



## Colorado Charter Schools Annual Conference

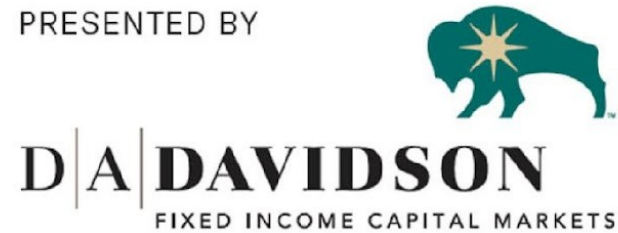
February 25-27, 2026  
Denver Marriott Tech Center



"If you want to go fast, go alone.  
If you want to go far, go together."  
— African proverb



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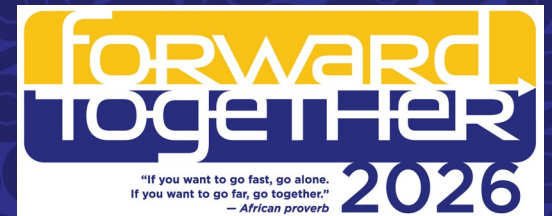


# (63) POWR, Protections, and Pitfalls: Navigating Colorado's Expanding Employment Laws in Charter Schools

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Michelle Olson, HR Director, Minga Education

Humboldt Peak  
February 26, 2026 | 11:00 AM – 12 PM  
Human Resources and Staffing









We make it our priority to **advocate** for high-quality public charter schools across Colorado.



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# **POWR, Protections, and Pitfalls:**



Navigating Colorado's Expanding  
Employment Laws in Charter Schools



## Presenters



**Eric Hall, Esq**

- Attorney at Sparks Willson
- Extensive trial and appellate experience, including cases before Colorado's highest courts.
- BA- William & Mary; MA- St. John's College; JD- Notre Dame
- Past President, El Paso County Bar Association; co-founder of Thomas MacLaren School.



**Michelle Olson, SHRM-CP**

- HR Director for Minga Education Group
- 20 years experience in HR
- BS & MS in HR from Colorado Christian University
- COSHRM/SHRM Western Colorado Board & Past President

# Cindy's Story

After raising 3 children and retiring from her first career as a paralegal, she wanted to do something more meaningful with her time. Teaching was always her dream. She completed her degree and started working at your school. She was a bit behind on the latest technology, but figured she would catch up eventually.



# Cindy's Story Continued

During a team meeting, staff discussed the digital tools they used for planning and teaching. Cindy mentioned how she used WordPerfect, a software she had used for years.



# Cindy's Story Continued

- There was brief silence in room, then chuckles and whispers. Some of the younger teachers exchanged amused glances, and Emily leaned over to Cindy with a smirk, "WordPerfect? I didn't even know that was still around! Do you send your emails by carrier pigeon too?"
- The room erupted in laughter. Cindy's face flushed with embarrassment, but she forced a smile trying to laugh it off.

# Cindy's Story Continued



- After a restless night, Cindy goes to the Principal and files a complaint against Emily alleging discrimination.
- The Principal interviews everyone – Emily admits to making the statement but indicates that she did not mean it as an act of discrimination, just a joke.

# Analyzing Complaint

Is this illegal conduct?

This means that the conduct violates a law and can subject your school to a lawsuit.

Is this conduct a violation of School Policy?

Just because conduct violates a company policy, does not mean it is illegal conduct that could subject the company to a lawsuit.

# Is Conduct Illegal?

- Is the complaint alleging discrimination, harassment, or hostile work environment, and
- Does the complaint implicate a protected class.

There is no discrimination, harassment, or hostile work environment without a protected class.

# Protected Classes in Colorado

Race, color, hair  
Sex, pregnancy, gender, gender identity  
Sexual orientation  
Religion, creed  
National origin, ancestry  
Age (40 and above)  
Physical or mental disability  
Marital status  
Union or other protected concerted activity  
Political affiliation  
Military or Veteran status

Bankruptcy or garnishment  
Filing wage and hour claims with the State or Federal Agency  
Filing claims under Discrimination laws  
Filing other claims with government agency (workers' comp; OSHA; etc.)  
Whistle blowing for false claims against the federal government  
Sealed criminal records  
Volunteer firefighter  
Using Statutory Leave Rights  
Challenging company compliance with public health orders  
Legal conduct off the job and off the premises

# Cindy's Case - Illegal?

Is there a protected class in Cindy's case?

Age - Over 40 years Old

If the answer was "NO" then you do not need to go further, you would then look to see if there was a violation of your company policies – but there is no illegal conduct.

# Cindy's Case - Harassment/Hostile Work Environment?

- Even when a person cannot allege discrimination, they can still allege harassment/hostile work environment.
  - Harassment/hostile work environment exist when the behavior is such that an employee must endure continued harassment (or bad treatment related to their protected class) as a condition of their employment.

# Federal Standard

In the Federal system (under Title VII and IX) to prove harassment/hostile work environment, an employee/student had to show that the behavior was severe or pervasive.

## Equal Employment Opportunity

### TITLE VII

Outlawed employment discrimination by businesses affecting commerce with at least twenty-five employees on the basis of race, color, religion, sex, or national origin and created the Equal Employment Opportunity Commission.

**Griggs v. Duke Power Co. (1971)**  
Ruled that the use of tests to determine employment that were not substantially related to job performance and that had a disparate impact on racial minorities violated Title VII (North Carolina)

**Phillips v. Martin Marietta (1971)**  
Ruled that not hiring mothers of preschool-aged children while hiring fathers of preschool-aged children violated Title VII, the first sex discrimination case to go to the U.S. Supreme Court (Florida)

**McDonnell Douglas Corp. v. Green (1973)**  
Established the "pretext" test for proving discrimination (Missouri)

**Hesswood School District v. United States (1977)**  
Ruled that statistical evidence comparing the racial composition of an employer's workforce with that of the relevant labor market could substantiate an initial case of discrimination (Missouri)

**Los Angeles Department of Water and Power v. Manhart (1978)**  
Determined that an employer may not use the fact that women, as a group, live longer than men to justify a policy of requiring female employees to make larger contributions to a pension plan in order to receive the same monthly pension (California)


**Meritor Savings Bank v. Vinson (1986)**  
Held that Title VII's prohibition on sex discrimination also included a prohibition on sexual harassment (Washington, D.C.)

**Johnson v. Transportation Agency, Santa Clara County (1987)**  
Ruled voluntary affirmative action programs for women in fields where they had previously been excluded were constitutional under certain circumstances (California)

**International Union, UAW v. Johnson Controls, Inc. (1991)**  
Ruled that barring women of childbearing age from certain jobs was unconstitutional (Illinois)

**Oncale v. Sundheimer Offshore Services, Inc. (1998)**  
Ruled that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII (Louisiana)

**Ricci v. DeStefano (2009)**  
Held that New Haven officials violated Title VII by ignoring results of a test in which white firefighters performed better than black and Latino firefighters (Connecticut)



# Cindy's Case - Federal Law

Did Cindy's complaint indicate a behavior that was Severe?

NO

Did Cindy's complaint indicate a behavior that was pervasive?

NO

# Cindy's Case - Colorado POWR

POWR eliminated the Severe and Pervasive requirement and instead created a new standard

The Person has to show that the behavior was:

1. Offensive to them
2. Would be offensive to a member of the same protected class
3. The conduct has been made a term of the individual's employment or the conduct has interfered with the person's work performance

# Cindy's Case - POWR

- POWR identifies that “petty slights, minor annoyances, and lack of good manners do not constitute harassment unless” those actions when taken individually or in combination and under the totality of the circumstances meet the test above.
- What’s the line between a “petty slight” and a comment that unreasonably interferes with an employee’s work performance or creates an offensive work environment?

# POWR Other Determining Factors

- Frequency of the conduct or communication recognizing that a single incident may rise to the level of harassment;
- The number of individuals engaged in the conduct;
- The type or nature of the conduct or communication;
- The duration of the conduct or communication;
- The location where the conduct or communication occurred;
- Whether the conduct or communication is threatening;
- Any use of epithets, slurs, or other conduct or communication that is humiliating or degrading; and
- Whether the conduct or communication reflects stereotypes about an individual or group of individuals in a protected class.

# Cindy's Case - Under POWR

Was Cindy offended by Emily's statement?

YES

Would someone in the same protected class be offended?

Probably?

Would this statement interfere with Cindy's working conditions moving forward?

Perhaps?

# Marcus's Story



Marcus is a high-performing middle school math teacher in his third year at the school. He is originally from Nigeria and speaks with a noticeable accent. He is well respected by students and parents and consistently receives strong evaluations.

# Marcus's Story- Continued

During a staff meeting, another teacher jokes, "Marcus, your students probably need subtitles to understand you." Several staff members laugh.

Marcus feels uncomfortable but does not report it immediately.

Over the next few months, Marcus notices subtle changes:

- He is excluded from curriculum planning meetings he was previously part of
- A colleague mimics his accent during lunch in front of others
- His department chair tells him, "Parents expect someone who sounds more American"

# Marcus's Story- Continued

Marcus files a written complaint with the Assistant Principal alleging discrimination based on his national origin.

The Assistant Principal speaks informally with the accused employee, who denies wrongdoing, and tells Marcus,  
“I don't think they meant anything by it. Let's just move on.”

No formal investigation is conducted. No written findings are created. No documentation is stored.

Three months later, Marcus is placed on a performance improvement plan citing “communication concerns.”

Marcus then files a charge with the Colorado Civil Rights Division.

# Marcus's Case - Under POWR

What protected class is implicated here?

National origin and ancestry are protected classes under Colorado law and POWR.

# Marcus's Case - Under POWR

Was Marcus offended by the other teacher's joke?

YES

Would someone in the same protected class be offended?  
Probably?

Did this joke interfere with his working conditions?

YES

# Retaliation Risk?

What action in Marcus's case could be considered retaliation?



Placing Marcus on a **PIP** shortly after he filed a discrimination complaint creates **strong retaliation risk**.



Under POWR, retaliation is **independently illegal**, even if the original complaint is unproven.

# Employer Responsibilities Under POWR

- The employer must take prompt, reasonable action to investigate or address alleged discriminatory or unfair employment practices;
- The employer must take prompt, remedial actions, when warranted, in response to complaints of discriminatory or unfair employment practices;
- The employer must communicate the existence of details of POWR policies to supervisory and nonsupervisory employees

# Repository Requirement

Under POWR, the school must maintain a repository of:

- Complaints of discrimination or harassment
- Investigation records
- Personnel actions taken

Retention requirement: minimum 5 years.

# What Is a Repository?

A repository is a centralized, secure location where the employer maintains records of complaints and related personnel actions involving discrimination or harassment based on protected classes.

This is not optional. It is a legal requirement.

The purpose is to ensure employers cannot ignore patterns of misconduct or allow repeat offenders to move through the organization without accountability.

# Why a Repository?

The legislature created this requirement to prevent repeat misconduct and organizational blindness.

For example, without a repository:

- A teacher could receive harassment complaints at one campus
- Move to another campus  
And leadership would have no centralized record of prior complaints

The repository ensures institutional accountability.

# What Else for a Repository?

Every charter school should have:

- A designated person responsible for maintaining the repository
- A secure location such as an HRIS system, restricted drive folder, or case management system
- A consistent process for documenting complaints and outcomes

# POWR Flowchart



# Jordan's Story

Jordan is a high school registrar entering their second year at the school. Jordan is highly organized, well respected by staff, and consistently meets deadlines.

At the beginning of the school year, Jordan informs their supervisor that they identify as nonbinary and will be using they/them pronouns moving forward. Jordan also asks that their email signature and staff directory listing be updated to reflect their correct name and pronouns.



# Jordan's Story - Continued

The school updates Jordan's email signature but does not update the staff directory, explaining that "it might confuse parents."

Several staff members continue using Jordan's former name. One coworker says during a front office meeting, "This is just too hard to keep track of. I'm going to call you what I'm used to."

Jordan feels uncomfortable but does not immediately report the issue.

# Jordan's Story - Continued

Several months later, Jordan is diagnosed with generalized anxiety disorder and provides medical documentation requesting the following accommodation:

They request to work in a quieter workspace away from the front counter for part of the day, as constant interruptions increase their anxiety symptoms and affect their ability to focus.

Their supervisor responds,  
“Everyone is stressed. We can't make special arrangements for one person.”

No interactive process occurs. No documentation is created.

# Jordan's Story - Continued

Jordan later submits a written complaint to HR alleging:

- Discrimination based on gender identity
- Failure to accommodate a disability
- Hostile work environment

HR verbally speaks with the supervisor but does not conduct a formal investigation. No written findings are created. No repository entry is made.

Three months later, Jordan receives their first negative performance evaluation citing “communication concerns” and “lack of team fit.”

Jordan files a complaint with the Colorado Civil Rights Division.

# Question 1: What protected classes are implicated?

- Gender identity is a protected class under Colorado law and POWR
- Disability is a protected class under Colorado law and POWR

Both are explicitly protected categories.

## Question 2: Did the school have an obligation to engage in an accommodation process?

Yes.

Under disability law and POWR protections, employers must engage in an interactive process when an employee requests accommodation for a medical condition affecting work.

Failure to engage in that process creates liability, even if the accommodation is ultimately denied.

# Question 3: Did the school have investigation obligations?

Yes.

Under POWR, the employer must:

Take prompt and reasonable action to investigate

Document findings

Take remedial action if warranted

Failure to investigate is itself a compliance failure.

# Question 4: Did the school have repository obligations?

Yes.

The following should have been placed in the POWR repository:

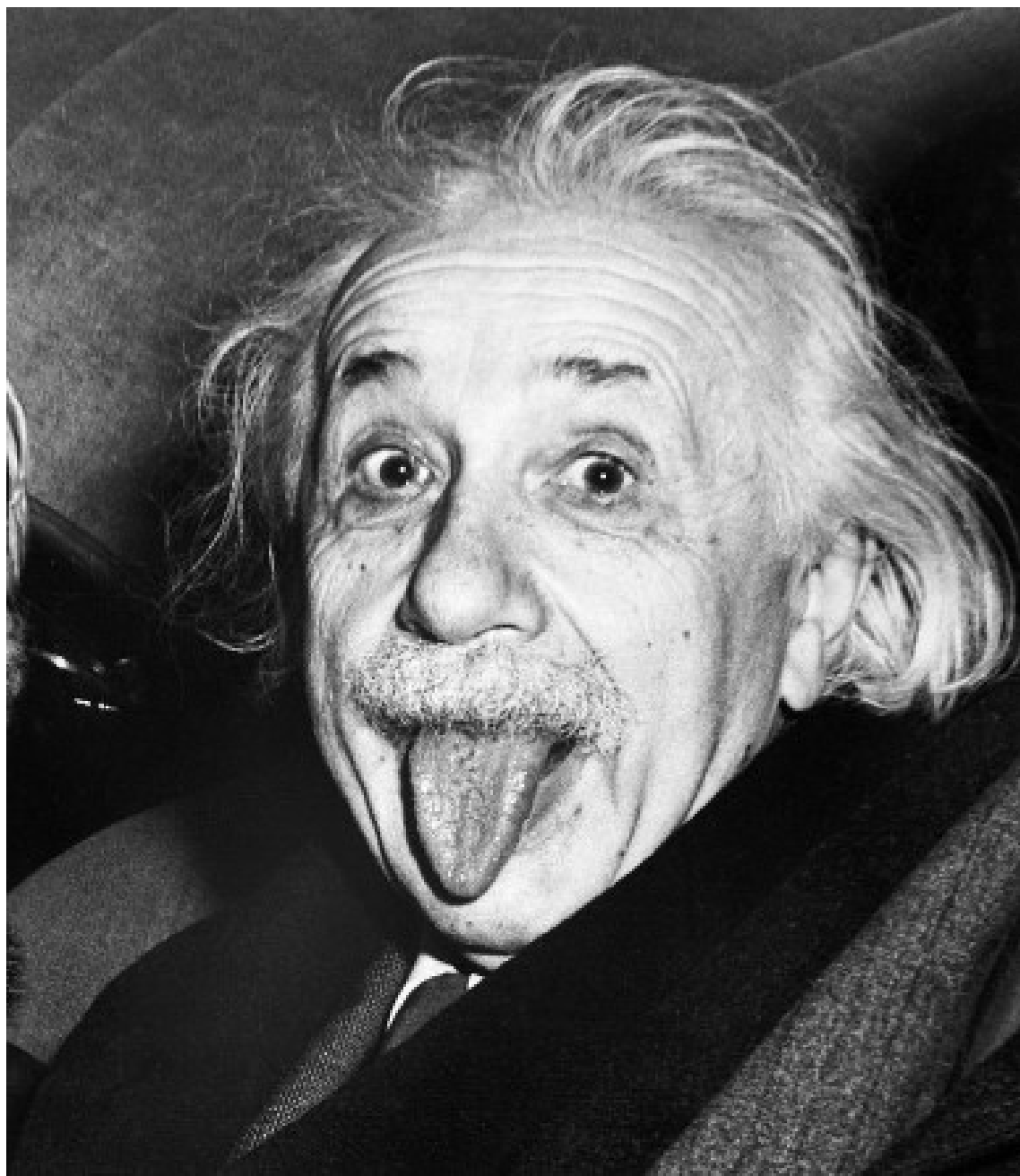
- Jordan's complaint
- Accommodation request
- Investigation documentation
- Personnel actions taken

Retention required: minimum five years.

Failure to maintain this documentation increases legal risk.

# Another Possible Employee:

- He is Jewish
- He is an immigrant
- He is over 40 years old
- He has autism so he can sometimes act a little odd socially
- As a result of his autism, he also presents sometimes with wild hair. He does not groom himself well.
- Has a bachelor's degree from Swiss Federal Polytechnic school.



# Questions?

**“  
Your  
feedback  
helps us all  
move forward  
together**



**Colorado League of  
Charter Schools**



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