



EMPLOYEE'S PERSONNEL FILE

Understanding the School Board's Role in **PERSONNEL MATTERS**

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Often newly elected school board members, and even veteran members, want to know their role in personnel matters. Given that many school corporations are the largest employer in the community, board members should be familiar with the laws that govern these issues and their

local board policies and procedures. Below is a general overview of applicable statutes and common practices. Board members should consult with local counsel when acting on specific issues presented to the school board.

HIRING DECISIONS

One of the specific powers granted to school boards is the power to employ the personnel that the board considers necessary for school purposes.¹ This is a broad grant of authority in that the statute does not define how a school board hires the personnel it deems necessary. Thus, decisions as to posting vacancies, selecting applicants, and interviewing candidates are often established through board policies, administrative guidelines, or employee handbooks. School board members are rarely part of the selection process as that responsibility is more appropriate for the superintendent and/or other school administrators. But Indiana law does require the school board to approve of the individual selected for employment.² In 2011, in an effort to clarify the roles of the school administrator and the school board in the hiring process, the General Assembly enacted legislation giving the

superintendent (and principal in some cases) the authority to “select and discharge” employees necessary to the operation of the school corporation, but subject to the “approval of the governing body.” In accordance with this statute, an individual may be hired by the school corporation only if that individual is recommended for employment by the superintendent and approved by the school board.

Additionally, Indiana law requires contracts of employment to be approved by a majority of the school board (not just a majority of the members present).³ While not every employee is entitled to a written contract of employment, a decision to hire a person is minimally an oral agreement to employ the person and requires the approval of a majority of the school board.

Hiring the Superintendent

The one significant exception to the statements above is the employment of the superintendent. This is within the sole authority of the school board and therefore the school board makes all the decisions about advertising, interviewing, and selecting the superintendent. While the school board has much discretion in this process, Indiana law imposes some restrictions in the terms and conditions of the employment of the superintendent, such as the length of the contract and the amount of any buy out of the contract.⁴

Additionally, our statutes require the school board to post the proposed terms of the superintendent’s contract, terms such as salary and fringe benefits, and to hear public comment on the proposed terms. The school board must complete this process before entering into a contract with a new superintendent.⁵ (This process also applies whenever proposing to change the terms of the superintendent’s contract.)

DISMISSAL DECISIONS

The statutes discussed above, that give the school board the authority to hire personnel, also empower the board with the authority to dismiss personnel.⁶ The board’s role in the dismissal process will differ, depending on the classification of the employee.

For those individuals who are not required to have a license to fulfill a job description, generally referred to as noncertified employees, the board’s role in any dismissal process is usually to act on the recommendation of the superintendent on the dismissal. Noncertified employees who do not sign employment contracts are considered at-will employees and may be dismissed for any reason, as long as it is not an unlawful reason. In these

cases, a school administrator could make the decision to dismiss the at-will employee immediately or to, for instance, give the employee two-weeks’ notice of dismissal. The administrator must still, however, have the board act on the dismissal. That action could be to approve of the recommendation to dismiss or to ratify the decision of the administrator to terminate the employee.

In limited circumstances, where a noncertified employee might have a written contract of employment and there is reason to terminate the contract before it expires, the employee may be entitled to a hearing before the school board before the board makes a decision on dismissing the employee. After listening to the evidence presented, the school board would vote on whether to dismiss the employee.⁷

For those employees who are required to have a license to perform services for the school corporation, generally referred to as certified employees, the board’s role in the dismissal process is likely more involved because of the due process procedures afforded to these employees. Teachers and school administrators are required by law to sign contracts with the school board and these contracts, as well as state law, provide the teacher and school administrator with a few more rights before being dismissed. Generally speaking, the superintendent or principal can initiate a contract cancellation process without any action by the school board, but ultimately the teacher has the right to a “conference” with the school board before the board makes a final decision. The conference is more like a hearing because the statute states both parties, the teacher and the school administration, have the right to present evidence during this meeting, that the evidence must be exchanged at least seven days before the conference, and the school board must consider whether the preponderance of the evidence supports the dismissal of the teacher. Depending on the complexities of the dismissal, all parties – the teacher, the school administration, and the school board – may elect to have legal representation in this process.

Because the school board is the ultimate decision-maker, board members need to take care to maintain impartiality or neutrality throughout any dismissal process. This means that an individual board member should not be part of any investigation into an allegation of misconduct or should not be seeking to gather any evidence or information on his/her own time about the particular situation. A board member must make a decision on termination after considering only the evidence that is presented during the conference.

Dismissing the Superintendent

As with hiring the superintendent, only the board is involved in the dismissal of the superintendent. Any termination of the board’s contract with the superintendent before its expiration would require the board to give the superintendent the opportunity for a hearing before the school board.⁸ In any such hearing, a member of the school board or an attorney (or some other person) would have to present evidence on behalf of the board that supports cancellation of the contract. This can be a complicated process and one that requires the board members to be very careful in order to maintain impartiality and provide a fair process.

REASSIGNMENT OF EMPLOYEES

The only statutes that speak to the reassignment of an employee are those related to the “nonrenewal” of certain administrators. Those administrators are the superintendent,

assistant superintendent, principal, assistant principal, and director of special education.⁹ The nonrenewal process must be followed when an administrator’s contract in the administrative position is ending and the superintendent and school board believe the administrator should be reassigned to another position. The nonrenewal process for all administrators except the superintendent requires the school board to either initiate the process or approve of the superintendent’s decision to initiate the process. Once initiated, the administrator would have the right to a conference before the school board, wherein the administrator would be given the opportunity to give reasons as to why he/she should be allowed to continue in the position. The board would ultimately vote on the nonrenewal at a public meeting.

Nonrenewal of the Superintendent

In a situation where a superintendent’s contract is ending, such as at the end of the original three-year contract, and the



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board merely wishes to reassign the superintendent to another position within the school corporation (as oppose to canceling the contract entirely), the board needs only to vote at a public meeting, before January 1 of the year the contract is to expire, to nonrenew and then give written notice to the superintendent of the decision to nonrenew.

DISCIPLINARY DECISIONS

Indiana law is silent on the issue of disciplinary action except in the case of suspending a teacher without pay as a disciplinary measure. Therefore, school administrators have complete discretion to determine whether an employee, certified or noncertified, should be disciplined in some manner. The school board has no role in determining whether an employee should be given a verbal or written warning or a reprimand. However, in cases where a supervisor believes a suspension with pay is warranted, that decision must be approved or ratified by the school board so that no school official is charged with ghost employment.¹⁰

If a superintendent or principal determines that a teacher should be suspended without pay, our statutes require that the administrator provide the teacher with specific due process rights, including the right to a conference with the school board. This process is much like the teacher dismissal process and is rarely used. It is also possible that the teacher would agree to a suspension without pay by waiving the rights given to the teacher.

COMPENSATION AND FRINGE BENEFITS

The school board also has the specific power to “fix and pay the salaries and compensation” of its employees.¹¹ For teachers, the board accomplishes this through the mandatory collective bargaining process in statute.¹² The bargaining process requires the school board to enter into a contract with the teachers association that identifies the salary range and fringe benefits that will be paid to teachers. The board then signs contracts with each teacher that sets forth the salary.

For school administrators or other teachers who are not in the bargaining unit, the school board enters into a contract with the employees that identifies the salary. The fringe benefits may be determined adoption of a fringe benefit package in board minutes or they may be established in an employee handbook approved by the school board.

For noncertified employees with a contract, the board

identifies the salary in the written contract. For noncertified employees, the board approves of the salary and fringe benefits at a public meeting. The salaries and fringe benefits must also be adopted when approving an employee handbook. 📌

REFERENCES

- 1 IC 20-26-5-4(a)(8)(A)
- 2 IC 20-26-5-4.5
- 3 IC 20-26-4-8
- 4 IC 20-28-8-6
- 5 IC 20-26-5-4.3
- 6 IC 20-26-5-4(a)(8)(A) and IC 20-26-5-4.5
- 7 IC 20-26-5-4(a)(19) gives the school board the authority to ratify action that is taken by an employee after the action is taken.
- 8 IC 20-28-8-7(2) and IC 20-28-7-5-2
- 9 IC 20-28-8-3, IC 20-28-8-7(3), and IC 20-28-8-11
- 10 This is the position of the State Board of Accounts
- 11 IC 20-26-5-4(a)(8)(B)
- 12 IC 20-29-6-4

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