



School Administrators Association of New York State

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What Do I Do When I'm Called to a Meeting?

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At some point in your career as an administrator, you may be contacted by your district regarding a meeting involving a problematic issue or possibly as part of an investigation. That notice may or may not include informing you that due to the nature of the meeting, you may bring unit representation. When you are notified of such a meeting, you should first ask if the meeting could lead to discipline, a letter of counseling, or may to terminating your probationary employment. Determining the nature of the meeting or interview is very important.

If the answer is that the results of the interrogation could, in fact lead to some form of discipline, counseling document or termination of probation, your next step is to contact your SAANYS and your unit representatives. Even if you feel you have a good relationship with your superintendent or assistant superintendent, you should not go into the meeting alone. At a minimum have your unit representative present if you fear bringing a SAANYS' attorney, but please contact SAANYS to discuss what is the district's motivation for the meeting and how to prepare to answer the questions asked to minimize your liability and maximize your work.

As a unit-represented employee, you have the right to have representation with you at the meeting. This right stems from the U.S. Supreme Court case of *NLRB v. J. Weingarten*, 420 US 251 (1975). In fact, your district should inform you of your right to have your representative accompany you at the meeting. If the meeting is for investigatory purposes, you have a right to have your unit representative with you. These are referred to as Weingarten rights. An interview may be investigatory if:

A manager, representative of management or supervisor is seeking to question an employee.

The questioning is part of an investigation into the employee's performance of work conduct. During an investigatory interview the employee may be asked to defend, admit or explain misconduct or performance issues that may be used as the basis for discipline or discharge

The employee reasonably believes the investigation may result in discharge, discipline or other adverse consequences to their job status

If the employer does not inform the employee of their right of representation. If the employer violates this premise, a claim made by the employee may result in an order that the employer must cease and desist, post a remedial notice, rescind and remedy discipline taken or repeat the interview with a Weingarten representative present.

An employee must affirmatively request to have a representative there. Understand that the employer is not required to specify an employee needs a Weingarten representative, but once an employee makes the request for that representative, they are not required to repeat that request. This is why the initial question as to the nature of the meeting is vitally important.

If your representative cannot attend the scheduled meeting, you must be provided with reasonable time to enable the representative to be present. While "reasonable time" is not specific, it is generally accepted that a few days is reasonable. Usually, your SAANYS attorney can contact the district or its attorney directly and agree upon a time that is mutually acceptable to all parties.

If for any reason you are in a meeting alone and the meeting starts to become one in which disciplinary action could result, or appears to be investigatory in nature, you can stop the meeting by saying you want to have your unit representative or your SAANYS attorney with you and you would ask to continue the meeting when you have that representation.

Again, by contacting a SAANYS attorney, we can talk you through what you can do and we can advise you as to whether or not you answer questions or how to answer questions during the meeting. Many times we may try to talk to you and your unit representative in a conference call to ensure we are all aligned in our actions.

If you are a tenured administrator, you can invoke your Cadet rights. This is the equivalent of invoking your 5th Amendment rights in a criminal matter. The underlying case was an appeal by the Board of Education of the City School District of the City of New York v. Andre Cadet, Ed. Dept Rep decision 13,589. This case affirmed the ability of a tenured educator to not answer incriminating questions if they could possibly lead to a 3020-a proceeding. If you invoke your Cadet rights, you do not have to answer any questions. You can simply answer that you invoke your Cadet rights.

If you are untenured or your position falls under a non-certificated category, you do not have the ability to invoke Cadet rights. You must answer the questions. In effect, you can be compelled to answer questions, or you could be considered as insubordinate. That could lead to possible termination based upon that insubordination. The case for non-certificated personnel is *Matt v. Larocca*, 71 N.Y.2d 154 (1987), which holds that termination is possible for non-certificated personnel who willfully refuse to answer questions.

In fact, for non-certificated personnel who may incriminate themselves answering questions, there may be situations that arise where testimony may incriminate a member and lead to criminal liability. In such a case, it may be beneficial to resign prior to the interview to avoid being compelled to testify, rather than incriminate themselves. Although prosecuting agencies are prohibited from using such compelled testimony, but why give prosecutors the information, especially if the information establishes the criminal liability. That scenario needs to be reviewed and discussed between for you and your SAANYS attorney.

If you are called in for an interview as a part of an investigation, we can give you advice as to how to answer those questions. We advise you to listen to the question and answer only the question. Don't guess and don't add anything else other than the answer to that specific question. If you do add, you can give the investigator other avenues to explore. We can also attend the interview with you, either in-person or via virtual means.

We can also help following an investigation. We can appear with you for the results, or you may want your unit representative present. In many districts, you may be able to bring both.

If it is a meeting other than an investigation, you must make a decision as to whether you answer the question or even speak at the meeting. This is one reason it is so important to have your unit representative with you.

Not only can SAANYS attorneys help you at the beginning of an investigation or disciplinary meeting, but they also can be invaluable in trying to resolve the matter in a manner acceptable to all parties. For example, if you do receive a counseling letter or memorandum, your SAANYS attorney can help you craft a rebuttal. While you may not think a rebuttal is necessary, we recommend that you submit one. Otherwise, the District's memo takes on a level of accuracy that it should not have and becomes a permanent part of your personnel file. Your side of the story is not heard. That could make a difference later if you are charged with disciplinary charges and never refuted the allegations in a prior counseling memo.

If the district's intentions are more than a simple memorandum or letter, SAANYS needs to be contacted immediately to protect your rights. A SAANYS attorney can minimize inculpatory evidence being gathered during such an interrogation. Also, SAANYS can negotiate a separation agreement from the district if you so choose. If your probation is terminated after an interrogation, SAANYS probably will be unable to save your position,

but we may be able to help you negotiate a graceful exit from the district that provides financial security and future employability.

Remember to keep your unit and SAANYS apprised of any issues you may be having in your district so that we can continue to help you.

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