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SCHOOL BOARD AND SUPERINTENDENT RELATIONS

THE LEGAL FRAMEWORK

Presented by: Lawrence J. Tenenbaum, Esq.

NEW YORK STATE SCHOOL BOARDS ASSOCIATION CONVENTION

October 16, 2009

I. Powers and Duties

A. Powers and Duties of the Board of Education – N.Y. Educ. Law § 1709

School boards have the “superintendence, management and control of the educational affairs of the school district” and “all the powers reasonably necessary to ... discharge duties imposed expressly or by implication” by law. The board of education has a duty to control administration and personnel employed by the district; is responsible for the fiscal management of the district; and has the ultimate determination with regard to the educational programs implemented in the school.

Some of these duties include, but are not limited to:

- a) Establish rules and regulations pertaining to the overall order and discipline of the schools;
- b) Prescribe courses of study; to make provision for the instruction of all required subjects; regulate the admission of students and their transfer from one class or department to another; prescribe the textbooks to be used in the schools; and ensure that all instructional materials are available in a usable format for each student with a disability.
- c) Responsible for the purchasing, leasing and insuring of all schoolhouses, recreation grounds or other space necessary for school district use.
- d) Hire a superintendent of schools and adopt a description of his or her professional duties and provisions for performance evaluation as well as retention or removal from the position based on those evaluations and contractual obligations.

- e) Assess and respond to needs associated with school facilities and equipment and maintenance or upgrading thereof.
- f) Approve the budget and spending priorities, while seeking to ensure adequate local, state and federal revenues to support the budget.
- g) Approve construction projects, capital expenditures, contracts and budget reports within a framework of policy and delegated authority suitable for the board.

B. Powers and Duties of the Superintendent – N.Y. Educ. Law § 1711

The superintendent is under the direction of the board of education, which is authorized and required to prescribe his or her powers and duties. The duties of the superintendent may also be prescribed by contract or by Board policy.

- a) The superintendent is the chief executive officers of the school district and the educational system and has the right to speak on all matters before the board.
- b) The superintendent is under the direction of the board of education and does not have the right to vote.
- c) The superintendent shall ensure the enforcement of all provisions of law, rules and regulations relating to the management of the schools and other educational, social and recreational activities under the direction of the board of education.
- d) Recommends to the Board for its adoption all courses of study, curriculum guides and textbooks to be used in the schools;
- e) Recommends suitable textbooks to be used in the schools.
- f) Supervises and directs associate, assistant and other superintendents, directors, supervisors, principals, teachers, lecturers, medical inspectors, nurses, claims auditors, attendance officers, janitors and other persons employed by the school;
- g) Transfers teachers from one school to another or from one grade to another and reports such transfers to the board for its consideration and actions;
- h) Reports to the board violations of regulations and cases of insubordination and to suspend employees until the next meeting of the board;
- i) To have supervision and direction over all matters pertaining to playgrounds, medical inspection, recreation and social center work, libraries, lectures, and all other educational activities under the management, direction and control of the board of education.

II. Recruitment and Appointment of the Superintendent

In recruiting a superintendent of schools, the school board should, in addition to the requirements set forth by the State, establish the major functions and responsibilities for the position.

A. New York State Requirements

1. having a bachelor's degree
2. having completed sixty semester hours of graduate study (including 24 semester hours of graduate study in the field of school administration and supervision) and an approved administrative/supervisory internship under the supervision of a practicing school administrator and of a representative of the sponsoring institution of higher education OR one year of satisfactory full-time experience in a school administrative or supervisory position may be substituted for the internship;
3. having completed three years of teaching and/or administrative and/or supervisory and/or pupil personnel service experience in the schools.

B. Appointment

1. the superintendent shall be paid a salary to be fixed by the board of education
2. a board of education may enter into a contract with a superintendent for a period of not less than three and not more than five years, and upon such other terms that are mutually acceptable to the parties, including but not limited to:
 - a) fringe benefits
 - b) procedures for termination by either party prior to the expiration of the term of the contract

C. Extension and Renewal

1. A superintendent's contract may include an extension and renewal provision which automatically extends the contract.
2. an outgoing board of education may extend the superintendent's contract

III. Evaluation of the Superintendent

A. Performance review of superintendent - 8 NYCRR 100.2(o)(2)(v)

The governing body of each school district shall annually review the performance of the superintendent of schools according to procedures developed by such body in consultation with the superintendent. Such procedures shall be filed in the district office and available for review by any individual no later than September 10th of each year.

IV. Removal of Board Members

A. Vacancies

If a Board member has failed to attend three successive meetings and has no sufficient excuse for the absence, a vacancy may be declared. N.Y. Educ. Law § 2109. However, if the board member has a sufficient excuse to warrant his or her absence, a vacancy may not be declared.

B. Board Member Removal for Willful Violation or Neglect of Duty

1. Education Law §306

Section 306 allows for removal in the case of a school officer who is a member of an organization listed as subversive by the board of regents, has been guilty of any willful violation or neglect of duty.

2. Education Law §1706

Section 1706 provides for removal if it is shown that a board member is guilty of willful disobedience of any lawful requirement of the commissioner of education, or a want of due diligence in obeying such requirement or willful violation or neglect of duty.

3. Education Law §1709(18)

Section 1709(18) provides that boards may remove members for official misconduct without proceeding to the Commissioner, as long as a written copy of the charges is served upon the board member at least ten days before the time appointed for a hearing, and the board member receives a full and fair opportunity to refute such charges before removal.

“Official misconduct” is misconduct that clearly relates to a board member’s official duties, either because of the allegedly unauthorized exercise of the member’s powers or the intentional failure to exercise those powers to the detriment of the school district.

V. Board Member Conflicts of Interest

Conflicts of interest exist where municipal officers are in a position to benefit personally from contracts made in their official capacity.

A. Personal Interests That Are Prohibited

1. Interests in a contract with the school district where a Board member has the power or may appoint someone who has the power to negotiate, authorize or make payment or audit bills or claims under the contract, unless otherwise exempted under law.
2. Interest by a Chief School Officers, Treasurer or his or her Deputy or employee in a Bank or other financial institution that is used by the school district he or she serves.

B. Definition of Terms

1. Contract is broadly defined to include any claim or demand against the school district or account or agreement with the school district, whether express or implied.
2. Interest is defined as a direct or indirect benefit that runs to the officer as a result of a contract with the school district.
 - a) Board members are deemed to have an interest in a firm, partnership or association in which the Board member is a member or employee;
 - b) A corporation in which the Board member is an officer, director or employee;
 - c) A corporation in which the Board member directly or indirectly owns or controls stock.

C. Exceptions

1. Contracts with membership corporations or other voluntary not-for-profit corporations or associations are exempt from the conflict of interest rules.
2. Education Law §316 allows Boards to appoint a relative or spouse of a Board member as a teacher upon 2/3 super majority vote.
3. Conflict of interest provisions do not apply to the employment of a Board member as school physician upon a 2/3 vote of the Board.
4. Contracts entered into by the district with a person who is subsequently elected or appointed to the Board remain valid, except the contract may not thereafter be renewed.
5. Board members may enter into a contract with the school district if the total amount paid under the contract is less than \$75,000.

VI. Initiation of Legal Proceedings

A superintendent of schools has no authority to commence legal proceedings on behalf of a school district absent school board approval, including an appeal from a commissioner of education decision. In addition, any school board vote authorizing such action must take place within the applicable period of limitations for commencing the particular legal proceeding.

VII. Alteration of Superintendent's Duties

The board of education retains the authority to change the superintendent's powers and duties unless the board has given up that authority in the superintendent's employment contract (1711(2)(3)). Except where that authority has been removed, a board has broad latitude in establishing work requirements.

VIII. Termination of the Superintendent's Contract

A. Termination through Non-Renewal

A superintendent's contract may be terminated through non-renewal, however automatic extension provisions and/or or notice procedures provided in the contract must be noted.

B. Termination for Cause

The services of a superintendent of schools may be discontinued at any time by a majority vote of the board of education, and upon sixty days notice in writing to the superintendent of schools. Prior to its expiration date, a superintendent's contract may be terminated for cause in accordance with the provisions of the contract and in compliance with applicable due process requirements.

D. Termination for Failure to Comply with Residency Provisions

The board of education can terminate a superintendent of schools who fails to comply with residency requirements.

In Appeal of Connor, 48 Educ. Dep't Rep. 113, Dec. No. 15,809 (August 6, 2008), the Commissioner of Education upheld the termination of a superintendent for failure to adhere to the residency provision contained in his contract.

In that case, the contract specified that the superintendent was required to reside in his primary residence within the county and in the event that he did not reside there, the entire contract would be deemed null and void. Thereafter, the superintendent entered into a one-year lease for an apartment within the county, but traveled most weekends to upstate New York to his family home. The school board determined that the superintendent was in violation of the contract for failing to establish his primary residence within the county. The contract was therefore deemed null and void and the board terminated the superintendent's employment. The superintendent appealed his termination to the Commissioner.

The main issue on appeal was what the parties meant when they agreed that the superintendent must "permanently reside at his primary residence in Suffolk County." The Commissioner found that since the terms were not defined in the contract, the language was not clear and

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unambiguous and therefore considered extrinsic evidence to determine the parties' intent. The Commissioner determined that it was clear from the record that the board did not intend to employ a "commuter superintendent" and the superintendent had indicated a willingness to relocate. However, after selling the home he owned during the interview process, he purchased and moved his family to another house located outside of the county. The Commissioner did not find reason to disturb the board's determination that the contract was null and void.

In addition, there were no due process violations, as the contractual provision at issue did not require that any process would be due. Where the contract provides that failure to comply with the residency requirement would render the contract null and void, due process is not required.

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