

# **TULARE/KINGS COUNTIES PERSONNEL COMMITTEE**

**Tulare County Office of Education**

**Redwood Room A & B**

**Friday, January 13, 2023**

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

❖ **Welcome – Dedi Somavia**

❖ **Interactive Process 101 - Lozano Smith – Desiree Serrano & Dedi Somavia**

- Scenarios – practice in small group

❖ **Legal updates - Lozano Smith – Desiree Serrano**

- AB2413 – Classified employee status pending disciplinary hearing
- Certificated/classified layoffs
- UCP Program instrument 22-23 – update

❖ **Transitional Kindergarten – Julie Berk & Sara Marvin**

❖ **Credential update – Sara Marvin**

- SPED bridge
- General credential information

❖ **Upcoming Law Seminars**

- Navigating Employee Complaints and Investigations – January 25, 2023
- The ADA Interactive Process (Advanced Training) – March 9, 2023



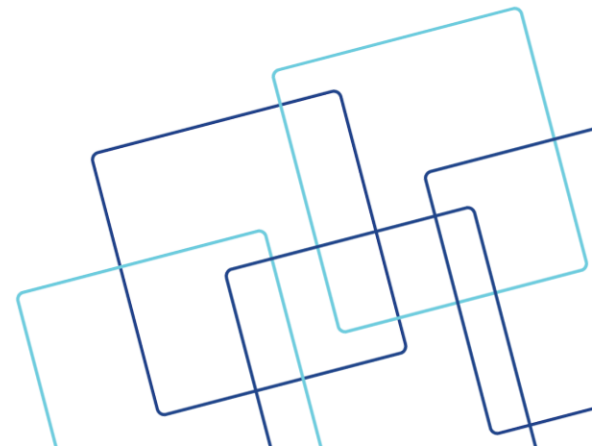
**Lozano Smith**  
ATTORNEYS AT LAW

# ADA/FEHA Interactive Process 101

Presented by: Desiree Serrano and Dedi Somavia

TCOE Personnel Committee

January 13, 2022



# Interactive Polling

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1. Open a browser on your device
2. Go to: [pollev.com/lozanosmith](https://pollev.com/lozanosmith)





# Overview

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Interactive Process

Reasonable Accommodations

Determining Accommodation

Employer must engage in a timely and good faith interactive process with employees to determine effective reasonable accommodations.



# Interactive Process

The Employer's obligation is triggered when:

- An Employee with a known disability or medical condition requests reasonable accommodations;
- The Employer otherwise becomes aware of the need for an accommodation through a third party or by observation; or,
- The Employer becomes aware of the possible need for an accommodation because the disabled Employee has exhausted medical and other leaves and the Employee's physician suggests further accommodations.



# What is the Interactive Process?

The *Interactive Process* is the way in which employees, supervisors, and their departments determine whether reasonable accommodations can be made for an employee with a health condition or disability.



## It's a "Process"



ADA and FEHA require a **timely, good faith, interactive process** between an employer and an applicant, employee, or the individual's representative.

The process is not a singular event, but an ongoing series of interactions from which the employer can identify and offer effective and reasonable accommodations to the employee.





# Hypothetical

# Hypothetical

Bus driver informs you that she has a medical issue with her knee and will be having surgery in four weeks. She tells you that prior to her surgery, due to the pain in her knee, she cannot sit for more than 1 hour at a time.

What is your first step?



# Initiate Interactive Process



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# What does the Interactive Process Look Like?

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# Interactive Process

## Possible Steps During Interactive Process:

- Review the current/updated job description
- Consult with immediate supervisor(s)
- Determine essential job functions (what, how, when)
- Identify and specify functional limitations
- Compare limitations to essential and non-essential functions
- Analyze options to accommodate limitations
- Engage and document your meetings and communications with the Employee and your analysis of accommodations



# Reasonable Accommodations

A reasonable accommodation is a **modification or adjustment that:**

- enables an applicant with a disability to have an equal opportunity to be considered for a job;
- enables an employee to perform the essential functions of the job the employee holds or desires; or
- enables an employee with a disability to enjoy benefits and privileges of employment equivalent to employees without disabilities.



# Hypothetical

## Exhaustion of Leave

Teacher suffers from Crohn's disease and was unable to work for most of this year while she was undergoing medical treatment. Teacher will exhaust all leaves, including differential leave, in two weeks. Teacher has told her Principal that she will probably need another month to recover from the treatment.

**What is the District obligated to do now?**

# Interactive Polling

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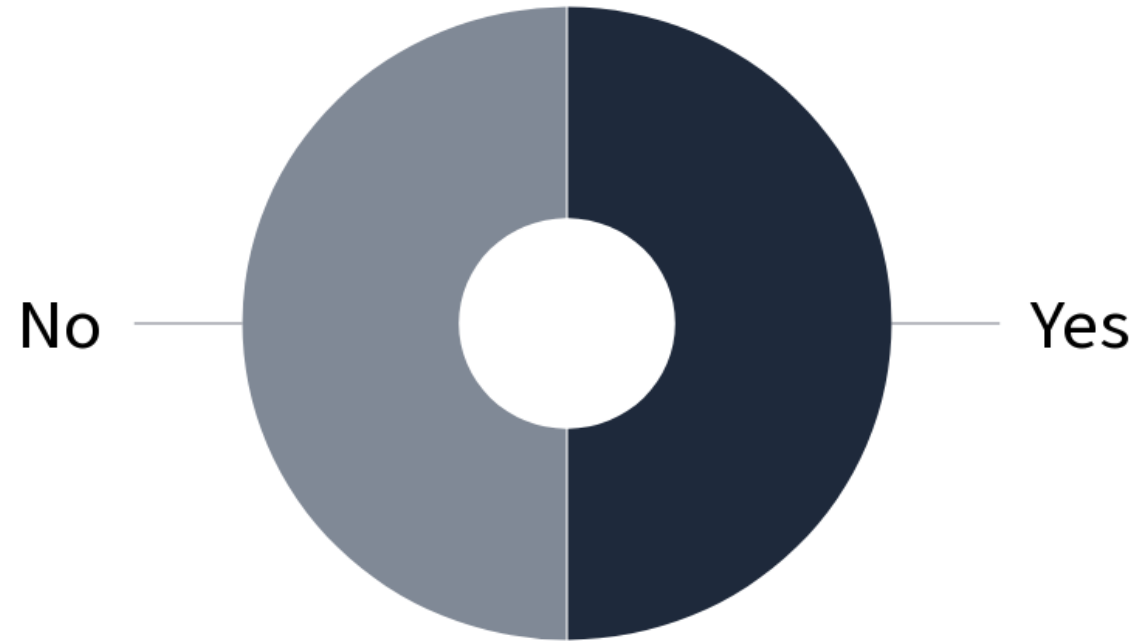


PHONES UP



# Is the District Office on notice if the teacher only told the Principal?

Yes **A** No **B**



# What is the District obligated to do now?

Place on 39-month  
reemployment list

Engage in the  
interactive process



PHONES DOWN

## Same Scenario: What does that interactive conversation look like?

Teacher suffers from Crohn's disease and was unable to work for most of this year while she was undergoing medical treatment. Teacher will exhaust all leaves, including differential leave, in two weeks. Teacher has told her Principal that she will probably need another month to recover from the treatment.

## Essential Functions

An employer is not required to eliminate essential functions of a position as a reasonable accommodation.

*Nealy v. City of Santa Monica*  
(2015) 234 Cal.App.4th 359.





# Essential Functions Under ADA/FEHA

**FEHA “essential functions”** means the fundamental job duties of the position the individual with a disability holds or desires, and does not include marginal duties. (Gov. Code, § 12926.)

**ADA “essential functions”** of a job are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation. (29 C.F.R. § 1630.2(n).)



PHONES UP



# How do you determine the essential functions of the position?



PHONES DOWN

# Determining Which Functions are Essential

Employer's judgment

Work experience of those  
in similar positions

Amount of time spent  
performing the function

Work experiences of past  
incumbents of position

Terms of collective  
bargaining agreement

Job description

# Examples of Accommodations

- Job **restructuring** (non-essential job functions)
- **Leaves** of absence (paid and/or unpaid for treatment or recovery)
- Modified **facilities** and/or **equipment**
- Modification of qualifying **exams**, training **materials**, and providing additional **training**
- Providing qualified readers or **interpreters**

## More Examples

- **Reassignment** to vacant position
- Allowing an applicant/employee to bring an assistive **animal** to the work site
- **Transfer** to more accessible work sites
- **Altering** when and/or how an essential function is performed
- Modifying an employer **policy**, modifying supervisory methods

(See Modified Amended Disability Regulations under FEHA, 2 CCR § 11065(p)(2)(A)-(O).)



# Hypothetical



# Matt – District Custodian for 15 years

In addition to Matt's custodial duties, he occasionally assists with clerical tasks related to his job, such as inventory and ordering supplies. His evaluations have always been "satisfactory" or "exceeds standards".

Matt was injured on the job last year. He took several months off for related knee surgery and recuperation, using all of his accumulated sick leave and his differential pay entitlements. Although he is still experiencing some discomfort when he squats and turns, his doctor has cleared him to return to work without restrictions.

Upon his return to work, it has become clear that he has some physical limitations. It is very difficult for him to do work that requires him to squat or lift repeatedly. It is also a strain on him to work a full 8 hour day, because his pain increases by the end of the day. Matt clearly does not want to complain and has not asked for specific accommodations. He has stated that he really enjoys doing the clerical tasks and has asked if it can be made a regular part of his job. For the last two weeks, he has shown his enthusiasm by finishing his custodial duties early and spending the last hour of his day performing clerical tasks.

You consider Matt a valuable employee and would like to assist him in any way you can.

## Matt – District Custodian for 15 years



- What issues does this situation raise?
- As his manager, are you inclined to grant his request regarding clerical duties?
- Do you need additional information in order to properly address the situation?

# The Other Matt

Assume all of the facts on the previous slide, with the following changes: Matt has only been working for the District for four years. He takes all of his sick leave on an annual basis, often on Mondays and Fridays. His evaluations have been either “satisfactory” or “needs improvement.”

When Matt was injured, it was widely believed that he was “working the system” for as much leave as possible. In fact, the day that his differential pay was to be exhausted, he showed up with a doctor’s noting clearing him to work without restrictions.

How are you inclined to handle the request in this case?

What issues does this raise?

Is your answer different from your answers with the “other” Matt? Should it be?

# Responding to Accommodation Request

Grant it with a detailed letter to employee:

- Document the accommodations
- Indicate a time limit on the accommodations, when relevant
- Indicate that the District and employee will reconvene at the end of the time limit to reassess the situation

Deny it with a detailed letter to employee:

- Explain why the District is denying the request
- Provide a recap of the interactive process engaged in by both employer and employee
- If relevant, provide an overview of all the alternative accommodations considered

# Accommodation Decisions



A good faith effort includes consideration of input from the employee and his/her medical provider

Employer is not required to provide the best accommodations or the employee's requested accommodations

Employer makes final determination

**Document, Document, Document**



PHONES UP



# What areas of the ADA/Interactive Process would you like more support?





PHONES DOWN



# Final Thoughts

- Explore how the limitations might be overcome with reasonable accommodation, and give a good faith consideration of all potential accommodations
- Document your assessment of the effectiveness of all accommodations considered
- If considering denying an accommodation, can you articulate the reason and does it comply with the legal standards
- Document the process, including meeting dates, times, persons present, discussions held and agreements made

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# Reminder: Classified Layoffs

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# AB 2413

Suspension Without Pay While  
Classified Dismissal Hearing is Pending

# AB 2413: Effective January 1, 2023

Amends Ed. Code 45113(f) to **prohibit** the following while pending a hearing on charges:

- Suspension without pay
- Suspension or demotion with a reduction in pay
- Dismissal before a decision is rendered after the hearing

Unless . . .



## AB 2413: Effective January 1, 2023

“ . . . unless the **governing board**, or an impartial third-party hearing officer . . . finds that at the time discipline was imposed at the conclusion of the [*Skelly* Meeting], the employer demonstrated by a preponderance of the evidence that the employee engaged in:

- **criminal misconduct,**
- **misconduct that presents a risk of harm to pupils, staff, or property, or**
- **committed habitual violations** of the district’s policies or regulations.”

(Ed. Code, § 45113, subd. (f)(1))

## AB 2413: Effective January 1, 2023

- If a hearing on the charges will be conducted by an impartial third-party hearing officer or the governing board pursuant to subdivision (e), the school district may stop paying a permanent employee before a decision is rendered after 30 calendar days from the date the hearing is requested.
- AB 2413 does not impact a CBA entered before January 1, 2023, until the contract expires or is renewed.

## Other Recent Changes to the Education Code

Education Code Section 45113(g) was revised to require:

- Delegation to a judge (ALJ) to determine whether sufficient cause exists to discipline for “**egregious misconduct**” involving a minor
- Egregious Misconduct means **sex offenses** and **controlled substance offenses**, per Education Codes 44010 and 44011



# UCP Program Instrument





Document available here:

<https://www.cde.ca.gov/ta/cr/documents/ucp2122.docx>

[Cover Page](#)

[Change](#)



## Uniform Complaint Procedure 2021–22 Program Instrument

California Department of Education  
May 2021

### II. Governance and Administration

#### UCP 01: Policies and Procedures

The local educational agency (LEA) adopted <sup>a, g</sup> UCP for all specified programs.<sup>1</sup>

1.0 LEA policies and procedures were adopted by the LEA's governing board <sup>a, b, g</sup> and include the following:

(a) All programs and activities that are subject to the UCP: <sup>1, k</sup>

- Accommodations for Pregnant and Parenting Pupils (California *Education Code [EC] Section 46015*)

#### 2021–22 Uniform Complaint Procedure Program Instrument

(p) A school restroom has not been maintained or cleaned regularly, is not fully operational, or has not been stocked at all times with toilet paper, soap, and towels or functional hand dryers.

(q) The school has not kept all restrooms open during school hours when pupils are not in classes, and has not kept a sufficient number of restrooms open during school hours when pupils are in classes. This does not apply when temporary closing of the restroom is necessary for pupil safety or to make repairs.

# Questions





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- Volunteer projects
- Sponsorships and award programs
- Scholarships

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Tulare County  
Office of Education

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*Tim A. Hire, County Superintendent of Schools*

# TK Updates

Presented by:

**Julie Berk**

Assistant Superintendent



# UPK Updates

## 1 | UPK Plan Submission

- Late survey submissions are due 12/29/22
- UPK Planning funds will be collected from LEA's who have not submitted implementation plan
- Confirm submission [UPKPlanningGrant@cde.ca.gov](mailto:UPKPlanningGrant@cde.ca.gov)

## 2 | Qualified TK Teacher Workforce

- TK Teachers need to meet qualifications by August 1, 2023
- TCOE partners with COS/PC to provide flexible options and stipends
- Enrolling for Spring 2023 now

*Thank you for sending out to your staff!*

## 3 | TK Fiscal Requirements

- Class size penalty
- Ratio penalty
- Teacher qualification penalty
- NO waivers





## TK TEACHER QUALIFICATION

### **Credentialed Teacher** Education Code (EC) 48000 (g)(4)

Assigned to TK prior to July 1, 2015 will be "grandfathered" as qualified.

OR

Holds a valid Commission-issued Child Development Permit at the Teacher level or higher.

OR

Completed 24 units of Child Development units with a minimum of C letter grade.

OR

LEA determines experience as teacher in the classroom setting with preschool age children (36 -60 months) is comparable to 24 units of Child Development.

Complete TK Teacher Qualification form for verification

### **Non-Credentialed Teacher** Education Code (EC) 44300 (j)

Emergency Specialist Teaching Permit authorization from the Commission for 1 year providing the following conditions are met:

1. BA degree and holds a valid child development permit at a Teacher level or higher.
2. Meets subject matter competency through one of the following:
  - a. 24 units of child development coursework
  - b. BA in child development or similar major
  - c. 3 or more years of full time teaching experience in PK/TK/K as the lead teacher
3. Commission approved justification for Emergency Child Development Specialist Permit submitted to the Commission by the employing LEA.

# TK Average Class Enrollment Size Calculation Example

Example Schoolsite: XYZ Elementary	Mo. 1	Mo. 2	Mo. 3	Mo. 4	Mo. 5	Mo. 6	Mo. 7	Mo. 8	Sum of Active Enrollment Counts	Number of Active Enrollment Counts	Average Number of Pupils Enrolled Per Class
Class A	24	24	24	24	24	25	25	25	195	8	24.375
Class B	23	23	24	24	24	24	24	24	190	8	23.750
Class C	24	24	25	25	25	25	25	25	198	8	24.750
Class D	24	24	26	26	26	26	26	26	204	8	25.500

Sum of Average Number of Pupils Enrolled Per Class: 98.375

**Average Transitional Kindergarten Class Enrollment\*:  $98.375 \div 4 = 24.59 \approx 24.5$**

\*Average Transitional Kindergarten Class Enrollment is rounded to the nearest half or whole integer.



# TK Average Class Size Penalty: Calculation Example

Sample school district with  
2022-23 P-2 TK ADA = 285

$$\begin{array}{c} \$953 \\ \text{(K-3 GSA} \\ \text{Add-On)} \end{array} \times 285 \text{ ADA} = \$271,605$$

# Adult-to-Student Ratio Penalty: Calculation Example



# Teacher Qualification Penalty: Calculation Example

2

Number of  
unqualified  
teachers

×

22

24 reduced by  
PY statewide  
absence rate\*

×

\$9,166

2022-23 LCFF  
K-3 Base Grant  
per ADA

×

0.375

Percentage of  
unqualified  
teachers

=

\$151,239

Penalty

\*The 2021-22 statewide average rate of absence for elementary (K-8) was calculated by the CDE as 8.34%

# Frequently Asked Question

**Can we take a TK Class with more than 24 students if we add a third adult?**

Since EC 48000(g)(1) requires that a school district or charter school maintain an average TK class enrollment of not more than 24 pupils for each school site, it is possible for an LEA to have an individual TK class with more than 24 pupils while maintaining an average at the school site of 24 or less. Failure to maintain an average of 24 pupils or less at the school site would lead to a penalty to the TK LCFF funding pursuant to EC 48000.1, regardless of the number of adults.



# Email Questions to:

- For programmatic questions regarding the TK Program, please contact the Early Education Division at [UPK@cde.ca.gov](mailto:UPK@cde.ca.gov)
- For fiscal questions regarding TK or fiscal penalties contact Principal Apportionment Section at [PASE@cde.ca.gov](mailto:PASE@cde.ca.gov)

# Thank You!

Any questions?

Julie Berk | [jberk@cc.tcoe.org](mailto:jberk@cc.tcoe.org) | 559-651-3022 Ext. 3953

# Credential Updates

Presented by:

**Sara Marvin**

Credentials & Retirement Analyst





# SB 1397 – Substitute Flexibility

- Basic Skills Requirement waived for Emergency 30-Day Substitute Permit
- Effective January 1, 2023 through July 1, 2024
  - For first time 30-Day Sub Permits
  - But...

# Updated Education Specialist Credential Requirements

- All Education Specialist candidates starting a program will meet the new requirements through updated credential programs.
- Defines teacher assignments by level of student need in addition to disability type
- Bridge Added Authorizations available to current teachers, but not required by the state
- New teacher assignment monitoring increases visibility of mis-assignments

# What Changed?

## Previous Credentials

- Mild Moderate Disabilities (MMD)
- Moderate Severe Disabilities (MSD)
- Early Childhood Special Education (ECSE)

## Current Credentials

- Mild Moderate Support Needs (MMSN)
- Extensive Support Needs (ESN)
- Early Childhood Special Education (can teach TK/K)

# Expanded Authorization for New Credentials

Federal Disability Categories	MMD (Past) Mild/Moderate Disabilities	MMSN (Now) Mild to Moderate Support Needs	MSD (Past) Moderate/Severe Disabilities	ESN (Now) Extensive Support Needs
Autism	✓	✓	✓	✓
Deaf/Blindness			✓	✓
Emotional Disturbance	✓	✓	✓	✓
Intellectual Disability	✓	✓	✓	✓
Multiple Disabilities		✓	✓	✓
Orthopedic Impairment		✓		✓
Other Health Impairment	✓	✓		✓
Specific Learning Disability	✓	✓		✓
Traumatic Brain Injury		✓		✓

Early Childhood Special Education Added Authorization includes TK/K content standards

# Pathways to Bridge Added Authorization

## CL-904 - Verification of Requirements

1. Coursework
  - a. Online options available
  
2. **Professional Development Courses**
  - a. The SELPA Association has a shared presentation that covers content required for each respective authorization
  
3. Competency Demonstration
  - a. Confirmation of prior knowledge and experience via observational data, a portfolio submission, video demonstration, a performance assessment, or another means to show demonstrated competence

*Thank you!*

Any Questions?

Sara Marvin [saram@tcoe.org](mailto:saram@tcoe.org) 559-733-6859