SCHOOL PERSONNEL & FINANCE
A Presentation for CSU Stanislaus

November 16, 2017
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Areas of Relevant Law
[Not an Exhaustive List!]

- **Education Code**
  - County Offices of Education
  - Preschools/Early Childhood Education
  - K-12 School Districts
  - Community College System
  - California State University System
  - University of California System
Areas of Relevant Law
[Not an Exhaustive List!]

- Education Code
  - Hiring
  - Transfer
  - Evaluation
  - Time Issues
  - Classification
  - Status/Tenure
  - Layoff/Discipline/Release
Areas of Relevant Law
[Not an Exhaustive List!]

- Education Code
  - Sex and Drugs
  - Compensation
  - Student Discipline
  - Charter Schools
  - School Board Powers and Duties
  - Elections
  - Accountability (in progress…)
Areas of Relevant Law
[Not an Exhaustive List!]

- **Education Code**
  - Curriculum/Instruction
  - Budget & Finance
  - LCFF/LCAP
  - School Site Councils
  - AB 1200 etc.
  - Pension (STRS)
  - Much, Much More!
Areas of Relevant Law
[Not an Exhaustive List!]

- Government Code
  - EERA
  - CFRA
  - Pension (PERS)
  - PEPRA of 2013
  - Tort Claims/Liability
Areas of Relevant Law
[Not an Exhaustive List!]

- Government Code: Discrimination Under FEHA – 14 Protected Categories!
  - Age (40 and over)
  - Ancestry
  - Color
  - Religious Creed (including dress/grooming)
  - Denial of FMLA Leave
  - Marital Status
  - Medical Condition (cancer; genetic characteristics)
  - Genetic Information
  - Military & Veteran Status
  - National Origin (including language use restrictions)
  - Race
  - Sex (pregnancy, childbirth, breastfeeding & medical conditions related thereto)
  - Gender, Gender Identity & Gender Expression
  - Sexual Orientation
Areas of Relevant Law
[Not an Exhaustive List!]

- Government Code
  - Brown Act
  - Conflicts of Interest (1090, FPPA)
  - Board Members
  - Public Records Act (personal cell phones?)
  - Superintendent Contracts (approval; buyouts)
  - Administrative Procedures Act
  - Much, Much More!
Areas of Relevant Law
[Not an Exhaustive List!]

• **Labor Code**
  - Wage and Hour
  - Status (“key,” management, exempt, etc.)
  - Overtime
  - Stand-by time
  - Pay for training
  - Pay Withholding
  - Final wages/vacation payout
  - Sick Leave for all
  - More
Areas of Relevant Law
[Not an Exhaustive List!]

• “Specialty” Codes
  – Vehicle Code (licensing)
  – Penal Code (mandatory suspension/dismissal offenses; child abuse reporting)
  – Health and Safety Code (list of drugs/discipline)
  – Family Code (registered domestic partners; same sex marriage)
Areas of Relevant Law
[Not an Exhaustive List!]

• “Specialty” Codes (cont.)
  – Military and Veterans Code (military leave/return rights)
  – Business and Professions Code (alcohol on district property – now allowed!)
  – Public Contracts Code (bidding; use of force account labor)
Areas of Relevant Law
[Not an Exhaustive List!]

- California Code of Regulations
  - Title 2
    - DFEH
    - FPPC
    - Conflict Codes
  - Title 5 Education
  - Title 8 PERB
  - Title 9 Mental Health & Rehabilitation
  - Title 12 Military & Veterans Affairs
  - Title 13 Motor Vehicles
  - 28 in all!
Areas of Relevant Law
[Not an Exhaustive List!]

- **Federal Law/Regulations - Discrimination**
  - Age
  - Equal Pay/Compensation
  - Harassment
  - Pregnancy
  - Religion
  - Sex
  - Disability
  - Genetic Information (GINA)
  - National Origin
  - Race/Color
  - Retaliation
  - Sexual Harassment
Areas of Relevant Law
[Not an Exhaustive List!]

- **Federal Law/Regulations** (cont.)
  - FMLA
  - Transportation & Drug Testing
  - Drug Free Workplace Act
  - Civil Rights (Title VII etc.)
  - FLSA
  - USERRA
  - More
Areas of Relevant Law
[Not an Exhaustive List!]

• **Constitutional Law**
  – Due Process
  – Equal Protection
  – Freedom of Speech/Expression
  – Freedom of Association
  – Freedom from Self-Incrimination
  – Freedom from Unreasonable Search & Seizure
Areas of Relevant Law

[Not an Exhaustive List!]

• **Constitutional Law** (cont.)
  - Religion: Establishment and Free Exercise
  - Right to Privacy (CA)
  - Fundamental Right to Free Education (CA)
  - More
Areas of Relevant Law
[Not an Exhaustive List!]

• **Case/Decisional Law/ Administrative & Agency Rulings**
  – State Courts
    • Courts of Appeal
    • California Supreme Court
  – Federal Courts
    • Ninth Circuit U.S. Court of Appeals
    • United States Supreme Court (SCOTUS)
Areas of Relevant Law
[Not an Exhaustive List!]

• **Case/Decisional Law/Administrative & Agency Rulings** (cont.)
  
  – Regulatory Agencies
    
    ➢ EEOC
    ➢ DFEH
    ➢ PERB
    ➢ Labor Commission
Finding the Right People

- Terms and conditions, legal protections, benefits, and obligations are determined by:
  - Status: permanent, probationary, intern, substitute.
  - Job Description
  - Collective Bargaining Agreement
  - Board Policy and Administrative Regulation
  - Classification: classified or certificated
  - Education Code
  - Title 5 California Code of Regulations
Finding the Right People

- Filling hard to fill positions –
  - Make your district THE go-to district
  - Recruit early – anticipate needs
  - Signing bonuses
  - Grow your own
  - Anticipate Needs
If You Could Turn Back Time…

Question:
If you could go back and have a chance to take a class or study an area in more depth what would the subject be?
If You Could Turn Back Time…

Answers:

– Psychology!
– Collective bargaining
– Leaves
– Certificated/Classified Discipline
Collective Bargaining - Teams

- Why is he/she on the team?
- Drawing on experience
- Valuing different perspectives
- Commitment to the process
- Manifest authority to bargain
- Board’s and Superintendent’s Roles
Collective Bargaining - Teams

- Lead Negotiator
- Educational Expert
- Operational Expert
- Financial Expert
- Who else might be on the team? Why?
Collective Bargaining - Those Not in the Room

- Students
- Board
- Superintendent
The Duty to Bargain in Good Faith

Duty to bargain in good faith:

Not an obligation to reach specific outcome, but to bargain in good faith
Leaves, Leaves, Leaves…

Types of Leaves?
- Sick leave – classified/certificated (and everyone else??!!).
- Vacation leave – classified
- CTO leave - classified
- Differential leave – classified/certificated
- Industrial leave – classified/certificated
- FMLA/CFRA leave – classified/certificated
- Bonding leave – classified/certificated
etc., etc., etc.
Leaves, Leaves, Leaves…

How to keep track?

- Invest in training an internal expert
- Professional development
- Develop a checklist – certificated, classified, ADA, FMLA/CFRA, differential, sick leave, PDL, bonding
- Develop flow charts and umbrellas.
- Memorize this word: Coordinate!
- Call legal counsel at the beginning of the process
Employee Leaves: Differential Leave
Know Where to Look

<table>
<thead>
<tr>
<th>Certificated Employees</th>
<th>Classified Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to five months per injury or illness per school year (Ed. Code, § 44977)</td>
<td>Up to five months per injury or illness per school year;</td>
</tr>
<tr>
<td>Salary less the amount which would have been paid to the substitute.</td>
<td>Unit member salary minus actual amount paid to substitute</td>
</tr>
<tr>
<td>Unless “50% Rule adopted.”</td>
<td>Unless “100 Day Rule” adopted.</td>
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</tbody>
</table>

(Ed. Code, § 44983)

(Ed. Code, § 45196)
Employee Leaves: Differential Leave

Certificated Employees
(Ed. Code, § 44977)

- Up to five months per injury or illness per school year (Veguez v. Long Beach U.S.D. (2005) 127 Cal.App.4th 406.)
- Cost of substitute is deducted from salary whether or not one is hired (unless 50% Rule – employee receives at least 50% of salary regardless of sub hired)
- Runs consecutively after exhaustion of sick leave
Employee Leaves: Differential Leave

Certificated Employees (cont.)
(Ed. Code, § 44977)

- Does not accumulate
- If the school year ends before the five-month period is exhausted, the employee may use the balance of the leave in a subsequent school year
Employee Leaves: Differential Leave

Classified Employees
(Five Months)

- Runs concurrently with sick leave and other paid time off.
- Cost of substitute is deducted from salary only if a substitute is actually hired; if no substitute is hired, employee receives his/her full wage. (Ed. Code, § 45196; CSEA v. Tustin Unified Sch. Dist. (2007) 148 Cal.App.4th 510)
- Unless “100 Day Rule” is adopted (at least 50% pay for 100 total days inclusive of accrued sick leave; vacation comes after).
Employee Leaves: FMLA/CFRA

Employers must grant FMLA/CFRA leave entitlements to eligible employees for the following purposes:

– Employee’s own serious health condition
– Birth and care of a child (including bonding)
– Placement of a child for adoption or foster care
– Care for a spouse, child or parent with a serious health condition

Employee Leaves: FMLA/CFRA

The FMLA provides for additional leave entitlements including:

– To attend to a qualifying exigency arising from the fact an employee’s covered military family member is being deployed to a foreign country on covered active duty
– To care for a family member injured in the line of duty in active military service (26 weeks in a 12 month period)

Employee Leaves: FMLA/CFRA

Employees are eligible for FMLA/CFRA if he or she:

– was employed for at least 12 months
– was employed for at least 1,250 hours during the 12-month period immediately preceding the date leave is to begin
– [BUT! 1250 hours requirement no longer applicable to CFRA child bonding leave under Education Code]
– is employed at a worksite where the employer employs at least 50 employees within 75-miles of that worksite

(29 C.F.R. § 825.110(a); Cal. Code Regs., tit. 2, § 11087(d); Ed. Code, §§ 44977.5 and 45196.1.)
Employee Leaves: FMLA/CFRA & PDL

Assembly Bill 375 and 2393 (aka “Bonding Leave”):

- Adds Sections 44977.5 and 45196.1 to the Education Code providing up to 12 weeks differential pay to all certificated and classified employees who are absent due to maternity or paternity leave under CFRA.
- Must exhaust all accrued leave first; balance of time is differential up to 12 weeks.
- 1250 hours eligibility requirement does not apply (BUT 12 months employment does!)
Employee Discipline - Classified

Classified probationary employees -

- One year limitation on probation per the Education Code
- Merit districts – Six months or 130 days (Ed Code 45301)
- District may dismiss for any reason except illegal reason before completion of probation

(Ed. Code, § 45113(a))
Employee Discipline - Classified

Classified permanent employees may be disciplined or dismissed for cause per -

- Collective Bargaining Agreement, or
- Board Policy and Administrative Regulation

(Ed. Code, § 45113(b))
Employee Discipline - Classified

Classified discipline process includes -

- Written notice listing just causes
- Factual charges against employee, and
- Due process rights

(Ed. Code, § 45113)
Employee Discipline - Classified

May not base discipline on conduct arising -

- Before the employee become permanent, or
- More than two (2) years old
- Unless the cause was concealed/not disclosed by employee when it reasonably should have been

(Ed. Code, § 45113(d))
Employee Discipline – Permanent Certificated

- Governed entirely by written law setting out a teacher’s due process rights (Education Code)
- Unless board policies or practices or collective bargaining agreements afford additional rights/steps
- Can negotiate suspension up to 15 days as alternative to Ed Code process.
- Due Process
- Notice
- Opportunity to Be Heard Prior to an Action
Employee Discipline - Certificated

- Education Code section 44944 states:
  “. . . No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.” (Emphasis added.)
Employee Discipline - Certificated

- Documentation and Investigation
- 45/90 Day Notice
- Pre-Disciplinary ("Skelly") Notice and Conference
- Statement of Charges
- Notice of Intent to Dismiss
- Pre-hearing Process
- Dismissal Hearing
- Post-hearing
Progressive Discipline

Doctrine of progressive discipline -

- The process of identifying, communicating, and attempting to correct employee performance and misbehavior
- Essential principle of employee relations
- Essential element of managerial strategy
Progressive Discipline

Purpose of progressive discipline -

– Notify employee of problems in performance or conduct
– Provide opportunity to correct
– Support and assist
– Does the punishment fit the crime?
– How have you treated others in similar circumstances?
– *Formal process to document problem discipline if no improvement*
Progressive Discipline

Standard process -
- Verbal Warning
- Written Warning or reprimand
- Suspension
- Dismissal
One Last Thought

- Be PREPARED
  - P – Participate in Training/Professional Development
  - R – Reflect on the District’s goals
  - E – Explore staffing, hiring, housing
  - P – Pore over your LCAP
  - A – Assemble your teams - bargaining/hiring
  - R – Reach out and get to know your neighbors
  - E – Embrace change – review new laws and identify hot button issues for next round of hiring, bargaining and personnel management
THANK YOU!

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