

## Top Five Mistakes Made By Independent Schools

By Tamara Devitt (Irvine)

A new school year approaches and the momentum to “start fresh” is at its annual high. Take advantage of this momentum and spend a few minutes reviewing your school’s employment procedures, practices and policies. To help you, we have compiled a “Top Five” list of the most common mistakes made by independent schools:

### Mistake Number One: Falling Prey to Wage-Hour Pitfalls

Federal and state wage and hour laws are, under the best of circumstances, a barely navigable maze. Various wage-hour traps exist for both exempt and non-exempt employees of private schools. While federal and most applicable state laws exempt teachers as well as some executive and administrative employees from minimum wage, overtime and timekeeping requirements, the exemptions are not at all straightforward.

Determining whether a “white collar” exemption applies requires a careful analysis of the employee’s actual job duties. And the school’s responsibilities don’t end there. Since an employee’s duties may change over time, schools must periodically evaluate whether the exemption still applies.

Because the federal Fair Labor Standards Act has some relaxed rules for teachers (e.g. teachers need not meet the “salary-basis” test), schools mistakenly assume they need not be as vigilant about wage-hour laws. Not so. Non-teacher employees are commonly misclassified under the administrative exemption (which can include the controller, registrar, publications director, admissions officer, development officer, or technology manager, among others). This is a concern particularly where employees may have many different responsibilities.

Likewise, employees are sometimes misclassified as exempt managers under the executive exemption, which has very specific requirements pertaining to the individual’s actual supervision and hiring or firing of employees (or decisions that are given particular weight). Without the proper analysis as to the employee’s actual job responsibilities, authority, ability to exercise discretion and make decisions, classification of such employees as exempt can create serious wage hour problems.

Another common wage hour pitfall for schools is misunderstanding the record-keeping requirements for non-exempt employees. Schools that do not consistently require adequate time records of non-exempt employees are vulnerable to claims of improper pay and record-keeping practices.

### Mistake Number Two: Over-Simplifying Leave of Absence Issues

Second only to wage-hour issues, employee leave of absence issues

create the greatest headache for school administrators. Not surprisingly, schools have the same reaction to tricky leave of absence issues as to headaches – go away! As a result, such issues are often shuffled to the bottom of the to-do pile. As with wage-hour issues, the most common mistake is misunderstanding the applicable rules and neglecting to take the time to implement policies and procedures that help ensure consistent compliance with leave of absence laws.

Employee requests for leaves of absence come in various forms: maternity leave, military leave, baby-bonding leave, leave for a work-related injury, and intermittent leave to care for a sick family member, to name just a few. The permutations in which an employee may request a leave of absence often seem limitless.

Unfortunately, there are nearly as many laws for your school to consider as there are types of leaves that may be requested. It is important that your school’s administrators know what federal, state and local laws apply, and to publish policies that comply with all applicable laws. For instance, schools (regardless of size) are required to comply with the notice and posting requirements of the Family Medical Leave Act, even though schools need only provide job-protected leave in accordance with the FMLA if the school and the employee meet the Act’s eligibility requirements (the school must have 50 or more employees and the employee requesting a leave of absence must have been employed for

12 months and have worked 1250 hours in the preceding year). There are other provisions of the FMLA that apply only to schools.

Confusion commonly arises when the school must determine how long to provide job-protected leave, and to what extent it must be paid. Whether or not a job-protected leave must be paid depends on various factors, including state and local laws as well as the school’s own policies. It is important to understand and clearly define the rules so that leaves of absence are administered in a uniform manner.

### Mistake Number Three: Using an Outdated Faculty or Employee Handbook

Handbooks are useful tools for schools in managing a variety of employee issues. But handbooks that have outdated policies or inconsistent provisions may well create legal (as well as morale) problems instead of prevent them.

Ideally, your handbook’s policies should provide your school with the right balance of specificity and flexibility. Too much of either is bound to create problems. For instance, does your school’s handbook offer paid vacation for all employees, or only full-time employees, or worse, is it unclear?



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# Engaging Non-Teaching Staff Members

By Bill Rollings<sup>1</sup> and Suzanne Bogdan (Fort Lauderdale)

Schools generally do a wonderful job of evaluating students and teachers on a regular basis. Surprisingly, very few schools have formal processes for evaluating non-teaching staff. Yet despite an absence of formal evaluations, every school has their “stars” – non-teaching staff members who are motivated without any prodding from their administrator. They go the extra mile and figure out what must be done and do it without being told. They anticipate problems from teachers and parents and solve them with a smile on their face.

Why are they so engaged when other non-teaching staff members just go through the motions? We know that in non-profit schools, they’re not doing it for the money. Is there some “engaged employee” gene in the DNA that only some people possess? Or is it possible to encourage employees to be passionate about their work? And if it’s possible to create engaged employees, what role does the supervisor have in the process?

## Surprising Results from Current Research

In the past 15 years, The Gallup Poll has conducted extensive research on *engaged* employees - those who feel passionate about their work and connected to their company. In a review of the October 12, 2006 Gallup study, *Well-Being in the Workplace and its Relationship to Business Outcomes*, *Gallup Management Journal*, the authors summarize the positive perceptions that engaged employees feel toward their company, none of which has to do with money:

1. “Supervisors give me clear expectations and the right equipment to do the job.”
2. “I feel I contribute to the organization.”
3. “I have a sense of belonging to something beyond myself.”
4. “I have opportunities to discuss my progress and growth with someone.”

What are the implications of this research? It turns out that those employees who feel engaged, who feel passionate about their work, look to the actions of their supervisors and to the organization as a whole to help create their passion. So, let’s take a look at each of these perceptions and how supervisors play a role in promoting them.

## Clear Expectations and the Right Equipment

The first step in creating “engaged employees” is to write a clear and accurate job description. A well-written job description is the roadmap for the employee’s position, duties, expectations, and evaluation. Unfortunately, accurate job descriptions are often missing or seriously out-of-date for non-teaching staff. School administrators are often surprised when they sit down with an employee and discuss the scope of the non-teaching staff member’s position. Often, the discussion about creating the job description is the first real acknowledgment of the breadth of the employee’s job. This then, is the first opportunity to really help the employee begin the process of becoming engaged.

In creating accurate job descriptions, remember to keep legal issues in mind. as well. Ensure that the job description is written broadly enough to encompass other assigned duties as determined in the school’s sole discretion. Also, remember that any educational, experience, or physical qualifications must actually be necessary to perform the job to avoid any discrimination issues. If a bachelor’s degree and the ability to lift fifty pounds are not necessary for the lower school secretary’s position, then don’t include these types of qualifiers in the job description.

The second step is giving employees the tools and equipment to complete their job efficiently. Too often, equipment needs of non-teaching staff are delayed year after year because of tight budgets. Consider setting aside a specific budget amount and seeking input from the staff member on the purchases that are most important within that budget. In addition, consider asking the parents’ association for a fundraising effort to provide equipment for the non-teaching staff. These types of efforts would send a clear message to the non-teaching staff of their importance to the entire organization.

## Contributing to the Organization.

In the book, *Good to Great* (Harper Collins 1992), Jim Collins talks about getting “the right people in the right seats on the bus.” We know that non-teaching employees often complete a wide variety of tasks for a school. Yet during the day, do they have the opportunity to do what they do best?

Engaged employees believe that, for a portion of each day, they complete and are recognized for a talent at which they excel. Supervisors must allow this opportunity to occur. The process begins with a real discussion between the supervisor and the staff member to understand the priorities of the work and the limitations created by distractions that may not be apparent to the manager.

## A Sense of Belonging

One of the joys of working in a school is that an employee’s efforts, even if they are not directly teaching students, will help in the students’ education. How often are non-teaching staff recognized by teachers, parents and students for the work that they do? How do you, as a supervisor ensure the recognition of your entire staff, both teaching and non-teaching? Rather than deciding what types of methods to use for recognition, consider obtaining input from the staff directly. They may prefer a bookstore coupon or a dinner gift certificate over a staff appreciation day or special parking privilege. At the very least, they will know that you think it is important enough to seek their input.

## Opportunities to Discuss Progress

This perception may require the most work of the supervisor, because it cannot be satisfied by an evaluation once a year (or less frequently.) Engaged employees, especially Generations X and Y, look for feedback from supervisors on a regular, if not immediate, basis. They want to know how they’re doing. They want praise on what they do well. But they don’t expect a stream of compliments if there are performance problems.

If employees are deficient in a certain area – punctual attendance, appropriate interaction with peers, quality of work – they will prefer to get immediate feedback with a plan for improving the deficiency. Often, school



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Your school's handbook should specifically explain limitations on policies and benefits. For example, a blanket statement that *all* employees are entitled to a six-month personal leave of absence could result in an employee demanding personal leave to take a sabbatical or serve a jail sentence, unless you reserve the right to grant or deny requests for personal leave in your sole discretion. Overly-definite statements can create problems too. A statement that termination will result if the attendance policy is violated leaves the school with no discretion for imposing a lesser penalty or for an unusual situation to be treated according to the circumstances.

Most importantly, the policies in the handbook should comport with the school's actual practices. A well-written handbook that is generally ignored or out of date is worse than no handbook at all.

### **Mistake Number Four: Using Outdated Employment Contracts**

It's a mistake to assume that changing the date on your employment contracts is the only revision that needs to be made on an annual basis. You should also review each employment contract to ensure it is consistent with a teacher's or administrator's current responsibilities as well as to ensure that it does not contradict any other documents that may govern employment, such as a faculty or employee handbook. Although the contract receives the most attention at the beginning of the employment relationship, it is even more important at the end of the employment relationship. But terms providing for what should happen at the end of the relationship are commonly overlooked.

Why review and update contracts now, when the school year just started? As with anything worth doing, it commonly takes time to review and update contracts. Allow for plenty of lead time so that the project does not get pushed to the back burner for yet another school year.

### **Mistake Number Five: Assuming Teachers and Students Understand the Boundaries of Inappropriate Conduct**

Most schools agree that greater interaction between teachers and students results in a positive impact on student learning. But more interaction means there is a higher risk of *inappropriate* interaction. Indeed, the risk of inappropriate conduct between students and teachers includes potential liability for harassment, battery, invasion of privacy and defamation. Such claims have increased in recent years and that trend will likely continue.

In order to offset some of this risk, your school should implement a clear written policy that prohibits inappropriate conduct between teachers and students. The policy should specifically prohibit unprofessional or inappropriate interaction and define appropriate boundaries. For example, teachers should be prohibited from maintaining student confidences where there has been a rule or policy violation. The policy should also have a reporting structure for students, parents and teachers so that they may report inappropriate conduct.

A policy alone is not enough, however. Training is also essential in order to ensure that teachers and students understand that your school takes its policy seriously, and to make sure teachers and students understand your school's view regarding appropriate boundaries. The best way to do this is by demonstrating through fact-specific examples what conduct is acceptable or unacceptable and what to do if inappropriate conduct occurs.

If you are unsure whether your school's current policies and procedures comply with applicable laws, or if you are interested in having one of our attorneys conduct an audit of your procedures or policies or to provide training, please contact us.

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# Foreign Students: What Are Your School's Rights and Obligations?

*By Kim Thompson (Atlanta)*

As the Admissions Director of a private elementary or secondary school, you receive a call that one of your students was stopped by U.S. Immigration at the border and will not be allowed to return to school because he does not have a "student visa." How did this happen? And what are the obligations of a private school regarding the immigration status of foreign students who are enrolled or want to attend your school?

## **Background**

Students studying at the primary or secondary level in the U.S. fall into two broad categories: 1) those who enter the U.S. solely to attend school under an F-1 visa; and 2) those who are the dependent children of foreign nationals living in the U.S. in a status that allows their dependents to attend schools. Foreign nationals on H-4, L-2, or F-2 visas fall into this category.

Students who are in the U.S. as dependents of a parent in a corresponding status – such as H-1B (special occupations), L-1 (intra-company transfers), or F-1 – are allowed to attend private or public schools in the

U.S. without being required to first obtain their own F-1 student visa. In fact, there is no requirement for a private school to inquire into a student's immigration status in the U.S. before admitting that student.

But students coming from abroad to study in the U.S. at a private elementary or secondary school or a public high school, who are not accompanying a parent in a valid nonimmigrant status that allows the student to attend school, will only be admitted to the U.S. if they have both a valid F-1 student visa and the corresponding Form I-20 A-B/ID issued by a Department of Homeland Security (DHS) approved school. Students who arrive at a U.S. port of entry and do not have a valid visa that allows study in the U.S., may be denied entry and required to return to their home country.

## **Schools can Issue Form I-20s to Facilitate Foreign Student Admissions**

By following certain procedures developed by the Department of Homeland Security (DHS), a school can become approved to issue Form I-20s.

In order to become a DHS-approved school, the school must first pay a fee and host a site visit by a DHS inspector, which includes an interview

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administrators are not good at confronting poor performance, because it doesn't fit into the caring atmosphere of a school. But the reality is that timely and fair criticism of poor performance is the most humane approach to effective supervision.

### What You Can Do

Here are five things you can do today to encourage all of your non-teaching staff to become engaged employees at your school:

1. Write or revise the employee's job description to accurately reflect the job being done today. An effective job description should contain five or six primary responsibilities. This document can then be used as the basis for the employee's yearly evaluation.
2. Give non-teaching staff the tools to do their job in the most efficient manner.
3. Give employees an opportunity to do what they do best each day.
4. Acknowledge their skills publicly among their peers, teachers, students and parents.
5. Implement an evaluation plan that is ongoing throughout the year, that allows input from your non-teaching staff, that rewards excellence and identifies weaknesses in a timely fashion.

*For more information contact the authors. Bill Rollings can be reached at 800.555.9074. Suzanne Bogdan may be contacted at or 954.525.4800.*

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with the Director of the school. The interview covers school programs, facilities, enrollment, and recruitment of foreign students, a campus tour, and the submission of the application form and supporting documents, such as evidence of the business operations of the school, licensure, accreditation, and financial statements.

Once certified, the school gains access to a web-based database called SEVIS (Student and Exchange Visitor Information System) and is required to update the records on a timely basis for all foreign students to whom it has issued a Form I-20, indicating, for example, that the student has registered for classes, dropped out, graduated, or changed programs.

There is no limit on the number of student visas that can be issued each year, and students are not limited in how much time they can spend studying in the U.S. For private elementary and secondary schools, there are no restrictions on what students can study, how long they may attend, or how much they must pay in tuition. Foreign students in F-1 status may attend public high schools in grades 9 to 12 for no more than 12 months and must reimburse the school in advance for the unsubsidized per capita cost of the education.

### Benefits of DHS Certification for your School

Becoming a DHS-approved school and attracting foreign students can result in your school becoming an internationally diverse educational institution and give your students the opportunity to experience different cultures and form lasting relationships with individuals from other countries. Currently, there are over 500,000 foreign students in the U.S. The potential to increase enrollment by tapping into the foreign market is unlimited.

*For more information on student immigration issues or to become SEVIS-certified, email the author at [ktompson@laborlawyers.com](mailto:ktompson@laborlawyers.com) or call 404.231.1400.*

*Fisher & Phillips LLP represents employers nationally in labor, employment, civil rights, employee benefits, and immigration matters*

We're interested in your opinion. If you have any suggestions about how we can improve the *Education Labor Letter* (or its sister publication the *Labor Letter*), let us know by contacting Suzanne Bogdan, Chair of our Education Practice Group at (954) 847-4705 or [sbogdan@laborlawyers.com](mailto:sbogdan@laborlawyers.com), or e-mail the editor at [mmitchell@laborlawyers.com](mailto:mmitchell@laborlawyers.com).

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