

Many application forms still in violation of non-discrimination standards. Revision is necessary . . .

# AA/EEO and School District Pre-Employment Application Violations

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## Theoretical Framework

For more than a quarter century, efforts have been made to eliminate discriminatory practices in many areas of life. While progress has been made in overcoming de jure discrimination, efforts are now concerned with de facto discrimination, particularly in employment. In response to such demands, states enacted laws and policies to ensure nondiscriminatory practices. Typical are statutes in Kansas (Chapter 44, Article 10) and Missouri (Section 296).

Discrimination is defined as action and practice which has a different and negative impact on members of a subordinate group (Feagin & Feagin, 1978). Recent Executive, Legislative and Judicial actions have added to the examination of both the effect and intent to discriminate. If the intent/effect argument is a key in determining the nature of discrimination, then organizational practices need to be scrutinized. This is because both the formal and informal rules of the organization may well lead to the effect of discrimination regardless of the intent of the organization members (USCRC, 1981).

The measurement of intent and overall use of affirmative action plans was to be voluntary. The primary purpose was to spur employers and unions to self-evaluation of their employment practices and to eliminate discrimination (Albemarle Paper Co. v. Moody, 422 US 405, 1975).

With these conditions in society, AA/EEO evaluations need to move to the pre-employment application area. This is needed to determine if conventional screening practices that use subjective criteria are potentially suspect, as they may lead to the *effect*, if not the *intent*, of the organization to discriminate. As the intent of pre-employment activities is to obtain information about the applicant so that the best person can be hired, and since employers, including school districts, are to comply with AA/EEO guidelines, the application form must contain only those permissible inquiries of the candidate (Horton & Corcoran, 1984; McCarthy, 1983; Sassen, 1976).

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The purpose of this study was to determine the degree to which pre-employment inquiries by school district personnel were violative of AA/EEO guidelines. Specifically, the study sought to determine if there was a significant difference between the number of violations and the size and home state of school districts. If significant, the results would call into question the intent, and the effect, of the use of these applications as being potentially discriminatory.

## Methods/Data Source

The 851 school districts in Kansas and Missouri were contacted and asked to send a copy of their application form for teachers. The applications were gathered for the 1985 hiring year to permit the examination of the effect of 20 years of nondiscrimination legislation on employment practices.

As school district size was a factor to be considered, each school district in the two states was categorized into one of five classes based on pupil enrollment.

Table 1  
School District Classification

School District Class	School District Size
Class 1	0-399
Class 2	400-999
Class 3	1,000-1,799
Class 4	1,800-9,999
Class 5	Above 10,000

Using a non-reactive research technique, the applications were reviewed using AA/EEO guidelines for permissible and impermissible inquiries. The document used as a source was the Pre-Employment Inquiries worksheet produced by the Kansas Department of Personnel. Specifically, applications were reviewed on the following 18 items: marital status, family status, age, handicaps, sex, race/color, birthplace, military record, photograph, citizenship, ancestry/national origin, conviction/arrest record, relatives, emergency information, credit rating, references, education (as to type of institutions), and a miscellaneous category. Upon receipt of the data, five categories were eliminated from consideration as no violations were found. These included ancestry/national origin, emergency information, references, credit rating, and education. After categorizing the violations, the data were compared using chi-square analysis for both overall state differences and differences by school district size. Prior to the analysis, significance was established at the .05 level.

The response rate was 60 percent (185 of 304) of the school districts in Kansas and 38 percent (210 of 547) of the school districts in Missouri, yielding an overall response rate of 46.4 percent. Of the data from the 395 school districts, usable data from 374 was obtained. The remaining 19 school districts indicated that they did not use the application process, but chose to let the candidate submit a letter of application and a resume.

## Results

Data analysis indicated that violations do in fact exist on school district pre-employment applications. This holds true for different school district classifications, as well as between the states.

First, the results indicated first that a maximum number of eight violations existed in school district pre-employment inquiries. From a total possible number of violations of 6,732, the responding school districts yielded 1,182 violations or 17.26 percent of the total possible. Com-

paring total number of violations by state and class, we find the following results.

**Table 2**  
**School District Violations by State and Class**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	136	310	4	66	3	519
Missouri	162	205	90	149	37	643

A chi-square analysis yielded a value of 151.852, which was significant beyond .001. In analyzing the data, care must be taken in considering the small frequency count in classes 3 and 5 from the state of Kansas. However, there were significant frequency differences in classes 2, 3 and 5 and in both Kansas and Missouri, and in class 4 for Kansas, that led to the significance.

Further comparison of the overall numbers of violations by school district class between Kansas and Missouri finds that class 1 yielded a raw chi-square value (16.716) and level of significance (.0332). Intrastate analysis of Kansas yielded a chi-square value of 144.872, with 28 degrees of freedom ( $p < .05$ ). Intrastate analysis of Missouri yielded a chi-square value of 132.647, with 28 degrees of freedom ( $p < .01$ ).

A second finding was that the extent of the violations covers all major aspects of the nondiscriminatory provisions of federal and state legislation, court decisions, and guidelines established to reduce such discrimination. An item by item analysis of the seven violated categories yields the following information.

#### Item #1—Marital Status

In this category, questions pertinent to the marital status of the individual were considered to be a violation. Specific violations included direct questions regarding married, divorced, single, widowed, etc., and informal questions such as (Circle One: Mr., Mrs., or Ms.).

**Table 3**  
**Frequency Count for Marital Status Violations**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	24	54	0	11	0	89
Missouri	26	34	14	16	2	92

The overall chi-square value was 21.50756 with a significance level at .0003. Specifically the cell for class 3 effected the results with a chi-square value beyond significance, with Kansas school districts yielding a value of 6.68 ( $p < .01$ ) and Missouri districts yielding a value of 6.65 ( $p < .01$ ).

#### Item #2—Family Status

In this category, family status, questions were asked about the number of children at home, time needed away from the job by the prospective employee to take care of family matters, and the like.

**Table 4**  
**Frequency Count for Family Status Violations**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	22	40	0	5	0	67
Missouri	26	32	13	16	2	89

The overall chi-square value was 19.26469 with a level of significance of .0007.

#### Item #3—Age

Violations in this category were determined to be present when applications asked either the direct questions (as some did) as to the age of the applicant, or when they asked the date of birth.

**Table 5**  
**Frequency Count for Age Violations**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	24	59	1	12	0	96
Missouri	32	48	23	34	8	145

The overall chi-square value was 32.33617 with a level of significance beyond the .0001 level. Four cells contributed to the significant difference. Kansas class 2 and 3 with significance at .02 and .01 respectively, and Missouri class 2 and 3 with significance for both at .05 created the differences when compared to the total.

#### Item #4—Handicaps

While this area is one of prominence since the passage of 94-142, violations continue to occur because of the general nature of the questions asked by school districts. Most of the violations fail to make any attempt (a) to find out the specific handicap involved and/or (b) to link the handicapping condition to job performance.

**Table 6**  
**Frequency Count for Handicap Violations**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	24	45	0	9	0	78
Missouri	21	17	4	10	2	54

The overall chi-square value for this item was 15.03105, with a significance level of .0046.

#### Item #5—Birthplace/Nationality

This item seems strange in that it would not seem to be important. By itself it probably is not, however, as it gives clues to national origin it becomes a questionable practice on the part of school districts and a violation of AA/EEO.

**Table 7**  
**Frequency Count for Birthplace/Nationality Violations**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	10	26	0	4	0	40
Missouri	11	10	2	5	3	31

The overall chi-square value for this item was 11.31074, with a level of significance of .0233.

#### Item #6—Military Record

In this category school districts can legitimately ask questions of the individual's military record as it pertains to training received in the military pertinent to the specific tasks of the position for which the applicant is applying. No general questions, including type of discharge, are viable within the AA/EEO guidelines.

**Table 8**  
**Frequency Count Violations for Military Record**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	13	26	1	4	1	45
Missouri	4	7	5	10	3	29

The overall chi-square value for item #6 was 19.38916 with a level of significance of .0007.

**Item #7—Conviction/Arrest Record**

In this category, school districts asked questions that made no distinction between arrests or convictions, nor did they distinguish between misdemeanors and felonies. Therefore, while a small category, in terms of overall violations, it is still an important consideration as there were violations of AA/EEO guidelines.

**Table 9**  
**Frequency Count for Convictions/Arrest Record Violations**

	Class 1	Class 2	Class 3	Class 4	Class 5	Total
Kansas	6	16	1	4	0	27
Missouri	4	6	3	15	7	35

The chi-square for the overall analysis was 18.59114 with a significance level of .0009. Internal cellular analysis yielded Kansas class 2 as distinctive with a significance level of more than .05 ( $X^2 = 4.30$ ).

**Conclusions and Implications**

Overall, the data analysis demonstrates a disregard for the AA/EEO guidelines promulgated to avoid discrimination in the hiring of personnel. With 1,182 violations noted among the respondents, it is clear that while the data does not show their intent to discriminate nor does it provide demonstrable proof of effect, with the gathering of illicit information the potential to discriminate is present.

Areas of specific violations continue to be demonstrated in the 18 AA/EEO areas examined. Significance was found both between and within states in the areas of marital status, family status, age, handicap condition, birthplace/nationality, military record, and conviction/arrest record. To find such numbers of violations, and the significant differences both between and within states, are indications of the disregard for AA/EEO guidelines and the low level of knowledge and sophistication with which school districts approach this issue. Also, of the 11 areas where no significant differences were found, the fact that violations were present raises questions about the intent of school district administrative actions and the effects on their hiring policy.

While the findings cannot establish the intent or effect, they do call into question the formal and informal rules/norms used by school district personnel in their screening practices. Specifically, classes 1, 2, and 4 appear to be heavy violators of the guidelines. The high level of violations in classes 1 and 3 may be a direct result of their size and location within the states and the general practice of

hiring locally without concern for individuals beyond the local school district boundaries. However, class 4 violations are a different matter. In a number of these districts there is an individual who oversees the hiring process and who should be cognizant of the guidelines to ensure compliance.

Lack of knowledge, or assuming a posture of least resistance, are also possible explanations for the violations. Many of the districts who utilize the application process do so with applications that come from three specific school supply vendors, or who use these vendors' applications to develop their own. Where these vendors' products were used, it was apparent that no attempt had been made to keep current with applicable AA/EEO guidelines. Where districts had modeled their applications on the vendors, similar results were apparent.

The implications for school district hiring personnel are many. First, they need to become acquainted with the legal requirements and guidelines regarding AA/EEO. Second, they need to establish policies and procedures that fulfill the intent, and effect, of the AA/EEO legislation and court decisions. Third, the school management personnel need to restructure their application procedures to ensure compliance with the guidelines, either through newly designed applications or through the use of letters of application and resumes solicited from the applicant. Last, the findings indicate that state department of education personnel, and state officials from AA/EEO and personnel offices, should be concerned with the level of sophistication and compliance with the guidelines by school district personnel. This concern should lead to both in-service/professional development of school district management personnel and an additional part to the audit process of the school districts to ensure compliance with state regulations.

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