



**Dave Yost**  
Auditor of State



*Auditor of State's 2012  
Community School Training*

**Legal Update  
and  
Using Ohio's Public Records Act to Promote  
Open and Accountable Government**

Presented by:  
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Assistant Legal Counsel

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UPDATES**



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**Ohio Ethics Commission  
Advisory Opinion No. 2010-01**

All members of the governing board, officers, employees of a community school are subject, without limitation, to:

- Chapter 102 of the Ohio Ethics Laws
- Ohio Revised Code Sections 2921.42 and 2921.43  
(including all teachers)



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*Hope Academy v.  
Ohio State Dept. of Educ.*  
2008 WL 4226106 (Ohio App. 10 Dist.)

- Ohio Revised Code 3314.02(E)(2), effective March 30, 2007, which provides that “[n]o person shall serve on the governing authorities of more than two start-up community schools at the same time” has prospective effect only.



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***State ex. rel. Nancy Rogers, Atty. Gen.  
v. New Choices Community School***  
2009 WL 2957360

- Charter school did not operate as a charitable trust that could be monitored and potentially dissolved under the AG’s authority to oversee charitable trusts
- Assuming charter school was deemed to be a charitable trust, the AG’s authority regarding charitable trusts had to give way to the more specific provisions in the Community School Act.



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***Richard Cordray, Ohio Attorney General  
vs.  
The International Preparatory School***

- Is a community school treasurer a “public official”?
- If so, Ohio Revised Code 9.39 “strict liability” applies.
- \* *Orally argued before the Ohio Supreme Court on April 21, 2010 ...stay tuned*



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## Public Records Act

- Overview
- Complying with Public Records Requests
- Records Retention
- Open Meetings Act





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## Office Public Records Policy R.C. 149.43(E)

- All public offices must prepare, distribute, and post a public records policy
- The Attorney General's model public records policy is available at:  
<http://www.ohioattorneygeneral.gov/files/Publications/Publications-for-Legal/Model-Public-Records-Policy.aspx>
- The model public records policy is for guidance, it is **not** a substitute for an individualized policy suited to each public office



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## MODEL PUBLIC RECORDS POLICY

- **MISSION STATEMENT** Openness leads to a better informed citizenry, which leads to better government and better public policy. Consistent with the premise that government at all levels exists first and foremost to serve the interests of the people, it is the mission and intent of [public office] to at all times fully comply with and abide by both the spirit and the letter of Ohio's Public Records Act.
- **DEFINING PUBLIC RECORDS** All records kept by [public office] are public unless they are exempt from disclosure under Ohio law. All public records must be organized and maintained in such a way that they can be made available for inspection and copying. A record is defined to include the following: A document in any format – paper, electronic (including, but not limited to, business e-mail) – that is created, received by, or comes under the jurisdiction of [public office] that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.



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### Definitions – The “Who?” of Public Records

- **Public Office** – R.C. 149.011(A)
- Any private entity that is the **functional equivalent** of a governmental entity





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### Definitions – The “What?” of Public Records

**Records** – R.C. 149.011(G):

- Information stored on a fixed medium (tapes, e-mails, photos, films, videos, papers, etc.), **and**
- Are created or received by, or come under the jurisdiction of, a public office, **and**
- Document what the public office does: the organization, functions, policies, decisions, procedures, operations, or other activities **of the office**



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### Definitions – The “When” of Public Records

**Public Records** – R.C. 149.43(A) includes records **“kept by”** any public office

**“Kept by”** means any record that is actually in existence and in the possession of the public office or person responsible for public records

- Examples of records **not “kept by”** a public office:
  - (1) a record not yet in existence,
  - (2) a record that has been disposed of lawfully



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**Electronic Records**

*E-mail*

*Databases*

*Electronic Records Management*



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**Electronic Records**

**Email**

- Handle electronic records just like any other tangible record
- Analyze based on **content**, rather than storage medium




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**Notes**

**Notes can be "records," but are usually transient**

**Notes are not public records if they are:**

- 1) Kept as personal papers, not official records;
- 2) Kept for the employee's own convenience (for example, to recall events);

**AND**

- 3) Other employees did not use or have access to the notes

*State ex rel. Cranford v. Cleveland*, 2004 Ohio 4884



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## Rights and Obligations

- Any **"person"** can make a public records request, including corporations and other governmental agencies
- **No special format or special language** required
- A request may be **written** or **verbal**
- The requester's motive **is not relevant**. However, the request must at least be specific and describe in detail the records being sought
- A public office cannot require the requester to put it in **writing** or reveal his/her **identity**



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## Rights and Obligations

- **Regular business hours**
- Copies at **"cost"**
- Payment **in advance** (optional)
- Methods of **delivery**



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## Public Records Act Exceptions

**Unless the public office can identify an exception that clearly requires or permits withholding a requested record, it must disclose the record**

- Exceptions are created only by law (Exceptions are usually statutes, but they may also come from constitutional rights or common law)
- Persons cannot "contract out" of the Public Records Act



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## Mandatory/Catch-all Exemption

- Such records are prohibited from disclosure in response to a public records request, even if the public office would like to disclose it
- If any state statutes, rules, federal statutes or regulations prohibit public disclosure, then a public office **MUST NOT release** that record in response to a Public Records Request



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## Example: Student Records

### Family Education Rights and Privacy Act of 1974 (FERPA)

- School officials may not disclose personally identifiable information about students without the written consent of the students or their parents, unless permitted to do so by the Act



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## Additional Examples of Exceptions

- **Security & Infrastructure Records**  
R.C. 149.433
- **Juvenile Records**
  - Juvenile Courts
  - Children Services Agency
  - Fingerprints and photographs statute



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## How to Comply With Public Records Requests

*Preparation*  
*Negotiation/Clarification*  
*Documentation*  
*Withholding/Redacting*



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## Preparation: Tools

**Lists:**

- Non-records
- Exceptions



**Retention Schedules:**

- Set and follow prudent records retention periods

**Periodic training of office staff**

**Yellow Book: keep on hand, linked online:**  
[http://www.auditor.state.oh.us/services/opengov/resources/OhioSunshineLaws2009\\_AnOpenGovernmentResourceManual.pdf](http://www.auditor.state.oh.us/services/opengov/resources/OhioSunshineLaws2009_AnOpenGovernmentResourceManual.pdf)

**Contact information of your legal counsel**



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## Documentation

- Documenting the steps taken to satisfy a public records request is a **must!**
- If a request is made verbally, **write it down**
- Send a **receipt letter** if you cannot satisfy a request immediately. (See Handout Page 1)
- Document the **format** in which the requester wishes to receive the records
- Document the agency's charges per copy, if copies are requested



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### Withholding or Redacting: Definition and Identification

- **“Redaction”** - **Obscuring** or **deleting** any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a record
- Redactions must be plainly visible, or the office must advise the requester of what redactions have been made – R.C. 149.43(B)(1)

(See Handout Page 2)



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### Liabilities for Violating the Public Records Act

- **Mandamus Action** by “person aggrieved” by violation of Division 149.43(B) of the Public Records Act  
**A legal action in common pleas, appellate court, or the Ohio Supreme Court to enforce the Act**
- **Civil Damages** (only if violation caused actual lost use of records)
- **Attorney’s fees** and court costs



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### Records Retention

*Obligations*

*Liabilities*

*Schedules*



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### Obligations of Public Offices for Records Retention

A public office may **not** destroy, mutilate, or otherwise dispose of records except as provided by law or under the rules of the records commissions – R.C. 149.351



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### Obligations of Public Offices for Records Retention

- **Shall organize and maintain** public records in a manner that they can be made available for inspection or copying
- AND*
- Shall have available a copy of its **current records retention schedule** at a location readily available to the public – R.C. 149.43(B)(2)



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### Liabilities for Violating Records Retention Laws

**Any person may file either or both of the following, in common pleas court:**

- A civil action for **injunctive relief** to compel compliance with this section, and an award of reasonable attorney's fees, and/or
- A civil action to recover a **forfeiture of \$1,000 for each violation**, and an award of reasonable attorney's fees. R.C. 149.351



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## Records Retention Schedule: Contents

- Record Series **Title**
- Series Description – describes the **purpose** and **function** of the record series and tells what **types of information** can be found in the records
- Set retention period, format(s) to be retained, and disposal method(s)

**Create the schedule for someone who has no knowledge of the records – minimize use of jargon and acronyms.**

(See handout page 5)



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## Factors Determining Retention Periods

- **Administrative Purposes** – period needed by the office to carry out its duties
- **Fiscal Tracking** – needs pertaining to the receipt, transfer, payment, adjustment, or encumbrances of funds. Documents subject to audit.
- **Legal Value** – documents relating to rights or obligations of citizens, or of the agency that created it
- **Historical Value** – Ohio Historical Society/Archives



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## Records Retention Information

**For more information, please contact:**

**State Archives**  
(614) 297-2553  
[localrecs@ohiohistory.org](mailto:localrecs@ohiohistory.org)

**Ohio Historical Center**



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**Open Meetings Act Overview**

**Definitions**

**Obligations**

**Executive Sessions**

**Liabilities**



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**Who is Subject to the Open Meetings Act and When?**

**Definitions**



**Public Body:** Any decision-making body of the state, its political subdivisions, and school districts (including any committee or sub-committee of each body)

**Meeting:** (1) **Prearranged** gathering of  
(2) a **majority** of members of public body  
(3) conducting or discussing public business



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**Looking Deeper: What is a Meeting ?**

- **Discussion/Deliberation vs. Information Gathering:**
  - Discussion and deliberation involve the weighing of reasons for and against a course of action and **must be conducted in the open**
  - Gatherings **solely** to receive factual information **may** not be meetings – **but consult legal counsel first!**
- **Work sessions:**
  - **Prearranged** work sessions, retreats, etc. where **public business is discussed** among a **majority of the members** of the public body are "meetings" and must be as noticed and open as any other meeting



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### Obligations

Give appropriate **notice**  
R.C. 121.22(F)

Take action & deliberate on public  
business in **open** session  
R.C. 121.22(C)

Take & file **minutes**  
R.C. 121.22(C)



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### Obligation 1: Notice (by rule)

#### Types of Meetings and the Notice Required

<p><b>Regular Meetings</b></p>	<p>➔</p>	<p>Meetings held at prescheduled intervals <b>Notice</b> = time and place</p>
<p><b>Special Meeting</b></p>	<p>➔</p>	<p><b>Any meeting that is not a regular meeting</b> <b>Notice</b> = at least 24 hrs advance notice of time, place, and purpose.</p>
<p><b>Emergency Meeting</b></p>	<p>➔</p>	<p><b>Requiring immediate action</b> <b>Notice</b> = immediate to news media</p>



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### Obligation 2: Openness

#### Take Action & Deliberate in Public

**Where must public meetings be held?**

- In a public forum within the area that the public body serves

**Does the public have a right to speak at public meetings?**

- Not required by the OMA, but may otherwise be permitted or required

**Can members of the public record proceedings?**

- Yes, if it does not disrupt the meeting



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**Obligation 3: Minutes**

"The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to the public."

- R.C. 121.22(C)
- Minutes do not have to be a verbatim transcript of the proceedings but must be accurate and enable the public to understand the rationale behind the public body's decisions.
- There is no requirement to keep minutes of executive sessions.



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**Executive Sessions**

**Proper Procedures:**

- Must be preceded by specific motion, second, and roll call vote
- Motion should state the specific permissible topic(s) to be discussed
- Meetings must always begin & end in open session (cannot adjourn the meeting from within executive session)



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**Executive Sessions**

**Acceptable Topics for Discussion:**

- Personnel (**must** state specific type of personnel matter to be discussed, but **not** identity of the person)
- Property
- Court action (only with the body's attorney)
- Collective bargaining
- Matters confidential by law
- Security arrangements
- County, Joint Township and Municipal hospitals' trade secrets



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### Executive Sessions

**Present in Executive Sessions:**

Who may members include?  
 – **anyone who is invited to stay**

Who may the members exclude?  
 – **any other members of the public**



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### Restrictions On Executive Session

- × There can be **no decision-making**
- × **No voting**, including "straw polls"
- × Non-permitted matters may **not** be discussed in executive session, even if intertwined with permitted matters
- × No minutes need to be taken (and probably shouldn't be) of executive session discussions




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### Penalties for Violating the OMA



*Fines*

*Injunction*

*Court Costs*

*Action Invalidated*

*Fees*





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### Miscellaneous Topics: Virtual Participation

- A member “shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting”
  - R.C. 121.22(C)



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### Questions & Answers

Sunshine Laws Web Page:  
<http://www.auditor.state.oh.us/services/opengov/default.htm>

Yellow Book Online:  
[http://www.auditor.state.oh.us/services/opengov/resources/OhioSunshineLaws2009\\_AnOpenGovernmentResourceManual.pdf](http://www.auditor.state.oh.us/services/opengov/resources/OhioSunshineLaws2009_AnOpenGovernmentResourceManual.pdf)

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**Federal Program Audits**  
(aka Single Audits & A-133 Audits)

Community School Training  
August 3, 2012

Presented by: Kelly Berger-Davis  
Center For Audit Excellence

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## Agenda

- What is an A-133 audit?
- Am I required to have an A-133 audit?
- What is tested in an A-133 audit?
- A-133 Letter
- Proposed Changes




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## What is an A-133 audit?

- History of A-133:
  - “The Single Audit Act of 1984” (*Public Law 98-502*) established requirements for certain governments that administer Federal financial assistance programs.
    - **Single Audit** Act Amendments of 1996 (*31 USC 75*)
  - OMB Circular A-128 (*Audits of States, Local Governments*), issued in 1985 to help auditors and recipients implement the new Single Audit Act.
    - OMB Circular **A-133** (*Audits of Institutions of Higher Education & Other Non-Profit Organizations*), issued in 1990, where OMB extended the single audit process to non-profits.
      - A-133 requirements amended in 2003 & 2007



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### What is an A-133 audit?

- History of A-133:
  - Each year, OMB issues an updated version of the “OMB Compliance Supplement” to assist auditors in performing the required audits.
  - In addition, the AICPA maintains a guide titled *Government Auditing Standards and Circular A-133 Audits* which gives a basic description of the procedures auditors should perform and the reports they should issue for single audits.




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### Am I required to have an A-133 audit?



- A-133, Subpart B, Section .200(a) states:
  - Non-Federal entities that **expend \$500,000 (for fiscal years ending after December 31, 2003) or more in a year in Federal awards** shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

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### Am I required to have an A-133 audit?

- So, how do you know how much Federal funds you spent?
  - It is **VERY IMPORTANT** that the Treasurer has some method in place to track federal expenditures!
    - As an example: Each federal grant is tracked in a separate fund & cost center. At year end, as part of closing out the books, the system requires the Treasurer to complete a Federal Expenditures summary to determine if it is over \$500,000.


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### Am I required to have an A-133 audit?

• **IMPORTANT NOTES:**

- If the Charter School passes federal funds through to their Management Company to spend – the federal expenditures are determined when they are spent by the management company.
- A-133 requires the auditee to prepare a schedule of expenditures of federal awards.
  - A-133 requires the auditor to determine and provide an opinion on, whether the auditee's schedule is presented fairly.
- Auditors must be able to audit original records (ie. when school utilizes a mgmt. co. auditors need mgmt. company records).

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### Am I required to have an A-133 audit?

- So, how do you know if you require a single audit, if you don't track and calculate total federal expenditures at the end of the fiscal year?
  - You don't know, and you may not get the required single audit.

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### Am I required to have an A-133 audit?

- Per A-133 .235(c)(1):
  - The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period.
    - If FYE is 6/30/12, then single audit must be done and submitted by the end of 3/31/13.

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**Am I required to have an A-133 audit?**

- If an entity fails to have a required single audit, or fails to meet the A-133 deadline, there are several possible consequences:
  - Pay back the federal funds, and/or
  - Loss of federal funding in future years, and/or
  - Citations, internal control deficiencies, & A-133 opinion modification in federal audit,
  - Etc.
- It is up to the Federal Agency to decide what the ultimate outcome will be.



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**Am I required to have an A-133 audit?**

- If your school did not qualify for a single audit in the past, be sure to contact your auditors ASAP if you think you may be single in the current year!
  - Auditors need to do single audits earlier in order to meet the A-133 deadline.



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**What is tested in an A-133 Audit?**

- Auditors must first:
  - Test the entities federal schedule to determine if it is presented fairly (A-133.505).
  - Determine if the entity is a low-risk auditee (A-133.530).
  - Determine what the major program(s) are (A-133.520).



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### What is tested in an A-133 Audit?

- Testing major programs:
  - There are 14 types of compliance requirements, and for each:
    - Compliance (Substantive) Tests
    - Internal Control Tests
  - The A-102 Common Rule requires that non-Federal entities receiving Federal awards (i.e., auditee management) establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements.



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### What is tested in an A-133 Audit?

- 14 Compliance Requirements:

A. Activities Allowed or Unallowed (Includes ARRA)	H. Period of Availability of Federal Funds
B. Allowable Costs/Cost Principles	I. Procurement and Suspension and Debarment (Includes ARRA)
C. Cash Management	J. Program Income
D. Davis-Bacon Act (Includes ARRA)	K. Real Property Acquisition and Relocation Assistance
E. Eligibility	L. Reporting (Includes ARRA)
F. Equipment and Real Property Management	M. Subrecipient Monitoring (Includes ARRA)
G. Matching, Level of Effort, Earmarking	N. Special Tests and Provisions (Includes ARRA)



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### What is tested in an A-133 Audit?

1. Section A – Activities Allowed or Unallowed
  - Compliance (Substantive) – Were the funds only spent for purposes the specific award (grant) permits.
  - Internal Controls – What controls does your entity have in place to ensure the grant was only spent on items allowed, as noted in the grant agreement?



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### What is tested in an A-133 Audit?

#### 2. Section B – Allowable Costs / Cost Principles

- Compliance (Substantive) – Were the funds only spent for purposes allowable under OMB Cost Circular A-87, allowable cost guidelines?
- Internal Controls – What controls does your entity have in place to ensure the grant was only spent on items allowable under A-87?

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### What is tested in an A-133 Audit?

#### 2. Section B – Allowable Costs / Cost Principles

- A-87 was codified in 2 CFR 225
- 2 CFR 225 can be found at <http://www.gpo.gov/fdsys/>
- These general principles for determining allowable costs apply to most grants (unless specifically excluded)

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### What is tested in an A-133 Audit?

- For a cost to be allowable, it must **BOTH**:
  - Be for a purpose the specific award permits, **AND**
  - Fall within the cost circular's (A-87) allowable cost guidelines

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### What is tested in an A-133 Audit?

#### 3. Section C – Cash Management



- When the grant is advance-funded, auditees must maintain procedures to minimize the time elapsed between the draw-down of the federal funds and the subsequent disbursement of those funds.
- When reimbursements are received, auditees must have procedures to ensure reimbursements are requested only for allowable expenditures already incurred.

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### What is tested in an A-133 Audit?

#### 3. Section C – Cash Management – ADVANCE FUNDED

- Compliance (Substantive) – Was the advance funded grant spent in time?
- Internal Controls – What controls does your entity have in place to ensure advance funded grants are spent in time?



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### What is tested in an A-133 Audit?

#### 3. Section C – Cash Management – REIMBURSEMENT BASIS

- Compliance (Substantive) – Were the funds spent before the reimbursement was requested?
- Internal Controls – What controls does your entity have in place to ensure funds were spent before the reimbursement was requested?



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### What is tested in an A-133 Audit?

- 4. Section D – Davis-Bacon Act
  - When federal funds are used for construction, entities must ensure prevailing wage rates are paid for projects/contracts exceeding \$2,000.

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### What is tested in an A-133 Audit?

- 4. Section D – Davis-Bacon Act
  - Compliance (Substantive) – Were the required certified payrolls submitted by the contractor or subcontractor to the school?
  - Internal Controls – What controls does your entity have in place to determine if the prevailing wage requirement applies? And if it does apply, and the certified payrolls were not received, how would you know it and follow up with the contractor?

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### What is tested in an A-133 Audit?

- 5. Section E - Eligibility
  - Each federal program has unique criteria for determining the individuals, groups of individuals or subrecipients that can participate in the program, and the amount of assistance for which they qualify.
  - The program-specific eligibility requirements can be found in the laws, regulations, and provisions of contract or grant agreements pertaining to the program.

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### What is tested in an A-133 Audit?

#### 5. Section E - Eligibility

- Compliance (Substantive) – Was the individual, group, etc. eligible under the specific grant criteria?
- Internal Controls – How would you know if an individual was ineligible under the grant and exclude them from receiving benefits? Does your school have a procedures in place for this?

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### What is tested in an A-133 Audit?

#### 6. Section F – Equipment & Real Property Mgmt.

- Recipients of federal funds must comply with certain requirements regarding the use, maintenance, and disposal of equipment and real property (e.g., land and buildings) purchased with federal money.
- Equipment is defined as tangible property charged directly to a federal award and having a useful life of more than one year and an acquisition cost greater than \$5,000 or more per unit.
- The school may establish lower \$ threshold though.

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### What is tested in an A-133 Audit?

#### 6. Section F – Equipment & Real Property Mgmt.

- Compliance (Substantive) – Does the school maintain an inventory listing and take a physical inventory of federally purchased equipment? Were the records updated for disposals?
- Internal Controls – If equipment or land is purchased with federal \$, would the Treasurer know to “follow the rules” for use/maintenance? And if equipment or land purchased with federal \$ is sold or transferred to another department, how would the Treasurer know this and then “follow the rules” for disposal/compensation?

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### What is tested in an A-133 Audit?

#### 7. Section G – Matching, Level of Effort, & Earmarking

- **Matching** includes requirements to provide (cash or in-kind) contributions (usually nonfederal) of a specified amount or percentage to match federal awards.
- **Earmarking** includes requirements that specify the minimum and/or maximum amount or percentage of the program's funding that must/may be used for specified activities, including funds provided to subrecipients.

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### What is tested in an A-133 Audit?

#### 7. Section G – Matching, Level of Effort, & Earmarking

- **Level of Effort** includes requirements for (1) a specified level of service to be provided from period to period, (2) a specified level of expenditures from nonfederal or federal sources for specified activities to be maintained from period to period, and (3) federal funds to supplement and not supplant nonfederal funding of services.

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### What is tested in an A-133 Audit?

#### 7. Section G – Matching, Level of Effort, & Earmarking

- **Compliance (Substantive)** -
  - If **matching**, **LOE**, or **Earmarking** applies, test to see if the requirement(s) were met.
- **Internal Controls** -
  - If **matching** applies, how does the School ensure it is met?
  - If **level of effort** applies, how does the School ensure it is met? If there is a required service or expenditure level, how does the School ensure it was maintained? If there was a minimum or maximum **earmarking** limit set, how does the School ensure it was met?

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## What is tested in an A-133 Audit?

### 8. Section H – Period of Availability

- Federal awards may specify a time period during which the nonfederal entity may use the federal funds.
- Where a funding period is specified, a recipient may only charge costs to the award resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal Awarding Agency.



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## What is tested in an A-133 Audit?

### 8. Section H – Period of Availability

IF AN OBLIGATION IS FOR --	THE OBLIGATION IS MADE --
(a) Acquisition of real or personal property.	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services.	When the State or subgrantee receives the services.
(f) Travel.	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State under the applicable cost principles.	On the first day of the subgrant period.

- For example, audit costs related to a FY 2011 audit may need to be charged to a FY 2012 Federal program b/c the LOA is signed in FY 2012 - obligation occurs upon signing the LOA.



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## What is tested in an A-133 Audit?

### 8. Section H – Period of Availability

- Compliance (Substantive) – Test transactions that were recorded during the POA and verify that the obligation occurred during the POA.
- Internal Controls – In your school, what prevents federal funds from being obligated after the period of availability ends; or paying obligated funds after the required time period?



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### What is tested in an A-133 Audit?

#### 9. Section I – Procurement and Suspension and Debarment

- Entities must establish procurement procedures covering the solicitation and award of contracts and subcontracts for goods and services.
- Entities must establish procedures to ensure goods and services are not purchased from suspended or debarred parties.
- Applicable ARRA funded procurements must use iron, steel, or manufactured goods that were produced in the United States.

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### What is tested in an A-133 Audit?

#### 9. Section I – Procurement and Suspension and Debarment

##### – Compliance (Substantive) –

- Test some procurements to determine if the School performed a verification check (checked the EPLS website, etc.).
- For applicable ARRA funded procurements, determine if the school documented that the iron, steel, or manufactured goods were produced in the United States.

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### What is tested in an A-133 Audit?

#### 9. Section I – Procurement and Suspension and Debarment

##### – Internal Controls –

- What prevents procurement transactions from bid-splitting or being otherwise procured without competitive bidding, etc.?
- What prevents covered transactions from being made with entities that are suspended or debarred.
- What prevents applicable ARRA funded procurements from using iron, steel, or manufactured goods that were produced outside the United States?

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### What is tested in an A-133 Audit?

#### 10. Section J – Program Income

- Entities must account for program income related to projects financed in part or in whole by federal funds, ensuring it is recorded and spent in accordance with program requirements.
- Program income is gross income received that is directly generated by a federally funded project during the grant period.
- Program income includes income from fees for services performed, the use or rental of real or personal property acquired with federal funds, the sale of commodities or items fabricated under a grant agreement, and payment of principal and interest on loans made with federal grant funds.

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### What is tested in an A-133 Audit?

#### 10. Section J – Program Income

- Compliance (Substantive) – Test program income to assure it was recorded properly and spent for allowable purposes.
- Internal Controls – What control does your School have in place to assure that program income is complete, and spent for allowable purposes?



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### What is tested in an A-133 Audit?

#### 11. Section K – Real Property Acquisition and Relocation Assistance

- Governments have the right to take ownership of an individual's land and buildings (real property) for use in public improvement projects, such as highways, wastewater treatment facilities, and providing work space for government employees.
- Nonprofits do not have this right; therefore, this requirement does not apply to nonprofits (e.g., charter schools).

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### What is tested in an A-133 Audit?

#### 12. Section L - Reporting

- Compliance (Substantive) - Test certain financial, special, performance, 1512 (ARRA), & FFATA reports to ensure they are accurate, complete, supported by applicable records, and are submitted timely.
- Internal Controls - What ensures all required reports for federal awards are accurate, complete, supported by applicable records, and are submitted timely?

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### What is tested in an A-133 Audit?

#### 13. Section M – Subrecipient Monitoring

- Compliance (Substantive) - Test the pass-through entities (School) subrecipient monitoring procedures to ensure they comply with the various requirements.
- Internal Controls -
  - What ensures the pass-through entity (School) properly monitors their subrecipients?
  - What ensures the pass-through entity (School) makes sure its subrecipients receive a single audit if they expend more than \$500k in a single year (this is a mandatory responsibility of the pass through agency's subrecipient monitoring under A-133)?

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### What is tested in an A-133 Audit?

#### 14. Section N – Special Tests and Provisions

- Compliance (Substantive) - Verify that ARRA expenditures are accounted for separately on the Federal Schedule and Data Collection Form.
- Internal Controls - What internal controls does your school have to prevent ARRA funding from not being separately accounted for and identified on the Federal Schedule and Data Collection Form?

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### A-133 Compliance Letter

- A-133.505 requires the auditor to:
  - Give an opinion as to whether the federal schedule is presented fairly;
  - Report on internal control related to major programs;
  - Give an opinion as to whether the auditee complied with laws, regulations, and provisions of contracts or grant agreements that could have a direct and material effect on each major program.
  - If applicable, issue findings, questioned costs, and/or internal control deficiencies.



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### A-133 Compliance Letter

- A-133.505 requires the auditor to:
  - Give an opinion as to whether the federal schedule is presented fairly;
    - We conducted our audit to opine on the School's financial statements taken as a whole..... The schedule of federal awards receipts and expenditure (the Schedule) is required by the U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.....In our opinion, this information is fairly stated in all material respects in relation to the basic financial statements taken as a whole.



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### A-133 Compliance Letter

- A-133.505 requires the auditor to:
  - Report on internal control related to major programs;
    - IF NO PROBLEMS: We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above.
    - IF 1 MATERIAL WEAKNESS & 1 SIGNIFICANT DEFICIENCY: As discussed below, we identified a certain deficiency in internal control over compliance that we consider to be a material weakness and a deficiency that we consider to be a significant deficiency.



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### A-133 Compliance Letter

- A-133.505 requires the auditor to:
  - Give an opinion as to whether the auditee complied with laws, regulations, and provisions of contracts or grant agreements that could have a direct and material effect on each major program.
    - UNQUALIFIED: In our opinion, the School complied, in all material respects, with the requirements referred to above that could directly and materially affect each of its major federal programs for the year ended June 30, 2012.
    - OR



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### A-133 Compliance Letter

- A-133.505 requires the auditor to:
  - UNQUALIFIED WITH NONCOMPLIANCE REQUIRED TO BE REPORTED: Same as paragraph above, plus: However, the results of our auditing procedures disclosed an instance of noncompliance with these requirements that, while not affecting our opinion on compliance, OMB Circular A-133 requires us to report. The accompanying schedule of findings and questioned costs lists this instance as Finding 2012-03 and 2012-06.
  - OR – Qualified – “complied, except for”
  - OR – Adverse – “Did not comply”



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### A-133 Compliance Letter

- A-133.505 requires the auditor to:
  - If applicable, issue findings, questioned costs, and/or internal control deficiencies.
    - These would be the “comments” at the end of the report in the Schedule of Findings.
    - “Part 3” is “Findings and Questioned Costs for Federal Awards”.
    - Any noncompliance finding must be assessed to determine whether it is reported in the management letter, A-133 letter, and whether it affects the major federal programs opinion (as discussed earlier).



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**Proposed Changes**

- On 2/28/12 OMB issued a *Notice of Proposed Reforms*, which included proposed changes to:
  - OMB Circular A-133
  - Cost Principle Circular A-87
  - OMB Circular A-102
- Items included in the proposal include:
  - Increasing the single audit threshold
  - Reducing the number of compliance requirements (currently there are 14)





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**Questions?**





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# FEDERAL STATE AND LOCAL GOVERNMENTS

Employment Tax Issues  
James Driver, FSLG Specialist

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## FSLG Mission:

- To provide government entities with top quality service
- by helping them understand and comply with applicable tax laws, and
- to protect the public interest by applying the tax laws with integrity and fairness to all

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## TOPICS:

- FRINGE BENEFITS (Employee Reimbursements)
- ACCOUNTABLE PLANS
- EMPLOYEE VS. INDEPENDENT CONTRACTOR

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## WHAT IS A FRINGE BENEFIT?

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## FRINGE BENEFITS:

- **ANY PROPERTY, SERVICE OR CASH** (Other than Salary, Provided by Employer)
  
- **TAXABLE UNLESS EXCLUDED SPECIFICALLY BY LAW**
  - **Example: Medical Premiums**
  - IRC 106**

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## WHAT TO DO?

- ☆ Identify specific benefit provided to employee(s)
- 🕒 Determine if benefit is excluded by law and
- 🕒 Determine if benefit is fully taxable, or only partially

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### Non-Taxable Fringe Benefits:

- No additional cost service
- Qualified employee discounts
- Working condition fringe
- De minimis fringe
- Qualified transportation expenses
- Qualified Moving Expense Reimbursements

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### TAXABLE FRINGE BENEFITS:

- INCLUDE in Employee's wages and on W-2 (Never on 1099-MISC)
- Subject to Federal Withholding, Social Security and Medicare
- Even if benefit is received by/for spouse or child of employee

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### ACCOUNTABLE PLAN

- Business Connection
- Adequate 'accounting' by employee in reasonable time period
- Excess reimbursement returned in a reasonable time period

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## NON-ACCOUNTABLE PLAN:

- Does Not Meet ALL 3 Requirements For An Accountable Plan
- Benefit is Fully Taxable When Paid

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## NON-TRAVEL FRINGE BENEFITS:

- Clothing
- Equipment
- Stipends
- Awards
- Bonuses

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## AWARDS ARE TAXABLE

- CASH PRIZES OR AWARDS are always taxable
- PERFORMANCE AWARDS are always taxable
- NON-CASH:
  - Use Fair Market Value

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## AWARDS EXCEPTIONS:

- Certain Awards transferred to Charities
  - Pulitzer, Nobel Peace Prize
- Certain Employee Achievement Awards
  - Length of Service, Safety - Not Cash
- Nominal Holiday/Special Occasion Awards
  - Coffee mugs, plaques, etc.

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## REMEMBER:

- If the benefit is taxable:
  - Determine the Value of the benefit
  - Include it in Wages and W-2

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## TRAVEL-RELATED FRINGE BENEFITS:

- Per Diem Allowances
  - for lodging, meals and/or incidentals
  - for business related travel
  - while away from home

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## MEAL ALLOWANCES WHILE TRAVELING ON BUSINESS:

- MEALS AWAY FROM HOME:
  - OVERNIGHT
    - Accountable Plan - Not taxable
  - NOT OVERNIGHT
    - Taxable as wages

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## MEAL ALLOWANCES WHEN NOT TRAVELING:

- Meals with business meetings -
  - NOT taxable if:
    - clear business setting
    - directly related
- Employer buys you lunch -
  - Taxable as wages

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## AUTOMOBILE EXPENSES:

- EMPLOYEE CAR USED FOR EMPLOYER'S BUSINESS:
  - 2012 Federal Mileage Rate - 55.5 cents per mile
    - At this rate or less: Non-taxable to Employee
    - Excess over this rate: Taxable to Employee - only the excess amount
    - If Employee chooses not to get reimbursed, cannot claim on personal tax return.  
Substantiation required

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## SUBSTANTIATION:

- Employee reports to Employer:
  - Date, Purpose, Place of each trip
  - Mileage 'at or near the time' incurred
  - Examples: Diary, log, trip sheet, expense statement or similar record
  - Commuting is always taxable - it is non-business travel

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## EMPLOYER-PROVIDED VEHICLE:

- **How Does Employee Account For Personal Use?**
- Personal Use is taxable
- Verified Business Use is not taxable
- Employee can reimburse Employer for personal use

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## Personal Use:

- IF NO RECORD KEPT:
  - Value of ALL use is taxable
- IF RECORD KEPT:
  - Only Personal Use is taxable

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## VALUING PERSONAL USE - THREE RULES:

- Automobile Lease Valuation Rule
- Cents-Per-Mile Rule
- Commuting Rule

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## Web Links to help with Taxable Fringe Benefits

- Taxable Fringe Benefit Guide  
[http://www.irs.gov/pub/irs-tege/fringe\\_benefit\\_fslg.pdf](http://www.irs.gov/pub/irs-tege/fringe_benefit_fslg.pdf)
- IRS Publication 15-B  
<http://www.irs.gov/pub/irs-pdf/p15b.pdf>

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## EMPLOYEE OR INDEPENDENT CONTRACTOR?

- Determine Worker Status
- Fringe benefit rules apply
- Accountable Plan rules apply
- Report payments on information return:
  - W-2 for Employee
  - 1099-MISC for Independent Contractor

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The IRS looks at  
**THREE FACTORS TO  
DETERMINE WORKER  
STATUS:**

- **BEHAVIORAL CONTROL**
- **FINANCIAL CONTROL**
- **RELATIONSHIP OF PARTIES**

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**BEHAVIORAL RELATIONSHIP:**

- **IF the firm provides instructions:**
  - on how to do the job,
  - what hours to work, what days, etc. ,
  - the worker is most likely an **employee.**

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**FINANCIAL CONTROL:**

- If the firm provides an office,
  - all office supplies, computer
  - and other business equipment to the worker,
  - the worker may be an **employee.**

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## RELATIONSHIP OF THE PARTIES:

- If the firm provides benefits:
  - health insurance, life insurance,
  - retirement benefits, 401(k) plan, 403(b)
  - the worker may be an **employee**.

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## INDEPENDENT CONTRACTOR

- Offers services to public
- Operates own business
- Bills for services
- Doesn't have to personally perform work

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## COMMON MISCONCEPTIONS:

- EMPLOYEES CAN BE:
  - Part-time workers
  - Temporary workers
  - Probationary period
  - Workers who say they are Independent Contractors

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## REPORTING FOR EMPLOYEES:

- All Compensation: W-2
  - Awards
  - Back pay
  - Bonuses
  - Severance Pay
  - Taxable Fringe Benefits

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## REPORTING FOR INDEPENDENT CONTRACTORS:

- ALL COMPENSATION FOR SERVICES:
  - On 1099-MISC
  - If **Non-Accountable Plan**:
    - Include Reimbursed Expenses on 1099

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Helpful Web links!

IRS Publication 963

<http://www.irs.gov/pub/irs-pdf/p963.pdf>

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## NO W-9 INFORMATION

- If no TIN provided:
  - Backup Withhold 28%
  - File Form 945
  - Don't issue the check
- Get the W-9 information before job is awarded



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THANK YOU!

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**Dave Yost**  
Auditor of State



*Auditor of State's 2012  
Community School Training*

**Legal Update**

Presented by:  
Stephanie Mingo Miles  
Assistant Legal Counsel

Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

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**Agenda**

- Ethics Opinion Review
- Case Law Review
- Common Findings for Recovery & Noncompliance Citations – How to Avoid
- Unauditable Designation & How to avoid



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**Ohio Ethics Commission  
Advisory Opinion No. 2010-01**

All members of the governing board, officers, employees of a community school are subject, without limitation, to:

- Chapter 102 of the Ohio Ethics Laws
- Ohio Rev. Code Sections 2921.42 and 2921.43 - (including all teachers)
- Added to Ohio Revised Code Section 3314.03 in March of 2007



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**Ohio Ethics Commission  
Advisory Opinion No. 2010-01**

- The OEC issued Opinion 2010-01. This Opinion overruled Opinion 2003-01 as it related to limits on the application of the Ethics Law and related statutes.
- So what does this mean?
  - Conflict of interest, nepotism, public contract restrictions, accepting gifts, etc.
- Consult legal counsel and OEC

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***Richard Cordray, Ohio Attorney General  
vs.  
The International Preparatory School***

- Is a community school treasurer a “public official”?
- If so, Ohio Revised Code 9.39 “strict liability” applies.
- *Supreme Court* decided this case on December 20, 2010
- Community School treasurer is public official

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***Majority of Community  
Schools are in Compliance***

- Most schools implement sound fiscal practices
- Those who are not in compliance generate the most attention, but are not typical
- Laws and regulations are aimed at schools that are out of compliance
- Compliance is important as it effects children, their parents, teachers and the community

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**Findings for Recovery & Noncompliance Citations**

- A **finding for recovery** will be issued where, during the course of an audit, it is found that public money has been illegally expended, has not been accounted for, is due but not collected, or that any public property has been misappropriated or converted.
- A **noncompliance citation** is a finding that school has not complied with some local, state or federal provision.



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**Findings for Recovery  
Who is Liable?**

- The individual directly responsible for the loss or misuse of public funds will be held liable.
- Generally, Ohio law holds certain other parties jointly and severally liable by virtue of holding certain positions:
  - Under Ohio law, any public official who either **authorizes** an illegal expenditure of public funds or **supervises the accounts** of a public office from which such illegal expenditures is made is liable for the amount of such expenditure. Seward v. National Surety Co., 120 Ohio St. 47 (1929); 1980 Op. Att’y Gen. No. 80-074; ORC 9.39; State ex rel. Vill. of Linndale v. Masten, 18 Ohio St. 3d 228 (1985)



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**Findings for Recovery  
Who is Liable?**

- So, who does this apply to?
- Who “authorizes” and/or “supervises the accounts” of the school?
  - Those who make the purchase
  - Those who sign checks
  - Those who approve expenditures/purchases
  - The Treasurer/Fiscal Officer – think about Cordray v. TIPS
  - Documentation and Transparency are paramount



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**Common Findings for Recovery**  
***Proper Public Purpose***

- Government entities may not make expenditures of public monies unless they are for a valid public purpose. State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951).
- Typically, the determination of what constitutes a "proper public purpose" rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable.
- Even if a purchase is reasonable, **Ohio Attorney General Opinion 82-006** indicates that it must be memorialized and must be approved BEFORE the purchase is made.
- Policies

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**Common Findings for Recovery**  
***Proper Public Purpose***

- AOS Technical Bulletins 2003-005 and 2004-002 discuss the requirements imposed by case law and AG Opinions.
- There are two criteria that the entity should consider when making a determination of proper public purpose:
  - (1) the expenditure is required for the general good of all inhabitants (students), meaning its objective is the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all inhabitants, and
  - (2) the primary objective of the expenditure is to further a public purpose, even if an incidental private end is advanced

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**Common Findings for Recovery**  
***Proper Public Purpose & Documentation***

- Most findings for recovery are due to a lack of documentation
- An expenditure may be for a proper public purpose, but lack of documentation makes it impossible to determine what the purpose was
- Credit cards and lack of itemized receipts
- Sam's Club, Office Max, Target, Restaurants, Grocery Stores, and Gasoline – personal or private?
- Remember – transparency and documentation!

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### Common Findings for Recovery *Proper Public Purpose & Documentation*

• **Example:** During the audit period, purchases were made from the Academy's bank accounts for which supporting documentation was not on file and approval of the Governing Board could not be verified. The following transactions were unsupported:

- Food - \$1,500
- Gasoline - \$5,000
- Travel - \$12,000
- Fed Ex - \$1,100
- Retail - \$25,000
- Internet/Computer - \$5,200
- Cell Phone - \$9,200
- Utilities - \$1,700



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### Common Findings for Recovery *Proper Public Purpose & Documentation*

• **Example:** During the audit period cash withdrawals were made from the School's bank account for which supporting documentation was not on file and approval of the Governing Board could not be verified. A total of \$27,200 in ATM withdrawals and checks made payable to "cash" were unsupported.

- Think about who would be liable for this.
- How could documentation have changed the outcome?



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### Common Findings for Recovery *Proper Public Purpose & Documentation*

• **Example:** During the audit period payments were made to Bob Jones in the amount of \$9,257. No employment records could be located for Bob Jones, and the purpose of the payments was not clear. Additionally, no Governing Board approval could be located.

- Was Bob Jones a contractor or consultant?
- Again, documentation was essential.
- When re-creating fiscal records, it is often impossible to determine the purpose of an expenditure.



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**Common Noncompliance & Referrals**  
**Failure to Withhold STRS & SERS**  
**Contributions**

- Teaching and non-teaching employees are required to make the statutorily mandated contributions to STRS and SERS. (see Ohio Rev. Code Sections 3314.10, 3307.26, 3309.23)
- Employee and employer contributions are sometimes found to have been unpaid to the appropriate retirements system. This typically results in a referral to the respective entity.
- Please note** – we no longer make findings for entities that also contribute to Social Security. Although it is the AOS position that this is not fiscally prudent and unnecessary due to the above-referenced law, the IRS has declined to rule on the matter. As such, we acknowledge that this is a management decision and accept an entity's decision to pay Social Security taxes as a precaution


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**Common Noncompliance & Referrals**  
**Failure to Withhold STRS & SERS**  
**Contributions**

- The OEC has held that community schools are subject to the Ohio's ethics laws. Remember earlier discussion
- Among other prohibitions, ORC §§ 102.03 and 2921.42 prohibit public officials from using their public offices to secure contracts, employment, etc. for themselves or relatives/certain associates. These are commonly referred to as "related party transactions."
- A finding that a school has likely violated a provision of the ethics law will result in a referral to the OEC.
- In one example, we saw that an executive director of a community school hired her young relative as an administrative assistant, and set their relative's compensation. The total compensation in this scenario totaled more than 5k during the school year. This resulted in a referral to the OEC.
- Another referral resulted from a governing board member voting to utilize her own company for a school project.


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**Avoiding Findings & Citations**  
**TRUST BUT VERIFY**

- Sponsors should review the governing board's contracts and arrangements to ensure compliance and best practices.
- Governing board must monitor and verify companies and/or employees responsible for fiscal operations.
- Fiscal officers must assure compliance with board policies and accounting procedures.
- This is not a lack of trust – it is a system of checks and balances that help everyone win.


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### Avoiding Findings & Citations *TRUST BUT VERIFY*

- The Executive Director was responsible for many significant operational duties for the Academy during the year – including approving contracts, setting salary schedules, drafting and approving purchase requisitions and reimbursements (including her own), and entering into debt agreements.
- This lack of segregation of duties increases the risk that the Academy's funds could be misappropriated or fraudulent activity could occur and go undetected by management. Again, this is the exception – not the rule. However, this is a safeguard that helps keep public funds safe.
- In this type of situation, we'd recommend that the Board take a more active role. This would allow for segregation of duties which would, in turn, help the organization safeguard its assets. We would also recommend that all expenditures involving the salary of or reimbursement to the Executive Director be approved by the Board.



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### Avoiding Findings & Citations *Board Approval of Expenditures/Policies*

- A way to avoid findings/citations of this nature is for the governing board to adopt formal policies over authorization of expenditures and terms for reimbursements. Those expenditures and policies should be reviewed on a regular basis.
- These types of policies should identify those individuals responsible for reviewing and approving purchases of the entity. Those individuals with such authority should be independent of the purchases. The policy should also include a requirement that supporting documentation be provided, and should specify what documentation is required.
- Additionally, policies on reimbursements should require that prior approval be given to make a purchase for which reimbursement is sought.



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### Avoiding Findings & Citations *Example Policy Provisions*

- upon receipt of original itemized documentation, credit card expenditures will be paid through the Board of Director's bank account."
- "failure to submit an original itemized receipt for any purchase made on the Board credit card shall result in rejection of payment for any and all charges not properly documented."
- "the Board of Directors and the Fiscal Officer are responsible for the supervision, distribution, use and documentation of the credit card."



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### Avoiding Findings & Citations *Treasurer Issues*

- Avoid having your treasurer on both sides of a transaction.
- Example: School contracts with a management company for treasurer and other services. The board determines to contract with the management company for grant writing services. Treasurer signs the check issued to the management company as compensation for grant writing services.

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### Unauditable Designation

- This law requires the AOS to notify the school's sponsor and the ODE when a charter or community school fails to submit documents showing how tax dollars have been spent.
- If financial statements and records are not brought into an auditable condition, state payments to the school will stop.
- This law also prohibits a school's sponsor from opening any additional community schools while their finances are considered to be unauditable.
- Once the situation is corrected, payments to the school resume.
- The AOS declares a public office "unauditable" when officials fail to submit complete financial statements and other documentation needed to support an annual audit.



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### Unauditable Designation

- If the AOS or a public accountant finds that a community school is unauditable, the AOS shall provide written notification of that declaration to the school, the school's sponsor, and the ODE.
- A sponsor that is notified by the AOS that a community school that it sponsors is unauditable shall not enter into contracts with any additional community schools until the records are brought into an auditable condition, and the AOS or a public accountant is able to complete a financial audit of that school.



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### Unauditable Designation

Not later than 45 days after receiving notification by the Auditor of State that a community school is unauditable, the sponsor of the school shall provide a written response to the Auditor of State. The response shall include the following:

- (1) An overview of the process the sponsor will use to review and understand the circumstances that led to the community school becoming unauditable;
- (2) A plan for providing the Auditor of State with the documentation necessary to complete an audit of the community school and for ensuring that all financial documents are available in the future and
- (3) The actions the sponsor will take to ensure the plan is implemented.



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### Unauditable Designation

- If a community school fails to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditable condition within 90 days after being declared unauditable, the AOS shall notify the ODE of the school's failure.
- If the AOS or a public accountant subsequently is able to complete a financial audit of the school, the AOS shall notify the ODE that the audit has been complete.



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### Unauditable Designation

- Upon notification by the AOS that a community school has failed to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditable condition following a declaration that the school is unauditable, the ODE shall immediately cease all payments to the school under ORC Chapter 3314 and any other provision of law.
- Upon subsequent notification from the AOS under that division that either the AOS or a public accountant was able to complete a financial audit of the community school, the ODE shall release all funds withheld from the school under this section.



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### Unauditable Designation

- AOS Technical Bulletin 2007-008 provides guidance
- How to avoid being "unauditable" – need to have the following:
  - An accurate/complete reconciliation of the school's bank and investment accounts to the school's book balance including supporting documentation (e.g., listing of outstanding checks, listing of deposits in transit, support for other adjustments, etc);
  - Approved minutes for all board meetings held during fiscal year;
  - Ledgers with all fiscal year activity posted
  - Supporting documentation (e.g., receipt detail, expense detail, payroll records, leases, capital assets, contract with employees and service providers, etc.); and
  - Financial statements including notes and management's discussion and analysis.



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**Conflicts of Interest  
vs.  
Related Parties**

Presented by:  
Marnie Carlisle, CFAE

[www.ohioauditor.gov](http://www.ohioauditor.gov)

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## Purpose



We will clarify the difference between related party transactions (RPT) and conflicts of interest.

- That is - some RPT are also Ethics violations - no doubt about it!
- However, in no way are all RPT's Ethics violations.
  - Many RPT are beneficial to the government!



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## GASB 56 Related Party Transactions

- What / who are governmental related parties?
  - City council, commissioners, board members, treasurer, superintendent, administrative officials, department heads, etc.
  - Immediate family members of these individuals.
  - Affiliated governmental units such as component units and joint ventures (e.g., County DD Workshops).



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**GASB 56**  
**Related Party Transactions**

- GASB Cod. 2250.102 requires RPT disclosure in the notes to the financial statements.
  - Disclose the *substance* of the transaction rather than merely its legal form when **significant**.


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**GASB 56**  
**Related Party Transactions**

- Examples of RPT with *form-over-substance* considerations include:
  - Borrowing or lending on an interest-free basis or at a rate significantly above / below prevailing market rates.
  - Selling real estate at price significantly different from appraised value.
  - Exchanging property for similar property in a nonmonetary transaction.


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**GASB 56**  
**Related Party Transactions**

- Making loans with no scheduled terms for when or how the loans will be repaid.
- How do we evaluate substance-over-form?
  - Consider whether the transaction would similarly occur between unrelated parties and whether it would be subject to the same terms and conditions.


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**GASB 56**  
**Related Party Transactions**

- GASB 56 requires RPT disclosures be sufficient to permit users to judge whether the RPT was equivalent to an arms-length cost.
- AOS suggests disclosing:
  - The nature of the relationship.
  - A description of the transaction, including dollar amount(s).
  - Amounts due from or to related parties if not otherwise apparent.

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**GASB 56**  
**Related Party Transactions**

- FASB 57 prohibits entities from implying in their disclosure that the RPT were consummated on terms equivalent to those that prevail in arm's-length transactions unless such representations can be substantiated.



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**GASB 56**  
**Related Party Transactions**

- Examples of possible RPT's (*can be entities or individuals*):
  - Buying janitorial supplies from a city council member's company.
  - A (related) volunteer Fire Department charging a Village for fire protection services.
  - A school board operating under authority of a City charter (i.e., City appropriates on behalf of school).
  - Leasing a govt-owned retail complex to the mayor.

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## GASB 56 Related Party Transactions

- Examples of possible RPT's:
  - Selling city park land to a council member.
    - GASB 56 requires identification and disclosure in the F/S to avoid the possible distortion that could arise from such transactions being made at less than an arm's length.
    - **So far, nothing illegal or unethical!!!!**



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## GASB 56 Related Party Transactions

- GASB 56, *Related Party Transactions*, applies only to significant transactions.
- So, if the Mayor used GF \$ to pay his nephew \$50 to mow the property, might be an ethics problem and even noncompliance / referral; however, it is NOT a RPT requiring disclosure.
  - *Do not clutter notes with trivia!*



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**THE MORAL OF THE STORY:**  
***FASB and GASB weren't even remotely thinking about ethics violations when they created these standards.***

- - Once upon a time an auditor audited a new brokerage service subsidiary of a major Bank.
  - The financials showed they were very profitable, but they were misleading without RPT disclosure.
  - Only profitable because the major bank gave them free office space, free supplies, free everything.



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### GASB 56 Related Party Transactions

- RPT *sometimes* represent illegal payments or ethics violations.
- Because of heightened public interest in illegal RPT's, auditors will consider whether such RPT are significant risks in an audit.

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### Ohio Ethics Law

- The Ohio Ethics Law and related statutes are found in ORC Chapter 102 and Sections 2921.42 and 2921.43.
- These laws generally prohibit public officials and employees from misusing their official positions for their own personal benefit or the benefit of their family members or business associates.

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### Ohio Ethics Law

- The Ohio Ethics Law and related statutes prohibit an official from:
  - Selling goods or services to the agency she serves unless she can meet one of two exceptions to the law; and
  - Using her position to get a public contract or payments from the agency.
  - *Non-elected officials and employees may be exempt in certain limited circumstances.*

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## Ohio Ethics Law

- A public contract exists whenever a public agency buys or acquires goods or services, regardless of whether there is a written contract.  
Examples:
  - Purchases of goods (e.g., computers, fire trucks, & paper);
  - Purchases of services (e.g., insurance, consulting, & accounting);
  - Any employment, whether full time, part time, temporary or permanent; and
  - Grants (because the agency acquires services by virtue of the grant).

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## Ohio Ethics Law

- Authorization or use of authority to secure public contract for official, family member or business associate is prohibited.
- Use of authority could include:
  - Recommending a vendor
  - Reviewing applications
  - Writing bid specs
  - Filling out purchase orders
  - Signing a contract

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## Ohio Ethics Law

- There are two exceptions under which interest in a public contract will not be prohibited:  
(1) Stockholding Exception – No prohibited interest if stockholding is less than five percent and file an affidavit.

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## Ohio Ethics Law

(2) Four-Part Exception – Must meet **all four parts** for this to apply:

- *Part 1* – Good or services are necessary;
- *Part 2* – Goods or services are part of a continuing course of dealing or unobtainable elsewhere for same or lower cost;

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## Ohio Ethics Law

- *Part 3* – Preferential or same treatment as others; and
- *Part 4* – The transaction is conducted at an arm's length.
  - Full knowledge of official's interest in the sale of goods or services.
  - Official has taken no part in the deliberations or decision.

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## Ohio Ethics Law

- Employment is a public contract.
- Hiring family is a felony.
- Public officials cannot approve public contracts with family members.
- Officials cannot use their authority to secure any employment for family.

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## RPT vs. Ethics?

A county official or employee operates a paving company and contracts with the county for road-paving work.

- RPT?
- Conflict of Interest?



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## RPT vs. Ethics?

A county official or employee operates a paving company and contracts with the county for road-paving work.

- RPT – Yes, requires disclosure.
- Conflict of Interest? - The county official or employee may be in violation of the public contract prohibitions of the Ethics Law **unless** he can affirmatively show that he meets the limited conditions outlined in previous slides.



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## RPT vs. Ethics?

A teacher enters into a contract with the school district where she works to provide Title I Supplemental Educational Services (SES) (i.e., tutoring).

- RPT?
- Conflict of Interest?



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## RPT vs. Ethics?

A teacher enters into a contract with the school district where she works to provide Title I Supplemental Educational Services (SES) (i.e., tutoring).

- RPT? **No, since a teacher is not an administrator or member of the governing board.**
- Conflict of Interest? **Prohibited unless the teacher can meet the four-part test, including providing the SES at a lower cost than any other SES provider.**



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## RPT vs. Ethics

*So what about the RPT examples from slide 9?*

- Buying janitorial supplies from a city council member's company.
- Leasing a government-owned retail complex to the mayor.
- Selling city park land to a council member.



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## RPT vs. Ethics

- No Ethics violation as long as each of these RPT's were conducted at an arm's length.
  - Full knowledge of official's interest in the sale of goods or services.
  - Official has taken no part in the deliberations or decision.
- The burden is on the public official claiming exemption to demonstrate compliance.



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**ESEA Maintenance of Effort**  
 Center for School Improvement  
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**Maintenance of Effort**

Local Educational Agency (LEA) may receive funds under a covered program for any fiscal year if State Educational Agency (SEA) finds that either the **combined fiscal effort per student** or the **aggregate expenditures** from state and local funds for the preceding fiscal year was not less than **90 percent** of the combined fiscal effort or the aggregate expenditures for the second preceding fiscal year.




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**Maintenance of Effort**

**In addition to Title I, Part A, MOE requirements of section 9521 apply to:**

- Title I, Part B, Subpart 3, Even Start
- Title I, Part D, Neglected, Delinquent
- Title I, Part F, Comprehensive School Reform
- Title II, Part A, Improving Teacher Quality State Grants
- Title II, Part D, Educational Technology State Grants
- Title III, Part A, English Acquisition State Grants
- Title IV, Part A, Safe and Drug-Free Schools/Communities
- Title IV, Part B, 21<sup>st</sup> Century Learning Centers
- Title VI, Part B, Subpart 2, Rural Education

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**Failure to Meet Requirement**

**SEA must reduce the amount of allocation** of funds under a covered program in any fiscal year **in exact proportion by which LEA fails to maintain effort** by falling below 90 percent of the combined fiscal effort per student and the aggregate expenditures (using measure most favorable to LEA).

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**Expenditures**

In determining whether LEA has maintained fiscal effort, SEA must consider LEA's expenditures from state and local funds for free public education.



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**Expenditures**

**Include:**

- Instruction
- Administration
- Attendance and Health Services
- Pupil Transportation Services
- Operation and maintenance of plant
- Fixed charges
- Net expenditures to cover deficits for food services and student body activities

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## Expenditures

### Exclude:

- Community services, capital outlay, debt service
- Expenditures from federal funds for which LEA is required to account to federal government directly or through SEA
- Supplemental expenses made as result of Presidentially declared disaster




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## Data Sources

### Average Daily Membership (ADM)

- EMIS period **N** (Yearend) reporting

Reports are located in the SDC behind SAFE account

Secure Data Warehouse>Shared Reports>Reports for Analysis>Enrollment  
 School Enrollment (ADM) – Current Data  
 School Enrollment (ADM) – Customizable

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## Data Sources

### General Fund (GF)

- EMIS period **H** (July) reporting
- EFM (expenditure flow model)
- USAS fund codes: 001, 016 and 494

Reports can be requested from local ITC sites

ITC\_IRN\_COORD\_YYYYMMDD.TXT\_YYYYH\_FIN\_EFM\_BLDG\_EXP\_GF  
 ITC\_IRN\_COORD\_YYYYMMDD.TXT\_YYYYH\_FIN\_EFM\_EPP\_GF  
 ITC\_IRN\_COORD\_YYYYMMDD.TXT\_YYYYH\_FIN\_EFM\_INC\_GF

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### Document, Document, Document



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### Example of Calculation

DIST_NAME	ADM(2010)	GF(2010)	ADM (2011)	GF(2011)	PPE 10	PPE 11	GF MOE	PPE MOE
LEA 1	1,514.78	12,276,085	1499.89	10,747,253	\$ 8,104.20	\$ 7,165.36	-2.73%	-1.76%

Compare FY11 GF (\$10,747,253) to 90% of FY10 GF (\$11,048,477).

Compare FY11 PPE (\$7,165.36) to 90% of FY10 PPE (\$7,293.78).

Calculation is performed in FY12. LEA may apply for a waiver.

The percentage by which FY13 ESEA covered programs allocations must be reduced if the LEA does not ask for waiver or does not receive approval of the waiver is: **1.76%**

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### How can I prevent my school from failing the Maintenance of Effort requirement?



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## Waiver

Secretary may waive maintenance of effort requirements if waiver is determined to be equitable due to:

- Exceptional or uncontrollable circumstances such as natural disaster
- Precipitous decline in financial resources of the LEA

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## New for FY13

Web-Based MOE application:

- Under SAFE account
- Automated Calculations
- Automated Messages/Reminders
- History Log
- Audit Log

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## Questions?



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