ESSAA Insights

Food for Thought from the ESSAA Legal Team

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Probationary or Tenured?

What Every New York School Administrator Needs to Know

Karen Khanzadian, Esq.
ESSAA Attorney

When a workplace issue arises, one of the first questions that matters is also one of the most basic: *Are you tenured or probationary?*

For ESSAA counsel, the answer to that question often determines the legal rights available to a member, the protections that apply, and the strategy for addressing the issue. The distinction is significant. Tenure provides substantial protections in one's position and generally prevents those interests from being altered without due process of law. Probationary employment carries far fewer protections and provides an employer considerably greater discretion in making employment decisions.

Understanding your status—and what it does and does not mean—is therefore essential for every school administrator. This article highlights the key distinctions between probationary and tenured employment in New York State and explains some of the practical implications for ESSAA members.

Probationary Employment: What It Really Means

A probationary appointment is, by its nature, a period during which the school district determines whether it wishes to continue the employment relationship. **Simply stated, a probationary administrator is essentially an at-will employee.** The district generally does not need to establish cause to discontinue the appointment before tenure is granted.

This is an important expectation to understand. A decision to discontinue a probationary appointment is not the same as bringing disciplinary charges against a tenured employee. The district is deciding not to continue the probationary employment relationship.

While there are important legal exceptions - including actions taken for an unlawful or constitutionally impermissible reason - the protections available to a probationary administrator are significantly more limited than those afforded after tenure.

ESSAA Insight:

A probationary appointment is not a guarantee of employment for the entire probationary period.

During probation, the district is determining whether it wishes to continue the employment relationship and ultimately grant tenure.

Tenure Changes the Employment Relationship

Tenure fundamentally changes the equation. Once an administrator acquires tenure, the district no longer has the same discretion simply to end the employment relationship. Tenure creates a protected interest in the position and brings with it substantial procedural and due-process protections.

In practical terms, a tenured administrator generally cannot be dismissed or disciplined without cause and without the procedures required by law. The district must be prepared to establish a legally sufficient basis for its action and follow the applicable due-process requirements.

That is why the question **"Are you probationary or tenured?"** is so consequential. Before tenure, the district is still deciding whether to continue the employment relationship. After tenure, the district must meet a very different legal standard before it can take action affecting that protected employment interest.

The Key Distinction

Probationary: The district generally does not have to establish cause to discontinue the appointment.

Tenured: The administrator has a protected employment interest and substantial due-process rights.

The Role of Evaluations

During the probationary period, the district evaluates whether an administrator is "competent, efficient and satisfactory" for continued service. Annual evaluations and other performance reviews are typically an important part of that process—but **positive evaluations do not guarantee tenure.**

A district may decide not to grant tenure even when an administrator has received satisfactory or positive evaluations. Courts have consistently held that evaluations are relevant to the tenure decision, but they are not determinative.

A documented history of evaluations can nevertheless be important. Evaluations may help establish what feedback was provided, whether concerns were identified, and whether the administrator was given an opportunity to address those concerns. Conversely, consistently positive evaluations followed by an unexpected decision to discontinue employment—or the absence of documented concerns—may raise questions about the district's decision and whether it was made in bad faith or for an improper reason.

In these circumstances, **ESSAA advocacy can be particularly important.** Counsel or union representatives may advocate with the superintendent or district to reconsider the decision or, when appropriate, extend the probationary period. However, positive evaluations or the absence of meaningful evaluations, standing alone, generally do not provide a basis for formal legal action challenging the denial of tenure.

GOOD EVALUATIONS MATTER - BUT KNOW WHAT THEY MEAN

Positive evaluations can be important evidence and may strengthen the case for advocacy on a member's behalf.

They do not, however, create a right to tenure or require a district to continue a probationary appointment.

Discontinuance During the Probationary Period

A district is not required to wait until the end of the probationary period—or until an administrator receives an unsatisfactory annual evaluation—to discontinue a probationary appointment.

Under Education Law §3012, a school district may discontinue the services of a probationary administrator during the probationary period. The district generally is **not required to establish cause before making that decision.**

This is one of the most important points for probationary administrators to understand: **being appointed to a four-year probationary period does not guarantee four years of employment.**

What Notice Is Required?
Although the district generally does not have to establish cause to discontinue a probationary appointment, certain notice rights apply. If an administrator is not going to be recommended for tenure or employment is going to be discontinued during the probationary period, written notice must generally be provided no later than 60 days before the termination of employment.

During that period, the administrator has the right to request the reasons for the district's decision and may submit a response or rebuttal to the Board of Education.

That right should not be confused with the due-process protections available to a tenured administrator. A probationary administrator does not have the right to an independent hearing at which the district must prove just cause for its decision.

NOTICE IS NOT THE SAME AS JUST CAUSE

The right to notice and an opportunity to respond **does not mean the district must prove cause** for discontinuing a probationary administrator's employment.

Extending Probation: The Juul Agreement

In some circumstances, the district and administrator may enter into what is commonly known as a **Juul Agreement**, which extends the probationary period rather than having the administrator denied tenure or discontinued at the conclusion of the original probationary term.

A Juul Agreement typically provides an additional period—often one year—during which the administrator has another opportunity to demonstrate satisfactory performance and the district has additional time to evaluate whether tenure should be granted.

The agreement must be knowing and voluntary, should clearly establish the length of the extension and applicable waiver of tenure-related claims, and must be approved by the Board of Education.

A Juul Agreement can provide an important additional opportunity, **but it is an extension of probation—not a guarantee of tenure.**

THREE THINGS TO REMEMBER

Good evaluations matter, but they do not create tenure rights.

Notice does not mean the district must establish cause.

A Juul Agreement can provide another opportunity, but it does not guarantee tenure.

When Should You Contact Your ESSAA Attorney?

Early - before a concern becomes a crisis.
The rights of probationary administrators do not begin and end with New York State Education Law. Your collective bargaining agreement may provide important additional protections, and those provisions can vary significantly from district to district.

Depending on your agreement, additional rights may address evaluation procedures and timelines, notice requirements, opportunities or plans for improvement, representation at meetings, and grievance or other contractual procedures.

A district's failure to follow negotiated procedures may provide the basis for a grievance or other contractual or legal challenge, including rights arising under New York's Public Employees' Fair Employment Act (Taylor Law).

If you have questions about an evaluation, receive notice of performance concerns, are called to a meeting that may affect your employment, or learn that your tenure recommendation may be in question, **do not wait to seek advice.** Contact your ESSAA attorney so that your individual circumstances, collective bargaining agreement, and available legal protections can be reviewed.

WHEN IN DOUBT, MAKE THE CALL

Your ESSAA attorney is here to protect your rights, help you understand your options, and guide you through the process.

Your ESSAA Attorneys



Karen Khanzadian, Esq.
karenkhanzadian@aol.com



Michael A. Starvaggi, Esq.
mstarvaggi@starlawpc.com



Paul A. Pagano, Esq.
paul.pagano@gmail.com



Brad A. Stuhler, Esq.
bstuhler@caslongisland.com

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75 South Broadway, 4th Floor - Suite 4609 White Plains, New York 10601