

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

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SUMMONS IN A CIVIL ACTION



Case Name: **Earl F Metzler, II v School Administrative Unit No. 55**
Case Number: **218-2019-CV-01638**

Date Complaint Filed: November 15, 2019

A Complaint has been filed against School Administrative Unit No. 55 in this Court. A copy of the Complaint is attached.

The Court ORDERS that ON OR BEFORE:

- | | |
|-----------------------------------|--|
| January 06, 2020 | Earl F Metzler II shall have this Summons and the attached Complaint served upon School Administrative Unit No. 55 by in hand or by leaving a copy at his/her abode, or by such other service as is allowed by law. |
| January 27, 2020 | Earl F Metzler II shall electronically file the return(s) of service with this Court. Failure to do so may result in this action being dismissed without further notice. |
| 30 days after Defendant is served | School Administrative Unit No. 55 must electronically file an Appearance and Answer or other responsive pleading form with this Court. A copy of the Appearance and Answer or other responsive pleading must be sent electronically to the party/parties listed below. |

Notice to School Administrative Unit No. 55: If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:

C. Kevin Leonard, ESQ	Douglas Leonard & Garvey PC 14 South Street Suite 5 Concord NH 03301
School Administrative Unit No. 55	30 Greenaugh Road Plaistow NH 03865

BY ORDER OF THE COURT

November 22, 2019

(126921)

Marshall A. Buttrick
Clerk of Court

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT
218-2019-CV-01638

Dr. Earl F. Metzler, II
9 Victoria Lane, East Hampstead, NH 03826

v.

School Administrative Unit No. 55
30 Greenaugh Road, Plaistow, NH 03865

COMPLAINT

I. Preliminary Statement

This action seeks to recover unpaid wages due Dr. Earl Metzler in the form of compensatory time for the SAU's failure to fully pay compensatory time at the rate provided in its policy. The SAU's compensatory time policy expressly applies to both exempt and non-exempt employees and incorporates the compensation rate of the Fair Labor Standards Act of 1938 of one-and-one-half-hours. Here, the SAU compensated Dr. Metzler at straight time, not one-and-one half-hours.

II. Parties

1. The plaintiff, Dr. Earl F. Metzler, is the Superintendent of Schools for SAU No. 55 and resides at 9 Victoria Lane, East Hampstead, NH 03826.

2. The Defendant, School Administrative Unit No. 55, is a New Hampshire School Administrative Unit organized as a corporation and existing pursuant to RSA 194-C:1. The Defendant (hereinafter "SAU No. 55") has a principal place of business located at 30 Greenaugh Road, Plaistow, NH 03865.

III. Jurisdiction & Venue:

3. Subject matter jurisdiction is proper pursuant to RSA 275:53, I, and RSA 491:7.

4. Venue is proper because the Defendant's principal place of business is 30 Greenaugh Road, Plaistow, NH 03865.

IV. Facts

5. Dr. Metzler is employed with SAU No. 55 as its Superintendent of Schools.

6. The School Districts of Timberlane and Hampstead constitute SAU No. 55.

7. SAU No. 55 operates through a School Board of combined school boards of the two school districts. The Board members are: Kimberly Farah (Chair), Brian Boyle (Vice Chair), Jason Giard, Sheila Lowes, Sarah Machemer, Shawn O'Neil, Caitlin Parnell, Kristin Savage, Jennifer Silva, David Smith, James Sweeney, Karen Yasenka and Susan Sherman.

8. As Superintendent, Dr. Metzler supervises the schools of SAU No. 55 and serves as the executive for planning and administering the activities of the school districts.

9. In addition to the Superintendent, other administrators for SAU No. 55 are the Assistant Superintendent, the Business Administrator, the Human Resource Director, the Business Operations Coordinator and the Transportation Coordinator.

10. The practice of exempt (salaried) employees, including the Superintendent, earning compensatory time for working non-work days is decades old.

Since as far back as 2003, the catalogue of “Administrators Benefits” has included compensatory time.

11. In 2016, an audit of the SAU recommended the adoption of a formal policy to address the earning, use, and pay-out of compensatory time.

12. In response, SAU No. 55 adopted Policy DKD on November 16, 2016, which provided “Compensatory Time” for all employees: “The employees of School Administration Unit No. 55 can earn compensatory time for working weekends and holidays.” The policy made no distinction between exempt and non-exempt employees.

13. Then the SAU Board adopted Policy DKD-R on December 1, 2016, to implement its Compensatory Time policy. Policy DKD-R, entitled “Compensatory Time,” provides that both exempt employees and non-exempt employees may earn compensatory time at a rate consistent with the Fair Labor Standards Act (FLSA). The policy makes no distinction between exempt and non-exempt employees.

14. Specifically, Policy DKD-R incorporated FLSA, section 207(o): “Use or payment of earned compensatory time shall be at the discretion of the employee consistent with the provisions of RSA 274:43, VII and Federal (sic) Labor Standards Act of 1938, section 207(o).”

15. In relevant part, Section 207(o), sets the rate of compensatory time at one-and-one-half hours:

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation,

compensatory time off at a rate not less than one-and-one-half-hours for each hour of employment....

Fair Labor Standards Act of 1938, 29 U.S.C. Section 207 (o)(1)(emphasis added).

16. Policy DKD-R, an SAU Board-created policy, provided the compensatory time at a rate which is consistent with the FLSA standard of one-and-one-half-hours.

17. Until recently, SAU No. 55 allowed Dr. Metzler and other School Administrators to earn and accrue compensatory time and receive payment for unused compensatory time.

18. However, on June 24, 2019, the SAU No. 55 Board voted to end Dr. Metzler's right to earn compensatory time.

19. With the Board's change in policy, Dr. Metzler requested payment of his accrued compensatory time. At that point, it was determined that payments of Dr. Metzler's compensatory time had been paid at a rate of straight time, not at one-and-one-half-hours.

20. Based on consultation with the Department of Labor, as of July 24, 2019, the SAU Board was on notice that "the comp time payment [to Dr. Metzler] may need to be amended to reflect time and a half versus the straight time in which it was paid." SAU No. 55 Board Meeting Minutes, July 24, 2019.

21. Because he reasonably understood and expected to be compensated at one-and-one-half-hours for his compensatory time, on or about October 10, 2019, Dr. Metzler requested payment of his compensatory time at a rate of one-and-one-half-hours. Without any explanation, the Board failed and refused to pay Dr. Metzler the

difference between straight time and one-and-one-half-hours for his earned compensatory time.

**COUNT I
(Violation of RSA 275)**

22. The plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

23. In 2016, SAU No. 55 adopted Policy DKD-R allowing exempt employees, such as Dr. Metzler, to earn compensatory time for working non-scheduled workdays.

24. Dr. Metzler's accrued compensatory time is part of his compensation and is "wages" under New Hampshire law.

25. New Hampshire requires employers to notify employees of their rate of pay, methods used to determine wages, and employment practices and policies. RSA 275:49 and Lab 803.03.

26. Policy DKD-R applied to exempt and non-exempt employees and incorporates the standard of the Fair Labor Standards Act of 1938, Section 207(o), which sets the rate of compensatory time at one-and-one-half-hours.

27. SAU No. 55 has paid Dr. Metzler compensatory time at the rate of straight time, not one-and-one-half-hours as required by Policy DKD-R. Dr. Metzler is entitled to be paid the full amount of his accrued compensatory time at the rate of one-and-one-half-hours.

28. In violation of RSA 275 and Policy DKD-R, SAU No. 55 failed and refused to compensate Dr. Metzler his compensatory time at the rate of one-and-one-half-hours.

REQUEST FOR RELIEF:

WHEREFORE, Dr. Earl F. Metzler, respectfully prays this Honorable Court order the following relief:

- A. Award compensatory time at the rate of one-and-one-half-hours;
- B. Award attorney's fees, interest and costs;
- C. Award liquidated damages; and
- D. All other damages as set forth herein or as allowed by law.

Respectfully submitted,
DR. EARL F. METZLER, II
By his attorneys,
DOUGLAS, LEONARD & GARVEY, P.C.

Date: November 15, 2019

By: /s/ C. Kevin Leonard
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