

Board of Education Role in Employment Decisions

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Agenda

- Classified v. Unclassified Employees
- Hiring Process for Administrators (Other than Superintendent)
- Probationary Appointments and Tenure Decisions for Certificated Employees
- Layoff/Recall Rights of Administrators



Types of School District Employees

All employees within a school district are Civil Service employees, however, they fall into two major categories of classified service and unclassified service. Teachers, Teaching Assistants and school certificated Administrators fall within the unclassified service and their job titles are described in certifications issued by the New York State Education Department to the New York State Department of Civil Service as described in Civil Service Law §35-g.



Types of School District Employees

Unclassified Service (Civil Service Law §35) - includes elected officials, members of boards or commissions, Board of Election employees, the head or heads of any department of the government who are vested with authority, direction and control over a department, and who have power and authority to appoint and remove employees and officers therein.

Teachers, Teaching Assistants and school certificated Administrators fall within the unclassified service and their job titles are described in certifications issued by the New York State Education Department to the New York State Department of Civil Service as described in Civil Service Law §35-g.



Types of School District Employees

- Classified Service (Civil Service Law §40-45) – Generally speaking, this includes all other employees.

The Classified Service is divided into four subcategories:

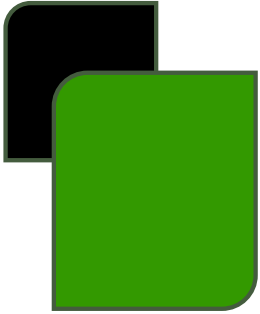
- Competitive
- Non-competitive
- Labor
- Exempt

The County Civil Service Department (or City Civil Service Commission if applicable) exercises jurisdiction over all employment of the classified service in every School District and BOCES.



Classified Service

- Exempt (Civil Service Law §41) – all positions for which a competitive or noncompetitive examination is not practicable. Often involves highly confidential duties, but confidentiality does not require an exempt classification. Serves at the pleasure of the appointing authority.
- Noncompetitive (Civil Service Law §42) – Qualifications can be objectively assessed, but no written or oral examination is given. Civil service sets minimum qualifications.
- Labor (Civil Service Law §43) – Unskilled often manual positions, with no minimum qualifications.
- Competitive (Civil Service Law §44) – Must meet minimum qualifications set by the local civil service and are subject to a competitive examination.



Classified Service

All permanent employees must complete a probationary period.

- Length may vary depending on the specific County's Civil Service Rules, and any applicable collective bargaining agreement, but generally:
 - Westchester County: Minimum of 12 weeks, maximum of 52 weeks.
 - Putnam County: Minimum of 8 weeks, maximum of 52 weeks.
- After the completion of the probationary period, the appointment becomes permanent.
- Based upon a recent amendment to the New York State Civil Service Law all seniority calculations for layoff and recall determinations of competitive, non-competitive and labor class employees are made by the County Civil Service Authorities. (See Civil Service Law §§80-81)



The Hiring Process for Administrators

The Board of Education is the employing authority of the District and shares that responsibility with respect to pedagogical employees who are in tenure track positions under the education Law. (Education Law §§1709[16] & 3012). In small city school districts, Deputy, Associate and Assistant Superintendents are contractual, non-tenure bearing positions which are direct hires by the Board of Education for contract terms of from 1 to 5 years. (Education Law §2509[3]).

With the 2025 changes to the tenure laws and the disassociation of APPR scores from tenure conferral for building principals, effective with the 2024-25 school year, the employment of certificated administrators has been returned to its earlier simplicity.



The Hiring Process for Administrators

For certificated administrators whose positions require one of these certifications:

- SDA or SDL (Districtwide)
- SAS or SBL (Building Level)
- SDBL or SBA (Business Only)

The probationary term is generally four (4) years but may be shortened to three (3) years based upon prior tenure status as an administrator in any New York Public School District or BOCES, regardless of which administrative position was served in, and such service could have been in the same school district. (Education Law 3012).

There is no shortening of probation for prior service as a long term substitute (*Roberts v. Community School Board*, 66 N.Y.3d 652 (1985)).



The Hiring Process for Administrators

The appointment to probation in all school districts, except with respect to Deputy, Associate and Assistant Superintendents in Small City School Districts must state:

- The name of the appointee
- The position of hire
- The tenure area of the appointment (could be a single position tenure area)
- The start and expected end date of the appointment (based upon calendar years – not school years)
- The certification status of the appointee

[Note: For Building Principals there no longer should be a reference to successful evaluation under the District's APPR Plan]



The Hiring Process for Administrators

Filling Unexpected Vacancies

It is not uncommon for administrators to leave their employment with the district with relatively little notice to the board of education and superintendent of schools. (See Education Law §3019-a; 30 calendar day notice requirement).

When hiring a temporary employee to fill the position pending a comprehensive search no more than a couple of meetings may pass before de facto probation would occur. *Matter of Serritella* 58 A.D.2d 645 (2nd Dept.[1977]); *Matter of Ricca* 47 N.Y.2d 385 [1979]).



The Hiring Process for Administrators

Filling Unexpected Vacancies

It is lawful to enter into a *contract in lieu of probation* for a period of months during the pendency of search. The contract will preclude a claim of *de facto* probationary status. *Matter of Feinerman v. BOCES*, 48 N.Y.2d 491[1979])

If the hiring is for a fixed term of at least five (5) months, and if the position is covered under a collective bargaining agreement, its terms will apply to the employee. Otherwise, either policy or agreed upon contract terms would be applicable.



Probationary Employment and Tenure Conferral of Certificated Employees

- Teachers and Teaching Assistants are appointed to probationary appointments of four years, with the following exceptions applying to teachers only:
 - Prior Experience:
 - Teachers who have received tenure in another school district (regardless of tenure area) and were not dismissed as a result of disciplinary charges will serve a three-year probationary period.
 - Jarema Credit:
 - A teacher must be given a shortened probationary period if the teacher was a certified teacher who served as a regular substitute immediately preceding the probationary appointment in the same tenure area as the probationary position.
 - Cannot combine prior tenure and Jarema credit – it is whichever appointment in the tenure area is the better benefit.
 - In order to be awarded a Jarema Credit, the substitute service must be at least a semester in length. The Jarema credit will not be awarded for more than 2 years of service.



Probationary Employment and Tenure Conferral of Certificated Employees

School Administrators, Teachers, & Teaching Assistants who are appointed to tenure track positions are subject to termination from their probationary employment as follows:

- *During the probationary term*, but before the end of the term, both the Superintendent of Schools and the Board of Education must be in agreement to terminate services.
- *At the time of a tenure conferral* decision, either the Superintendent of Schools or the Board of Education may effectuate tenure denial.
- Several Education Law statutes are involved with these processes

Education Law §3031, a/k/a the *Fair Dismissal Law*; Education Law §3019-a *Notice of Termination* and, for tenure denial §3012 *Notice of a Superintendent's negative tenure recommendation*



Probationary Employment and Tenure Conferral of Certificated Employees

Mid-Term Termination of a Probationary Employee

Under the *Fair Dismissal Law* an initial letter must be sent by the Superintendent of Schools to the Probationer advising that the Board will vote on a resolution to terminate probationary service (on at least 30 calendar days notice to the probationer).

- At least 21 calendar days before the date set for the board vote the employee may request the superintendent's reason(s); then
- Within 7 calendar days the specific reason(s) must be furnished; and
- At least 7 calendar days before the board vote, the employee may write a rebuttal to the superintendent's reasons for consideration by the Board.



Probationary Employment and Tenure Conferral of Certificated Employees

Mid-Term Termination of a Probationary Employees

When the Board votes upon the resolution for a mid-term termination, pursuant to the provisions of Education Law §3019-a, the last day of work must be set at least 30 calendar days after the board vote to assure at least 30 days actual notice of the termination.

About the reasons given: They must be sufficiently specific to allow for a meaningful rebuttal (if any); they must not place at issue the moral character of the probationer or else a name clearing hearing will have to be afforded the probationer if the reasons are in dispute.



Probationary Employment and Tenure Conferral of Certificated Employees

Tenure Conferral

If the Superintendent is recommending tenure, the only critical timeline is that the vote take place during the probationary term or else the employee would secure *tenure by estoppel*.

Education Law §3031(b) provides that a board's vote which does not support the superintendent's recommendation for tenure would be deemed advisory and a second vote would have to be established as a time for final action by the board. In such a case, the reasons would come from the board instead of the superintendent, but the timeframes for the sequencing of letters, reasons and rebuttal would be the same as for a mid-term termination.



Probationary Employment and Tenure Conferral of Certificated Employees

Tenure Conferral

If the **Superintendent is recommending against tenure**, notice of that intention must be given at least 60 calendar days before the end of the probationary term, in accordance with the provisions of Education Law § 3012.

In the case of a Superintendent's negative tenure recommendation, the provisions of the *Fair Dismissal Law* applicable to mid-term termination, as set forth in **Education Law §3031(a)** would be in effect.



Layoffs and Recall Rights of Administrators

In accordance with Education Law §§2510(2)&(3) and 3013(2)&(3), a layoff of an administrator would be based upon the tenure area of their employment based upon tenure area seniority and recall rights would be based upon the inverse order of seniority as an administrator in the District.

The Recall period: 7 years from the effective date of the layoff (using calendar years).

Determining the Tenure Area of Employment: The definitive analysis is based upon what is stated in the appointment resolution, regardless of the tenure area stated in a tenure conferral resolution.

What if no tenure area appears in the appointment resolution?

The position is deemed to be in a general administrative tenure area.



Layoffs and Recall Rights of Administrators

What happens if an Administrative position is abolished and there is another position created?

If a newly created position is similar to the position from which an administrator is being laid-off the administrator subject to layoff would have the right to the newly created position at no reduction in salary. (See Education Law §2510 [1]; *Matter of Elmendorf*, 36 Ed. Dept. 308, Decision No. 13,733 [1997]).

What makes administrative positions “similar”?

- In the same tenure area
- Certification requirements the same (e.g.: SAS or SBL cert.)
- Duties more than 50% similar.



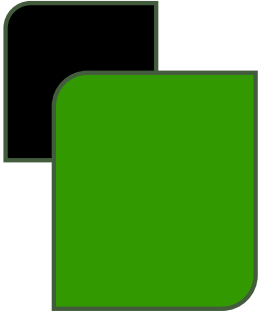
Layoffs and Recall Rights of Administrators

What happens of an Administrative position is abolished and there is another position created?

If an administrator has a colorable claim that a newly created position is similar to their abolished administrative position, due process may require that a hearing be offered at which the administrator affected by the layoff may contest the issue of similarity of positions (using the *Elmendorf factors*)

30% or more similar is a reasonable yardstick for determining the need for a similarity hearing.

(See *Goldberg v. Board of Education*, 777 F. Supp. 1109 [E.D.N.Y. 1991]; *DeSimmone v. Board of Education*, 612 F. Supp.1568 [E.D.N.Y. 1985])



The End

Questions?