Termination of a Principal's Administrator Contract

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Publications

On December 15, 2015, the Indiana Supreme Court issued an opinion addressing the procedures required in the termination of a principal's administrator contract. The case involved the termination of an elementary school principal's contract after the school board learned the principal had been involved in a sexual relationship with a teacher who was one of his subordinates. The issue was whether the school board provided the principal with appropriate due process when it terminated his employment as an administrator. In a case of first impression, the Court analyzed the teacher termination statute, IC 20-28-7.5-1 *et seq.*, and determined that it did not apply to the termination of an administrator when his underlying teaching contract was not also being terminated. The Court further held that the provisions in the required form of the teacher's contract, that makes reference to an opportunity for hearing and just cause for termination, also only applied to the termination of an administrator's underlying teaching contract. Further, under the facts of the case, it was determined that the principal was given sufficient notice and an opportunity to be heard.

In November of 2011, the principal was approached by the superintendent, who informed him there were concerns with his performance as principal. Thereafter, the principal was asked about rumors that he had engaged in a sexual relationship with another staff member. The principal admitted to this relationship. Due to concerns about the appropriateness of such a relationship between a supervisor and a subordinate, the school requested his resignation. On December 13, 2011, the principal tendered his letter of resignation, which was to become effective June 30, 2012. When this was presented to the school board, the board was concerned with the principal's continued employment, and while the board proposed accepting the resignation, it sought an earlier effective date. The principal refused to sign a revised resignation that would have made his resignation effective immediately.

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Thereafter, he was placed on paid leave while the school board sought cancellation of his administrator's contract, leaving his underlying teacher contract intact. The director of human resources then sent a letter to the principal explaining that a preliminary recommendation was being made to the board to have the principal's employment as an administrator terminated, effective immediately. Several reasons were listed for this action, including concerns about the principal's ability to be an administrator. The letter explained that the principal could request a private conference with the school board. A private conference with the superintendent was not offered. Further, the letter detailed that the principal would be allowed to bring counsel to the private conference with the board and would be given an opportunity to respond to the reasons set out in the recommendation for termination. The principal then sent a letter requesting a private conference with the board and also asked the school to identify the applicable sections of the Indiana Code under which the action was being taken. The school's counsel responded and explained that there was no statute applicable to a private conference for cancellation of an administrator's contract. This letter detailed that the statutory process for a private conference is only applicable to the cancellation of a teacher's contract, which was not being sought in this matter. The letter detailed that at the private conference with the board, the principal would be permitted to request records, have counsel present, make a personal statement to the board, and describe what witnesses would say on his behalf. However, there would not be witnesses or formal evidentiary procedures.

The school board met in an executive session for the private conference at which the principal was present and represented by counsel. Thereafter, in the public meeting the board moved for his administrator's contract to be immediately terminated and this motion was approved.

The principal then filed a complaint in court alleging breach of contract and denial of due process, and challenged the notice and procedures utilized by the school board. Cross-motions for summary judgment were filed, and the trial court found in favor of the school. Thereafter, the Court of Appeals reversed and remanded for further proceedings. The Court of Appeals determined that the

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principal was entitled to the procedures found in the teacher's termination statute. Further, the Court of Appeals held there were genuine issues of material fact regarding the hearing process, and these precluded summary judgment. Thereafter, the school sought transfer to the Indiana Supreme Court.

In a careful analysis of both the statute applicable to cancellation of teachers' contracts and the contract itself, the Court determined neither of these applied to the cancellation of an administrator's contract and applied exclusively to the cancellation of a teacher's contract. As a result, these procedures did not govern the cancellation only of an administrator's contract. Further, the Court held that there are no specific statutory procedures for cancellation of a principal or other administrator's contracts. Furthermore, there is a separate statute that addresses the power of the superintendent to terminate principals and teachers, IC 20-26.5-4.5. The Court held that the language in that section further demonstrated that the procedure for terminating a teacher's, and the procedure for terminating a principal's, contract are distinct. Review of this code section supported the conclusion that the General Assembly did not intend for the teacher's termination statute to apply to principals.

The Court went on to analyze several earlier cases and concluded that cancellation of a principal's contract does not require the same level of due process as would cancellation of a teacher's contract. Indeed, "the protections provided to principals under the teachers' tenure law are few, and are much more limited than those provided to teachers." *Caston School Corporation v. Phillips*, 689 N.E. 2d 1294, 1298 (Ind. Ct. App. 1998).

The Court then went on to analyze whether the procedures utilized in this matter provided sufficient constitutional due process. While the Court acknowledged that the principal had a legitimate property interest in his job as principal, it also noted that he was not entirely deprived of all employment, but only his employment as a principal. The Court concluded that the procedures offered were sufficient and did meet the requirements of constitutional due process.

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This case is significant for all schools in Indiana. The Indiana Supreme Court has provided a definitive determination regarding the procedures to be followed in cancelling, as opposed to simply non-renewing, a principal's contract. It would appear so long as some due process, i.e., notice of the charges, an opportunity to be heard, etc., is met, that the cancellation of a principal's contract may proceed. Further, the procedures afforded for cancelling a principal's contract only are substantially less than those detailed in the statute for cancelling a teacher's contract. This decision should provide clarity and assistance to schools facing similar circumstances.

For more information please contact Marsha Bugalla, Tom Wheeler, or any attorney in Frost Brown Todd's Government Services practice group.

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