



# AASPA

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# BEST PRACTICES

In School Personnel



## COMPLIANCE

In this Issue:

- Employee Performance and Disability
- Understanding Exemptions Under FLSA
- FMLA Abuse and the "Rolling Back" Method
- Five Steps to Begin Implementing Title IX
- Compliance: Nightmare or Innovation Driver
- And More...



# BEST PRACTICES

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# EMPLOYEE PERFORMANCE AND DISABILITY: A SHORT COURSE ON EMPLOYEE EVALUATION UNDER THE ADA

By Bradford A. King, Esq., Sands Anderson PC, Richmond, Virginia

## ACT I: THE PROBLEM

Jason is a veteran middle school math teacher who has been in the classroom for more than 20 years. He has never been a strong teacher. The principal who worked with him for the bulk of his 20-year teaching career was aware of Jason's weaknesses, but failed to document them as required by the state and school district-required teacher evaluation systems. Indeed, annually Jason received "satisfactory" indicators in all evaluation domains, and in each sub-domain, with no commentary included whatsoever.

The school district assigns a new principal, Yvonne, to Jason's school. Yvonne's doctoral thesis focused on systems for improving teacher evaluation. For several years, although a young administrator, Yvonne has served on the school district's teacher evaluation system committee, reviewing and refining teacher evaluation instruments and analyzing teacher performance data.

Once she arrives at the middle school, Yvonne immediately recognizes Jason's deficiencies. She observes his classroom performance and makes recommendations for improvement. Jason ignores those suggestions. When Jason fails to respond favorably to her informal attempts to assist him, Yvonne meets with Jason to develop, jointly, a performance improvement plan (PIP). Jason attends two sessions with Yvonne, during which she reviews with him: (1) observations of his classroom that she and another administrator have completed; (2) several complaints filed by parents of students in his classroom related to lack of structure and poor communication; (3) standardized testing data, which reveals his students are not performing commensurate with their abilities or consistently with their performance in other classes; (4) his lesson plans, which appear to have simply been recycled from year-to-year, and without adjustments

to actual student performance or currently available instructional materials; and (5) excessive student disciplinary referral data from his class. At the end of the second session, Yvonne and Jason both sign the PIP. However, as Jason leaves Yvonne's office, he mutters (under his breath, but loud enough that Yvonne hears), "This is BS. I've always been fine before."

The following week, Jason calls in sick to work on three consecutive days. When he returns to the middle school, he presents Yvonne with a note from a psychologist. The note advises that Jason is suffering from "anxiety, depression – workplace pressures." Yvonne picks up the phone and calls the school district's human resources director, Sharon.

## ACT II: THE SOLUTION?



Increasingly, school district human resources professionals face medical diagnoses from employees in response to performance improvement plans, corrective action, and even discipline. Often their initial instinct is to abort the improvement plan or corrective action and/or un-ring the discipline bell. Not so fast. While the HR professional and the school district administration must be mindful of their obligations under

applicable law, including specifically the Americans with Disabilities Act (ADA) and other employee protections, they are not proscribed from evaluating the performance of the employee who asserts a disability or any related legal protections.

Our suggestions? Two-fold. First and foremost, engage in the interactive process required by the ADA to determine if the employee, with or without accommodation, can perform the essential functions of his job. If warranted, provide reasonable accommodation(s) to the employee. But remember,

the ADA does not require that the employer provide every accommodation that the employee requests or desires. It need only provide him with accommodation(s) to allow him to perform essential job functions. Many resources exist to assist HR professionals in identifying commonly recognized accommodations, including publications available on the United States Department of Labor, EEOC and Office of Civil Rights websites, and the Job Accommodation Network ([www.AskJan.org](http://www.AskJan.org)). Second, continue to monitor and document the employee's performance under the growth plan, and if necessary and consistent with the accommodations identified for the employee, discipline him.

Presumably, Jason has a "disability" within the meaning of the ADA—*anxiety and depression*—regardless of their underlying causes. Indeed, the ADA includes in its definition of discrimination failing to accommodate known mental limitations that affect major life activities (which include work). Whether caused by workplace stress or something at home, Jason likely qualifies for the protections under the ADA. If Yvonne and Sharon have reason to believe the diagnoses are suspect, the school district may request information from a health professional sufficient to: (1) describe the nature, severity, and duration of the employee's impairment, the activity or activities that the impairment limits, and the extent to which the impairment limits the employee's ability to perform the activity or activities; and (2) substantiate why the requested reasonable accommodation(s) is needed.

Yvonne and Sharon—and Jason—must engage in good faith in what the ADA calls "the interactive process." Initially, Jason must provide sufficient information to them to put the school district on notice of his need for accommodation(s). The interactive process then requires the school district to conduct a flexible and informal investigation into what accommodation(s) will allow Jason to perform his job successfully. The implementing regulations of the ADA are not specific regarding the interactive process, but do note that the process should "identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations."

The accommodation(s) must be reasonable under the circumstances, and the school district does not have

to offer accommodations that the law would deem to create for the district an undue hardship. What constitutes an undue hardship may include a financial component. For instance, having a second teacher accompany Jason all day—presumably at full salary based on the district's salary scale—likely would not be a reasonable accommodation. On the other hand, providing periods of limited professional coverage for Jason during extremely stressful times, considering intermittent leave in conjunction with his Family Medical Leave Act benefits, or re-structuring his teaching assignment may be reasonable. Whatever the result, Yvonne and Sharon should document the accommodation(s) the district provides in response to the interactive process. If the district offers Jason reasonable accommodation(s), and he refuses the accommodation, he may no longer be considered a qualified individual with a disability.

Likewise, the ADA does not preclude the school district from accurately evaluating Jason's performance if it is otherwise complying with the law. And the district may discipline him, including terminating his employment, so long as it does not do so based on his disability or for asserting rights under the ADA. Yvonne should continue to monitor and document Jason's performance under his PIP once the accommodation(s) is in place. Any evaluations should be faithful to the district's employee evaluation system, and any discipline should be otherwise consistent with the district's employment policies.

The ADA is a complex law. As with many HR issues, Yvonne and Sharon are well-advised to confer with the school district's legal counsel as they navigate issues regarding Jason's employment needs.

*Brad King is a member of the Government Group and leads the School and Education Law Team. He focuses his law practice on representing public school boards throughout the Commonwealth of Virginia. Leveraging his more than 20 years of experience, he provides counsel and representation in the substantive areas of special education, school employment, student discipline, governance, policy matters and contract negotiations.*



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## PRACTICAL CONSIDERATIONS FOR RESPONDING TO EEOC COMPLAINTS

By Laura Rodriguez McLean, Walsh Gallegos Treviño Russo & Kyle, P.C., Irving, Texas

### Introduction

Needless to say, one of the least favorite notices school personnel and human resources administrators can receive is the notice that a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) has been filed against their school district. However, in the world of personnel administration the reality is that administrators will be required to lead the charge (no pun intended) in responding to an EEOC complaint or will be tasked with working with legal counsel to respond to the complaint. Therefore, it is beneficial for school personnel administrators to be aware of the legal and practical hurdles they will encounter in this process. This article covers some of the main issues and factors administrators should consider when responding to an EEOC complaint, including initial steps, mediation, and the school districts investigation and response.

### The Issues and Considerations

#### What is the EEOC's jurisdiction?

The EEOC enforces various anti-discrimination laws, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967 ("ADEA"), Title I of the Americans with Disabilities Act

of 1990 ("ADA"), and the Genetic Information Non-Discrimination Act of 2008 ("GINA"). As part of its enforcement authority, the EEOC is charged with receiving and investigating complaints of discrimination in the workplace based on an individual's race, color, age, religion, sex (gender), national origin, or disability.

#### What triggers the EEOC's authority to investigate?

The filing of the Charge or complaint of discrimination by an aggrieved individual or group ("Charging Party") will trigger the EEOC's duty to investigate. Federal regulations provide that a Charge should contain certain information. This includes identifying the Charging Party and the employer ("Respondent") accused of discrimination, as well as a clear and concise statement of facts, including pertinent dates, outlining the unlawful employment practices. According to federal rules, a Charge is sufficiently precise if it "identifies the parties and describes generally the actions or practices complained of." Therefore, even if a Charge is not specific, the EEOC will accept it.

#### What should a school district do when it receives a Charge?

**Step One: Read the Notice of Charge and all attachments carefully.** The EEOC will outline relevant dates, including the

deadline for agreeing to mediation and the deadline for submitting the school district's response, also known as the Position Statement. Also calendar all deadlines and review all information that comes with the Charge. It is important to note that the EEOC may include a written request for information. The request may ask for information that exists, or may require the school district to create information.

#### Step Two: Secure relevant information and witnesses.

Remember, a Charge encompasses allegations, not established facts or truths. To the extent the allegations in support of the claims identify persons with relevant knowledge (such as the direct supervisor, campus principal, or department administrator), be sure to notify the relevant players that they have been identified. Whether a request for written information is included with the Charge, inform the relevant players that they need to secure (and not destroy) any and all relevant documents concerning the Charging Party. Depending on the allegations being made, the relevant documents to be secured include district personnel files, grievance files, campus files, and district emails. It is also advisable to have the school district technology department secure electronic information related to the Charging Party. Where the Charging Party

is a current employee it is also recommended to communicate to supervisors and other relevant individuals that retaliation against the Charging Party is prohibited and will not be tolerated.

#### Step Three: Contact the school district's insurance carrier.

Many school districts have insurance coverage for acts and omissions and/or professional liability. Because an EEOC complaint is a required jurisdictional step before filing suit, a school district should contact its carrier, and then follow up any verbal contact in writing. This is also the appropriate time to determine or confirm the amount of the school district's insurance deductible if a lawsuit is filed. As discussed below, this information will become important if mediation is pursued.

#### Step Four: Assess the need for legal counsel's assistance and/or handling.

The reality is that most complaints filed with the EEOC are drafted by attorneys on behalf of Charging Parties. For this reason, a school district should alert its legal counsel as soon as it receives a Charge or Notice of Charge and ask for input and guidance.

#### What are the considerations for going to mediation?

With the Charge, the EEOC will offer the parties the opportunity to mediate the discrimination complaint. The school district's participation in mediation does not mean that the school district has admitted to engaging in any wrongdoing. Mediation (if agreed to by both parties) allows the parties the opportunity to resolve alleged issues quickly and before

an investigation is conducted. School districts should carefully consider mediation as an option as it may help to save legal costs and administrative time associated with preparing the Position Statement and handling the district investigation or review of the complaints. Further, mediation with an EEOC mediator is free of charge.

Even if the school district is not inclined or is simply not in the position to offer a monetary incentive to resolve the complaint, mediation may be a worthwhile endeavor. Depending on the allegations, possible non-monetary terms of resolution include placement in a different position, the opportunity for an interview, a neutral letter of reference, sealing of negative documentation, a written apology, etc. An offer of any of these terms and other non-monetary terms could resolve the matter for a school district with minimal cost.

Other questions to consider when determining the benefit of mediation include:

- Has a preliminary district investigation uncovered information that may undermine the school district's defenses? If so, mediation and resolution may be in the best interests of the school district.
- Are there school district documents, created at those times relevant to the allegations, to support the district's side of the story or is the district's defense hinging on witness testimony alone? Lack of documentation or weak witnesses will also make mediation a more attractive option.
- What is the extent of the

economic harm to the Charging Party? The less economic harm, the greater the chances of negotiating a resolution that may involve little to no money.

- What impact will resolution have on future claims from others? Some school districts make it a point not to offer compensation to resolve a matter based on the concern that it will set a bad precedent. However, as noted above, the refusal to offer monetary terms does not negate the opportunity to mediate.
- What if the school district cannot or will not offer anything? Depending on the circumstances, it is quite possible that the district cannot offer any type of incentive to resolve a complaint. If that is the case, then mediation would not be recommended as it would not be fruitful, and would essentially waste resources for all the parties.

The EEOC mediation process is confidential. This means that neither party can quote or use what is shared in mediation at a later point. However, in mediation, a school district can come into possession of information that it otherwise would not have learned outside of the mediation process that can help to resolve the matter or, at the very least, frame the issues for the Position Statement. For example, a school district may learn that the Charging Party is looking for an apology or simply misunderstood a particular communication. Knowledge of these issues may ultimately result in resolving the matter. If resolution is not achieved, mediation may help a school district understand the Charging Party's theory of the case or obtain facts the Charging Party believes occurred, which in



turn, helps a school district define its investigation and response in the Position Statement.

### What are some recommended preparations for mediation?

In most cases, prior to mediation, preliminary information should be confirmed before mediation.

- Confirm the school district's position. A district should confirm with relevant persons their knowledge of the specific incidents or acts being complained of. For example, if the Charge alleges the immediate supervisor discriminated against the Charging Party and the Charging Party cites two specific incidents, then the district official(s) who is attending the mediation should meet with the supervisor to obtain his/her side of the story regarding these incidents, obtain any documents that are relevant to the incidents, and review those documents prior to the mediation.

- Ascertain the possible terms to resolve the matter. Prior to mediation, a school district may be able to ascertain whether the Charging Party is demanding money to resolve the matter. Depending on the information located to date concerning the claims as well as the employment status of the Charging Party, a monetary offer to resolve the matter may be a reasonable option. It is at this juncture that the school district's insurance deductible becomes relevant because it may dictate the amount the school district is comfortable offering to the Charging Party to resolve the matter. Of course, all circumstances are different, and consultation with legal counsel regarding the estimated costs of investigating the complaint and

assisting with or preparing the Position Statement are also relevant factors to consider.

- Determine the persons who will represent the school district. The district representatives can be the superintendent and/or the administrator over human resources. On some occasions, it may be advantageous to have the complainant's immediate supervisor present. It is also appropriate at this time to determine if legal counsel for the school district will be needed. It is important that a school district have representatives present at mediation that have the authority to resolve the matter and are authorized to commit to specific actions if resolution is achieved. School district administrators should verify against their local board policies on whether School Board authorization is needed prior to mediation or finalization of any resolution agreement.

### What can we expect at an EEOC mediation?

Generally, the mediation starts out with the EEOC mediator meeting with the parties and their representatives together. Notably, the EEOC mediator is not the EEOC investigator who is charged with investigating the complaint. The mediator will first meet with the parties and their representatives to address protocol and confidentiality. The parties will then be asked to sign an agreement that they will keep information learned during mediation confidential.

The mediator will dictate the process of mediation. However, one common scenario is where the Charging Party or his/her

representative is first allowed to orally present his/her complaint and the allegations in support of the complaint. The school district, as Respondent, is then given the opportunity to respond. After initial presentations are completed, the parties and their representatives are separated into different meeting rooms. The mediator will then move between the parties, presenting offers and counter-offers while at the same time pointing out issues to both sides for each to consider in reaching a mutually agreeable resolution.

### What can we expect if the matter is resolved?

If agreement of the essential terms of resolution is achieved, the EEOC will present the parties with a form Mediation Settlement Agreement ("MSA"). Possible terms that the EEOC will require as part of the MSA include, but are not limited to, the following: the agreement does not constitute an admission by the employer of liability; the employer agrees to not retaliate or discriminate against the Charging Party as a result of filing the Charge; the EEOC is authorized to investigate compliance with the settlement agreement; and the agreement constitutes the final and complete statement of the agreement between the EEOC and the parties.

Importantly, the EEOC's resolution of the matter addresses only the Charge that is before it. It does not function as a full release of any and all claims that could be brought by the same party under another law. Therefore, if a school district is concerned about other potential claims, a school district should pursue a separate release agreement

addressing other potential claims.

### How does the school district prepare the Position Statement?

When mediation does not result in resolution, the school district must then respond to the allegations by providing a Position Statement and, in most cases, providing supporting documentation. The Position Statement is the school district's first and sometimes only opportunity to officially respond to the allegations of discrimination before the EEOC. Given the uniqueness of a public school district's calendar, a school district may want to ask for a deadline or an extension that recognizes extended periods of closure or special circumstances (e.g., testing days). A school district should make a written request for an extension of time as soon as possible, and explain the circumstances warranting the extension.

A school district must investigate the allegations before the Position Statement is prepared. This is the time for a school district to address and follow up on the allegations, claims, or any other additional information obtained at mediation concerning the Charging Party's facts or theory of the case.

Suggested areas to cover include, but are not limited to, the following:

- Seeking out and reviewing all relevant documents

concerning the allegations. Depending on the claims being made, relevant documents could include email communications;

text messages; disciplinary and evaluative information related to the Charging Party; complaints submitted by the Charging Party and the school district's responses; the Charging Party's job application, job description, interview paperwork, and contracts of employment; and employment information on other employees. Where the work misconduct by the Charging Party is relevant, other helpful documents may include the school district employee handbook, administrative regulations, campus or department handbook/guidelines, and Board policies. Where student records are deemed critical to the school district's defense, parental consent should be obtained or the records should be redacted to prevent against the disclosure of personally identifiable information in compliance with the Family Educational Rights & Privacy Act.

Sometimes information will need to be created. For example, if a Charging Party raises claims of race and age discrimination related to a school district's decision not to promote him/her, demographic data on the candidates and applicants, including their race, age, and how far they made it through

the hiring process may prove helpful to a school district's defense.

- Identify Relevant Witnesses.

When deciding the "line up" of the persons with knowledge to interview, be mindful of those individuals identified in the Charge

as well as those individuals who are identified in the documents.

- Prepare for Witness Interviews. Be sure to identify and gather copies of the documents that are relevant to each particular witness. With knowledge of the Charging Party's contentions, outline a list of topics to explore with the witness.
- Assessment of Witness Information. As in the case of any school district investigation, all information gathered should be assessed to determine if there are any gaps or inconsistencies. Better to address discrepancies early rather than leave them for the EEOC investigator to find and question.

### What goes into our Position Statement?

The Position Statement is the school district's opportunity to tell its side of the story. The facts and information provided in the Position Statement need to be accurate and truthful, and ideally, supported by documentation. While a form response cannot be created to fit all circumstances, recommended points or areas for a Position Statement to address include the following:

- Provide The Relevant Background. Because the EEOC investigator may have limited knowledge of public school district operations, provide information on the district, campus, and/or department. Include the expectations and goals of the department and campus. It may be relevant and beneficial to explain the job duties, qualifications, and/or responsibilities of the Charging Party's position and how his/her execution of those duties relates to the campus or department goals or purpose.

**BETTER TO ADDRESS DISCREPANCIES EARLY RATHER THAN LEAVE THEM FOR THE EEOC INVESTIGATOR TO FIND AND QUESTION.**



- Quote and Cite Relevant Policies and Guidelines. Whether requested specifically or not, refer to and include copies of policies and guidelines. Including the school district's policies prohibiting discrimination and retaliation is also recommended.

- Tell the District's Story. Identify the key decision makers; their duties/responsibilities; address and explain the particular concerns, issues, or job performance deficiencies of the Charging Party; and how these issues relate back to the reasons for adverse action, if any.

- Explain and Provide Information to Show Non-Discrimination. Remember, the school district is expected to explain why the actions taken by it were lawful and not discriminatory. For example, sometimes the Charging Party was not the sole recipient of adverse action. Are there other employees outside of the Charging Party's protected group who were also similarly treated? If so, explain this. If the Charging Party has identified others who are outside the protected group that were allegedly treated more favorably, explain why these persons were not similarly-situated to the Charging Party and are distinguishable.

- Absolutely Deny Discriminatory Action and The Claims. A Position Statement should deny the

allegations of discrimination. If the facts and circumstances do not appear to support such a denial, then the school district should consult with its legal counsel.

**Once it is out of our hands, what can we expect?**

After receiving a school district's Position Statement and any information in support thereof, and conducting further investigation, the EEOC will ultimately issue its determination. Ideally, once the fact gathering and hard work of reviewing the concern and creating the Position Statement is done, a "no finding" determination will be received by the school district. A "no finding" determination is where the EEOC has determined there is no reasonable cause to believe that an unlawful employment practice has occurred. Where such a determination is made, the EEOC's involvement is terminated. However, a "no finding" determination does not necessarily end the matter. The Charging Party can proceed to litigate the matter. With the EEOC's determination, the Charging Party will receive a Notice of Right to Sue. The Charging Party's receipt of this notice starts the timeline for him/her to file a lawsuit. The Charging Party has 90 days from the date he/she receives the letter to file a lawsuit. It recommended

that the school district estimate the calendar date of this deadline.

While unfortunate, it is possible that the EEOC issues a "reasonable cause" determination, meaning that the EEOC has determined that a reasonable cause exists to believe that an unlawful employment practice has occurred under Title VII, the ADEA, the ADA, or GINA. Typically, prior to the issuance of such a determination, the EEOC will contact the Respondent and encourage settlement of the Charge through a negotiated agreement.

**Conclusion**

While it is not an enviable position, the receipt and response to a Charge of Discrimination is far from an impossible task to tackle. All educators are familiar with the saying, "Knowledge is power." Approaching an EEOC claim methodically and with focus is essential. By gathering information, confirming the facts, and consulting with legal counsel, school personnel administrators can successfully maneuver the process.

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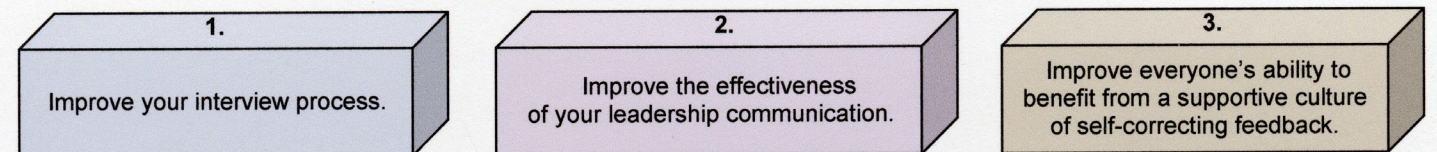
Laura Rodriguez McLean is an attorney at Walsh Gellegos Trevino Russo and Kyle PC and has devoted the majority of her years in legal practice to supporting school officials. She feels privileged to serve those responsible for educating our kids. Laura assists administrators and officials in general school law matters such as personnel and student issues on a daily basis. An experienced litigator and appellate attorney, she also represents public entities in state and federal courts throughout Texas. Laura believes preventative law is an essential strategy for school districts. Her practice includes practical, hands-on training for educators and officials on a variety of general education topics.

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# Understanding Exemptions Under FLSA

By Ronda Bauman, Senior Human Resource Consultant, Texas Association of School Boards, Austin, TX

When it comes to the Fair Labor Standards Act (FLSA) the most costly mistake an employer can make is to misclassify a nonexempt position as exempt. School districts with misclassified employees may be subject to back pay, unpaid overtime, and penalties. Some of the most commonly misclassified jobs in school districts include the following:

- Superintendent's secretary
- Cafeteria manager or other first line supervisors
- Payroll specialist
- Registrar
- High school bookkeeper
- Licensed vocational nurse (LVN)
- Certified occupational therapy or physical therapy assistant
- Computer technician
- Tax assessor clerk

## Exemption Tests

The Department of Labor (DOL) assumes all jobs are nonexempt. It is the employer's responsibility to establish the exemption. For a position to be exempt, it must pass a duties test, and in most cases, the employee must be paid on a salary basis an amount not less than the minimum weekly salary set by the DOL. The most common exemption tests used in school districts are the executive, administrative, and professional exemptions.

**Executive exemption.** The primary duty of a position under the executive exemption is managing the enterprise or a recognized subdivision of the enterprise. The position must customarily and regularly direct two or more full-time employees and have hiring and firing authority or their recommendation to hire and fire, promote, or change a worker's employment status holds sufficient weight is usually followed. If the employee does not evaluate the work of the employees he or

she directs then the executive exemption duties test will probably not apply. The executive exemption is typically used for the superintendent, principals, and department directors.

**Administrative exemption.** To meet this exemption test, an individual must perform office or nonmanual work related to the management or general business operation of the district and have the authority to make decisions by exercising discretion and independent judgement with regard to matters of significance.

**Administrator in an educational establishment.** An administrator in an educational establishment must perform nonmanual work, exercise discretion and independent judgement with regard to matters of significance, and perform administrative functions directly related to academic instruction or training in an educational establishment. This exemption is typically used for assistant principals, curriculum developers, instructional coaches who train teachers, testing coordinators, and counselors who analyze test data and advise students on appropriate classes and college admission.

**Professional exemption.** The professional exemptions used most typically in school districts are the learned professional exemption and the computer professional exemption. The **learned professional exemption** includes all three of the following elements.

- The primary duty involves the performance of work that requires advanced knowledge and the exercise of discretion and independent judgement.
- The advanced knowledge must be in a field of science or learning.
- The advanced knowledge must be customarily

acquired through a prolong course of specialized intellectual instruction. Simply having a bachelor's degree will not be sufficient. The degree must be specific to the profession being practiced.

Professionals in school districts include teachers, registered nurses, and athletic trainers who are certified by the Board of Certification of the National Athletic Trainers Association (NATA).

**Computer employees** such as systems analysts, programmers, software engineers, or other similarly skill workers in the field are also eligible for the professional exemption. The exemption does not apply to employees whose primary job is to repair computers, install software, or provide help desk support for user problems. For the exemption to apply, the primary duty of the position must be one or any combination of the following:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware or software needs or to determine the functional specifications of the system.
- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs related to system design specifications.

Computer professionals may be paid either on a salary basis at the DOL established minimum salary or on an hourly basis of no less than \$27.63 per hour.

## Salary Requirements

Most exempt employees must be paid on a salary basis. That is, the employee must receive the same

amount of money for each workweek in which he or she performs any work. The amount of weekly pay cannot vary based on the quality or quantity of the work. Other than specific deductions allowed by the FLSA, any reduction in salary would result in the loss of the exemption for that workweek.

Currently the minimum salary for an exempt employee is \$455 per week. However, the DOL has passed final regulations that will raise the minimum weekly salary to \$913 per week (\$47,476 for a full-year worker).

The proposed changes will not affect teachers and may not impact educational administrators in certain school districts. Teachers are not subject to the salary basis or minimum salary requirements of the FLSA. Educational administrators are not required to be paid the minimum salary established by the DOL if there is a minimum teacher salary set for the school and they are paid at least that amount.

Other exempt positions in school districts including licensed professionals (e.g., nurse, licensed specialist in school psychology, speech language pathologists, physical therapist, counselors who do not do academic advising) and others who perform exempt duties are subject to the minimum FLSA weekly salary. If the new minimum salary is not met, these positions would lose their exemption status and employees would be required to record work hours and be paid overtime.

More information about the FLSA and exemption tests is included in The Administrator's Guide to the Fair Labor Standards Act available through AASPA.



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## PROPOSED REGULATIONS CONCERNING FLSA EXEMPTIONS AND THEIR IMPACT ON SCHOOL POSITIONS



By Richard F. Verstegen,  
Boardman & Clark, LLP,  
Madison, WI

On May 18, 2016, the Department of Labor (DOL) announced that it will publish a final rule to update regulations (final regulations) under the Fair Labor Standards Act (FLSA). The final regulations will take effect on December 1, 2016. Because of this impending deadline, school districts will want to take immediate action to comply with the final regulations. This article will briefly summarize the changes to the FLSA regulations made by the final rule and discuss the impact on school positions.

### Background / Current Regulations

The FLSA is a federal law that sets minimum wage, overtime, equal pay, recordkeeping, and child labor standards for employees who are covered by the Act. State and local governments, including school districts, must comply fully with the FLSA. Employees who are covered by the Act fall into two categories: non exempt and exempt. Non-exempt employees are subject to all of the FLSA requirements. Exempt employees are generally not subject to the minimum wage and overtime provisions, but are still subject to the other FLSA requirements. It is the employer's burden to prove that an employee is exempt.

Exemptions are identified by different categories, including bona fide executive, administrative, professional, and computer employees. The FLSA regulations define the requirements for each of these exemptions. Each exemption generally includes three basic requirements: (1) a salary basis requirement; (2) a salary level requirement; and (3) a primary duty requirement.

- **Salary Basis.** An employee must be paid on a salary, rather than an hourly, basis. In other words, each pay period, the employee must regularly receive a predetermined amount constituting all or part of his or her compensation, without regard to the quality or quantity of the work performed. Some exempt employees (administrative, professional, and computer) may also be paid on a fee basis.

- **Salary Level.** An employee must earn a minimum weekly salary. Under the current rules, the minimum salary requirement is generally \$455 per week (equivalent to \$23,660 annually).



• **Primary Duty.** An employee's primary duty must be the performance of exempt work. Although an exempt employee may perform some nonexempt duties, the primary duty of the employee must be exempt in nature. Employees who spend more than 50 percent of their work time on nonexempt duties may still have exempt work as their primary duty. Each exemption identifies the duties that an employee must perform to meet that exemption.

Below is a brief summary of each of the exemptions and the positions within school district that generally fall within these exemptions.

• **Executive Employees.** These employees generally include those who engage in the management of the district or a department within the district, which generally involves oversight of employees and control over the work involved. Employees who may qualify in a school district include the supervisor of buildings and grounds, transportation director, and food service program director.

• **Administrative Employees.** These employees are generally those who engage in running or servicing the district or a department within the district. Administrative duties include work in such areas as finance, accounting, budgeting, procurement, safety and health, personnel management, human resources, labor relations, computer network, and similar activities. Employees who may qualify in a school district setting include the human resource director or business director.

• **Administrative Employees (academic administrative).** Administrative employees also include those in educational establishments. These employees are generally those who perform work related to the academic operations and functions in a school, rather than administration along the lines of general business operations. Such employees include the superintendent; any assistants responsible for administration of such matters as curriculum and other aspects of the teaching program; the principal and any vice-principals; academic counselors; and other employees with similar responsibilities. As explained below, such employees also have a separate salary level component.

• **Professional Employees.** Professional employees are generally those who are engaged in work that requires knowledge of an advanced type in science or learning acquired by a prolonged course of specialized instruction. Employees who may qualify in a school district setting include a school nurse or physical therapist.

• **Professional employees (teachers).** Teachers are professional employees but are covered under a separate regulatory section. Such employees are those who are engaged in teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who are employed and engaged in the activity as a teacher in an educational establishment by which the employee is employed. The salary level and salary basis requirements do not apply to teachers.

• **Computer Employees.** Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals. Computer employees may also be paid on an hourly basis of not less than \$27.63 per hour.

The current regulations also contain a relaxed duties test for certain "highly compensated" employees who receive total annual compensation of \$100,000 or more and are paid at least \$455 per week.

### Final Regulations

In 2014, President Obama issued an Executive Order directing the Secretary of Labor to "update and modernize" the overtime exemption rules under the FLSA. In 2015, the Department issued proposed regulations based on this directive, and the proposed regulations resulted in about 270,000 comments. Based on these comments, the Department has now issued its final regulations. The final regulations include the changes below.

**Changes to Salary Amounts.** The final regulations significantly increase the salary threshold for applicable exemptions. The final regulations set the minimum salary level for applicable exemptions at the 40th percentile of weekly earnings for full-time salaried employees in the lowest wage Census Region (currently the South), which is equal to \$913 per week (\$47,476 for a full-year worker).

**Updates to Amounts Every Three Years.** The final regulations also do not identify a specific amount that would remain stable over time. Instead, the final regulations establish a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the applicable percentile. Future automatic updates to these thresholds will occur beginning in January 1, 2020.

**Highly Compensated Employees.** The final regulations also raise the compensation requirement needed to qualify for the highly compensated employee exemption. To meet this exemption, an employee must receive total annual compensation of at least the annualized earnings amount of the 90th percentile of full-time non-hourly workers nationally, or \$134,004 annually. This amount will also be updated every three years, beginning January 1, 2020.

**Changes Related to Nondiscretionary Bonuses.** The final regulations also made an important change related to non-discretionary bonuses and the inclusion of such bonuses within the calculation of weekly salary. In particular, the final regulations now specifically permit school districts to count nondiscretionary bonuses, incentives, and commissions toward up to ten percent of the required salary level. However, school districts must pay those amounts on a quarterly or more frequent basis. The final regulations also allow districts to make a "catch-up" payment at the end of each quarter in order for employees to meet the salary level test.

**Certain Salary Provisions Did Not Change.** A few important things did not change under the final regulations with respect to salary basis and salary level:

- The teacher exemption is still not subject to any salary level or salary basis requirement under the FLSA.
- Computer employees may still be paid on an hourly basis at a rate of not less than \$27.63 per hour.
- Academic administrative employees still permits such individuals to be paid "on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment" where the administrator is employed.
- Some exemptions may also continue to be paid on a fee basis.

**No Changes to Provisions Related to Type and Amount of Exempt Duties.** Prior to the final regulations being released, many observers believed that the final regulations would tighten the rules regarding which "duties" an exempt employee may undertake. Some observers believed the FLSA rules would be reworked to require that a certain percentage of an employee's time be spent on exempt tasks. In the end, however, the Department decided not to make any specific changes in the final regulations to revise the duties test at this time. There have been indications, however, that the duties test may be revised in a future round of rulemaking.

### Impact of the Final Regulations on District Positions

Within these final changes, many districts have had questions as to the impact on certain positions. Below is a discussion on different school positions.

• **Teachers.** As mentioned above, the final regulations did not change the law with respect to one aspect of the professional exemption related to teachers; that is, the teacher exemption is not subject to the "salary basis" or "salary level" requirements that apply to other professional employees. Accordingly, consistent with the current law, a teacher in the district who meets the duties requirements related to the teacher exemption will be considered exempt, regardless of the amount that the teacher is paid. Thus, **the final regulations do not change any approach related to full-time, part-time, substitute, and temporary teachers in the district.**

• **Coaches.** The final regulations also likely do not impact the district's approach to coaches in the district. In general, employees who only coach in school districts will likely continue to not meet any exemption under the FLSA, based solely on their duties as coaches in the district. However, if a part-time coach is also a full-time teacher in the district, the coach will likely continue to be considered exempt in his or her capacity as a coach, considering the totality of his or her employment (full-time teacher / part-time coach) in the district. As a result, it continues to be advisable for districts to continue to carefully consider its hiring and payment practices related to coaches in the district.

• **Academic Administrators.** Under the academic administrative exemption, the final regulations



raised the amount of the salary level requirement. However, as mentioned above, the final regulations did not impact a separate salary level provision that only applies to academic administrators. Specifically, academic administrators may still meet the salary level requirement if they are paid “on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment” where the administrator is employed. As a result, if an academic administrator’s salary is at least equal to the entrance salary for teachers at the district, there is likely no need for a salary adjustment for that administrator.

- *Computer Employees.* The computer employee exemption also changed with respect to the specific salary level. However, as mentioned above, the law did not change a provision allowing computer employees to meet the salary level requirement if they are paid at a rate of not less than \$27.63 per hour. Therefore, any computer employee who met this hourly requirement under the current law will also meet this requirement under the final regulations.

- *Directors / Managers.* The category of “director” or “manager” may be the category of employee within the school district that is most affected by the final regulations. Such positions may include Director of Food Services, Director of Building and Grounds, Business Services Manager, or Human Resource Manager. Although the duties required to meet these positions have not changed, the amount that must be paid to these positions has changed, and therefore, districts will need to pay close attention to ensure that these positions are adjusted appropriately.

#### Considerations for School Districts

Again, the final regulations take effect on December 1, 2016. Until then, the current regulations will remain in

place. The time period between now and December 1 gives districts an opportunity to address any positions that may be impacted by the final regulations (in particular, those positions that may not meet the new salary level requirements). One approach would certainly be for districts to increase the salary for that employee. However, another approach could be to reclassify the employee as nonexempt and pay overtime for any hours worked over forty in a work week. Previously exempt employees will need to be instructed and trained about their recordkeeping obligations and tracking their hours worked. Districts may also then decide to limit the hours of these reclassified nonexempt employees to avoid having to pay overtime.

It is advisable to identify now any impact that the regulations may have on certain positions and the potential impact of future budgeting or hiring. School district officials should also review any handbook provisions, policies, collective bargaining agreement provisions, and contracts that may be impacted by these regulatory changes, and they should also consider any relevant state law and its impact.

#### Conclusion

The changes to the regulations are important. However, the Department did not impact the primary duty tests for these exemptions, which would have made things even more challenging for district officials. Considering the current political climate, which includes a U. S. Presidential election in November, there could be legal challenges to these regulatory changes. However, for now, the changes will be the law in December 2016, so school districts must take action and decide how to address these changes and seek legal counsel as necessary.



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# FMLA Abuse and the “Rolling Back” Method of 12-Month Entitlement Calculation

By Scott D. Macdonald, Esq., SPHR, Middleton, CT

What’s the best 12-month calculation method to use? Let’s examine that backwards: What’s the worst one to use?

The 2000 U.S. DOL Survey of employees asked leave-takers who used leave for health-related reasons (excluding disability due to pregnancy) if the condition required a doctor’s care or overnight hospital stay. It is worth noting that 99.1 percent of leave-takers who took leave under FMLA to address their own or a family member’s serious health condition reported that the condition required a doctors’ care. Furthermore, 67.0 percent indicated that they (or their family member) were in the hospital overnight. When asked to give the health condition, responses included heart attack, cancer, depression, and a variety of surgeries.

What’s more, of the six categories of “serious health condition” defined in Section 825.112, only one—chronic conditions—lends itself to significant abuse. Is the potential abuse you are trying to prevent hypothetical, or do you actually have a problem in your organization that you need to address? Why implement a calculation method that is overly cumbersome to administer based upon the premise that it’s the least “employee-friendly”, or for hypothetical abuse of a very small (single digit) percentage of employees who potentially might try to abuse FMLA leave?

As Paul Falcone, Vice President, Employee Relations, at Time Warner Cable in Los Angeles and a prolific

writer on HR topics, stated in 2010, in his experience, about three to five percent of employees cause problems with FMLA, and that’s just a cost of doing business. “Manage the 95 percent,” he says, and sooner or later the abuse will catch up to the others. Source: BLR’s HR Daily Advisor.

The Rolling Back method of calculation may cause your organization to have to add a day, a portion of a day, an hour or even a fraction of an hour for each and every day an employee took leave during the previous 12 months. As a result, an employee may go in and out of FMLA-protected leave from one day to the next, depending on whether the leave was taken in a block of time or intermittently. Further complicating this issue is that an employee also may go in and out of eligibility if, as a result of having taken leave, the employee no longer meets the 1,250 service hour requirement. As a result, the 12-month entitlement period may change on a daily basis, and you may be required to send a new Eligibility Notice each time the employee’s eligibility for FMLA changes.

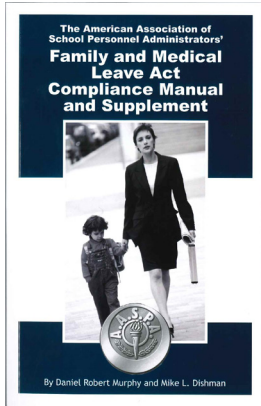
So ask yourself if it’s really worth having to calculate and recalculate each employee’s FMLA leave balance potentially on a daily basis, just to prevent either a hypothetical problem or one that involves such a small percentage of employees (who are likely to be problems for other reasons as well).





Scott Macdonald has been practicing labor relations and employment law since 1987, and human resource management since 1997. The scope of his work includes employee and labor relations, HR compliance and best practice audits, employee handbooks, personnel policies and procedures, compliance training, EEO and affirmative action, recruitment and selection, FMLA implementation and administration, job descriptions, employee benefits design and administration, and HR information systems/technology. He brings substantive knowledge and expertise in human resource management in both the private and the public sector. Scott has consulted to numerous public school systems across the United States.

Scott holds a Bachelor's degree with Honors in Political Science and Philosophy as well as a Juris Doctor degree from University of North Carolina at Chapel Hill. In 2003, Scott earned his Senior Professional in Human Resource Management Certification. He is a frequent presenter/trainer for the American Association of School Personnel Administrators, at state conferences, and for private and public sector employers.



For more information on FMLA, check out our *FMLA Compliance Manual and Supplement* available for purchase in our AASPA Bookstore at [www.aaspa.org/resources/store](http://www.aaspa.org/resources/store).

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## Five Steps to Begin

# Implementing Title IX

By Lindsay Pfister, West Jefferson Hills School District, Pittsburgh, PA

### Dear Colleague...

On April 4, 2011, these words began a letter to remind educational institutions across the United States of their responsibility to adhere to the requirements of Title IX in order to protect students and employees from gender discrimination, specifically in the area of sexual harassment (Department of Education [DOE]/Office of Civil Rights [OCR], 2011a). Over the decades, Title IX expanded to recognize and address gender discrimination in athletics and through sexual harassment.

In 2001, educational institutions received guidance to address sexual harassment, including sexual violence, as a method of gender discrimination. A decade later, OCR recognized the need to refocus the efforts of educational institutions to implement Title IX and wrote the Dear Colleague Letter of 2011.

Even though many school districts have taken action based on the recommendations of the letter, the level of implementation of Title IX varies greatly. Unfortunately, many school districts do not realize the importance of Title IX compliance until an individual files a complaint and OCR begins an investigation. Using the Dear Colleague Letter of 2011 and the experience of this writer as a guide, below are five steps to help move your district toward compliance.

**1.** Find a Title IX Coordinator and Tell Everyone. Identify a Title IX coordinator for your school district (DOE/OCR, 2011b). School districts may choose multiple coordinators, but the district must appoint one person to oversee all coordinators (DOE/OCR, 2011b). Once the district names the coordinator, publicize the person's contact information on the organization's website, in publications (i.e., school calendar, take home packets, handbooks), and at district buildings (DOE/OCR, 2011b).

Each school district will identify the person best suited in their organization to serve in this role, [www.aaspa.org](http://www.aaspa.org)

but often personnel administrators are appointed. Having served as the Title IX coordinator in multiple positions, I found that the knowledge personnel administrators have of compliance, investigations, and training provides a strong foundation to execute this role in an effective manner. For example, in one school district we were able to combine our administrators' knowledge of employee and student discipline investigations into a process to conduct Title IX investigations. By structuring the process in this manner, we were able to comply with the law without overwhelming our administrators with competing investigatory systems.

**2.** Open and Read Your Policy Manual. If you have a harassment policy, check to make sure all the requirements for Title IX are included. If you do not have a harassment policy, get one. Every district needs a policy that forbids gender discrimination in any form, specifically in the form of sexual harassment and sexual violence and details the steps of the grievance process if the policy is violated (DOE/OCR, 2011b). The grievance procedure should include the investigation process, timelines, determination, and appeals. A district may choose to develop an individual policy for Title IX or include it in an existing process as long as the policy addresses all necessary parts.

For example, many school districts in Pennsylvania use a generalized harassment policy provided by the state school board association policy service that forbids any forms of discrimination (i.e., age, gender, racial) and details the investigation process, timelines, outcomes, and appeals for all protected class harassment. In addition, the policy includes sections on sexual harassment.

**3.** Educate, Educate, Educate. At a minimum, all administrators need to understand how to identify Title IX complaints relating to sexual harassment and



sexual violence and what to do when a complaint arises. Ideally, the district should educate all students, parents, faculty, and staff about sexual harassment and sexual violence and the grievance process (DOE/OCR, 2011b).

School districts can educate through a systematic structure. Over the summer, central office and building administrators can receive Title IX training that includes regulations, identifying and investigating harassment, and methods to remedy claims. When the school year begins, building principals can use opening day presentations to explain sexual harassment and sexual violence and the district's grievance complaint process to their students in an age appropriate manner. Throughout the school year, administrators and the Title IX coordinator can provide presentations on sexual harassment and sexual violence and the grievance process to all faculty, staff, and parents.

**4.** Investigate. The district must investigate all claims of sexual harassment and sexual violence according to the district's established policy (DOE/OCR, 2011b). If a student or third party reports an act of sexual harassment or sexual violence to a school district employee, he/she must either take action or report it to the appropriate administrator.

Not all investigations begin with a direct complaint of harassment. Often, administrators categorize actions requiring investigation as general discipline when they include sexual harassment or gender discrimination. These types of situations may require administrators to conduct disciplinary and harassment investigations concurrently. Examples of disciplinary actions that may involve Title IX are bullying based on gender (DOE/OCR, 2011b), a student kissed without consent, "consensual" sexual interaction, or a student exposing him/herself to other students regardless of gender.

To assist administrators in these situations, I developed a general investigation report template to help administrators conduct both investigations and document the process. The administrators retained a copy and provided one to me in case someone appealed or filed an OCR complaint.

**5.** Remedy, Remedy, Remedy. As soon as a person makes a complaint, either blatantly or through a situation, the district must take steps to stop the behavior immediately without further harming the complainant (DOE/OCR, 2011b). A district may need to implement remedies before or during an investigation. Protections such as separating involved parties, limiting interaction during extra-curricular activities, and/or removal or changing of transportation, may need to be immediate while an investigation occurs. As the district applies the preponderance of evidence to make a decision, remedies may increase or decrease in severity. Administrators need to remember that disciplinary measures are not the only remedies. School districts should consider offering counseling services to the claimant and respondent.

As with all compliance, these five steps are only the beginning to understanding and effectively implementing Title IX in K-12 organizations. Multiple resources are available to school districts and Title IX coordinators. Individuals can personally contact OCR or visit their website to acquire copies of regulations, Dear Colleague Letters, and frequently asked questions. In addition to OCR, several organizations provide training and resources to support Title IX coordinators. We are well aware of the demands placed on personnel administrators, but by taking an active role in coordinating Title IX compliance, we protecting our students, faculty, and staff.



*Lindsay Pfister, Ed.D. is the director of human resources at West Jefferson Hills School District in a suburb of Pittsburgh, PA. Ms. Pfister worked in private education as a teacher and principal for more than 10 years. As the principal of Our Lady of Grace School, Ms. Pfister was responsible for several areas including human resources. Her love of personnel administration led to a transition from private to public education to become the director of human resources in the Penn Hills School District, a position she held for two years. In 2015, Lindsay earned her doctorate in School Leadership from the University of Pittsburgh.*



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# Compliance: **NIGHTMARE** or *innovation driver*?

By Emily Douglas-McNab, Battelle for Kids, Columbus, OH

**From ghoulies and ghosties  
And long-leggedy beasties  
And things that go bump in the night,  
Good Lord, deliver us!  
-The Cornish and West Country Litany, 1926**

Among human resources professionals, the topic of compliance is akin to ghoulies, ghosties, long-leggedy beasties, and things that go bump in the night. It's a moving target. It's full of legal jargon and rules. It's what keeps HR professionals from spending time on strategic work and keeps us in the transactional space. And, one compliance mistake could have epic legal and financial consequences for your district—in fact, such a misstep could be a career killer.

HR should exist to help an organization attract, support, and retain its most valuable asset: people. Yet, it is also a key player in keeping a district compliant with the law. One of the greatest mistakes employers make is underestimating the importance of compliance with employment laws. This misunderstanding can put districts at a significant competitive disadvantage and legal risk.

## **Strategic vs. Transactional HR**

Many school district HR leaders are interested in their department becoming a sleek, sexy, strategic partner of the organization. In fact, some current writers and speakers on the topic would say that HR should focus solely on strategic activities, and not transactional ones. Yet, here's the reality: strategic and transactional HR aren't mutually exclusive. This becomes blatantly apparent when we think about what our customers want. In schools, HR's customers—teachers, building leaders, maintenance staff, department leaders, substitute teachers, and more—typically need support and guidance with transactional activities and want to be treated fairly and within the word of the law. This means that when they call with questions about health insurance or family medical leave, they're not in the mood to hear about the department's strategic vision and goals.

However, employees also want to be engaged and satisfied with their job and organizations want to be competitive or the best they can be—this is where strategic HR comes into play. But again, these are second-level needs and wants. In short, HR departments cannot be strategic if they're not great at managing the transactional work, including compliance activities, first.

Yet, what if we were able to look at compliance through a strategic lens and allow it to drive innovation in our districts? What if we used compliance as a way to focus on improving our processes through the collection of data? If we take a moment to look at compliance a bit differently, we may be able to use it strategically.

When thinking about compliance differently, we must first truly understand the difference between transactional and strategic human resources. Historically, personnel departments were transactional bodies that kept records, posted jobs, checked time cards, and processed payroll. While needed, these tasks did not necessarily add much value or generate cost savings for organizations. Even after changing names a few decades ago, many HR departments continued to serve as stand-alone, siloed operations, and HR directors were rarely invited to meetings with financial and operations executives. This transactional focus worked for some organizations. But others began to experiment with the idea of HR being more than storing papers, processing new-hire paperwork, and ensuring legal compliance. From that, strategic HR was born. Under this new model, HR leaders have a seat at the executive table right next to the chief operations, finance, and technology officers.

Strategic HR works to align human resources operations to organizational goals. It is proactive and

forward-thinking, not reactive. Organizations that strategically invest in their people create more satisfied, engaged, and loyal employees, which ultimately leads to better outcomes. In schools, that could mean more effective teaching and leading resulting in greater student progress.

One additional caveat is that while the idea of making HR a more strategic part of an organization sounds great, actually making the shift can be quite challenging. Doing so takes time, patience, and individuals with deep knowledge and understanding of what your HR function is and what it could be.

## **Changing the Compliance Conversation**

The question becomes: How do we view compliance in an innovative way? When looking at the way some businesses approach compliance, we can extrapolate a few ideas to make the topic more strategic and fun. Here are four possible ways districts can ensure that they are working to change the compliance conversation from one of dread to one involving strategy and data:

1. Promoting a Deeper Understanding of HR and Compliance
2. Approaching Compliance as Part of an Organization's Strategy
3. Managing Compliance as an Individual's Full or Part-time Role
4. Utilizing Data in Compliance Conversations

## **Promoting a Deeper Understanding of HR and Compliance**

Today's school district HR professionals have taken many different paths to the position, including a variety of educational backgrounds, work experience, and HR training. But, that's ok! This variety of expertise, perspectives, and skill sets can strengthen HR departments. Some HR professionals are career changers, including former teachers and principals, who moved into their district's HR department. Others have changed industries, moving from an HR role in business, for example, to education. Yet, just as great teachers work to hone their craft, district HR staff also must continually work to grow and develop.

Practicing strategic HR requires a solid foundation in HR practice and the willingness to continually grow as a professional and expert in the space. Thus, HR professionals must work to understand compliance

guidelines and employment laws regarding wages and hours (i.e., the Fair Labor Standards Act); health and safety (i.e., Occupational Safety and Health Act); healthcare, retirement, and workers compensation (i.e., Family Medical Leave Act); bargaining; and civil rights.

For those looking to grow their HR and compliance knowledge, here are four avenues for professional growth:

1. **Professional Development:** Participating in professional development programs, such as the AASPA boot camp, the AASPA national conference, or state and district-level training, can help HR professionals stay current on best practices in the field. Another useful way to get access to great professional development materials is via AASPA publications and the bookstore.
2. **Professional Networking:** Engaging with your peers in other school districts, either in person or online, is critical for professional growth. AASPA provides opportunities to connect with HR professionals of all different backgrounds. There are also a number of online professional learning communities for HR staff, including the #K12Talent Twitter chat.
3. **Leadership Development and Certification:** Through certification programs, HR professionals have the ability to demonstrate their level of expertise and display their certification in a variety of ways. In spring 2015, Battelle for Kids partnered with AASPA to survey hundreds of district HR professionals from 28 states. More than 80 percent of respondents noted that they have no HR-related certification. Of the 18 percent of respondents with an HR-specific certification, the majority of those individuals had a PHR or SPHR from the Human Resources Certification Institute.
4. **Leadership Opportunities:** AASPA and state affiliate members may have opportunities to sit on national and local committees or hold elected officer positions. Serving in this capacity allows professionals to build their leadership skills within a supportive and safe environment.

## **Approaching Compliance as Part of an Organization's Strategy**

Organizational alignment to a thoughtful, planned strategy is crucial to any initiative that will ultimately impact teachers and students. Many districts work to ensure alignment by creating a thoughtful strategic plan. Such planning requires enlightened, painstaking,



and efficient work, and many organizations struggle to get it right.

Often times, compliance programs are seen as risk-aversion planning rather than the promotion of fair, legal, and equitable practices. When it comes to compliance, everyone should understand why compliance is part of your strategic plan and goals. Your compliance plan should be viewed as something to better the organization, rather than policing or tasks that are done in an attempt to catch wrong doers.

Compliance goals must be linked to strategic execution. They must be achievable, measureable, and time-bound. Successful organizations set goals, use actions plans, assign ownership, select measures, and report out on goal achievement regularly. For example, due to the recently announced Fair Labor Standards Act changes that go into place on December 1, 2016, all employees who make less than the salary threshold amount of \$47,476 qualify for overtime pay and districts must now work quickly to be in compliance with the law. By making compliance a strategic goal, HR professionals can ensure that conversations pertaining to budget changes, compensation schedules, payroll and timekeeping, job description, and employee communications takes priority over less timely work.

### Managing Compliance as an Individual's Full or Part-time Role

In the for-profit, business world many organizations have employees who spend their day focusing on compliance. These individuals are usually directors, executive directors, or chief compliance officers. In many instances, they are attorneys and/or have extensive knowledge and skills specific to risk management.

Having an individual "own" the role of managing compliance, whether full-time or as part of their role could help districts address issues more proactively. While rare, some districts, particularly large, urban districts, also employ chief compliance officers. For example, according to a job description on the Sweet Water School District website, their chief compliance officer works specifically on HR and employment law compliance specific to sexual and racial discrimination. It notes, "The job of chief compliance officer is done for the purpose of evaluating, planning, implementing, and monitoring district-wide compliance programs, policies, and procedures that promote a culture that fosters

ethical and compliant behavior. The chief compliance officer functions as an independent and objective body that reviews and evaluates compliance issues/concerns within the organization."

### Data-Driven HR Conversations

While school districts have long captured data to measure student performance, many districts are also seeing the value in using data for talent management, process improvement, customer service, and compliance to improve educational opportunities for students. Compliance is an area where HR professionals can use data to be more strategic and communicate with the organization.

Tulsa Public Schools' (TPS) Human Capital department has been using data specific to improve recruitment and retention processes, increase the effectiveness of their hiring practices, provide exceptional service to customers, and ensure compliance with federal and state employment laws. Using this data-driven improvement approach, the district has seen great success. For example, Talia Shaull, Chief Human Capital Officer, shares that TPS, "has seen results, such as a reduction in support staff turnover by six percent in the past year and a 38 percent reduction in the number of complaints received in our HC department over the prior year. Having data allows us to make informed decisions and proactively address issues as we move forward down our path of continuous improvement."

With the right data, used in appropriate ways, HR can learn a great deal about what their customers want and need, prioritize work, and communicate needs to ensure compliance.

In conclusion, as HR professionals, we have to begin to look at compliance in an innovative way. This can be done by promoting a deeper understanding of HR and compliance; thinking of compliance as part of an organization's strategy; looking at ways to integrate compliance into an individual's role; and utilizing data for compliance conversations. The bottom line is that, whether we like it or not, compliance is an important topic for HR professionals to understand and embrace, especially when the world is driving towards HR as a strategic partner. If we work hard enough and change our mindset, we can move compliance from a nightmare to a way for our organizations to be more strategic, competitive, and effective.

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*Emily Douglas currently works for the nonprofit Battelle for Kids, an organization that provides counsel and solutions to advance education internationally. As the director of human capital, Emily works with schools and state departments across the country to build and improve human capital and performance management systems. Emily also writes for the world's largest K-12 education newspaper, Education Week, as the "K-12 Talent Manager." In 2013, Emily was recognized by Workforce magazine as an "HR Game Changer." This award honor the next generation of workplace leaders under 40 who are making their mark in the field of human resources. Recently, she was also recognized by Microsoft Education as a "Global Hero in Education."*

*After earning her B.A. in political science from Miami, Emily received her MBA and master's in human resources (MLHR) from The Ohio State University Fisher College of Business. Emily also has her Senior Professional HR certification (SPHR), is a Lean Six Sigma Black Belt (LSSBB), and has a social media management certificate from Cornell University.*



**AASPA Personnel Administrator Boot Camp**  
**June 23 - 24, 2016**  
**8:00 a.m. - 4:30 p.m. each day**  
**Omni Severin Hotel-Indianapolis, IN**

Take charge of your career, increase your knowledge, and gain the respect of your peers and superiors with career enhancing professional development. AASPA Personnel Administrator Boot Camp is an engaging learning experience and will help you ignite your passion for human resources.

Our most popular regional meeting, this two-day workshop offers a variety of essential topics for all HR administrators. Breakouts follow two strands of topics - one for the basic HR professional and another for the more advance administrator. Topics include recruitment, HR legislation, hiring, employee evaluation, employee discipline and more!

**Session Titles and Descriptions**  
**AASPA Personnel Administrator Boot Camp**  
**June 23-24, 2016 – Omni Severin Hotel, Indianapolis, IN**

**Conducting Investigations: How, When, Why, and How** -- In our current day and age where "bullying" and "harassment" are major buzz words, it can be difficult to discern when an expression of concern about a staff member is simply a gripe or a complaint that must be investigated. This presentation will attempt to walk through the basics of understanding, processing, and investigating complaints regarding staff members. *Robert T. Schindler, Attorney, Lusk Albertson, Bloomfield Hills, MI*

**The Conundrum: Quality Hires vs. Empty Positions** -- Attracting, hiring, and retaining the best educator talent in the midst of an ever-expanding shortage of candidates is a growing challenge for schools. Additionally, many districts are struggling to provide diversity in their work force. This session will share the stories of how two districts, Tulsa Public Schools and Des Moines Public Schools, engaged in transformative processes to recruit new educators to replace those retiring or looking for new opportunities. *Tony Bagshaw, Managing Director – Human Capital, Battelle for Kids, Columbus, OH*

**Delving into the Scary World of the FLSA** -- The FLSA is one of those statutes that personnel administrators often know the basics of, but are reluctant to delve into deeply – often in fear of what they may find in their organization. However, it is better for you to find concerns within your organization than for the EEOC, Department of Labor, or a jury in an FLSA lawsuit. This presentation will cover the basics of the FLSA and some of the larger pitfalls to watch out for. *Robert T. Schindler, Attorney, Lusk Albertson, Bloomfield Hills, MI*

**Employee Discipline - Legal Considerations** -- If you are wondering whether your decision to discipline will be second-guessed under the ADA, FMLA, Title VII, ADEA, OSHA or other federal or state law, then attending this session is a must. Attendees will be given practical advice on how to discipline while complying with employment laws. *Tuck Hopkins, Attorney, Barnes and Thornburg LLP, Fort Wayne, IN*

**Employee Handbooks: Practical & Legal Considerations, How to Create, What to Include & What Not to Include** -- Attendees will learn the purposes of employee handbooks, how to create and revise handbooks, what to include and not include (a checklist will be provided), how to organize and customize the handbooks, practical and legal implications, tips and common mistakes. *Séamus Boyce, Attorney, Church Church Hittle & Antrim, Noblesville, IN*

**Hiring for Diversity** -- Hiring for diversity has always been a puzzle to us in the recruitment and hiring profession and continues to be a puzzle because we cannot make all the pieces fit. However, we will continue all efforts to put all the pieces of the puzzle together for the successful hiring and retaining of professional educators of color. During his session we will discuss: WHAT does diversity look like? WHY does it look that way? HOW can you make it look different or can you? and WHEN do you begin the transition? *Dr. Addie Swinney, Chief Executive Officer, Refresh Innovations, LLC, Auburn, AL*

**How to Deal with Employee Misconduct Allegations, including Sexual Abuse and Sexting** -- Employee misconduct is a highly sensitive subject, especially with regards to sexual abuse or inappropriate behavior such as sexting. This session will address the issue of such employee misconduct, and provide considerations for the process of investigating reports of sexual abuse, reporting to authorities, and proceeding with any impending disciplinary actions as a result. *Amy A. Matthews, Attorney & Andrew A. Manna, Attorney, Church Church Hittle & Antrim, Noblesville, IN*

**How to Hire a Teacher** -- The selection and employment of highly qualified teachers is one of the most difficult of all administrative responsibilities. The ability to select the "best" teacher from a pool of applicants is a skill which, without a doubt, directly impacts the quality of the instructional program and the success of the administrator responsible for the selection of personnel. The awesome nature of this responsibility can be overwhelming to the serious administrator who realizes that both personal and organizational success hinge on the collective competencies of the staff members selected. *Carrie Durley, Retired Executive Director of HR, Charlotte, NC*

TIME/JUNE 23	BASIC TRAINING	ADVANCED MANEUVERS
07:30 am – 08:00 am	Continental Breakfast & Registration Bags – <b>Sponsored by Proximity Learning</b> Name Badges – <b>Sponsored by Teachers-Teachers.com</b> Program Book – <b>Sponsored by TeacherMatch</b> Breakfast – <b>Sponsored by Appleton</b>	
08:00 am – 08:15 am	Welcome & Introductions <i>Kelly Coash-Johnson, Executive Director, AASPA</i>	
08:15 am – 09:30 am	Transgender Challenges in Your District – <i>Dr. Addie Swinney</i>	
09:30 am – 10:45 am	HR 101: A Primer for Newbies – <i>Dr. Kim Chambers</i>	Dealing with Student/Teacher Relationships – <i>Susan Traynor Chastain</i>
10:45 am – 11:00 am	Break	
11:00 am – 12:00 pm	Employee Handbooks: Practical & Legal Considerations, How to Create, What to Include & What Not to Include – <i>Séamus Boyce</i>	Strategies for Employee Discipline – <i>Steve Stephanoff</i>
12:00 pm – 01:00 pm	Lunch	
01:00 pm – 02:00 pm	The Fair Labor Standards Act (FLSA) – <i>Robert Schindler</i>	Legal Update & Best Practices in FMLA Administration – <i>Brent Borg</i>
02:00 pm – 03:15 pm	Writing & Maintaining Effective Job Descriptions – <i>Dr. Addie Swinney</i>	Employee Discipline, A Legal Perspective – <i>Tuck Hopkins</i>
03:15 pm – 03:30 pm	Break – <b>Sponsored by Frontline</b>	
03:30 pm – 04:30 pm	Social Media & Teachers – <i>Michelle L. Cooper</i>	Investigations – <i>Robert Schindler</i>
04:30 pm – 06:30 pm	Networking Reception – <b>Sponsored by TalentEd by PeopleAdmin</b>	
TIME/JUNE 24	BASIC TRAINING	ADVANCED MANEUVERS
08:00 am – 09:15 am	Breakfast Table Talks - Recruitment/Retention - My Teacher Did What?!? - Attracting and Working with the New Generation Breakfast – <b>Sponsored by RIVS</b>	
09:15 am – 10:30 am	Legal Hot Topics in School HR – <i>Jonathan L Mayes</i>	Addressing Abuse & Other Major Misconduct Allegations – <i>Amy A. Matthews &amp; Andrew A. Manna</i>
10:30 am – 10:45 am	Break	
10:45 am – 12:15 pm	Sponsor Presentations	
12:15 pm – 01:15 pm	Lunch	
01:15 pm – 02:15 pm	How to Hire a Teacher – <i>Carrie Durley</i>	Human Capital Branding – <i>Tony Bagshaw</i>
02:15 pm – 02:30 pm	Break	
02:30 pm – 03:30 pm	Hiring for Diversity – <i>Dr. Addie Swinney</i>	
03:30 pm – 03:45 pm	Wrap Up & Evaluation <i>Kelly Coash-Johnson, Executive Director, AASPA</i>	

To register, please visit <http://aaspa.org/personnel-administrator-boot-camp/>



**HR 101: A Primer for Newbies** -- New to HR? Excited, but nervous? Join us for this session geared toward new HR Administrators. Learn HR basics, tips and tricks of the trade. *Dr. Kim C. Chambers, Director of Human Resources, Adlai E. Stevenson High School District 125, Lincolnshire, IL*

**Legal Hot Topics in School HR** -- Come hear about important updates in the FLSA, new LGBT protections, and other leading-edge issues of the day. *Jonathan L. Mayes, Attorney, Bose McKinney & Evans LLP, Indianapolis, IN*

**Legal Update and Best Practices in FMLA Administration** -- Attendees will learn about the latest compliance issues and legal updates in light of the revised federal regulations and court decisions. Best practices in FMLA administrations, along with useful, practical tips and tools will be provided that will enable attendees to facilitate FMLA administration through HR staff and train supervisors. *Brent Borg, Attorney, Church Church Hittle & Antrim, Noblesville, IN*

**Maneuvering Your School Through the Social Media Phenomenon** -- The session will focus on legal issues that arise with teacher uses of social media, including disciplinary and First Amendment considerations. The session will also include information pertaining to social media policies and procedures. *Michelle L. Cooper, Attorney, Lewis Kappes Attorneys at Law, Indianapolis, IN*

**Strategies for Employee Discipline** -- Participants will hear about successful techniques in dealing with employees who need disciplinary action. From difficult employee-employer conferences to cancelation of teaching or administrative contracts, many aspects of employee discipline will be discussed. *Dr. Steve Stephanoff, Assistant Superintendent of Human Resources, Noblesville Schools, Noblesville, IN*

**Transgender Challenges in Your District** -- Change Happens! It does not matter if they are instructional, academic, cultural, social, or societal. It is how a District responds to "all employees" concerns in the workplace. Be prepared to engage in a much needed, but sensitive conversation. In this session, we will engage in conversation about the challenges you are faced with in your District. Educating all stakeholders and respecting individual differences continue to be the foundation in all we do. *Dr. Addie Swinney, Chief Executive Officer, Refresh Innovations, LLC, Auburn, AL*

**Writing and Maintaining Effective Job Descriptions** -- Have you ever looked at job description and notice that it seems a little dated? Antiquated? Or just old? That is a clear indication that someone has failed to review and revise their job descriptions prior to posting when there is a vacancy. During this session we will engage in thought provoking discussion as to why you need job descriptions, why they are important, and how important it is to revise and maintain job descriptions for their effectiveness. This session will provide you with an overview to get for writing and maintaining your District's job descriptions. *Dr. Addie Swinney, Chief Executive Officer, Refresh Innovations, LLC, Auburn, AL*



This program has been approved for 12 recertification credit hours through the HR Certification Institute (HRCI) and the Society for Human Resource Management (SHRM).

The use of this seal is not an endorsement by HRCI or SHRM of the quality of the program. It means that this program has met HRCI and SHRM criteria to be pre-approved for recertification. Certificates will be available at the end of the workshop.



## AASPA 78th Annual Conference

Orlando, FL

October 11 - 14, 2016

AASPA's 78th Annual Conference provides four days of high quality educational programs designed to sharpen your expertise, enhance your knowledge and equip you to lead your school HR department into the future. Multiple education formats (keynote speakers, pre-conference and clinic workshops, education and ignite sessions) will be presented by education's top experts and industry leaders and will focus on innovative ideas, ready to use solutions and research based strategies you need to know to successfully lead your district.

AASPA's 78th Annual Conference is a must attend event for any ambitious, school administrator who is committed to HR and passionate about their own professional growth. You will have the opportunity to network with your peers in the field of school HR; stay up-to-date in your knowledge of new trends, laws and strategies; gain a solid grounding in tried-and-true HR fundamentals and gain unique insight into new practices. Learn what's necessary to stay competitive by discovering new innovative products and services from our business partners and enjoy time in the city of Orlando! You won't want to miss the fun and energy of the Presidents Reception, the Opening Night Event as well as the State and Hospitality Receptions. You are sure to "Celebrate Success" at this engaging event!



**Wednesday,  
October 12**  
Leading a Culture  
of Service  
Excellence  
By Dennis Snow  
In today's

competitive market, developing a service excellence strategy is an important part of any leader's role. Beyond developing the strategy, however, there is the challenge of executing the plan. It's in the execution that service excellence strategies become a reality or simply another "flavor-of-the-month" program. Employees watch to see how committed the organization truly is to customer service and take their cues directly from their leaders.



**Thursday,  
October 13**  
Crossing the  
Generational  
Divide  
By Alicia  
Rainwater

For the first time in history, four generations are working side by side. Each generation brings different strengths, values and communication styles to the workplace. These differences can be challenging or a strategic opportunity depending on how leaders respond. Rainwater reveals each generation's workplace mindset and strengths. She shares surprising statistics, laugh-out-loud stories, and frontline-tested strategies that drive results across generations.



**Friday,  
October 14**  
Leading When  
Leadership Gets in  
the Way  
By Carla Santorno  
Have you had

to tweak, shift, break or overhaul traditional, ingrained systems, routines and timelines to inspire relevant change? Our current complex work demands that we establish strong goals and metrics while nurturing the systems that will sustain our efforts. Success is rising to the next level of leadership while intentionally celebrating every milestone! Oh yeah- and having some fun while doing it.





AASPA 78th Annual Conference  
October 11-14, 2016

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