



Top 10 Takeaways for New Superintendents

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Disclaimer

This presentation is for informative purposes only and does not constitute legal advice. Please check with your attorney for legal advice.

Top Legal Issues School Districts

1. Sexual Misconduct
2. Special Education Issues
3. Personal Injury - Negligence
4. Harassment, Intimidation, Bullying (HIB)
5. Discrimination
6. Labor/Grievance – CBAs
7. Wrongful termination
8. Employee Misconduct
9. Constitutional Issues (speech, searches, etc.)
10. Student Discipline

Trends

- What do you notice about this list?
- What trends do you notice in your District?
- How has COVID-19 impact these trends?





Takeaway

10. Most legal issues come out of the Human Resources department

An HR lens must be included in District decision-making



Takeaway

9. Some decisions will need to be bargained

Mandatory Subject

- MUST be bargained before implementation
- Wages, hours and conditions of employment
 - Extending the workday an additional .5 hour would need to be bargained
 - Contracting out bargaining work

Permissive Subject

- NOT required to be bargained before implementation
- Management rights – or a management prerogative
 - What curriculum you use
 - Payroll process
- Beware of the impact of a permissive topic



Impact Bargaining

Obligation to bargain the “effects” of unilateral decisions regarding areas of permissive bargaining.

- “In this case, the employer was within its right to reduce staffing. While the employer was not obligated to bargain the decision to reduce staffing, the employer remains obligated to bargain the impacts of that decision.” *Central Washington University*, Decision 10413-A



Takeaway

8. Bargaining is ongoing all year and based on relationships



Takeaway

7. Consider whether the superintendent is on the bargaining team

In most cases, the answer is NO



Takeaway

6. Laws and CBAs provide protection to employees*

*No employees are “at will”

Provisional Nonrenewal Teacher

- Provisional status for first 3 years in the District (or one year with 2 years experience in another school District in the state of Washington)
- Notification by May 15
- Informal meeting with Superintendent
 - Either reinstate or submit a report to the School Board
- Decision of the Board is final and not subject to appeal

RCW 28A.405.220

Administrator Transfer to Subordinate Position

- Applies to certificated administrators including assistant superintendents, directors, principals (with less than 3 years), assistant principals and coordinators.
- Principals - Provisional status for first 3 years in the District (or one year with 2 years experience in another school District in the state of Washington.
- Notification by May 15
- Standard is “best interest of the District”
- Informal meeting with Board in executive session
- Decision of the Board is final and not subject to appeal

RCW 28A.405.230 – Administrators

RCW 28A.405.245 – Principals

Termination for Cause

- Applies to teachers, principals, supervisors, superintendents, or other certificated employees
- Supported by probable cause to adversely impact the contract
- No May 15 deadline
- May request a hearing pursuant to RCW 28A.405.310

RCW 28A.405.300

Nonrenewal due to loss of enrollment or revenue

- Applies to certificated employees
- Supported by probable cause to adversely impact the contract for loss of enrollment or revenue
- May 15 deadline
- May request a hearing pursuant to RCW 28A.405.310 for the sole purpose of determining whether cause existed for loss of enrollment or revenue

RCW 28A.405.210



Takeaway

5. When engaging in an adverse action against an employee, rule in and rule out potential discrimination*

Document, document, document

HYPOTHETICAL CASE STUDY

- On April 1, your HR Director approaches you to request that you non-renewal a provisional principal – new to your District this year. The mid-year evaluations are unremarkable, but there have been concerns about the principal’s follow through. The HR Director is concerned that the employee doesn’t “fit the mold” and wants to part ways before they gain tenure in the District.
- What is the statute you would use to non-renewal the principal?
 - What is the legal standard?

Case Study CONTINUED.....

- Now assume that after the employee got word of a potential non-renewal, he is expressing an interest in the District's informal discrimination complaint process and is requesting a meeting with the superintendent's designee to present evidence of potential treatment during the year.



Takeaway

4. Document employee concerns in evaluations and progressive discipline



Takeaway

3. At times we settle cases to avoid risk and mitigate damages

Balancing Act



- During the *28A.405.300* hearing, the employee continues to receive pay until a decision from the hearing officer
- If the employee prevails, can recover attorneys' fees
- If the District prevails, the employee can appeal the decision up to the Supreme Court*
 - *no appeal right exists for the District



Takeaway

2. Know when you have a board policy in play

Comply with process and timelines



Takeaway

1. Communicate with colleagues

Contact Information



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