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M E M O R A N D U M

To: KSB Policy Service Subscribers
FROM: KSB School Law
DATE: June 3, 2019
RE: Annual Policy Updates

Attached are the 2019 KSB School Law policy updates. We have also included changes to our standard forms and updates on some other laws which do not require changes to policies but do present new obligations or things to keep in mind as you enter the 2019-20 year. We have broken these down in 3 sections: "Policy Changes;" "Forms Changes;" and "Other Issues to Consider."

To assist subscribers in implementing these policy changes and the other considerations laid out in this Memo, **KSB will hold a webinar on Tuesday, June 4, 2019 at 9:00 a.m. Central Time.** In the webinar, we will give a brief overview of the changes and then answer questions from attendees regarding the policies and other considerations. We have included the link to the ZOOM conference in the cover e-mail that transmitted these updates. We will also record the webinar and will post it on the KSB School Law website in the Policy Updates section.

Please feel free to contact us if you have any additional questions or if you would like to have a policy customized or "tweaked" to meet your individual circumstances.

Policy Changes

REVISION OF POLICY 2002: Organization of the Board

LB 399 changes the name of the Committee on Americanism to the Committee on American Civics. You must appoint this committee at the

beginning of each calendar year. Previously, you appointed the committee at the beginning of each school year.

The duties of this committee now include the following:

- Hold no fewer than two public meetings annually, at least one when public testimony is accepted;
- Keep minutes of each meeting showing the time and place of the meeting, which members were present or absent, and the substance and details of all matters discussed;
- Examine and ensure that the social studies curriculum used in the district is aligned with the social studies standards adopted pursuant to section 79-760.01 and teaches foundational knowledge in civics, history, economics, financial literacy, and geography;
- Review and approve the social studies curriculum to ensure that it stresses the services of the men and women who played a crucial role in the achievement of national independence, establishment of our constitutional government, and preservation of the union and includes the incorporation of multicultural education as set forth in sections 79-719 to 79-723 in order to instill pride and respect for the nation's institutions and not be merely a recital of events and dates;
- Ensure that any curriculum recommended or approved by the committee on American civics is made readily accessible to the public and contains a reference to this section;
- Ensure that the district develops and utilizes formative, interim, and summative assessments to measure student mastery of the social studies standards adopted pursuant to section 79-760.01;
- Ensure that the social studies curriculum in the district incorporates one or more of the following for each student:
 - Administration of a written test that is identical to the entire civics portion of the naturalization test used by United States Citizenship and Immigration Services prior to the completion of eighth grade and again prior to the completion of twelfth grade with the individual score from each test for each student made available to a parent or guardian of such student; or
 - Attendance or participation between the commencement of eighth grade and completion of twelfth grade in a meeting of a public body as defined by section 84-1409 followed by the completion of a project or paper in which each student demonstrates or discusses the personal learning experience of such student related to such attendance or participation; or
 - Completion of a project or paper and a class presentation between the commencement of eighth grade and the completion of twelfth grade on a person or persons or an event

commemorated by a holiday listed in section 79-724(6) or on a topic related to such person or persons or event; and

- Take all such other steps as will assure the carrying out of the provisions of this section and provide a report to the school board regarding the committee's findings and recommendations.

Other requirements of LB 399 include the following:

- All social studies courses approved for grade levels as provided by this section shall include and adequately stress contributions of all ethnic groups to (a) the development and growth of America into a great nation, (b) art, music, education, medicine, literature, science, politics, and government, and (c) the military in all of this nation's wars.
- All grades of all public, private, denominational, and parochial schools, below the sixth grade, shall devote at least one hour per week to exercises or teaching periods for the following purpose:
 - The discussion of noteworthy events pertaining to American history or the exceptional acts of individuals and groups of Americans;
 - The historical background, memorization, and singing of patriotic songs such as the Star-Spangled Banner and America the Beautiful;
 - The development of respect for the American flag as a symbol of freedom and the sacrifices of those who secured that freedom; and
 - Instruction as to proper conduct in the presentation of the American flag.
- In at least two of the three grades from the fifth grade to the eighth grade in all public, private, denominational, and parochial schools, time shall be set aside for the teaching of American history from the social studies curriculum which shall be taught in such a manner that all students are given the opportunity to (a) become competent, responsible, patriotic, and civil citizens who possess a deep understanding of and respect for both the Constitution of the United States and the Constitution of Nebraska and (b) prepare to preserve, protect, and defend freedom and democracy in our nation and our world.
- In at least two courses in every high school, time shall be devoted to the teaching of civics and American history as outlined in the social studies standards adopted pursuant to section 79-760.01, during which courses specific attention shall be given to the following matters:
 - The Declaration of Independence, the United States Constitution, and the Constitution of Nebraska, and the structure and function of local government in this state;

- The benefits and advantages of representative government, the rights and responsibilities of citizenship in our government, and the dangers and fallacies of forms of government that restrict individual freedoms or possess antidemocratic ideals such as, but not limited to, Nazism and communism;
- The duties of citizenship, which include active participation in the improvement of a citizen's community, state, country, and world and the value and practice of civil discourse between opposing interests; and
- The application of knowledge in civics, history, economics, financial literacy, and geography to address societal issues.
- Appropriate patriotic exercises suitable to the occasion shall be held under the direction of the superintendent in every public, private, denominational, and parochial school on George Washington's birthday, Abraham Lincoln's birthday, Dr. Martin Luther King, Jr.'s birthday, Native American Heritage Day, Constitution Day, Memorial Day, Veterans Day, and Thanksgiving Day, or on the day or week preceding or following such holiday, if the school is in session.
- Every school board, the State Board of Education, and the superintendent of each school district in the state shall be held directly responsible in the order named for carrying out this section. Neglect thereof by any employee may be considered a cause for dismissal.

The State Board of Education has been directed to adopt rules and regulations to carry out these provisions and to ensure that all of these requirements are carried out by each school district.

This change is required.

REVISION OF POLICY 2006: Complaints

We have added a section to this policy that makes it clear that parents of students with IEPs and Section 504 plans cannot use the complaint process to side-step the formal administrative exhaustion requirements found in those laws and the accompanying regulations. We have had several instances over the last year in which unhappy special education parents have tried to appeal to the board to override decisions made by the student's IEP team. That is simply not allowed by the Individuals with Disabilities Education Act. We also believe this edit will make it more difficult for special education parents to sue the school district for money damages by seeking to identify a conflict over a disabled students' education as a Section 504 issue rather than an IDEA issue.

This change is required.

**REVISION OF POLICY 2014: Relationship with School Attorney
NEW NAME: Relationship with District Legal Counsel**

We have revised this policy to swap out the term "school's attorney" for "district legal counsel." We think this will make it clearer that the school's law firm serves at the discretion of the board of education, and the board is free to use law firms and legal services whenever it deems advisable. We have also added a provision in the policy that allows the board president or superintendent to retain an attorney if there is a pressing situation between board meetings. For example, this will allow the superintendent to retain a hearing officer before a personnel hearing if there is not a board meeting before the date of the hearing.

This change is not required but is highly recommended.

NEW POLICY 2017: Indemnification and Liability Insurance

Nebraska statute section [79-516](#) has long provided broad authority for a board to purchase liability insurance and to indemnify board members, employees, and agents of the school in the event they become involved in a legal proceeding. This includes lawsuits, as well as administrative hearings, investigations, and others.

Most boards have purchased broad insurance coverage for defense costs and damages, but no insurance provider covers every single circumstance in which a board might want to indemnify board members or employees. This is why many administrator contracts have provisions providing indemnification if the administrator is involved in employment-related legal proceedings.

Some circumstances are trickier than the standard employment contract covers. For example, the board might want to provide indemnification for a principal facing a PPC complaint in some but not all situations. Similarly, there are a few obscure statutes under which a school board member could face criminal charges for the execution of his/her duties. These circumstances are not covered by insurance carriers but section 79-516 will allow the school board to provide a legal defense to the employees or board members in these circumstances.

This policy is designed to make it clear that the board may, but is not required, to provide a defense at the outset of these sorts of circumstances. This policy also allows the superintendent to procure legal services for other

employees in certain circumstances under their authority to secure legal services.

This policy is not required but is highly recommended.

REVISION OF POLICY 3003.1: Bidding for Construction, Remodeling, Repair, or Related Projects Financed with Federal Funds

Very few school districts in Nebraska use federal funds for construction projects. However, those districts that do use federal dollars for construction must follow all of the special provisions required by the federal government. We included all of these special requirements in Policy 3004.1, but we have had feedback from auditors and NDE compliance reviewers that it is better to have all of these unique requirements centralized in the construction policy as well.

We have also modified this policy to make it clear that, although the federal limit for solicitation of sealed bids is \$250,000, Nebraska state law requires formal bidding for all construction projects with an anticipated aggregate cost of \$100,000 or more.

This change is required, even though it is likely to impact very few districts.

REVISION OF POLICY 3004.1: Fiscal Management for Purchasing and Procurement Using Federal Funds

This revision just fixes a typographical error that we discovered when we were transferring duplicate sections of Policy 3004.1 into Policy 3003.1.

This change is required.

REVISION OF POLICY 3016: Smoking

Two bills passed this year criminalizing the use of “electronic nicotine delivery systems,” defined as “any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.” LB 149 criminalizes the use of an electronic nicotine delivery system by any minor *under the age*

of 19. LB 397 criminalizes the use of an electronic nicotine delivery system by any minor *under the age of 18*. We have added the term “electronic nicotine delivery system” to the policy and cleaned up and added some additional terms. There are three options under this policy, and the district must choose one.

This change is not required but is highly recommended.

REVISION OF POLICY 3028: Sex Offenders

This policy has been amended to note that the second paragraph is no longer required by the Nebraska Sex Offender Registration Act. Several years ago, prior to changes to the Act, schools would get information about certain offenders not available to the general public. The Act used to require schools to disclose that information to its stakeholders. Now that nearly all offender information is publicly available, school districts may, but are not required to, notify staff members, parents, and students of any registered sex offenders residing in the school district. If you wish to continue to provide such notice, no policy change is required. If you do not wish to continue to provide such notice, you may delete this paragraph.

This change is not required.

POLICY 3039: Threat Assessment and Response

Policy 3039 was revised for clarity, but no substantive changes were made to Options 1 and 2.

These changes are required.

This policy was also updated to add a third option for school boards who decide to adopt the policy naming a “Law Enforcement Unit” under FERPA, discussed below. This option to Policy 3039 provides that the law enforcement unit will be responsible for conducting threat assessment investigations, and will share the results of that investigation with the superintendent for further action. However, please note that this is not required even if you chose to adopt the policy designating a law enforcement unit.

This change is not required.

POLICY 3046: Animals at School

We received many questions over the past year about former Policies 3046: Service Animals; 5060: Animals; and 5061: Therapy Dogs. In an attempt to better address these issues and to avoid further confusion, we have decided to combine all of the animal policies into Policy 3046: Animals at School.

The first section of this policy addresses the instructional use of animals in school. The policy requires the written permission of the superintendent or the building principal before a teacher can have an animal like a class pet in the building. We would be happy to tailor this section of the policy to address any different procedure that you might use.

The second section of this policy addresses service animals and is identical to our 2017 Policy Update, when we changed Policy 5060: Animals into Policy 3046: Service Animals. Some policy subscribers did not delete Policy 5060 at that time, which has resulted in some confusion. **If you have Policy 5060: Animals in your service, please delete it!**

The third section of this policy addresses “therapy animals” and was in former Policy 5061: Therapy Dogs. That policy was originally limited to dogs and placed in the 5000 series when it was created in 2012 at the specific request of policy subscribers that wanted to allow teachers to bring their therapy dogs to school. As you are probably aware, the news has been full of stories regarding people taking or attempting to take their therapy animals to a wide variety of public locations. Nebraska schools have not been immune to this trend. Many of our client schools have received requests from staff members, students, and members of the public to be allowed to bring their “therapy animals” to school.

The Americans with Disabilities Act (ADA) requires schools to allow students who comply with federal regulations to bring dogs and miniature horses to school. However, those regulations explicitly state that animals that provide only “emotional support, well-being, comfort, or companionship” (i.e. “therapy dogs”) are not service animals. Schools are not *required* to allow therapy animals at school under the service animal regulations. Are schools required to allow therapy animals into school as an accommodation under the ADA? Unfortunately, there is no guidance in the ADA or its regulations about allowing emotional support animals or therapy animals at school as an accommodation for a staff member, student, or patron. For this reason, we have given you ***two options***. One is to allow therapy animals brought by a school employee when (1) approved by an administrator and (2) it is for the benefit of students. Otherwise, therapy animals are prohibited except as otherwise required by law. The second option bans therapy animals in school except as otherwise required by law. Obviously, there are other

options available. Please contact us if you would like to explore those other options.

This change is required. DELETE Policy 5060: Animals if you did not do so after the 2017 policy updates; DELETE Policy 5061: Therapy Dogs; and select either Option 1 or Option 2 under the third section of this policy.

REVISION OF POLICY 3050: Technology in the Classroom

Over the last year, we've received a number of calls regarding the use of smart speakers and other devices, such as AngelSense devices. In response, we updated this policy to provide additional clarity regarding the use of smart speaker devices and other forms of assistive technology that are becoming more widely used and requested. The updated language indicates that teachers may use smart speakers with the permission of building administration. Additionally, the updated language clarifies that assistive technology devices, such as AngelSense devices, that actively or passively create or transmit audio or video recordings must have that function disabled while being used in district classrooms, unless otherwise required by law.

This change is not required.

NEW POLICY 3051: Opioid Overdose Prevention and Response

In 2015 the Nebraska Unicameral authorized expanded access to naloxone, an opioid antagonist which is administered to individuals who are experiencing an opioid overdose. Naloxone, also known by its brand name Narcan, has been used by emergency responders for many years. Although the naloxone statute allows for dispensing naloxone without a prescription, the Department of Health and Human Services, Division of Public Health, has also issued a standing order to facilitate the availability of naloxone.

We have had several policy service subscribers ask us about the policy which they should have in place if they wish to stock and administer naloxone. This policy has been reviewed by both the Nebraska Department of Education and the Nebraska Department of Health and Human Services. The National Association of School Nurses has a naloxone administration protocol, which school nursing staff can review [here](#). There are also a number of programs which will provide schools with access to naloxone at little or no cost, which you can review [here](#).

This policy is NOT required unless your district wants to stock and administer naloxone.

NEW POLICY 3052: Leasing Personal Property

This is a new policy. It provides the authority for authorized personnel to lease personal property (e.g., equipment, goods, etc.) from vendors for school district use. Each board of education will need to select the total lease amount above which written quotes/estimates will be required to be obtained from multiple vendors.

This policy also provides the authority for the superintendent to lease out district-owned personal property that is not needed for school purposes. Boards will have to decide (1) the threshold (dollar amount) of the fair market value of the personal property under which the superintendent may lease out such property without board authorization, and (2) the maximum number of days that the superintendent can agree to lease out district-owned personal property.

This policy is not required but is highly recommended. If it does not reflect your current practice, you should speak with one of us to tailor it to meet your current practices.

MOVED POLICY 3053: Nondiscrimination

This policy has been 4001 in our series for some time. However, because it contains nondiscrimination provisions for laws that apply to students and staff, we have decided that it is more appropriate to have it in the 3000 series. Policy 4001 will now be "[Intentionally Left Blank]."

Be sure to check any internal references you may have made to this policy in other locations. Please note this is a nondiscrimination policy. You are also required to have nondiscrimination notices which you likely include in your handbooks, on your website, etc. We have updated our standard nondiscrimination notice below, as well, so now is a good time to review the policy and notices together.

This move is required.

POLICY 3054: Law Enforcement Unit

In the wake of increased threats to school districts' safety and security, we've had several subscribers interested in providing more information to law enforcement and other third parties outside the district. For example, several schools have asked whether they can provide law enforcement with live access to video surveillance cameras. Generally speaking, FERPA requires schools to obtain parental consent before disclosing education records, unless the disclosure fits within one of the narrow exceptions.

However, FERPA places no limits on the disclosure of records created and maintained by a district's designated "law enforcement unit." That means "law enforcement unit" records may be shared much more freely, because they do not constitute education records under FERPA.

Law enforcement units are defined as the school district staff or group which is charged with (1) maintaining the physical security and safety of the district to enforce any local, state, or federal law, or (2) authorized to refer criminal matters to appropriate authorities. These responsibilities mean that the school district's "law enforcement unit" may be responsible for the creation of records, such a video surveillance footage, that can be disclosed without regard to the restrictions of state and federal law.

Boards of education who want to share information like security footage with the police and others can use this policy to designate a school staff member or group as the district's "law enforcement unit." Before designating a law enforcement unit, however, boards should consider the complex legal and practical implications of designating a law enforcement unit. This includes understanding the scope and application of this "exemption" from FERPA, the use of law enforcement units and law enforcement unit records for disciplinary purposes, and the treatment of law enforcement unit records in different contexts and under different laws.

If you choose to adopt this policy, you should also update Policy 5016: Student Records, with the optional language addressing law enforcement unit records. As further discussed above, Policy 3039: Threat Assessment and Response was also updated with optional language available to schools that adopt this policy.

This policy is not required.

DELETE POLICY 4001: Nondiscrimination

This policy has been moved to the 3000 series. It will now be Policy 3053. Your index for the 4000 series should indicate that Policy 4001 will now be “[Intentionally Left Blank].”

This move is required.

REVISION OF POLICY 4048: Assessment Administration and Security

We have updated the internal references from Nebraska State Accountability (NeSA) to the Nebraska Student-Centered Assessment System (NSCAS).

This change is required.

REVISION OF POLICY 4052: Job References to Prospective Employers

Last summer the US Department of Education issued a Dear Colleague letter highlighting the requirements of Section 8546 of ESEA (20 U.S.C. § 7926). You can review the letter [here](#). ESEA states that all schools must have a policy prohibiting school employees from providing assistance in obtaining a new job to an employee, contractor, or agent if the school knows or has probable cause to believe that he/she has engaged in sexual misconduct with a student or minor in violation of the law. The prohibition does not apply to routine procedures regarding the transmission of administrative or personnel files, but prohibits the district or its agents from doing anything more than that to help the employee obtain new employment. This policy has been updated with a general prohibition as required by law.

This change is required.

REVISION OF POLICY 5002: Admission of Students

The Nebraska Supreme Court’s Commission on Children and Families in the Courts is working to improve the educational outcomes for court-involved students. One of the major impediments to these students’ educational success is a lack of educational stability. The Commission’s Education Sub-committee has developed a form called the “Education Court Report” which is designed to force probation officers and DHHS caseworkers to seek information about a student’s educational situation before the agency changes the student’s educational placement. If you have never seen the

form, [here](#) is a copy for you to review. Unfortunately, too few probation officers and caseworkers are completing this form. The new wording in Policy 5002 states that schools will ask to review the Education Court Report before enrolling a court-involved student. Note that we cannot refuse to enroll a student without the Education Court Report. We are hopeful that if schools consistently ask to review the Report, however, that this will prod the agencies to more consistently complete the form.

This change is not required but is highly recommended.

REVISIONS OF POLICY 5016: Student Records

Under the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA) there must be "data protections" set up around the personally identifiable student information in education records. The US Department of Education identifies elements which must be present in contracts between local education agencies and the testing companies. The good news is that in Nebraska the state department of education has signed a single statewide contract with ACT, Inc. The revision to Policy 5016 makes it clear that any information disclosed to ACT, Inc. by the school is pursuant to the portion of FERPA which allows schools to disclose information to their state departments of education. It also makes it clear that any redisclosure of information about student test scores by ACT, Inc. is governed by the NDE contract and not within the control of the local school district.

This change is required.

Under the section designating "school officials," we have added in the school district's insurance carriers. When schools report incidents which may trigger coverage, we often get the question of whether FERPA-protected information can be disclosed. This allows schools to disclose information and records to insurance representatives required to exercise the district's rights under the policy. It also eliminates a sentence which is more restrictive than required under federal law.

This change is required.

This policy was further updated to include optional language regarding the records of law enforcement units. This language should only be included if you also adopt the policy designating a law enforcement unit, discussed above.

This change is optional, and should only be made if you also adopt a policy designating a law enforcement unit.

REVISION OF POLICY 5017: Routine Directory Information

LB 575 adds a provision to state law to provide equal access to high schools for military recruiters that is enjoyed by all other post-secondary recruiters who visit high schools and speak with students about opportunities after graduation. This is the same concept put into law by the federal government under the 2001 No Child Left Behind Act, but the wording of the state law is slightly different than the federal law which necessitates an amendment to this policy.

This change is required.

REVISION OF POLICY 5022 OPTION A: Investigations, Arrests, and Other Student Contact by Law Enforcement and Health and Human Services

We modified the section in only this option of the policy relating to administrators being present in student interviews by law enforcement. We also deleted the requirement for administrators to intervene in the interviews with law enforcement.

This change is not required but is highly recommended.

REVISION OF POLICY 5035: Student Discipline

We revised two of the "school rules" in this policy. First, we added provisions prohibiting the possession, handling, or transmission of a look-a-like weapon and simulating the possession of a weapon. Second, we updated the wording related to vaping to include "an electronic nicotine delivery system" (discussed above in Policy 3016). We also changed a reference to "state law" to "the Nebraska Criminal Code" to track the wording found in section 79-293 regarding the requirement to report certain violations to law enforcement.

This change is required.

REVISION OF POLICY 5045: Student Fees

We revised this policy to add a section addressing fees associated with technological devices, which are becoming increasingly prevalent as more schools utilize 1:1 device programs. While such fees are lawful in limited circumstances, it is important that the policy and the district's practice make clear that fees will not be charged for the use of these devices when they are necessary to access the basic curriculum.

Additionally, we revised the formatting of the policy, because the previous tables used to list fees sometimes made it difficult to customize the policy.

This change is not required.

REVISION OF POLICY 5063: Audio and Video Recording

We've had a number of districts ask for guidance in dealing with student use of devices that actively or passively create or transmit audio or video recordings. This policy was updated to provide additional clarity with respect to this issue. As devices like Amazon Echo, Google Home, Apple HomePod, and AngelSense trackers are becoming more popular in use, more students are bringing these devices to school, sometimes unbeknownst to the district. In some situations, parents may be under the impression that their student is entitled to bring such a device to school. The updated language makes clear that students are generally prohibited from using such devices unless otherwise permitted by district policy or administration.

This change is not required.

Forms Changes

REVISION of Notice of Nondiscrimination

Regulations implementing various antidiscrimination laws require recipients of federal funds to issue notices of nondiscrimination notifying students, parents, and others that the recipients do not discriminate on the basis of race, color, national origin, sex, disability, and age, and, if applicable, that they provide equal access to the Boy Scouts of America and other designated youth groups. Over the years, the U.S. Department of Education Office of Civil Rights (OCR) has approved various versions of the Notice of

Nondiscrimination used by our school district clients. Those different versions found their way into our stand-alone notices, handbook provisions, policy provision, etc. In order to ensure uniformity, we have revised our Notice of Nondiscrimination to essentially follow the sample notice provided by OCR across our policies and handbooks.

This revision is required.

REVISION OF 3000 FORM: General Facility Use Application

The liability insurance coverage limits appearing in this form have been updated to reflect the school district requiring applicants seeking to use district facilities to furnish liability coverage with limits of \$5,000,000 per occurrence. This level of coverage is consistent with the limit on the school district's tort liability under the Nebraska Political Subdivision Tort Claims Act. Applicants can meet this requirement through a combination of underlying liability policies and umbrella/excess policies. Applicants are also required to name the school district as an additional insured to such policies on a primary and non-contributory basis.

This change is required. Failure to adopt this update may leave a gap between the insurance coverage furnished by a facility user for the benefit of the district and the liability limitation under the Nebraska Political Subdivision Tort Claims Act.

Veterans Preference Not Hiring Letter (4000 Series)

Under Nebraska's Veterans Preference laws (48-225 to 48-231), any preference-eligible applicant must be informed if they will not be hired and provided with their appeal rights. Here is the exact provision of the law:

Within thirty days after filling a position, veterans who have applied and are not hired shall be notified by regular mail, electronic mail, telephone call, or personal service that they have not been hired. Such notice also shall advise the veteran of any administrative appeal available.

If you have a preference-eligible veteran apply and submit the required forms and documentation, this letter can be used to provide the required notices. You can also provide notice via phone call or e-mail, but we prefer using a letter to document the notice when possible.

The law does not require a school district to have an appeal procedure. Our form policy service does not include an appeal right. If you permit an appeal, you should include that process in this letter.

This form is not required but can be used to satisfy your obligations under the Veterans Preference law in Nebraska.

SPECIAL EDUCATION PROCEDURES (6000 Series Form)

KSB updated our procedures in February in response to new requirements conveyed to school districts during the special education audits conducted by NDE. The revised procedures address all of the areas required by Rule 51, IDEA, and its implementing regulations.

The adoption of these procedures is required.

Other Issues to Consider

COMMENT ON POLICY 5015: Protection of Pupil Rights and Related Handbook Requirement

Nebraska is 1 of 29 states which require administration of a college entrance exam to meet the requirement to administer an assessment in reading/language arts and mathematics at least once in grades 9-12 the Elementary and Secondary Education Act (ESEA). However, last spring, the department within the U.S. Department of Education in charge of protecting student privacy issued a document which requires schools to take certain steps related to administration of these exams. You can review a copy of that document [here](#).

One of the issues that the US Department of Education is concerned about is the voluntary pre-test surveys that the testing companies include in their exams. These surveys ask questions about all kinds of topics: academic interests, participation in extracurricular activities and religious affiliation. That information is then sold by the testing companies to colleges, universities, scholarship services and other organizations for the purposes of college recruitment and scholarship solicitation.

The US Department of Education's new guidance emphasizes that these surveys implicate the Protection of Pupil Rights Amendment (PPRA). Under PPRA, parents have a right to be consulted regarding the development of

district policies related to surveys covering restricted topics; they must also be notified annually about the policies and "informed "whenever a survey includes questions on a restricted topic or when student information will be for the purposes of marketing or selling.

Most educators have assumed that since the survey questions at the beginning of the ACT are voluntary, a student can choose whether to complete them or not. But note that, unless the student is 18, it is not the *student* who gets to decide whether the survey will be completed, it is the parent. PPRA requires schools to notify *parents* and give *parents* the opportunity to opt their student out of participation in the pre-surveys (unless the student is emancipated or is 18 or older).

The PPRA also requires schools to make pre-test survey questions available for review by parents and students and to provide parents (and emancipated students or those 18 or older) with notice of the date the survey will be administered.

As written, Policy 5015 is general enough that it will not have to be revised. However, your student handbooks will need to be updated to address this issue. The updated KSB student handbooks will be distributed to full service subscribers soon. If you do not use KSB's form handbooks, you will need to provide this updated notice to parents.

No change to 5015 is required, but your handbooks will need to be updated.

**COMMENT ON POLICY 5057: District Title I Parent
and Family Engagement and School-Parent-Student Compact
Example Title I**

Each year, our service subscribers get visits from the ESSA Federal Programs monitoring staff from NDE. As many of you will recall, we've worked with NDE proactively on policies like Homeless Students and Title I Parent and Family Engagement to be sure the policies are in compliance long before the monitoring staff ask for them.

This year, NDE staff told some administrators who that our policy 5057 was not sufficient. After discussing the matter with NDE, and after they once again reviewed our policy in light of the compliance checklist, we have been assured that our policy is compliant. If you are going through the ESSA Federal Programs monitoring check and run into any issues, please let us know. If you're a full policy subscriber and want to be sure your policy is the

most current version, you can always get it from our website under the Complete Policy Service link.

Finally, we have provided an updated "School-Parent-Student Compact Example Title I" which removes the signature lines. If you want to use this version moving forward, you can. If you have been obtaining signatures on this document, it is no longer required to do so.

REMINDER FOR POLICY 6036: Reading Instruction and Intervention Services

Last year, the Unicameral passed LB 1081, thereby creating the Nebraska Reading Improvement Act (sections 79-2601 through 79-2607). This Act expresses the Unicameral's intent that all students in public schools be able to read at or above grade level by third grade. In order to meet this goal, school boards are required to develop policies to facilitate reading instruction and intervention services to address student reading needs, including, but not limited to, dyslexia. Beginning with the 2019-20 school year, schools will be required to administer reading assessments approved by NDE three times per school year to all students in kindergarten through third grade. A list of reading assessments that have been reviewed and approved by the Nebraska Department of Education can be [found here at NebraskaREADS](#). Schools will also be required to provide supplemental reading intervention programs to students identified with reading deficiencies to ensure that they are reading at or above grade level by the end of third grade. NDE's FAQ indicates that it will be providing a supplemental reading program template, but it was not yet available as of this writing. This policy, which we sent out last year, addresses all of the requirements of the new Act.

The Act also authorizes NDE to adopt rules and regulations. While the department has not yet done so, it has created [a list of Frequently Asked Questions that can be viewed here](#).

This policy is required.

Fair Credit Reporting Act and Background Checks

Some school business officials have reached out to us regarding changing obligations under the federal Fair Credit Reporting Act when schools and ESUs use third-party background check companies, like OneSource. If you've seen "FCRA" updates in various HR emails or tweets over the last year, it's likely because the FTC put out new forms last fall, and in January

the Ninth Circuit Court of Appeals issued a FCRA decision regarding the required notices.

These items are important, because the compliance obligations under FCRA fall to the employer and not the third-party company (and FCRA generally doesn't apply if you conduct your own). However, most schools work with an entity like OneSource which provides the required notices as a service. If you have questions about your FCRA obligations, please feel free to contact us. However, at this time we are not making any changes to our standard policies or forms.

Finally, please keep in mind that FCRA is different from Nebraska's state "ban the box" statutes which prohibit conducting criminal background checks (other than for crimes of abuse) until your school or ESU has determined that the employee meets the "minimum essential qualifications" for employment. These differ from the ADA and the "essential function" analysis, as well, and we already have the "MEQ" section at the beginning of our form job application in the 4000 series forms.

LB 103: Changes in Property Tax Requests

The Unicameral passed LB 103 and the Governor signed it early in the legislative session. It requires boards of education to hold an extra public hearing and pass a resolution when the district's tax collections will increase, regardless of whether the increase resulted from higher property valuations or from a higher property tax levy. The bill specifies what information must be provided in published notices of the public hearing.

Boards of education and school administrators should be aware of these new requirements. Both the Nebraska Department of Education and the Nebraska State Auditor will be developing the forms necessary for boards of education to use in making property tax requests in compliance with LB 103. These new requirements do not require a policy change or any immediate board action, but you should prepare for them.

LB 281: Posting the Child Abuse Hotline Number

This bill requires all public schools to either:

1. Post a sign with the statewide toll-free child abuse and neglect number in English and Spanish in a “clearly visible location in a public area of the school”; OR
2. Post a link to the sign or poster on its website.

NDE has been given the authority to contract with an appropriate entity to create such a poster.

LB 675: Contracts for Certain Services

This bill changes the maximum length of contracts for utility services, refuse disposal, transportation services, maintenance services, financial services, insurance, security services, and instructional materials, supplies, and equipment from four years to seven year. The maximum contract length allowed for collective bargaining agreements remains four years.

LB 630: Sexting and Revenge Porn

LB 630 changes the criminal penalties for sexting and creates a new criminal offense for revenge porn and sexual extortion. This new law doesn't require any policy changes, but the new crimes will be included in the definitions of the crimes which principals must report to law enforcement under Policy 5035. When schools provide the annual digital citizenship training to students required by the Children's Internet Privacy Protection Act, you should be sure to include a summary of these new crimes.

Title IX Regulatory Changes

In November of 2018, the US Department of Education released new proposed Title IX regulations. We have been warning for several months that the revisions to the Title IX regulations which have been proposed by the US Department of Education will have enormous policy implications for K-12 school districts. If you would like to review our summary of the proposed regulations, we blogged about the regulations [here](#).

News reports indicate that the proposed rule generated more than 100,000 pieces of feedback. Now that the notice-and-comment period has closed, the Department of Education is under legal obligation to consider and respond to all substantive comments. Department of Education has set an internal goal of releasing the final regulations in September, although that

target date can be extended. Once we have the final regulation, KSB will develop compliant Title IX policies for subscribers' consideration. We will also be training both administrators and board members on the new regulations. In the meantime, there is nothing to do but wait to see if the regulators take the concerns of the K-12 education community to heart and revise the proposed regulations.

CONCLUSION

It is all too easy to adopt policies that look good, but that do not actually reflect how the school operates or assist the school in accomplishing its goals. Every year we stress that it is very important to us to give you a working, useful set of policies and a continuing ***policy service***. There is no additional charge for revisions to these policies or consultation about them. Please don't hesitate to contact any one of us with questions. Our group e-mail address is ksb@ksbschoollaw.com.