



New Administrators Survival Guide Holiday Inn, Plainview NY

October 16, 2019

Albert H. Voorneveld, President

Michael Starvaggi, Esq.

Brad Stuhler, Esq.

*Council of Administrators and Supervisors
1300 Veteran Highway Suite 330
Hauppauge, NY 11788
Phone 516-761-5451*

How To Survive As An Administrator: *Strategies and Solutions for Success*



**"There's no time for thinking. We have
to make a *management decision*."**

Probationary Period & New Tenure Rules:

- All administrators appointed on or after July 1, 2015 shall serve a **FOUR** year probationary appointment*
- **NEW LEGISLATION!** Exception for tenured administrators starting a new position on or after June 1, 2020
- Special APPR rules for Principals [also apply to teachers but **not** other administrators]
- In order to be eligible for tenure Principals must have been rated either “effective” or “highly effective in 3 out of 4 years

Probationary Appointment

- Public sector's version of Employment at Will
- May be terminated anytime during probationary appointment for *any reason* as long as not unconstitutional or in violation of statute, e.g., discrimination, Whistleblower, etc.
- No reasons need be given to discharge or deny tenure – you have right to ask for reasons
Education Law §3031
- Can be terminated at any time during probationary period [60 day notice] Not a 3 or 4 year contract!
- Denial or termination can be for good reason, bad reason, or no reason—just not illegal one

Role of Evaluations & Complaints

- All positive evaluations \neq tenure
- Even if required by regulation or contract, failure to evaluate does not annul denial of tenure
 - *Appeal of Fusco, Com Dec #12,589*
- Failure to follow contractual procedure [e.g. midyear conference by March 1] is grievable and could result in an additional year if occurred in last probationary year
- May be based on anonymous complaints
 - *Matter of Hampton Bays School Administrators*
 - *Association Comm Dec #11,807*

Education Law § 3031

- If Supt does not recommend, or wants to terminate - 30 day notice before Board meeting
- Board cannot grant without Superintendent recommendation
- Can request reasons w/in 21 days
- District respond w/in 7 days
- You can respond w/in 7 days

- *Tenure can be rescinded prior to effective date.
(DWI, Complaint filed, etc.)

Denial of Tenure

- If Supt recommends and Board rejects:
Vote considered advisory for 30 days and same process followed
- Termination date must be at least 30 days after 2nd Board meeting
- Always required to have 60 days notice
- **Remedy for failure is back pay not tenure**

APPR Rules for Principals Appointed on or After July 1, 2015

- If rated “ineffective” in fourth year of probationary period CANNOT be granted tenure
- Board may grant fifth probationary year
- Still need “E” or “HE” at end of fifth year in order to be eligible for tenure
- Successful APPR appeal allows, but does not require, Board to grant tenure
- “nothing in this section shall be construed to affect the UNFETTERED statutory right of a school district . . . to terminate a probationary teacher or principal for ANY statutorily and constitutionally permissible reasons [other than the performance of the teacher or principal in the classroom or school]”

Indemnification and Legal Representation

- There is a good chance you will get sued or named in a lawsuit.
- “Scope of your employment”
- Red Flag Law & New Vaccination Law
- Notification requirements and timeline
- You **MUST** provide a copy of the Complaint to the District ASAP
- Contact CAS office immediately upon being served.
- Notice of Claim v. Personal Service



Common & Potential Legal Pitfalls For New Administrators

DASA and/or Hostile Work Environment
Complaints

DASA – The Dignity Act

The Common Understanding:

Provides protections from discrimination and harassment by employees or students *on students* based on a student's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender identity or sex.

Education Law §11

The Statutory Reality:

7. “Harassment” and “bullying” shall mean the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying, that (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or (d) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

Investigating DASA Complaints

- Improperly used by teachers to alleged staff on staff harassment
- No private right of action
- Do you still need to investigate? Yes!
- Parental or Student DASA complaints. How to investigate?
- Same applies to investigating Hostile Work or Sexual Harassment complaints

“Hostile Work Environment”

- How is HWE defined?

workplace permeated with discriminatory (based upon a protected classification) intimidation, ridicule, and insult severe or pervasive enough to alter the conditions of the victim’s employment

- What is not a HWE?

“Mere personality conflicts must not be mistaken for unlawful discrimination, lest the antidiscrimination laws become a general civility code”

Forrest v Jewish Guild for the Blind, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (2004)
[emphasis added]

Examples of Sexual Harassment

- Physical contact, such as; Touching, pinching, patting, grabbing, brushing up, poking, or sexual assault
- Unwanted sexual advances, such as; requests for sexual favors or subtle or obvious pressure for unwelcome sexual activities
- Sexually oriented gestures, noises, remarks, jokes about a persons sexuality or sexual experience which creates a *hostile work environment*.
- Displaying pictures, posters, objects, etc.
- Sexually harassing hostile work environment consists of unwanted verbal or physical advances, sexually explicit derogatory statements or discriminatory remarks which are offensive or objectionable to recipient, and which cause his/her discomfort or humiliation, which interfere with job performance
- **Employees interactions during “off hours” extension of work environment.**

DUTY TO REPORT HARASSMENT

- You are required to report any harassment reported to you or which you observe.
- You must report any harassment you observe or know of, even if no one is objecting to the harassment.
- *Must report the matter to the employer (DO) even if the employee asks that it not be reported.*
- Disciplined for not reporting or engaging in retaliation.
- Provide the individual with the district complaint form.

Navigating the Probationary Waters as a New Administrator

**How to Survive A Probationary
Appointment, Receive Tenure and Keep It**

When hired, were you told?

- Shape up those teachers– district lawyer tells you to **include at least one negative comment in all observations– proceed with caution!**
- Predecessor didn't enforce standards
- Predecessor let teachers get away with too much
- Or something similar like lesson plans, attendance, etc.

Being motivated, you work to address these issues

- **Likely result 1**
 - Teachers, through union, complain to Central Office or Board
- **Likely result 2**
 - Too often the Supt will not support you, or if supports you, when tenure comes up Board will not – too many complaints from teachers
- **What to do**
 - **Can't ignore Superintendent!**

Listen, Think, Act: Make Central Office Part of the Solution

- Share your problem and your plan with Superintendent or your supervisor before you act
 - then that person has a stake in the process and a degree of responsibility for its success
- Remember if something isn't in writing, it can be forgotten, recalled differently or denied– use email (wisely)
- Email can easily be misinterpreted so run it past third party (e.g. union) -** Goes for rebuttals, responses to parents, etc.

Ask Specific Questions!

- What are the problems?
- Who are the problems?
- What has occurred in past?
- Why have these issues/problems arisen?
- What remedial actions have been attempted?

Listen, Think and Act

- Listen to everything,
 - but don't necessarily accept it as fact, especially if you are new to the district
 - **Also do not share what you hear (no gossip)**
- Tell supervisor that you want to develop detailed plan with her/him
 - but first you want to get a feel for the building/dept/program and the staff

Labor Relations Issues

- **Read the relevant contracts.**

(teachers, administrators, supervisors, nurses, teaching assistants, paraprofessional aides, custodians, maintenance workers, cafeteria aides, bus drivers, etc.)

- **Try and understand past practice.**

- **Involve HR prior to making any decisions impacting contracts.**

Shared Decision Making = Shared Accountability!

- **Follow up memo (get your union involved)**
 - **Outline issues discussed.**
 - **Document how you and supervisor agreed to address issues**
- **By sharing solution, your supervisor now has a vested interest in the success of your plan.**

Dealing Effectively with the Teachers' Union

- **Try to develop a relationship. Do not fight everything. Change is not easy.**
- **Include building reps and/or union officials, president**
- **Let union know your plan**
- **Discussions will clue you into potential problems**

If Union Opposes Plan

- **Specious/legitimate?**
- **Can concerns be accommodated?**
- **If not, do not draw line in sand. Stay away from it's my way or highway.**
- **You will think about and get back to union**

Protect yourself and make a record

- Address issue to supervisor in writing. Do not send overly formal follow up email. Do not over use cc.
- Review plan previously agreed upon
- Indicate union opposition and threatened action, i.e., grievance, PERB charge, etc.
- Ask whether supervisor still wants you to implement plan knowing opposition

Personal Relationship With Staff

- **Don't have any! They can impact your employment.**
- **NO jokes.**
- **Do not share unflattering comments about parents, staff, board members etc.**
- **Today's jokes or gossip become tomorrow's sexual harassment complaints, grievances or embarrassments.**
- **Avoid texting and personal emails.**

Smartphones, Web Cams and Recording Devices

- New York Law permits one party to a conversation to tape record the conversation without informing the other party or asking the person's permission
- True for both telephone and face-to-face conversations
- Always assume being taped by everyone
- FOIL & Text messages on your private phone!

It's the District's PC, iPad, Phone, etc.!

- No right to privacy
- District can review everything on computer
- District can check on emails and websites visited
- Beware the snide comment and the inadvertent “reply all” button and/or the bcc reply all!
- Off-campus conduct is relevant!
- Log out of your personal Google or Apple or better yet don't go on them. Use your own cellphone data when searching internet.

Warning Signs

- Changes in way supervisor relates to you
- Body language
- Negative public comments
- Written communications focusing on problems
- Counseling memos, negative evaluations etc.

How to Respond Proactively

- **Contact CAS attorney immediately!**
- **Involve your Association– 3rd eye on everything!**
- **We will help develop a survival plan**
- **Have supervisor clearly identify concerns**
- **Develop plan to address concerns and share that plan**
- **Regular meetings**

The list of don'ts!

- Do not have a personal relationship with any subordinate.
- Do not go to any website on your school computer or smart phone that you wouldn't want your Superintendent knowing about.
- Do not run a business out of your school district office or make business calls, or go online during your work day. Do not hide in office. Get out and be visible.
- Do not “borrow” school equipment such as cameras, projectors or money for that matter, even if you bring them back later.
- Make sure you fully understand all testing protocols and procedures and review them with appropriate staff and vigorously enforce them. If you discover any testing irregularities, do not fail to report it— report it immediately.

The list of don'ts, continued!

- Do not tell jokes or make fun of supervisors to subordinate employees who you may have to write up one day. That “joke” will become part of an allegation of sexual or other harassment.
- Do not assume any time you speak to a parent or teacher, whether in person or by phone, that you are not being recorded. You are being recorded! It is legal and it happens.
- Do not borrow money from subordinates or have them do you favors (e.g. pick up kids).
- Do not hire subordinates to perform personal services for you, even if you pay them by check. They can later claim they felt coerced.
- Do not use sick days if you aren't sick, especially if you are appearing in public, such as at an airport or any type of event. Do not use unless you really need to.
- If you can't control yourself from sending a snide email to a colleague in response to a group email, double check that you haven't clicked “reply all” before you send it.
- If you confiscate contraband such as drugs, porn, or weapons make sure all District reporting/disposal requirements are followed and if in doubt, email central office for guidance- promptly!

Administrative Tool Kit

- Conduct and Discipline Policy
- Student Handbook
- Teacher Handbook
- Teacher & other Contracts
- School Board Policy

Thank you!

