



Employment Issues

Employee Discipline and Just Cause

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neither performing high-quality work nor improving in [performance](#).² Thus, Iowa’s educational employers need not tolerate a barely acceptable level of performance--the so-called “lowest common denominator.”

Matters relating to the discipline or discharge of school employees are permissive bargaining subjects, which means that proposals on those subjects do not have to be negotiated and cannot be submitted to fact-finding or arbitration without mutual [agreement](#).³ However, if the employer includes discipline or discharge language in a collective bargaining agreement or an individual employment contract (for example, providing employees can only be discharged for “just cause”), an arbitrator, adjudicator or court will interpret and apply such language in an arbitration, termination or wrongful discharge case.

Sections 279.15 and 279.27 provide that there must be “just cause” to terminate or fail to renew a teacher’s contract. To justify the mid-term discharge of a teacher, the school corporation must establish fault attributable to the teacher and cannot terminate the teacher’s contract due to declining enrollment or for budgetary [reasons](#).⁴

General Information

The Iowa General Assembly has authorized Iowa school corporations to make rules governing the conduct of employees at the workplace and to discipline and discharge employees who have engaged in [misconduct](#).¹ The Iowa Supreme Court has declared “a school corporation is not married to mediocrity, but may dismiss personnel who are

The Iowa Legislature did not define the terms “just cause” or “fault” when enacting the state’s continuing teacher contract provisions. Based on court decisions in Iowa and elsewhere, the terms include, but are not limited to, the following:

1. Unsatisfactory work performance, including teachers’ insufficient planning, improper teaching methods,

inappropriate classroom management or discipline, faulty student evaluations or ineffective relations with parents, supervisors or colleagues.

2. Excessive absenteeism.
3. Persistent acts of insubordination.
4. Failure to comply with licensure or educational requirements.
5. Physical or sexual abuse of children or co-workers.
6. Alcohol or drug use which impairs the employee's ability to safely and properly perform his/her job.

There are certain offenses that have usually lead courts or arbitrators to sustain an immediate discharge, regardless of an employee's seniority, disciplinary record or prior warnings. These offenses are:

1. Falsification of material information on an employment application or other significant record.
2. Being under the influence of alcohol or drugs on the job.
3. Violent, unprovoked physical contact with fellow employees or supervisors.
4. Conviction of a job-related crime (OMVUI of a bus driver) or a felony involving honesty and integrity (falsifying negotiable instruments) .
5. Theft of the employer's property.
6. Refusal to perform an assignment for which the employee is qualified.
7. Performing gainful employment while on a paid leave.

The Iowa Supreme Court has recognized that the term "just cause," as it applies to public school

teachers, "relates to job performance including leadership and role model [effectiveness](#)."⁵ The court has pointed out that off-premises misconduct can justify a teacher's termination because "a teacher occupies a sensitive position. Since students are taught by example as well as lecture, the teacher's out-of-school conduct may affect his classroom [fitness](#)."⁶

To prevail in a termination hearing, the school corporation must, however, prove that a connection or "nexus" exists between the off-duty misconduct and the employee duties and responsibilities. The Iowa courts have upheld teacher terminations after a conviction for [shoplifting](#)⁷ and a conviction for possession of drugs in the teacher's [home](#).⁸ In an unpublished decision, the court also upheld the termination of a teacher who was convicted for reckless driving that resulted in the death of another individual. The notoriety of the misconduct and objections to the employee by parents or students are relevant facts in such a case.

In a competency case, must the administration prove that the teacher's deficiencies harmed students? The Iowa courts have not required such a showing. However, it must be shown that the teacher's methods violated the school corporation's standards. Because of the law's differential attitude toward academic freedom, a teacher's judgment in selecting materials cannot be the basis for discipline unless the teacher exercises that judgment in a manner that contradicts the school corporation's established curriculum or violates some clearly articulated school corporation rule or policy. Furthermore, a school corporation can evaluate and discipline the teacher for using ineffective teaching methods without violating a teacher's rights of academic freedom.

Iowa courts typically apply a more relaxed just cause standard in cases involving the termination of a licensed employee pursuant to IOWA CODE Sections 279.15-.19 than do arbitrators when determining whether a classified employee was discharged for just cause. For this reason and others, it is important that school corporations not include provisions in their collective bargaining agreements stating that classified employees will be discharged or disciplined only for just cause. Contract proposals regarding discipline and discharge are not mandatory subjects of bargaining. School corporations cannot, therefore, be compelled

to include such proposals in their collective bargaining agreements.

Investigation Procedures and Due Process

In determining whether an employer had just cause to take disciplinary action, courts and arbitrators often employ a series of tests:

1. Was there forewarning of the disciplinary consequences of the employee's conduct?
2. Did the employer's policy or work rule relate to the orderly, efficient and safe operation of its business?
3. Did the employer, prior to discipline, investigate the alleged misconduct?
4. Was the investigation fairly conducted?
5. Did the investigation disclose, by a preponderance of the evidence, that the employee charged was guilty?
6. Did the employer, in similar cases, apply penalties even-handedly?
7. Was the discipline imposed in line with the seriousness of the offense and the employee's record?

School corporations in Iowa are not required by statute to have just cause before they discipline an employee. However, school corporations must abide by the due process requirements of the 14th Amendment to the U.S. Constitution before issuing discipline if the discipline deprives the employee of a protected property interest in continued employment or a protected liberty [interest](#).⁹ Discipline that stigmatizes or otherwise damages an employee's reputation can deprive the employee of a protected liberty interest and invoke due process protections if the reason for imposing discipline is published to outside [parties](#).¹⁰ A protected liberty interest can be involved even though the employee

does not have a recognized property interest in his or her continued employment.

A thorough discussion concerning how these due process rights arise is beyond the scope of this service. As a general rule, treat all employees as if they are protected by the 14th Amendment and afford them sufficient due process rights before imposing discipline. At a minimum, the due process clause requires giving employees notice of the charges against them and a meaningful opportunity to respond to those charges. What notice must be given, when it must be given and the type of hearing that must be offered depends on balancing the competing interests involved. A full-blown evidentiary hearing, like that offered a teacher whose contract is recommended for termination, is not required before issuing discipline unless the discipline is in the form of a lengthy unpaid suspension or involves serious allegations such as an employee physically or sexually mistreating a child. Before disciplining a teacher or employee for those types of misconduct, a school corporation should consult with its attorney to determine exactly what process is required. This is particularly true if the employee involved contests the allegations against him or her.

Generally, to comply with due process requirements, the employer should confront the employee with the charge against him or her and hear the employee's side of the story. Interview witnesses the employee claims will support his or her side of the story and verify any facts the employee mentions. The school corporation should then decide, based on the information gathered, and notify the employee of its decision. If the employee is represented by an employee organization and requests the presence of an organization representative during an investigatory interview, the request must be [granted](#).¹¹ In most discipline cases, the employee does not have the right to confront, question or examine the statements of adverse witnesses during an investigation, but the school corporation should ultimately be able to show its investigation was thorough and fair.

Documenting Employee Discipline

The law does not require that an Iowa school employee be given notice of a disciplinary action or require school corporations to use a particular form when issuing employee discipline. However, a dated and signed copy of any written warning

notices, reprimands, demotions, probations or suspensions should be retained in the employee's file to document his or her disciplinary record. The employee should be given the opportunity to sign the document acknowledging receipt. If the employee refuses to sign the document, then the administrator should sign the document noting the date and time a copy was given to the employee. The employee's signature means only that he or she has received a copy of the disciplinary notice and not that the employee necessarily agrees that the discipline should be imposed.

An employer's documentation of disciplinary problems serves several important functions. First, well-written documentation establishes a written record of what transpired. Since Title VII, Iowa Civil Rights Commission, and wrongful discharge cases are often heard years after the events in question, documentation preserves the evidence. Second, appropriate documentation lends credibility to the testimony of the school corporation's witnesses. Judges and juries tend to believe written statements more than they believe oral statements or testimony. This is particularly the case if the written statement was prepared shortly after the events described in the statement occurred.

To be effective, all documentation must contain the date of the event, a specific description of the facts and the names of people familiar with those facts. Proper documentation includes a signed form acknowledging receipt of the school corporation's policies or work rules, signed incident reports of misconduct, file memoranda noting the employee being alerted to deficiencies and suggested remediation measures, signed disciplinary notices to the employee and the employee's responses to that discipline.

Although some private sector collective bargaining agreements require employers to destroy a disciplinary record if no further discipline occurs for six months to two years, few public sector collective bargaining agreements contain those restrictions. It is good management practice to retain any disciplinary notices involving serious offenses (for example, sexual harassment, theft or substance abuse) as a constant reminder for the employee to adhere to the rules.

Finally, it is critical that the employer's documentation be consistent regarding the reason(s)

for discipline or discharge. Few factors are as harmful to the employer's case than differing reasons as to why an employee was disciplined or fired. Similarly, if a school corporation fails or even refuses to provide a reason for discharging an employee, the failure or refusal can appear unfair to a neutral and may cast doubt on the employer's disciplinary system.

Suspensions

A school corporation's board of directors possesses the ultimate authority to hire, fire and discipline employees. The Iowa Supreme Court has, however, recognized that school boards can legally delegate to the superintendent and administrative staff the authority to discipline employees including the authority to suspend employees with or without [pay](#).¹² In most cases, delegating authority to discipline employees to the superintendent and his or her administrative staff makes sense because the board, as a policy-making body, should not become overly involved in day-to-day operations. Also, delegating disciplinary authority is necessary with respect to licensed employees because it preserves the board's neutrality if a termination hearing later ensues. If the board wants to delegate the disciplinary authority to the superintendent, the board should adopt a specific policy to that effect.

Section 279.27 of the IOWA CODE authorizes the administrator to suspend a teacher pending a termination proceeding. The Iowa Supreme Court has held that in such cases the suspension must be with [pay](#).¹³ A suspension without pay, if provided for in the school corporation's personnel policy, is, however, permissible if Chapter 279 is not [involved](#).¹⁴

Some misconduct by school employees can also result in criminal proceedings (for example, sexual battery or indecent exposure). Should discipline be contingent upon the outcome of the criminal case? Generally this is not wise since discipline could be negated by a plea bargain or the prosecutor's inability to prove a crime beyond a reasonable doubt. Additionally, school districts need to handle the problem expeditiously and waiting for results in a criminal proceeding may take months or years to resolve.

Board Involvement in the Disciplinary Process

What is the role of the board of directors in the investigation of alleged misconduct? Under Iowa law, the board is the finder of fact in a teacher termination case and must remain impartial. This means the board cannot initiate the investigation of teacher misconduct, or assess the adequacy of a disciplinary action or recommended [termination](#).¹⁵ Likewise, if the board is required by the due process clause or board policy to hear disciplinary appeals of classified employees, the requirement that the board “hear” the evidence may preclude their prior involvement in the case.

In light of those constraints, board members should not become involved in employee discipline matters. Board members should refer complaints of employee misconduct to the administration (except, of course, complaints involving the superintendent) and only get involved when a recommendation to terminate the employee’s contract has been filed.

Work Rules

Many discipline cases have been lost, resulting in reinstatement of employees with back pay, due to vague or indefinite rules or policies. Policies or rules prohibiting “indecent or immoral conduct,” “action is not in the best interest of the employer” or “losing interest in his/her job” do not begin to define what type of conduct is prohibited. The language of policies or rules should be clear and precise. The following are some typical work behaviors that could result in termination:

1. Possession, use or sale of alcohol or non-prescribed drugs during working time.
2. Failure to comply with starting or quitting times for shifts or prescribed break periods.
3. Failure to observe any posted safety or security rules, including failing to report a work-related injury.
4. Theft or damage to the property of the employer or fellow employees.

5. Failure to follow a work-related directive of supervision.

Some policies or work rules group offenses according to severity. For example, the first offense of negligent work performance, tardiness or a safety rule violation may result in a written warning, the first offense of insubordination may result in suspension and the first offense of a physical altercation or falsification of records may result in immediate discharge. To maintain consistency in enforcement and avoid a claim of discrimination, an employer who groups defenses by severity must strictly follow its rules in every case. Employees committing the same offense must receive the same penalty, whatever their disciplinary records. Employers have more flexibility in enforcing rules by using a single list of offenses following the statement:

Violating any of the following rules is grounds for disciplinary action, including discharge. Management will take disciplinary action after reviewing the facts concerning the offense and the employee’s disciplinary record.

At-Will Disclaimers

A deviation from an employer’s disciplinary policies or rules can be the basis for a breach of contract or wrongful termination civil suit. Should employers, to avoid such suits, abolish all disciplinary policies or rules? This course is not recommended, since it is sensible employee relations practice to publicize such policies, alerting employees to their responsibilities.

School corporations can, however, greatly diminish their exposure to a contract or wrongful discharge suit by issuing a statement to classified employees that clearly says the school corporation employment policies and practices are intended as guidelines only and do not constitute a contract between the school corporation and its employees. The statement should also advise classified employees that they are employed “at-will,” which means either the school corporation or the employee can terminate the employment at any time, for any reason and without any advance notice. An example of an appropriate statement, often referred to as an “at-will disclaimer,” is:

The school corporation's work policies are provided as guidelines of proper employee conduct and do not constitute a contract of employment. All of the school corporation's non-certified employees are employed "at-will," which means either the school corporation or the employee can terminate the employment relationship at any time, for any reason. I understand that no employee or representative of the school corporation has the authority to enter into a contract of a specified period of time or to make an agreement that is inconsistent with the "at-will" nature of my employment.

The "at-will" disclaimer, if used, should be issued to all classified employees. The employees should be required to certify that they've read and understand the statement as a condition to their continued employment. It is also a good employment practice to include the statement on the application form when hiring classified employees. The "at-will" disclaimer does not apply to licensed employees, since they are required by statute to receive continuing employment that the school corporation can terminate only if just cause exists to do so.

Endnotes

1. [IOWA CODE](#) § 279.8; IOWA CODE § 20.7(3).
2. [Briggs v. Board of Education](#), 282 N.W.2d 740 (Iowa 1979).
3. [City of West Des Moines](#), PERB Case No.1898 (1981) (citing Keystone Area Education Agency, PERB Case No.928(1977); City of Sioux City, PERB Case No.1199 (1978); State of Iowa, PERB Case No.1846 and 1855 (1981)).
4. [Heartman v.Merged Area VI Community College](#), 270 N.W.2d 822 (Iowa 1978).
5. [Briggs v. Board of Education](#), 282 N.W.2d 740, 743 (Iowa 1979).
6. [Erb v. Iowa State Board of Public Instruction](#), 216 N.W.2d 339,343(Iowa 1974).
7. [Board of Directors of Lawton-Bronson v. Davies](#),489 N.W.2d 19(Iowa 1992).
8. [Board of Directors of Des Moines Area Community College v. Simons](#),493 N.W.2d 879(Iowa App. 1992).
9. [Board of Regents v. Roth](#), 408 U.S. 564, 573, 92S. Ct. 2701, 2707, 33L.Ed.2d 548 (1972).
10. [Bishop v. Wood](#), 426 U.S. 341, 96S. Ct. 2074, 48L.Ed.2d 684 (1976); [Winegar v. Des Moines Independent Community School District](#), 20F.3d 895 (8th Cir.1994).
11. [State of Iowa](#), PERB Case No.2562 (1985); [City of Cedar Falls](#), PERB Case No.511 (1980).
12. [See Northeast Community Education Association v. Northeast Community School District](#), 402 N.W.2d 765, 769-70 (Iowa 1987).
13. [McFarland v. Board of Education](#), 277 N.W.2d 901, 905-06 (Iowa 1979).
14. [Northeast Community Education Association](#), 402 N.W.2d at 470.
15. [Keith v. Community School District of Wilton](#), 262 N.W.2d 249 (Iowa 1978); but see [Larsen v.Oakland Community School District](#), 416 N.W.2d 89, 95 (Iowa App.1987) (school board did not lose impartiality simply because it previously appointed a committee, which included a board member, to observe teacher whose employment it later terminated).