



# Avoiding Personnel Landmines

Presented by:

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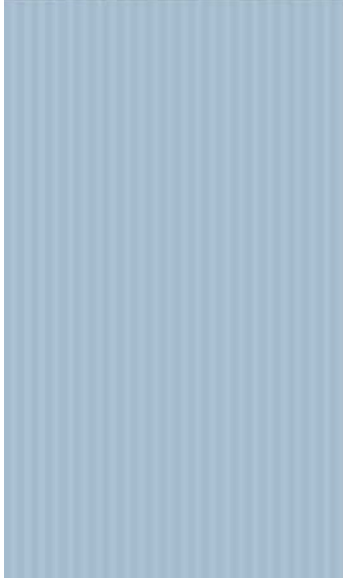
## Overview

- Introduction
- Goals
  - Ounce of Prevention
  - Improve Issue Spotting Skills
  - Provide Ideas for Systematic Change
  - Limit Disruption/Liabilities
- Disclaimers
  - Real Problems are Fact Specific & Complex
  - Cookie-Cutting can be Dangerous
  - Non-Attorney Advice and the Attorney-Client Privilege
- Keep Your Questions Hypothetical



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## **A. Some Legal Basics**



## **Basic Forms of Charter School Employment**

- “Pure” At-will  
[See Sample Contract]
- “At-will Plus Something”
- Fixed Term
- For Cause (Permanent Or Tenured)
- Statutory/Education Code Rights



## Use of Employment Contracts

- For At-will, Why Bother?
- Common Provisions
- Potential Pitfalls
- Inclusion Of Job Descriptions
- Consistency With Foundational Documents (i.e. Labor Agreements, Charter, etc.)
- Review Sample Contract



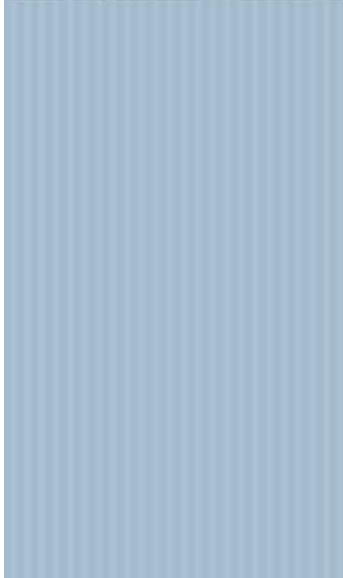
## Hiring Issues

- “Exceptions” To At-will Employment
- Basic Do’s And Don’ts
  - ADA Accommodations/Requirements
  - Applications
  - Interviews
  - [See Guide For Pre-employment Inquiries]
  - Criminal Background Checks
  - Reference Checks
- Collective Bargaining Agreement Considerations



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## **B. Managing Employees**



## **Tips for Effective Evaluations**

- Identify employee group/rights
- Identify proper form(s) to use
- Calendar deadlines
- Review policy/contract/collective bargaining agreement requirements



## **Tips for Effective Evaluations (contd)**

- Be honest!
- Assess job-related performance
- Include examples/be specific



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## **Tips for Effective Documentation**

- Avoid assumptions-investigate and confirm before finalizing
- Quality documentation vs. over documentation
- Purpose: not to trap, but fairness
- Be timely
- Afford all procedural rights
- Keep it simple



# A Word on FRISK Documentation System

## FRISK Elements

- Facts
- Rule
- Impact
- Suggestions/Directives
- Knowledge



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## **Maintaining Discipline** **& Dismissal Policies**

- What Is Required?
- Where Should They Be Included?
- What Should They Include?



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## **Tips for Effective Investigations**

- Should investigate all complaints
  - Even if you believe it's resolved
  - Even if the complaint appears minor at first
  - Even if complainant is reluctant, lacks credibility or appears vindictive
- Should investigate immediately, objectively, thoroughly and take appropriate remedial action



# **Tips for Effective Investigations** **(contd)**

- Prioritize red alert complaints:
  - Violence
  - Hostile Work Environment
  - Discrimination
  - Harassment
- Review policies/legal requirements
- Create an investigation plan



# **Tips for Effective Investigations** **(contd)**

- Get all the facts from the complainant first
- Talk to as many witnesses as possible/needed
- Get specific factual responses from respondent
- Consider paid administrative leave



## **Tips for Effective Investigations**

### **(contd)**

- Consider protective measures needed
- Continually revise investigation plan
- Avoid early conclusions
- Make all proper notifications
- Follow all required resolution steps
- Respect confidentiality requirements





## **C. Considering Discipline or Release**



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## **Release of At-Will Employees**

- Consider Employment History
- Review Contract, If One Exists
- Resist Use Of “Excuses”
- When To Mention “A Reason”
- Severance Considerations



## Elements of Just Cause (If Applicable)

- What Is Progressive Discipline?  
[See Checklist]
- What Is Just Cause?  
[See Outline]
- Common Factors Considered
- What Is Your Process?



## **Pre-Discipline or Termination** **Requirements**

- Notice of charges and opportunity to be heard before discipline is implemented (if applicable)
- Identify appropriate consequence(s)
- Conduct a risk of liability assessment
- Review all options (resignation, severance, etc.)



## Pre-Discipline or Termination Requirements (contd)

- Comply with all procedural requirements if union is involved (including Weingarten Rights)
  - Right to union representation at disciplinary and investigative interviews, whether labeled so or not
  - Right extends if employee reasonably believes meeting might result in disciplinary action
  - Right to representation not triggered until employee requests representation
  - No obligation to inform the employee of the right



## **Common Personnel Issues**

- Criminal Arrests/Resolution
- At-will With Disability/Leave Issues/Retaliation Claims
- One (1) Year Evaluation System With Remediation Promised
- Progressive Discipline Promised
- Accidental Incorporation Of Due Process
- Lack Of Documentation/Findings
- Mercy Performance Reviews
- Failure To Review
- Irrational Parent Complaints/ Demand For Discipline
- Keeping Personnel Information Confidential



## **A Word On Board Involvement**

- When To Involve The Board
- How To Agendize
- “Complaints Or Charges”
- Follow Your Complaint Policy
- Final Action



## **D. Ending the Relationship and Beyond**



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## Termination from Employment

- Assess Liabilities Prior To Termination
- Review Contract & Other Promises
- Consider Preventative Measures
- If For Cause, Ensure Due Process
- Post-termination Letter



## **Settlement Agreement/Releases**

- The Value Of Releases
- Unwaivable Claims
- Common Quid Pro Quo
- Tax Considerations



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## Settlement Agreement/Releases (contd)

- Job References
- Legal Review
- Confidentiality/Brown Act/  
Public Records Implications



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## Post Termination Issues

- Final Paycheck
- COBRA
- Unemployment Claims/Labor Commissioner Claims
- DFEH/EEOC
- Law Suits & Government Tort Liability
- Tendering To Your Insurance Carrier



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# Questions & Answers

