

Questions Received by WVBE/WVDE Relating to RESAs & ESCs



What type of legal entity is an ESC?

ESCs appear to be a quasi-governmental entity or a government instrumentality. It is an entity that is established in state code to serve a public purpose, but not a government agency.

Can a RESA and an ESC co-exist?

Yes; there is nothing that precludes a district from being a member of an ESC while simultaneously being part of a RESA. Certainly an ESC can be formed and take on initial organizational tasks while a RESA winds down. RESAs will statutorily cease to exist on June 30, 2018.

Are there any restrictions on what an ESC may call itself?

There are no restrictions within HB2711 with respect to what an ESC may choose to name itself. ESCs are encouraged to consult with legal counsel with respect to a "doing business as" registration should an ESC desire to pursue one.

May an ESC and a district serving as the fiscal agent for the ESC share an FEIN number?

HB2711 does not address the ability for ESCs and districts to share FEIN numbers. However, due to the myriad of complications that have existed throughout the years, and many additional issues that have become apparent in the windup of RESA activities, the WVDE recommends that ESCs and districts do not share a FEIN number. Should further guidance be necessary on this topic, ESCs and districts are encouraged to seek legal counsel on the legality, tax consequences, and potential issues likely to arise with an ESC and district sharing a FEIN number.

Will the ESC need to seek their own legal counsel in the future?

Yes. In particular if ESCs perceive tax implications or want to reallocate property, it is recommended that districts/ESCs seek legal counsel who specialize in the areas of note. WVDE/WVBE will not be providing legal counsel.

Will there be different expectations/requirements for those ESCs that utilize a county board as a agent and those that choose not to operate through a county board?

W.Va. Code §18-5-13c(e) permits a county board to serve as a fiscal agent for an ESC. ESCs utilizing county boards as fiscal agents will be required to follow the same WVBE financial policies applicable to county boards.

Will the requirements pertaining to the preparation of annual financial statements apply to the ESCs as they had applied to RESAs?

W.Va. Code §18-5-13c(e) requires ESCs to make arrangements for an annual audit conducted in accordance with the OMB Uniform Guidance (2 CFR 200). ESCs utilizing county boards as fiscal agents will be required to follow the same WVBE financial policies applicable to county boards, including any requirements pertaining to the preparation of an annual audit.

Please explain the WVDE's oversight of the ESCs.

HB2711 does not specify that the WVDE will be responsible for overseeing any ESCs that are formed. With respect to any grants that may be issued by the WVDE to an ESC, WVDE will maintain oversight over funds granted and the receiving entity will have to comply with all terms and conditions pertaining to any grants awarded.

Can RESA employees automatically transfer to ECS employees or must the job be posted?

The new law does not explicitly provide for the transfer of RESA employees to ESCs. ESCs are able to establish their own hiring practices, and can provide for the transfer of former RESA employees if that is what the ESC desires to do.

Will there be mandated restrictions on how employees can transition from the RESA to an ESC?

No. ESCs are not subject to restrictions with respect to transitioning employees, and can structure employment in any capacity. This includes the structuring of job postings, employment terms, responsibilities, etc.

Will the ESC have to post all positions as a new entity, or will the ESC be able to have in their bylaws a clause that allows them to grandfather in RESA staff that function in the same capacity without any postings?

The ESCs are not subject to restrictions with respect to hiring employees, and can structure employment in any capacity. This includes the transitioning of RESA employees to ESC employees.

Will an ESC be eligible for BRIM coverage or will it need to secure its own separate liability insurance coverage?

BRIM indicates coverage will be available. Each established ESC should contact BRIM regarding its composition and scope of services to determine policy cost/coverage.

Will ESC employees be covered by TERS?

W.Va. Code §18-5-13c(d)(3) states that ESC employees are eligible to participate in state retirement programs; however, CPRB has not communicated specifically which retirement program (i.e., TRS or PERS). WVDE has contacted CPRB for clarification and will pass along that information once received.

What happens to the sick/annual leave of RESA employees that transfers [is hired] by an ESC?

There is nothing in state law that requires an ESC to accept the transfer of unused sick/annual leave of a former RESA employee. There is likewise no prohibition preventing an ESC from including in its bylaws a provision allowing for the transfer of sick/annual leave of former RESA employees.

Will guidance be developed for RESAs to provide to employees who will be losing their jobs either because the RESA elects not to form an ESC or because the newly formed ESC will not need their positions?

The RESAs are responsible for providing clear communication to each of its employees regarding the status of their employment.

How will the transfer of current RESA funds (surplus) be transferred to the accounts of the new ESC?

With respect to the transfer, liquidation or disbursement of property, including surplus funds, RESAs need to follow W.Va. Code §18-5-13c(b).

Will real property and personal property (i.e. computers, cars, etc.) be transferred to the new ESC?

Not necessarily. W. Va. Code §18-5-13c(b) outlines the method for transferring, liquidating and disbursing property. Priority order is: (1) to any successor educational services cooperative substantially covering the same geographical area; (2) To the county boards who were members of the regional education service area as agreed upon by those counties; or (3) To the state board or to other appropriate entities as provided by law.

What is the proper manner of disposing/transferring of property purchased with federal funds (i.e., IDEA)?

Federal regulations provide guidance on how to properly dispose of equipment purchased with federal funds. When equipment is no longer needed for the original federal program that purchased it, the grantee can use the equipment to support other federal programs. If another federally funded program does not need the equipment, the grantee must follow the disposition rules contained in EDGAR.

Under the disposition rules in EDGAR, if the current fair market value of the equipment is less than \$5,000, a RESA can keep, sell or otherwise dispose of the equipment with no further obligation to the awarding agency. This means that federally funded property with a value of less than \$5,000 could be transitioned over to a subsequent ESC if desired.

If the current fair market value of the equipment is greater than \$5,000, the recipient may keep or sell the property, but must pay back to USDE (via returning the funds to WVDE who will return them to USDE) a share of the funds based on the percentage of federal participation in the original purchase. For example, if the property was 100% federally funded and the RESA determines they want to keep the property to transfer it to a subsequent ESC, the RESA would have to determine the current fair market value of the property and send that amount of funding to WVDE to return to USDE.

Please keep in mind that the basic rules regarding the disposition of personal property from Section 31.2 of State Board Policy 8200 must also be followed, particularly if the disposal of the assets is taking place prior to the dissolution of the RESA.

Can RESAs place funds that have been collected locally for PST in a community organization held trust for the purpose of assisting in funding and maintaining local programs and programs, to continue to fund Fire and EMT projects that have been or will be implemented in the region. These funds are not part of any State allocations for PST. The trust would be managed by a viable entity, and disbursement decisions would be made by a committee of senior emergency responders as well as the PST Coordinator for the region.

Like all other RESA property, the disbursement of funds held by RESA are to be transferred pursuant to W.Va. Code §18-5-13c(b).

Are part-time employees eligible for unemployment benefits?

Yes, part-time RESA employees are eligible for unemployment benefits so long as they were paid wages that meet the unemployment eligibility criteria. Per information from Workforce West Virginia's website, to be eligible for unemployment, an employee must have been paid wages of at least \$2,200 in covered employment during their base period and must have been paid wages in at least two quarters of their base period to be monetarily eligible to receive unemployment compensation benefits. The regular base period consists of the first four quarters of the last five completed quarters before the starting date of the unemployment claims. For more information on unemployment benefits and eligibility, please contact Workforce West Virginia.

Who is expected to handle outstanding financial obligations that arise after June 30, 2018?

It is recommended that fiscal agents retain sufficient funds to meet financial obligations and liabilities that become due after June 30, 2018. After all such financial obligations have been satisfied, any remaining funds are to be disbursed pursuant to W.Va. Code §18-5-13c(b).

Will there be guidance or requirements for how to make decisions after a RESA dissolves?

RESAs are expected to make all windup decisions and preparations for the cease of operations in advance of June 30, 2018.

If an ESC forms, will the ESC have authority to make decisions pertaining to contingency or residual issues pertaining to the RESA?

RESAs and ESCs are separate entities. Absent an agreement transferring the requisite decision making authority, an ESC does not have the ability to make decisions on behalf of a RESA.

Will there be any anticipated state department accounting, reconciliation, requirements when funds are transferred from the funds of the fiscal agent of the RESA to the funds of the ESC?

Absent an agreement of all RESA member districts, funds cannot be transferred directly from a RESA to an ESC. After all RESA financial obligations have been satisfied, any remaining funds are to be disbursed pursuant to W.Va. Code §18-5-13c(b).

How will post 07/01/18 unemployment claims be handled for previously state and federally funded positions?

RESAs will be responsible for any unemployment claims that result from ceasing operations. Any future unemployment costs for state and federally funded RESA employees are to be paid through any remaining fund balance in the RESA general current expense fund (Fund 14).

If a RESA dissolves and the counties are to receive/distribute the assets, will any remaining balance in the general fund be part of those assets that can be distributed or will the State in any way restrict or lay claim?

The State will not lay claim to any remaining balance in the general fund of a RESA. RESAs are to follow W.Va. Code §18-5-13c(b) with respect to the transfer, liquidation or disbursement its property.

Are there any obvious particulars that business officials should be aware of as they inform/discuss a transfer of rental or lease agreements with the vendors of these agreements?

Individuals responsible for the desired transfer of rental/lease agreements are encouraged to consult legal counsel to properly effectuate such a transfer.

Will state funds continue to flow down until June 30, 2018?

The status of all state grants to RESAs for the 2017-18 year is program-specific. During the 2017-18 fiscal year, grants to RESAs are being issued quarterly to provide for easier transition if a particular program moves to a different delivery model, if a RESA opts to convert to an ESC prior to year-end, etc.

What are the expectations of the State Department to draw back any state funded grant balances that are anticipated on June 30, 2018? Will there be any expectations to draw back funds early in certain situations?

All WVDE grants were issued to specific RESAs. When a RESA ceases to exist by operation of law on June 30, 2018 (or earlier as decided by the participating counties), all unspent state grant funds must be returned to WVDE. The unspent grant funds cannot be transferred from the RESA to a subsequent ESC. Instead, the funds would be returned to WVDE who would have discretion to then issue a grant to the ESC if determined to be appropriate. Funds returned to WVDE will not automatically be reissued to the ESC – all situations will be examined on a case-by-case, program-by-program basis.

If there are unspent state grant funds from prior years (or even the current year if applicable) that a RESA has already determined they will be unable to spend, the RESA should contact the appropriate WVDE program official for the grant regarding the prompt return of those funds to WVDE. It is recommended that all RESA finance staff or fiscal agents should begin reviewing the WVEIS Special Projects Worksheet to begin identifying such situations.

With respect to AEPA, who will be the state representative and will a membership fee be charged by the entity serving as the state representative to utilize AEPA contracts?

Presently, RESA 2 is the state AEPA representative. It is the WVDE's understanding that Districts and any ESCs that are formed will need to work with AEPA to determine which entity will be the successor representative, as well as the duties, responsibilities and authority of the successor representative.

Do the county boards have the authority to use an ESC contract?

Yes. W.Va. Code §18-5-13c(d)(6) allows ESCs to contract with county boards to provide services and implement programs. County representatives do not need to be a part of an ESC governing board in order for the county board to contract with an ESC.