

TULARE/KINGS COUNTIES PERSONNEL COMMITTEE  
Board Room, Education Building  
Tulare County Office of Education

October 23, 2009

**Minutes**

The Personnel Committee meeting was called to order at 8:38 a.m. Jeanne Nava welcomed those in attendance. Introductions were made around the table.

Members in attendance were:

Jeanne Nava	Dennis Martinez	Traci Fullerton
Cheri Barnes	Marvin Lopez	Tom Addington
Philip Pierschbacher	Alfonso Gamino	Cathy Martin
Fernie Marroquin	Norma Lovelace	Jeri Higdon
Al George	Ronald Koop	Patti Ernsberger
Marie Macedo	Barbara Leal	Sharie Ortega
Jeanette McDonald	Debbie Estrada	Enid Brinkman
Andrew Bukosky	Bernadine Landeros	

**Minutes** Norma Lovelace made a motion to approve the minutes of the September 3, 2009, Personnel Committee meeting; Tracy Fullerton seconded the motion. The minutes were approved as prepared.

**Alert** Jeanne provided a handout listing the four Lozano Smith Education Law Seminars for this school year. The next seminar will be held on November 19, 2009, and the topic will be *Temporary, Probationary, Permanent, Oh My! Navigating Employee Seniority and Status Issues*. Registration must be done online. You may contact [jeannec@tcoe.org](mailto:jeannec@tcoe.org) for the URL.

The 2010-2011 Tulare COE calendar was provided for informational purposes.

A CalSTRS e-Bulletin offering clarification on the reporting of post-retirement earnings was provided. It is generally understood that all retired members who perform *Creditable Service* are subject to the Earning Limitation and that all *Creditable Services* performed by retirees must be reported to CalSTRS as Non-Member. Additionally, working through a Third Party, or as an Independent Contractor **does not exempt** a retired member from having their earnings reported to CalSTRS.

A *Fiscal Report #21* dated October 16, 2009, offered suggestions in how to prepare for productive negotiations by evaluating current contract language and establishing negotiations priorities.

A *Lozano Smith Client News Brief #41* dated October 2009, addressed Ripon USD v. Comm. of Professional Competence (2009) where the California Third District Court of Appeal upheld the Ripon USD's authority to move for termination against a certificated employee who failed to comply with the District's requirement to obtain an English Language certification. The case clarifies the general authority of a school district to impose certain requirements on employees in order to comply with a legislative mandate. More specifically, this case clarifies that school districts may take disciplinary action against employees who fail to comply with a district requirement to obtain EL certification. This decision may be appealed.

A *Fagen Friedman & Fulfroost NewsFlash* dated September 2009, reported that the Ninth Circuit Court of Appeals upheld the decision of Everett School District No. 2 to require all musical selections at graduation ceremonies to be "purely secular."

## Social Networking

Carol Laird, Deputy County Counsel, introduced Desiree Serrano, Deputy County Counsel, and new to the Tulare County Counsel team. Desiree, who has been working with school districts in Tulare County since she joined the team this past year, began the discussion on social networking including technologies such as e-mail, text messaging, Twitter, and Internet sites such as Facebook, My Space, etc. and what parameters a school district must abide by if it is felt that action needs to be taken to discipline a student for their use of one or more of these technologies. Desiree related that Ed Code 48900R provides for the discipline of a student who bullies another student while on campus. She related that students have a right to free speech when off-campus the same as anyone else. When one of these technologies is used off-campus by a student to bully, harass, embarrass, exploit, etc., another student, it must be proven that his/her actions has caused interference with the educational environment in order for the district administration to discipline the perpetrator. The only exception to this would be if a true threat were made and you have reason to believe that it could be carried out. Is the student to whom the threat was made fearful? If this is the case, the police should be contacted and become involved.

If no threat has been made, however, a student feels that they have been harassed in any way, you are obligated to investigate, however, you cannot violate a student's right to privacy either. You must be careful and obtain information legally.

There are two questions you must ask before proceeding. Does the district have jurisdiction to become involved? Does the situation meet the definition of bullying? A school can meet the criteria of having jurisdiction in two ways. First, it has to be related to a school activity in some way (off-campus school activities would be included) or, secondly, it must substantially disrupt the school environment. It must cause a negative impact on the school grounds. Students must be negatively impacted. Is it great enough that staff needs to become involved to handle it?

Carol Laird then addressed the issues that can come into play with staff members' use of technology with other staff members and/or students. She indicated that staff members have the right on their own time, on their own equipment, to do whatever they want. It is none of the school's business what they do on their own time. It is their choice who they decide to invite to be one of their "friends" on these Internet sites. Unfortunately, this can lead to problems when an adult uses poor judgment.

It is commonly felt that technology can be used as an instructional tool by teaching staff, and that communicating on-line after hours can be advantageous and a good way to be in touch with one's students. Unfortunately, some teachers tend to want to relate to their students as peers rather than as an adult to a minor and this is where problematic situations may arise. Carol indicated that many people have a false sense of privacy when it comes to technology and that it is risky when teachers and students are communicating online after school hours. What starts as joking can lead to flirting and the next thing you have is a sexual harassment claim. This can happen between coworkers, or between staff and students, and school districts have been held liable. Carol related that when issues come up and you are not certain how to deal with them, you should look at issues that are occurring online just as you would if they were not happening electronically. At what point can a district set limits? Carol indicated that if it is taking place on campus during school hours using school equipment, it is probably already addressed in your district's acceptable technology use policy. If your policy is violated, you can administer discipline accordingly. If the unacceptable behavior is taking place away from school, there must be a connection to school for this to become part of the school's jurisdiction. The questions that must be asked are:

- Is it likely that it will adversely affect students or someone else?
- How serious is the potential harm?
- Has the teacher breached confidentiality of students or employees?
- Has the conduct caused substantial disruption at school?
- How recently did this occur and is it ongoing? Will it happen again?
- Are there extenuating circumstances?
- Is there a violation of any technology policy, or state or federal law?
- Is there a negative reaction in the community?
- Will restricting the conduct have a chilling effect on their constitutional rights (freedom of speech, association)?

Carol related that courts look at these issues and teachers have been dismissed for their conduct off-campus because it is either unprofessional or immoral, and that it undermines their effectiveness to teach. It is possible to dismiss a teacher even if the action didn't take place at school using school equipment. She indicated that even if the action doesn't warrant disciplinary action, you can still meet with him/her to let them know that you feel it is inappropriate. She recommended that administrators include this topic in their annual staff trainings for both certificated and classified staff. Let them know what is acceptable and what is not. They may not realize just how careful they need to be. Remind them that they are role models 24/7 and that the people living in the community know who they are, and that it is difficult for teachers to separate their professional life from their private life. Remind staff that information that is posted on the Internet can be out there for a very long time even if they think that it is deleted.

Carol indicated that each district must decide how to handle this issue. She shared some examples, one of which pertained to the first school district in the country, (Lamar, Mississippi) which adopted a policy which forbids interaction on social networking sites and prohibits teachers from accepting students as their "friends" with access to personal sites. The district does provide for school-sanctioned electronic environments - from district-sponsored e-mail to teacher Web pages where assignments are posted. The district also provides school messenger systems and an online system that allows parents to track students' school progress. The National School Boards' Association compiled a survey on this issue in 2007 and posted a lengthy report about the use of electronic resources. In their report, they encourage districts to take advantage of powerful educational tools by maximizing the use of electronic resources by teachers, to use it to augment instruction and communication. The key is to strike an appropriate balance. Their recommendation was to utilize it in spite of the dangers, however, provide for safety measures. Carol encouraged those present to contact county counsel with any questions relating to this issue.

## **Credentials & Retirement**

Sharie Ortega provided a CalSTRS Employer Information Circular dated August 5, 2009, which included a REVISED *Retirement System Election* form (ES 372), and instructions to immediately discontinue use of the old form. The form was updated for clarity, confidentiality of members, ease of use and incorporates many suggestions provided by employers. This form is used when someone changes from classified to certificated and vice versa, and any personnel staff member that is providing orientation and/or accepting paperwork from new hires should begin using the new form. A copy of this form is attached to this email. Sharie is willing to meet with school district personnel staff to go over pertinent retirement system forms if needed.

It was noted that the Commission on Teacher Credentialing temporarily has additional staff available to process the credentialed staff members with Life Credentials into the SEID system. If during the CalPADS exercise you come across staff members without their SEID number, please provide Sharie with a copy of their Life Credential and she will forward it to CTC so that their SEID number can be assigned.

Enid Brinkman shared that a CTC Coded Correspondence #09-15 dated July 23, 2009, announced that the amendments and additions to Title 5 of the California Code of Regulations pertaining to General and Special Education Limited Assignment Teaching Permits have been approved by the Office of Administrative Law, and became effective July 3, 2009. It was noted that the Special Education Limited Assignment Teaching Permit has similar requirements to the General Education Limited Assignment Teaching Permit which may be issued in any of the current Education Specialist Teaching Credential speciality areas. An individual holding this permit may be assigned to serve outside the speciality area of their Special Education Credential while they are completing the course work for an Added Authorization in Special Education. Enid indicated that there are Temporary Assignment options available and that there are new regulations coming out that should be at the office of Administrative Law which will change so that autism spectrum disorder is included in all Special Education Credential programs, however, there are no programs available at this time.

**Teacher Recruitment Center** Norma Lovelace updated those present on the status of VPSS offerings. VPSS classes for Social Science and Science should be available in the spring of 2010. Tier I for Math and English is finishing up, and Tier II will be held in the spring. Information on VPSS can be found at the following website: [www.tcoe.org/HR](http://www.tcoe.org/HR).

**Other**

**Adjourned** The meeting was adjourned at 10:38 a.m. The next meeting will be held in the Board Room of the Tulare COE Building beginning at 8:30 a.m. on Friday, December 3, 2009.

**Meeting Dates for 2009-10**

~~November 5, 2009, cancelled~~  
December 3, 2009, Friday  
February 3, 2010, Wednesday  
~~February 5, 2010, cancelled~~  
March 5, 2010, Friday  
April 9, 2010, Friday  
May 14, 2010, Friday

**Upcoming Tulare/Kings Counties' Teacher Recruitment Fairs:**

- **March 20, 2010**
- **March 19, 2011**
- **March 17, 2012**

Personnel Committee agendas, minutes and meeting handouts are posted on the TCOE HR Personnel Committee website . The website is as follows: <http://www.tcoe.org/HR/PersonnelCommittee>