



Employment Issues

Performance Evaluation and Collective Bargaining Agreement

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General Information

On September 5, 2002, the Iowa Supreme Court affirmed in its Waterloo decision that school corporations are not required to negotiate evaluation standards of performance, criteria or instruments. The law now provides that the board, beyond the requirements set forth in Chapter 284, has exclusive authority to set forth the staff standards of performance, criteria and instruments. To read the entire decision, go to

<http://www.judicial.state.ia.us/supreme/opinions/20020905/01-0494.asp>

Evaluation procedures, the frequency of evaluations, prior disclosure of the instrument and criteria, timing and contents of the evaluation conference are all still mandatory subjects of bargaining. These items are typically spelled out in collective bargaining agreements and board policies.

Even though the standards of performance, criteria and instruments may be established without negotiating, the district may choose to include staff in developing the evaluation criteria

and instrument. To aid in the discussion, address the following fundamental questions:

1. What is the purpose of your evaluation process? Is it recognition, feedback, improved performance, remuneration, documentation of deficiencies or other discipline?
2. What is the basis for evaluations, job descriptions, supervisors' or employees' stated goals or targets, overall job performance on a specific set of measurable criteria?
3. Who does the evaluating? In some systems, employees complete self-evaluations, peers submit appraisals of their colleagues' performances or an immediate supervisor's observations are subject to review and comment by other managers.
4. Does your contract clause or policy permit or preclude informal evaluations, including disciplinary action based on work-related misconduct not observed during the formal evaluation process?
5. Does the responsibility for remediation rest with the employee after receiving feedback from supervision?

A school corporation's evaluation procedures will, of course, differ depending upon how these questions are answered.

The criteria used to evaluate licensed and classified employees are quite different. Criteria for licensed employees (teachers, nurses, counselors, etc.) usually include job performance descriptions, professional responsibilities, relations with staff and parents and compliance with educational requirements. Evaluation forms for classified employees (physical plant, drivers, clerical, etc.) often include the quantity and quality of work, relations with supervisors, attendance and safe working practices (or adherence to work rules). If the evaluation form contains a series of 20 criteria, each of which is rated "Meets," "Exceeds" or "Does Not Meet" school corporation standards, employees must be told how many "Does Not Meet" entries constitute an unsatisfactory evaluation. If an employee is given a "Does Not Meet" or "Unsatisfactory" rating, specific comments or illustrative examples must be given that explain or support the negative rating. Negative ratings alone, without examples or explanations, do not properly advise an employee of how his or her performance is deficient and should be avoided.

The evaluation of a teacher's work performance need not be limited to the formal evaluations during a given school year. School corporation employees, like teachers, are required to perform in a competent and professional manner throughout the school year and not just during those few instances when the building principal visits their classroom and observes them teaching a class. From time to time, employees will violate employment rules and policies or engage in other forms of misconduct that the employee's immediate supervisor must document and should consider when evaluating the employee's overall work performance. If considered, these incidences of misconduct should be discussed in the employee's final evaluation.

Most collective bargaining agreements provide for "formal" and "informal" evaluations. Those contract provisions typically require administrators to base their evaluation of a teacher's work performance on at least a specified number of formal classroom observations and further require that all formal observations be preceded and followed by observation conferences. These same contract provisions typically do not limit the administrative right to

enter the classroom at any time and informally observe what takes place.

Administrators must be careful to follow all the procedures in the collective bargaining agreement when conducting formal observations. If the administrator does not follow those procedures, in particular any provision regarding pre or post-observation conferences, the teacher can raise those concerns in a termination hearing. An evaluator should base the final evaluation primarily on the teacher's performance during formal classroom observations and not place undue emphasis on what he or she has informally observed. While the spontaneity of an impromptu observation has its value, a summative evaluation should not be based entirely upon informal evaluations.

The evaluation of a teacher who also performs coaching duties should also be completed in accordance with contract procedures. Like the evaluation of a teacher's work performance in the classroom, the evaluation of a teacher performing coaching duties need not be limited to the formal evaluations during the school year. Because evaluation procedures are mandatory subjects of bargaining for unionized employees, the district may want to negotiate an evaluation procedure with the employee's bargaining representative which specifically addresses the teacher's performance of coaching duties.

For individuals who perform coaching duties, but who are not teachers, a school district has no duty to bargain evaluation procedures with them. The school, however, may use the evaluation instrument used for teachers who perform coaching duties or may use different evaluation criteria (including an instrument) and different evaluation procedures.

Some collective bargaining agreements require that any complaints about an employee's performance be called to his or her attention before placing the complaint in the employee's file. Advising employees about complaints and criticisms of their work performance is a good employment practice to follow even if it is not expressly required by a collective bargaining agreement. A written notation by the supervisor, showing the date when the complaint was shown

to the employee, will suffice to notify the employee in most cases.

Job performance complaints, whether or not they result in formal disciplinary action against the employee, must be specific and clearly describe the offense committed. To be effective, the written notice should also advise the employee what actions a school corporation will take against the employee if the conduct is repeated. For example:

To: Teacher
From: Principal
Date:

On Oct. 3, I received a call from Ms. Shepard. Ms. Shepard reported that you struck her son Alan, your third-grade student, in class that day. I spoke with you, Alan and third-graders Johnny and Scottie on Oct. 4. It appears Alan was away from his seat and talking during plans. You told him to be seated and pushed him toward his seat with your hands open. Alan suffered no injury. Although you did not violate the school corporation's corporal punishment policy, Board Policy 406.6, when you pushed Alan toward his seat, your conduct was, nevertheless, unprofessional and improper. I am placing this incident report in your file as a reminder to not treat children in an inappropriate manner. Further mistreatment of students will result in discipline up to and including your immediate discharge.

OR

To: Custodian
From: Principal
Date:

Our time records show that you clocked in between 15 and 30 minutes late on September 22, 24 and 25. Your file contains written warnings of January 12 and March 14 for tardiness and a written warning of May 1 for an unexcused absence.

I suggest you re-read and follow work rules 10 and 11 regarding excessive tardiness and absenteeism. You are to regard this as a formal written reprimand. The next incident will result in your suspension without pay.

Evaluative materials (incident and observation reports and formal evaluations) should be filed in the employee's personnel file. Administrators should not maintain the only copies of such materials in private files, which are unavailable for employees' inspection

Evaluation and the Teacher Termination Process

Administrators must appreciate how important it is to prepare complete and accurate evaluations and, if applicable, to follow the procedures in the collective bargaining agreement when evaluating any employee's work performance. This is particularly the case with respect to teachers, since their employment contracts can be terminated only for "just cause" after a full evidentiary hearing before the board of directors. The steps in terminating a licensed employee are described in the *Licensed Employee Contract Procedures Manual* section of this service.

Evaluation materials play a central role in any teacher termination case involving allegations of poor work performance. Adjudicators and reviewing courts expect evaluation materials to be accurate and complete. They also expect administrators to follow the set procedures when evaluating teachers. Inaccurate, incomplete and incorrectly compiled evaluation materials have little effect if the decision that just cause exists to terminate a teacher is ever appealed.

The contracts or policies of some school corporations provide for additional observations or re-evaluation after an unsatisfactory evaluation. In addition, and often apart from any master contract, the school corporation may have a detailed employee assistance plan. Typically, these plans use fellow teachers as role models for, or as observers of, teaching practices. To ensure that the school corporation has the flexibility to complete the assistance plan, and colleagues remain willing to participate in the program

without fear of being called as witnesses in an evaluation arbitration or termination hearing, the plan should be maintained outside the contract. This means that the school corporation cannot use the teacher's performance during the assistance plan and the opinions and advice offered by the teacher's colleagues during any later evaluation or termination proceeding. That the assistance plan exists "outside the contract" does not, however, preclude the school corporation from later discussing what efforts were made during the plan to show the significant remediation steps that were used and to show that the teacher's performance, as measured through formal observations typically taken during the same period, did not improve despite those efforts. Sometimes adjudicators and courts are reluctant to sustain the termination of a long-term teacher who receives one or two negative evaluations after many years of satisfactory evaluations, particularly if the most recent principal/evaluator is new or inexperienced. In this case, if the teacher's deficiencies are marginal or debatable, using additional evaluators may make sense. For example, another principal or curriculum director could conduct an independent evaluation. The evaluation may only be completed by a licensed evaluator. If the results confirm the judgment of the teacher's immediate supervisor, the school corporation has a valuable witness and the teacher

may decide not to contest termination. To be effective, the alternate evaluator must observe the teacher enough to form an independent and honest assessment of the teacher's performance and cannot simply rely on the primary evaluator's findings and conclusions.

Evaluation and Reduction in Force

Some collective bargaining agreements provide that employees must be selected for staff reduction based on relative skill and ability, not based on seniority alone. If so, it is the school corporation's obligation to prove that its decision to lay off the grievant, and not some other less senior teacher, did not violate seniority provisions in the collective bargaining agreement or was for just cause. Proving this typically involves comparing the grievant's performance evaluations with the evaluation received by other teachers who the school corporation could have selected for reduction instead of the grievant. Teacher associations generally have no objection to eliminating the names of colleagues from their evaluation forms to protect their privacy. In addition to introducing the evaluations into evidence before the board, the school corporation may want to succinctly summarize the evaluations in an exhibit. For example:

2003-04 Evaluations Math Department

Employee	Overall *	# Satisfactory Entries	# Unsatisfactory Entries
A	E	20	0
B	E	19	1
C	S	18	2
Grievant	S	15	5

*E= Excellent; S= Satisfactory

Evaluation Do's and Don'ts

The evaluation dos and don'ts listed below are provided to help school corporations evaluate employees. While these measures are directed toward the evaluation of teachers, the measures apply equally to all employee performance evaluations.

1. Do provide detailed descriptions of performance problems. Do not rely on vague conclusions that lack any meaningful information and are not supported by specific facts.
2. Do make suggestions in the evaluation concerning how the teacher might improve

- his or her performance. Do not give the impression that the teacher is incapable of improvement.
3. Do accurately state the teacher's strengths and weaknesses. Do not exaggerate the teacher's strengths or weaknesses; avoid hyperbole, flowery language and the like.
 4. Do provide opportunities for training or education to help the teacher.
 5. Do compliment a teacher's performance when a compliment is deserved. Do not counterbalance all negative remarks with a positive remark or an excuse.
 6. Do give consistent criticisms. Do not find new things to criticize each lesson thus creating a "moving target" the teacher is obligated to hit.
 7. Do be positive and encouraging. Do not give the teacher false hopes or watered-down feedback.
 8. Do let the teacher know how serious his or her deficiencies are. Do not fail to mention the consequences of nonperformance.
 9. Do give the teacher professional advice regarding what he or she must do to improve. Do not let the teacher fend for him or herself. However, remember that the teacher is ultimately responsible for improving his or her work performance.
 10. Do seek support from the central administration if the teacher is performing below school corporation standards. Do not give central administration initial notice that a teacher is in trouble shortly before a termination notice must be served.
 11. Do evaluate teachers in the same manner and with the same degree of fairness as you would expect someone to evaluate you. Do not hold teachers to standards and timetables that are unattainable and unreachable.
 12. Do give the teacher realistic time lines for remedying performance problems. Evaluate how long the organization can tolerate the behavior.

Endnotes

- *Northeast Community School District v. Public Employee Relations Board*, 408 N.W.2d 46, 49 (Iowa 1987)
- *Aplington Community School District v. Public Employee Relations Board*, 399 to N.W.2d 495 (Iowa 1986).