

# Human Resources Concepts the Governing Body Needs to Know

## Governance Training Series

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- Nicole, a Partner at Feldesman Tucker Leifer Fidell LLP, has been with the firm since 2008 and a practicing attorney since 2003.
- She is counsel to numerous federal grantee organizations across the country representing her clients in federal litigation as well as providing counsel on compliance and transactional matters.
- Her representative activities include reviewing and revising contracts, subrecipient agreements, procurement policies and procedures, and other grant-related documents to ensure compliance with programmatic requirements and other federal regulations. Nicole also advises clients on the federal requirements for grant related construction and renovation projects including issues related to filing notices of federal interest.
- Prior to joining the firm, Nicole worked as a legal services staff attorney, representing low-income clients in domestic violence matters, family law issues, public housing and landlord-tenant disputes, and consumer cases.

# DISCLAIMER

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- Please do not record today's training session.

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# Conflicts of Interest

# BOARD CONFLICTS OF INTEREST

(SEC. 642(c)(1)(C))

- **Cannot have a “financial conflict of interest”** with the HS agency (including delegates)
- **Cannot “receive compensation** for serving on the governing body or for providing services to the [HS] agency”\*
- **Cannot “be employed”** (or have immediate family members employed) by the HS agency (or delegate)\*
- Must **“operate as an entity independent of staff** employed by the [HS] agency”
- **\*Note:** exceptions for elected or appointed officials if also appointed to HS Board. **Note also, IRS rules per preamble!**

# POLICY COUNCIL CONFLICTS OF INTEREST - §1301.3(b)(2)

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“The program must ensure members of the policy council, and of the policy committee at the delegate level, do not have a conflict of interest pursuant to sections 642(c)(2)(C) and 642(c)(3)(B) of the Act.”

## Under HS Act ---

- PC members may “not have a conflict of interest with the Head Start agency” (including delegates)
- May “not receive compensation for serving on the Policy Council or for providing services to the Head Start agency”

# EXCEPTION FOR POLICY COUNCIL EMPLOYMENT

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“Staff may not serve on the policy council or policy committee at the delegate level except parents who **occasionally substitute** as staff. In the case of tribal grantees, this exclusion applies only to tribal staff who work in areas directly related to or which directly impact administrative, fiscal, or programmatic issues.”

§1301.3(b)(2)

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# Hiring

## When to involve the Governing Body and Policy Council



# GOVERNANCE ROLES

## Board

642(c)(1)(E)

*“reviewing and approving... personnel policies of such agencies regarding the hiring, evaluation, termination, and compensation of agency employees...”*

*“approving personnel policies and procedures, including policies and procedures regarding the hiring, evaluation, compensation, and termination of the **Executive Director, Head Start Director, Director of Human Resources, Chief Fiscal Officer,** and any other person in an equivalent position with the agency”*

## Policy Council

642(c)(2)(D)

*“**approve** and **submit to the governing body... decisions...***

Program personnel policies and **decisions regarding the employment of program staff**, consistent with paragraph (1)(E)(iv)(IX), including standards of conduct for program staff, contractors, and volunteers and **criteria** for the **employment and dismissal** of program staff.”

# INTERVIEW PROCESS

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- Decide whom to interview
  - Compare qualifications to posting
  - Must consider current and former program parents for vacancies for which such parents **apply** and **are qualified**.
- Decide who will be at the interview
  - Head Start parent?
  - No requirement that PC member must be in interviews!!!
- Consider confidentiality

# DON'T FORGET AGENCY APPROVAL

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- Obtain Regional Office approval if Key Personnel Under 45 C.F.R. 75.308(c)
  - Change in the Project Director requires prior approval
- ACF-PI-HS-06-01 defines “key personnel” as “the Head Start Director and, where salaries are covered principally (i.e.; greater than 50%) by the Head Start grant, the Executive Director and the Chief Financial Officer.”

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# Firing

## When to involve the Governing Body and Policy Council

# STEPS TO TERMINATE HEAD START EMPLOYMENT

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**Step 1:** Ask “What ‘criteria’ have you laid out in your personnel policies?”

- ✓ Make sure you have the ability to suspend individuals with or without pay
- ✓ Administrative leave is an important tool while you investigate employee’s performance and other things

# STEPS TO TERMINATE EMPLOYMENT, CON'T.

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## **Step 2:** Exhaust grievance process

- ✓ If you don't like your process, now is not the time to fix it

## **Step 3:** Seek PC approval, if it is necessary and applicable

- ✓ Note that this occurs at the PC's meetings, so PC runs it
  - ✓ For personnel matters, go into Executive Session
- ✓ Keep track of decisions and documents
  - ✓ Don't let documents escape if have to hand them out
- ✓ Carefully discuss confidentiality of process

# STEPS TO TERMINATE EMPLOYMENT, CON'T.

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**Step 4:** If Board is (or needs to be) involved, make sure you involve them

- ✓ Typically, not the case
- ✓ Certain circumstances where this applies

**Step 5:** Deliver the bad news

# TIPS FOR GOVERNANCE AND HR

## **Board and PC Bylaws should incorporate HS Act requirements**

- ✓ Personnel Policies approved by PC/Board
- ✓ PC approves Hiring decisions
- ✓ Exempt out 4 top positions
- ✓ Not involved in individual termination decisions

## **Board should evaluate ED/CEO every year, but:**

- ✓ Stay away from other positions
- ✓ ED/CEO should oversee (evaluate/hire/fire) HS Director, CFO, HR Director



# TIPS FOR GOVERNANCE AND HR

## Personnel Committee is Essential

- ✓ Need Committee Charter and Minutes of Meetings
- ✓ Remember, PC or Board can't delegate its full body rights to the Committee; committee gets more detail and makes recommendations; PC still has to approve

## Maintain Confidentiality

- ✓ Incorporate good practices now

## Demonstrate Clear Approvals

- ✓ Agenda
- ✓ Sign-In
- ✓ Minutes with clear resolutions

## Don't forget EPLI and D&O Insurance

- ✓ Employment Practices Liability Insurance
- ✓ Directors and Officers coverage

# CONTACT INFORMATION

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