



Board-Superintendent Relationship: Tools to Manage Through Tough Times

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Part I – *The Tool Box*

- State Laws and Regulations
- The Contract – often overlooked but important terms
- Evaluation Format and Process
- BOCES District Superintendent
- Board Policies
- NYSSBA
- Scripted Response to address situation
- Cease and Desist Letter – “Bad Board” Letter
- Separation Agreement – Controlling the Process
- Civil Remedies



New York State Law

- Education Law
 - §1708 – Regular Meetings and Visitation of Schools
 - §1709 – Powers and duties of Boards of Education
 - §1711 – Appointment of Superintendent of Schools
- Public Officers Law
- Executive Law
 - Freedom of Information Law (FOIL) §§84-90
 - Open Meetings Law §§101 *et. seq.*



New York State Regulations

- Regulations of the Commissioner of Education
 - 8 NYCRR Part 84 – Examination of Records
 - 8 NYCRR Part 100.2(o)(2) – Evaluation of the Superintendent
 - 8 NYCRR Part 275 – Appeals to the Commissioner
- Regulation of the Committee on Open Government
 - 21 NYCRR Part 1401 - Public Access to Records
 - COG Advisory Opinions



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Important Contract Terms from The Council's Perspective



Important Contract Terms: Board Meetings & Criticisms

- “The Superintendent shall be notified of and shall have the right to attend all meetings of the Board, including executive sessions of the Board, except that the Board may exclude the Superintendent from any portion of a meeting during which they are discussing his/her performance or salary.”
- “The Board, **individually and collectively**, shall promptly and discretely refer to the Superintendent, in writing for his/her study and recommendation, any and all criticisms, complaints, suggestions, communications or comments regarding the administration of the District or the Superintendent’s performance of his/her duties.”



Important Contract Term – The “Non-Diminishment” Clause

“The Board may, from time to time, prescribe additional or different duties and responsibilities for the Superintendent, provided, however that the Board shall not, without the Superintendent's written consent, adopt a policy, by-law or regulation which impairs or reduces the duties and authority specified above; and, provided further, that all additional duties and responsibilities prescribed by the Board are consistent with those normally associated with the position of Superintendent of Schools in the State of New York. This provision shall continue in full force and effect during any period of suspension.”



Important Contract Term – The Renewal

- “No later than June 30th in each year of this Agreement, or in any extension hereof, the Board shall meet to consider extending the term of the Superintendent's employment for an additional one year period. At such time, a motion to extend the term of this Agreement for an additional one year period will be moved, seconded and voted upon by the Board. If the Board fails to so act by June 30, the Superintendent may require that it do so at its next regularly scheduled Board meeting. It is the parties' expectation that the Superintendent's term of employment will be renewed at the time of such Board consideration, provided the Superintendent has previously rendered competent and efficient service and faithfully discharged the duties of his/her position as described herein.”
- “The requirements of this paragraph may be waived upon written notice to the Board signed by the Superintendent.”
- “Any extension of the term of the Superintendent's employment shall be in the form of an amendment to this Agreement; and shall be upon the same terms and conditions as herein set forth unless otherwise agreed in writing by the parties.”



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NYSSBA takes the position that there can be differing perspectives in contract negotiations. School Attorneys may have different opinions as to the importance or relevance of including the above terms in a contract.



Important Contract Term – The Evaluation

- The Board shall devote at least a portion of one meeting during the month of May in each year of the Superintendent's employment by the District to an evaluation in executive session of his/her performance and his/her working relationship with the Board.
- The evaluation shall be based upon performance criteria as mutually established by the Board and the Superintendent by October 1 of each year which shall be reduced to writing in a form mutually agreed upon by the parties. A sample copy of the form shall be attached to this agreement. The Superintendent shall be provided with a copy of the written evaluation at least ten (10) days prior to the executive session of the Board scheduled to discuss such evaluation.
- The performance evaluation prepared pursuant to this paragraph shall be confidential and shall be kept so by the Board and individual Board members.



Strong Evaluation Format and Process

The board's evaluation of the superintendent is one of its most important functions. It's also mandated by law (8 NYCRR 100.2(o)(2) requires an evaluation on an annual basis).

Strong Evaluation

1. Discuss tensions or issues
2. Clarify areas where the board-superintendent relationship can be improved
3. Serve as a record of strong performance over time

Weak Evaluation

1. Overweigh management considerations at the expense of broad, ambitious goals
2. Serve as a platform to magnify the minority opinions of single board members
3. Devolve into *ad hoc* expressions of a recent frustration



BOCES District Superintendent

- Your Colleague and your resource
- Informal authority
- Legal authority



Make Your Board Policies Work for You

Most Board Policies will define the following:

- Authority of the Board of Education
- Limitations on the authority of individual board members
- Broad delegation of authority to the superintendent
- Chain of command (i.e. board communicating through the superintendent to the staff; and the staff communicating through the superintendent to the board)
- Public Session Protocol
- Public Expression at meetings



NYSSBA as a Resource

Give your Board President and Board members the tools to succeed

Handling the Public Comment Section – NYSSBA

<http://www.nyssba.org/index.php?src=news&refno=917&category=On%20Board%20Online%20June%2029%202009>



Scripted Response

1. Review the facts
2. Review your contract
3. Review your board policies
4. Assist you to craft a response within the boundaries of your contract and board policies.



“The Bad Board Letter”: Why Send Such a Strong Message to the Board?

- Board Member acting beyond scope of authority
- Hostile Work Environment
- Diminishing Role and Responsibilities
- Defamatory Statements
- Blogging
- Legal Harassment (FOIL requests, nuisance law suits)



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“The Bad Board Letter”

Board of Education Member

RE:

Dear _____:

Please be advised that, as counsel to the New York State Council of School Superintendents, we represent _____, Superintendent of Schools for the _____ School District (“District”). Mr. _____ has contacted us in regard to certain concerns about his relationship with and employment by the Board of Education of the District. It appears, from our review of **several documents and from conversations with Mr.** _____, that certain members of the Board are seeking to undermine, and possibly defame, Mr. _____.



“The Bad Board Letter”

There is just one possible solution to this situation: The Board and the Superintendent try to work out their differences and allow the Superintendent to complete the term of his employment in a productive manner. Working out these differences in an amicable way requires the assistance of a majority of the Board in stopping any attacks. Mr. _____ intends to fulfill the commitment he has made to the District and wants to deal with the situation in a professional manner.

If you have has any questions in regard to this letter, please feel free to contact me.



Positive Response:

1. Drawing boundaries to effectively establish the terms of your relationship with the Board
2. Repairing your relationship with the Board

Adversarial Response:

1. Enforcing Board Policy
2. Enforcing the terms of your contract



Separation Agreements – Controlling the Process

- Circumventing the Due Process Provision
- Memorandum of Understanding
- Press Release
- Letter of Reference



Civil Remedies

- Breach of Contract
- Defamation/Slander
- Federal/State Title VII Remedies
- Limitations on Legal Services



Part II - *Review of Current Events*

- Defamation
- Blogging
- Superintendent Evaluation
- Dealing with Individual Board Members
- Controlling Public Session Comments



Defamation

Definition: generally a false statement or act of communication that causes someone to be shamed or ridiculed or lowered in the estimation of the community, or to Lose employment status or earnings, or to otherwise Suffer a damaged reputation. (libel – written; slander –verbal)

*The superintendent was negligent and lied to me about staffing issues.
(Published in the New York Daily Times on May __, 2009 by: Mr. Smith –
Board Trustee XYZ School District)*

*Dear Mr./Ms. Superintendent, we did not select you as our candidate for
superintendent because of your damaged reputation. You lied to a school
trustee as evidenced by the published statement in the New York Times.
Sincerely – ABC School District Search Consultant*



Blogging

Web Logs – The “Soap Box” of the twentieth Century. The easiest social media tool to master; the most efficient media tool available to publish personal editorials and comments. Blogging provides anyone with the ability to instantly convey information and opinions, and solicit public response, without having to worry about social responsibility. (Freedom of Speech and the right to be anonymous.)

“I just know my former board member posted that blog entry – even though the person posting this information was anonymous, that information was only given to the board during executive session, and Mr. XYZ is the only person that had the motivation to release such damaging information just before the board votes to give me a raise, and extend my contract.”



Superintendent Evaluation

It was a crazy year, the economy collapsed, the budget went down, three members were off the board at the end of June, and the board just did not have time to complete my performance evaluation.

- What happens if a board refuses or forgets to complete the superintendent's performance evaluation?
- Can you compel a board to evaluate a superintendent?
- Will the board's failure to act impact salary?



FOIL Requests by Individual Board Members

My Board member keeps coming into my office, and directs me or my employees to immediately provide information she says that she is entitled to under the Freedom of Information Law. When I cannot produce the information fast enough, she reminds me that I work for her. She further cautions me to do everything she tells me to do or else she will have the majority of the board vote to terminate me.



Board Member inappropriate criticism of Superintendent, in front of Staff or in public

A newly elected board member told members of the local Rotary Club that she did not have any confidence in my performance, and was elected by the community to remove me as the superintendent. The same new board member came into my district office and started telling my senior staff members that I was not in charge of the district, and to come directly to her with any complaints about how I run the district.



Secret Board Meetings

The Audit Committee is meeting in executive session to speak to certain staff members, and to review the superintendent's attendance records to report back to the board. The Superintendent is not invited to participate in the meeting.



Request to review information in a Personnel File

A new board member has demanded that the superintendent produce the evaluations of all district administrators for his personal review.