

TULARE/KINGS COUNTIES PERSONNEL COMMITTEE

Tulare County Office of Education

Redwood Room A & B

Friday, October 21, 2022

9:00 a.m. - 11:00 a.m.

❖ Welcome – Dedi Somavia

❖ Hiring – Best Practices

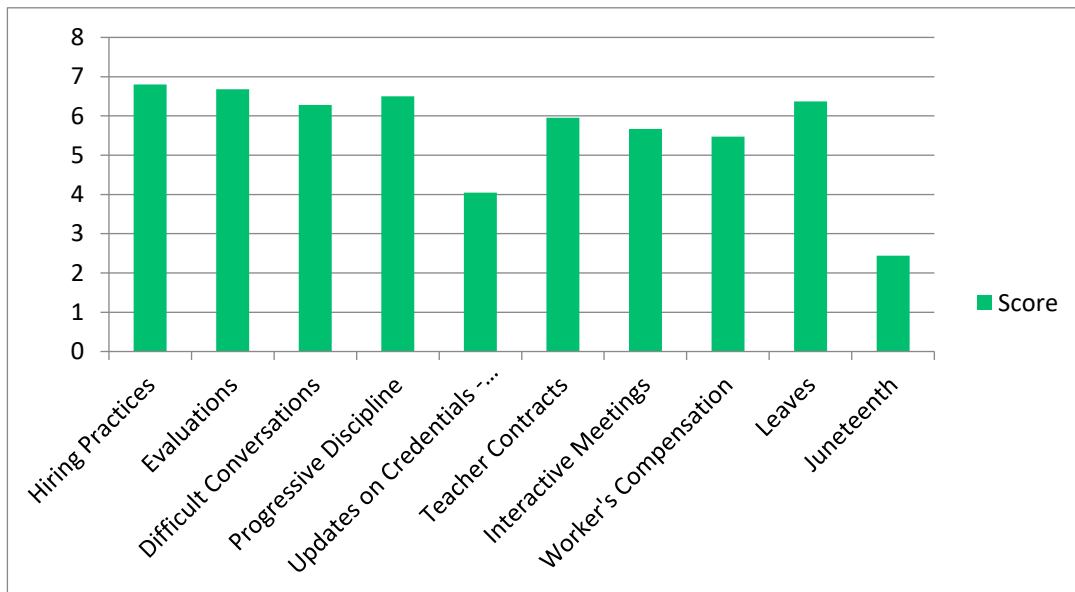
- Roberta Rowe – Lozano Smith Attorney
- TCOE Hiring Practices – Dedi Somavia & Sarah Santano

❖ Special Education credential updates – Sara Marvin

- SPED authorizations
 - MMSN, ESN, DHH, VI, ECSE

❖ Others

- Law Seminars
 - Navigating Employee Complaints and Investigations – January 25, 2023
 - The ADA Interactive Process (Advanced Training) – March 9, 2023
- Survey results – discussion for next meeting





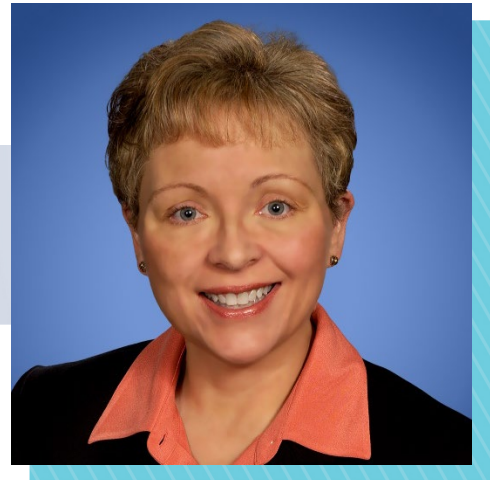
Best Hiring Practices

Presented by:
Roberta L. Rowe

Tulare County Office of Education
October 21, 2022

Roberta L. Rowe

Partner



Fresno Office
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559.431.5600

Overview

Roberta L. Rowe is a Partner in Lozano Smith's Fresno office. She focuses on student, and labor and employment matters for school districts and community college districts in her daily practice of law. Ms. Rowe has expertise in certificated and classified employee matters, termination and layoff hearings, collective bargaining, grievance arbitrations and unfair labor practice charges.

She also has in-depth knowledge of the Brown Act, conflicts of interest and policy development. In addition, she has been involved with investigations on behalf of school districts and municipalities related to harassment and discrimination complaints.

Before becoming an attorney, Ms. Rowe worked for eighteen years as a Vocational Rehabilitation Consultant with workers' compensation, social security and marital dissolution cases.

Presenter Experience

Ms. Rowe is a sought-after speaker and has made numerous presentations to school districts, county offices of education and statewide organizations including California School Boards Association (CSBA), Association of California School Administrators (ACSA), California Association of School Business Officials (CASBO), California Association of Supervisors of Child Welfare and Attendance (CASCWA) and California Small School Districts Association (SSDA). Topics include sexual harassment prevention, student discipline, bullying and gender identity/sexual orientation, employee and student free speech, leaves, Brown Act, classified and certificated discipline, and certificated and classified layoffs.

Ms. Rowe has taught for California State University, Fresno, Kremen School of Education and Human Development Administrative Services Credential Program. She has conducted seminars in Advanced Techniques of Personnel and Legal Aspects of Education.

Education

Ms. Rowe received her Juris Doctor degree from San Joaquin College of Law in 1995. While attending law school, she won first place at the Hopper Moot Court Competition and was a quarter finalist at the Evans Constitutional Law Moot Court Competition at the University of Wisconsin in Madison. She also served on the San Joaquin College of Law Agricultural Law Review. Ms. Rowe earned an M.A. in Rehabilitation Counseling from California State University, Fresno, and a B.S. in Psychology from Oregon State University, Corvallis.

Practices
Labor & Employment
Student
Investigative Services

Education
J.D., San Joaquin College of Law
M.A., California State University, Fresno
B.S., Oregon State University, Corvallis

Admissions
California

WHO WE ARE & WHAT WE DO

Lozano Smith is a full-service education and public agency law firm serving hundreds of California's K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in eight California locations: Sacramento, Walnut Creek, Fresno, Monterey, Bakersfield, San Luis Obispo, Los Angeles, and San Diego.

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- Administrative Hearings
- Charter School
- Community College
- Facilities & Business
- Governance
- Investigations
- Labor & Employment
- Litigation
- Municipal
- Public Finance
- Public Safety
- Special Education
- Student
- Technology & Innovation
- Title IX

COST CONTROL is important for public agencies and an area we have mastered. We recognize and understand your financial restraints and work tirelessly to provide the best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you updated on changing laws affecting education. In addition, we offer extensive workshops and legal seminars providing the tools needed to minimize liability, reducing the need for legal assistance down the road.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

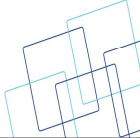
DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.

LS Lozano Smith
ATTORNEYS AT LAW

Best Hiring Practices

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TULARE COUNTY OFFICE OF EDUCATION
October 21, 2022



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Overview of the Hiring Process



Advertise/Post the Position
↓
Paper Screen Applicants
↓
Interview Applicants
↓
Background/Reference Checks
↓
Select Applicant/Offer Position
↓
Fingerprint
↓
School Board Approval
↓
Proper Classification of New Employee



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Overview of the Hiring Process

Advertise/Post the Position



- Is the posting/job description current?



3

Overview of the Hiring Process

Advertise/Post the Position



Paper Screen Applicants



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Paper Screen Applicants

- Who paper screens?
- Are they trained?



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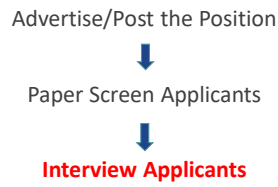
Education and Credential Verification

- Certificated
 - Do they have the proper credential, permit, authorization?
- Classified
 - Education level on application versus job description
 - Past experience
 - Certification/License



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Overview of the Hiring Process



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Interview Applicants



- Who is on the panel?
- How do they rank applicants?



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Dress Codes: New law prohibits discrimination based on hairstyle

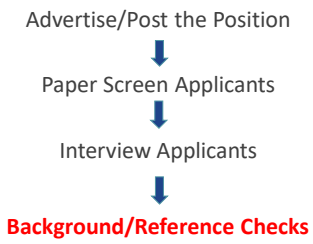
A new law, called the CROWN Act, amends the definition of “race” in state anti-discrimination laws to include “hair texture and protective hairstyles.”

Be mindful about hiring decisions based on an applicant’s lack of “professionalism.” Be clear about what the member of the hiring team means by this.



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Overview of the Hiring Process



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Background Checks

- A **complete** background check should include review by **trained staff** of:
 - Complete employment application
 - Employer References
 - Credential Verification
 - Education Degree Verification
 - Fingerprinting (Criminal History)



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Checking Out Employee's Social Media – Good or Bad Idea?



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Overview of the Hiring Process



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Fingerprinting

- Offer contingent upon receiving fingerprint clearance
- Employee should not begin work until fingerprints are cleared*



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AN ARREST
≠
CONVICTION!



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Withdrawing Employment Offer After DOJ Report

- Individualized assessment of relationship of conviction to job
- Written notification of decision to applicant
- Applicant has opportunity to respond and provide additional information
- Written notice of disqualification after review



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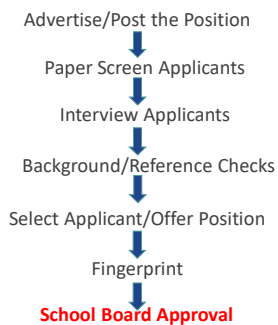
Fingerprinting & Criminal Record Take-Aways

- Cannot consider arrests
- May consider charges
- Violent and serious felonies, sex offenses, and controlled substance offenses generally bar employment, but exceptions
- **May generally consider** the conviction before hiring if not otherwise prohibited
- Call legal counsel for complicated scenarios



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Overview of the Hiring Process



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Overview of the Hiring Process



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HIRED – Now What?

How are you “**Onboarding**” new employees?

- Introduction and Socialization of new employee into the workplace.



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Federal Equal Pay Act (“EPA”) and California Fair Pay Act (“FPA”)

- EPA prohibits discrimination by employers on the basis of sex in wages paid for: “[E]qual work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.”
- FPA prohibits discrimination on the basis of sex, race or ethnicity in wages paid for “substantially similar work.”
- Jobs don’t need to be identical – “substantially equal” and “substantially similar” looking at job duties rather than title.
- Includes all forms of pay.



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Federal Equal Pay Act

- A Plaintiff bringing forward a claim under the EPA is not required to show intent to discriminate.
- If Plaintiff shows wages unequal for substantially equal work, burden of proof shifts to the employer.



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Equal Pay Act: Employer's Case



- The employer has the burden to show that the compensation differential is based on:
 - Seniority;
 - Merit;
 - Quantity or quality of production; or,
 - “Any factor other than sex”.
(Catch all Exception)

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Rizo v. Yovino (2018): Background

- Aileen Rizo hired by Fresno COE as a math consultant. Previously employed as a teacher in Arizona.
- COE's hiring procedures dictated that new hire's salary placement be based on prior salary, plus 5%.
 - In Arizona, Rizo's salary was \$50,630 (206 days work) plus \$1,200 per year educational stipend.
 - At the COE, she was placed on step 1 of the 10-step salary schedule, with a salary of \$62,133 (196 days work) plus \$600 educational stipend.

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Rizo v. Yovino (2018): Background Cont'd

- When Rizo found out that male colleagues who were paid based on prior salary for jobs in California were all placed at higher steps upon hire, she first filed an internal complaint, then sued in federal district court.
- COE's position was that Rizo was placed on the salary schedule based on her prior salary, which fell under the "catch all exemption."



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Rizo v. Yovino (2018): Use of Prior Salary

- Ninth Circuit ruled that the federal Equal Pay Act prohibits using a new employee's prior salary as a basis for establishing their initial salary.
- Prior salary is not a "factor other than sex."
- Decision relied on the "intent" of the EPA and national data on wage disparities between men and women.
- Split among circuit courts.
- However, the Supreme Court vacated the decision because it included a vote from Judge Reinhardt, who had passed away before the decision was published.



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Questions



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For more information, questions and comments about the presentation, please feel free to contact:

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Or any of the attorneys in one of our 8 offices.



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Assignments Authorized by Special Education Authorizations

✓ = Authorizes Service for disability Category; ✗ = Does not Authorize Service in identified disability area

*= These authorizations may only be added to a base special education teaching credential as an Added Authorization (AA)

Credential Authorization	Auth. Code	Grade Level	Student Support Level	Autism Spectrum Disorders	Emotional Disturbance	Established Medical Disability	Intellectual Disability	Multiple Disabilities	Orthopedic Impairments	Other Health Impairment	Specific Learning Disability	Traumatic Brain Injury	Deafness or Hard of Hearing	Deafblindness	Visual Impairments	Resource Specialist ¹	Adapted Physical Education
Mild To Moderate Support Needs	R3MN	TK-12 (up to age 22), and Adult Ed.	Mild to Moderate Only	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✓	✗
Extensive Support Needs	R3EN	TK-12 (up to age 22) and Adult Ed.	Extensive Only	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	✓	✗
Deaf And Hard of Hearing	R3HD	Birth - Age 22, and Adult Ed.	All	✗ ²	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✗	✓	✗
Early Childhood Special Education	R3ER	Birth-K	All	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✓	✗
Visual Impairments	R3VB	Birth - Age 22, and Adult Ed.	All	✗ ²	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓	✗
Early Childhood Added Authorization*	SEEC	Birth-K	All	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✗	✗
Education Specialist Bridge – Mild to Moderate Support Needs*	R3BM	TK-12 (up to age 22), and Adult Ed.	Mild to Moderate Only, for disabilities unauthorized by R3MM auth	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✓	✗
Education Specialist Bridge – Extensive Support Needs*	R3BE	TK-12 (up to age 22), and Adult Ed.	Extensive Only, for disabilities unauthorized by R3MS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	✓	✗
Education Specialist Bridge – Early Childhood *	R3BC	Birth-K	All	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✓	✗

¹ May serve as a resource specialist within the grade levels authorized on the document

² May teach VI or DHH students that also have autism, but cannot serve students with the Autism disability area alone

Assignments Authorized by Special Education Authorizations

Credential Authorization	Auth. Code	Grade Level	Student Support Level	Autism Spectrum Disorders	Emotional Disturbance	Established Medical Disability	Intellectual Disability	Multiple Disabilities	Orthopedic Impairments	Other Health Impairment	Specific Learning Disability	Traumatic Brain Injury	Deafness or Hard of Hearing	Deafblindness	Visual Impairments	Resource Specialist ¹	Adapted Physical Education
Mild/Moderate	R3MM	TK-12 to Age 22	All	✗	✓	✗	✓	✗	✗	✓	✓	✗	✗	✗	✗	✓	✗
Moderate/Severe	R3MS	TK-12 to Age 22	All	✓	✓	✗	✓	✓	✗	✗	✗	✗	✗	✓	✗	✓	✗
Deaf and Hard of Hearing	R3DH	Birth to age 22	All	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✗	✓	✗
Physical & Health Impairment	R3PI	Birth to age 22	All	✗	✗	✓	✗	✓	✓	✓	✗	✓	✗	✗	✗	✓	✗
Visual Impairment	R3VI	Birth to age 22	All	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓	✗
Early Childhood Special Education	R3EC	Birth to Pre-K	All	✓	✓	✓	✓	✓	✗	✓	✓	✓	✗	✗	✗	✓	✗
Language & Academic Development ³	R3LD	Pre-K to age 22	All	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗
Autism Spectrum Disorders Added Auth*	AAAS	See Base Credential	All	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Deaf-Blind Added Auth*	AADB	See Base Credential	All	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗
Emotional Disturbance Added Auth*	AAED	See Base Credential	All	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Orthopedic Impairment Added Auth*	AAOI	See Base Credential	All	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗

³ The Language and Academic Development (LAD) authorization allows services for students identified with academic communication and language needs in the following areas: language development, school readiness and social skills, and literacy development addressing competencies across the curriculum in listening, speaking, reading, writing, and academic areas.

