

EQUITY and LEGAL COMPLIANCE

Section 1 Non-Discrimination

A. Policy of Non-Discrimination

ESU 17 does not discriminate on the basis of sex, disability, race (including skin color, hair texture and protective hairstyles), color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, gender identity or sexual orientation, or any other protected status in its programs and activities and provides equal access to designated youth groups. Reasonable accommodations will be provided to employees with disabilities and to those who are pregnant, have given birth, or have a related medical condition, as required by law. Complaints or concerns involving discrimination should be addressed to:

Employees and Others: Jeff McQuistan, Title IX Coordinator, 207 N Main St.,
Ainsworth, NE 69210 (402) 387*1420 jmcquistan@esu17.org.

Complaints or concerns involving discrimination or needs for accommodation or access should be addressed to the appropriate Coordinator.

For further information about anti-discrimination laws and regulations, or to file a complaint of discrimination with the Office of Civil Rights in the U.S. Department of Education (OCR), please contact the OCR at One Petticoat Lane, 1010 Walnut Street, 3rd Floor, Suite 320, Kansas City, Missouri 64106, (816) 268-0550 (voice), Fax (816) 268-0599, (800) 877-8339 (telecommunications device for the deaf), or ocr.kansascity@ed.gov.

ESU 17 is committed to offering employment and educational opportunities to its employees and students in a climate free of discrimination. Accordingly, unlawful discrimination, harassment and retaliation of any kind by ESU 17 employees, including co-workers, non-employees (such as volunteers), third parties, and others is strictly prohibited and will not be tolerated.

B. Harassment

Harassment is a form of discrimination and includes verbal, non-verbal, written, graphic, or physical conduct relating to any protected status that is sufficiently serious to deny, interferes with, or limits a person's ability to participate in or benefit from an educational or work program or activity, including, but not limited to:

1. Conduct that is sufficiently severe or pervasive to create an intimidating, hostile, or abusive educational or work environment, or
2. Requiring an individual to endure the offensive conduct as a condition of continued employment or educational programs or activities, including the receipt of aids, benefits, and services.

Educational programs and activities include all academic, educational, extracurricular, athletic, and other programs of the ESU, whether those programs take place in an ESU facilities, on an ESU vehicle, at a class or training program sponsored by the ESU at another location, or elsewhere.

Discriminatory harassment because of any protected status may include, but is not limited to:

1. Name-calling,
2. Teasing or taunting,
3. Insults, slurs, or derogatory names or remarks,
4. Demeaning jokes,
5. Inappropriate gestures,
6. Graffiti or inappropriate written or electronic material,
7. Visual displays, such as cartoons, posters, or electronic images,
8. Threats or intimidating or hostile conduct,
9. Physical acts of aggression, assault, or violence, or
10. Criminal offenses.

The following examples are additional or more specific examples of conduct that may constitute sexual harassment:

1. Unwelcome sexual advances or propositions,
2. Requests or pressure for sexual favors,
3. Comments about an individual's body, sexual activity, or sexual attractiveness,
4. Physical contact or touching of a sexual nature, including touching intimate body parts and inappropriate patting, pinching, rubbing, or brushing against another's body,
5. Physical sexual acts of aggression, assault, or violence, including criminal offenses (such as rape, sexual assault or battery, and sexually motivated stalking), against a person's will or where a person is incapable of giving consent due to the victim's age, intellectual disability, or use of drugs or alcohol,
6. Requiring sexual favors or contact in exchange for aids, benefits, or services, such as grades, awards, privileges, promotions, etc., or
7. Gender-based harassment; acts of verbal, nonverbal, written, graphic, or physical conduct based on sex or sex-stereotyping, but not involving conduct of a sexual nature.

If ESU 17 knows or reasonably should know about possible harassment, including violence, ESU 17 will conduct a prompt, adequate, reliable, thorough, and impartial investigation to determine whether unlawful harassment occurred and take appropriate interim measures, if necessary. If ESU 17 determines that unlawful harassment occurred, ESU 17 will take prompt and effective action to eliminate the harassment, prevent its recurrence, and remedy its effects, if appropriate. If harassment or violence that occurs off ESU property creates a hostile environment at ESU, ESU 17 will follow this policy and grievance procedure, within the scope of its authority.

All ESU 17 employees are expected to take prompt and appropriate actions to report and prevent discrimination, harassment, and retaliation by others. Employees who witness or become aware of possible discrimination, including harassment and retaliation, must immediately report the conduct to his or her supervisor or the compliance coordinator designated to handle complaints of

discrimination (designated compliance coordinator).

C. Anti-retaliation

ESU 17 prohibits retaliation, intimidation, threats, coercion, or discrimination against any person for opposing discrimination, including harassment, or for participating in ESU 17's discrimination complaint process or making a complaint, testifying, assisting, or participating in any manner, in an investigation, proceeding, or hearing. Retaliation is a form of discrimination.

ESU 17 will take immediate steps to stop retaliation and prevent its recurrence against the alleged victim and any person associated with the alleged victim. These steps will include, but are not limited to, notifying students, employees, and others, that they are protected from retaliation, ensuring that they know how to report future complaints, and initiating follow-up contact with the complainant to determine if any additional acts of discrimination, harassment, or retaliation have occurred. If retaliation occurs, ESU 17 will take prompt and strong responsive action, including possible discipline, including expulsion or termination, if applicable.

D. General Grievance (or Complaint) Procedures

Employees or students should initially report all instances of discrimination, harassment or retaliation to their immediate supervisor or teacher or to the Compliance Coordinator designated to handle complaints of discrimination. If the employee or student is uncomfortable in presenting the problem to the supervisor or teacher, or if the supervisor or teacher is the problem, the employee or student may report the alleged discrimination, harassment or retaliation ("discrimination") to the Compliance Coordinator.

If the Compliance Coordinator is the person alleged to have committed the discriminatory act, then the complaint should be submitted to the Administrator for assignment. A discrimination complaint form is attached to this grievance procedure and is available in the office of each ESU 17 building, on the ESU 17 website, and from the Compliance Coordinator.

Under no circumstances will a person filing a complaint or grievance involving discrimination be retaliated against for filing the complaint or grievance.

1. *Level 1 (Investigation and Findings)*

The Compliance Coordinator will review and evaluate each grievance, complaint, or report to determine if such grievance, complaint or report is covered under Title IX. If such a grievance, complaint or report is covered under Title IX, then the Compliance Coordinator will follow the Title IX Grievance Procedures (outlined below). For all other grievances, complaints or reports, the Compliance Coordinator will follow these General Grievance Procedures. Once ESU 17 receives a grievance, complaint or report alleging discrimination, harassment, or retaliation, or becomes aware of possible discriminatory conduct, ESU 17 will conduct a prompt, adequate, reliable, thorough, and impartial investigation to determine whether unlawful harassment occurred. If necessary, ESU 17 will take immediate, interim action or measures to protect the alleged victim and prevent further potential discrimination, harassment, or retaliation during the pending investigation. The alleged victim will be notified of his or her options to avoid contact with

the alleged harasser, such as changing a class or prohibiting the alleged harasser from having any contact with the alleged victim pending the result of ESU 17's investigation. ESU 17 will minimize any burden on the alleged victim when taking interim measures to protect the alleged victim.

ESU 17 will promptly investigate all complaints of discrimination, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. ESU 17 will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this grievance procedure. If the allegation(s) involve possible criminal conduct, ESU 17 will notify the complainant of his or her right to file a criminal complaint, and ESU 17 employees will not dissuade the complainant from filing a criminal complaint either during or after ESU 17's investigation.

ESU 17 will aim to complete its investigation within ten (10) working days after receiving a complaint or report, unless extenuating circumstances exist. Extenuating circumstances may include the unavailability of witnesses due to illness or incapacitation, or additional time needed because of the complexity of the investigation, the need for outside experts to evaluate the evidence (such as forensic evidence), or multiple complainants or victims. If extenuating circumstances exist, the extended time frame to complete the investigation will not exceed ten (10) additional working days without the consent of the complainant, unless the alleged victim agrees to a longer timeline. Periodic status updates will be given to the parties, when appropriate.

ESU 17's investigation will include, but is not limited to:

- a. Providing the parties with the opportunity to present witnesses and provide evidence.
- b. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- c. For allegations involving harassment, some of the factors ESU __ will consider include: 1) the nature of the conduct and whether the conduct was unwelcome, 2) the surrounding circumstances, expectations, and relationships, 3) the degree to which the conduct affected one or more students' education, 4) the type, frequency, and duration of the conduct, 5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, 6) the number of individuals involved, 7) the age (and sex, if applicable) of the alleged harasser and the alleged victim(s) of the harassment, 8) the location of the incidents and the context in which they occurred, 9) the totality of the circumstances, and 10) other relevant evidence.
- d. A review of the evidence using a "preponderance of the evidence" standard (based on the evidence, is it more likely than not that discrimination, harassment, or retaliation occurred?)

The Compliance Coordinator (or designated investigator) will complete an investigative report, which will include:

- a. A summary of the facts,

- b. Findings regarding whether discrimination, harassment or other inappropriate conduct occurred, and
- c. If a finding is made that discrimination, harassment or other inappropriate conduct occurred, the recommended remedy or remedies necessary to eliminate discrimination, harassment or other inappropriate conduct.

If someone other than the Compliance Coordinator conducted the investigation, the Compliance Coordinator will review, approve, and sign the investigative report. ESU 17 will ensure that prompt, appropriate, and effective remedies are provided if a finding of discrimination, harassment, or retaliation is made. ESU 17 will maintain relevant documentation obtained during the investigation and documentation supportive of the findings and any subsequent determinations, including the investigative report, witness statements, interview summaries, and any transcripts or audio recordings, pertaining to the investigative and appeal proceedings.

ESU 17 will send concurrently to the parties written notification of the decision (findings and any remedy) regarding the complaint within one (1) working day after the investigation is completed. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 11232g; 34 C.F.R. Part 99, permits ESU 17 to disclose relevant information to a student who was discriminated against or harassed.

2. *Level 2 (Appeal to the Administrator)*

If a party is not satisfied with the findings or remedies (or both) set forth in the decision, he or she may file an appeal in writing with the Administrator within five (5) working days after receiving the decision. The Administrator will review the appeal and the investigative documentation and decision, conduct additional investigation, if necessary, and issue a written determination about the appeal within ten (10) working days after receiving the appeal. The party who filed the appeal will be sent the Administrator's determination at the time it is issued, and a copy will be sent to the Compliance Coordinator. [If the Administrator is the subject of the complaint, the party will file the appeal directly with the Board.]

3. *Level 3 (Appeal to the Board)*

If the party is not satisfied with the Administrator's determination, he or she may file an appeal in writing with the Board within five (5) working days after receiving the Administrator's determination. The Board will review the appeal, the Administrator's determination, the investigative documentation and decision, and allow the party to address the Board at a Board meeting to present his or her appeal. The party will be allowed to address the Board at the Board's next regularly scheduled Board meeting (unless the Board receives the appeal within one week of the next regularly scheduled Board meeting) or at a time and date agreed to by the Board, Compliance Coordinator and the party. The Board will issue a written determination about the appeal within thirty (30) days after the party addresses the Board. The party who filed the appeal will be sent the Board's determination at the time it is issued, and a copy will be sent to the Compliance Coordinator. The Board's determination, and any actions taken, will be final on behalf of ESU 17.

E. Confidentiality

The identity of the complainant will be kept confidential to the extent permitted by state and federal law. ESU __ will notify the complainant of the anti-retaliation provisions of applicable laws and that ESU __ will take steps to prevent retaliation and will take prompt and strong responsive actions if retaliation occurs.

If a complainant requests confidentiality or asks that the complaint not be pursued, ESU __ will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or the request not to pursue an investigation, as long as doing so does not prevent ESU __ from responding effectively to the harassment and preventing harassment of other students. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, ESU __ will inform the complainant that its ability to respond may be limited. Even if ESU __ cannot take disciplinary action against the alleged harasser, ESU __ will pursue other steps to limit the effects of the alleged harassment and prevent its recurrence, if warranted.

F. Title IX Grievance (or Complaint) Procedures

All employees are responsible for helping to prevent sexual harassment. Employees, or students, who believe they have been subjected to or witnessed sexual harassment should follow these procedures:

1. Directly inform the person engaging in the discrimination or harassment that such conduct is offensive and must stop.
2. For employee reporters, contact your principal or supervisor or the principal or supervisor of the offending person, the Title IX Coordinator, or the Human Resources Manager, if you do not wish to communicate directly with the person whose conduct is offensive or if direct communication with the offending person has been ineffective.
3. Report the matter to the Title IX Coordinator or the Human Resources Manager, if the offending conduct continues or has not been resolved to your satisfaction after you have reported the matter to a principal or supervisor.
4. For student reporters, contact any teacher or administrator.
5. Report to the Title IX Coordinator if you are the adult to whom the student has made a report so that the matter can be properly resolved. The Title IX Coordinator may file a formal complaint and begin the following complaint procedure.

Allegations of sexual harassment or discrimination shall be investigated and, if substantiated, corrective or disciplinary action may be taken, up to and including dismissal from employment if the offender is an employee, or suspension and/or expulsion, if the offender is a student. Retaliatory action will not be taken against an employee for reporting discrimination or harassment.

i. Response to a Formal Title IX Complaint:

1. Filing Formal Complaint: An employee or student can allege sexual harassment by filing a formal complaint in writing with the Title IX Coordinator in person or by mail, or by electronic mail using the following contact information:

TITLE IX COORDINATOR CONTACT INFORMATION
Jeff Mcquistan
207 N. Main Street, Ainsworth, NE 69210
402-387-1420
jmcquistan@esu17.org

The formal complaint must be signed by the complainant or by the Title IX Coordinator. The following procedures apply only in the event that a formal complaint is filed. All other allegations of sexual harassment shall be resolved using the general complaint procedure. Any timelines set forth in the following procedures may be extended by the Title IX Coordinator with notice to the parties.

2. Immediate Actions Upon Receipt of Formal Complaint: Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following to all known parties: (a) the complaint procedure as outlined in this regulation; and (b) notice of the allegations of sexual harassment including (i) the identities of the parties involved, if known, (ii) the conduct allegedly constituting sexual harassment, and (iii) the date and location of the alleged incident.

The parties to the formal complaint may select an advisor of their choice, who may be, but is not required to be, an attorney.

3. Investigation of Formal Complaint: Upon receipt of a formal complaint, the Title IX Coordinator shall notify the Investigator. The Investigator will promptly investigate all complaints of discrimination, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. The Investigator will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this complaint procedure. If the allegation(s) involve possible criminal conduct, the ESU will notify the complainant of his or her right to file a criminal complaint, and ESU employees will not dissuade the complainant from filing a criminal complaint either during or after the ESU's investigation.

The Investigator will aim to complete its investigation within a reasonable time frame as determined by the Title IX Coordinator. The factors to determine a reasonable time frame include, but are not limited to the allegations of the formal complaint, the number of witnesses that may need to be interviewed, and whether the police are also conducting an investigation into the allegations. The time frame originally set by the Title IX Coordinator may be extended by the Title IX Coordinator, upon notice to the parties, as he or she deems necessary to complete the investigation. Periodic status updates will be given to the parties, when appropriate.

(A) *Neutrality:* The Title IX Coordinator, investigator, decision-maker, or any person designated by the ESU to facilitate this complaint procedure, shall not have any conflict of interest

or bias for or against complainants or respondents generally or an individual complainant or respondent. The ESU shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates this complaint procedure shall receive training on the definition of sexual harassment in accordance with this regulation, the scope of the ESU's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the fact at issue, conflicts of interest, and bias. The ESU shall ensure that the individuals involved in the complaint procedure receive training on issues of relevance of questions and evidence and on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

(B) *Burden of Production*: It shall be the Investigator's burden to gather evidence sufficient to reach a determination regarding responsibility. To reach a determination, the investigation will include, but is not limited to:

- a. Providing the parties with the opportunity to present witnesses and provide evidence.
- b. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- c. For allegations involving harassment, some of the factors the ESU will consider include: 1) the nature of the conduct and whether the conduct was unwelcome, 2) the surrounding circumstances, expectations, and relationships, 3) the degree to which the conduct affected one or more students' education, 4) the type, frequency, and duration of the conduct, 5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, 6) the number of individuals involved, 7) the age (and sex, if applicable) of the alleged harasser and the alleged victim(s) of the harassment, 8) the location of the incidents and the context in which they occurred, 9) the totality of the circumstances, and 10) other relevant evidence.
- d. A review of the evidence using a "preponderance of the evidence" standard (based on the evidence, is it more likely than not that discrimination, harassment, or retaliation occurred?)

(C) *Rights of the Parties*: The respondent is entitled to a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process.

The Investigator must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

The Investigator shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

The Investigator shall provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice if the Investigator deems appropriate. However, the Investigator may establish restrictions regarding the extent to which the advisor may participate in the proceedings, if the restrictions apply equally to both parties.

The Investigator shall provide to all witnesses expected to attend a meeting notice of the

date, time, location, participants, and purpose of all hearings within 2 days of the meeting.

Up until the conclusion of the investigation, the parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. This includes the evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence obtained from any source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

The ESU retains the right to place a non-student employee respondent on administrative leave during the pendency of the investigation. The ESU also retains the right to remove a respondent from the ESU's educational program prior to the conclusion of the investigation. In the event of a removal, the respondent shall have the opportunity to challenge the decision for removal.

(D) *Conclusion of Investigation:* Prior to the conclusion of the investigation, the investigator shall send each party and the party's advisor, if any, the evidence that is subject to inspection and review in an electronic format or a hard copy. The parties shall then have ten (10) days to submit a written response, which the investigator will consider.

Once the investigator has considered the written statements of the parties, if any, and any questions of the parties, if any, the investigator shall create an investigative report that fairly summarizes relevant evidence. The investigator shall then submit the written investigation report to the decision-maker. The parties shall each receive a copy of the final investigative report at the same time as the decision-maker.

4. Decision of Responsibility: The decision-maker, shall review the investigative report. Prior to coming to a determination regarding responsibility, the decision maker shall provide 10 days for each party to submit written, relevant questions that a party wants asked of any party or witness, provide each party with answers, and allow for additional, limited follow-up questions from each party.

Once the decision maker has considered the written questions of the parties, if any, the decision maker shall issue a written determination regarding responsibility by a preponderance of the evidence within a reasonable time frame as determined by the Title IX Coordinator. The decision-maker shall consider all relevant evidence, including inculpatory and exculpatory evidence, and will not consider the credibility of the evidence to be based on a person's status, such as complainant, respondent, or witness. The decision-maker shall provide the written determination to both parties simultaneously. The written determination must include:

- a. Identification of the allegations potentially constituting sexual harassment;
- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of each recipient's code of conduct to the facts;
- e. A statement of, and rationale for, the results as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes

on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

- f. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Sec. 11232g; 34 C.F.R. Part 99, permits the ESU to disclose relevant information to a student who was discriminated against or harassed.

5. Supportive Measures and Disciplinary Actions:

Throughout the investigation, either party may be entitled to supportive measures. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the ESU's educational environment, to deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The ESU shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the ESU to provide the supportive measures.

At the conclusion of the investigation, the decision-maker may institute disciplinary measures to the respondent if the decision-maker determines that the respondent engaged in sexual abuse or harassment. Disciplinary measures may include, but are not limited to, in school suspension, out of school suspension, expulsion, and in the case of an employee disciplinary action up to and including dismissal from employment. This policy does not limit or prohibit the ESU from instituting disciplinary measures if in the course of the investigation it determines that the complainant or respondent violated the student code of conduct.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

ii. Title IX Appeals

If either party is not satisfied with the outcome of the investigation and the decision of the decision-maker, they may appeal on the following bases:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

- c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against the complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter.

The request for an appeal shall be in writing and submitted on the appropriate document. The appeal document shall be submitted to the ESU Administrator.

Upon notice of an appeal by either party, the ESU Administrator shall notify the other party in writing when the appeal is filed and of the appeal procedures, which apply equally to both parties.

The ESU Administrator shall give both parties a reasonable, and equal opportunity to submit a written statement in support of or challenging the outcome.

The ESU Administrator shall review the investigative report, decision-maker's determination, and written statements of the parties and then issue a written decision describing the result of the appeal and the rationale for the result. The ESU Administrator shall provide the written decision simultaneously to both parties.

iii. Informal Resolution

If a formal Title IX complaint is filed, the ESU may offer the complainant and respondent the opportunity to participate in an informal resolution process. The informal resolution process may take place at any time prior to reaching a determination regarding responsibility. The informal resolution process shall only take place upon:

- a. Written notice to both parties disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the resolution process and resume the complaint process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b. The parties' voluntary, written consent to the informal resolution process; and
- c. That the allegations of the formal complaint do not involve any allegations that an employee sexually harassed a student.

G. Training:

The ESU will ensure that ESU employees, including but not limited to officials, administrators, teachers, substitute teachers, counselors, nurses and other health personnel, coaches, assistant coaches, paraprofessionals, aides, bus drivers, and school law enforcement officers, are adequately trained so they understand and know how to identify acts of discrimination, harassment, and retaliation, and how to report it to appropriate ESU officials or employees.

In addition, the ESU shall ensure that employees designated to address or investigate discrimination, harassment, and retaliation, including designated compliance coordinators, receive additional specific training to promptly and effectively investigate and respond to complaints and

reports of discrimination, and to know the ESU's grievance procedures and the applicable confidentiality requirements.

H. Preventive Measures:

The ESU may, from time to time, distribute specific harassment and violence materials (such as sexual violence), including a summary of the ESU’s anti-discrimination, anti-harassment, and anti-retaliation policy and grievance procedure, and a list of victim resources, to its employees and students that the ESU serves.

Legal Reference:	Title VI, 42 U.S.C. § 2000d, Title VII, 42 U.S.C. § 2000e, Title IX; 20 U.S.C. § 1681, and the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §48-1101 et seq. Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA), 29 U.S.C. §621 et seq., and the Nebraska Age Discrimination in Employment Act, Neb. Rev. Stat. §48-1001 et seq.; Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq. Section 504 of the Rehabilitation Act of 1973 (Section 504) Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) Uniform Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 et seq. Neb. Rev. Stat. § 79-2,115, et seq
Date of Adoption:	

Section 2 Section 504 Compliance

A. Purpose (34 CFR 104.3)

The purpose of this policy is to effectuate Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. Compliance with this policy will also effectuate compliance with the Americans with Disabilities Act (ADA).

B. Definitions (34 CFR 104.3)

“Handicapped persons” means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

“Major life activities” means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Qualified handicapped person means:

With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

With respect to educational services, a handicapped person (a) of an age during which non-handicapped persons are provided such services, (b) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (c) to whom a free appropriate public education is required to be provided.

With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

C. Discrimination Prohibited (34 CFR 104.4)

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the ESU.

D. Voluntary Action and Self-Evaluation (34 CFR 104.6)

Voluntary action. The ESU may take steps, in addition to any action that is required by this policy, to overcome the effects of conditions that result in limited participation in the ESU's program or activity by qualified handicapped persons.

Self-evaluation. The ESU shall: (a) evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this policy; (b) modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this policy; and (c) take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

The ESU shall, for at least three years following completion of the evaluation, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) a list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

E. 504 Coordinator (34 CFR 104.7)

The ESU has designated the Administrator as its Section 504 Coordinator. The ESU has designated the Director of Special Education as its Section 504 Coordinator for students. As required by law, these persons shall coordinate the ESU's efforts to comply with Federal Law.

F. 504 and ADA Complaint Procedures (34 CFR 104.7)

The following grievance procedure shall be used to provide for the prompt and equitable resolution of complaints alleging any action prohibited by this policy and for the resolution of complaints of alleged violations of Section 504 or the ADA:

1. Complaints shall be filed with the ADA and Section 504 Coordinator. Complaints shall be made in writing, unless the Complainant's disability prevents such, in which event the Complaint can be made verbally.
2. Complaints shall set forth: (a) the name of the Complainant, (b) the address and telephone number or other such information sufficient to enable the Coordinator to contact the Complainant, (c) a brief description of the alleged violation, and (d) the relief requested by the Complainant.
3. Complaints shall be investigated by the Coordinator or the Coordinator's designee. Investigations shall be thorough, but informal, and the Complainant shall be given a full opportunity to submit evidence relevant to the complaint.
4. The Coordinator shall make a decision on the Complaint within thirty (30) days of the filing of the Complaint, unless such time period is extended by agreement of the Complainant. The decision shall be made in writing, shall set forth the Coordinator's proposed resolution of the Complaint, and shall be forwarded to the Complainant.
5. The Complainant shall have ten (10) days from the date the Coordinator's decision is sent to the Complainant to accept or reject the Coordinator's proposed resolution, and shall be deemed to have accepted the proposed resolution unless the Complainant rejects the proposed resolution within such time period.

In the event the Complainant rejects the proposed resolution, the Complainant shall be given the opportunity to file a request for reconsideration within ten (10) days from the date the Coordinator's decision is sent to the Complainant. The request for reconsideration shall be filed with the Coordinator. The Coordinator shall consider any additional information provided in the request for reconsideration and make a decision on the request for reconsideration within 10 (ten) days after the request for reconsideration was filed.

G. Notice (34 CFR 104.8)

The ESU shall take appropriate steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of State or Federal law, including Section 504. The notification shall state, where appropriate, that the ESU does not discriminate in admission or access to, or treatment or employment in, its programs and activities.

The notification shall also include an identification of the responsible employee designated above. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in the ESU's publication, and distribution of memoranda or other written communications.

If the ESU publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement that the ESU does not discriminate on the basis of handicap in violation of State or Federal law, including Section 504.

H. Employment Practices Discrimination Practices Prohibited (34 CFR 104.8)

1. General.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this policy applies.

The ESU shall take positive steps to employ and advance in employment qualified handicapped persons in programs that receive assistance under the special education laws.

The ESU shall make all decisions concerning employment under any program or activity to which this policy applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

The ESU will not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this policy.

2. Specific Activities.

The provisions of this policy apply to: (1) recruitment, advertising, and the processing of applications for employment; (2) hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring; (3) rates of pay or any other form of compensation and changes in compensation; (4) job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists; (5) leaves of absence, sick leave, or any other leave; (6) fringe benefits available by virtue of employment, whether or not administered by the ESU; (7) selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training; (8) employer sponsored activities, including social or recreational programs; and (9) any other term, condition, or privilege of employment.

3. Collective Bargaining Agreement Superseded.

The ESU's obligation to comply with this policy is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

4. Reasonable Accommodation (34 CFR 104.12)

The ESU shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the ESU can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

Reasonable accommodation may include: (a) making facilities used by employees readily accessible to and usable by handicapped persons, and (b) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

In determining whether an accommodation would impose an undue hardship on the operation of the ESU's program, factors to be considered include: (a) the overall size of the ESU's program with respect to number of employees, number and type of facilities, and size of budget; (b) the type of the ESU's operation, including the composition and structure of the ESU's workforce; and (c) the nature and cost of the accommodation needed. The ESU may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

5. Employment Criteria (34 CFR 104.13)

The ESU will not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (a) the test score or other selection criterion, as used by the ESU, is shown to be job-related for the position in question, and (b) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not available.

The ESU shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

6. Pre-employment Inquiries (34 CFR 104.14)

Except as provided below, the ESU will not conduct a pre-employment medical examination or make pre-employment inquiries of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. The ESU may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

When the ESU is taking remedial action to correct the effects of past discrimination or voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when the ESU is taking affirmative action, the ESU may invite applicants for employment to indicate whether and to what extent they are handicapped. To take such action, the ESU must: (a) state clearly on any written questionnaire used for this purpose, or make clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and (b) state clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this policy.

Nothing in this section shall prohibit the ESU from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (a) all entering employees are subjected to such an examination regardless

of handicap, and (b) the results of such an examination are used only in accordance with the requirements of this policy.

Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that: (a) supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations; (b) first aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and (c) government officials investigating compliance with the Act shall be provided relevant information upon request.

I. Program Accessibility

1. Discrimination Prohibited (34 CFR 104.21)

No qualified handicapped person shall, because the ESU's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this policy applies.

2. Existing Facilities (34 CFR 104.22)

Program accessibility. The ESU shall operate each program or activity to which this policy applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. The ESU is not required to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Methods. The ESU is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with program accessibility. In choosing among available methods for meeting the requirement of program accessibility, the ESU shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

Transition plan. In the event structural changes to facilities are necessary to meet the requirement of program accessibility, the ESU shall develop a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum: (a) identify physical obstacles in the ESU's facilities that limit the accessibility of its program or activity to handicapped persons; (b) describe in detail the methods that will be used to make the facilities accessible; (c) specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during

each year of the transition period; and (d) indicate the person responsible for implementation of the plan.

Notice. The ESU shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

3. New Construction (34 CFR 104.23)

Each facility or part of a facility constructed by, on behalf of, or for the use of the ESU shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons.

Each facility or part of a facility which is altered by, on behalf of, or for the use of the ESU after the effective date of this policy in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

J. Program Accessibility to Students (34 CFR 104.32 to .38)

As and to the extent the services to a qualified handicapped student are the responsibility of the ESU, the services are to:

1. be in conformance with the 504 Plan developed by the 504 team for the student by the school in which the student is enrolled, and
2. afford handicapped students an equal opportunity for participation in programs and services without discrimination on the basis of handicap.

Legal Reference:	Rehabilitation Act of 1973, Section 504--29 U.S.C. §791, et seq.; 34 CFR §104, et seq. ADA-42 U.S.C. §12101 et seq.; 28 CFR §35.101 et seq. Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §§48-1101 to 48-1126
Date of Adoption:	November 13, 2023

Section 3 Special Education

The ESU will abide by all state and federal laws and regulations relating to special education.

1. Free Appropriate Public Education: The Board affirms its position that students with disabilities are entitled to a free appropriate public education in conformance with Nebraska Department of Education Rule 51. As and to the extent the services to a special education student are the responsibility of the ESU, the services are to:
 - a. be in conformance with the student’s Individualized Education Plan (IEP) or Individual Family Service Plan (IFSP),

- b. meet the standards that apply to education provided by the school in which the student is enrolled, and
 - c. provide the student with all of the rights of a child with a disability who is served by the school in which the student is enrolled.
- 2. Student Records - Rights and Privacy: Student records are to be maintained in conformance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and NDE Rule 51. The Administrator or designee shall establish procedures to protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.
- 3. Procedural Safeguards: The special education programs and services operated by the ESU or provided to schools by contract shall comply with the procedural safeguards specified in NDE Rule 51.
- 4. Plans and Budgets: Special education plans and budgets for schools served will be available for public viewing.
- 5. Personnel: All personnel assigned to provide special education and related services to children with disabilities are to be appropriately and adequately prepared to provide special education. The Director of Special Education will develop a comprehensive system of personnel development which shall include:
 - a. In-service training;
 - b. Procedures to assure that all personnel are properly endorsed and adequately trained; and
 - c. Acquiring and disseminating best educational practices and materials developed for the provision of the services.

Legal Reference:	20 U.S.C. 1400 et seq. 34 CFR Part 300 (Individuals with Disabilities Education Act and regulations); §§ 79-1110 to 79-1178 92 NAC 51 (NDE Rule 51) 20 U.S.C. 1232g (FERPA)
Date of Adoption:	November 13, 2023

Section 4 Homeless Students

A. General Policy Statement

The ESU shall ensure that homeless children and youths shall have equal access to the same free, appropriate public education, including public preschool education, as provided to other children and youths.

B. Definitions

“School of Origin” shall mean the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including preschool. School of origin

shall also include any designated receiving school for the next grade level for all feeder schools when a student completes the final grade level served by the school of origin.

“Homeless children and youths” shall mean any individuals who lack a fixed, regular, and adequate nighttime residence; and includes:

- 1. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;
- 2. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- 3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- 4. Migratory children who qualify as homeless because they are living in circumstances described in (1-3).

“Unaccompanied youth” shall mean a homeless child or youth not in the physical custody of a parent or guardian.

C. School Stability

- 1. School Selection: The ESU shall presume that keeping a homeless child or youth enrolled in the child’s or youth’s school of origin is in the child’s or youth’s best interest, except when doing so is contrary to the request of the child’s or youth’s parent or guardian or, in the case of an unaccompanied youth, the youth.

To overcome the presumption that a child or youth should remain in his/her school of origin, the ESU shall consider student-centered factors including: the impact of mobility on achievement, education, health, and safety of homeless children and youth, giving priority to the request of the child’s or youth’s parent or guardian or, in the case of an unaccompanied youth, the youth.

- 2. Enrollment: Once the school is selected in accordance with the child’s or youth’s best interest, that child or youth shall be immediately enrolled even if the child or youth is unable to produce records normally required for enrollment including, but not limited to, previous academic records, immunization or other health records, proof of residency or has missed any application or enrollment deadlines during any period of homelessness.
- 3. Transportation: If the child or youth continues to attend his or her school of origin, transportation shall be provided promptly even if there is a dispute pending regarding which school is in the child’s or youth’s best interest to attend. Transportation will continue to be provided to and from the school of origin for the

remainder of any academic year during which the child or youth becomes permanently housed.

D. Records

Any record ordinarily kept by the ESU, including immunization or medical records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, regarding each homeless child or youth shall be maintained:

1. Such that all records are available, in a timely fashion, when a child or youth enrolls in a new school or school district;
2. Any information about a homeless child's or youth's living situation shall be treated as a confidential student education record, and shall not be deemed to be directory information; and
3. In a manner consistent with the Federal Education Rights and Privacy Act.

E. Services

The Local Education Agency Liaison shall identify an appropriate staff person to be the Local Educational Liaison (LEL) for all homeless children and youth attending programs in the ESU. The LEL responsibilities shall include, but are not limited to:

1. Ensure homeless children and youth are identified through outreach and coordination activities including coordination with the Nebraska Department of Education Homeless Education Liaison, community, and school personnel responsible for education and related services to homeless children and youths;
2. Receive appropriate time and training in order to carry out the duties required by law and this policy;
3. Ensure homeless families and homeless children and youths are referred to health care, dental, mental health, substance abuse, housing and any other appropriate services;
4. Ensure that homeless children and youths:
 - a. Are enrolled in school which includes attending classes and participating fully in school activities;
 - b. Have a full and equal opportunity to meet the same challenging State academic standards as other children and youths;
 - c. Receive individualized counseling from counselors to prepare and improve their readiness for college, including college selection, application, financial aid, and on-campus supports.

- d. Unaccompanied youths are informed of their status as independent students under the Higher Education Act of 1965 and may obtain assistance from the LEL to receive verification of such status for purposes of the Free Application for Federal Student Aid.
- 5. Ensure that public notice of the educational rights and available transportation services of the homeless children and youths is disseminated in locations frequented by parents or guardians of such youths and unaccompanied homeless youths, including schools, shelters, public libraries, and soup kitchens, in a manner and form that is easily understandable.
- 6. Ensure the dispute resolution process identified below is carried out in accordance with the law and district policy.

F. Dispute Resolution

- 1. The dispute procedure must be available for disputes over eligibility, as well as school selection or enrollment.
- 2. In the event of a dispute regarding where a child or youth should enroll, the child or youth shall be immediately enrolled in the ESU program in which enrollment is sought pending final resolution of the dispute, including all available appeals. The ESU shall immediately provide the child’s parent or guardian or, in the case of an unaccompanied youth, the youth a written explanation of the decision made regarding the school selection including the right to appeal such decision. Said writing shall be provided in a manner and form understandable to such parent, guardian, or unaccompanied youth and also include the LEL contact information. The LEL shall carry out the dispute resolution process within 30 calendar days from the date of said writing pursuant to 92 Nebraska Administrative Code 19-005.02.
- 3. Appeals: Any parent, guardian or other person having legal or actual charge of a homeless child or youth that is dissatisfied with the decision of the ESU after the dispute resolution process may file an appeal with the Commissioner within thirty calendar days of receipt of the decision by following the process in 92 Nebraska Administrative Code 19-005.03 and 19-005.03C.

Legal Reference:	Neb. Rev. Stat. § 79-215, Nebraska Department of Education Rule 19, McKinney-Vento Homeless Assistance Act, 42 USC §§ 11431, et seq., Every Student Succeeds Act
Date of Adoption:	November 13, 2023

Section 5 Student Welfare

A. Child Abuse and Neglect

Any employee of ESU 17 who has reasonable cause to believe a child has been subjected to abuse or neglect or is being subjected to conditions which would result in abuse or neglect shall inform

their immediate supervisor and the appropriate administrator of the school in which the student is enrolled. For children below age five, the report shall also be made to the Director of Special Education.

The immediate supervisor or the Director of Special Education, as applicable, shall make a report or cause a report to be made of suspected abuse or neglect directly to local law enforcement or the Department of Health and Human Services, Child Protection Services (CPS). If there is an emergency, the report is to be made to local law enforcement immediately. To fulfill their statutory duty, the employee shall also make the report or confirm that the report has been made to local law enforcement or CPS.

Confidentiality of the person making the report shall be maintained to the extent practicable. The Administrator or designee is to establish and implement procedures to ensure such confidentiality.

The Administrator or designee shall provide employees information and in-services as appropriate to ensure that employees fully understand their responsibility under the law and the ESU’s procedures.

Legal Reference:	§ 28-711
Date of Adoption:	November 13, 2023

B. Corporal Punishment

Use of corporal punishment is prohibited by ESU 17. Corporal punishment for purposes of this policy means the infliction of bodily pain as a penalty for disapproved behavior. This does not include physical contact that is intended to preserve order in schools or to protect persons or property from harm. Any physical force used with students shall be limited to that which is reasonable in relation to the need for self-defense, the defense of others, the defense of one’s property or the defense of another’s property.

Any employee who has been involved in an incident involving the use of physical force with a student shall make an oral report of such circumstances to the Administrator or designee as soon as is practicable and within twenty-four hours. The Administrator or designee shall prepare a memorandum of such report and, as deemed appropriate, investigate and report the incident to the appropriate administrator of the school in which the student is enrolled. A child abuse or neglect report shall be made in the event such is warranted.

The Administrator or designee shall provide employees information and in-services as appropriate to ensure that employees fully understand their responsibility to not use corporal punishment and the ESU’s procedures.

Legal Reference:	§ 79-295 NDE Rule 27.002.09 and 27.004.03G
Date of Adoption:	November 13, 2023

C. Use of Restraints and Seclusion

This policy sets forth the requirements, restrictions and procedures related to the use of physical

restraints and seclusions.

1. Definitions

- A. Physical Restraint. Physical restraint means one or more persons using a physical hold to restrict a student's freedom of movement as a response to student behavior. A light touching of a student while conducting a physical escort or a touching to provide instructional assistance is not a physical restraint for purposes of this Guidance.
- B. Seclusion. Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving as a response to student behavior.

Seclusion is distinguishable from an in-school suspension, in which other students or adults may be present. While students are required to remain in the in-school suspension area, the students are not physically prevented from leaving.

2. Physical Restraint

- A. When Physical Restraint May be Used. Physical restraint may be used in the following circumstances:
- To prevent a student from completing an act that would result in injury to the student or others when there is a substantial risk that the student would commit the act.
 - A verbal threat by a student does not present a substantial risk that a student would commit an aggressive act unless the student also demonstrates the ability and intent to carry out the threat.
 - Destruction of or damage to property does not present a substantial risk of personal injury unless personal injury would be caused as a result of the destructive act (for example, throwing sharp or heavy objects when others are present, or the person whose property is about to be destroyed is likely to react physically if the person's property were destroyed). (Note: If a student is about to destroy or damage property, the act of grasping the student's arm or leg solely to prevent the striking, throwing or kicking of the item is not prohibited).
 - To move a student to a seclusion room, or to remove a student to another location because the student is creating a substantial disruption to others, in circumstances where the student is unable to be moved or removed without the use of physical restraint; and
 - In circumstances where the student's IEP or a Behavioral Plan provides for the use of physical restraint in circumstances other than the foregoing. If it is anticipated that physical restraint may need to be used with a special education student, the IEP team is to discuss and include use of physical restraint in the

student's IEP if the IEP team determines use of physical restraint to be appropriate. (Note: IEPs or Behavioral Plans should not provide for such physical restraint except in those circumstances where the professional staff determines that non-aversive or positive intervention strategies would not be effective).

Physical restraint may not be used:

- When a known medical or psychological condition contraindicates its use.
- As a form of punishment.

- B. Conditions. Use of physical restraint shall take into consideration the safety and security of the student.

In determining whether a student who is being physically restrained should be removed from the area where such restraint was initiated, the staff shall consider the potential for injury to the student, the student's privacy interests, and the educational and emotional well-being of other students in the vicinity.

If physical restraint is imposed upon a student whose primary mode of communication is sign language or an augmentative mode, the student shall be permitted to have his or her hands free of restraint for brief periods, unless staff determines that such freedom appears likely to result in harm to the student or others.

- C. Timeline. Physical restraint is to be used only as long as necessary to resolve the reason for which it was initiated.

- D. Training. Physical restraint shall be applied only by individuals who have received systematic training that includes all the elements described below. An individual who applies physical restraint shall use only techniques in which he or she has received such training within the preceding two (2) years.

Training with respect to physical restraint may be provided either by the School ESU or by an external entity and shall include, but need not be limited to:

- Appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, relationship-building, and the use of alternatives to restraint;
- A description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;
- The simulated experience of administering and receiving a variety of physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;

- Instruction regarding the effects of physical restraint on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- Instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and
- Demonstration by participants of proficiency in administering physical restraint.

An individual may provide training to others in a particular method of physical restraint only if he or she has completed training in that technique that meets the foregoing requirements within the preceding one-year period.

3. Seclusion

A. When Seclusion May be Used. Seclusion may be used in the following circumstances:

- When a student's behavior is so out of control that the student's behavior creates a risk of injury to the student or others;
- When a student's behavior is so out of control that the student is causing a substantial disruption to school activities and there is no other technique and no other place the student may be moved to prevent continued disruption;
- When a student's behavior is so out of control that the student is unable to engage in educational activities and there is no other technique that could reasonably be employed to allow the student's emotions to cool down and engage in appropriate behaviors and educational activities; and
- The student has an IEP or a Behavioral Plan which provides for the use of seclusion in circumstances other than the foregoing. If it is anticipated that seclusion may need to be used with a special education student, the IEP team is to discuss and include use of seclusion in the student's IEP if the IEP team determines use of seclusion to be appropriate. (Note: IEPs or Behavioral Plans should not provide for use of seclusion except in those circumstances where the professional staff determines that non-aversive or positive intervention strategies would not be effective).

Seclusion may not be used:

- When a known medical or psychological condition contraindicates its use.
- As a form of punishment.

B. Conditions. Use of seclusion shall take into consideration the safety and security of the student.

Enclosures used for seclusion, other than enclosures used on a temporary basis, shall:

- Have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being isolated but also any other individual who is required to accompany that student.
- Be constructed of materials that cannot be used by students to harm themselves or others, be free of electrical outlets, exposed wiring, and other objects that could be used by students to harm themselves or others, and be designed so that students cannot climb up the walls (including walls far enough apart so as not to offer the student being isolated sufficient leverage for climbing).
- If an enclosure used for isolated time out is fitted with a door, the door shall either be a steel door or a wooden door of solid-core construction. If the door includes a viewing panel, the panel shall be unbreakable.
- Be designed to permit visual monitoring of and communication with the student sufficient to ensure the student's safety and security. For students who do not communicate verbally, arrangements shall be made to permit the student to periodically communicate the student's needs.
- If a locking mechanism is used on the enclosure, the mechanism shall be constructed so that it will engage only when a key, handle, knob, or other similar device is being held in position by a person, unless the mechanism is an electrically or electronically controlled one that is automatically released when the building's fire alarm system is triggered. Upon release of the locking mechanism by the supervising adult, the door must be able to be opened readily.

The procedures for use of seclusion include:

- An adult who is responsible for supervising the student shall remain within close proximity of the enclosure.
 - The adult responsible for supervising the student must periodically check on the student visually if possible.
- C. Timeline. A student shall not be kept in seclusion for more than 20 minutes after the student ceases presenting the specific behavior for which isolated time out was imposed or any other behavior for which isolated time out would be an appropriate intervention.
- D. Training. Orientation will be provided to staff members who are anticipated to be involved in the use of seclusion. The orientation shall cover the procedures contained in this Guidance.

4. Documentation and Evaluation

- A. Documentation of Use of Physical Restraint or Seclusion. A written record of each use of seclusion or physical restraint shall be prepared and maintained in the student's temporary record. The student's case manager, if any, shall also maintain a copy of each such record. Each such record shall include:

- The student's name;

- The date of the incident;
- The beginning and ending times of the incident;
- A description of any relevant events leading up to the incident;
- A description of any interventions used prior to the implementation of physical restraint or seclusion;
- A description of the incident and/or student behavior that resulted in implementation of physical restraint or seclusion;
- A log of the student's behavior during physical restraint or seclusion, including a description of the restraint technique(s) used and any other interaction between the student and staff;
- A description of any injuries (whether to students, staff, or others) or property damage;
- A description of any planned approach to dealing with the student's behavior in the future;
- A list of the school personnel who participated in the implementation, monitoring, and supervision of physical restraint or seclusion;
- The date on which the parent or guardian was notified.

The record shall be completed by the beginning of the school day following the use of seclusion or physical restraint.

- B. Notification of Administration. The Administrator or Administrator's designee shall be notified of the incident as soon as possible, but no later than the end of the school day on which it occurred.
- C. Notification of Parent or Guardian. Within 24 hours after use of seclusion or physical restraint, the Administrator or Administrator's designee shall send written notice of the incident to the student's parents or guardians, unless the parent or guardian has provided the ESU a written waiver of this requirement for notification. The parent or guardian shall be informed of the date of the incident, a description of the intervention (physical restraint or seclusion) used, and who at the school may be contacted for further information.
- D. Evaluation. An evaluation shall be conducted whenever a physical restraint exceeds 15 minutes or results in physical injury, whenever a seclusion exceeds 30 minutes, or use of physical restraint or seclusion is repeated with an individual student during any three-hour period:
- A certified staff person trained in the use of physical restraint, or knowledgeable about the use of seclusion, as applicable, shall evaluate the situation.
 - The evaluation shall consider the appropriateness of continuing the procedure in use, including the student's potential need for medication, nourishment, or use of a restroom, and the need for alternate strategies (e.g., assessment by a mental health crisis team, assistance from police, or transportation by ambulance).

- b. The results of the evaluation shall be committed to writing and copies of this documentation shall be placed into the student’s temporary student record and provided to the Administrator or Administrator’s designee.

Legal Reference:	
Date of Adoption:	November 13, 2023

B. Removal of Students and Interviews of Students

It shall be the policy of the ESU to follow the policy of the school in which each individual student is enrolled with respect to the removal of students and interviews of students to the extent that such school policies are consistent with the effective operations of the ESU. In the absence of such a school policy, or when the school policy has not been provided to the ESU, the following procedures shall be used.

1. Removal of Students by Law Enforcement Officials

In dealing with law enforcement officials, ESU employees are not to obstruct government operations or unreasonably refuse or fail to aid a peace officer, but are also to attempt to prevent undue interference with ESU operations or educational programming.

A peace officer may in the line of duty require a student to accompany him for questioning or detention, either with or without an arrest warrant. A peace officer has the lawful authority to take immediate temporary custody of children under the age of 18 without a warrant or order of the court (1) when, in the presence of the officer, the juvenile has violated a state law or a municipal ordinance; (2) when a felony has been committed and the officer has reasonable grounds to believe the juvenile committed it; (3) when such juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile’s protection; or (4) when there are reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian. A probation officer assigned to a student by a court also has the statutory authority to arrest a student in certain circumstances and that power is similar to the power granted to a peace officer by law.

If a peace officer or probation officer requests custody of a student who is at that time under the control and jurisdiction of the ESU:

- a. The student should be released after appropriate measures are taken and documented to ensure that the officer has the authority to take the student.
- b. Upon releasing the student, the school in which the student is enrolled has a statutory responsibility to inform the student’s parent or guardian of the removal. To assist the school in meeting this responsibility, the ESU employee who has released the student shall contact an appropriate administrator of the school in which the student is enrolled. The school

administrator shall be informed of any circumstances that warrant a delay in immediately contacting the parent or guardian, such as information which suggests that immediate notification could interfere with the peace officer's performance of duties or create a dangerous situation for the student or peace officer.

In some instances there may be orders for custody of a student served by the FBI, a federal marshal, a postal inspector, another federal officer, state official, or officers from outside the jurisdiction of the ESU. While these officers may have authority to arrest and remove students, local law enforcement should be contacted and requested to participate in or monitor the removal.

A student should not be released to a private detective or "special police officer" who is not an officer of a Nebraska political subdivision or an officer of some agency of the federal government without consent of the student's parent, guardian or custodian.

2. Interviews of Students by Law Enforcement Officials

Unless a student is placed under arrest, a peace officer or probation officer will not be permitted to remove a student from the control and jurisdiction of the ESU for questioning unless permission of the student's parent, guardian or custodian is obtained. Law enforcement officers should be urged to contact students outside the instructional day and off ESU premises whenever possible. Questioning or interview of students on ESU premises should only take place pursuant to the following guidelines:

- a. If an interview of a student is requested during school hours concerning an ongoing investigation of a crime not related to the ESU, questioning should not take place until the student's parent, guardian or custodian has been contacted, either by the ESU or by an appropriate administrator of the school in which the student is enrolled, and permission is given for such interview. The consent should be documented. The presence of an ESU employee during the interview is not necessary.
- b. If an investigator represents that an interview is necessary to collect information concerning an allegation of child abuse or neglect or an offense involving a family relation and it is clear that obtaining parental consent for the interview would be impossible or counter-productive, the interview may be conducted on ESU premises without such consent. In these situations, an employee of the ESU or the school in which the student is enrolled should be present during the interview to ensure that the interview relates only to those matters specified by the law enforcement official.
- c. If the investigation relates to an incident which took place on ESU or school premises or during instructional time, it is not necessary to obtain parental consent for an interview. In these situations, an employee of the ESU or the school in which the student is enrolled should be present during the

interview to ensure that the interview relates only to the incident which took place on ESU or school premises or during instructional time or something which is directly related thereto.

- d. A probation officer assigned to a student by a court may be allowed the opportunity, on request, to interview a student on ESU premises free from the observation of other children or individuals. In such situations, it is neither necessary nor desirable that an ESU employee be present during the interview. It also is not necessary to obtain the consent of the parent, guardian, or custodian for the interview.

3. Disclosure of Student Records

ESU employees shall not, in the course of dealing with a peace officer or probation officer, disclose any confidential student records or information from such student records other than in response to a court order or subpoena or as otherwise authorized by state law and the Family Educational Rights and Privacy Act (FERPA).

4. Interviews of Students by Persons other than Law Enforcement Officials

Any person other than an employee or agent of the ESU or of the school in which the student is enrolled who comes to ESU premises to interview a student or remove a student prior to the end of the student’s instructional day must obtain permission of the Administrator or designee.

Permission to remove is not to be granted unless authorized by the student’s parent, guardian or custodian or a person authorized by the student’s parent, guardian or custodian.

Permission to interview is not to be granted unless that person has a clearly valid and proper reason and such is not disruptive to ESU operations or the student’s educational program. Ordinarily such contacts shall be restricted to the student’s parent, guardian or custodian or a friend of the family when an emergency or other similar circumstance exists.

Legal Reference:	§ 43-248; § 43-418; § 79-294 § 79-2,104 (student records) 20 U.S.C. 1232g (FERPA)
Date of Adoption:	November 13, 2023

Section 6 Student Conduct

A. Student Conduct Rules

Students are to be held responsible for compliance with the student conduct rules of the school district in which they are enrolled. ESU employees shall report conduct violations to the

responsible administrator of such school as appropriate for disciplinary action, subject to the student’s IEP or 504 Plan.

The Administrator or designee is authorized to establish additional conduct rules for students while participating in ESU programs and such conduct rules, when approved by the Board, shall have the effect of Board-approved policy.

Legal Reference:	
Date of Adoption:	November 13, 2023

B. Anti-Bullying

One of the missions of the ESU is to provide a physically safe and emotionally secure environment for students and staff.

The administration and staff are to implement strategies and practices to reinforce and encourage positive behaviors by students. Positive behaviors include non-violence, cooperation, teamwork, understanding, and acceptance of others.

The administration and staff are to implement strategies and practices to identify and prevent inappropriate behaviors by all students, including anti-bullying education for all students. Inappropriate behaviors include bullying, intimidation, and harassment. Bullying means any ongoing pattern of physical, verbal, or electronic abuse in areas within the control or jurisdiction of the ESU.

Legal Reference:	§ 79-2,137 §§79-254 to 79-296 (Student Discipline Act) NDE February 2003 State Board Action; Reaffirmed December 2005
Date of Adoption:	November 13, 2023

C. Search and Seizure

The ESU exercises exclusive control over lockers, desks and other such property that is owned by the ESU and made available for use by students. Students should not expect privacy regarding items placed in or on such property because ESU property is subject to search at any time by ESU officials. Periodic, random searches of student lockers may be conducted in the discretion of the administration.

The following rules shall apply to the search and the seizure of items in a student’s possession or control:

1. ESU officials may conduct a search if there is a reasonable basis to believe that the search will uncover evidence of a crime or rule violation.
2. Illegal items or other items reasonably determined to be a threat to the safety of others, a threat to educational purposes, or a prohibited nuisance item may be seized

by ESU officials. Any firearm shall be confiscated and delivered to law enforcement as soon as practical.

3. Items which are used to disrupt or interfere with the educational process may be removed from student possession.
4. The appropriate administrator of the school in which the student is enrolled is to be notified when items are discovered that would warrant discipline of the student under the school's student code of conduct.

Legal Reference:	
Date of Adoption:	November 13, 2023

Section 7 Student Health

A. Prohibition on Mandatory Medication

A student shall not be required to obtain a prescription for a controlled substance as a condition for receiving ESU educational services, an evaluation or special education services.

Legal Reference:	20 U.S.C. 1400 et seq. 34 CFR Part 300 (Individuals with Disabilities Education Act and regulations) 92 NAC 51 (NDE Rule 51)
Date of Adoption:	November 13, 2023

B. Dispensing Medications

The administration of medication to students is to be limited to medications that must be taken while students are participating in ESU programs or otherwise under the control and jurisdiction of the ESU. Adjustment of dosage intervals should be considered before medication is administered by ESU employees.

All medications administered by ESU personnel shall be administered in accordance with the Medication Aide Act.

1. Authorizations for Prescription Medications. Prescription medications may be administered when the following are on file with the ESU:
 - a. Physician's Authorization: A physician's signed, dated authorization including name of the medication, dosage, administration route, time to be given and reason student is receiving the medication.
 - b. Caretaker's Authorization: A caretaker's signed and dated authorization or

permission to administer the medication during school. (Note: All references to “caretaker” in this policy shall mean a parent, foster parent, family member, or legal guardian who provides care for the student for whom medication is to be administered. The laws include a “friend” as a caretaker, but the school will not ordinarily recognize such an individual as a “caretaker” for the purposes of medication administration).

- c. Original Packaging: The medication is in its original packaging and is labeled as dispensed by the prescriber or pharmacist. The label must name the student and identify the medication, strength, time interval and route to be administered. If needed, the physician may be contacted for clarification.
2. Authorizations for Non-Prescription Medications. Non-prescription medications may be administered provided that a caretaker’s authorization is provided in the form established by the Administrator or designee and the medication is in its original packaging.
3. Renewal of Authorizations. Medication authorizations must be renewed annually and updated immediately as changes occur.
4. Documentation. Accurate medication administration records are to be kept and maintained. Documentation of each dose of medication administered shall be made reflecting the student’s name, the name of the medication, date, time, dosage, route, the signature and title of the person administering the medication and any unusual observations, and any refusal by the recipient to take or receive the medication. Medication documentation shall be kept confidential in accordance with the policies and practices concerning student records, provided that medication administration records shall be available to the Department of Education and the Department of Health and Human Services Regulation and Licensure for inspection and copying according to the Family Education Rights and Privacy Act (FERPA) requirements. Such medication administration records shall be maintained for not less than two years.
5. Storage. Medication shall be stored in a locked or otherwise secure area in accordance with the manufacturer’s or dispensing pharmacist’s instructions or temperature, light, humidity, or other storage instructions. Only authorized personnel who are designated by the administration shall have access to the medications. The school nurse shall establish procedures for monitoring the storage and handling of medication, the medication's expiration date, and the disposal of medication.
6. Receipt and Disposal of Medications. Medication shall be delivered to ESU personnel and picked up by the parent. When medication is received, the amount received should be documented. Medication which is either past the expiration date or not claimed by the parent a reasonable time following the student’s departure from the ESU program shall be destroyed. Procedures for destroying medication shall include witness and documentation.

7. Administration of Medication by ESU Personnel.

- a. Administration of Medication: Administration of medication includes, but is not limited to:
 - i. Providing medications for another person according to the “five rights” (getting the right drug to the right recipient in the right dosage by the right route at the right time);
 - ii. Recording medication provision; and
 - iii. Observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired affects, side effects, interactions, and contraindications associated with the medication.

- b. Authorized ESU Personnel: Administration of medication shall only be done by the following:
 - i. Health Care Professionals (School Nurses). This means an individual who holds a current license from the Department of Health and Human Services Regulation and Licensure for whom administration of medication is included in the scope of practice. For purposes of this Policy, such individuals are referred to as “school nurses.”

 - ii. Medication Competent Staff. This means a staff member of the ESU who, by arrangement with the school in which the student is enrolled is an employee of the school for purposes of the medication administration laws and who has been determined to be competent to administer medication in accordance with the competency assessment standards established by law. A medication competent staff member is to be subject to direction and monitoring, which involves responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication. Direction and monitoring is to be done by a recipient with capability and capacity to make an informed decision about medications, a caretaker, or the school nurse. Medication competent staff members are to promptly report any medication errors or concerns to the school nurse.

- c. Routes of Medication Administered by ESU Personnel:
 - i. Routine Medication via Oral, Inhalation, Topical, and Instillation Routes: School nurses and medication competent staff may provide routine medications (meaning the frequency of administration, amount, strength, and method are specifically fixed) by the following routes:
 - a. Oral, which includes any medication given by mouth including sublingual (placing under the tongue) and buccal (placing between the cheek and gum) routes and oral sprays;
 - b. Inhalation, which includes inhalers, and nebulizers. Oxygen may be given by inhalation;
 - c. Topical application of sprays, creams, ointments, and lotions and transdermal patches; and

- d. Instillation by drops, ointments, and sprays into the eyes, ears, and nose.
- ii. Administration of Medication via Additional Routes, PRN Medication, and Observing and Reporting: School nurses and medication competent staff may provide medication by additional routes (“additional routes”), provide PRN medication (PRN medication means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness), or participate in observing and reporting for monitoring medications only under the following conditions:
 - a. In the case of a medication competent staff member, a determination has been made by the school nurse or by the student’s physician or duly licensed health care professional that these activities can be done safely for the specified recipient by the medication competent staff member and the determination is placed in writing.
 - b. Directions for additional routes must be for recipient specific procedures and must be in writing.
 - c. Directions for PRN medication must be in writing and include parameters for provision of PRN medication.
 - d. Directions for observing and reporting for monitoring medication must be in writing and include the parameters for the observation and reporting.
 - e. ESU personnel administering the medication shall comply with the written directions.
- iii. Injections: School nurses will ordinarily be responsible for medications that must be provided or administered by injection. A medication competent staff member will not ordinarily administer medications by injection without specific training on injection administration. Students may be authorized to self-administer medication as hereafter provided.
- d. Refusal to Administer Medication: The ESU may refuse to give a medication if after a reasonable and prudent research by an ESU or school health care professional a decision has been made that the dosage prescribed exceeds that which is recommended in the Physician's Desk Reference, Mosby’s Nursing Drug Reference, the most recent edition of the Nursing Drug Handbook, or other pharmaceutical manuals handbook; or when a drug or substance is not currently approved by the FDA. When ESU personnel refuse to carry out a request to administer medication, the Administrator or designee is to be notified and efforts are to be made to work out a suitable solution (such as changing the time of administration, the dosage, or the medication) with the parent or guardian and the physician.

Legal Reference:	§§ 71-6718 to 71-6742; NDE Rule 59
Date of Adoption:	

C. Emergency Response to Life-Threatening Asthma or Systemic Allergic Reactions

It is the policy of ESU 17 to follow the Emergency Response to Life-Threatening Asthma or Systemic Allergic Reactions (Emergency Protocol) and related policies of the school in which the ESU provides services in the school ESU’s facilities.

Each employee who is or will be providing services to students in an accredited school, an approved school, or to children in an approved early childhood program, is to be provided with the following:

1. Information about the existence of the Emergency Response to Life-Threatening Asthma or Systemic Allergic Reactions (Emergency Protocol) established by the Nebraska Department of Education and adopted by each school ESU.
2. Access to a copy of the Emergency Protocol form and either a copy of the school’s signed Emergency Protocol or directions to obtain such from the school administrator.
3. Information about the availability of a school nurse and, if one is not available, who at the school site where services are being provided is a designated trained non-medical staff member for purposes of implementing the Emergency Protocol.
4. Information about the whereabouts within the school building where the employee is providing services of the equipment and medication necessary to implement the Emergency Protocol in the case of any student or school staff emergency, including the location of an IM EpiPen-Jr. or adult EpiPen, or the school official who is to be contacted to obtain such information.
5. Appropriate direction and instruction so that an employee who may be involved in an Emergency Protocol response provides appropriate and accurate information to the appropriate school official, in order that the school may maintain records of administration of medication by school staff as required.
6. Inform and provide the employee of any written request from a parent or guardian of a minor student served by the employee, directing that such minor student not receive emergency treatment under the protocol.

Legal Reference:	NDE Rule 59.006
Date of Adoption:	

D. Student Self-Management of Asthma, Anaphylaxis, and Diabetes

Students with asthma, anaphylaxis or diabetes will be permitted to self-manage such medical conditions while participating in programs operated by the ESU when the student has a self-management plan established with the school in which they are enrolled that is prepared and signed in accordance with legal requirements.

Legal Reference:	§§ 79-224 and 79-225
------------------	----------------------

Date of Adoption:	November 13, 2023
-------------------	-------------------

E. Emergency Medical Aid

When a student is receiving services in a program under the control or supervision of the ESU, ESU employees are to utilize the skills within their capacity to respond to health emergencies. Employees are to render medical aid to students in need of emergency medical services or, as appropriate, arrange for the transportation of the student to the nearest facility where professional medical assistance is available.

Every effort should be made by ESU 17 employees to contact the student’s parent or guardian, if time allows for such contact under emergency circumstances; but the primary interest is the health of the student. In the event that emergency circumstances do not allow the employee to contact a parent or guardian prior to the rendering of medical assistance, then the employee should contact the parent or guardian at the earliest practical time under the circumstances.

Legal Reference:	
Date of Adoption:	November 13, 2023

Section 8 Required Trainings

The Board hereby authorizes the Administrator to oversee and ensure that the ESU and its employees comply with all training requirements required by law and all associated data or training reporting requirements required by law. The Administrator has the authority to take all reasonable steps to comply with training requirements, including the authority to contract with third parties to ensure that any such training or reporting complies with state and federal law. This Section shall supersede any conflicting policy to the extent that a conflicting policy would prevent the ESU from complying with a legal mandate.

Section 9 Communicable and Infectious Diseases

A. Procedures for Control of Communicable Diseases.

The ESU shall cooperate with county and state health departments in developing procedures for the control of communicable disease in ESU programs and activities. Procedures shall conform to the regulations for communicable disease control set up by the state health department. The Administrator or designee shall establish an exposure control plan in accordance with OSHA’s “Occupational Exposure to Blood-Borne Pathogens” Standard.

B. Students

1. Contagious and Infectious Diseases. Contagious and infectious diseases subject to this part include those diseases regulated by the Nebraska Department of Health and Human Services regulations pertaining to school health and communicable disease control (173 NAC 3). A student showing any signs or symptoms of a contagious or infectious disease will be excluded from attending ESU schools or programs in accordance with the Contagious and Infectious Disease Chart attached

to those regulations and not be allowed to return until the minimum isolation period has elapsed, and all signs or symptoms of illness have disappeared in accordance with the Chart. Students with contagious or infectious diseases or conditions other than those listed in the Chart will be subject to exclusion until the student's physician gives a written statement that the disease or condition is not in a communicable stage or there is minimal risk of transmission to others in a school or ESU program setting.

2. Bloodborne Pathogen Communicable Diseases. Communicable diseases subject to this part include diseases spread via bloodborne pathogens, including Human immunodeficiency virus (HIV) (including AIDS) and Hepatitis B (only carriers are of concern). A student with such a disease shall not be excluded or be subject to different treatment concerning services or participation in activities in the absence of an individualized determination that exclusion or modifications are appropriate because the student's condition poses an imminent threat to the health or the safety of others in the ESU school or program community. Such a determination shall be made by following established policies and procedures for students with chronic health problems or students with disabilities. Decision makers are to consult with the student's physician and parent or guardian; respect the student's and family's privacy rights; and reassess the placement if there is a change in the student's need for accommodations or services.

In making such a determination, the following factors will be evaluated: (1) the nature of the disease; (2) the age of the student; (3) the behavior of the student; (4) the neurological development of the student; (5) the physical condition of the student; (6) the expected type of interaction which the student will have with other individuals in the proposed placement setting; (7) the degree to which other individuals may be exposed to infectious organisms; (8) the hygienic practices of the student; (9) the risk of transmission of the disease from the student to those individuals with whom the student will interact; and (10) any other pertinent factor reasonably related to the decision.

3. Reporting. Employees who become aware that a student has been diagnosed with or is suspected of having a reportable disease shall immediately inform the Administrator or designee, who shall notify the appropriate administrator of the school in which the student is enrolled and make a report to the Board of Health where required by law.

C. Employees

1. Contagious and Infectious Diseases. When an employee has a contagious or infectious disease which is in a communicable stage or presents more than a minimal risk of transmission to others, the employee should not report to work and is expected to follow the absence reporting procedures. Employees should in general follow the same guidelines for absence from work as a student is to follow under the guidelines of the Contagious and Infectious Disease Chart of the Nebraska Department of Health and Human Services regulations pertaining to school health and communicable disease control. Prior to returning to work,

employees shall upon request submit a physician's written statement stating that the employee is able to return to work and does not pose a significant risk of transmission of the disease to others.

2. Bloodborne Pathogen Communicable Diseases. Communicable diseases subject to this part include diseases spread via bloodborne pathogens, including Human immunodeficiency virus (HIV) (including AIDS) and Hepatitis B (only carriers are of concern). An employee with a communicable disease, or an applicant for employment, shall be employed or be continued in employment without consideration of the communicable disease provided the employee or applicant is able to perform the essential functions of the position with such reasonable accommodations as may be necessary and provided the communicable disease does not pose an imminent threat to the health or the safety of others within the employee's work environment. Employees who have a communicable disease are expected to conduct themselves in such a manner as to not place others at risk and, in the event reasonable accommodation is necessary to avoid such risk, to make a confidential request for such accommodation.

D. General Provisions

1. No Discrimination or Harassment. No employee or student shall be unlawfully discriminated against or subjected to harassment on the basis of having a communicable disease.
2. Privacy. Every employee has a duty to treat as highly confidential any knowledge or speculation concerning the bloodborne pathogen status of a student or other employee. Violation of medical privacy may be cause for disciplinary action against the employee, including possible termination.

No information regarding a person's bloodborne pathogen status will be divulged to any individual or organization other than ESU employees or agents who have a need to know of the circumstance, appropriate officials of the school in which the student is enrolled, and emergency medical personnel with a need to know, without a court order or a signed and dated consent of the person with the bloodborne pathogen infection (or the parent or guardian of a minor).

3. Records. All health records, notes, and other documents that reference an employee's bloodborne pathogen status or occupational exposure will be maintained in a separate confidential medical file for the employee. Records of occupational exposure shall be maintained for at least the duration of employment plus 30 years in accordance with OSHA standards.

All health records, notes, and other documents that reference a student's bloodborne pathogen status will be maintained in a separate confidential medical file for the student.

4. Infection Control. All employees are required to consistently follow infection control guidelines. Employees are required to follow the exposure control plan of

the ESU established in accordance with OSHA’s “Occupational Exposure to Blood-Borne Pathogens” Standard. The use of universal precautions is mandated and work practice controls to minimize or prevent potential exposure are to be implemented. Any incident of exposure to blood shall be reported, evaluated, and follow-up completed and shall be shared only to the extent required to accomplish legitimate educational goals and to comply with employees’ right to know requirements. Equipment and supplies needed to apply the infection control guidelines will be maintained and kept accessible.

5. Staff Development. The Administrator or designee will make communicable disease and bloodborne pathogen education programs available to employees as appropriate to convey guidance on infection control procedures and inform employees about ESU policies.

Legal Reference:	173 NAC 3 (HHS Control of Communicable Disease regulation) §§ 20-167 and 20-168 (HIV/AIDs statutes) § 79-264 (student emergency exclusion) 29 CFR 1910.1030 (OSHA Bloodborne Pathogens regulation) ADA-42 U.S.C. §12101 et seq.; 28 CFR §35.101 et seq. Rehabilitation Act of 1973, Section 504--29 U.S.C. §791, et seq.; 34 CFR §104, et seq. Nebraska Fair Employment Practices Act--§§48-1101 to 48-1126 20 U.S.C. 1232g (FERPA)
Date of Adoption:	November 13, 2023

Section 10 Student Fees

The ESU will not assess any fee to students in a manner inconsistent with the adopted Student Fee Policy of the school district in which the student is enrolled (“School District”). Further, the ESU will not assess any fee to students in the absence of specific authority within a contract for services between the ESU and the School District.

In the event that a student served by the ESU requires certain goods or services to be provided by the ESU when no counterpart service is available within the School District, any fees to be charged for any such goods or services by the ESU shall be specifically identified by the School and the ESU. Any fees assessed by the ESU at the direction of, or by contract with, the School shall be deemed a fee collected by the School District.

Legal Reference:	§§ 79-2,125 to 79-2,135 (Public Elementary and Secondary Student Fee Authorization Act)
Date of Adoption:	November 13, 2023

Section 11 Transportation

A. Safe Pupil Transportation Plan

This policy sets forth the ESU's plan for providing safe transportation to students being transported by the ESU in pupil transportation vehicles.

1. Weapons. Vehicles shall not transport any items, animals, materials, weapons or look-a-like weapons, explosive devices or bomb-related materials or equipment which could endanger the lives, health, or safety of the children, other passengers, and the driver. Look-a-like weapons associated with a school-sponsored or approved activity may be transported with written permission of an administrator of the District. Personal safety or security devices (such as tasers, mace or pepper spray) may only be transported with the prior approval of an administrator of the Administrator or Administrator's designee. If possible, these items should be secured and not visible or accessible to students while in the vehicle.

Upon becoming aware of a weapon aboard a vehicle, the driver will make every attempt to:

- a. Contact dispatch and notify them of the situation if possible. If not possible, the driver will make every attempt to contact dispatch from a cell phone (after parking on a shoulder or otherwise not moving) or from the nearest safe haven location. Examples of a safe haven include, but are not limited to, any school building site, emergency service station (law enforcement or fire department), community service agency, etc.
 - b. Pull vehicle over to safe and secure area.
 - c. Confiscate weapon (if doing so does not jeopardize student or driver safety).
 - d. Give description of weapon and participating parties to dispatch.
 - e. Dispatch will immediately notify appropriate law enforcement agencies and administration.
2. Pupil behavior. Students are expected to follow student conduct rules while in a vehicle. The pupil transportation driver is responsible for controlling behavior which affects safety and for reporting rule violations to administration. In the event a student violates Board policy regarding student conduct standards or otherwise engages in behavior that jeopardizes safety, the driver will make every attempt to:
 - a. First seek to resolve incident through discussion with the student(s) involved.
 - b. Contact dispatch and notify them of situation if possible. If not possible, the driver will make every attempt to telephone dispatch from a cellular telephone or from the nearest safe haven location.
 - c. Activate emergency flashers.
 - d. Bring vehicle to a safe stop. Seek to resolve the incident, using physical force only as necessary to protect students or yourself.
 - e. Report and document discipline problems to the Administrator. Use a Bus Conduct Report/Incident Form, if available.
 3. Terrorist threats. A person commits a terroristic threat if the person threatens to

commit a crime of violence with the intent to terrorize another or with the intent of causing evacuation of a building, place of assembly or the vehicle or in reckless disregard of the risk of causing such terror or evacuation. Upon becoming aware of a terroristic threat relating to a pupil transportation vehicle, the driver will make every attempt to:

- a. Contact dispatch and notify them of situation if possible. If not possible, the driver will make every attempt to telephone dispatch from a cell phone or from the nearest safe haven location.
 - b. Make every attempt to keep passengers calm (this may mean complying with the terrorist).
 - c. Dispatch will immediately notify appropriate law enforcement agencies and administration.
 - d. Driver should wait for instructions from dispatch if possible.
4. Severe weather. Upon becoming aware of severe weather while aboard a pupil transportation vehicle, the driver will make every attempt to:
- a. Contact dispatch and notify them of situation if possible. If not possible, the driver will make every attempt to telephone dispatch from a cellular telephone or from the nearest safe haven location.
 - b. Return to the nearest school site if less than five minutes away and follow the directions of the school administrator.
 - c. If more than five minutes away from a school site, go to the nearest school and follow the directions of the administrator.
 - d. If more than five minutes away from the nearest school site or there is immediate danger, get to the nearest basement or underground shelter with all students.
 - e. If there is no shelter and there is immediate danger the driver and passengers are to follow evacuation procedures and get everyone off the vehicle into the nearest ditch or culvert at least 100 feet away from the vehicle.
5. Hazardous materials and Unattended Items. Upon becoming aware of a hazardous material aboard a pupil transportation vehicle, the driver will make every attempt to:
- a. Contact dispatch and notify them of situation if possible. If not possible, the driver will make every attempt to telephone dispatch from a cellular telephone or from the nearest safe haven location.
 - b. Pull vehicle over to safe and secure area.
 - c. Give description of hazardous materials in question to dispatch.
 - d. Dispatch will immediately notify appropriate law enforcement and administration.
 - e. Driver should wait for instructions from dispatch if possible.

In the event an unattended item is discovered on or near the vehicle, the driver will seek to determine who the item belongs to and whether the item could be hazardous to the safety of those in the vehicle. Any unattended item that would break or could cause injury if

tossed about the inside of the vehicle when involved in an accident shall be secured. If it is determined that the item is not hazardous and need not be secured, the driver will not allow the item to distract the driver's attention to the task of operating the vehicle.

6. Medical emergencies. Upon becoming aware of a medical emergency aboard a vehicle, the driver will make every attempt to:

- a. Contact dispatch and notify them of situation if possible. If not possible, the driver will make every attempt to telephone dispatch from a cell phone or from the nearest safe haven location.
- b. Dispatch will immediately notify appropriate medical agencies and administration.
- c. Driver should follow instructions from dispatch, ESU officials, and parents when such information can be obtained quickly enough. If not available, follow emergency first aid procedures.
- d. Only if necessary, the driver should move passengers only enough to get them out of danger of traffic or fire. If moved, the driver and aide are to keep them where placed until a medical agency arrives, unless a parent has taken charge of their child. Driver should try to keep student passengers as calm as possible.

7. Procedures in the event of mechanical breakdowns of the vehicle.

Upon becoming aware of a mechanical breakdown aboard a vehicle, the driver will make every attempt to:

- a. Pull vehicle over to safe and secure area if possible.
- b. Contact dispatch and notify them of situation if possible. If not possible, the driver will make every attempt to telephone dispatch from a cellular telephone or from the nearest safe haven location.
- c. Activate emergency flashers and place warning flares/reflectors in accordance with safety guidelines, if not in secure area.
- d. Driver should try to keep student passengers as calm as possible.
- e. Dispatch will arrange for assistance and a relief vehicle if needed.

8. Documentation under Safe Pupil Transportation Plan. Each pupil transportation driver is required to complete and submit to the administration a bus conduct report or incident report involving the pupil transportation vehicle operated by the driver or any pupils transported in it. Documentation is to include the occurrence of any of the following events: weapons, student behavior which affects safety, terroristic threats, severe weather, hazardous materials, medical emergencies, or procedures in the event the drop-off location is uncertain or appears unsafe to leave students. Documentation of such events shall be completed and submitted as soon as practicable after the incident.

9. Transportation of Unsafe Items. Drivers shall not permit pupil transportation vehicles to transport any items, animals, materials, weapons or look-a-like weapons or equipment which in any way would endanger the lives, health or safety of the children or other passengers and the driver. Look-a-like weapons associated with a school-sponsored or approved activity may be transported only with written

permission of a school administrator. Personal safety or security devices (such as tasers, mace or pepper spray) may only be transported with the prior approval of an administrator of the District. Any items that would break or could produce injury if tossed about inside the pupil transportation vehicle when involved in an accident or sudden stop shall be secured.

10. Supplemental Information. A copy of this plan shall be placed in each pupil transportation vehicle, kept at each ESU site, and made available upon request. Supplemental information with respect to operational and procedural guidelines used to administer this plan can be found in the Nebraska Department of Education Pupil Transportation Guide.
11. Vehicle drivers of small vehicles on activity trips. The ESU will provide drivers of small vehicles with instruction on and guidance for emergency evacuation procedures, first aid, and emergency equipment. Drivers of small vehicles are generally expected to follow this Plan in the event of an emergency evacuation. The ESU may provide additional guidance for drivers of small vehicles to increase student safety.
12. Student Instruction. At least twice during each school year, each pupil who is transported in an ESU vehicle shall be instructed in safe riding practices and participate in emergency evacuation drills.
13. Driver Capacity. To confirm a driver has the ability to conduct daily tasks and emergency evacuations, drivers must: (a) pass a prescribed physical examination administered by a Certified Medical Examiner at least every two years and provide the employer with a copy of the medical certificate; (b) pass a transportation screening every year; (c) participate in required in-service training which includes emergency evacuation training; and (d) if required, to have a Commercial Driver’s License (CDL) to operate the vehicle, participate in the drug and alcohol testing program as required by federal law. Should a driver have a medical concern throughout the year, the Administrator or Administrator’s designee will work with the driver to confirm a drivers’ ability to conduct the daily tasks and emergency evacuations prior to transporting students.

Legal Reference:	§§ 79-318, 79-602, 79-607 and 79-608 NDE Rules 91 and 92
Date of Adoption:	November 13, 2023

B. Safe Driving Record Standard for Drivers

Each person who drives students in a small vehicle (car or van) other than a pupil transportation vehicle for an ESU activity and who is not required to have a permit to operate a pupil transportation vehicle shall be precluded from driving in the event it is discovered that the person does not have a record of satisfactory driving. For such persons, a satisfactory driving record means a record which reflects the absence of any of the following offenses or circumstances:

1. Motor vehicle homicide;

2. Driving while under the influence of alcoholic liquor or drugs or refusal to submit to a chemical test, within the immediate prior 20 years; or,
3. Reckless driving or willful reckless, within the immediate prior 20 years; or
4. Accumulation of 5 or more points under the motor vehicle operators' license point system, within the immediate prior 4 years. In the event the person has accumulated 3 or 4 points within the immediate prior 4 years, the determination of whether the person has a satisfactory driving record shall be made by the Administrator or Administrator's designee based on the nature and proximity of the offense as it relates to safe transportation.

Each person who drives an ESU vehicle other than a pupil transportation vehicle and does not transport students in the vehicle shall be precluded from driving in the event it is discovered that the person does not have a record of satisfactory driving. In the event the person's employment position required driving vehicles as a function of the person's employment, the employment may be terminated in the absence of a record of satisfactory driving. For such persons, a satisfactory driving record means a record which reflects the absence of any of the following offenses or circumstances:

1. Motor vehicle homicide;
2. Driving while under the influence of alcoholic liquor or drugs or refusal to submit to a chemical test, within the immediate prior 20 years; or,
3. Reckless driving or willful reckless, within the immediate prior 10 years; or
4. Accumulation of 6 or more points under the motor vehicle operators' license point system, within the immediate prior 4 years. In the event the person has accumulated 3, 4 or 5 points within the immediate prior 4 years, the determination of whether the person has a satisfactory driving record shall be made by the Administrator or Administrator's designee based on the nature and proximity of the offense as it relates to safe transportation.

The record of satisfactory driving standards shall apply to all new employees from and after adoption of this policy. Existing employees shall be subject to the same standards, provided that the Administrator or Administrator's designee may determine to permit an exception based on the existing employee's record of satisfactory driving while employed with ESU ___ and the nature and proximity of prior driving offenses as such offenses relate to safe transportation.

Legal Reference:	NDE Rule 91
Date of Adoption:	November 13, 2023