White Paper: Meaningfully Addressing Staff Competency and Conduct Issues in an Era of Increased School Accountability

by
Randall A. Eden
President & Co-Founder, UpSlope Solutions LLC

Operational Staff Development for K-12 School Leadership

Underperforming or non-performing public school districts and charter organizations generally follow one of two paths toward increased student achievement

Because of federal and state mandates demanding more accountability from public school districts and charter organizations in recent years, school leaders are under increasing pressure to demonstrate consistent year-over-year increases in student achievement (i.e., "Adequate Yearly Progress" or AYP) across all demographic groups based on the aggregated results of high-stakes testing and other performance data. As a part of this process, each Local Education Agency (LEA) is categorized by the State Education Agency (SEA) with labels such as "exceeding", "performing", "underperforming" or "nonperforming" on an annual basis – characterizations that not only have significant political consequences, but also directly impact the degree of independence with which any LEA is allowed to operate on a prospective basis.

Those LEAs designated as "performing" or better by their SEAs will typically seek to address a smaller numbers of performance concerns within the context of a defined School Improvement Plan (SIP) for one year, three years, five years or another prescribed period of time. As a general rule, SIP objectives establish a course of action ("inputs") in one or more targeted areas (e.g., teaching, learning, resource allocation, staff development, data management or assessment) linked to objectively measurable goals or outcomes ("outputs").

In contrast, LEAs designated as "underperforming" or "non-performing" by their SEAs are usually required to address multiple impediments to student achievement in a coordinated manner within the context of a Comprehensive School Reform (CSR) initiative. Those public school districts and charter organizations engaged in the CSR process must[1]:

- Identify the resource(s) that will be used to support and sustain the plan;
- Develop an actionable plan for identifying or sustainably remediating specific performance deficit(s) in coordination with outside partners demonstrating core competencies in scalable education reform;
- Establish measurable goals and benchmarks for plan success;
- Employ either proven, research-supported strategies for raising performance or methodologies that demonstrate strong evidence of a linkage to increased student achievement;
- Solicit "buy-in" for the plan among both internal and external stakeholder groups;
- Ensure that adequate support and ongoing, high-quality staff development are provided for the administrators, teachers and/or designated staff responsible for implementing the plan; and
- Collect relevant data and evaluate the selected reform strategies for their impact on student achievement on an annual basis.

School improvement or reform efforts require a large-scale commitment to an ongoing, data-driven process for increasing student performance

Maximizing the probability of success for either of these paths toward increased student achievement requires that underperforming and non-performing LEAs adopt what could best be described as a Continuous Program Improvement (CPI) model of school improvement or reform. This data-driven model for generating consistent increases in "input quality" (i.e., curriculum and instruction) in order to positively affect "output quality" (i.e., high stakes test scores) represents the essence what is being asked of all 21st Century Schools by the accountability movement.

From the CPI perspective, measures intended to effect or sustain meaningful change are implemented within the current iteration of a deliberate, ongoing and cyclical quality assurance process. By contrast,

traditional models of school improvement or reform typically implement multiple disconnected projects with finite program "start" and "end" dates all at once – an approach that is more likely to generate only temporary benefits at best.

Perhaps two of the greatest benefits of the CPI approach for raising student achievement are: (1) that the paradigm fosters an inquiry-based approach to student achievement problems by administrators, teachers and designated staff focused on problem identification, solution implementation and results monitoring over relatively short timeframes; and (2) that the model allows school leaders to identify and address a variety of persistent student achievement barriers that have the potential to jeopardize the success of the SIP or CSR initiative. Examples of the general types of operational concerns that either form the initial basis of an SIP or CSR initiative or later threaten its sustainability include, but are not limited to, the following:

Planning deficits	District or building level	• Improper alignment of curriculum or resources to state standards
		• Discrepancy between cognitive level of LEA benchmarks and state standards
		• Excessive use of "soft" curricular materials or other resources
	Classroom level	• Utilization of non-approved curriculum or instructional resources
		• Underdeveloped long-, mid- and/or short-term instructional plans
		• Inadequate differentiation of instruction among student subpopulations
Implementation deficits	District or building level	• Inability to maintain a high level of campus safety
		• Persistent negative perceptions with regard to school climate
	Classroom level	• Ineffective instructional strategies contributing to low student performance
		• High incidence of classroom management or classroom discipline problems
		• Low levels of parent/guardian involvement
Assessment deficits	District or building level	• Invalid or unreliable LEA benchmark assessment items
		• Incomplete data points to support informed decision making
		• Insufficient infrastructure to collect relevant data
	Classroom level	• Disconnect between classroom and LEA assessment strategies
		• Administration of culminating tasks prior to demonstration of standards mastery
		• Lack of assignment or other formative assessment rigor
Evaluation deficits	District or building level	• Excessive weighting (or dismissal) of qualitative data
		• Reaching unsupported conclusions about the success or failure of an initiative
		• Neglect of valid conclusions to drive the next program improvement cycle
	Classroom level	• Inclusion of student behavioral data within the academic grading schema
		• Large discrepancy between course grades and state CRT performance
		• Failure to adjust instruction when significant non-mastery is evident

Targeted remediation of staff is an important component of most CPI-oriented school improvement or reform efforts, but it often fails to produce AYP gains on its own

In many instances, evidence uncovered during CPI-oriented school improvement or reform cycles reveals that the ineffective action(s) or behavior(s) of administrators, teachers and/or designated staff are causing (or contributing to) low levels of student achievement on either a direct or an indirect basis. In such cases, the overall success of the SIP or CSR initiative is likely to require targeted remediation for the group(s) of staff involved – or, in some cases, for all employees within the underperforming or non-performing LEA.

Targeted remediation should result in performance gains if the program is: (1) clearly relevant to the underlying school performance issue(s); (2) supported by compelling research and methodologies; and (3) followed by the necessary operational modifications needed to ensure that the strategies and/or skills gained by staff are actually being implemented in practice. Not infrequently, however, remediation efforts fail to produce subsequent changes in the action(s) or behavior(s) of one or more staff members, and if it can be demonstrated that all necessary prerequisites for staff success with the targeted strategies and/or skills are in place, only two possible reasons for this failure remain: the individual(s) involved either: (1) remain unable; or (2) remain unwilling to put the strategies and/or skills into practice for whatever reason(s).

A demonstrated ability to put new strategies and/or skills into practice represents the first expectation of teachers within an SIP/CSR-focused "Highly Qualified Educator" program

Since the inability or unwillingness of any staff member to modify his or her action(s) or behavior(s) in response to targeted remediation efforts speaks directly to the professional competency of the individual involved, it stands to reason that cooperation with staff development and other measures intended to improve student achievement should be closely linked to state and local "Highly Qualified Educator" (HQE) programs where licensed or certified staff are concerned. In most 21st Century Schools, however, school improvement or reform efforts remain disconnected from HQE programs.

A brief review of the evolution of state HQE programs over the past decade not only explains why this is the case, but also provides an understanding of the types of operational changes that must be implemented to ensure that SIPs and CSR initiatives are being fully implemented on the "front lines" by highly qualified administrators and teachers.

Well publicized for its student-focused accountability provisions, the *Reauthorization of the Elementary and Secondary Education Act of 2001* (also known as the "No Child Left Behind Act" or NCLB) also mandated assurances of "educator quality" by SEAs and LEAs as a condition to ongoing eligibility for Title I funding. These professional competency provisions of NCLB were based on solid research that linked educator quality to student achievement [2,3,4].

Early during the Bush Administration, the U.S. Department of Education (USDE) provided policy guidance to assist SEAs and LEAs in determining whether (or not) licensed or certified staff were professionally competent in the form of *High, Objective, Uniform State Systems of Evaluation* (HOUSSE) standards. These standards require that all educators demonstrate a minimum level of professional competency in the following four areas: (1) the referencing of instructional planning, delivery and assessment to standards; (2) the use of evaluation data to drive differentiation of instruction; (3) the use of effective classroom management skills; and (4) the possession of grade-appropriate subject matter knowledge.

Between 2004 and 2006, most states elected to structure their HQE programs in terms of input and process measures such as years of experience, receipt of awards, pedagogies used, workshops attended and service on various committees – criteria which correlate poorly with actual professional competency[5]. Based on their failure to address the intent of NCLB and the HOUSSE guidelines, virtually all state HQE programs were rejected by Secretary Spellings in 2006, and in response, state HQE programs have more recently focused on determining "highly qualified" status on the basis of endorsement area-specific competency test results.

The successful remediation of persistent performance deficiencies represents the second expectation of teachers within an SIP/CSR-focused "Highly Qualified Educator" program

Although competency testing is clearly superior to earlier approaches offered by state HQE programs, it may be argued that test performance alone is an inexact predictor of professional competence in practice. Educators may possess the knowledge and skill sets required to engage in "highly qualified" teaching, yet remain unable or unwilling to demonstrate an improvement in student performance at the classroom level or student level.

As a result, stakeholders in public school districts and charter organizations have called on SEAs and LEAs to make the paradigm shift toward assigning "highly qualified" status on the basis of more performance-oriented criteria that have a direct and measurable impact upon student achievement. Critics point out that any attempt to determine competency based solely on classroom level student achievement data, however, would be inherently unfair since this metric is affected by variables outside of the control of the educators being evaluated.

Both of these concerns can be effectively addressed by determining whether or not an administrator or teacher is "highly qualified" based upon his or her demonstration of satisfactory progress toward targeted remediation objectives established across multiple work domains within a comprehensive Staff development Plan (SDP) for each educator. Such a paradigm, often referred to as "No Teacher Left Behind" or "IEPs for Educators", could also be used to establish pay for performance guidelines at the state or local level in an equitable manner.

Under the SDP model, staff development opportunities must be meaningfully geared toward the cultivation of "highly qualified" administrators and teachers and must display characteristics such as the following:

- Organization as deliberate, ongoing processes focused on making administrators or teachers (and, subsequently, students) successful;
- Delivery of formal learning opportunities in short, on-demand or concentrated courses with immediate professional applicability;
- Participation in regular cycles of evidence gathering, feedback or other coaching, metacognitive reflection, formative assessment and evaluation against clearly defined program objectives linked to clear professional standards (e.g., INTASC); and
- Placement of special emphasis on the role of staff members as active participants in their own progression through the program and of the artifacts they produce during the experience, a concept gaining popularity in higher education as the management of "academic currency."[6]

From this vantage point, the overarching goal of each SDP should be to expand the knowledge base and skill set of the educator involved so that he or she will be a direct contributor to the underperforming or non-performing LEA's primary mission of demonstrating consistent year-over-year increases in student achievement.

A positive response to progressive employee discipline in cases of chronic lack of professional competence represents the third expectation of teachers within an SIP/CSR-focused "Highly Qualified Educator" program

Because of its direct negative impact on student achievement, underperforming or non-performing LEAs must have a clear plan in place to address competency issues that persist despite prior staff development and

individualized remediation efforts. In most cases, this plan will involve progressive disciplinary action for the employee(s) involved.

Although the types of employee discipline used to address any lack of professional competence are the same as those used to address incidents involving employee misconduct, care must be taken by the underperforming or non-performing LEA to make a clear distinction between the completely remedial focus of disciplinary action taken for the former and the consequential nature of discipline executed for the latter. Four examples of the grounds upon which disciplinary action might be taken for lack of professional competence in a meaningful HQE program include the following: (1) insufficient knowledge or skills to meet the HOUSSE standard; (2) ineffectiveness in meeting the HOUSSE standard; (3) inconsistency in meeting the HOUSSE standard; or (4) refusal to meet the HOUSSE standard (a charge which carries a high burden of proof).

A defensible Code of Employee Conduct is a critical pre-requisite to disciplinary action for chronic lack of professional competence in underperforming or non-performing LEAs

Both the expectation(s) for remediation and the possibility of progressive employee discipline for failure to remediate should be clearly outlined in a comprehensive Code of Employee Conduct whenever the grounds for employee discipline involve a lack of professional competence, since policy errors of omission or commission in this regard could either limit an underperforming or non-performing LEA's ability to execute employee discipline or expose the public school district or charter organization to later liability once the need for disciplinary action arises. Examples of the types of questions that school leaders must take into consideration when developing or revising policies and procedures related to the discipline of lack of professional competence include, but are not limited to, the following:

- Are the disciplinary policies and procedures currently in use within the underperforming or non-performing LEA fully consistent with federal law, state statute and higher level policy guidance?
- In what ways might the underperforming or non-performing LEA, its leadership or its staff be held liable (e.g., by the justice system, by stakeholders or by others) for taking disciplinary action in cases of lack of professional competence?
- In what ways might the underperforming or non-performing LEA, its leadership or its staff be held liable (e.g., by the justice system, by stakeholders or by others) for neglecting to take disciplinary action in cases of lack of professional competence?
- Is the underperforming or non-performing LEA a party in a prior contract (e.g., the negotiated agreement) that may contain provisions which conflict with disciplinary action for lack of professional competence?

While virtually all public school districts and charter organizations in the U.S. have established Governing Board policies and administrative procedures in place pertaining to the employee disciplinary process., either these or the employee handbooks based on upon them are found to be outdated, disorganized or underdeveloped upon close inspection. As of 2008, less than 10% of all LEAs in the U.S. have adopted formal Codes of Employee Conduct that contain the following key elements:

- Performance expectations for licensed/certified and classified staff;
- Definitions, examples and student achievement impacts for each of the grounds for employee discipline within the LEA;
- Alignments of these grounds to federal law, state statute or relevant policy guidance;
- Descriptions of the types of employee discipline that an employee may face once any of the grounds have been validated;
- Due process, procedural and documentation concerns before, during and after disciplinary action; and
- A defensible progressive discipline schema for addressing chronic performance deficiencies.

A defensible Code of Employee Conduct is a also a critical pre-requisite to disciplinary action for employee misconduct

As with cases of lack of professional competence, incidents involving employee misconduct can also have either a direct or an indirect impact on student achievement. In underperforming or non-performing LEAs, acts of employee misconduct not only have the potential to undermine school improvement or reform efforts, but may also to expose the public school district or charter organization to liability based on the actions – or inactions – of school leaders in response to these types of incidents for reasons that include, but are not limited to, the following:

- **Disciplinary action in cases involving employee misconduct often carries significant legal risk.** In 2008, the Council of School Attorneys asked its members to identify the most common types of legal issues faced by the K-12 education community today. Overwhelmingly, the group ranked issues such as teacher discipline, workplace discrimination and termination at the top of that list.
- **Claims of employee rights violations during the disciplinary process are commonplace.** On an annual basis, approximately 75% of all claims brought against LEAs are raised by certified and classified employees, and by conservative estimates, 60% of all public school districts and charter organizations will be sued at some point by an employee. In a substantial number of these cases, due process or other claims based on the actions or behaviors of school leaders before, during or after disciplinary action are involved.
- **Defense of these claims is costly – even when no evidence of wrongdoing is present and even in "right to work" states.** Across the U.S., the cost of defending against, settling, or paying out all of these claims was estimated at a staggering $3 billion annually in 2007. In an era of tight budgets and worsening fiscal constraints, preventable grievances and lawsuits further reduce the ability of any public school district or charter organization to achieve its primary mission: Demonstrating an increase in student achievement.

  In the state of Arizona, for example, the Arizona Risk Retention Trust ("The Trust"), the state's largest pooled insurance fund, managed approximately 4,000 claims for all causes in 2004 – an estimated 267% increase from 1998. Given the national data, it can be inferred that about 3,000 of these cases involved employment-related matters.

  Because The Trust also reported an average claim management cost of $5,800 during this timeframe, it can also be inferred that employment-related litigation cost insurers, public school districts and charter organizations – and, ultimately, the taxpayers of the state – $17.4 million in 2004. Assuming only the same rate of increase observed from 1998-2004, a constant rate of increase in the number of claims and no increase in The Trust's per-case management costs, this figure was estimated at $26.2 million for 2007 in Arizona – and may approach $46.5 million in 2010.

  Applying this same model to the state of Oklahoma, it is estimated that the costs of threatened or actual employee discipline-related litigation was approximately $17.1 million in 2007. On a prospective basis, this figure is likely to approach $30.2million in 2010 – a 78% increase in only three years.

Developing a comprehensive "Highly Qualified Educator" program in a difficult economic climate

Finally, in the current era of tight budgets and worsening fiscal constraints, the level of SEA or LEA investment required to institute a meaningful HQE program is often perceived as prohibitive. While the realities of the 2008-09 economic crisis are forcing many public school districts and charter organizations to institute sweeping reductions in force (RIFs) at the same time that the AYP "bar" is being set higher, it is more critical that staffing decisions are made based on educator quality than at any time in the recent past.

Not wanting to allow state and local budget shortfalls to derail the accountability movement, the Obama Administration signed into law the $44 billion *State Fiscal Stabilization Fund Program* (SFSFP) as authorized by the *American Recovery and Reinvestment Act of 2009* (ARRA). Shortly thereafter, Secretary Duncan published policy guidance[7] pertaining to SEA and LEA spending under these federal programs.

The overall goals of the SFSFP were to stimulate the economy in the short term and to invest in education and other essential public services to ensure the long- term economic health of the nation. Four principles guide the distribution and use of ARRA/SFSFP funds:

- Spend funds quickly to save and create jobs.

- Improve student achievement through school improvement and reform.

- Ensure transparency and accountability and report publicly on the use of the funds.

- Invest one-time ARRA/SFSFP funds thoughtfully to minimize the "funding cliff."

These "stimulus" funds are meant to promote school improvement and reform through initiatives and programs that achieve the following outcomes without unsustainable future budget commitments:

- Improving teacher effectiveness and commitments that all schools have highly qualified teachers.

- Attaining progress toward college and career- ready standards and rigorous assessments that will improve both teaching and learning.

- Increasing student achievement in low- performing schools by providing intensive support and effective interventions in those schools.

- Enhancing data collection and information gathering through the establishment of more transparent systems to track student learning, teacher performance and college or career-readiness.

As LEAs begin to examine a variety of operational strategies and best practices for their potential to improve – or continue improving – student performance using "stimulus" funds, the role of staff development in achieving SFSFP outcomes is gaining increased attention. In one recent survey of school leaders, for example, 47% identified staff development spending under the SFSFP as a "priority", while 37% viewed SIP or CSR initiative-related training as a "high priority."[8]

Regardless of whether SFSFP or other funding sources are used to provide staff development, leadership teams should examine any staff development program candidate from multiple perspectives prior to its development or selection to ensure maximum return on investment (ROI) for these planned expenditures. Examples of questions that might be asked during a program candidate audit from this perspective include, but are not limited to, the following:

- What is the compelling research basis for the program?
- Does the program truly qualify as a meaningful "job-embedded" staff development opportunity?
- Can the program simultaneously address multiple related operational deficits wherever possible?
- How does the program target the actions and behaviors of those "front-line" personnel in closest proximity to the operational deficit(s) involved?
- Does the program provide participants with strategies and skills which they haven't yet received rather than merely repeating prior formal or informal training?

- Will the program naturally create a subsequent context for peer collaboration and group problem solving?
- Is the LEA prepared to follow the program with a data-driven plan to effect institutional change in this/these area(s)?

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About UpSlope Solutions

For additional information about how UpSlope Solutions has supported the efforts of school leaders to effect institutional change in well over 1,000 underperforming and non-performing schools in 13 states across the country, visit www.uplopes.com.

Contact information

Randall Eden, President & Co-Founder
UpSlope Solutions, LLC
P.O. Box 10683
Glendale, AZ 85318-0683
(602) 863-4905 voice
(800) 599-0350 toll free
(623) 374-4881 fax
(602) 315-0386 mobile
raeden@upslopes.com
www.upslopes.com

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