



School Administrators Association of New York State

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Called in to be Questioned? Know Your Rights and What to do!

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The legal department at SAANYS consistently handles several calls throughout the day from members and unit leadership regarding a member being notified by their district that the member has been summoned to appear for questioning, regarding an incident, claim or point of concern from the district's perspective. From a legal perspective, it is our intention to advise the unit leadership and the member as to what they can expect during questioning, what their rights are, and what they should do when questioned. Many times, our legal advice will advise the unit leadership as to how to represent the member during questioning or having legal representation present during the meeting. This article will touch on some general legal theories that all administrators and unit leadership should be aware of, and some pointers for how to go about being interviewed and/or representing someone being interviewed. Keep in mind, we often call them "interrogations," as many times that is exactly what they are. While the term carries with it a level of significance, and has an adversarial undertone, recognizing the potential magnitude of the situation can be helpful, in and of itself.

First and foremost, a general note is that the district is not required to notify an administrator, or unit leadership, what the purpose of the questioning is, or what the subject matter of the questioning will be. While this can be quite perplexing, this is an unfortunate reality. What we advise our unit leadership to do, is, if possible, build relationships with the district. In building these relationships, oftentimes the district may provide some insight in advance of a meeting as to what that meeting will be about. The same goes for connecting with SAANYS and looking to see if SAANYS legal counsel can inquire in advance of the meeting as to what topics the interview will cover. While this will not always produce helpful information, many times it will. There is one caveat however which is to note that the district is not required to identify what the interview will be about. If the questioning may result in "disciplinary action" against the administrator being questioned, the administrator must be notified of such, and the administrator has the right to have union representation present, whether a fellow unit member, or a SAANYS attorney. While this may not be a notice consisting of the subject matter of the meeting, we at least know that the person being interviewed may very well be the current or eventual target of a counseling memo or even disciplinary charges.

As noted, if the interview may result in "disciplinary action" against the member being interviewed, the district must notify the member in advance and allow for union representation during the meeting. Failure to do so may cause the interview to be thrown out or deemed illegitimate. Important to remember is that the administrator must request a representative before questioning occurs. Always be aware though, that a district may be able to claim that though they did not anticipate the interview would result in "disciplinary action", the defense exists that the district only learned of conduct later during the interview that could then result in "disciplinary action." Be vigilant to seek union representation regardless of whether the district notifies our member that the interview may result in "disciplinary action".

Know your Cadet Rights. Cadet Rights are rights reserved for Administrators (and Teachers). Cadet Rights can be viewed as analogous to your Fifth Amendment right against self-incrimination. Understand that Cadet Rights apply to both tenured and probationary administrators. What this means is that if an administrator is tenured, they respond to a question, some questions, or even all questions, by asserting their Cadet Rights, and thus invoking the right to not answer the question asked. In doing so, an administrator's response, or lack thereof, cannot be deemed insubordinate, and held against them. While a lack of response will also prevent potential

exculpatory information from being presented in responsive form, the failure to answer the question cannot be deemed insubordinate. Many times, it is a complete judgment call as to when and why to invoke Cadet Rights. From our perspective, Cadet Rights should be invoked when questions are posed that clearly indicate that the district has already made up their mind as to the answer of the question, when the district looks like they will plan to seek “disciplinary charges” regardless of the answer; when the answer to the question will be damaging to our member, or when the question is too complicated/or unclear to provide a helpful or meaningful response to. Again, it is a judgment call, but we oftentimes find Cadet Rights to be quite useful to invoke. With that said, Cadet Rights are not usually invoked by a probationary administrator. Understand that if a probationary administrator invokes his/her Cadet Rights, the likelihood of continued employment is doubtful. There are also times that a probationary administrator should decide not to answer a question, and those would be when the answer will be highly damaging to the administrator, such as when the answer will support a finding of criminality or otherwise. In those cases, it is imperative to consult with a SAANYS attorney.

When answering questions – answer truthfully, and succinctly. Providing inaccurate or false information in response to a question can support a disciplinary charge in and of itself. As for answering questions succinctly, do so as if in a legal deposition. It is not the job of the answering party to guess or to speculate. It is also not the job of the answering party to go on lengthy tangents, unresponsive to the question. Without a legal mindset, the way in which we answer questions can be distorted. The best answer is a clear, concise answer.

When the questioning has concluded, the interview is done. This is not the time to ask follow-up questions, or to attempt to learn more about how the district interpreted answers to questions. The same adage for a deposition can be applied here. When the questions stop, the meeting should stop. This is to protect our members from giving information not asked of them that has not yet been vetted by union leadership or SAANYS counsel. There will come a time to learn more about what the district has planned and at that time, those plans may be addressed.

If an interview results in a counseling memo, or some other form of “constructive feedback” review this with union leadership and SAANYS counsel. It is always helpful and truly necessary to respond appropriately to counseling memos or other forms of constructive feedback such as performance improvement plans to ensure that their terms are well understood and defined, and that we produce a responsive record to rebut the claims presented by the district. Should the interview result in “disciplinary charges,” again, these will need to be discussed with union leadership and SAANYS counsel. SAANYS will defend our membership throughout the process.

If ever in doubt, contact the SAANYS Legal Department for guidance, legal advice, and possible representation.

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