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Principal Demotions: An Update

The demotion of school principals is a frequent subject of litigation. In previous visits to this topic (Zirkel, 2002; Zirkel & Gluckman, 1981), the case law focused primarily on two issues: whether a change of position—which the district termed a reassignment, transfer, or nonrenewal—in effect constituted a demotion; and if so, whether procedural protections, such as those associated with tenure, were required.

The judicial resolution of the first issue depended on the framework of the applicable state statute, which in turn usually depended on whether the position change resulted in a decrease in salary, responsibility, and/or prestige. The answer to the second issue varied considerably from one state to the next.

A third issue surfaced in a more recent visit to this subject. When the position change was a demotion, the courts—with notable deference to district discretion—have tended to rule that the district had sufficient grounds for its action.

The following case and the accompanying question-and-answer discussion provide an update of recent litigation.

The Case

Diane Myers started working for the Elkhart, Indiana, school district in 1973 as an elementary school teacher, eventually serving as principal of Mary Feeser Elementary School from Aug. 1, 1997, to June 13, 2005. During that eight-year period, she continued to have a regular teacher's contract, with her assignment identified as "administrator." This was in accordance with Indiana law, which requires the contract for principals to be the same as that of a regular teacher while allowing the district to designate a specific position, such as principal of Mary Feeser School, or the generic position of administrator. Indiana law also requires that the initial contract for principals to be for at least two years, and that thereafter the contract continues in force annually unless the district provides written notice of nonrenewal by Feb. 1 and affords the principal the opportunity for a private conference with the superintendent and the school board.

On June 13, 2005, the superintendent reassigned Myers for the following school year, without prior written notice and conference opportunity, to a new position of "principal of special projects" under the same "administrator" designation in her contract. Her new duties were different and, in Myers' view, constituted a demotion from her former position, even

though she received a slight increase in salary.

Myers filed suit in state court, seeking reinstatement to her position at Mary Feeser Elementary School. She claimed that the change in position triggered the state statutory procedural prerequisites for what she characterized as a demotion and thus a nonrenewal of her principal's contract. The trial court ruled against her and she appealed. In the meantime, she assumed the new position, performing her reassigned duties at her new salary.

Questions and Answers

What do you think was the state appellate court's decision?

In a published decision on Jan. 17, 2007, the state's intermediate appellate court affirmed the lower court's decision in favor of the school district (Myers v. Elkhart Community Schools, 2007) and provided two reasons for its decision. First, the court reasoned that, per the language of her contract, Myers was assigned to a general administrative capacity rather than to a particular position or school, and therefore did not trigger the statutory procedural requirements for nonrenewal.

Second, the court concluded that even if the school district had breached the statute, it allows only for monetary relief, thereby precluding her requested reinstatement to her position for an additional year. Moreover, because the district had paid her for the year in question, she had suffered no monetary damage.

If the contract had specified "principal at Feeser Elementary School," would the judicial outcome likely have been different?

Yes, for breach of contract but not for the remedy of reinstatement. More specifically, the appellate court's reasoning would seem to suggest that her reassignment would have been, in effect, a nonrenewal if the contract had specifically designated her original assignment as a principal. However, because the Indiana statute limits the remedy only to monetary damages, she would be without basis for this relief because she had received a year's salary for her new position.

If Myers had premised her suit on 14th Amendment procedural due process grounds, would the outcome have differed?

No, based on the circumstances of her case. The procedural protections under the 14th Amendment's due process clause are premised, in the public school context, on a denial of liberty or property. The courts have interpreted "liberty" to include reputation, but only for a severe stigma—which does not apply to a change of title and duties, in the absence of other effects. "Property" includes a legitimate entitlement, or objective expectation, under state law.

The fatal problem for the plaintiff in this case is that, under state law, she was entitled only to an administrative position at approximately the same salary, which is what the district provided. In most other cases where the principal perceived the district's decision as a demotion, 14th Amendment due process was unavailing (Bernstein v. Lopez, 2003; Bordelon v. Chicago School Reform Board of Trustees, 2000; Finch v. Fort Bend Independent School District, 2003; Sharp v. Lindsey, 2002; Ulichny v. Merton Community School District, 2001).

The exceptions have been very limited in recent years. In a Louisiana case, the state appellate court upheld a preliminary injunction for an elementary school principal who had been reassigned to a teaching position, but the court's opinion was based on the procedural prerequisites in the district's own policy for involuntary transfers, not demotion-related due process under the 14th Amendment (Saunders v. Stafford, 2006). In a Massachusetts case, the court commented that the principal may have had a cognizable liberty interest based on his alleged drunken vandalism, but that it was irrelevant to the defendants he sued in the absence of a causal connection to his reassignment (Galvin v. Town of Yarmouth, 2007).

If Myers had asserted that the real reason for her reassignment was her speaking out, thus premising her suit on First Amendment freedom of expression, would the judicial outcome have been successful?

No, most likely. First Amendment freedom of expression has been the most frequent basis of recent litigation concerning alleged demotions of school principals, and most of them have gone for naught (Cavazos v. Edgewood Independent School District, 2006; Finch v. Fort Bend Independent School District, 2003; Painter v. Campbell County Board of Education, 2006; Sharp v. Lindsey, 2001; Vargas-Harrison v. Racine Unified School District, 2001).

Although an actual or constructive demotion is an adverse action (*e.g.,* Lapinski v. Board of Education, 2006), the problem is that the resulting multistep analysis that the courts use in First Amendment public employment cases amounts largely to hurdles for the plaintiff-principal. Moreover, as Hassenpflug (2007) has shown, the Supreme Court's recent decision in Garcetti v. Ceballos (2006), which held that public employees' expression conveyed as part of their job duties is not protected speech, has further slanted the slope against the plaintiffs in such First Amendment cases.

Have there been other issues in litigation concerning alleged demotions of principals?

Yes. Some of the cases concerned the threshold issue as to whether the reassignment met the classic criteria of a demotion. For example, in a recent Georgia case the court concluded that the reassignment of a high school principal to alternative school lead teacher, with no decrease in salary, did not result in lower prestige, responsibility, and salary required for a demotion under state law (Siler v. Hancock County Board of Education, 2007).

Other cases concerned more technical issues. For example, the plaintiff-principal in some cases needs to ascertain whether state law requires exhaustion of administrative remedies

before proceeding to court. This procedural hurdle has been an issue in Texas cases (Jones v. Clarksville Independent School District, 2001; Vela v. Waco Independent School District, 2002). Similarly, in some jurisdictions that have collective bargaining for principals, the issue has arisen of whether demotion disputes are subject to labor arbitration (New Board of School Commissioners v. Public School Administrators & Supervisors Association, 2002; Marion County Board of Education v. Marion County Education Association, 2001).

Conclusion

The more recent relevant case law presents various legal lessons for school principals who believe that their school district has demoted them. The primary message: Don't rely on your own perceptions as the basis for litigation. What the school district characterizes as a reassignment or transfer may, in the principal's view, appear to be a demotion, contract nonrenewal, or even constructive discharge. However, in the hard and objective glare of a courtroom, the district's characterization may well prevail, depending on the relevant state statute, the contract language, and the evidence in terms of the salary, responsibilities, and prestige of the new position.

A second lesson is that the Constitution, at least in its First Amendment freedom of expression and 14th Amendment due process clauses, does not provide particularly fruitful alternatives to state law.

Finally, principals who are worried about demotions may be better off spending their legal energies up front by ensuring that there are individual or collective protections in their employment contracts and board policies. P

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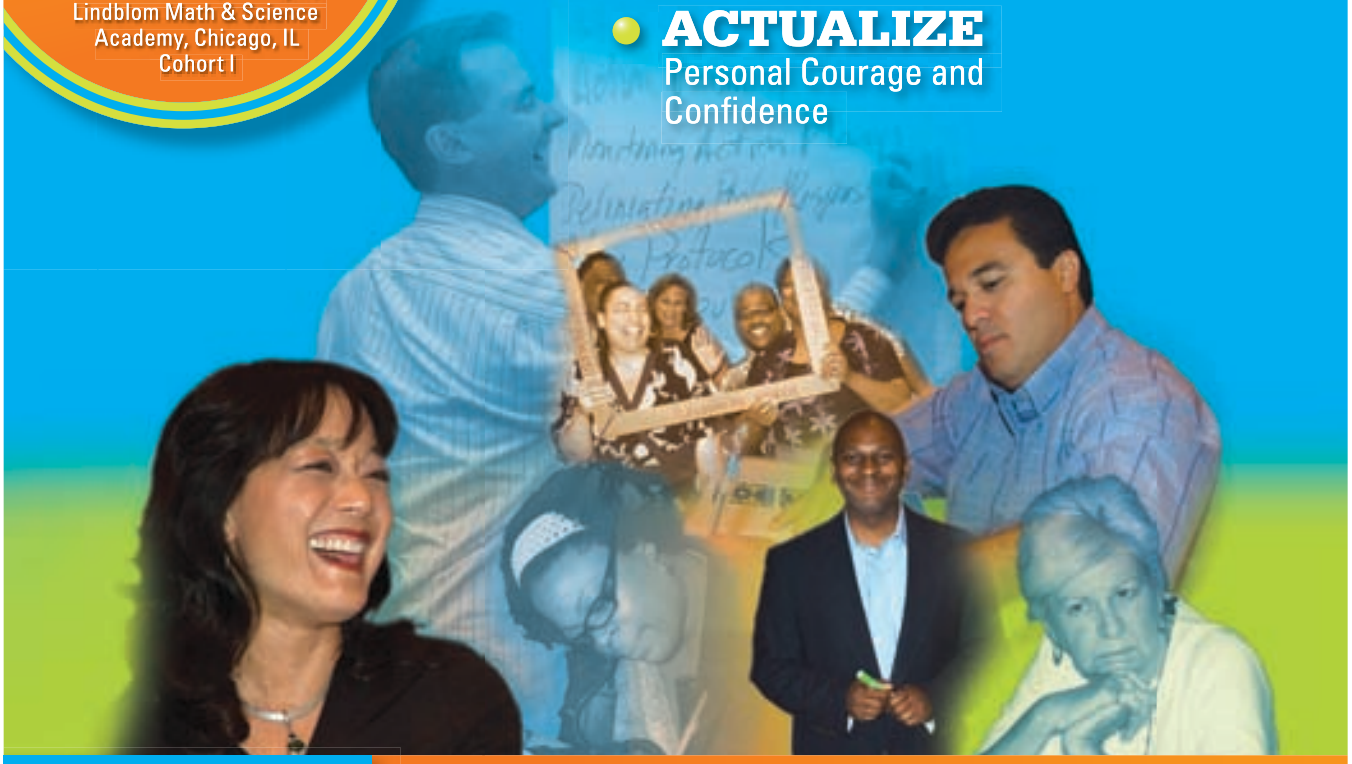

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