

Workplace Violence and Employee Confrontation

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Generally Speaking

- Necessary to have good policies in place
- Principals, supervisors need to be trained in handling and advising employees
- Various state laws do address these issues
- Situations to Consider:
 - Employee is the (potential) victim
 - Student is the (potential) victim
 - Employee confrontations

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§ 115C-335.5. Policies Addressing Harassment of School Employees

- (a) Each local board of education may adopt a policy addressing the sexual harassment of local board employees by students, other local board employees, or school board members. The policy may, at a minimum, set out (i) the consequences of sexually harassing school employees and (ii) a procedure for reporting incidents of sexual harassment.
- (b) No local board of education or employee of a local board shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee files a written complaint alleging sexual harassment by students, other local board employees, or school board members, unless the employee reporting the harassment knew or should have known the report was false.

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§ 115C-407.17. Prevention of School Violence

- Schools shall develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior. (2009-212, s. 1; 2009-570, s. 39.)

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§ 115C-338. Salaries for Employees Injured During an Episode of Violence

- Any employee who while engaged in the course of his employment or in any activities incidental thereto, suffers any injury or disability resulting from or arising out of any episode of violence by one or more persons shall be entitled to receive his full salary during the shortest of these periods: one year, the continuation of his disability, or the time during which he is unable to engage in his employment because of injury.

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Hypothetical: Employee is Victim

Everyone in the school knows Janice, a middle school English teacher, is going through a rough separation from her spouse, Gary. The school receptionist informs you (the Principal) that Gary is calling several times a day asking to leave a message or be forwarded to her voicemail. One day Gary shows up to school. He comes to the office and demands to see Janice. He leaves but not until you hear a commotion and have to intervene by asking him to leave.

A few days later, you walk by Janice's class and see she is visibly upset. You ask her colleague and good friend, Ms. Knowitall, if there is anything you should know about. Knowitall tells you that Gary went by Janice's house last night and threatened to "beat her up". An hour later, Gary shows up at school. He appears to be drunk and demands to see Janice.

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Legal Options – Restraining Orders

- 50B – Domestic Violence No-Contact Order
 - Reasons to obtain order:
 - Causing or attempting to cause bodily injury; or
 - Causing imminent fear of injury or harm
 - Must have a “Personal Relationship”
 - Current/former spouses
 - Persons of opposite sex that live together
 - Parent (or other in loco parentis individuals) if child is victim
 - Have a child in common
 - Current/former household members
 - People that are dating, but only if opposite sex
 - Law enforcement may arrest someone for violation of order

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Legal Options

- 50C Civil No Contact Order
 - For anyone that falls outside of the 50B DV Order
 - Violation of order is contempt of court, not a crime.
 - Conduct that may lead to the 50C:
 - Nonconsensual sexual conduct;
 - Stalking = on more than one occasion, following or harassing another person with the intent to:
 - ♦ Place the person in reasonable fear for either their safety or the safety of others around them; or
 - ♦ Cause the person to suffer substantial emotional distress by placing that person in fear of death, injury or continued harassment

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Legal Options for Employer

- *Persona non grata* (or Ban) the person by letter. (i.e. trespassing)
- Workplace Violence No-Contact Order
 - N.C.G.S. § 96-260
 - Obtained by employer to prevent potential assailant from coming onto employer’s property
 - Generally for more reasons than 50C order, including:
 - Attempting or intending to cause bodily injury;
 - Threatening, in writing or orally, to physically injure an employee.
 - Stalking

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Legal Options for Employer

- Workplace Violence Order continued
 - Must consult with employee before obtaining order;
 - But, Employee is not required to consent
 - Cannot require employee's consent;
 - Cannot retaliate with adverse action against employee who does not cooperate
 - Violation of order is a contempt of court (not a crime)

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Hypo 2 – Employee Confrontation

Chris and Pat are dating. Both are teachers at Xanadu High School. One day, Chris comes in to your office to indicate she just obtained a 50B Domestic Violence order against Pat. You read the order, and it indicates that until the next hearing, Pat cannot come onto the property of Chris's workplace." Pat coaches basketball and the final home game is tonight on your campus. What do you do:

- a. Ask Chris whether she told the court that she and Pat work at the same place?
- b. Immediately ban Pat from campus until the matter is cleared up?
- c. Tell Chris that she just blew your school's first chance to make it to the playoffs?
- d. Call Pat into your office, with Chris, to get this matter "straightened out?"
- e. None of the above.

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Hypo 2 – Employee Confrontation

- School is not required to follow 50B or 50C order. Much like a custody order/agreement, the school is not a party to the order.
 - However, schools should typically honor these orders.
- Handle and assess each case on the merits and develop an appropriate protocol that promotes safe environment for all involved.

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Hypo 3 – Employee Confrontation

Your administrative assistant, Jean, is a hard worker; but she also believes she is the supervisor to everyone in the office suite that is otherwise not an assistant principal. She is constantly talking down to the front desk assistant (Sarah) and getting into petty spats with the data coordinator. Even the school counselors are afraid of Jean.

On an especially busy day, Jean overhears two employees talking about her. She storms into the front office and starts yelling at both employees and demands that they get back to work.

The next day, she walks into the front part of the office and chastises the front desk assistant for not turning in her timesheet on time. Several other employees witness this confrontation and Sarah leaves the office trying to hold back tears.

The following week, Sarah comes to you with a long list of complaints about Jean.

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Do you . . .

- a. Thank Sarah and tell her you will address the concerns with Jean.
- b. Meet with Sarah and Jean together.
- c. Enact the grievance procedure.
- d. Counsel Jean.
- e. Talk yourself up to confront Jean, because deep down, you are scared of her, too.

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Employee Confrontations

- Counseling
- Grievance Procedure
- Disciplinary Process
- Directives
- Other concerns that may be raised:
 - Title VII/Title IX
 - Discrimination
 - Harassment
 - Retaliation

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The Differences Between Dismissal Proceedings

Career Status Teachers and Contract Teachers

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OVER REGULATED AND UNDER APPRECIATED

- Career status teachers
- Contract teachers
 - With three or less years experience
 - With more than three years of experience
- Multiple year contract teachers (coming soon to a school near you)
- Teachers in low performing schools
- Not to mention. . . .
 - Principals, directors, supervisors
 - Classified employees

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The Differences

- Hearing Officer
- Definition of inadequate performance
- Suspension without pay

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Hearing Officer

- Old 325: Employee has the option to request preliminary hearing before impartial hearing officer.
- New 325.1 *et al.* does not contain this right

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Suspension without Pay

- Old 325: Contained a full due process hearing before the Board for suspensions greater than 10 days or for certain types of intentional conduct.
 - Witnesses, etc.
- Old 325: For suspension less than 10 days, the hearing before the board is less formal (no requirement for witnesses)
- New 325.7 contains the same due process for all suspensions without pay, dismissals, and demotions

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Reasons for Dismissal – Inadequate Performance (Old 325)

In determining whether the employee's performance is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy or deficiency in performance shall be conclusive evidence of satisfactory performance. Inadequate performance for a teacher shall mean: (i) the failure to perform at a proficient level on any standard of the evaluation instrument; or

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Reasons for Dismissal – Inadequate Performance (Old 325)

(ii) otherwise performing in a manner that is below standard. However, for a probationary teacher, a performance rating below proficient may or may not be deemed adequate at that stage of development by a superintendent or designee. For a career teacher, a performance rating below proficient shall constitute inadequate performance unless the principal noted on the instrument that the teacher is making adequate progress toward proficiency given the circumstances.

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Reasons for Dismissal – Inadequate Performance (New 325)

- In determining whether the professional performance of a teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard.

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The Differences

In determining whether the employee's performance is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. ~~Failure to notify a career employee of an inadequacy or deficiency in performance shall be conclusive evidence of satisfactory performance.~~ Inadequate performance for a teacher shall mean: (i) the failure to perform at a proficient level on any standard of the evaluation instrument; or

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Inadequate Performance as Defined by our Courts

Nestler v. Chapel Hill-Carrboro City Sch. Bd. of Educ., 66 N.C. App. 232 (1984). A teacher was dismissed for inadequate performance based on a concern stemming from his teaching methodology.

The court indicated that while he had an excellent grasp of the material and students seemed to do fine in the class, his teaching methodology was poor (i.e., poor anticipatory sets, failed to establish clear objectives, failed to ask appropriate questions, etc).

The teacher's evaluations were consistently mediocre and the teacher had been advised on several occasions of ways to improve his teaching methods. For example, he was placed on "conditional status" after a classroom observation.

The court noted that in the face of these warnings (i.e. observations, being advised that his teaching methods were inadequate and being on conditional status) a person of ordinary understanding could determine how to comply with the requirement.

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Immorality

- Immorality is like pornography - you know it when you see it.
- *Barringer v. Caldwell County Bd. of Educ.*(1996). A tenured high school math teacher approached a pool room armed with a twelve-gauge shotgun and a concealed handgun. In response to screams from outside the establishment, two law enforcement officers opened the door and saw the teacher facing the pool room entrance with the shotgun pointed toward it. The officers ordered the teacher to put down his guns and eventually he did so. The teacher told the officers he was "looking for a friend." One of the officers asked, "Why, to show him the gun?" and the teacher responded, "No, to show him the bullets." The teacher pled guilty to first degree trespass and received a six-month suspended sentence. The Board, after a hearing, ordered the teacher's dismissal for immorality.

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Insubordination

- *Thompson v. Wake County Bd. of Educ.*, rev'd on other grounds, (1977). Court of Appeals held that the teacher's use of inappropriate language, his slapping, kicking, hair pulling, frogging students and his sanctioning of card games in study hall did not constitute insubordination because there was no evidence that the acts continued after the teacher was admonished or counseled to behave differently.

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Insubordination

- *Baxter v. Poe* (1979). Court of Appeals upheld the dismissal of a career teacher after the teacher had applied corporal punishment to students with orthopedic disabilities after direct orders from the principal not to do so. The principal had previously agreed to give the teacher tenure on the condition that she would not strike the children anymore and the teacher responded "I'm not going to hit anybody else no more, no more."

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Insubordination

- *Hope v. Charlotte-Mecklenburg Bd. of Educ.* (1993). Court of Appeals upheld the dismissal of a career teacher after she continued a doll-making project in her class despite being told to stop by the principal; refusing to meet with the principal despite being instructed to do so; and refusing to implement a professional growth plan after the principal had instructed her to do so.

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Neglect of Duty

There is no North Carolina case upholding a negligent of duty dismissal.

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Neglect of Duty

- *Thompson v. Wake County Bd. Educ.*, 292 N.C. 406 (1977). The Board dismissed a career teacher on numerous grounds including neglect of duty. The Board found that the teacher had neglected her duties by allowing students to fight in class. The Court of Appeals upheld the dismissal and stated that allowing students to fight in class to resolve their problems constituted neglect of duty relating to the teacher's duty to encourage order and discipline. While the N.C. Supreme Court agreed with the substance, it reversed the Court of Appeals holding that the evidence that the teacher actually tolerated fighting in her classroom was insubstantial.
 - One good thing from *Thompson* is that one incident might be enough to warrant a negligent of duty dismissal ("If a career teacher's ability to maintain good order and discipline at school is to be judged solely by one incident, that evidence of that incident should be clear.")

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Failure to Fulfill the Duties and Responsibilities Imposed upon Teachers or School Administrators by the General Statutes of this State.

- Teachers – N.C. Gen. Stat. § 115C-307
 - Maintain order and discipline
 - Provide for general well-being of students
 - Provide some medical care to students
 - Teach students
 - Enter into the Superintendent's plans for professional growth
 - Discourage nonattendance
 - Make required reports
 - Take care of school buildings

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Failure to Comply with such Reasonable Requirements as the Board may Prescribe

- Board policies and procedures
- *Kurtz v. Winston-Salem/Forsyth Bd. of Educ.*, 39 N.C. App. 412 (1979). A teacher was dismissed for violating the Board's policy on corporal punishment (the policy allowed use of reasonable force to maintain order but restricted the way that the force could be administered including a prohibition against striking or slapping students on the head and face).

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Any Cause which Constitutes Grounds for the Revocation of the Career Teacher's Teaching Certificate or the Career School Administrator's Administrator Certificate

- N.C.A.C. tit. 16, ch. 6C §§ .0312 and 0602.
- Examples – revocation of a teaching license from another state; conviction or plea of no contest to a crime if there is a reasonable and adverse relationship between the crime and the teacher's continuing ability to perform his/her duties in an effective manner; any other illegal, unethical, or lascivious conduct by a person, if there is a reasonable and adverse relationship between the misconduct and the teacher's continuing ability to perform his/her duties in an effective manner.

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The Other Reasons . . .

- **Physical or Mental Incapacity**
- **Habitual or Excessive Use of Alcohol of Nonmedical Use of a Controlled Substance**
- **Conviction of a Felony or a Crime Involving Moral Turpitude**
 - "An act of inherent baseness in the private, social or public duties which one owes to his fellowmen or to society, or to his country, her institutions and her government."
 - Crimes of moral turpitude include – murder, kidnapping, giving worthless checks, burglary, solicitation of robbery, misappropriation of clients funds by a lawyer and embezzlement.

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The Other Reasons . . .

- **Advocating the overthrow of the Government of the United States or of the State of North Carolina by Force, Violence or other Unlawful Means**
- **Failure to Repay Money Owed to the State**
- **A Justifiable Decrease in the Number of Positions due to District Reorganization, Decreased Enrollment, or Decreased Funding**
- **Failure to Maintain License**
- **Providing False Information or Knowingly Omitting a Material Fact on an Application for Employment or in Response to a Pre-Employment Inquiry**

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