

Internal Monitoring Report

August 16, 2017

Policy: 2.0 GENERAL OPERATING LIMITATIONS POLICY
Policy Category: OPERATING LIMITATIONS
Period Monitored: July 1, 2016 – June 30, 2017

This is my monitoring report on the Board of Education's Executive Limitations policy "General Operating Limitations." This report is presented in accordance with the Board's monitoring schedule. I certify that the information contained in this report is factual and true.



Christopher E. Gdowski, Superintendent
August 10, 2017

Global Policy Prohibition: *The Superintendent shall not cause or allow any practice, activity, decision, or organizational circumstance which is either unlawful, imprudent or in violation of governmental regulations or of commonly accepted business and professional ethics and practices.*

INTERPRETATION: The interpretation of “unlawful” has not changed since the last report.

I interpret “Unlawful” to mean:

Any practice, activity, decision, or organizational circumstance (hereafter, “unlawful situations”) which is determined to be contrary to applicable law by an agency of the State of Colorado or the United States, or by a court of law.

Other unlawful situations are those about which the Superintendent or General Counsel knows or should have known and which are likely to be found contrary to clearly established law applicable in the State of Colorado, including but not limited to the delegation of legal responsibilities from the Board of Education to the Superintendent in a manner contrary to law.

Compliance is interpreted as:

Standard 1. The absence of any decision or judgment by final agency action, or by an appellate court with final appellate authority for the issue presented, concluding that the District or one of its employees or agents, acting within the scope of his/her duties to the District, acted or failed to act in a manner which is contrary to law.

Decisions in which the District is held liable by a court or agency decision because of the negligence or error of a District employee, including but not limited to workers’ compensation claims, bus accidents, or other matters which have not been caused or allowed by the Superintendent, shall not be relevant data in monitoring compliance except in those cases in which the injury resulted from inadequate training, systems, or procedures within the reasonable control of the Superintendent.

Standard 2. Certification by the District’s Superintendent and General Counsel following reasonable inquiry and due diligence, that they are unaware of any ongoing violation of any clearly established law applicable in the State of Colorado by the District or by any District employee or agent acting within the scope of his/her duties to the District.

This interpretation is reasonable because the courts and administrative agencies are the ultimate arbiters of the lawfulness of District action, and because legal standards require that, in most circumstances, a school district corrects violations of law which it knows exist, or which, through the exercise of reasonable care, it should have known exist.

Data Reported:

Standard 1. There were no decisions or judgments by final agency action, or by an appellate court with final appellate authority for the issue presented, concluding that the District or one of its employees or agents, acting within the scope of his/her duties to the District, acted or failed to act in a manner which is contrary to law.

Standard 2. There were no ongoing violations by the District or any District employee or agent acting within the scope of his/her duties to the District of any clearly established law applicable in the State of Colorado.

The Superintendent and General Counsel have signed a certification, on file with the Senior Executive Assistant to the Board of Education, representing that they have engaged in reasonable inquiry and due diligence and that they are not aware of any ongoing violations of any clearly established law applicable in the State of Colorado by the District or by any District employee or agent acting within the scope of his/her duties to the District.

Compliance: The District complied with Standards 1 and 2.

INTERPRETATION: The interpretation of “imprudent” has not changed since the last report.

I interpret “*Imprudent*” to mean:

Any situation which violates Operating Limitations, any ongoing violation of a Superintendent Policy now referred to as District Policy as of July 1, 2017), or any failure to adopt any policy required by law or governmental regulation.

Compliance, or the absence of imprudent action, is characterized by:

Standard 1. Adoption and dissemination to the appropriate staff members of 100% of those policies required by law and governmental regulation, as determined through self-evaluation by General Counsel and comparison to standards set by the Colorado School Boards Association.

Standard 2. Periodic verification by the Superintendent’s Senior Staff throughout the monitoring period, and following reasonable inquiry and due diligence, that they are not aware of any ongoing matters of non-compliance with District Policies;

Standard 3. Compliance with Operating Limitations 2.1 through 2.9 in the most recent monitoring reports submitted to the Board of Education for each Limitation during the monitoring period.

This interpretation is reasonable because I have determined that policies subsequent to the global Operating Limitation 2.0 further define the range of actions which are imprudent and unacceptable. The interpretation uses the most recent monitoring reports submitted concerning Operating Limitations 2.1 through 2.9 as the basis for evaluating compliance because more than one monitoring report may be submitted on these limitations during the monitoring period, and some noncompliant items may have been corrected by the conclusion of the monitoring period. Finally, the interpretation is reasonable because the failure to adopt legally required policies, as well as ongoing noncompliance with District Policies, places the District in greater risk of being found to have acted unlawfully, contrary to governmental regulations, and contrary to commonly accepted business and professional ethics and practices.

Data Reported:

- Standard 1. General Counsel has verified that all policies required by law are in place and have been disseminated to appropriate staff. Ongoing efforts are in place through Policy Council initiatives and staff member communications and/or training opportunities to keep all staff members informed of current and changed policy expectations.
- Standard 2. Members of the Superintendent’s Senior Staff have verified, following reasonable inquiry and due diligence, that they are unaware of any ongoing patterns of non-compliance with District Policy.
- Standard 3. Monitoring reports for Operating Limitations 2.1 through 2.9 submitted during the monitoring period, or to be submitted to the Board in future monitoring reports covering this time period, reported compliance except for those items of noncompliance previously reported to the Board.

Compliance: The District’s performance complied with standards 1 and 2.

The District’s performance complied with standard 3 except as to the instances shared with the Board in the 2.1 through 2.9 monitoring reports. The previously reported violations of Operating Limitations have been cured, will be addressed during the next monitoring period or are subject to an approved plan for resolution. There are no ongoing violations of Operating Limitations.

INTERPRETATION: The interpretation of “violation of governmental regulation” has not changed since the last report.

I interpret “*violation of governmental regulations*” to mean:

Inconsistent with applicable federal, state, county, or municipal rules, procedures, or ordinances.

Compliance is interpreted as:

- Standard 1. The absence of any decision or judgment by final agency action, or by an appellate court with final appellate authority for the issue presented, concluding that the District or one of its employees or agents, acting within the scope of his/her duties to the District, acted or failed to act in a manner which is contrary to applicable rules, procedures, or ordinances adopted by the federal, state, county, or municipal governments.

Decisions in which the District is held liable by a court or agency decision because of the negligence or error of a District employee, including but not limited to workers’ compensation claims and bus accidents, or other matters which have not been caused or allowed by the Superintendent, shall not be relevant data in monitoring compliance except in those cases in which the injury resulted from inadequate training, systems, or procedures within the reasonable control of the Superintendent.

- Standard 2. Certification by the Superintendent and General Counsel, following reasonable inquiry and due diligence, that they are unaware of any ongoing violations of any clearly established and applicable rules, procedures or ordinances by the District or by any District employee or agent acting within the scope of his/her duties to the District.

This interpretation is reasonable because the courts and administrative agencies are the ultimate arbiters of the lawfulness of District action, and because legal standards require in most circumstances that a school district correct violations of applicable rules, procedures or ordinances.

Data Reported:

- Standard 1. There are no court or final agency decisions at the conclusion of the monitoring period finding that the District or its employees are acting contrary to applicable rules, procedures, or ordinances.

- Standard 2. The Superintendent and General Counsel have signed a certification, on file with the Senior Executive Assistant to the Board of Education, representing that they have engaged in reasonable inquiry and due diligence and that they are not aware of any other ongoing violations of any clearly established rules, procedures or ordinances by the District or by any District employee or agent acting within the scope of his/her duties to the District except as set forth herein.

Compliance: The District’s performance complied with Standards 1 and 2 except as noted below.

Explanation of Previously Reported Exception to Standard 2: Although we are currently in compliance in this area, we take this opportunity to update the Board about a matter that was out of compliance in the past. As first reported to the Board in August 2015, a matter was brought to our attention by PERA during their audit process. PERA questioned whether contributions to tax deferred accounts as part of the Administrator Longevity Program (ALP) were properly categorized as employer contributions or employee contributions. In addressing this situation (it began in 2009), we sought a tax opinion from outside counsel and began working with local experts. As a result, the district has resolved the matter with PERA, revised its tax deferred plans, self-reported the issues to the IRS and corrected than manner in which the contributions are categorized. In July 2016, the district, through outside legal counsel, submitted an Application for Voluntary Correction Program to the IRS.

By letter dated July 28, 2017, the IRS responded to our Application for Voluntary Correction (submitted over a year ago) in a positive manner by issuing a Compliance Statement. As of the preparation of this Monitoring Report, our outside counsel is working with the IRS on a few minor corrections to the Compliance Statement. Since July 2016, our Human Resources department has put a great deal of effort into correcting the categorization of the ALP contributions for the years 2009 through 2014, making the employees whole, and obtaining releases from affected individuals. We are pleased to report that this process is nearly complete.

INTERPRETATION: The interpretation of “commonly accepted business and professional ethics and practices” has not changed since the last report.

I interpret “commonly accepted business and professional ethics and practices” to mean:

- 1) Operating Limitations 2.1 through 2.9 as established by Board Policy.

- 2) Conduct standards that address the following topics:

- Ethics, conflicts of interest, and nepotism policies which include substantive standards commonly found in policies/procedures adopted by other Colorado school districts.
- Bidding/procurement procedures which include substantive standards commonly found in policies/procedures adopted by other Colorado school districts.
- Internal controls for processing financial transactions which include substantive standards that reflect sound accounting practices as determined by the District's independent auditors.

Compliance is interpreted as:

Standard 1. Compliance with Operating Limitations 2.1 through 2.9.

Standard 2. Adoption of District Policies and/or internal procedures concerning conflicts of interest, nepotism, bidding/procurement procedures, and internal controls for financial transactions which include the substantive standards described above.

Standard 3. Dissemination of the policies/procedures and training of appropriate administrative and supervisory staff concerning these requirements.

Standard 4. Annual audits to determine compliance/noncompliance with these policies/procedures.

Data Reported:

Standard 1. The District's performance on this standard has been reported earlier in this report under the section regarding 'imprudent' practice, activity, decision or organizational circumstance.

Standard 2. The District has adopted District Policies concerning conflicts of interest, nepotism, bidding/procurement procedures, and internal controls for financial transactions.

Standard 3. The relevant District Policies have been disseminated to staff members through a variety of means, including through email communications, the District's website, and Policy Council communications throughout the monitoring period. Principals were updated on the policy provisions through information disseminated by the Legal Services Office.

District Policy 4130 is sent to District administrators with their annual employment contracts, and compliance with the policy is expressly incorporated into the contracts. The policy is published on the web for access by all employees, and is reviewed with employees periodically by their supervisors.

Standard 4. District Policy 4130 concerning Staff Ethics/Conflicts of Interest/ Nepotism requires an annual internal or external compliance audit by July 1 of each year. Because the District has not had an internal auditor on staff for several years, the District contracted with CliftonLarson to perform the annual audit of compliance with Policy 4130.

In November 2016, CliftonLarson conducted a compliance audit of District Policy 4130 for the 2015-16 fiscal year. The district was found to be in compliance and this information was provided to the Board in the 2.4 External Monitoring Report for the fiscal year 2015-16.

CliftonLarson is scheduled to perform a compliance audit of Policy 4130 for the 2016-17 year in the coming months. The results of that audit will be provided to the Board as part of the 2.4 External Monitoring Report for the fiscal year 2016-17.

Compliance: The District's performance complied with Standard 1.

The District's performance complied with Standard 2.

The District's performance complied with Standard 3.

The District's performance complied with Standard 4 with the possible exception explained in part B below.

A. During the 2016-17 year, District Policy 4130 was revised to specifically authorize use of an external auditor because our district has not employed an internal auditor for the past several years. As reported above, CliftonLarson is scheduled to perform a compliance audit of Policy 4130 for the 2016-17 year in the coming months. The results of that audit will be provided to the Board as part of the 2.4 External Monitoring Report for the fiscal year 2016-17.

B. The accounting team in the district's finance department is conducting an ongoing initial review of travel expenditures for the fiscal year 2016-2017. Preliminary results show some patterns of non-compliance with District Policy 4150 Employee Professional Development/Travel Reimbursement. Some key areas the team has identified as non-compliant are:

1. Policy 4150 7.1- preferred seats (seats that are in the prime area of the plane, have more leg room and/or be an isle or window seat) that some airlines charge additional fees for.
2. Policy 4150 4.3- per diem was paid in situations where conference meals were provided.
3. Policy 4150 8.1- non-economy parking was reimbursed.
4. Policy 4150 3.3-District Pcard was used for meal/incidental purchases.

Three areas of inquiry that need further review are Extended Stays, Use of Taxi/Uber for personal time and the lack of approvals on the travel form.

Once the accounting team's review is finalized, it will review results with the CFO and present options for her to discuss with Legal and/or Chiefs if necessary. Some areas appear to identify that additional training and/or review of policy is needed for staff, which will be implemented immediately.

The Board acknowledged receipt of a monitoring report as of August 16, 2017, for the period July 1, 2016 through June 30, 2017, of the Superintendent concerning Board Policy 2.0 General Operating Limitations and found the Superintendent's interpretations were reasonable and supported by data that was relevant, justified and complete.

Certification For Monitoring Report 2.0
Superintendent and General Counsel
Adams 12 Five Star Schools
August 2017

We interpret "unlawful" to mean:

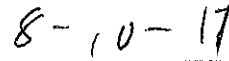
Any practice, activity, decision, or organizational circumstance (hereafter, "unlawful situations") which is determined to be contrary to applicable law by an agency of the State of Colorado or the United States, or by a court of law.

Other unlawful situations are those about which the Superintendent or General Counsel knows or should have known and which are likely to be found contrary to clearly established law applicable in the State of Colorado, including but not limited to the delegation of legal responsibilities from the Board of Education to the Superintendent in a manner contrary to law.

The Superintendent and General Counsel certify that they have engaged in reasonable inquiry and due diligence during the period July 1, 2016 – June 30, 2017 and that they are not aware of any ongoing violations, as of the conclusion of the monitoring period, of any clearly established law applicable in the State of Colorado or clearly established rules, procedures or ordinances by the District or by any District employee or agent acting within the scope of his/her duties to the District except as set forth in the Monitoring Report 2.0 dated August 9, 2017, which is scheduled to be presented to the Board of Education on August 16, 2017.



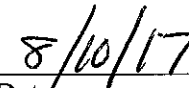
Christopher E. Gdowski, Superintendent



Date



Philip H. Spare, General Counsel



Date