BOARD AGENDA ITEM
October 25, 2016

SUBJECT:

Changes to Policy GDBC and Administrative Rule GDBC-R – Support Staff Supplemental Pay/Overtime – Final Reading

BACKGROUND:

On May 8, 2016 the United States Department of Labor issued a final rule (81 FR 32391) updating the Fair Labor Standards Act (FLSA) concerning exemptions to overtime regulations. The new rule sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South ($913 per week; $47,476 annually for a full-year worker). The rule takes effect December 1, 2016, and will be updated every three years thereafter.

ADMINISTRATIVE CONSIDERATION:

The current policy and administrative rule are based on the standard that was in place prior to this final rule. The proposed revisions bring the policy and rule in line with the updated FLSA and clarify the process for approval and compensation for overtime.

RECOMMENDATION:

Adopt the proposed policy on final reading

ATTACHMENT:

Policy GDBC – Support Staff Supplemental Pay/Overtime
Administrative Rule GDBC-R – Support Staff Supplemental Pay/Overtime

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SUPPORT STAFF SUPPLEMENTARY PAY/OVERTIME

Code **GDBC** *Issued* **10/16**

Purpose: To establish the basic structure for district compliance with the Fair Labor Standards Act (FLSA) provisions regarding minimum wage and overtime.

The board recognizes that the district is subject to the provisions of the Fair Labor Standards Act. This Act includes provisions applicable to school districts relating to minimum wage and overtime pay for non-exempt employees.

The district will pay a minimum wage on an hour-by-hour basis to all district employees, either part time or full time, permanent or temporary which is no less than the federal minimum wage, except under designated training and apprenticeship programs exempt under special U.S. Department of Labor certification.

The board also recognizes that it may occasionally be necessary for non-exempt persons to work more than 40 hours during a given workweek. Individuals will be paid time-and-a-half (in money or compensatory time off) for each hour of overtime worked. No overtime, as defined by the FLSA, will be required or permitted without prior authorization as established by administrative rule.

The district requires all employees who are subject to the provisions of the FLSA to complete a daily time record showing actual hours worked. Failure to maintain or falsification of such records may be grounds for disciplinary action.

The administration will maintain records and establish regulations that are consistent with this policy and the requirements of the Fair Labor Standards Act.

Adopted 6/11/86; Revised 11/27/01

Legal references:

A. United States Code:
   1. Fair Labor Standards Act, 29 U.S.C. §§ 201-216.

B. Department of Labor Regulations:
   1. 29 C.F.R. Parts 511-800.
   2. 81 FR 32391

C. United States Supreme Court:
   1. Garcia v. San Antonio Metropolitan Transit Authority, 105 S.Ct. 1005 (1985) - Minimum wage and overtime hours provisions of the federal FLSA applied to state and local government employees.

SUPPORT STAFF SUPPLEMENTARY PAY/OVERTIME

Code **GDBC-R** *Issued* **10/16**

Minimum wage

The **minimum** wage paid on an hour by hour basis to all district employees full or part time, permanent or temporary will be at the approved rate as determined by the federal government, except under designated training and apprenticeship programs exempt under special U.S. Department of Labor certification.

Workweek

A workweek will be a continuous period of 168 hours in the form of seven consecutive 24-hour periods. The district workweek begins at 12:01 a.m. each Monday for all employees and runs for seven consecutive days. Each workweek stands alone for the purpose of determining overtime pay for non-exempt employees.

Hours worked

Hours worked means all hours during which the individual is required to be on duty - generally from the required starting time to normal quitting time. Meal periods do not count as hours worked unless the individual is required to perform work duties during the meal period. Break periods of 20 minutes or longer do not count as work time.

- *Travel*

  Ordinary travel time from home to a base location or vice versa is not work time. Official travel that occurs during an individual's regular working hours will be considered hours worked.

- *Leave*

  Time taken for annual leave, sick leave, leave without pay or other leave taken for the purpose of jury duty, military assignment or because of death in the family will not be counted as time worked and is therefore not counted as compensable time for the purpose of overtime pay.

- *Part time in different capacity*

  If an individual is employed in one capacity but voluntarily works part time in a different capacity on an occasional or sporadic basis, the hours logged in the secondary capacity will not be counted as hours worked for overtime purposes.

- *Substitution in same capacity*

  Employees, at their own option but with the approval of the employer, may substitute during scheduled hours for other employees employed in the same capacity. In the case of such substitution, the hours involved are credited to the scheduled employee and not to the

substitute employee. The employer need not maintain a record that the substitution has taken place.

Overtime hours

Overtime hours will be held to a minimum consistent with the needs and requirements of sound and orderly administration. All hours worked by non-exempt employees (see district salary schedules for list) must be scheduled and duly authorized. Overtime of up to 8 hours and in anticipation of compensatory time must be authorized by the supervisor in writing prior to the time the work is performed. Overtime in excess of 8 hours and in anticipation of compensatory time or any overtime that will not be utilized as compensatory time (i.e., hours worked in anticipation of payment at one and a half time the regular rate) must be authorized in writing by the supervisor and a chief officer. Overtime in cases of emergency and as approved by the chief officer of operations and students services or other chief officer do not require written authorization prior to the time the work is performed. Unauthorized overtime will not be tolerated.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the employee's regular rate for that week is the weighted average of such rates. (That is, the earnings from all such rates are added together.) This total is then divided by the total number of hours worked at all jobs.

Holidays during a workweek do not count in the computation of pay at the "overtime rate." (For example, if a 40-hour non-exempt employee works two extra hours during a week which includes one paid holiday, the employee would be entitled to additional "regular rate" pay for the extra two hours but would not be paid at the "overtime rate" for these two hours.)

- *Compensatory time off*

  Non-exempt employees who work more than 40 hours during any work week may be awarded compensatory time off ("comp time"). Comp time will be awarded at the rate of one and one-half hours for each hour of overtime worked.

  - Comp time may be accrued up until 120 hours (80 overtime hours). Overtime work beyond this maximum accrual will be monetarily compensated at the rate of one and one-half times the individual's normal hourly rate of pay. It is the employee's supervisor's responsibility to ensure that accumulated comp time does not exceed the accrual limits.

  - Every effort will be made to permit the use of comp time at the time mutually agreed upon by the individual and his/her supervisor within a reasonable amount of time after the comp time is earned. However, where the individual's absence would unduly disrupt the district's operations, the district retains the right to postpone comp time usage.

  - Time off later for working on an official holiday will not be considered compensatory time off but as a delayed holiday. Employees who are required to work on an announced holiday must be given equal time off within the same fiscal year.

- *Monetary compensation*

  Non-exempt employees who work in excess of 40 hours per workweek will be paid at one-and-one-half times their "regular rate."

- *Termination*

  Individuals with unused comp time who are terminated or who terminate their employment will be paid for unused comp time at one and one-half times their final regular rate of pay or for the average regular rate of pay for the final three years of employment, whichever is higher.

Volunteers

A volunteer is defined as an individual who receives no compensation or who is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. Such services are not the same type of services which the individual is employed to perform for the district.

Students

Vocational students performing work as part of a curriculum are students and not workers. Students helping in office capacities for short periods of time are volunteers and not employees.

Exclusions

Executive, administrative and professional employees will be considered exempt if they are paid at a rate at least equal to the weekly standard set in the Fair Labor Standards Act (FLSA), Final Rule: Overtime, effective December 1, 2016, exclusive of board, lodging or other facilities, and meet all of the following respective tests for exemption from coverage under the law. (81 FR 32391)

- *Executive*
  - The employee's primary duty must be management of the enterprise or of a customarily recognized department or subdivision.
  - The employee must customarily and regularly direct the work of at least two or more employees therein.
  - The employee must have the authority to hire or fire; or recommend hiring and firing; or whose recommendations on these and other actions affecting employees are given particular weight.
  - The employee must customarily and regularly exercise discretionary powers.
  - The employee must devote no more than 20 percent of his/her hours worked to activities not directly and closely related to the managerial duties.
- *Administrative*
  - The employee's primary duty must be either of the following:
    - -- responsible office or non-manual work directly related to the management, policies or general business operations of the employer of the employer's customers
    - -- responsible work that is directly related to academic instruction or training carried on in the administration of a school system or educational establishment

The employee must customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures, and must have the authority to make important decisions.

- The employee must do one of the following:

  -- Regularly assist a proprietor or bonafide executive or administrative employee.
  -- Perform work under only general supervision along specialized or technical lines requiring special training, experience or knowledge.
  -- Execute under only general supervision special assignments.

- The employee must not spend more than 20 percent of the time worked in the workweek on work that is not directly and closely related to the administrative duties discussed above.

- *Professional*

  - The employee's primary duty must be one of the following:

    -- Work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study.
    -- Work that is original and creative in character in a recognized field of artistic endeavor the result of which depends primarily on the employee's invention, imagination or talent.
    -- Work as a teacher certified or recognized as such in the school system or educational institution by which he/she is employed.

  - The employee must consistently exercise discretion and judgment.

  - The employee must do work that is predominately intellectual and varied as distinguished from routine mental, manual, mechanical or physical duties.

  - The employee must not spend more than 20 percent of the time worked in the workweek on activities not essentially a part of and necessarily incident to the professional duties.

  - The salary requirement does not apply to an employee who is the holder of a valid license or certificate permitting the practice of law or medicine and who is actually engaged in such practice; an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program; or an employee employed and engaged as a teacher in a school or educational institution.

Record-keeping

- *Exempt employees*

  - The following records must be kept for each employee.
    -- name and identifying number
    -- home address
    -- birth date if the employee is under 19
    -- sex and occupation in which employed

- *Non-exempt employees*

  - The following records must be kept for each employee.

    -- name and identifying number
    -- home address
    -- sex and occupation in which employed
    -- time and day on which his/her workweek or work period begins and length of the work period
    -- regular rate of pay for any workweek or work period
    -- hours worked each day and each workweek or work period
    -- total daily, weekly or work period straight-time earnings (includes one time, but not time and one-half pay for overtime)
    -- overtime excess compensation (the "half time" or more extra compensation for overtime)
    -- total additions to or deductions from wages paid each pay period
    -- total wages paid each pay period
    -- date of payment and the pay period covered by the payment (29 C.F.R. Sec 516.2)

- *Retention of records*

  - records to be preserved three years

    -- payroll records
    -- certificates, agreements, plans, notices, etc. (e.g. contracts, written agreements or memoranda summarizing the terms of oral agreements)
    -- sales and purchase records (29 C.F.R. Sec 516.5)

- records to be preserved two years

    -- supplementary basic records such as basic employment and earnings records, wage rate tables and work time schedules
    -- order, shipping and billing records
    -- records of additions to or deductions from wages paid
    -- records which explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment (29 C.F.R. Sec 516.6)

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