

Instruction Sheet

ESC Localized Policy Manual Update 16

District Region 20 Education Service Center

Code	Action To Be Taken	Note
CKA (LEGAL)	Replace policy	Revised policy
DAB (LOCAL)	Replace policy	Revised policy
DBE (LEGAL)	Replace policy	Revised policy
DC (LEGAL)	Replace policy	Revised policy
DEA (LEGAL)	Replace policy	Revised policy
DEBA (LEGAL)	Replace policy	Revised policy
DEBB (LEGAL)	Replace policy	Revised policy
DGBA (LEGAL)	Replace policy	Revised policy
DHB (LEGAL)	Replace policy	Revised policy
DI (LEGAL)	Replace policy	Revised policy
EAB (LEGAL)	Replace policy	Revised policy
EABB (LEGAL)	Replace policy	Revised policy
EC (LEGAL)	Replace policy	Revised policy
EC (LOCAL)	Replace policy	Revised policy

Explanatory Notes

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CKA (LEGAL) SAFETY PROGRAM/RISK MANAGEMENT
INSPECTIONS

We have revised this policy throughout to reflect the corrected title of the Texas Department of State Health Services (TDSHS). Citations in this policy have also been updated.

DAB (LOCAL) EMPLOYMENT OBJECTIVES
OBJECTIVE CRITERIA FOR PERSONNEL DECISIONS

The criteria for personnel decisions have been expanded to include other written evaluative information (including disciplinary information), violation of a policy or procedure, and any instance of inappropriate, unprofessional, or unlawful conduct. The inclusion of this expanded criteria may be useful in the dismissal, reassignment, and demotion process.

DBE (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

We have revised the margin note at EFFECT OF BOARD MEMBER RESIGNATION for clarity. Citations in this policy have been updated as well.

DC (LEGAL) EMPLOYMENT PRACTICES

An existing statutory provision referencing the PENALTIES for violating the new hire reporting requirement has been added on page 2, in addition to other editorial revisions.

DEA (LEGAL) COMPENSATION AND BENEFITS
SALARIES, WAGES, AND STIPENDS

Changes at FAIR LABOR STANDARDS ACT, beginning on page 1, incorporate existing law on BREAKS FOR NONEXEMPT EMPLOYEES and add new provisions requiring ESCs to provide BREAKS FOR NURSING MOTHERS. If an ESC grants employees a rest period, the ESC must pay nonexempt employees for rest periods, including coffee or snack breaks, of up to 20 minutes. MEAL PERIODS of 30 minutes or more are unpaid as long as the employee is completely relieved of job duties during the break. The new nursing provisions require ESCs to provide a nonexempt employee a reasonable break to express breast milk each time the employee needs to do so for up to one year after a child's birth. The ESC must make available to the employee a location, other than a bathroom, that is shielded from coworkers and the public. The ESC is not required to pay a nonexempt employee for a breastfeeding break. Exemptions from the provisions on breaks for nursing apply to ESCs that employ fewer than 50 employees.

We have also revised the margin note at PAYMENT FOR ACCRUED TIME on page 2.

Citations throughout this policy have been updated.

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DEBA (LEGAL) LEAVES AND ABSENCES
FAMILY AND MEDICAL LEAVE

The National Defense Authorization Act for Fiscal Year 2010, effective October 28, 2009, expands employee leave benefits for a qualifying exigency arising out of a relative's military service. Previously this type of leave was available only if the relative was serving in the reserves. Now it is available if the relative is on "covered active duty," which includes regular service in the armed forces if the relative is being deployed to a foreign country. See QUALIFYING REASONS FOR LEAVE, item 5, on page 2.

Throughout this policy we have added citations to the definitions of relevant terms for ease of use. In addition, we have added a DEFINITIONS section, beginning on page 3, with the definitions of NEXT OF KIN, PARENT, SON OR DAUGHTER, and SPOUSE, since these definitions are frequently needed for reference.

Minor editorial revisions have been made at PREGNANCY OR BIRTH on page 3, FAILURE TO PAY PREMIUMS on page 10, and MEDICAL CERTIFICATION OF SERIOUS HEALTH CONDITION on page 15.

DEBB (LEGAL) LEAVES AND ABSENCES
MILITARY LEAVE

In addition to several minor editorial changes to make the policy easier to read, we have added margin notes for REEMPLOYMENT after FEDERAL MILITARY LEAVE and for an EXCEPTION to reemployment. Also, the definition of "uniformed services" is now a separate paragraph. Lastly, citations in this policy have been updated.

DGBA (LEGAL) PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE COMPLAINTS/GRIEVANCES

Citations in this policy have been updated.

DHB (LEGAL) EMPLOYEE STANDARDS OF CONDUCT
SEARCHES AND ALCOHOL/DRUG TESTING

The citation at RANDOM DRUG TESTING has been updated.

DI (LEGAL) EMPLOYEE WELFARE

The citation at EDUCATION AND TRAINING has been updated.

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EAB (LEGAL) PUBLIC INFORMATION PROGRAM ACCESS TO PUBLIC INFORMATION

HB 3544, from the 81st Texas Legislature, creates an exception to the general rule that E-MAIL ADDRESSES, on page 4, used by a member of the public to communicate with an ESC are confidential. The exception provides that an e-mail address provided to an ESC for the purpose of receiving decisions from the ESC or to comment on or receive notices related to an application for a license is not confidential. For an ESC, this might apply, for example, if a citizen provides his or her e-mail address to receive notice of board activity or information on a professional license or certificate.

Citations in this policy have been updated as well.

EABB (LEGAL) ACCESS TO PUBLIC INFORMATION REQUESTS FOR INFORMATION

This policy has been revised, on page 8, regarding PREVIOUS DETERMINATIONS of the attorney general. Under current law, when the attorney general has issued a previous determination decision on information that is the subject of a request, the ESC may not request another attorney general decision on the SAME INFORMATION. A citation to the relevant open records decision, No. 673, has been added.

When the attorney general has issued a previous determination decision that a category of information is not subject to disclosure under the Public Information Act, an ESC may withhold information that falls within that category without first seeking an attorney general decision. Recently, the attorney general issued Open Records Decision 684 (2010), which provides a list of CATEGORIES OF INFORMATION for which the attorney general has issued a previous determination. If an ESC receives a request for information that falls within one of the categories, it may also withhold the information without first seeking an attorney general decision. In addition to the categories addressed in ORD-684, the attorney general has previously determined that an ESC may withhold personally identifiable, non-directory information in "education records" as defined by FERPA. A citation to the relevant open records decision, No. 634, has been added as well.

Other citations throughout this policy have been updated as well.

EC (LEGAL) ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

Beginning at SECURITY BREACH NOTIFICATION on page 3, we have added more detail about an ESC's obligations to notify affected persons in the event of a breach of system security affecting sensitive personal information, including definitions for "breach of system security" and "sensitive personal information."

The persons who an ESC must notify in such circumstances and the time lines that an ESC must comply with vary, as provided by Business and Commerce Code 521.053. According to the statute, if an ESC owns or licenses the computerized data, the ESC must notify any Texas resident whose personal information was, or is reasonably believed to have been, acquired. In this case, notification must be made as quickly as possible or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system. If an ESC only maintains, but does not own, the computerized data, the ESC must immediately notify the owner or license holder. There are exceptions to these time lines if a criminal investigation is pending. In addition, an ESC required to notify more than 10,000 persons at one time must also notify each consumer reporting agency without unreasonable delay.

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Although the ESC must comply with these legal provisions governing to whom it must give notice and the timing of the notice, an ESC may use the notification methods set out in the ESC's policy rather than using the notification methods included in the Business and Commerce Code.

To assist ESCs in creating such a policy, this update includes provisions that address notification methods in the event of a security breach. See EC(LOCAL), below.

EC (LOCAL) ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

As described above at EC(LEGAL), ESCs may establish their own policies addressing notification methods in the event of a breach of system security affecting sensitive personal information as long as the policies follow the disclosure and timing requirements found in the Business and Commerce Code. An ESC that establishes and follows its own notification procedures will be in compliance with the law if it notifies affected persons in accordance with its policy.

While the ESC is not required to adopt a policy addressing notification methods to be used in the event of a breach of security, the recommended provisions included here simplify the Business and Commerce Code requirements and therefore should be beneficial in the event of a security breach. An ESC that chooses not to adopt local policy provisions would be required to comply with the more detailed notification procedures found in section 521.053 of the Business and Commerce Code.

The recommended text included at this update allows a SECURITY BREACH NOTIFICATION to be made through several methods: written notice, e-mail, posting on the ESC's Web site, or through broadcast media.

If your ESC does not wish to add these notification procedures to local policy, please contact your policy consultant.