


Participating in Employee Termination and Discharge Hearings

Leadership Retreat
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Andrew M. Sanchez
Carol Helms

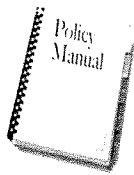


CUDDY & MCCARTHY, LLP
Attorneys at Law

By Cuddy & McCarthy, LLP 2015

•Employee Hearings

How did we get here?



- Employee violates policy or regulation
- Administrator supervises employee and documents misconduct or poor work performance



- Union negotiates processes for supervision, evaluation and meetings on misconduct.
- Grievances on process



- Create property rights in employment (tenure and nontenured)
- Due process rights
- Hearings and independent arbitration

•WHO ARE THE PARTIES?

• Administration

- Superintendent
 - Represented by legal counsel
 - Administrators
 - Other employee witnesses

• Employee

- *Pro Se* or represented by Union
- Other employee witnesses

What is the Board's function at the hearing?

• Conduct the hearing in accordance with law

- Board Legal Counsel
 - Hearing Officer for the Board
- Open Meeting Act
 - Special Meeting of the Board
 - Closed for Personnel Hearing, but can be opened by request of the employee.
 - Final action must take place in open portion of the Special Meeting.

What is the Board's function at the hearing?

- **Adjudicate the facts**
 - Rules of Civil Procedure do not apply but guide hearing
 - Rules of Evidence do not apply but guide hearing
- **Determine if there is "Just Cause"**
 - The School Personnel Act defines "just cause" as, "... a reason that is rationally related to an employee's competence or turpitude or the proper performance of the employee's duties and that is not in violation of the employee's civil or constitutional rights." N.M. Stat. Ann. § 22-10A-2(A) (2003).

•TYPES OF HEARINGS

Employment

- Discharge Hearings - N.M. Stat. Ann. § 22-10A-27 (2003)
 - End the employment of employee during the current employment contract
 - More time for parties to prepare for the hearing
 - The hearing is recorded and employee may obtain a transcript of the proceedings at the Board's expense.
- Termination Hearings - N.M. Stat. Ann. § 22-10A-27 (2003)
 - Decision to not renew the employment contract of an employee for the current school year
 - Less formal hearing requirements and shorter time to prepare for hearing
 - The hearing is not recorded

Hearing Protocol

- **Board President calls the meeting to order**
- **Approval agenda**
- **Motion to enter executive session**
 - **Employee can demand that hearing is open to the public**
- **Delegate hearing process to hearing officer**
- **Conduct Hearing**

Hearing Protocol (cont)

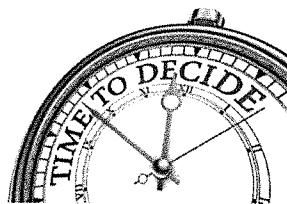
- **Opening statements**
- **Administration goes first**
 - **Burden of proof (more likely than not)**
 - **Examination of witnesses/cross-examination by employee**
 - **Board members may ask questions**
- **Employee presents case**
 - **Just cause does not exist**
 - **Examination of witnesses/cross-examination by Administration**
 - **Board members may ask questions**
- **Rebuttal by Administration**
- **Closing Arguments**
- **Deliberations**
- **Written Decision**

• Advocates

Who is talking to you?

- Administration's Counsel
 - Presents to you what the school administrator encountered and did in order to justify ending the employment of the employee
 - Administrative counsel is retained and has a duty to represent the Superintendent
- Employee or NEA/AFT/CSEC:
 - Employee pays dues for representation
 - Union has a fiduciary duty to represent the employee
- YOU ARE THE IMPARTIAL DECISIONMAKER

advisory
ad-vis-ory /əd-
advise; giving advice
role.
ad-vo-cacy /əd-
of support (to a cat-
her advocacy of won-
or work of an advo-
ad-voc-ate /əd-
publicly in favour



What the hearing is not.

- An employee hearing cannot be used to rescind or amend existing policies or regulations
 - Board interprets its current policies and applies the facts to them
 - What you permit one employee to do under your policy all others can now do.
- An employee hearing is not a forum to communicate to or evaluate the Superintendent or school administrators
 - It's about process—was policy or regulations violated by the employee.
 - Is misconduct sufficient for discharge or termination
 - Decision applies to all other employee behavior in the future



Board Decisions

- Employee will lose their job
 - Ramifications to career
 - Financial hardship

- Administration is communicating that it cannot provide an efficient education to students with this employee
 - Attempted to address poor work performance

- Administration is communicating that the employee engaged in misconduct where the employee cannot be at school anymore.



How the employee got here

- Uncorrected, unsatisfactory work performance
 - Bad evaluation
 - Growth Plan (90 school days)
 - Bad evaluation
 - State average – 1 out 5 teachers minimally effective or ineffective (1 out 6 or maybe 1 out 7).
 - 1000 employees – 167 work performance issues (State average)
 - 500 teachers – at least 83 with work performance issues (1/6)
 - 393 using State average

- Misconduct
 - Something happens everyday

work quantity	2
Knowledge of job	5
Work skills	6
Enthusiasm	
Initiative	

**INVESTIGATION
CLOSED**

Tips for the Board Member

Trial by Combat

- It may be emotional
 - Do not make a permanent decision on the behavior or performance of all employees based a temporary emotion in one case
- Process over personality
 - Where did administration depart from process
 - Process = Fairness (your policies/State laws)
- You were not there
 - Administrators must be trained on process
 - Everyone has an appreciation of what is at stake

If not at the hearing then where and when?

- If there are questions or opinions you have related to the circumstances of a discharge or termination of the employee or of the hearing
 - Regularly scheduled or special meeting of the Board
 - Executive Session to receive personnel reports
 - Questions to the Superintendent
 - Reports from the Superintendent
- Policy development
 - Create, review and amend employee policies
 - Recognize what already exists in law
 - Do not reinvent the wheel
 - Speak for your school district

If not at the hearing then where and when?

• Training

- Allow and budget for HR training of school administrators and HR central office administrators
- In-service training for employees (more than just on sexual harassment)
- Pedophile prevention/Student safety
- Board training
 - How, what, where and why does a school district do what it does.
 - Highly regulated—where do govern

• Budget Control

- Do you have enough administrators to comply with new evaluation process, including administering growth plans
- How many administrator hours are needed on HR matters

Certain truths are self-evident ...

- Generally, only the extremes of the public on any particular school issue contact you.

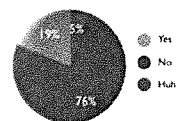
- Is there a silent majority?

- You do not want to be the Director of Human Resources.

- Employees or staff who contact

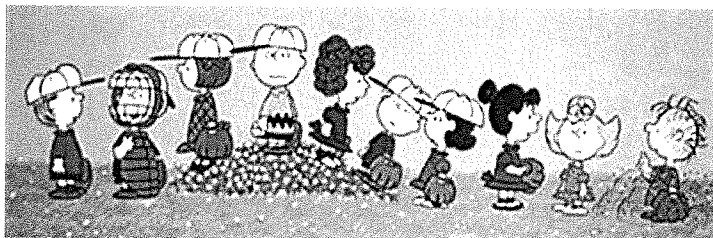
- You solve HR issues you will be contacted by more and more employees
- Refer employees to their chain of command or the grievance process
 - Report to Superintendent
 - Seek report from Superintendent on what happened later.

Do you trust public opinion?




**KEEP
CALM
AND CALL
HUMAN
RESOURCES**

QUESTIONS



Contact Information



CUDDY & MCCARTHY, LLP

Attorneys at Law

Andrew M. Sanchez

Carol Helms

(505) 888-1335

asanchez@cuddymccarthy.com

chelms@cuddymccarthy.com