

Seniority and Tenure Rights for Part-time Employees

The lawmakers of New York State have bestowed broad power and discretion upon a board of education with respect to hiring and firing teachers and school administrators. Prior to the enactment of today's tenure statutes, the board exercised this power using employment contracts between the board and individual employees. These contracts were reviewed and renewed by the board annually, if ever. The tenure statutes were enacted to create a shift in the administrator employment system, from the prior system of annual review to one of permanence and away from the sphere of political influence. The legislation's main purpose was to provide job security to competent educators and administrators holding positions to which they were appointed.

Generally speaking, tenure is the permanent employment status earned by administrators who complete a probationary period of satisfactory service with a district. All principals, administrators, and other members of the supervisory staff of school districts and board of cooperative educational services (BOCES) must be appointed by the school board to a probationary term of three years. Probationary appointments are required when filling any vacant, unencumbered, full-time position. Unlike the tenure system for teachers, administrators who have received tenure in another school district in the state are not entitled to a shortened two-year probationary period. These credits, available only to teachers, are referred to as "Jarema credits." However, a board of education may take it upon itself to reduce the term of probation for an administrator and typically do when the individual has been tenured in another position in the district.

Once probation is completed, tenure is granted by the school board upon recommendation from the district superintendent. If the superintendent does not recommend an administrator for tenure, a board of education cannot grant tenure itself. The tenure process requires both the affirmative recommendation of the superintendent and the positive vote of the board. Without both, the administrator will be terminated at the end of his/her probationary term, provided the school district does not acquiesce to his/her continued employment which would result in tenure by estoppel.

An employee who is granted tenure has essentially earned the right to remain employed free from dismissal or discipline unless just cause can be shown. Within the tenure framework, the distinction between "tenure" and a "tenure area" is especially noteworthy. As mentioned previously, tenure is a general designation or status, whereas "tenure areas" are the specific subject areas of administrative positions. The applicable law requires that school districts establish at least one specific administrative tenure area, with the state giving broad discretion to school districts to define them. Conversely, tenure areas for teachers are specifically defined by regulations promulgated by the commissioner of education. Furthermore, an administrator's tenure area may be broad, such as "district administrator" or narrow, such as "elementary principal." Some districts go even further, creating administrative tenure areas specific to the building in which the person works.

Another area in which the tenure system for teachers and administrators differs is the ability of the employee to attain tenure in two separate areas simultaneously. Teachers may attain tenure in more than one tenure area at a time if spending at least 40 percent of their time on each of the two areas. For administrators, a different set of rules apply. An administrator must devote more than 50 percent of his/her time to duties in the administrative tenure area to which he/she is appointed.

However, an administrator can be deemed to serve simultaneously in both an

administrative and teacher tenure area, and thus receive seniority credit and tenure in both areas. This law was established as a result of *Appeal of Pearce*, a 2010 case SAANYs successfully argued before the commissioner of education. In *Pearce*, an administrator had been appointed to a probationary position in which she spent 60 percent of her time as dean of students and the remaining 40 percent as a foreign language teacher. The decision concluded that this administrator was able to obtain tenure and seniority in both the administrative and teaching tenure areas because she performed more than 50 percent of her duties in the administrative tenure area and at least 40 percent within the teacher tenure area. Given this system, an administrator cannot attain tenure in two administrative tenure areas simultaneously, nor do they retain prior administrative tenure after they accept a new administrative position in a different tenure area.

Very often, confusion arises amongst administrators about the particular tenure area to which they belong. Critical attention must be paid to the evidence surrounding their appointment, not granting of tenure. Evidence must be gathered including his/her appointment letters. In addition, one must look at other documents such as the board meeting minutes, the board agenda and board resolutions relating to the person's initial appointment. This evidence will be used to determine the tenure area to which the administrator was first appointed. In such cases, any ambiguity or discrepancy is construed against the hiring school district. This determination is of particular importance as it directly impacts seniority rights.

Seniority rights are those rights to job security and priority within a school district based on length of actual paid service in a particular tenure area. Specifically, the first and main factor in calculating seniority is an administrator's full-time service within a tenure area. Unlike tenure rights, seniority rights apply to both tenured and probationary administrators. In the event a position is eliminated, seniority is the sole factor used to determine the order in which an administrator would be excessed. Because of the "more than 50 percent rule," it is impossible to hold administrative tenure in two or more areas.

Once a position is abolished, the laid off certificated administrator previously filling that position must be placed on a preferred eligibility list (PEL) of candidates for current or future job vacancies. Those on this list remain candidates for appointment to a similar position for a period of seven years after their previous position was abolished. The preferred eligibility list applies to both the position abolished and any similar position that may become available. A key distinction for those on the list is that seniority is determined by years of service within a district as opposed to a specific tenure area. However, if someone retires in lieu of being laid off, they forfeit their PEL rights.

A special set of complications arise for those working as a part-time administrator within a school district. Generally, part-time administrators are unable to receive probationary appointments and credit towards tenure status. Exceptions may be made for administrators only if a board decides to extend credit for tenure to a part-time employee through a board resolution or through a provision in a collective bargaining agreement. Those administrators who have already gained tenure status through service in a full-time position will not lose that status by taking a part-time position.

Part-time administrators are also ineligible for seniority credit. However, any part-time service performed after the completion of a full-time probationary appointment is included in the seniority calculation as long as the district requested the change. This is not the case where the administrator requests the reduction to part-time status him or herself. As was the case for tenure and part-time administrators, seniority credit may only be extended for part-time administrative work through a board policy or collective bargaining agreement.

An important limitation exists in that a collective bargaining agreement or policy purporting to extend seniority credit for part-time service cannot negatively impact bargaining unit members. To illustrate this situation, suppose an administrator works for ten years in a part-time role without any agreement or policy in place to extend seniority credit for these years. If the district attempts to layoff the part-time employee along with two full-time employees, each with less than ten years of service in the district, the board may not now reach an agreement retroactively extending seniority credit to the part-time employee as this action would negatively affect the two full-time employees. The board may still negotiate and extend seniority credit for future part-time service performed, but in this example, the two full-time employees must be recalled before the part-time employee with more years of service.

In summary, it becomes clear how fact-specific and complicated tenure and seniority rights can be. Anyone with questions regarding these topics should call the SAANYS Legal Department for assistance.