

21ST CENTURY ADMINISTRATIVE LEADERSHIP

- The stakes have never been higher
- Fundamental inquiry – do we have the tools to respond effectively?
 - Do we **use** them?
- Accountability is "risky business" and hard work
 - Did I mention stressful?
- Changing the confrontational paradigm
 - Are we (all the stakeholders) truly in this together?
- The underlying assumption is this:
 - A rising tide lifts all boats

SELF-ASSESSMENT: WHERE ARE WE?

- How well and how consistently do we investigate allegations of misconduct by staff?
- Are expectations relating to teacher professionalism known and consistently supported by the stakeholders?
- When teacher performance falls below expectations what is our "response ability" in helping these educators to improve?
- Do we document? Is the documentation focused and effective?
- Have we identified and worked to eliminate the obstacles that impede accountability?
- What obstacles? *Glad you asked!*

IDENTIFYING THE MAJOR OBSTACLES TO ACCOUNTABILITY

- No consensus among stakeholders on a shared vision.
- Lack of commitment by administrators.
- An absence of agreed-upon expectations for employee performance/conduct.
- Inconsistent responses to misconduct and poor performance.
- Fear of costly litigation and the hassles and hard work of holding people accountable.
- Unwieldy contract language.
- Anxiety over potential labor backlash.
- Constant leadership "turnover."

ADMINISTRATIVE "PARALYSIS" AT THE MOMENT OF TRUTH – WHY IT HAPPENS

- Inheriting an environment that lacks accountability.
- A history of alternate and inconsistent responses across the district to performance and conduct issues.
- Did I mention that holding employees accountable is hard work?
- "We have never done that before" or "That's the way we've always done it."
- Fear of straining labor relations or work environment (a/k/a, the need to be well-liked).
- No safety net for administrators who "engage" in accountability actions.
- Lack of reference points – where is the human resource training/background for this? ("I got into this business to educate children, not to fire people!")

ADMINISTRATIVE "PARALYSIS"

- Complexities of legal issues – hard to keep up without a program! (Remember the chart?)
- The prospect of losing valuable time away from education dealing with lawyers, judges, arbitrators, etc.
- "I am this close to retirement and you want me to do what?"

A rising tide lifts all boats – A proposed framework:

"Plan A" – A proactive commitment to accountability.

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"LOW TIDE" DISTRICT – The Wrong End of The Continuum

- Superficial approach to teacher development.
- "Reactive" vs. proactive personnel decision making.
- Inconsistent responses to poor performance or misconduct:
 - No appropriate follow-up with troubled employees; and/or
 - Poorly conceived improvement plans/plans of assistance;
 - No sustained monitoring of progress (write it and forget it).

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"LOW TIDE" DISTRICT

- Minimum "checklist" evaluations for non-certificated staff.
- Failure to embrace the OTES/OPES/OSCES platforms (piecemeal, no consistency).
- A culture of limited feedback (adversarial mode).
- No stakeholder consensus about accountability.
- An overall environment of distrust and instability.

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"LOW TIDE" DISTRICT

- Ineffective investigations of employee misconduct – failure to provide time and resources;
- Traditional "confrontational" labor relations premised upon power and position; and
- High absenteeism -- attendance is perceived as "optional."

POTENTIAL OUTCOMES IN LOW TIDE DISTRICTS

- Employees rarely held accountable for non-performance or misconduct (we can't make the teacher nonrenewal or termination stick).
- Administration held accountable for employee non-performance/misconduct (somebody has to pay).
- Administrators look to "Abandon Ship!"
- Increased confrontations with employees (ULPs, grievances, arbitrations, lawyers, \$).
- Litigation of all shapes and sizes (\$\$\$).
- Perpetual mediocrity (on a good day!).

At The Other End Of The Continuum: THE "RISING TIDE" DISTRICT

- A positive commitment to accountability and enhancing performance ("Plan A").
- Leaders recognize the obstacles and work to address and overcome them.

MODEL "RISING TIDE" DISTRICT

- Stakeholder consensus on accountability and performance expectations – a shared vision!
- Effective supervision (consistently utilizing a collaborative professional model).
- Unswerving, district-wide approach to staff discipline, best practices, and addressing poor performance.

MODEL "RISING TIDE" DISTRICT

- Well-developed and understood expectations for all staff (and a consistent vision of teacher professionalism);
- Definitive job descriptions for all positions with "tie-in" to employee evaluations; and
- Successful mentoring (not just "Resident Educators") and purposeful professional development for educators.

MODEL "RISING TIDE" DISTRICT

- Leaders consistently provide appropriate and **meaningful feedback** to staff through:
 - Appropriate and focused documentation of non-performance and/or misconduct.
 - Reliable follow-up and monitoring of progress on well-conceived plans of assistance/improvement.
 - Embracing and **consistently** applying the OTES/OPES criteria and rubrics.

MODEL "RISING TIDE" DISTRICT

- Overall prioritization of professional development and employee improvement.
- Robust monitoring of employee performance.
- Appropriate investigations of alleged misconduct (Always a "**Dignified Search for the Truth**").
- Collaborative labor relations utilizing an interest-based approach to problem solving.
- People come to work because that is the norm.

POTENTIAL OUTCOMES IN RISING TIDE DISTRICTS

- Employees perform at or above expectations —
 - **The Bar is Raised: Kids Win!**
- But what happens when there is employee misconduct or poor performance — despite commitment to Plan "A" and
 - We find **NO EFFECTIVE RESPONSE** From the Administration?
 - Even though the employee has demonstrated either an inability or unwillingness to meet our reasonable expectations — still, there is no action taken.
 - **WHY?**
 - ✓ Inability to overcome the obstacles (real or imagined) preventing administrators and boards from responding to employee non-performance.

POTENTIAL OUTCOMES

Employee misconduct or poor performance despite adherence to Plan "A" and a commitment to employee support and accountability.

THIS DISTRICT RESPONDS EFFECTIVELY BY:

MOVING TO PLAN "B"

- Employment action is pursued based upon documented adherence to Plan "A," i.e.,
 - **Play back the video!**
- A measured and defensible personnel response is implemented, supported by:

MOVING TO PLAN "B"

- Accurate documentation of events.
- Strict adherence to contract and/or legal parameters and time frames.
- Demonstrated "nexus" between evaluation/disciplinary conclusions and defined criteria.
- **Consistent** responses district-wide.
- Thorough and fair investigations.

MOVING TO PLAN "B"

- Elimination of unacceptable behavior.
- Enhancement of employee performance.
- Removal of unsuitable employees (*"set the table, sink the hook, pull the trigger and close the book."*)
- Avoidance of litigation, liability and losing!
- The bar is raised: *Kids Win!*

BUT WAIT ... THERE'S MORE!

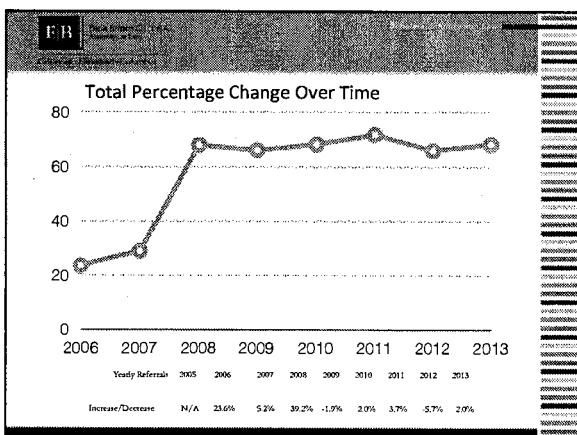
- The Culture is transformed due to employee perception of systemic:
 - ✓ Fairness
 - ✓ Consistency
 - ✓ No "Surprises"
 - ✓ Trust
 - ✓ High Morale and Attendance
- The result is that this district routinely attracts high quality applicants – the cycle of excellence continues.
- Valuable time and resources are **not** spent on unnecessary litigation.


PLAN "A" IN REVIEW

- Consistently provide appropriate and meaningful feedback – people want and need to know what is expected of them.
- Follow-up and monitor performance to facilitate positive employee outcomes – stay the course!
- Generate and effectively document measured and defensible personnel responses.
- Resolve the personnel issue to finality.
- Assess the aftermath and sharpen the saw – what did we get right? What do we need to do better?

OFFICE OF PROFESSIONAL CONDUCT 2014 REPORT


- Educators in Ohio are nationally recognized, highly qualified and exemplify the high ethical standards embodied in the *Licensure Code of Professional Conduct for Ohio Educators*. With approximately 250,000 licensed educators, the Office receives a relatively small number of educator misconduct referrals each year.
- From 2008 forward, yearly referrals have only changed 1.9% to 5.7% per year. In 2013, the Office received 163 more referrals than the previous year. This represents a 2.0% increase in educator misconduct referrals.






Conduct Unbecoming: The Standards

- **Professional Behavior** – Educators behave in a professional manner, realizing that one's actions reflect on the status of the profession. (The Role Model Provision).
- **Professional Relationship With Students** – Educators maintain a professional relationship with students at all times, both in and outside of the classroom.
- **Accurate Reporting** – Educators accurately report information required by the local board of education or governing board, state education agency, federal agency or state or federal law.



Conduct Unbecoming: The Standards

- **Criminal Acts** – Educators adhere to federal, state and local laws regarding criminal activity.
- **Confidentiality** – Educators comply with state and federal laws related to maintaining confidential information.
- **Use, Possession, or Unlawful Distribution of Alcohol, Drugs, and Tobacco** – Educators serve as positive role models and do not use, possess or unlawfully distribute illegal or unauthorized drugs.



TREND REPORT: TEACHER TERMINATION AND NON-RENEWAL CASES

Termination cases since 2010: Trend Report

- ***Freshwater v. Mr. Vernon City Sch. Dist. Bd. Of Edn.***
- Lets start with the ending: The U.S. Supreme Court upheld his firing by denying his appeal.
- Ohio Supreme Court held:
 - "In a proceeding under R.C. 3319.16 for the termination of a teacher's contract, 'good and just cause' includes insubordination consisting of a willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by a school board or by an administrative superior."

Trend Report: *Freshwater*

- What is important is the interpretation of "good and just cause" under R.C. 3319.16, as amended in 2009, to include insubordination.
- The Court stated:
 - "Disobedience alone will not establish insubordination under the definition we adopt above. We must also find that the orders themselves were reasonable and valid. If any order was unreasonable or invalid, Freshwater's disobedience of it would not be insubordinate."

***Freshwater* dissents....uncharted waters**

- Pfeiffer dissent:
 - "This court's decision will have far-reaching implications. In an effort to be rid of Freshwater's case without too much heavy lifting, this court has set a very low bar for what constitutes "good and just cause." Precedent from this court regarding R.C. 3319.16 is fairly limited, but now we have a case on the books setting forth that good and just cause means very little cause at all. Teachers throughout the state should feel much less secure in their employment today."

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Freshwater dissents....uncharted waters

- O'Donnell's dissent:
- "Because the majority resolves this case by finding that sufficient evidence exists to support just cause for termination and fails to examine the constitutional issues, I respectfully dissent."
- "... This record neither demonstrates that Freshwater defied direct orders from school administrators, nor reflects that he taught creationism or intelligent design, nor shows that he strayed from the established curriculum on evolution. The claim of insubordination is not proven by clear and convincing evidence....Thus, the school board lacked sufficient cause to terminate his contract. I would therefore reverse the judgment of the court of appeals and order his reinstatement with back pay."

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Trend report: fast forward to 2015

- *Speller v. Toledo Public Schools*
- Principal was fired for "poor job performance, repeated and consistent failure to perform job duties, unprofessional behavior, insubordination, and contributing to an offensive work environment at the elementary school."
- 9 specific instances of insubordination.
- Referee did not recommend termination, board rejected recommendation.
- She went to court, alleging she was not fired with "just cause".

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Speller: So, was it "just cause"?

- The lower court found that the board had sufficient evidence to reject the opinion of the referee.
- Appeals court found that the trial court did not abuse its discretion: i.e., the Board's determination of "good and just cause" to fire the principal was upheld.
- The court stated here that the facts were not in dispute, but it was "...the interpretation and significance given to those facts."
- Takeaways?
 - Good documentation
 - The power of interpretation

Termination station: other cases since 2010

- **Winland v. Strasburg Franklin**
 - In 2011, a 12 year teacher and track coach was fired.
 - He had positive evaluations.
 - One prior disciplinary action- a 5 day suspension for abuse of sick leave.
 - Acceptable use and internet safety policies prohibited viewing of porn on work computer.
 - Teachers were allowed to use laptops over the summer.
 - Teacher stated he searched something and the porn came up on the computer.
 - He acknowledged the files on the computer, apologized, offered to resign (later withdrew offer.)
 - Board suspended without pay pending termination.

Winland gets fired... or does he?

- Referee recommended 45 day unpaid suspension
 - Considered his past record
 - Recommended suspension instead of termination for insubordination for failing to return his laptop when due and for inappropriate use of the laptop, apology, banned from borrowing school equipment, and continuing ed.
- Board accepted findings of fact but rejected recommendation, and acted to terminate him for just cause.
- Winland appealed to court.
- Trial court reversed the decision of the board- reinstating him.
- The board appealed.

Winland: the final chapter

- Analysis of "good and just cause."
- Old case law (prior to amendment) states good and just cause is "a fairly serious matter."
- Court of appeals reviews based on abuse of discretion.
- "What constitutes good and just cause can depend on the context and unique facts of each case."
- Court relied on analysis of previous cases to determine teacher's behavior "had or could have had a serious effect on the school system."
- Court affirmed the trial court- **no just cause, teacher got job back, back pay.**

Turning the termination tables- the *Elsass* case

- *Elsass v. St. Mary's City Sch. Dist. Bd. Of Edn.*, 2011-Ohio-1870
- Almost 20 years of service as a math teacher, continuing contract
- Board terminated his contract when he was charged with public indecency and voyeurism at a school sporting event.
- Criminal charges with dismissed without prejudice.
- Elsass had been disciplined before for unethical behavior and unprofessional conduct.
- Referee rendered 20 page findings of fact.

***Elsass*' final act: Good and just cause?**

- Referee's findings of fact stated the board's decision to terminate for commission of the lewd act was good and just cause.
- Board adopted referee's decision.
- Elsass appealed to court, alleging lack of evidence, procedural and substantive errors- denial of due process.
- Trial court affirmed the board's decision to fire, but ordered 8 months back pay and benefits.
- Board appealed.
- Court of Appeals found **in favor of the board**. There is no power to order back pay/benefits where the court finds termination was justified. Good and just cause affirmed.

***Routson-Gim-Belluardo v. Jefferson Twp.* : 2016 termination case**

- Intervention specialist fired for academic fraud.
- She used San Diego Quick Assessment (SDQA) for reading comprehension test.
- OTES adopted in the district in 2013-14, 50% academic growth through SLO's.
- SLO's calculate student growth for purposes of scoring teacher evaluations.
- Teacher used the SDQA in her SLO for pre- and post-assessment. Approved by SLO committee.
- Teacher admitted she gave students word lists directly from SQA to study over breaks.

ER Education Relations

Routson-Gim-Belluardo v. Jefferson Twp. case

- Teacher suspended due to allegations and evidence of academic fraud and recommended for termination, hearing before referee 9/2014.
- Referee found Board failed to establish teacher committed academic fraud, recommended against termination of her teaching contract.
- Board rejected referee recommendation and terminated the teacher's contract.
- Teacher appealed, trial court affirmed the board's decision, finding good and just cause for termination due to her manner of administering test and students not being properly assessed and taught.

ER Education Relations

Routson-Gim-Belluardo v. Jefferson Twp. case

- Teacher appealed.
- Court of Appeals found that the trial court noted that the referee did not consider witnesses and signed statement, ignored evidence and failed to make findings on student's high scores on tests or improper test administration. Trial court's evaluation of referee's failure to properly address or completely ignore evidence establishing academic fraud and affirming Board's order to terminate was **not** an abuse of discretion and clearly supported by weight of evidence.

ER Education Relations

Strange Fruit of the Bargaining Tree: the West Branch case

- Does the CBA provided grievance procedure regarding termination compel access to arbitration, OR is the board's decision regarding renewal or nonrenewal a management right?
- Teacher was hired in 2008, was on extended limited contract from 2011-13.
- When contract expired June 30, 2013, board's options were nonrenewal or continuing contract.
- Board notified her of nonrenewal 4/20/13, hearing on nonrenewal 6/13. Notified 6/15/13 by letter.
- Union filed grievance. Board denied, stating procedural and substantive inarbitrability.

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Cleveland, Ohio

The West Branch case, con't

- Union filed for arbitration, board filed in court for injunction, arguing the grievance was not subject to arbitration.
- The issue was not whether the teacher was entitled to a job or whether the board evaluated teacher as set out in the CBA.
- The issue WAS whether the grievance filed by the union was arbitrable.
- The CBA provided for binding arbitration for specific alleged violations of the contract.
- The grievance alleged violation of the specific contract provision for evaluations (i.e. a specific section of the contract).

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Cleveland, Ohio

West Branch case

The larger issue is whether the union has the right to file a grievance over a board's ultimate decision to renew or non-renew an employee contract.

CBA also contained "fair dismissal" provision giving teacher rights under 3319.11 (nonrenewal and extended limited contract provisions of Ohio law, providing for appeal to common pleas court)

CBA stated that provisions on teacher evaluation intended to supersede provisions of R.C. 3319.111.

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Cleveland, Ohio

West Branch, decided

- 3319.11 appeal to court confines court only to review of procedural matters, not substantive issues.
- CBA stated the evaluation provisions of the agreement were intended to supersede provisions of R.C. 3319.11 on evaluations.
- Held, the CBA governed whether substantive issues of evaluation were followed, and therefore the grievance was arbitrable.
- No language in the contract that "...limits the grievance process to only nonterminable issues."

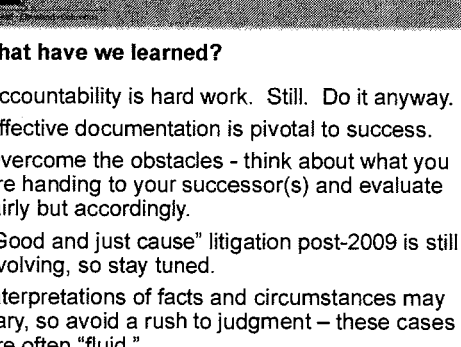
EB **ERIC** **Full Text Provided by ERIC**

Volunteer - Common Volunteer

Tolles CTC v. Tolles Education Association case

- Union filed grievance about teacher evaluations when evaluator noted teacher attendance in standard 7.
- Grievance denied, union filed for arbitration.
- Board filed for declaratory relief in common pleas court.
- Trial court denied, ordered matter to be arbitrated.
- Evaluating attendance is an exclusive management rights that had not been addressed in bargaining.
- CBA had a due process clause enabling challenge of evaluation violation of procedure or law by arbitration; however, Board argued that due process clause did not apply, because board did not have to bargain what data or metrics it uses under OTES

- **Case is on appeal, pending.**
- **EB submitted amicus brief on behalf of OSBA, OASBO, and BASA supporting management rights of employer.**
- **Part of decision will hinge on interpretation of specific bargaining language.**
- **A decision that upholds trial court order to submit use of attendance data in an evaluation to arbitration may have a negative impact on school districts.**
- **Restricting management discretion to select assessment data – the content of evaluation – for teacher performance evaluation, would be negative outcome.**



EB
Environmental Business

What have we learned?

- Accountability is hard work. Still. Do it anyway.
- Effective documentation is pivotal to success.
- Overcome the obstacles - think about what you are handing to your successor(s) and evaluate fairly but accordingly.
- "Good and just cause" litigation post-2009 is still evolving, so stay tuned.
- Interpretations of facts and circumstances may vary, so avoid a rush to judgment – these cases are often "fluid."

What else have we learned?

- The "book" on the limits of privacy, speech, cyberlaw and misconduct related thereto is still being written. Many chapters to go.
- Collective bargaining around the issues of evaluation, termination, arbitration and misconduct should be an area of focus.
- That said, terminations and non-renewals should not be left to the arbitrariness of arbitration.
- Understanding the new dynamics is pivotal to decision making.

Questions?

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