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**THE LEGAL ASPECTS OF THE PRINCIPAL'S RESPONSIBILITIES IN
DEVELOPING TEACHER IMPROVEMENT PLANS**

The University of North Carolina at Greensboro

Ed.D. 1985

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THE LEGAL ASPECTS OF THE PRINCIPAL'S
RESPONSIBILITIES IN DEVELOPING
TEACHER IMPROVEMENT PLANS


by

John Fletcher Nantz

A Dissertation Submitted to
The Faculty of the Graduate School at
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Approved by


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APPROVAL PAGE

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In response to the public's demand for quality education, many state legislatures are mandating teacher performance evaluation for the purpose of improving instruction. A review of state legislated mandates and an analysis of the court decisions involving teacher evaluation issues indicate the school administrator has a direct responsibility in providing assistance for helping a teacher make improvements where necessary.

This research was designed to determine the legal responsibilities of the school administrator in working with a teacher to make improvements. More specifically the study focused on the responsibility that the principal has in notifying the teacher that there is a problem and in providing an opportunity for the teacher to improve.

As a guide to educational and legal research, four questions were formulated in the introduction. Data for responding to these questions were obtained from an analysis of the fifty state statutes and court cases involving teacher evaluation. In this analysis of the state statutes and court cases, attention was given to procedural and substantive due process issues. Specific areas included specificity of notice, required documentation, and the time frame given for remediation.

Responses to the questions comprise the major portion of a set of legal guidelines which school administrators and other educational decision makers can refer to when making employment decisions based on teacher evaluation. This set of guidelines requires the school principal to know state and local mandates related to evaluation and notification of deficiencies. Even when the issues in a situation may be similar or the same as in cases already decided by the judiciary, a different set of circumstances can produce an entirely different decision by the court. If the educational decision maker follows the guidelines established in this study, he is less likely to be involved in litigation concerning teacher evaluations.

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CHAPTER I

INTRODUCTION

Many educators acknowledge that one of the primary responsibilities of the principal is to supervise instruction. Supervision of the instructional process began in American schools about 1800 with the visits of school committees or board members of "inspection." It is doubtful if instruction improved because of these visits, as lay persons were often concerned with only the three R's being taught, not how well they were taught.¹

Because a school's success depends largely on how well teachers teach, the school principal must make sure instruction is of the highest quality. Principals work directly with teachers, but teacher evaluation is often slighted or ignored.²

Evaluation is a sensitive process which requires a balance of giving praise and criticism, discussing information and presenting advice.³ Thomas L. McGreal prefaced

¹ Joseph Farley, "Student Interview as an Evaluation Tool," Educational Leadership 39 (December 1982): 184.

² Roger W. Lamb and Donald Thomas, "The Art and Science of Teacher Evaluation," NASSP Bulletin 61 (September 1981): 45.

³ Ibid.

a recent article on evaluation with this statement, "Evaluation procedures should focus on improving, should be realistic and practical, and should enhance the supervisor-teacher relation."⁴ McGreal further indicates that evaluation takes one of two forms, either in the nature of accountability or improvement.⁵ Experience and available data suggest that evaluation systems based on accountability promote negative feelings. On the other hand, systems built around the concept of improving instruction are more likely to be accompanied by acceptance.

Research has established a need to improve the quality of all instruction. Moreover, the hue and cry throughout America is to improve education. Gallup polls indicate desires on the part of all segments of our population to improve education. Researchers in educational theory agree that the primary purpose of supervision and evaluation is to improve instruction, thus improve education for children.

Teacher evaluation has been done effectively by some while haphazardly done by others. The need for consistency is essential in accomplishing effective teacher evaluation

⁴ Thomas L. McGreal, "Effective Teacher Evaluation Systems," Educational Leadership 39 (January 1982): 303.

⁵ Ibid.

programs. This desire for consistency and fairness in evaluation has been demonstrated in recent state mandates calling for teacher evaluation. The earliest of these mandates dates back to 1949 in Pennsylvania.⁶

In May 1980, the North Carolina Legislature passed GS 115C-326 which not only mandated that evaluation be done but that it be done consistently. Section 16.0600 of the North Carolina Administrative Code under .0601 general provisions (b) states:

The primary purpose of the employee performance appraisal system is to assist the employee to improve the instructional program for students. The appraisal system encourages job performance improvement, and professional growth, which contribute to the effectiveness with which employees carry on their work.⁷

In addition to North Carolina some thirty-three other states have some type of evaluation for job performance for teachers. Of these thirty-two states, some sixteen states legislate that the responsibility of the evaluator is to identify specific weaknesses in a teacher performance when they occur, and in turn help the teacher make a plan

⁶ Pennsylvania, Public School Code of 1949, Section 1123.

⁷ North Carolina, Administrative Code, Section 16.0600.

to improve these weaknesses. The language of these statutes may vary greatly from state to state but the general impetus is that it is not enough to tell a teacher that he is not doing an effective job. The evaluator must be specific in defining the problem(s) (Diagnosis) and just as specific in working with the individual to develop improvements in performance (Prescriptive).

This requirement raises several key questions which this study examines. The legal implications of what is expected of the evaluator in diagnosing and prescribing for the deficient teacher is at the heart of the study. By looking at the statutes and the way the courts have viewed this issue, recommendations have been made as to how principals as evaluators can work with teachers in developing teacher improvement plans that will help teachers improve thereby making them more effective teachers.

Statement of the Problem

The principal is required by legislative mandate in many states, including North Carolina, to evaluate teachers and subsequently to point out specific areas of deficiency in a teacher's performance and effectiveness in the classroom, and then to help the teacher develop an improvement plan.

This study examines the legal obligations that the principal as the evaluator has in helping develop an improvement plan and what the principal must do to meet these obligations in providing appropriate directions, expertise, or inservice to move the teacher into an acceptable pattern of performance.

Questions To Be Answered

One of the stated purposes of this study is the development of practical, legal guidelines for educational decision-makers to have at their disposal when faced with making decisions concerning the development of teacher improvement plans. Specifically, these guidelines deal with what the statutes require concerning directions as well as specificity and time frames. Below are several key questions that this study has attempted to answer in order for the legal guidelines to be developed.

(1) What do the individual state statutes address as the evaluator's responsibility in developing a teacher improvement plan?

(2) What do the courts say is acceptable as a teacher improvement plan that will meet the statutory directives?

(3) What do the courts say is sufficient to document that adequate time and assistance have been provided for the teacher in the improvement plan?

(4) What are the implications for the principal's training in that he must have certain skills to diagnose and prescribe for the teacher as part of the improvement plan?

Scope of the Study

This work is a historical and descriptive study of the legal implications of the principal's responsibilities in developing teacher improvement plans. The research describes the directives that are given by the various state legislative mandates through the state statutes or regulations and local policies governing teacher evaluation and teacher improvement plans. It also describes what the various state and federal courts have said regarding documentation and appropriate time frames that must be given the teacher.

This study does not try to develop a standard improvement plan but does develop a set of guidelines that can be followed by the evaluator that will meet both the statutory and court requirements in providing assistance to the teacher who is experiencing difficulty in the classroom.

This study includes a review of the statutes and litigation related directly or indirectly to teacher improvement plans. Major court cases from 1970 to the present (1985) are included in the study.

Methods, Procedures and Sources of Information

The basic research technique of this legal research is to examine and analyze within a historical context the available references concerning the legal implications of the principal in developing teacher improvement plans.

In order to determine if a need exists for such research, a search was made of Dissertation Abstracts for related topics. Articles related to the topic were located through the use of such sources as Reader's Guide to Periodic Literature, Education Index, and The Index to Legal Periodicals.

General research summaries were obtained from the Encyclopedia of Education Research, various books on school law and in a review of related literature obtained through a computer search from the Educational Research Information Center (ERIC).

Federal and state court cases related to the topic were located through the use of the Corpus Juris Secundum, American Juris Prudence, The American Digest System, and The National Reporter System. Recent court cases were located by examining case summaries contained in 1970 through 1980 issues of the NOLPE School Law Reporter.

All of these cases were read and placed in categories corresponding to the issues noted from the general literature review.

Other supplementary materials related specifically to the topics of teacher improvement and the legal implications of the principal in the development and implementation were obtained from the Center for Law and Education at Harvard University, the research division of the National Education Association, the research division of the National Association of Elementary School Principals, National Association of Secondary Principals, Association for Supervision and Curriculum Development, fifty state departments of public instruction and the Institute of Government at Chapel Hill, North Carolina.

Definition of Terms

For the purpose of this study the following selected terms are defined below:

Teacher Evaluation. An estimate or judgment of the quality of a person's teaching based on one or more criteria such as pupil achievement, pupil adjustment, pupil behavior, and the judgment of the school officials.⁸ For this study the term will apply primarily to the judgment of school officials as used in both formative and summative evaluation.

⁸ Carter V. Good, ed., Dictionary of Education (New York: McGraw Hill Book Company, 1973), pp. 193-194.

Formative Evaluation. On-going written documentation as to what is being done by the teacher being evaluated.

Summative Evaluation. A final summing up or evaluation of the effectiveness of a teacher. This at best becomes judgmental in nature.

Teacher Improvement Plan. A plan developed as a part of the formative or summative evaluation process developed by the evaluator or the evaluatee to focus specifically on ways to improve identified weaknesses or areas of ineffectiveness in the teaching process.

Time Schedule. Refers to the time frame established in a teacher improvement plan that is mutually agreed upon as the time period to be allowed for substantial progress to be made in moving to an acceptable mode of performance. Normally there is no rule of a specific time, but the courts have ruled in several cases that a reasonable time period must be given.

Documentation. (1) A written record that represents the writer's report on a condition or activity with which he has first hand contact. (2) The process of citing illustrative or supporting references for statements made.⁹

⁹ Ibid, pp. 193-194.

Significance of the Study

The courts have already pointed out in a number of court cases that adequate steps must be taken to document the need for change and proposed methods for this change before dismissal can take place. If principals who are expected to evaluate are not familiar with the constitutional rights of a teacher in regard to due process and property and liberty rights or what statutory requirements are, real problems can result.

Where notice of the results of a teacher evaluation, coupled with an opportunity to correct remediable deficiencies, fails to meet statutory or administrative standards or compliance, courts have ruled the reinstatement of the school employee.¹⁰ In the case of Orth v. Phoenix Union School System¹¹ a tenured teacher successfully sought reinstatement on the grounds that a letter he received from the school principal, characterized as a "reminder" letter did not meet the statutory requirement for a preliminary notice from the board before an action was taken to dismiss.

¹⁰ Joseph C. Beckham, Legal Aspects of Teacher Evaluation (Topeka, Kansas: NOLPE, 1981), p. 38.

¹¹ Orth v. Phoenix Union High School System No. 210, Ariz. App., 613 P. 2d 311 (1980).

Under a collective bargaining agreement in Maine, both teacher and school administrator were held to have mutual obligations to correct deficiencies identified as a result of a teacher evaluation. When a teacher was told of her deficiencies, but her school principal advised her that he would give her no assistance in improving her performance, the Maine Supreme Court concluded that the decision to terminate the teacher contract denied her a fair opportunity to improve her performance.¹²

In a case from Washington, the non-renewal of a teacher's contract was reversed and a teacher was reinstated because the record indicated that on a number of occasions the school district had failed to provide adequate opportunity to contest or correct teaching deficiencies.¹³

In a similar vein, if adequate notice is given and the statutes followed, then the courts have ruled that dismissal of a teacher is acceptable. In Vorm v. David Douglas School District # 45,¹⁴ the court ruled that a teacher had been given notice on three separate occasions about unsatisfactory ratings and thus had had ample notice of the need to improve and time to do so.

¹² Board of Directors of Maine Administrative District No. 75 v. Merrymeeting Education Association, Me., 354 A.2d 169 (1976).

¹³ Van Horn v. Highline School, No. 401, Wash. App., P. 2d 641 (1977).

¹⁴ Vorm v. David Douglas School District, Or. App., 608 P. 2d 193 (1980).

The question arises as to just what the purpose of evaluation is going to be. If as stated, it is to improve the quality of instruction through direction and improvement, then the importance of the principal knowing what he must do to meet the statutory obligation as interpreted by the courts is significant.

The guidelines that are developed as a part of this study provide for the principals' important role in doing the proper things that ensure they are fulfilling their obligations to the teacher who needs assistance in the classroom.

Design of the Study

This study is divided into five major parts. The first chapter provides an overview of the study, along with key questions to be answered. Chapter two presents a review of the selected literature as it relates to teacher improvement plans and the responsibility of the principal in developing them and helping the teacher implement proposed changes. Chapter three deals with the related state statutes and board policies that mandate the development of teacher improvement plans as a part of the process of teacher evaluation. Chapter four provides an analysis of relevant court cases and the way they impact on this study. Specific attention is given to what the courts require for the statutory directions to

be followed and the constitutional rights of the teacher not be violated. Also the requirements of the court were studied concerning the documentation of both the plan to improve and the assistance to be given by the evaluator. Chapter five gives the summary and conclusions of the study along with the recommendations and guidelines for helping the principal meet the legal responsibilities of evaluator.

CHAPTER II
REVIEW OF THE LITERATURE

The Purpose of Evaluation

Community and governmental demands for visible educational results, effectiveness, and efficiency have resulted in a growing number of legislative mandates designed to make the educational system more accountable to the public.¹ This study examines the issue of teacher evaluation and improvement, particularly as evaluation relates to the school principal's responsibility in identifying teacher deficiency and assisting the teacher in remedial activities improving the teacher's performance- the what, why, how, and where.

A major problem in the process of teacher evaluation emanates from what is often perceived as being the conflicting purposes of evaluation:

On the one hand, evaluation is perceived as having positive results such as the improvement of instruction and the encouragement of effective teachers. However, in the lexicon of the teacher, evaluation often has been viewed as a basis to make nonretention, demotion, reassignment, or dismissal decisions.²

¹ Dean Webb, "Teacher Evaluation," in a Legal Memorandum (Reston, Virginia: National Association of Secondary School Principals, December 1983), p. 1.

² Ibid.

Experience and available data suggest that evaluation systems based on accountability promote negative feelings about evaluations. On the other hand, systems built around the concept of improving instruction are usually accompanied by an acceptable level of accountability information. An attitude should prevail that the purpose of the evaluation system, particularly for tenured teachers, is to help teachers improve instruction.

Some state statutes and legislative mandates indicate the improvement aspects as a primary purpose for the evaluation policy. For example, the current North Carolina Administrative Code states:

The primary purpose of the employee performance appraisal system is to improve the instructional program for students. The appraisal system encourages job performance improvement and professional growth, which contributes to the effectiveness with which the employees carry out their work.³

Principals are being asked to distinguish between effective and ineffective teaching and simultaneously, to work with the teacher to develop a plan to improve inappropriate performance areas. Joseph Farley made this comment, "Ask educators to describe quality education and be prepared to hear a discourse ranging from Dewey to Freud and back."⁴

³ North Carolina, Administrative Code, Section 16.0601.

⁴ Farley, p. 185.

If this is true, then it is little wonder that many principals are perplexed when they are faced with the awesome job of teacher evaluation. This lack of agreement on a definition for effective teaching makes helping the ineffective teacher develop a plan of performance improvement a traumatic experience for both the teacher and the principal.

As the professional educator evaluates the teacher, his responsibility is to use the data gathered on which to build successes and to address needed improvements.⁵ Many people, however, are looking to particular methods that seem to hold some promise of giving direction to helping teachers improve in their ability to instruct and effectively guide students. McGreal points out that, in order for the principal or supervisors to have an impact on instructional practices, they must have some common framework and a similar set of definitions about teaching from which to work.⁶

In July, 1981, the North Carolina State Department of Public Instruction published a resource book for evaluation. The following statement is given in the overview:

The purpose of a performance appraisal system is to provide a vehicle whereby all personnel are provided the opportunity to continually

⁵ North Carolina, Administrative Code, Section 16.0601.

⁶ McGreal, p. 304.

improve their on-the-job performance. In its best and most positive light, an effective performance appraisal system encourages professional growth and development, provides employees satisfaction in knowing how well the job is being accomplished and contributes to the effectiveness by which people, and in turn the organization, are achieving their mission, goals, and objectives. The cornerstone of the performance appraisal program is one which is supportive of employees, and provides a means whereby personnel decisions can be made in a more rational and objective manner which are mutually beneficial to people and the organization in which they are employed.⁷

The Need for an Improvement Plan

Even though this paper is examining what can be done to help a teacher improve specific deficiencies before termination becomes a necessity, it is important to keep in mind that the administrator should work to document the areas of weakness and steps being taken to correct the problem area(s).

J. P. Mahon, in an article entitled, "Giving Reasons for Terminating Employees," makes the following statement: "The Roth⁸ and Sindermann⁹ decisions by the Supreme Court

⁷ Handbook for Conducting Performance Appraisal, North Carolina Department of Public Instruction, Raleigh, North Carolina, July 1981, p. 10.

⁸ Roth v. Board of Regents, 408 U.S. 564 (1972).

⁹ Perry v. Sindermann, 408 U.S. 593 (1972).

resolved some of the issues in personnel administration and left other controversies unresolved."¹⁰ Mahon goes on to say:

In a day and age of militancy which pits administrators against teachers and vice versa, theories of supervision and in fact some statutes require administrators to assist teachers in overcoming noted deficiencies. This practice militates against arbitrary and capricious administrative actions. When an administrator repeatedly has tried to help a teacher remediate his deficiencies, the administrator would seem to have a professional responsibility to bring charges and recommend termination if changes don't occur. Granted, it would be easier to terminate without giving help where possible, but this could be a counter productive move to the total educational enterprise.¹¹

When teacher performance is less than satisfactory and the principal can identify this as a problem in the classroom, the principal then can be in a position to evaluate and counsel the teacher in what must be done to correct the situation as well as to advise the teacher of what help he or other members of the school can provide.

When evaluating a teacher with observed weakness, the evaluator must be able to support perceptions of the teacher's performance. Most teachers will want to know how judgments are made and will accept the evaluator's conclusions if he

¹⁰ J.P. Mahon, "Giving Reasons for Terminating Employees," National Association of Secondary School Principals Bulletin, 63 (December 1979): 36.

¹¹ Ibid., p. 40.

is well prepared. The evaluator must also discuss specific behaviors that are working and those that are not working. During this time the evaluator must show an interest in helping.¹²

Once weaknesses are identified, principals have the responsibility to help the teacher improve performance in those areas. Without this assistance, an evaluation is neither helpful nor fair. Unfortunately, many school districts do not consider follow-up staff development as a high priority, and many principals do not have the resource, skills, or interest to assist teachers after they have been made aware of areas which need improvement.

In spite of the problems associated with conducting teacher evaluations, it seems likely that with the growing public demand for accountability, declining enrollment, and reduced revenues, teacher evaluation increasingly will be used for the purpose of providing information needed for making staffing decisions. As this occurs, teachers and their professional organizations are concerned that they be afforded appropriate procedural protections. They want assurance that teachers will not be released without adequate evaluation procedures.¹³

¹² Lamb and Thomas, p. 45.

¹³ Dale L. Bolton, Evaluation of Administrative Personnel in School Systems (New York: Teachers College Press, 1980), pp. 9-10.

Some states have adopted statutes that require school districts to advise teachers of the criteria and procedures to be used in the evaluation process as well as to provide adequate notice of an unsatisfactory evaluation. Cases involving employment decisions in these states hinge upon whether required procedures have been met. In a Florida case, two teachers challenged a notice of nonrenewal on the grounds that they were not properly evaluated or notified of their purported deficiencies in performance. State laws require that the superintendent establish procedures for assessing the performance of the duties and responsibilities of all instructional personnel. Judge Ervin states:

Additionally it required that prior to preparing the written report of assessment, each individual shall be informed of the criteria and procedures to be used.... The written report of assessment for each individual shall be shown to him and discussed by the person responsible for preparing the report.¹⁴

The superintendent had established district evaluation procedures which provided that each teacher have at least one observation for evaluation purposes before January 31 of the school year and that the evaluator provide feedback to the teacher. The procedure also stipulated that an evaluation conference would occur before the evaluation

¹⁴ Witgenstein v. School Board of Leon County, Fla. App., 347 So. 2d 1069 (1977).

was signed. The school board denied the teachers' petition for a review of the principal's decision not to renew their contracts claiming it had not adopted a policy of evaluation. The court concluded that if the board were aware of the evaluation policy which had been established by the superintendent, it was the board's duty to adopt appropriate regulations. But, even assuming it had no responsibility to adopt an evaluation procedure, the board still had a duty as the responsible agency under the state's Administrative Procedures Act to accord a hearing to the teachers if disputed issues of material facts relative to alleged disregard for the superintendent's evaluation procedure were involved. Accordingly, the court ordered reinstatement of the teachers.¹⁵

In reviewing the elements of procedural fairness required in the evaluation process, the courts also have emphasized the reasonableness of time periods in which an employee might be expected to improve. An Illinois case involved a special education teacher who had received partly unfavorable evaluations for several years.¹⁶ In the years in question, 1975-76

¹⁵ Ibid.

¹⁶ Board of Education of School District # 131 v. Illinois State Board of Education, 403 N.E. 2d 277 (Ill., 1978).

and 1976-77, evaluations were mixed. The teacher was issued a formal notice to remedy deficiencies in April 1976 but was rehired for the 1976-77 school year. Close supervision and observation continued in that year. He was advised of deficiencies in his teaching performance and signed a statement that he discussed the report with school administrators and that forty-five days was an adequate length of time to remedy all of the deficiencies. On February 22, 1977, a formal notice to remedy the teaching defects was sent to the teacher by the school board. Following several evaluations generated in March 1977, the board voted to dismiss the teacher on April 4. On appeal, the Illinois court concluded the board failed to give the teacher reasonable remediation time to correct alleged deficiencies. The court reasoned that the remediation period is only triggered by Board action (February 22), not by unofficial notices by school administrators. Thus the teacher was given at most only forty-one calendar days (and only fifteen school days) between his notice and dismissal, and not the full forty-five days as agreed. In addition to ensure the teacher his statutory protected opportunity for remediation, dismissal should have been based on evaluation conducted after, not during the remediation period.¹⁷

¹⁷ Ibid.

In another case the court ruled that the teacher must be given "written" preliminary notice of his inadequacies, specifying the nature thereof with such particularity as to furnish the teacher an opportunity to correct his inadequacies.¹⁸ The court found that a letter written by the principal more than ninety days prior to the notice of intent to dismiss did not meet the statutory requirements for a preliminary notice of inadequacy. The letter was considered a "reminder" and did not contain a list of deficiencies with such particularity as to provide the opportunity to correct.

In a Mississippi case, a third grade teacher was dismissed by the superintendent after meeting with parents who complained about the teaching methodology employed with accelerated students.¹⁹ Prior to this, the teacher always had received the highest possible ratings. After the meeting with the parents and a school board meeting with a number of parents expressing dissatisfaction about the teacher, the superintendent sent the teacher a letter of reprimand and a plan of improvement which he requested her to sign. The teacher refused to sign, asserting that she was unaware of the basis justifying the imposition of the plan. Upon her refusal to sign the letter, the superintendent removed her

¹⁸ Witgenstein v. School Board of Leon County, Fla. App., 347 So. 2d 1069 (1977).

¹⁹ Cantrell v. Vickers, 495, F. Supp. 195 (Miss. 1980).

from the position. In its review the court concluded that most, if not all, of the twelve items of concern in the plan for improvement were ambiguous and incapable of placing the teacher on notice of specific conduct which was prescribed. The court also found that the removal of the teacher in the absence of adequate notice of charges and without a hearing was a denial of due process. Accordingly, her reinstatement was ordered.

A Missouri teacher was given termination notice because "improvement was needed in the areas of relationships with students, enthusiasm for teaching, disciplinary policies, and relationships with parents."²⁰ Missouri law requires notice of specifics be given a teacher at least thirty days prior to termination and that the teacher then be given thirty days to remediate. The Missouri Court of Appeals ruled that the notice given the teacher did not show what improvements were needed.

Procedural fairness in evaluation proceedings also requires that the teacher be given the opportunity to improve and to obtain assistance in correcting deficiencies. In a Maine case, a teacher's evaluation resulted in the recommendation that the administration "acquaint her with acceptable teaching practices and help her implement these

²⁰ Pollard v. Board of Education of Reorganized School District No. 3 Platte County, Missouri, 533 S.W. 2d 677 (Mo. Ct. App. 1976).

practices in the classroom."²¹ Subsequently the superintendent sent her a recommendation that she visit other teachers early in the fall and that she be visited frequently by the building principal. Acting pursuant to this recommendation, at the beginning of the new year, the teacher approached her building principal who refused to comply with the suggestions of the superintendent and essentially told her to do it on her own. The court found that a dismissal without affording the teacher an opportunity to improve her professional performance lacked just cause.

Although it may seem to some school administrators and school boards that legal aspects of teacher evaluation are too constricting, there exists no real conflict between effective evaluation practices and due process rights of teachers. Due process considerations are consistent with the goal of evaluation which is to improve instruction.

Webb says this about due process and fairness:

In teacher evaluation, fairness implies that (1) the teacher knows what standards of performance are expected and what criteria and procedures will be used in evaluation; (2) evaluations take place within reasonable time frames; (3) adequate notice of evaluation results be provided; (4) the reason for an employment decision or notice that remediation is needed is of such clarity as to provide the teacher with direction for correction; (5) a reasonable time is given

²¹ Board of Directors of Maine School Administrative District No. 75 v. Merrymeeting Educators' Association, Me., 354 A. 2d 169 (1976).

to carry out prescribed improvement; (6) the teacher is given a chance to improve; and (7) the evaluation is of a form and nature to provide substantial evidence for employment decisions. If these elements of fairness are incorporated into a school district's evaluation policy, employment decisions will be more defensible. Also individual and school improvement in the quality of instruction will be facilitated.²²

What the Improvement Plan Should Contain

Richard Larson states that most administrators agree that there are teachers who need to improve.²³ Research has shown a direct correlation between student learning and the performance of the teacher. Iowa State University, working in conjunction with the West Des Moines, Iowa, School District, developed a teacher performance evaluation system. It was found that well organized teachers who had high student expectations achieved the greatest gains.²⁴

Manatt's research, along with other education researchers, indicates that teachers can be helped to move to a more acceptable level of performance.²⁵ From research such as this, the philosophy of many of the evaluation laws has emerged.

²² Webb., p. 69.

²³ Richard Larson, "Teacher Performance Evaluation-What Are the Key Elements?", National Association of Secondary School Principals Bulletin 68 (February 1984): 13.

²⁴ Richard Manatt, K.L. Palmer, and E. Hidlebaugh, "Evaluating Teacher Performance with Improved Rating Scales," National Association of Secondary School Principals Bulletin 60 (September 1976): 21.

²⁵ Ibid.

As has been pointed out already, the courts are more and more willing to become involved in educational cases, not to determine the competency or incompetency of a teacher, but to be certain that the local board policies and legislative mandates and statutes require that certain procedural practices occur before a teacher is terminated.

Communication is a key factor in evaluation, both for the evaluator and the evaluatee. Larson states:

An evaluation strategy should be designed to protect the teacher from unjust criticism as well as provide specific information to the teacher whose work is unsatisfactory so that teacher may have adequate opportunity to improve.²⁶

Job improvement plans go beyond the evaluation phase with a separate phase coming into effect. Job improvement goes beyond observing in the class and summarizing. Larson states:

The purposes of the job improvement target (plan) include (1) helping the teacher to develop a plan for professional, personal and/or instructional improvement; (2) assisting the teacher in overcoming a weakness and improving performance to meet district standards; (3) demonstrating that the school district has made a reasonable effort to assist the teacher in improvement of performance prior to initiating dismissal proceedings. ²⁷

²⁶ Larson, p. 15.

²⁷ Ibid., p. 18.

Paul Kelleher indicates the importance of the principal being very explicit in what is wrong and what is expected.

He describes the improvement plan as follows:

This document should contain a statement of the specific problem(s) that hinder the teacher's performance, a specific list of the principal's expectations for improvement, a list of the steps that the administrator will take to monitor the occurrence and extent of this improvement, a statement of the time period, during which such monitoring will take place and the date set for the next written evaluation.²⁸

An important plan of this type accomplishes several purposes: (1) it notifies the teacher as well as the school administration that the teacher knows what the problem is; (2) it identifies that the teacher has had the opportunity and the time to correct the problem; (3) that failure to comply will bring an increased series of consequences.

Sweeney and Manatt emphasize this point in an article on evaluation. They state:

Don't make the mistake of saying to the teacher that WE are going to work on the problem together.... The monkey is on the teacher's back to make the improvement; the responsibility of the principal is to provide assistance.²⁹

Kelleher also points to the importance of the principal's dealing clearly with the teacher who is performing less

²⁸ Paul Kelleher, "Inducing Incompetent Teachers to Resign," Phi Delta Kappan 66 (January 1985): 364.

²⁹ Jim Sweeney and Richard Manatt, "A Team Approach to Supervising the Marginal Teacher," Educational Leadership 41 (April 1984): 26.

than satisfactory. He says, "If a principal will speak, compassionately and sensitively, then the teachers will either know they need to change or resign."³⁰

This feedback to the teacher via the improvement plan is essential. As stated earlier, the principal is not responsible to make the changes but to know what is necessary to help the teacher move from an area of weakness to a satisfactory performance or termination if failure to improve occurs.

If the principal is going to be able to do this effectively, he must be able first of all to know what the statutes require. This will certainly vary from state to state or even within various local units. The principal must then be knowledgeable of what the teacher needs to be doing in the classroom that would be effective. These things make the principal responsible for being knowledgeable of the whole area of effectiveness training. The principal must be able to walk into a classroom and work with the teacher and determine concretely what is working and what is not. Then the principal must determine the performance objectives. Once this has been done, the improvement plan can be developed that will address the specific needs of that teacher in that teaching situation.

³⁰ Kelleher, p. 364.

It is important for the principal to know what competency and incompetency is. It is just as important to know what the statutes say must be done when a problem is identified. For the administrator, perhaps the best definition of what incompetency is, is that offered by Chester Nolte. He describes the incompetent teacher as one that the courts find to be performing at a sub-acceptable level after having been warned, helped, counseled, cajoled, threatened, or urged to resign.³¹

The specifics of an improvement plan may vary due to local or state mandates. There are several general components, however, that will be present in any effective improvement plan. In the North Carolina Department of Public Instruction Handbook for Conducting Performance Appraisal, this statement is made:

A performance improvement plan should contain the following elements: (1) objectives, (2) strategies for achieving the objectives, (3) resources and requirements, (4) completion dates and additional observation dates to complete the objectives.³²

Helping teachers to think through what they are trying to do, the way they go about it, and the evidence to use in

³¹ Shirley B. Neill and Jerry Custis, Staff Dismissal: Problems and Solutions, (Sacramento, California: AASA, 1978), p. 11.

³² Handbook for Conducting Performance Appraisal, North Carolina Department of Public Instruction, Raleigh, North Carolina, July, 1981, p. 9.

estimating success is a task of significance. The research of Rothberg indicates that it is important to have the teacher involved in the development of an improvement program. He says that we must work to improve teachers if we plan to improve the instructional process for students. He describes the improvement plan as follows:

Successful teacher improvement programs appear to contain the following:

- . evaluation of agreed upon competencies
- . development of a plan of action to be implemented to affect improvement
- . data gathered to determine how successful the plan was in meeting the individual teacher needs
- . time for exchange, improvement, and feedback.³³

It is important to keep in mind that there can be no best plan for improvement. The key is that the principal and the teacher being evaluated must look at that individual situation and work toward developing a plan of improvement for that teacher.

The whole concept of a performance improvement plan that is successful is based on the belief espoused by Douglas McGregor in the Theory Y concept. His Theory Y holds:

The motivation, the potential for development, the capacity for assuming responsibility, the readiness to direct behavior toward organizational

³³ Robert Rothberg, "Helping Teachers Improve Their Teaching," The Clearing House 53 (October 1979): 102-3.

goals are all present in people, management does not put them there. It is the responsibility of management to make it possible for people to recognize and develop these human characteristics for themselves. The essential task for management is to rearrange organizational conditions and methods of operation that people can achieve their own goals best by directing their own efforts toward organizational goals.³⁴

If one accepts the notion that teachers want to help themselves, then the idea of performance improvement plans can work for and with the teacher to improve areas of weakness.

The Principal's Role in Developing the Improvement Plan

The legal role of the principal in developing an improvement plan is the critical issue to keep in mind throughout this study. While it is not the sole responsibility of the principal to develop the plan or to bring about change in a teacher who is not performing at a satisfactory level, the principal has a legal responsibility to point out deficiencies and assist in developing a plan to improve these deficiencies.

³⁴ Douglas McGregor, Leadership and Motivation: Essays By Douglas McGregor, edited by Warren Bennis and Edgar Scheen with Caroline McGregor, (Cambridge: MIT, 1966), p. 15.

Neill and Custis point out that the role of the principal is key in the whole evaluation process. They indicate that the principal often fails:

The traditional role of the principal is that of educational leader. Consequently, the additional role of personnel manager may create a conflict. Principals don't get any pleasure from raking people over the coals. When they sit down and talk to the teacher they beat around the bush, say nice things, and do nothing. A teacher comes away with no expectation that the principal is saying, "If you don't straighten up, we're going to fire you." If a court feels that the teacher has not been advised of the deficiency, it is most unlikely to affirm a termination.³⁵

Don Moran, assistant director of the Kansas School Board Association, says that principals often do not want to get into an "eyeball to eyeball confrontation."³⁶ They wait too long to start serious documentation, he says, and then have "flimsy" excuses and reasons to support a dismissal. Moran indicates that many principals are not adequately prepared for most evaluation instances in that they do not understand the law and the accompanying procedures.³⁷

A large majority of teacher evaluations are on teachers that are deemed fully satisfactory. Probably less than twenty-five to thirty percent of the teachers that are evaluated

³⁵ Neill and Custis, p. 23.

³⁶ Ibid., p. 25.

³⁷ Ibid.

are in need of a written improvement plan.³⁸ If this is true, then the principal can use a large portion of his time to help the teachers who are having trouble. When a teacher is believed to be unsatisfactory, the principal must set specifications because the teacher may not admit to the problem. Whether specifications are mutually agreed upon or imposed by the principal, the principal must maintain a helpful attitude and aim toward improvement.

Neill and Custis give several generalizations that relate to the principal's responsibility in the improvement plan:

If a checklist form is used for evaluation, you need to decide early what the deficiencies are and tell the teacher what is wrong in specific terms, plan a course of correction, give much close supervision and help, documentation of the action taken and give the teacher notice of deficient performance. (This is taken from Redfern's suggestions).

The evaluation must be in writing, with deficiencies, recommendations, and sources of help indicated. Specific dates should be set for another evaluation as well as a timeline for improvement. The amount of time must be reasonable. (Up to six months has been construed to be a "reasonable" length of time for improvement).

The principal should maintain vigilance and check back often to find out if the deficiencies are corrected. Note, however, that the checks can not amount to harrassment.

³⁸ Ibid.

Simply alleging a conclusion is not adequate. Some experts believe that the evaluation by a single principal, carefully documented and substantiated is adequate to move the teacher to a different performance or to dismissal. Others advise the recording of instances outside the formal evaluation process. ³⁹

Many districts are building into their evaluation process the steps the principal should follow in order to maintain the moral and legal obligations of evaluation. One such unit is Prince William County Schools, Manassas, Virginia. George Redfern, an evaluation expert, worked with the unit to evaluate one of the more effective systems in use today. The evaluation process has three levels of performance. (1) exceeds expectations, (2) meets expectations, and (3) below expectations, both the teacher and the principal must state a reason. Evaluations are also required to include recommendations for improvement. ⁴⁰

This system, as do most others, emphasizes the idea that there should not be and in fact can not be surprises. Ivan W. Fitzwater, Superintendent of the North East Independent School District of San Antonio, Texas, indicates that it is important to understand that an improvement plan is a different process altogether from just a summary of a teacher

³⁹ Ibid., pp. 36-37.

⁴⁰ Ibid., p. 27.

observation. Teacher improvement plans are aimed at only one, two or three specific areas of concern rather than ranking the teacher with other teachers. Fitzwater indicates that the chances of improving a teacher depend usually on these three things:

- (1) the help available to remediate the problem
- (2) the teacher's own motivation
- (3) the local legal system.⁴¹

Once a discrepancy between the teacher's performance and acceptable practices in the performance has been identified, it is the administrator's responsibility to develop a plan that will move the teacher to a position of being able to improve. When specific deficiencies have been outlined and assistance given, there may be improvement (either permanent or temporary) in the teacher's performance. If this does not take place, the administrator has a responsibility to move to eliminate the teacher from the staff.⁴²

In many states that have statutes specifying evaluation procedures, there are strict directives as to how the teacher

⁴¹ "Interview with Ivan W. Fitzwater, Superintendent of the North East Independent School District, San Antonio, Texas, 1033 Broadway, San Antonio, Texas," in Staff Dismissal Problems and Solutions edited by Shirley B. Neill and Jerry Custis, (Sacramento, California: AASA, 1978), p. 46.

⁴² Robert K. Roney and Irma Perry, "Where the Buck Stops: Tenure Laws and Incompetency," National Association of Secondary School Principals Bulletin, 61 (February 1977): 48.

shall be dealt with. The issues of compliance with these statutes, legislative mandates, and local policies are the areas that the courts tend to scrutinize. The courts more and more are beginning to look at the area of teachers' rights and see that the procedural process of explaining the areas that are wrong and what is being done to help the teacher address the deficiencies in the identified problem area.

Ronald and Jeanne McIntire indicate that there are several things that the principal should do to ensure that a proper communication is taking place to help the teacher.⁴³ If these five criteria are carried out, then the principal can be relatively certain that he is doing the job prescribed by the statutes:

- . did the principal try to help the teacher improve?
- . did the principal identify both strengths and weaknesses so that the former can be reinforced and the latter corrected?
- . did the principal make suggestions for improvement?
- . did the principal work with the teacher in developing a plan for the teacher's improvement?
- . did the principal meet with the teacher on a long-term ongoing basis and take notes on the teacher's overall performance and progress between periods of evaluation - not a one shot rating.⁴⁴

⁴³ Ronald S. McIntire and Jeanne D. McIntire, "Termination and Contract Nonrenewal: How to Prepare for the Hotseat," National Association of Secondary School Principals Bulletin 66 (December 1982): 90-91.

⁴⁴ Ibid., p. 91.

More and more is being written on the area of evaluation and much of the literature is saying that the principal is critical in the process of teacher improvement. The literature indicates that the principal is the key person in the evaluation process because he is the designated educational leader in most schools. He is the one that is responsible for the judgment call as to what is being done effectively and what is not effective in the individual teacher's classroom. Just as important as knowing what is wrong in the classroom is the ability of the principal to be able to communicate this belief to the teacher that is being evaluated. Sometimes this idea may even be contrary to the belief of the teacher. Communications continue to be a key issue as one follows the process on through the development of the teacher improvement plan.

Throughout this chapter the literature has pointed out that the improvement plan must be very specific. The deficiencies must be exact as well as the job expectations of the teacher, the amount of improvement that is expected, the methods that will be employed in making the improvement, the time frame that will be used in making the improvement, and finally the accessibility of the principal in continued evaluation during the improvement period. It is also emphasized that during this time the principal has a responsibility

to continue to give feedback to the teacher during the improvement period. Throughout the study of the literature the impetus has been that the teacher, after being given the information in the improvement plan, is the one that is responsible for carrying out the plan.

It has also been indicated that the principal must always pay close attention to documentation. Dr. Richard Manatt, in a teacher evaluation workshop with a group of principals including the writer said, "If you don't write it down and document it, it did not happen."⁴⁵

This issue of evaluation is emphasized more and more as one looks at the way the courts often evaluate the procedural methods used in working with a teacher in a given situation. The principal must know what he expects out of the teacher and what is expected out of the principal as evaluator. The principal must also know what is realistic to expect of the teacher in beginning to develop a formal improvement process.

⁴⁵ Dr. Richard Manatt, Professor of Education at Iowa State University, Ames, Iowa, in an evaluation workshop for the Iredell County Schools, Statesville, North Carolina, December 1982.

CHAPTER III

ANALYSIS OF STATE STATUTES

During the 1970's management concepts stressing accountability and public pressure to legislate better education have resulted in legally mandated teacher evaluation.¹ These mandates come from state statutes and regulations. While the statutes vary in their approach to selected criteria, frequency of evaluation, and purpose, many focus on procedural due process rights that must be afforded teachers. The procedural issues addressed in the mandates include notification of deficiencies before established deadlines and efforts to help a teacher improve.

Tenure laws and evaluation laws often create a dilemma. On the one hand, conscientious administrators must demonstrate a desire to assist teachers who need assisting. Likewise, state statutes, school board policies, and procedures need to be attended to.

The purpose of the study is to focus on teacher improvement instead of dismissal. In analyzing legislation or regulations of various state education agencies, it is never clear which is more important.

¹ Laura Means Pope, "State Regulations of Educator Evaluation," in Legal Issues in Public School Employment, ed. Joseph Beckham and Perry A. Zirkel, (Bloomington, Indiana: Phi Delta Kappa, 1983) p. 139.

One of the stated purposes of this study is to determine what the fifty state legislative enactments mandate concerning the evaluator's responsibility in developing a teacher improvement plan.

There are thirty-four states that have some type of evaluation requirement for tenured or probationary teachers. Table I indicates there are twenty-nine states that have some type of legislative mandate for formal evaluation of teachers as a means for improving teacher performance. Five additional states listed in Table II have some form of evaluation for probationary teachers only. These mandates take the form of state statutes and state school board rules and regulations.

TABLE I

STATES THAT HAVE REQUIRED EVALUATION

Alaska	New Mexico
Arizona	North Carolina
Arkansas	Ohio
California	Oklahoma
Connecticut	Oregon
Florida	Pennsylvania
Hawaii	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Missouri	Vermont
Nevada	Virginia
New Jersey	Washington
	West Virginia

TABLE II

STATES THAT HAVE REQUIRED EVALUATION FOR PROBATIONARY ONLY	
Georgia Idaho Indiana	Massachusetts North Dakota

While the purpose of evaluation varies from state to state, there are three main reasons for evaluation in all of the states that have statutes or regulations. These include: (1) dismissal, (2) improvement, and (3) accountability. Tables III - V list states and the purposes cited for conducting evaluation in each state.

TABLE III

STATES THAT USE EVALUATION FOR DISMISSAL OF TEACHERS	
Alaska Arkansas* Hawaii Idaho Indiana Iowa* Nevada New Mexico North Carolina	North Dakota Oklahoma Oregon Pennsylvania South Carolina South Dakota Texas Utah Washington West Virginia

Note* All states with the exception of Arkansas and Iowa use evaluation for additional reasons than just for dismissal.

Many states with teaching personnel evaluation at either the probationary or tenured level use evaluation for the improvement of the teaching process.

TABLE IV

STATES THAT USE EVALUATIONS FOR IMPROVEMENT OF TEACHERS

Alaska	North Carolina
Arizona	North Dakota*
Arkansas	Ohio
California	Oklahoma
Connecticut	Oregon
Florida	Pennsylvania
Georgia*	South Carolina
Idaho*	South Dakota
Indiana*	Tennessee
Kansas	Texas
Missouri	Utah
Louisiana	Virginia
Nevada	Washington
New Mexico	West Virginia

Note* Probationary Teachers Only

TABLE V

STATES THAT USE TEACHER EVALUATION FOR ACCOUNTABILITY

Hawaii
North Carolina
Pennsylvania
Utah

A further analysis of state statutes reveals that sixteen states have statutes or regulations insisting that the evaluator has specific obligations in notifying the teacher of deficiencies in the teaching performance. These states require some type of written improvement plan with written notice to the teacher concerning the deficiency and what is expected to make the required improvements. The legislative enactment seldom spells out clearly how the teacher evaluation process and/or the improvement is to be construed. Much of this is relegated to school boards and/or administrative discretion. The states with specific reference to the evaluator's responsibility vary also in the degree of specificity. Table VI indicates states that require some type of written notice and improvement plan.

TABLE VI

STATES THAT REQUIRE SOME FORM OF TEACHER IMPROVEMENT PLAN

Alaska	Florida	Nevada
Arkansas	Hawaii	North Carolina
Arizona	Louisiana	Oklahoma
California	Maryland	Oregon
Connecticut	Missouri	South Dakota
		Washington

Legislative enactment seldom spells out clearly how evaluation for teacher improvement is to be conducted. Thus, school board policies and administrative discretion often address

the issue of development and implementation. That sixteen statutes have some specific reference to the importance of performance improvement and the evaluator's role in the process indicate the legislative intent. The North Carolina Administrative Code, regarding performance appraisal, states:

The primary purpose of the employee performance system is to assist the employees to improve the instructional program for students. The appraisal system encourages job performance improvement and professional growth, which contribute to the effectiveness with which employees carry out their work.²

The North Carolina statute and the accompanying administrative directive mandate a statewide evaluation instrument but no specific procedure. The administrative directive allows procedures to be determined by each local school unit as long as certain minimum criteria are included. The administrative directive has, however, recommended a procedure that requires a pre-observation conference, a formal observation and a post-observation conference. The evaluator has an obligation to identify specific weaknesses of a teacher where they exist and to help the teacher develop a specific improvement plan.

² North Carolina, Administrative Code, .0600; Statutory Authority, North Carolina, Public School Law, Section 115C-326.

In implementation of the state plan, one local school unit, the Iredell County School System, introduces the state evaluation plan in the following manner.

In order to work toward the goal of improvement of job performance, both the evaluator and the person being evaluated shall have a responsibility to establish an improvement plan for identified needs.³

The 1971 California Stull Act has the following statement:

Employee evaluation shall be made on a continuing basis, at least once each school year for probationary personnel, and at least once every other year for personnel with permanent status. The evaluation shall include, if necessary, areas of improvement in the performance of the employee.... The employing authority shall thereafter confer with the employee and make specific recommendations as to areas of improvement in the employee's performance and to endeavor to assist him in such performance.⁴

The General Statutes of Nevada state:

The evaluation of a probationary teacher or a post-probationary teacher shall, if necessary, include recommendations for improvement in teaching performance. A reasonable effort shall be made to assist the teacher to correct deficiencies noted in the evaluation.⁵

³ Iredell County Board of Education, Policy Manual, Evaluation Section, Professional/Certified Personnel; Descriptor Code GBI 1983, p. 43.

⁴ California, Education Code, Section 44663-44664.

⁵ Nevada, Revised Statutes, Section 391.3125.

A South Dakota statute states, "All teachers shall be evaluated and given notice of any deficiencies during each semester of the first two full terms of employment."⁶ Tennessee does not speak specifically to the principal evaluator role in evaluation but does say ... "The evaluation procedure shall be designed for the purpose of improving the instructional program."⁷

Washington statutes speak very clearly to the requirements of both a written identification of needs for improvement and an improvement plan. Washington's statute states:

Evaluation shall serve as a basis for the development of a written report, a copy of which shall be provided to the evaluatee, and for the development of a suggested and reasonable program of improvement in instances where the individual performance is judged unsatisfactory.⁸

Many states that have such requirements for written notice for deficiencies spell out what the principal or evaluator needs to do to meet the statutory requirements. The following is a summary of what these states say.

ALASKA. Formal written evaluation of professional employees of each school district are required at least once each contract

⁶ South Dakota, Compiled Laws Annotated, Section 2, 13-43-910.

⁷ Tennessee, Rules and Regulations, Section 0520-1-3.

⁸ Washington, Revised Code, Section 28A.67.065.

year. Specific instances of deficiencies must be spelled out to each teacher and sufficient time provided to make improvement given.⁹

ARKANSAS. When a principal or other supervisor charged with evaluation finds it necessary to call a teacher's attention to a problem, the administrator must bring the matter to the teacher in writing and document the efforts which have been undertaken to assist the teacher to correct whatever appears to be the weakness.¹⁰

ARIZONA. Arizona stipulates that any assessment made must be in writing and must contain recommendations as to areas of improvement in the performance of the teacher.¹¹

CONNECTICUT. The teacher evaluation laws of Connecticut and the accompanying guidelines describe the evaluation process as a partnership between the evaluator and the teacher:

Evaluation becomes a method for communication and cooperation to achieve this goal. The focus is on sound cooperative planning and on implementing these plans during the course of the year.... The new teacher evaluation process begins with the school district setting directions for the educational program by establishing system wide goals and objectives.... The next step is for the teacher to prepare several personal performance

⁹ Alaska, Administrative Code, Section 19.030.

¹⁰ Arkansas, Statutes Annotated, Section 80-1264.6.

¹¹ Arizona, Revised Statutes, Section 15-537.

goals.... The evaluator and teacher meet to discuss the performance objectives and, if necessary, modify them. After agreement is reached by the teacher and the evaluator on the performance objectives several additional observations are scheduled.... It is also the responsibility of the evaluator to assist the teacher by bringing in appropriate resources and providing instructional leadership.¹²

FLORIDA. Florida's legislative enactment requires the superintendent to develop and implement a system for assessing teacher performance. The assessment must be in writing and under the state statute. Each teacher must be informed of the criteria that will be used. The evaluator must provide the teacher with a written report and discuss it with the teacher.¹³

HAWAII. Hawaii's teacher evaluation falls under Board policy called Program for Assessing Teachers in Hawaii (PATH). In this plan, the principal is considered the instructional leader in the school. He is responsible for communicating the desired student outcomes, for deciding on a path to achieve those outcomes and for monitoring the implementation of the plan. The teacher is observed by the principal and any areas that need improvement are indicated to the teacher

¹² Connecticut, General Statutes, Section 10-151b; Connecticut Teacher Evaluation Law, Connecticut State Department of Education, February, 1979, p. 9.

¹³ Florida, Statutes Annotated, Section 231.29.

in writing. The principal then plans appropriate interventions for all of those areas marked in-service or informed solutions.¹⁴

IDAHO. Idaho statutes require that "in all instances, the teacher shall be duly notified in writing of the areas of work which are deficient."¹⁵

KANSAS. Kansas requires that any time an evaluation is conducted on a teacher, a written document must be shown to the teacher and discussed with the teacher.¹⁶

LOUISIANA. The Louisiana statute states that:

Employees not performing satisfactorily must be informed of such determinations and be given proof by documentation. The employee must be provided with ample assistance to improve.¹⁷

MARYLAND. Maryland does not have a state statute but has state education board guidelines that require evaluations. These guidelines give specific recommendations for dealing with teachers who are performing unsatisfactorily. Maryland guideline number eighteen reads:

It is recommended that the local education agencies include in their formal evaluation procedures specific

¹⁴ Hawaii, Revised Statutes, Section 297-46; "Program for Assessing Teachers in Hawaii," Department of Education of Hawaii, February, 1984, p. 2.

¹⁵ Idaho, Code, Section 33-513.

¹⁶ Kansas, Statutes Annotated, Section 72-9003.

¹⁷ Louisiana, Revised Statutes, Section 17:391.4.

opportunities for teachers who have received an unsatisfactory evaluation to request assistance in areas of identified need or weakness. A plan should be developed for the teacher which includes input from the teacher, principal and the supervisor.¹⁸

MISSOURI. The Missouri statute speaks only to notification to teachers in areas of unsatisfactory performance. The statute requires that the teacher be notified of these deficiencies. The statute states:

... its authorized representative shall provide the teacher with written statement definitely setting forth his alleged incompetency and specifying the nature of in order to furnish the teacher the opportunity to correct the fault.¹⁹

NEVADA. Nevada's regulations state that for probationary and post probationary teachers, notice shall be given, if necessary, to assist the teacher in correcting deficiencies noted in the evaluation. Also a reasonable effort shall be made to help correct the teacher's deficiencies.²⁰

NORTH CAROLINA. In the North Carolina statute, it is stated that consideration shall be given to evaluations that are devised by local administrative units and the State

¹⁸ Assistance for Teachers Who Have Received Unsatisfactory on Evaluation, Maryland State Department of Instruction.

¹⁹ Missouri, Annotated Statutes, Section 168.126.

²⁰ Nevada, Revised Statutes, Section 391.3125.

Board of Education guidelines. Failure to give written notice of deficiencies to a teacher shall be considered as conclusive evidence of satisfactory performance.²¹

OKLAHOMA. Oklahoma state board policy states:

It behooves the principal to use the evaluation system under the provisions of this law to help upgrade teaching proficiencies...bring the matter of the deficiencies to the teacher's attention in writing and make a reasonable effort to assist the teacher correct whatever appears to be the cause of the problem.²²

WASHINGTON. Washington also requires that if an area is deemed unsatisfactory in performance, then the teacher is to be given notice in writing of the specific area or areas of deficiency and also be given a suggested and reasonable program for improvement.²³

It becomes quickly evident that written notice and documentation are a general requirement of many of the state statutes and regulations concerning teacher evaluation. While many of the statutes reviewed spoke specifically to this written notice of what is wrong, some were much more general in addressing the question of how much help was to be given the teacher in correcting the alleged deficiency.

²¹ North Carolina, Public School Laws of North Carolina, Section 115C-325(e) (3).

²² Policy Bulletin and Guide, Oklahoma State Board of Education, March 25, 1982, p. 15.

²³ Washington, Revised Code, Section 28A.67.065.

Maryland states that teachers with unsatisfactory evaluations should be given every opportunity to improve their performance.²⁴ Alaska states that each teacher shall be given the opportunity to improve performance.²⁵ Arkansas requires that not only shall the teacher be given the opportunity to correct deficiencies, but:

The administration shall document the efforts which have been undertaken to assist the teacher to correct whatever appears to be the cause of potential termination or non-renewal.²⁶

Oregon specifies in its Fair Dismissal Law that if a teacher has an area of effectiveness below the performance standards, the district may want to give the teacher evaluated a plan of improvement. Of all of the states that were researched, Oregon is the only state that provides a specific form that is to be used as a plan of assistance.²⁷ North Carolina also has a form that is recommended but is not required.²⁸

One of the most elusive of all questions that has to be dealt with in working with teacher improvement plans

²⁴ Maryland, Assistance for Teachers Who Have Received Unsatisfactory on Evaluation, Maryland State Department of Public Instruction.

²⁵ Alaska, Administrative Code, Section 19.030.

²⁶ Arkansas, Statutes Annotated, 80-1264.6.

²⁷ See Appendix B, North Carolina.

²⁸ See Appendix C, Oregon.

is how long is enough time for the teacher to make the needed improvements. Again the statutes vary greatly on the matter. Most statutes do not give a specific time frame that has to be followed. They use such statements as "a reasonable amount of time," as a standard guideline.²⁹

There are two states that have a more specific response. Missouri, for example, specifies an exact amount of time in which improvement must be made or the teacher is subject to termination. The Missouri statute reads:

If improvement satisfactory to the board of education has not been made within ninety days of the receipt of notification, the board of education may terminate the employment of any probationary teacher immediately or at the end of the school year.³⁰

Oklahoma also addresses the question of time frame more specifically than the other states. The Oklahoma statute states:

The teacher shall be given a reasonable time for improvement, which shall not exceed two (2) months. The nature and gravity of the teacher's conduct shall be considered in determining what length of time would be reasonable.³¹

²⁹ Arizona, Revised Statutes, Section, 15-537.

³⁰ Missouri, Annotated Statutes, Section 168.126.

³¹ Oklahoma, Statutes Annotated, Section 6-102.2.

Specificity is another crucial element to be considered in studying the statutes to determine the evaluator's responsibility. Again in this area the statutes do not present a sequenced, detailed order of what must be done to make the teacher aware of what it is he is doing wrong. The statutes generally do agree on the fact that the teacher must honestly and openly be apprised of any area in which he is not performing satisfactorily if notification is to be placed in his personnel record.

While procedures for evaluation in many states are similar with required written evaluation signed by both the evaluator and evaluatee, the specificity of notice required for terminating a teacher varies from state to state. A review of the mandates regarding specificity of notice reveals the following information.

ARIZONA. The Arizona statute requires evaluation to include recommendations for areas of improvement where the performance of the teacher warrants improvement. After the assessment is made a board designee must confer with the teacher to make "specific recommendations" as to areas of improvement. After allowing a "reasonable time" for the teacher to improve, the designee must follow-up to ascertain if adequate classroom performance is being demonstrated. The statute calls for the use of a "specific criteria for measuring effective teaching performance in each area of the teacher's

classroom performance."³²

ARKANSAS. The Arkansas statute specifies that whenever a principal finds it necessary to admonish a teacher for a reason that may lead to termination, he has the responsibility to bring it to the teacher's attention in writing. The principal has the responsibility to document the efforts which have been undertaken to assist the teacher to "correct whatever appears" to be the cause of the potential termination or non-renewal.³³

CALIFORNIA. A written evaluation must include recommendations, when necessary as to areas of improvement. Standards established by the governing board as they relate to adherence to curricular objectives and maintenance of a suitable learning climate are used to measure the teacher's performance. Following an unsatisfactory performance, the principal has the responsibility to make "specific recommendations as to the areas of improvement in the employee's performance" and to "endeavor to assist the employee in such performance."³⁴

³² Arizona, Revised Statutes, Section 15-537.

³³ Arkansas, Statutes Annotated, Section 80-1264.6.

³⁴ California, Education Code, Section 44664.

CONNECTICUT. Guidelines established by the State Board of Education for carrying out the Connecticut statute call for a cooperatively developed education program. Evaluations are expected to be more diagnostic than judgmental. The process of evaluation is also expected to help analyze the teaching and learning to plan how to improve. The role of the principal or evaluator is to assist the teacher by bringing in appropriate resources and providing instructional leadership.³⁵

FLORIDA. The Florida statute specifies that the role of evaluator in an unsatisfactory teaching performance, requires conferring with an employee, making specific recommendations in areas of unsatisfactory performance, and providing assistance in helping to correct the deficiencies within "a reasonable prescribed period of time."³⁶

LOUISIANA. Evaluation of employees not performing satisfactorily requires the employing authority to notify the employee in writing and thereafter to confer with the employee making "specific recommendations on areas of unsatisfactory performance and assisting him to correct the deficiencies within a prescribed period of time."³⁷

³⁵ "Connecticut's Teacher Evaluation Law," Connecticut State Department of Education, February, 1979, pp. 2-3.

³⁶ Florida, Statutes Annotated, Section 231.29.

³⁷ Louisiana, Revised Statutes, Section 17:391.5.

NEVADA. The Nevada statute calls for "a reasonable effort" to be made in assisting the teacher to correct deficiencies noted in the evaluation. The teacher shall receive a written copy of the evaluation with specific areas of deficiencies noted, no later than fifteen days after the evaluation.³⁸

It becomes clear that there are a great number of expectations and demands that are placed on the principal as evaluator. The dilemma of knowing what is effective teaching and what is not is very demanding. Also the task of being able to say to the ineffective teacher, "This is what you are doing wrong, and this is what you might do to correct the problem" is one that will make many principals turn their back on problems rather than address them.

How can the principal be prepared for these tasks that befall him as evaluator when they are often not taught as part of the certification process? Several of the state legislatures have realized that the reliability of the evaluator is essential in having an effective evaluation program. An evaluator must not only identify what is wrong but work with the teacher in a productive supporting way to make necessary improvement. Because of this several states have included in the statutes or the rules and regulations

³⁸ Nevada, Revised Statutes, Section 391.3125.

for implementation, statements concerning the development and training of principals as evaluators. The following states have some statement to this effect as a part of the implementation process.

ALASKA. Alaska requires that there be training in evaluative techniques for all certificated staff.³⁹

MISSISSIPPI. Mississippi's evaluation process was adopted in 1983 and goes into effect July 1, 1986. The Mississippi statute says that the state must provide in-service training for personnel who will be involved in carrying out the state program of educational accountability and assessment of performance.⁴⁰

NORTH CAROLINA. The North Carolina Administrative Code specifies that all teachers and principals shall be provided an orientation on the performance appraisal system.⁴¹

OHIO. Certificated and classified personnel in Ohio shall have the opportunity to participate in in-service including cooperative planning, implementation, and evaluation of job-related training.⁴²

³⁹ Alaska, Administrative Code, Section 19.060.

⁴⁰ Mississippi, Statutes Annotated, Section 37-3-43-3d.

⁴¹ North Carolina, Administrative Code, Section 16.0601.

⁴² Ohio, Administrative Code, Section 3301-35-03.

SOUTH CAROLINA. The South Carolina directives are that the State Board of Education is to develop a training program for rater reliability.⁴³

This review of the various state statutes has revealed that there are many guidelines and directives that are established by the statutes and state and local boards of education in their administrative implementation of the evaluation process.

⁴³ South Carolina, Code of Laws, Section 59-26-10.

CHAPTER IV
RELATED COURT CASES

Introduction

The courts have consistently refused to become involved with the issue of determining the effectiveness or ineffectiveness of a teacher. Instead, they have repeatedly left this determination up to the discretion of school boards which are charged with the responsibility of evaluation.¹ The courts are, however, becoming more and more involved in issues that relate to protecting an employee's rights. School administrators involved in evaluation should use judicial decisions as an indicator of what the courts have accepted as meeting the due process rights of employees.

In the teacher evaluation process, the administrator as an evaluator has many legal responsibilities in carrying out due process in regard to teacher rights. This review of court cases will examine several key issues involved in procedural and substantive due process. These key issues will include general procedural and substantive due process claims and specific provisions that provide an opportunity for the teacher to improve before termination.

¹ Beckham, Legal Aspects of Teacher Evaluation, p. 3.

Courts become involved in teacher evaluation issues when a teacher has appealed an employment decision based on constitutional guarantees of procedural and substantive due process. Procedural due process claims result when school boards do not follow written procedures or guidelines in state or local policy and when school boards infringe on constitutional guarantees. Substantive due process refers to the fairness of an action and involves claims where an employer has made an employment decision that represents arbitrary or capricious exercise of power.

There have been few cases that deal exclusively with substantive issues such as incompetency of a teacher as the only reason for dismissal, but numerous cases have reached the litigation stage as a result of school boards' failure to follow procedural due process. There is no problem, however, in the courts supporting administrators in dismissing a teacher provided that procedural due process has been afforded. The following discussion provides examples of litigations that address the issue of due process.

One of the key issues in procedural cases deals with the question of whether the evaluatee was advised of what was expected, what was not being done right and then advised as to what could be done to improve. In the Adams v. Clarendon County District No. 2² decision the South Carolina Supreme

² Adams v. Clarendon City School District No. 2, 241 S.E. 2d 897 (S.C. 1978).

Court insisted

If, however, the cause for the discharge is deficiencies or shortcomings other than those which manifest an evident unfitness for teaching but which do, nevertheless, constitute improper performance of employee duties, the teacher must be given preliminary notice, written by an administrator, and calling the deficiencies to the teacher's attention, suggesting ways to improve.

Many of the cases in this area are decided on the basis that statutes require a warning and guidance before discharge. But even without a statutory requirement, courts have held that a teacher may not be dismissed for behavior that is remediable unless the board can show that the teacher, after warning did not improve his performance.³

In the 1967 New York , Brinks v. Board of Education⁴ case the court ruled that a teacher who had been dismissed must be reinstated because she had never been told her services were inadequate. A North Carolina case, Nestler v. Chapel Hill/Carrboro⁵ found that a teacher can be dismissed on incompetence once he has been notified and given time to remediate.

³ Potter v. Richland School District 13, Wash. App. 316, 534 P. 2d 577 (1975).

⁴ Brinks v. Board of Education, 7 New York Education Department, Rep. 9, (1967).

⁵ Clyde H. Nestler v. Chapel Hill/Carrboro City School Board of Education, (N.C. Ct. of App. 1984).

The Nestler case states:

We believe that the term "inadequate performance" is one that a person of ordinary understanding can comprehend in regard to how he is required to perform. In this case the evidence is that the petitioner was advised on several occasions that his performance was inadequate.⁶

In the South Dakota case Busker v. Board of Education of Elk Point⁷, a teacher whose contract was not renewed on the grounds that she was incompetent challenged the evaluation of her teaching performance claiming that the evaluations were insufficient to meet the requisite standard of substantial evidence. The teacher was finally evaluated during each of the three years she taught in the school system. Each year, she was criticized for her method of instructional organization. Several suggestions to improve her organizational deficiencies were given as required by state statute. On three occasions the teacher was criticized in her evaluation for failing to maintain classroom order by allowing students to randomly leave their desks without permission and place their feet on the desks. On her first evaluation she was told that improvement in classroom atmosphere would result in greater student interest and better student attitude. The court

⁶ Ibid. at 60.

⁷ Busker v. Board of Education of Elk Point, S.D. 295 2d 1, (1980).

ruled in this case that the deficiencies had been clearly spelled out to the teacher; therefore the board had the right to dismiss.

In addition to following the statutory requirements for procedural and substantive due process there are also constitutional rights established by the First and Fourteenth Amendment of the Constitution.⁸ Perry v. Sindermann⁹ established a property interest for tenured teachers thus requiring specific reasons be given for dismissal.

One of the key issues that must be addressed in employee evaluation is the issue of notification of deficiencies. As has been indicated in Chapter III, many state statutes address specifically the fact that the teacher must be notified of what the deficiency is.

An Oklahoma case, Miller v. Board of Education No. 56¹⁰ confirmed the necessity to tell a teacher specifically the reasons for nonrenewal. The teacher received notice of nonrenewal but had received no prior notice. The teacher made several written requests to be advised of the reasons

⁸ U.S. Constitution, Amendment I; Amendment XIV, Section 1.

⁹ Perry v. Sindermann, 408, U.S. 593 (1972).

¹⁰ Miller v. Independent School District No. 56, 609 P. 2d 756 (Okla. 1980).

for the action, but no reason was given her. The court ruled that the teacher was entitled to a reason and opportunity to be heard.

In Missouri a teacher was given notice that she was being terminated because "improvements were needed in the area of relationships with students, enthusiasm for teaching, disciplinary policies and relationship with parents."¹¹ The courts ruled in this case that even though general areas were given on the notice to the teacher, she was not shown what specific improvements were needed.

In another Missouri case, Meredith v. Board of Education,¹² the courts upheld a dismissal when the administration was able to show evidence that the teacher had been warned of her performance inadequacies and was advised that they might result in her dismissal. She was granted numerous conferences with her principal regarding her deficiencies in the areas mentioned in the evaluation report of her teaching performance.

Taken together, tenure and evaluation statutes create an administrative dilemma; on the one hand, conscientious administrators who want to help employees improve must also

¹¹ Pollard v. Board of Education, Reorganized School District No. 3 Platte County, Missouri, 533 S.W. 2d 677 (1976).

¹² Meredith v. Board of Education of Rockwood, 513 S.W. 2d 740 (Mo. Ct. App. 1974).

demonstrate faith in their ability to do so and must emphasize the positive aspect of their performance as well as identify their weakness.¹³

The Iowa Supreme Court addressed this recently when it affirmed a trial court's ruling that the evidence presented substantiated the school board's decision to terminate a tenured teacher. The case has an interest here:

Probably no inflexible "just cause" definition we could devise would be adequate to measure the myriad of situations which may surface in future litigation. It is sufficient here to hold that in the context of teacher fault, a "just cause" is one which directly or indirectly, significantly and adversely affects what must be the ultimate goal of every school system; high quality education for the district's students. It relates to job performance including leadership and role model effectiveness. It must include the concept that a school district is not married to mediocrity but may dismiss personnel who neither perform high quality work nor improve in performance. On the other hand "just cause" can not include reasons which are arbitrary, unfair or generated out of some petty vendetta.¹⁴

The case of Wilt v. Flanigan¹⁵ addresses the importance of specific response to the needs of the teacher. In this case the teacher in question had two good evaluations and one critical one which led to nonrenewal of her contract.

¹³ Beckham and Zirkel, p. 139.

¹⁴ Briggs v. Board of Directors of Human Community School District 282 N.W. 2d 740 , 743 (Iowa, 1979).

¹⁵ Wilt v. Flanigan, 294, W. Va. 294, S.E. 2d 189, 194 N. 5 (1982).

Asked why his early evaluations were not critical, the principal testified:

... The first year most teachers have difficulties of some sort or another. They like to be popular and that gets them into trouble real fast and also Mrs. Wilt was pregnant the first year which I think contributed to part of her problem and trying to be a halfway decent, humane person, I did not want to wipe her out totally the first year or the second year.¹⁶

The court responded in a message to all evaluators:

For an evaluation to properly inform the school employee about his or her job performance, it must be accurate and truthful as the evaluator can make it. Otherwise, a teacher or school employee will not know how his or her job performance is actually viewed by the administrator and also will not know how she can improve.¹⁷

In an administrative hearing a California district was ordered to return a dismissed teacher. The teacher was dismissed on the grounds that she could not maintain control of her class. The committee established that on specific days pupils caused disruptions in her class, that loud noises from her class disrupted other classes, that another teacher had to bring her class under control, students climbed over desks, the teacher had screamed at one student and had pulled the hair of another.

¹⁶ Ibid. at 194.

¹⁷ Ibid.

The hearing committee ordered the teacher returned to duty. It said it was convinced that the teacher had shown unfitness for service, had demonstrated incompetence and had engaged in unprofessional conduct. However, the committee charged that "only a minimal effort was made by the administration to assist her in the specifics of how to resolve the problem," and that "the nature of the comments and suggestions made by the administration were generally negative, rather than positive." The evidence presented by the board failed to show that had the teacher been given proper assistance, the teacher would not have improved.¹⁸

Very often this is the situation that the principal and the teacher find themselves in. They are not honest with each other. When a teacher is not performing satisfactorily, it is usually one of two reasons. Either the employee thinks he is doing a satisfactory job because no one has told him otherwise, or the employee does not understand the expectation of the employer.

In a recent report from the Research Institute of America recommendations for specificity of notice are cited as follows:

1. Let the employee know that you find his work level unsatisfactory, give him feedback,

¹⁸ Neill and Custis, p. 54.

tell the employee, but don't compare him or her with others in the department. If you do, you hand him an opportunity to give you reasons why they can do it and he/she can not.

2. Define clearly the performance you expect; if there is a big gap don't expect it to be closed over night; set some specific goals once you have established a new regimen and errors have been reduced; then you can work on getting more speed out of the employee.
3. Establish the time period for each improvement.
4. Praise when it is done.
5. Provide resources if necessary. This may range from explaining what you want done to referring the employee to others within the organization for help through direct supervision.
6. Warn if necessary.¹⁹

After determining the specificity and adequacy of a notice of deficiencies given a teacher, the courts examine the remediability of the teacher's performance. When school boards have provided substantial evidence that a teacher's performance is not irremediable, the courts will support the school board's action.²⁰ However, in performance that is determined to be remediable, the courts continue to examine the complexity of the deficiency in

¹⁹ "Creating and Motivating a Superior, Loyal Staff," Research Institute of America, June, 1982, p. 14-15.

²⁰ Adams v. Clarendon City School District No. 2, 241 S.E. 2d 897 (S.C. 1978).

performance and the amount of time that can be considered reasonable for a remediation period.²¹

Local districts must provide a reasonable period for a teacher to correct remediable deficiencies. Court cases reveal that the courts have held for the teacher in claims where notification of deficiencies and provisions for remediation failed to meet the court's standards on this specific issue. In Ganyo v. Independent School District²² the court ruled that eight weeks was not sufficient time for a teacher of seventeen years in the district to show improvement in the eight areas of deficiencies that had been specified for the first time.

In another case a teacher of mentally handicapped students was dismissed for lack of instructional planning, lack of positive learning activities, and lack of cooperation with colleagues. A period of fifteen school days lapsed between the notice to remedy and the last formal evaluation. An Illinois court did not consider this a reasonable period for assessing improvement and stated further that an evaluation should have been made at the end of the agreed upon remediation period.²³

²¹ Ganyo v. Independent School Dist. No 832, 311 N. W. 2d 497 (Minn. 1981).

²² Ibid.

²³ Board of Education of School Dist., No. 131 v. Illinois State Board of Education, 403 N. E. 2d 277 (Ill. App. 1980).

An Illinois elementary teacher was dismissed because of poor discipline and ineffective instruction. During a remediation period of eight school weeks, several administrators and supervisors observed the teacher and provided assistance. The teacher exhibited a defensive attitude toward suggestions for improvement, and no progress was noticed in her performance. In this case the court found the remediation period reasonable and upheld the dismissal.²⁴

In discussing the issue of a reasonable time period, Pellicer and Hendrix have this to say:

The time frame established for improving and/or correcting the deficiency must provide sufficient time for the teacher to plan, assemble materials and resources, and demonstrate effectiveness. The following seems appropriate for this:

- . All strategies should be implemented within three weeks or fifteen teacher working days
- . A satisfactory level of performance could be expected within three months or sixty teacher working days.²⁵

An Analysis of Judicial Decisions

Predicated on an analysis of judicial decisions, courts are becoming more specific as to what is expected of the principal as evaluator in providing necessary assistance to

²⁴ Community Unit School District No. 60 v. Maclin, Ill. App., 403 N.E. 2d 277 (1980).

²⁵ Leonard O. Pellicer and O.B. Hendrix, "A Blueprint for Principals: A Practical Approach to Remediation and Dismissal," National Association of Secondary School Principals Bulletin, 64, (March 1980): 60.

the employee, particularly where evaluation of performance has led to dismissal.

The remainder of this section will review court cases in areas discussed in the introduction of this chapter. The specific cases that will be reviewed are listed below.

Substantive and procedural due process

Van Horn v. Highland School District No. 401, Wash. App., 562 P. 2d 641 (1977).

Cantrell v. Vickers, 495 F. Supp. 195 (Miss. 1980).

Schulz v. Board of Education of the School District of Fremont, 315 N.W. 2d 633 (Neb. 1982).

Adams v. Clarendon County District No. 2, 241 S.E. 2d 897 (S.C. 1978).

Witgenstein v. School Board of Leon County, Fla. App., 347 So. 2d 1069 (1977).

Specificity of notice

Board of Directors of Maine School Administrative District No. 75 v. Merrymeeting Educators' Association, Me., 354 A. 2d 169 (1976).

Briggs v. Board of Directors of the Hinton Community School District, 282 N.W. 2d 740 (Iowa 1979).

Potter v. Richland School District No. 400, Benton County, Wash. App., 534 P. 2d 577 (1975).

Nestler v. Chapel Hill/Carrboro City School Board of Education, 311 S.E. 2d 57 (N.C. App. 1984).

Pollard v. Board of Education Reorganized School District No. 3 Platte County, Missouri, 533, S.W. 2d 667 (Mo. Ct. App. 1976).

Orth v. Phoenix Union High School System, Ariz. App., 613 P. 2d 311 (1980).

Required documentation

Busker v. Board of Education of Elk Point Independent School District # 61-3, S.D., 295 N.W. 2d 1 (1980).

Vorm v. David Douglas School District No. 40, Or. App., 608 P. 2d 193 (1980).

Wilt v. Flanigan, W. Va., 294 S.E. 2d 189 (1982).

Time frame for remediation

Ganyo v. Independent School District No. 832, Minn., 311 N.W. 2d 497 (1981).

Community Unit School District No. 60 v. Maclin, Ill. App., 435 N.E. 2d 845 (1982).

Board of Education of School District No. 131 v. Illinois State Board of Education, 403 N.E. 2d 277 (Ill. 1980).

Wren v. The McDowell County Board of Education, 327 S.E. 2d 464 (W. Va. 1985).

Substantive and Procedural Due Process

Van Horn v. Highland School District No. 401

Wash. App., 562 P. 2d 641 (1977)

Facts

William F. Van Horn was hired in 1967 as a high school counselor. In 1970-71 he was reassigned because of a reduced enrollment to Cascade Junior High as a math teacher. He appealed this move but failed to do so within the time limits.

On January 28, 1972, Van Horn was given notice he was being placed on probation until April 15, 1972. He was told his services as a mathematics teacher had been unsatisfactory, and that the major deficiency in his performance was his

failure to maintain adequate discipline and control of students in his class. The letter then detailed a number of incidents of poor classroom control and concluded suggesting ways to remedy the situation.²⁶

No hearing or opportunity to respond to the deficiencies listed in the letter was provided. Numerous personal visits had been made to evaluate his class and one written evaluation was performed.

Decision

The superior court held that the teacher was not placed on probation in accordance with the then existing procedural requirements; therefore, nonrenewal of the teacher was based upon fundamentally defective foundations. The court ordered reinstatement. The decision was appealed to the Appeals Court.

The trial court, concluding that teacher's contract was wrongfully nonrenewed, limited recovery to one year's back salary and granted the attorney's fees. The appeal court looked at the following issues in reviewing the case: (1) Whether the trial court had the discretion to order or deny reinstatement, (2) whether the teacher was improperly nonrenewed, (3) whether the lower court findings of one year's back salary and attorney's fees were sufficient to meet the

²⁶ William F. Van Horn v. Highland School District No. 401, Wash. App., 562 P. 2d, 641, 642 (1977).

statutory requirements of RCW 28A. 67.070 and (4) whether acceptable standard evaluation was adopted and in use at the time of the dismissal.²⁷

The appeals court found that the superior court does not have authority under the statute to discharge or non-renew the teacher. This is a function of the school board. It further ruled that the teacher was wrongfully dismissed. The court insisted that one year's salary was insufficient; therefore the case was remanded for further reconsideration.²⁸

Discussion

This case deals with several issues of importance in this study: (1) were the procedural due process rights of the teacher followed by the administrator in the dismissal? (2) Were the deficiencies that were found remediable? (3) Do the courts have a role in determining the renewal or dismissal of a teacher?

Cantrell v. Vickers

495 F. Supp. 195 (Miss. 1980)

Facts

Mrs. Cantrell was a third grade teacher at Emerson Elementary School. She worked with another teacher in a

²⁷ Ibid.

²⁸ Ibid. at 644.

two room class area. Mrs. Cantrell received complaints from students and parents about some accelerated students. During the 1978-79 year, the principal evaluated her twice and she received all satisfactory ratings. The superintendent and board received additional complaints along with requests to transfer some students out of Cantrell's class. Additional meetings were held to hear the complaints of parents.

On March 19, 1979, the Superintendent recommended the reemployment of Mrs. Cantrell and her co-worker Mrs. Bradwell for 1979-80. The following day the board reprimanded the Superintendent for hiring Cantrell and ordered the Superintendent to (1) reprimand in writing the two teachers, (2) reassign the teachers for the 1979-80 year and (3) develop a plan of improvement for the teachers and present such "plan" to the board for approval. This was prepared and presented to the board on March 21.²⁹

On March 22, Mrs. Cantrell was placed on administrative probation and presented with the "plan." Mrs. Cantrell responded that she was unaware of the basis justifying the plan and refused to sign the plan, stating she would not follow it. On March 26, 1979, she was notified that she was removed from her position as a teacher.

²⁹ Cantrell v. Vickers, 495 F. Supp. 195, 197 (Miss. 1980).

on April 9, 1979, she filed suit claiming she had not been afforded her constitutional rights of job protection being denied procedural due process.³⁰

Decision

The court held that the improvement plan infringed on the rights of Mrs. Cantrell under the First Amendment of the Constitution of the United States. The court also ruled that Mrs. Cantrell had a property right in that she had been employed for ten years. The court also held that removal from her teaching position without an impartial hearing board was a violation of her due process guarantee of the Fourteenth Amendment.³¹

Discussion

Again this case stresses the importance of procedural due process in dealing with teachers. The court is clear in this case that the teacher must be presented in writing the specific concerns or charges and be given time to do something about the charges if they are remediable. Also the court stresses that a teacher can not be required to forfeit his constitutional rights in order to get help. The plan of improvement must be one that is directly related to identified problems and that is realistic to expect from the teacher if he is to make improvements.

³⁰ Ibid.

³¹ Ibid. at 198.

Schulz v. Board of Education

Neb., 315 N.W. 2d 633 (1982)

Facts

Sharon Kay Schulz was a teacher in the school district of Fremont, Nebraska. She was dismissed by the board of education even though she received above average ratings. Having taught for the district one year in 1960-61, Schulz left the district and then returned to the district in 1968 where she had worked continuously until 1980 when her contract was terminated. A notice, required by statute, was given to her by the Board. Reasons cited by the Board related to her instructional procedures, communication skills, management techniques, evaluation of learning and goal achievement, and human and interpersonal relationships. While none of the reasons were grounds for dismissal of a tenured teacher, they seemed to imply that the Board was basing its case on just cause of incompetency. The school board was required to meet its burden of establishing, as a matter of law, the existence of just cause, as defined by statute, which is more than dissatisfaction by school board members or parents.

The dismissal was based on three persons' testimony, Dr. Melich, Superintendent; Miss Marion Iverson, supervisor; and Mr. Charles Bechtel. There were also some parents who had testified concerning homework and harsh treatment that caused their children to become ill.

Decision

The district court affirmed the board's decision, but the case was reversed on appeal. In reversing the case the Supreme Court of Nebraska held that:

Incompetency or neglect of duty of a tenured teacher is not measured in a vacuum or against a standard of perfection, but instead, must be measured against the standard requirements of others performing the same or similar acts.³²

The court ruled that the evidence used in the case did not meet the statutory requirement of Nebraska Law 79-1254 that requires "just cause." The court held that the hearsay evidence was not sufficient and no real documentation was presented to Schulz. She had taught in the district from 1968-1980 and at all times had received above average ratings.

In reversing the case, the court indicated that the board failed to show just cause for dismissal. The board could not deal with isolated instances in a vacuum but must look at the total job the teacher was doing. They also indicated the fact that the teacher had not been notified beforehand of the need to improve or how she might be expected to do so.³³

Discussion

Again this case points out the importance of specific notification of needs for improvement as well as specific

³² Schulz v. Board of Education, Neb., 315 N.W. 2d 633 (1982).

³³ Ibid. at 634.

documentation for specific areas of concern. It further points out the need for a standard against which to measure performance.

Adams v. Clarendon City School District No. 2

241 S.E. 2d 897 (S.C. 1978)

Facts

Charles B. Adams was a secondary teacher in Clarendon City School District No. 2. He was dismissed because he was said to have:

- (1) General incompetence. His educational level and written and oral communication are at such low levels as to render him ineffective as a Manning High School teacher.
- (2) Apparent inability to comprehend and follow instructions.
- (3) Apparent inability to keep accurate and necessary school records.³⁴

The appellant contested the dismissal on the grounds that the administration failed to follow 59-25-440 of the state code that states:

Whenever a principal or other school administrator charged with the supervision of a teacher finds it necessary to admonish a teacher for reason that he believes may lead to dismissal or cause the teacher not to be reemployed he shall (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and (2) except as provided in 59-25-450, allow for a reasonable time for improvement.³⁵

³⁴ Adams v. Clarendon City School District No. 2, 241 S.E. 2d 897 (S.C. 1978).

³⁵ Ibid. at 899.

The appellant never contested the reasons for dismissal, only that the administration had failed to follow the procedural due process as outlined in the statute.

Decision

In looking at this case the court ruled against the plaintiff. The court stated, "Unless we are to attribute inconsistency to the legislature, the two sections in question must speak to different categories of grounds for dismissal."³⁶

The court continued:

Section 59-29-430 identified what is subject to its provision, namely, as evident unfitness for teaching. It logically follows, then that 59-29-440 must address those deficiencies or short comings other than those which manifest an evident unfitness for teaching but which do constitute improper performance of employment duties.³⁷

The court also held that since the appellant had not challenged the issue of incompetency related to his alleged deficiencies, this was not an issue in the case. Also the plaintiff had been made aware of the problems by the letter that was a part of the court evidence presented. The court stated:

Given proper grounds for discharge under 59-25-430 which the board in this case has, all that is required

³⁶ Ibid. at 900.

³⁷ Ibid. at 901.

is prior notice and an opportunity to be heard. The appellant was accorded both in this case.³⁸

Discussion

There are several key points in this case. The key issues are (1) the notification of specific areas of deficiency and whether these deficiencies are remediable or not; (2) the importance of following statutory requirements; and (3) the issue of appropriate time frame. This case also impacts on the second area, that of specificity of notice. The court continued that in this case the board must determine if the deficiency can be remediated or not. If the deficiency can be remediated, then the notice must be given in writing according to state statute.

Witgenstein v. the School Board of Leon County

Fla. App., 347 So. 2d 1069 (1977)

Facts

In this Florida case the Florida Appeals Court reversed a school board decision dismissing a nontenured teacher on grounds the school board had not followed statutory mandates. Witgenstein was employed by Leon County Schools from 1972-75. On March 21, 1975, she was given nonrenewal notice predicated on the grounds, that the school board wished to "obtain the

³⁸ Ibid. at 901.

services of another person whose qualifications would better serve the needs of the District."³⁹

Witgenstein filed a timely grievance that was finally denied June 24, 1975. Witgenstein insisted her teaching performance was not properly evaluated and that she should be accorded another year of employment during which time she could be properly evaluated.⁴⁰

The school superintendent had recommended that state statutory mandates be adopted and followed as policy. However, the school board chose not to accept school superintendent's recommendations; thus action was flawed because state statutory requirements that were imperative were not followed.

Decision

The petitioner maintained that the school principal had never appraised her teaching performance and that she had never been told that her teaching performance was deficient. Thus, there was never any opportunity to correct those areas which were considered inadequate.⁴¹ The court determined that Florida Statutes required the school superintendent to establish procedures for assessing performance of duties and responsibilities

³⁹ Witgenstein, v. the School Board of Leon County, Fla. App., 347 So. 2d 1069, 1070 (1977).

⁴⁰ Ibid.

⁴¹ Ibid. at 1072.

of all instructional personnel employed in the school district. The school principal also has the responsibility to make individual teacher assessment and report the results to the superintendent and the board.⁴²

The court insisted that the school board should have adopted policies proposed by the school superintendent as required by law. Moreover, the court maintained that the plaintiff was correct in asserting that the school board did not follow the state statute:

...Her principal or person directly responsible for her supervision failed to follow the statutory procedure by not warning her that her teaching performance was deemed deficient. These charges, if true, would constitute a violation by the Board and the Principal.⁴³

Discussion

The court insists that the school board had no right to choose not to comply with the law. Once the statute provides a policy for evaluation, a school board is bound to adopt such policy and see that it is enforced. Finally, the court acknowledges that since the teacher had not in fact been apprised of deficiency in teaching performance, then school board was in violation of the law in dismissing her.

⁴² Florida, Statutes Annotated, Section 231.29.

⁴³ Witgenstein at 1072.

Specificity of notice

The following six cases deal with specificity of notice that is required before a court will accept a board's decision to dismiss a teacher. Generally these cases look at the issue of was the information given the teacher in such a manner that a person with average intelligence can understand the directions and the consequences of improving or not improving?

Board of Directors of Maine School Administrative District

No. 75 v. Merrymeeting Educators' Association

Me., 354 A. 2d 169 (1976)

Facts

During the school year 1972-73 Mrs. Florence Small was subject to several evaluations, one of which resulted in the following recommendation:

If Mrs. Small is to continue teaching, the administration will need to provide experiences that will acquaint her with acceptable teaching practices and help her implement these training strategies in her classroom.⁴⁴

Subsequently on June 18, 1973, Mrs. Small received a communication from the superintendent of the schools:

Your performance as a teacher must improve drastically if you are to continue. I recommend that you visit other teachers early next fall and that you be visited frequently by the building principal ⁴⁵

⁴⁴ Board of Directors of Maine School Administrative District No. 75 v. Merrymeeting Educators' Association, Me., 354 A. 2d 169 (1976).

⁴⁵ Ibid.

Mrs. Small received a contract in 1973-74 and approached her building principal who refused to comply with the recommendations of the superintendent. She was told by the principal to "do it on her own." Mrs. Small was subsequently not given a contract in 1974-75.

This dismissal was appealed to a collective bargaining hearing and subsequent binding arbitration. The arbitrator found in favor of Mrs. Small, and the board subsequently appealed the decision saying the arbitrator had overstepped his bounds. The arbitrator stated:

The just cause standard... implies that a teacher will be given a fair opportunity to demonstrate her capacity, and that only after such opportunity will a teacher's contract be nonrenewed where there is good and sufficient cause for doing so. Fundamental fairness in this case requires that where the forces have been set in motion to determine what ought to be done about a particular teacher's performance, the administration had the duty to follow through on the recommendation made where there evidences a willingness to follow through on her side.⁴⁶

Decision

The court ruled that the arbitrator was correct in his ruling. The court stated:

To argue as the board has, that the evaluation article placed no reciprocal responsibility upon it flies in the face of the purpose of this agreement.... As we see it these parties contemplated that teacher evaluation would serve a dual purpose. Not only will the teacher benefit

⁴⁶ Ibid. at 172.

by having teaching deficiencies recognized, but the school system will be stronger if these weaknesses are corrected. Under the contract both the teacher and the administration have assumed mutual obligations to strive to attain that end.

Since board failed to provide an atmosphere which both the evaluator and the superintendent considered necessary, Mrs. Small was deprived of the requisite assistance to improve her performance. The court sustained the arbitrator's findings and denied the appeal.⁴⁷

Discussion

This case emphasizes the point that if a contract or statute stipulates that specific assistance be given to help a teacher improve identified weaknesses in performance, then the teacher is being denied a basic substantive due process if the help is not given. The court holds closely to this position in almost every case when the deficiencies are deemed "remediable."

Briggs v. Board of Directors of the Hinton

Community School District

282 N.W. 2d 740 (Iowa 1979)

Facts

Thomas J. Briggs was an elementary principal in the Hinton Community School for a period of fourteen years. At the end of the 1977-78 school year, he was given notice that

⁴⁷ Ibid.

he was not going to be renewed. He appealed the case to the district court. The district court upheld the Board and the case was appealed.

The key issue in this case dealt with the issue of "just cause" and interpretations of the idea that the teacher has a responsibility in fulfilling a job's obligations. The appeals court in sustaining the lower court decision stated:

"It must include the concept that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance.⁴⁸

Decision

The court in sustaining the board and the lower court stated that there was substantial evidence in the record before the board to justify the action. The evidence showed that Briggs had been told of deficiencies in the areas of teacher supervision, student discipline, and decision making, which were reported by former Superintendent Johnson. Similar deficiencies were found the following year, along with long range planning difficulties. Also, for the next two years 1974-76, almost totally negative evaluations were given. The court determined that certainly there was enough "just cause"

⁴⁸ Briggs v. Board of Directors of the Hinton Community School District, 282 N.W. 2d 740 (Iowa 1979).

to dismiss Briggs because he had been repeatedly advised of his deficiencies and had done nothing to improve.

Discussion

In this case the court establishes the fact that "just cause should be what a reasonable mind would accept as adequate to reach a conclusion."⁴⁹ The case stresses the importance of the evaluator spelling out what is wrong and what needs to be done to improve. If this is done properly and adequate time is given to the teacher to improve, the courts will have no problem in supporting a board in a dismissal of a deficient teacher who will not improve.

Potter v. Richland School District No. 400,

Benton County,

Wash. App., 534 P. 2d 577 (1975)

Facts

Potter was employed as a music teacher in the Richland School District where he had taught since 1965. At the end of the 1971-72 school year, Potter was assigned to teach music at the elementary level due to a tax levy failure. Potter supplemented his income by playing professionally at various Elks Clubs in the area. In October, 1972, he

⁴⁹ Ibid. at 743.

signed a supplemental contract to supervise the band at the high school during basketball and football games. Mr. Nash, the acting principal, was advised there may be some conflicts with already committed playing dates at the clubs and agreed to allow another music teacher to fill in for Potter if he (Potter) arranged it.

On two occasions Potter attended games until half-time and left to go to other engagements leaving his keys with a student band director to give to the replacement teacher. Mr. Bair, the replacement, did not show up on two occasions and the students, as well as equipment, were left unsupervised.

On December 1, 1972, the date of the second incident, Potter had been given an evaluation in which he was told "to improve your overall supervision over students and equipment."⁵⁰

When the principal found that Potter had violated this recommendation on the night of December 1, he moved to recommend to the superintendent for dismissal.

It was also presented in court that the year before that Mr. Vandenberg, principal at the high school who was on a year's leave of absence, had placed Potter on probation during the 1970-71 school year in an effort to overcome similar problems.

⁵⁰ Potter v Richland School District No. 400, Benton County, Wash. App., 534, P. 2d 577, 578 (1975).

In appealing the case the plaintiff contended that:

- (1) the school district failed to place him on probation in 1972-73;
- (2) that none of the charges were sufficient cause for discharge as they are remediable teaching deficiencies as defined in Wojt v. Chimacum School District 49, 9 Washington App. 857, 516 P. 2d 1099 (1973);
- (3) the December evaluation did not give him opportunity to remedy the alleged deficiencies;
- (4) the absences at most were a violation of the supplemental contract and not his teaching contract.⁵¹

Decision

In finding for the board in the dismissal, the court ruled that where a teacher had been placed on probation during one school year, for failure to adequately supervise students and did not substantially correct such failure during the following two school years, the school district was not required to again place him on probation in order to discharge him. The court in ruling on this question stated:

In looking at the issue of a prior period of probation we find it to be irrelevant. This argument is contra to the conclusion reached in the Wojt case that a failure of a teacher to substantially correct work-related deficiencies subsequent to an initial probationary period may be used by the school board as a basis for discharge.⁵²

⁵¹ Ibid. at 579-80.

⁵² Ibid. at 581.

Discussion

The court's ruling in this case reveals its holdings for boards in claims where boards have followed due process by giving adequate notice of deficiencies and time for improvement.

Nestler v. Chapel Hill Carrboro City

Schools Board of Education

311 S.E. 2d 57 (N.C. App. 1984)

Facts

This is an appeal of the Chapel Hill/Carrboro City School Board of Education from judgment of the superior court reversing a decision of the Board of Education to terminate the employment of Clyde H. Nestler.

In May of 1981, Dr. Nestler was notified by the Superintendent of Schools that she intended to recommend to the board of education that his employment be terminated for inadequate performance. This recommendation was reviewed by a hearing board that ruled in favor of Nestler. Nevertheless, the superintendent recommended dismissal.

Evidence presented to the board in August of 1981 revealed that the employee was first employed in the fall of 1971. He became a career teacher in the 1974 school year. He had taught chemistry since 1975 for the system. He was observed and evaluated by four principals from 1971 through 1978 and his performance was rated as satisfactory.

In 1978 Dr. Robert Monson became principal at Chapel Hill High School. He observed Nestler and expressed concern for his competence. He listed seven reasons for his concern. These were:

- (1) what he felt was poor anticipatory set which is "giving the kids an opportunity to mentally shift gears from their previous class,"
- (2) failing to establish an objective by which he tells "the kids what he expects of them in that particular class period, and hopefully, ties that together with what has previously happened in class;
- (3) inadequate checking on comprehension including not asking questions of all students in the class to see whether all students were learning;
- (4) talking in a monotone;
- (5) too much lecturing and not involving the students in the learning;
- (6) laboratory experiments that were weak in that students were not required to generate an hypothesis;
- and (7) inadequate homework assignments.⁵³

The board of education made a decision and placed Nestler on conditional status where he remained for one and one-half years. During the spring of 1980 he made some improvement, but this improvement did not continue in the 1980-81 school year.

In 1981 the Board of Education concluded that the performance of Nestler was inadequate and terminated his employment. Nestler appealed to the superior court, contending that the facts that the board based its conclusions on were not adequate. The superior court also held that G.S. 115C-325 (e) (1) (a) as applied to the petitioner violated

the due process clause of the Fourteenth Amendment of the United States Constitution because it is too vague.

Decision

In holding for the board and reversing the lower court decision the appeals court held that (1) substantial evidence supported the board of education's decision to terminate the teacher for inadequate performance and (2) the statute providing for dismissal of a career teacher was not unconstitutionally vague.

In reversing the lower court, the court of appeals found that the evidence on which the Board of Education based its decision was adequate. The court went on to state:

We hold that the superior court substituted its judgment for the judgment of the Board of Education when it held that the Board's findings of fact were not supported by the evidence.⁵⁴

The court also ruled on the second issue, that of the constitutionality of the statute that the board used in terminating employment of Nestler. In responding to G.S. 115C-325 (e) (1) (a) which gives as a reason for dismissal inadequate performance, the court ruled the statute constitutional. The court stated:

We believe that the term "inadequate performance" is one that a person of ordinary understanding

⁵⁴ Ibid. at 60.

can comprehend in regard to how he is required to perform. In this case the evidence is that the petitioner was advised on several occasions that his performance was inadequate because of his teaching methods. We believe that as applied to the petitioner, he was given an objective standard with which a person of ordinary understanding could determine how he must comply.⁵⁵

Discussion

In this case the court supports the school board in its dismissal of a tenured teacher based solely on the charge of inadequate performance. The board had carried out procedural due process and presented substantial evidence to document inadequate performance. The court also insists that the statutory reason of inadequate performance is not unconstitutionally vague.

Pollard v. Board of Education Reorganized School

District No. 3 Platte County

533 S.W. 2d 677 (Mo. Court App., 1976)

Facts

This case was initiated by an appeal to the Circuit Court of Platte, County, Missouri, by a permanent teacher Vera Pollard, who challenged the termination of her employment by the Board of Education. The Circuit Court affirmed the decision of the Board and the teacher appealed to the Appeals Court.

⁵⁵ Ibid.

Mrs. Pollard was sent a letter on March 20, 1973, by Gerald Hart, superintendent of the system, that informed her of the following:

...The Platte County R-III Board of Education wishes to notify you that improvement is needed in the following areas:

1. Relationship with students
2. Enthusiasm in teaching
3. Disciplinary policies
4. Relationship with parents

According to section 168.116 of Missouri Statutes you have 30 days to show improvement satisfactory to your principal, superintendent, and Board of Education....⁵⁶

After the 30 day "improvement period" had passed, on May 17, 1973, Max Hunt, president of the School Board notified Pollard that she was being terminated. On July 9, after a hearing with the board Pollard was terminated. On appeal Pollard claimed that:

- (1) she had no sufficient or specific notice of the charges against her;
- (2) there was no evidence that she failed to improve during the thirty day improvement period;
- (3) hearsay was improperly admitted at the hearing on July 21, 1973; and
- (4) she did not get a fair and impartial hearing.⁵⁷

Decision

The case was reversed and remanded to the lower court. In making this decision, the Court of Appeals held that

⁵⁶ Pollard v. Board of Education of Reorganized School District III, 533 S.W. 2d 667, 668 (Mo. Ct. App. 1976).

⁵⁷ Ibid. at 669.

where the board of education relied upon statutory ground of incompetency, inefficiency, or insubordination in the line of duty as basis for discharging the teacher, the board was bound by the terms of the statute to state in the thirty day warning letter the specific causes which if not removed, could have resulted in charges; and that the warning letter which announced that the teacher needed improvement in certain areas was insufficient to meet statutory mandate of notice as to specific cause. The board also on the final appeal attempted to indicate that the teacher was suffering from a mental disorder that made her unfit to teach. The court ruled since the board did not "give the slightest hint in the earlier proceedings that the teacher had this problem that it could not be used now."⁵⁸

Discussion

The crucial point in this case deals with the specificity of the notice given as well as the time frame. The court emphasizes that a thirty-day warning letter sent to a tenured teacher employed under an indefinite contract was insufficient to meet the statutory mandate of specifically stating the cause which if not removed, could result in charges against the teacher. The letter in question in this

⁵⁸ Ibid. at 670.

case was deemed so "broadly drafted that the teacher had no way of knowing exactly how she could improve her conduct during the improvement period."⁵⁹

Orth v. Phoenix Union High School System No. 210

Ariz. App., 613 P. 2d 311 (1980)

Facts

This case was appealed on the sole issue of whether the School Board complied with A.R.S. 15-265 in dismissing the Appellant for classroom inadequacy. The teacher was dismissed and then sought reinstatement through the superior court. The court ruled in favor of the board of education's decision, and the teacher appealed to the court of appeals.

The appellant, Carl Orth, had been a tenured teacher in Phoenix Union High School since 1965. In June 1977, the District adopted a teacher evaluation program as required by A.R.S. 15-268. The appellant was evaluated and received an unsatisfactory rating in some teaching areas. A more extensive evaluation was done in December of 1977. Again the appellant received an overall unsatisfactory rating and a recommendation that he not be retained. As part of the evaluation Orth was given a list of objectives for improvement, and a target date of March 14, 1978. The evaluation was

⁵⁹ Ibid.

not accompanied by a letter or other notice regarding Orth's future employment with the district.

On January 9, 1978, the appellant received a letter from his principal. The letter stated:

... Since the purpose of teacher assessment and evaluation is for the improvement of instruction and learning experiences of students, as well as the growth of the teacher, it was determined, as a result of your initial evaluation on October 24, 1977, that the purposes indicated above could best be achieved by the utilization of the Form B. instrument for follow-up evaluation procedures.

The Form B evaluation B team, Tom Baleski, Robert Anderson and I jointly outlined on Form C some specific goals/objectives for improvement for you over the next ninety day period, commencing on December 2, 1977.

You have already received the documents which identify those specific objectives for improvement how the objectives can be achieved, and the target date for demonstrating that improvement had occurred; however, this letter is intended to serve as a reminder....⁶⁰

The appellant was re-evaluated in March of 1978 and subsequently on April 12, 1978, notified that the board intended to dismiss. The appellant requested a hearing and this was granted. The appellant then appealed the decision to the court, contending that he had not been afforded due process under the ARS 15-265.

Decision

The Appeals Court reversed the decision to dismiss and remanded it back to the trial court. In making the decision

⁶⁰ Orth v. Phoenix Union High School System, Ariz. App., 613, P. 2d 311, 312 (1980).

the court held (1) that the letter, which the principal sent to the teacher failed to meet the statutory requirements for a preliminary notice of inadequacy, and (2) mere fact that "Teacher Assessment and Evaluation Manual" provided that "all evaluations and recommendations will be reviewed by the principal, who will take appropriate action on the evaluation,"⁶¹ did not establish that the board had authorized the principal to issue preliminary notice of inadequacy within the meaning of the statute that required that such notice be issued by the school board or its authorized representative.

Discussion

In this case, the courts reveal that certain standards must be met for a notification to qualify as preliminary notice of inadequacy. In this case the "reminder letter" from the principal did not meet the established standards.

Required documentation

A third section of court cases that are considered are those that deal with the documentation that is required for the alleged deficiencies and for the notice that is given the teacher to improve. This issue is closely related to specificity of the earlier cases, but in this section the

⁶¹ Ibid.

courts have indicated more specifically what must be done to ensure that a clear understanding is given the teacher as to what is expected as far as improvements are concerned. Three specific cases will be briefed in this area.

Busker v. the Board of Education of Elk Point Independent
School District # 61-3 of Union County

S.D., N.W. 2d 1 (1980).

Facts

Yvonne Busker was employed during the 1974-76 school years as a mathematics teacher in the Elk Point School System. During each of the three years of employment, she was evaluated by her principal, three times her first year and two times each of the other years. Each year she was criticized for her method of instructional organization. Several suggestions were given which included specific steps to use in lesson design. She was told that improvement in classroom atmosphere would result in a greater interest from the students. Evaluations showed she was repeatedly told of these areas. By her own testimony, Busker stated that she did not take the suggested corrective measures but willfully refused to comply, stating that her methods of teaching were better.

This, along with parent complaints, led to her notification of nonrenewal. The case was appealed to the district court where the court ruled for Busker, saying that the

dismissal was not for "just cause" because the court contended that the teacher was fired because of anti-administration sentiments rather than nonperformance of duty. The case was appealed to the state Appeals Court and this court overturned the lower court ruling and said that there was "just cause" for dismissal.

Decision

The court ruled that the evidence was sufficient to indicate that deficiencies had been pointed out to the teacher and that the Board had the right to dismiss. The appeals court also emphasized the authority or limitations of the court in dealing with a dismissal. The court stated the following as the areas of authority of the district court:

The district court can reverse the actions of the board of education only if:

- (1) a violation of constitutional or statutory provisions were done;
- (2) excess of statutory authority were used;
- (3) the decision was made upon unlawful procedures;
- (4) if the case were affected by other error of law;
- (5) if the charges were supported by substantial evidence on the whole record;
- (6) arbitrary or capricious action was taken by the board.⁶²

⁶² Busker v. the Board of Education of Elk Point Independent School District # 61-3 of Union County, 295 N.W. 2d 1 (S.D., 1980).

Discussion

In deciding the case the court ruled that the Board had presented specific evidence to the teacher in a clear manner. The board had not violated any of the six principles set forth by the appeals court.

Vorm v. David Douglas School District No. 40

Or. App., 608 P. 2d 193 (1980)

Facts

Clifford Vorm was a tenured teacher who was dismissed for "inadequate performance." Vorm argued on appeal from district court that (1) the standards and articulation of standards on which he was evaluated were not sufficient to meet statutory requirements and (2) that statements provided him were not sufficient to let him know what was expected as stipulated in ORS 342.895 (2).

Decision

The court found in favor of the school board in affirming the lower court's findings. The court stated:

According to the petitioner, the statement he received, comprised of sequentially lettered statements of deficiencies with supporting references to his personnel file, did not make it clear whether the stated deficiencies or the file references were the facts relied on. The Petitioner argued further that the stated deficiencies were "value judgments" rather than fact.

We do not agree that the petitioner could have been misled as to whether the stated deficiencies or the supporting personnel file references were the

facts relied on for dismissal. It is obvious that the former were the facts as the petitioner suggested; the stated deficiencies were conclusory in nature. However, the statements were formulated in terms which corresponded generally with the school district's performance standards. Accordingly, they adequately notified the petitioner of the facts relied on by the superintendent.

...The petitioner also contended that his constitutional rights were violated by the reception of hearsay reports, absent his ability to cross-examine the complaining parent.... It follows that, to the extent the parental complaints were relevant to the facts relied on to support the petitioner's dismissal and were probative of matters supported by other statements in his personnel file, their admission or consideration was not error.⁶³

Discussion

This case stresses two important facts for the evaluator. First, the employee can not use the argument of ignorance of what is expected if the expectations are presented in writing and subsequent deficiencies are given.

The court also states the importance of documentation of deficiencies to the employee. Here the employee was given a written list of deficiencies that correlated with the board's expectation of him as a teacher. If notice is given, then the employee can not argue that he does not know what is not being done properly.

Hearsay evidence can also be used in making such a determination if it can be substantiated by fact.

⁶³ Vorm v. David Douglas School District No. 40, Or. App., 608 P. 2d 193, 195 (1980).

Wilt v. Flanigan

W. Va., 294 S.E. 2d 189 (1982)

Facts

This case was tried in the circuit court of Berkeley County, West Virginia. The Circuit Court supported the action of the County Board of Education to dismiss a teacher. The case was reversed and remanded on the issue of failure to comply with the policy entitling every employee to know how well he has performed his job and to be offered the opportunity to open and honest evaluation.

In the 1977-78 school year, Faylee Wilt was assigned by the Berkeley County Board of Education to teach reading. All teachers were to serve a three year probationary period and be evaluated during that time.

The evaluation for the 1977-78 year was done by her principal. Only three areas were marked needing improvement. These were in classroom discipline and management areas. Thirty-one other areas were either strong or satisfactory. On this evaluation the board rehired her for the 1978-79 school year. On February 14, 1979, her principal (Mr. Greenfield) completed his 1978-79 evaluations. All areas were satisfactory .

On April 25, 1979, after recommendation for employment had already been sent in, a letter was sent to Wilt that

spelled out twelve problem areas. Greenfield labeled his letter as a "written warning notice" and stated that "unless things improve dramatically... I will not be able to recommend you for employment or tenure beyond the 1979-80 school year."⁶⁴ On October 9, 1979, Wilt was evaluated and met standards in thirteen areas and failed in twenty-one areas.

Again on November 4 she was evaluated and this time she did much better having four not acceptable and forty-two acceptable areas. Greenfield wrote a letter which was later lost which stated that things had gone better on that observation.⁶⁵

On February 4, 1980, Wilt requested a conference to complain about Greenfield listening to her class over the P.A. system. She asked if she was going to be given tenure. Greenfield stated that at the time he would not make such a recommendation. He told the teacher she could have one of two options: to continue her present performance as a teacher, in which case he would not recommend her for future employment or to resign and avoid the embarrassment of being fired.

⁶⁴ Faylee K. Wilt v. Jackson L. Flanigan, W. Va., 294 S.E. 2d 189, 192 (1982).

⁶⁵ Ibid. at 193.

On February 12, Wilt filed a grievance against Greenfield. On February 13, Greenfield evaluated Wilt for a third time. In this evaluation she met standards in twenty areas and was not acceptable in seven areas. Wilt refused to sign the evaluation and requested to make a written response.

On February 15, 1980, Greenfield wrote a recommendation to the Superintendent that Wilt not be rehired. On April 22, 1980, the board gave Wilt notice of intent not to re-employ.

Decision

In reviewing the case the court had to determine if Guidelines enumerated in 5300 (6) (a) (board of education policy) in compliance with West Virginia Code 18A-2-8 had been followed.

In doing this the court specified the following:

We examine what the appellant (Wilt) reasonably should have known about the views of the administration regarding her performance. The October 9, 1979, evaluation should have let the appellant know she was having problems. The November 5, 1979, observation was much more positive. This, along with the letter that was written, tend to lead the teacher to think improvements are being made. The timing of the final evaluation was a fatal blow for the board's case in that it tended to meet the formality of a final evaluation rather than complying with the intent of the law.⁶⁶

Discussion

The court determined that the employee had a right to know how well he is performing his job in open and honest

⁶⁶ Ibid.

evaluation based on honest evaluation formulated according to the policy of the board 5300 (6) (a) in compliance with the West Virginia State Code. This case emphasizes the fact that if a teacher is going to be dismissed for failure to perform or for any other reason that can be deemed "remediable," then he must be told and given a fair opportunity to improve.

Time frames for remediation

The final area that will be discussed in this chapter will be that dealing with the improvement plans that are given teachers and the time specifications that are established for the improvement to take place. As in other areas the specific statutes and state or local regulations that are applicable may have some effect on this area. The courts have, in several cases that will be reviewed in this section, stressed the importance of the administrator following the procedural process outlined if the dismissal is to take place. The courts have also indicated in several cases that the amount of time that is required depends on the severity of the deficiency unless otherwise stated by the statute or regulations.

Joy Ganyo v. Independent School District No. 832

Minn., 311 N.W. 2d 497 (1981)

Facts

Joy Ganyo was a teacher of oral communication and English literature in 1978-79 at Matomedi Senior High School.

Dismissed on grounds of incompetency, she had taught in the system since 1961. The district court upheld the case and then it was appealed to the Minnesota Court of Appeals.

In 1978-79 school year the teacher was evaluated by her assistant principal and by the assistant superintendent. These observations resulted in a notice of deficiency given to Ganyo on January 2, 1979, pursuant to the requirements of section 125.12 subsection 6 of the Minnesota Codes. Ganyo was told that improvement would be expected by February 1, 1979, when a second round of evaluations would be done. The notice gave eight areas of deficiency:

(1) Lack of clear directions to students, (2) Poor classroom control (3) Listening skills, (4) Inappropriate record keeping, (5) Ineffective parent communications, (6) Instructional criteria and student evaluation that was unsatisfactory, (7) discussion of personal matters, and (8) relations with staff and supervisors.⁶⁷

Ganyo was twice observed in early February of 1979. On the 27th of February she was notified that she was being terminated.

Decision

Ganyo petitioned the district court for a writ of certiorari to review the dismissal. The court found for the board, but when the case was appealed to the court of appeals the case was reversed. The reversal was based on the following

⁶⁷ Joy Ganyo v. Independent School District No. 832, Minn., 311 N.W. 2d 497, 498 (1981).

points that the court considered:

- (1) The evidence that was presented was not given with any consideration of explanation and was not conclusive.
- (2) Much of the information that was presented was not conclusive and consisted of hearsay evidence that was not substantiated.
- (3) Most important was the fact that the court did not feel that Ganyo had had sufficient time to remedy the deficiencies charged.⁶⁸

Discussion

The court affirmed the importance of the employee being given ample time to remediate a problem. Here the court as in several other cases emphasizes the importance of the teacher being given ample time to correct a problem and make sure that the statutes or policies are complied with in this area.

The improvement plan, in this case, was fairly specific and comprehensive in nature. The problem that the court found with the plan was that many of the areas that were considered were not documented deficiencies. Also in several instances some progress was made to remediate the conditions, but no follow-up classroom observations were made before the dismissal took place.

⁶⁸ Ibid. at 497.

Community Unit School District No. 60 v. Maclin

Ill. App., 435 N.E. 2d 845 (1982)

Facts

Elaine F. Maclin appealed this case to the Appellate Court of Illinois, from the Circuit Court of Lake County. The Circuit Court had upheld the School Board's decision to dismiss on charges that she failed to remedy deficiencies and had been negligent.

Maclin was a teacher in various elementary schools over a period of twenty-five years. During the 1978-79 school year, following a school desegregation plan, she was assigned to Oakdale School to teach fifth grade.

Gene Hawkins, principal at Oakdale testified that during the year, particularly March through May there were disciplinary problems and parent complaints. He consulted with Maclin and did some demonstration teaching for her. He also made a formal observation during this time and indicated that there was a lack of attention and that the class was very noisy. At that time he advised Maclin to devise a plan and use a folder system for keeping track of assignments. In April he wrote a letter to Maclin and again suggested the use of folders and called attention to complaints of parents in Maclin's own lack of punctuality.

On April 24, 1979, a meeting was held in the assistant superintendent's office with Maclin to discuss her deficiencies.

Following this meeting, an additional letter was sent to Maclin outlining her deficiencies in teaching and absenteeism and reminding her that she had previously been a source of concern in 1977.

On June 26, 1979, after the 1978-79 school year had ended, Maclin was sent a letter designated as "second remedial notice" calling her attention to the previous remediable notice of January 1977 indicating that she was directed to remedy and remove her deficiencies as listed. These consisted of the following:

Failure to (1) maintain proper discipline (2) organize her classroom for effective instruction; (3) present clear explanations and instructions; (4) satisfy parents of her pupils; (5) keep up-to-date test records, making it difficult to monitor progress in her class; (6) number assignments, maintain pupil folders and communicate with parents as to assignments not done; (7) respond in a positive manner to supervisors suggestions; (8) arrive at school on time, and (9) establish a satisfactory work attendance record.⁶⁹

In the school board's letter, Maclin was informed that she had until November 2, 1979, to remedy the deficiencies noted above.

During the remediation period after school started, several observations were made during September, and each time the evaluators indicated that there were continuations of the earlier observed problems. On November 13, 1979,

⁶⁹ Community Unit School District No. 60 v. Maclin, Ill. App., 435 N.E. 2d 845, 846 (1982).

Maclin was given notice that she was being dismissed as a teacher for the following charges:

1. You have failed to remedy deficiencies which were brought to your attention in the Notice of Remedy mailed to you by certified mail on June 26, 1979.
2. You are negligent.
3. You have been insubordinate and have failed to follow instructions of your supervisors and to cooperate with them.
4. In the opinion of the Board of Education, your dismissal is in the best interest of the school.⁷⁰

An administrative hearing was held on the dismissal on February 5, 1980, and at the end of the hearing, the hearing officer held that the charges were not proven against Maclin. The School Board then appealed to the circuit court. The circuit court upheld the board's action and then Maclin appealed to the Illinois Court of Appeals.

Decision

The appeals court sustained the findings of the lower court and agreed that there was sufficient evidence to justify dismissal of the teacher. In sustaining the lower court's position for dismissal, the court addressed the issue of a reasonable time to remediate deficiencies. The court stated:

In the case before us, Maclin was notified of her deficiencies on June 26 and her remediable period extended to November 2. While school was not in session during the period from June 26 to August 28, she did have the time during this period to consider the deficiencies noted by the school authorities and to plan to remedy them. In any

⁷⁰ Ibid. at 848.

event, however, the actual time between the beginning of the 1979-80 school term and the end of the remediable period, August 28 to November 2 was 64 days, considerably more than in the Murray case.⁷¹

Discussion

The court supports boards of education when they can present ample evidence and notice as to what was expected from the teacher but not given by the teacher. In this case, the court concluded that the sixty-four day remedial period given a tenured elementary teacher was enough time to remedy the deficiencies, even though the teacher had failed to improve.

Board of Education of School District No. 131

v. Illinois State Board of Education

403 N.E. 2d 277 (Ill. 1977)

Facts

This case came to the appeals court after the Board of Education of District No. 131 of Kane County, Illinois dismissed a teacher. A hearing officer ordered the teacher reinstated, and the Board appealed to the Circuit Court. The Circuit Court reversed the hearing officer and the teacher appealed to the state appeals court.

The School Board dismissed John P. Murray, III, from his position as a teacher of educable mentally retarded

⁷¹ Ibid. at 851.

students at Aurora High School on April 4, 1977. Records failed to show any evaluation during the first two years of employment. An evaluation during 1971-72 criticized Murray in two areas: (1) classroom discipline and control and (2) teaching techniques in that his teaching assignments lacked structure and he failed to provide clear instructions to his students. No record of any evaluations were found for the next year. In 1974-75 Murray received a partly unsatisfactory rating. Murray was on sick leave for October through December 1975. In January 1976, an evaluator criticized Murray for failing to do any constructive activities in his class.

In April of 1976, Murray was issued a formal notice which listed the following deficiencies:

(1) failure to provide effective instructional planning, (2) failure to maintain positive learning activities and (3) failure to cooperate with colleagues in department related matters.⁷²

Murray was hired for the 1976-77 school year. His performance according to evaluations during this time remained the same. On April 4, 1977, the Board voted to dismiss Murray for cause. The first reason listed for the dismissal was that Murray failed to remedy the deficiencies cited in

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Board of Education of School District No. 131 v. Illinois State Board of Education, 403 N.E. 2d 277 (Ill. 1980).

the February 22 notice to remedy. Also listed were four general charges: (1) Negligence, (2) Insubordination and failure to cooperate with supervisors, (3) incompetency, and (4) that the best interest of the school required his dismissal.⁷³

Decision

In ruling in this case there were several important issues that were addressed. The court reinstated the teacher insisting that notice as given to the teacher was not an official notice. The court stated "a remediation period is only triggered by official school board action; unofficial notice as given by school administrators is not controlling."⁷⁴ The court affirmed the fact that "If following a notice to remedy, a remedial deficiency is not corrected within a reasonable period of time, it may be grounds for discharge."⁷⁵

In addition the court maintained that if the teacher was to be assured the statutory opportunity for remediation, it was incumbent on the school board in this case to ground

⁷³ Ibid. at 279.

⁷⁴ Ibid. at 278.

⁷⁵ Ibid. at 281.

its dismissal decision on observations and evaluations made after the remediation period, and not during the agreed upon remediation period.

This case as several others cited in this study indicates the importance of giving notice as prescribed by the statutes and that once a remediation period has been established, the teacher must be afforded that time to remediate any problems, and only after this period, should the teacher be reevaluated to determine if improvement has been made. The court affirmed the fact that if after proper notice and proper time to remediate, if no improvement is made then, this becomes grounds for dismissal.

Wren v. The McDowell County Board of Education

327 S.E. 2d 464 (W.Va. 1985)

Facts

This case was appealed to the Supreme Court of Appeals of West Virginia, after the circuit court of McDowell County, West Virginia, affirmed the decision of the county board of education not to rehire a teacher.

John Wren was employed as a school psychologist in McDowell County on three successive probationary contracts. His performance was never evaluated during his first two years of employment. In the 1981-82 school year he was evaluated twice, once on November 13 and again December 14,

1981. The appellant disagreed with both evaluations and filed a grievance seeking their removal from his personnel file. The Superintendent agreed to remove the evaluations and to have another evaluation conducted.

That evaluation was performed on March 17, 1982. The evaluation was accompanied by a letter written by Mr. Bennett Church, the evaluator. The letter indicated that, in his opinion, the previous evaluations were a result of personal conflicts between Wren and those he worked with. Wren could do a good job with the pupils but that a change in his relationship with his coworkers would have to take place. Mr. Church indicated that he did not foresee this taking place.

Mr. Church recommended that the appellant not be re-hired. No follow-up evaluation was done and by letter dated April 21, 1982, Wren was notified that he was not going to be re-hired. On April 23, 1982, he received reasons behind the decision not to renew his contract. This decision was appealed by Wren to the circuit court. The court sustained the board's decision and appeal was made to the Supreme Court of Appeals in West Virginia.

Decision

In reversing the lower court decision, the court of appeals indicated that

Only one month elapsed between the time of the appellant's March 1982 evaluation and the

recommendation of the Board that he be dismissed from his position as a school psychologist. There was clearly not time for the appellant to improve his performance even if he had wanted to. The appellee contended that Mr. Wren was given verbal notice of his shortcomings but the evidence on this point is conflicting.⁷⁶

Discussion

The court indicated in this case the importance of allowing a reasonable time to make improvements for alleged deficiencies. The court insisted that it was necessary to follow prescribed procedures in presenting improvement plans to teachers. The importance of using written notice is brought out in this case very clearly. The board of education indicated that they had given Wren notice much earlier than the March written notice that the court considered official notice. Verbal notice or directions are often hard or impossible to substantiate; therefore, it is essential that written documentation be used in all directives and assistance that is given the teacher.

⁷⁶ Wren v. The McDowell County Board of Education, 327 S.E. 2d 464, 466 (W. Va. 1985).

CHAPTER V
SUMMARY, CONCLUSIONS, AND
RECOMMENDATIONS

Summary

Since the quality of education has become such a national concern, many state legislatures have mandated teacher evaluation as a means of improving instruction. A review of the state legislated mandates and an analysis of the court cases reveal that many of these place a direct legal responsibility on the administrator to help a teacher improve his performance in the classroom. This research was designed to determine the legal responsibilities of the school administrator in working with a teacher to make improvements.

When evaluation is conducted for the primary purpose of improving instruction, one of the most important tasks is helping the teacher improve his performance in the classroom. Providing for teacher improvement begins with an honest evaluation, communicating openly with the teacher about any problems observed in the classrooms. Further provision for improvement requires that some type of remediation program be established for the teacher who is not performing at an acceptable standard.

This study has focused on the legal responsibility that the principal has in notifying the teacher that there is a

problem and in providing an opportunity for the teacher to improve. As a guide to education and legal research several questions were formulated and listed in Chapter I of this study. The answers to these questions comprise the major portion of a set of legal guidelines which school administrators and other educational decision makers can refer to when making decisions related to teacher evaluation.

The first question indicated in Chapter I was to identify the administrator's responsibility, as an evaluator, in developing a teacher improvement plan. A review of state statutes and state school board regulations requiring improvement plans reveals the following key points.

1. The principal first of all must notify the teacher in writing of any alleged deficiency.

2. The principal must work with the teacher to develop a written plan for improvement.

3. Specific suggestions for improvement must be included in the written plan.

4. The principal must give a reasonable amount of time pursuant with the degree of seriousness to allow the teacher to improve deficient performance.

5. The principal must continue to give supervision and subsequent feedback to let the teacher know if improvement is in fact being made.

6. Documentation of efforts to assist a teacher during

a remediation period must be provided.

A second question addressed in this research was to determine what the courts have required in an improvement plan. There are several factors that the courts have indicated must be present.

1. The evaluation must be open and honest.
2. The teacher must have a prior understanding of what the job expectations are.
3. The objectives for improvement must be specific enough that a "reasonable mind" would understand what is expected.
4. Specific assistance, or the willingness to assist, must be evident during the remediation period.
5. The teacher must be given a "reasonable" amount of time to make his needed improvements.
6. The plan of improvement must be one that is directly related to the identified deficiency and is realistic to expect from the teacher.
7. A reasonable evaluation schedule should be enumerated in the plan so the teacher would have adequate feed-back during the remediation period.
8. What is put in the improvement plan must be an area that is remediable and behaviors that the teacher has control over.

The third question guiding this research was determination of what the courts say is sufficient to document the

improvement plan and the efforts to assist the teacher. Key issues addressed by the courts include basic procedural and substantive due process afforded by the First and Fourteenth Amendments. Emphasis has also been placed more recently on following specific procedures related to teacher evaluation statutes and policies which include specificity of notification, required documentation, and an opportunity to improve. Particularly, the courts are concerned with whether there is substantial evidence to document a teacher's "preliminary" and final notice to remediate an area identified as deficient.

Clarity of deficiencies and expectations are also a major issue in a number of cases. The courts have indicated that any notice to improve must be expressed specifically enough that it can be understood and also that the time-frames and other supporting information be established as a part of the plan. Both statutes and courts have emphasized the necessity of having signatures of both employer and employee on all documents that become a part of an employee personnel file. Several cases also have dealt with hearsay evidence that has been addressed. The courts again look at this issue from the standpoint of "Can it be substantiated?"

The final question that has been addressed is that of principal training and the inservice to provide necessary skills. Several of the state statutes mandate that the state

and/or local boards of education provide adequate inservice to prepare the principal as an evaluator.

None of the cases reviewed in this study had the competency of the principal as an evaluator challenged. The courts, in general, have accepted the principal and the superintendent as a creditable authority in this area. There is a growing need, however, for this to become an integral part of the principal's initial training for certification. For those already certified, there must be inservice to acquaint them with such areas as learning styles, teacher effectiveness, conferencing and observation techniques as well as communications skills with their teachers.

Conclusions

Even when legal issues appear to be similar or the same as those cases already decided by the judiciary, a different set of circumstances can produce an entirely different decision. Thus, drawing conclusions from legal research is difficult. However, based on an analysis of judicial decisions, the following general conclusions can be made concerning the principal's responsibility for assisting teachers with improvement plans.

1. The teacher must have prior knowledge of performance expectations.
2. When there is a deficiency, the teacher must be advised of what was expected, what was not done right and what

could be done to improve.

3. A teacher may not be dismissed for behavior that is remediable unless a board of education can show the teacher, after warning and an opportunity to improve, failed to improve the teacher performance.

4. Local school boards must provide a reasonable period for a teacher to correct deficiencies when a remediable deficiency is identified.

5. Documentation of efforts to assist a teacher must be presented in writing.

6. The plan of improvement must be directly related to identified deficiencies.

7. Local school boards must have a standard against which to measure performance.

8. When a policy for evaluation is specified by state statutes, local boards have no choice but to adopt this and enforce it; however, local boards of education are given the option to exceed these minimum standards.

9. Courts support school board decisions when due process has been provided.

Recommendations and Guidelines

The stated purpose of this study was to provide education decision makers with appropriate information regarding the legal aspects of the principal's responsibility for assisting the teacher with improvement plans so he might be able to make

educationally and legally sound decisions concerning this issue. Based on an analysis of the statutes and case laws, the following guidelines have been developed. If the school principal will follow the recommended guidelines, the teacher litigation concerning improvement plans can be reduced. These guidelines are as follows:

1. The principal should make certain the teacher knows evaluative criteria and job expectations.
2. The principal should document the teaching performance including commendations and condemnations.
3. Documentation should include dates, times, and other specifics as needed to substantiate actual occurrences.
4. The principal should know the state statutory requirements and local school board policies or regulations concerning the process of evaluation and notification of deficiencies. It is recommended that the principal study state legislative enactments and school board policy to ascertain job expectations.
5. As the school principal identifies unsatisfactory performance, the observation must be placed in writing and shared with the teacher. The principal must make certain the written explanation of unsatisfactory is clear and specific enough that any "reasonable" mind would understand it.
6. The principal must make reasonable efforts to assist the teacher in helping him understand expected teaching

performance standards.

7. The school principal must provide a reasonable plan and assistance for improvement that includes:

- a. Specific objectives for improvement,
- b. Strategies for attaining improvements,
- c. Resources available for assisting the teacher,
- d. A time frame spelling out clearly what is expected of the teacher. (The time frame must be predicated on the seriousness of the matter and the degree to which the improvement can be remediated.),
- e. An evaluation schedule during the remediation period, and
- f. Method(s) for informing the teacher concerning progress and/or lack thereof during the remediation period.

8. Any recommendations for dismissal, demotion, or transfer predicated on the improvement plan and the plan's implementation must be made on observations that occur after the remediation period time is designated.

9. The school principal must have complete documentation concerning teacher assistance.

Recommendations for Further Study

This research has explored the role of the principal in developing improvement plans. There are several additional areas that arose during the study that might be explored in future studies. These are:

1. Does the evaluation process that implements the use of improvement plans and teacher development for the improvement of instruction actually improve student performance?
2. What impact will the administrator's (principal's) expertise, or lack of expertise, have in future cases concerning teacher dismissal?
3. Recent court decisions are having what impact on new teacher evaluation legislation and state board of education mandates?

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APPENDIX A

ALASKA

AS Section 14107.020 Duties of the Department.

The State Department of Education Shall

- (1) exercise general supervision over the public schools of the state except the University of Alaska;
- (2) study the conditions and needs of the public school of the state and adopt or recommend plans for the improvement of the public schools.

State Department of Education Regulations

Chapter 19 Evaluation of Professional Employees

4 AAC 19.010 Purpose of Evaluations.

Evaluations of the performance of professional employees of each school district shall be directed toward improving the quality of instruction and facilitating the learning process in the public schools. Additionally, formal evaluation shall serve as a method for gathering data relevant to subsequent employment status decisions pertaining to the person evaluated.

4AAC 19.020. Scope of Evaluation.

The evaluation should emphasize such factors as teaching or administrative skills, processes and techniques and interpersonal relationships with students, parents, peers and supervisors, as well as those additional factors which the school district considers relevant to the effective performance of its professional employees. The standards for performance must be measurable and relevant.

4AAC 19.030. Method for Evaluating Professional Employees.

(a) Formal written evaluation of professional employees of each school district must be made at least once per contract year for each certificated staff member, without regard to tenured or nontenured status, including teacher evaluation of principals and other administrators.

(b) An acknowledgement of content signed by both the evaluator and the person evaluated must appear on all formal evaluations. The person evaluated must be informed that he has the right to review each written evaluation prior to its final submission and comment in writing on any matter contained in it and that he may, at his request, retain the evaluation for a reasonable amount of time, but not less than 24 hours for the purpose of reviewing and commenting on it. The fact that a person evaluated exercises his right to comment on his evaluation in the manner described may not be used against him. Failure to submit written comments by a person evaluated prior to his acknowledgement of the evaluation constitutes a waiver of this right.

(c) The evaluation may include information other than specific observations of the evaluator. Districts may adopt procedures whereby input such as students' evaluation of teachers, principals' evaluation of administrators, peer and self-evaluation are utilized. The evaluation must clearly indicate that this kind of information has been used and clearly identify the source of the information.

4AAC 19.040 Use of the Evaluation.

(a) Neither the formal evaluation document, nor any notes, comments, or other information used in its preparations is a matter of public record.

(b) The evaluation may be reviewed upon demand at reasonable times by the person evaluated or some other person designated in writing by the person evaluated.

(c) Each school district shall establish procedures as to which supervisory personnel may have access to the evaluation documents.

(d) Unless mutually agreed otherwise by both the person evaluated and the school board (or its designee), no portion of the evaluation may be made public, except as evidence in a proceeding relative to an evaluated person's certification or employment or as otherwise allowed or required by a court of law.

4AAC 19.050. Development of Local Evaluation Procedures.

(a) Responsibility for evaluation of the performance of professional employees rests with the individual school district. To this end, each school board shall develop and adopt procedures for evaluation of its professional employees. These procedures must be consistent with the standards and guidelines set out in this chapter, as well as other relevant provisions of federal or state law and regulations.

(b) Prior to final adoption, the local procedures must be submitted to the department for review.

(c) Each school district in the state, whether or not it has previously adopted evaluation procedures, shall submit current procedures to the department for review no later than July, 1, 1976.

(d) Each school district is encouraged to invite, obtain, and consider community input, including that of students, parents, teachers, and administrators, in the design of the procedure and content for evaluation.

4AAC 19.060 Evaluation Training.

Each school district shall provide in-service training in evaluation techniques for all certificated staff.

ARIZONA

AR. Section 15-537. System of Assessment and Evaluation

(A) There shall be a system of assessment and evaluation of the performance of certificated teachers within each school district of the state which shall involve the development and adoption by each school district of objective assessment and evaluation guidelines for the improvement of instruction. In the development and adoption of these guidelines and procedures, the governing board shall avail itself of the advice of its certificated teachers.

(B) The governing board of each school district shall develop and adopt specific assessment and evaluation guidelines for the improvement of instruction which shall include the following elements:

1. The establishment of criteria of expected teaching performance in each area of teaching and of techniques for the assessment and evaluation of that performance.

2. Assessment and evaluation of competence and certificated teachers as it relates to the established criteria.

(C) Any assessment and evaluation made pursuant to this section shall be in writing and a copy thereof transmitted to the certificated teacher. The certificated teacher may initiate a written reaction or response to the assessment and evaluation.

(D) Assessment and evaluation of the performance of each certificated teacher shall be a continuous process, at least every other year for personnel with continuing status.

(E) Each assessment and evaluation shall include recommendations as to the areas of improvement in the performance of the teacher. After transmittal of an assessment, a designee of the governing board shall confer with the teacher to make specific recommendations as to areas of improvement in the teacher's performance and to endeavor to assist the teacher in attaining that improvement.

(F) Copies of the assessment and evaluation report of a certificated teacher trained by the governing board are confidential and do not constitute a public record and shall not be released or shown to any person except:

1. To the certificated teacher who may make any use of it.

2. To authorized district officers and employees for all personnel matters and for any hearing which relates to personnel matters.

3. For introduction in evidence or discovery in any court action between the governing board and the certificated teacher in which either:

- a. The competency of the teacher is at issue
- b. The assessment and evaluation was an exhibit at a hearing, the result of which is challenged.

ARKANSAS

AK. 80-1264.6. Annual Evaluation Admonishment Procedures. Each teacher employed by the board of directors of a school district shall be evaluated in writing annually. Evaluations criteria and procedures shall be established in the manner prescribed in Act 400 of 1975 [80-1256-80-1260]. Whenever a principal or other school administrator charged with supervision of a teacher finds it necessary to admonish a teacher for a reason that the administrator believes may lead to termination or dismissal, the administrator shall bring the matter to the attention of the teacher involved in writing and shall document the efforts which have been taken to assist the teacher to correct whatever appears to be the cause of potential termination or non-renewal.

80-1264.7 Teacher Personnel File.

The district shall maintain a personnel file for each teacher which shall be available to the teacher for inspection and copying at the teacher's expense during normal office hours. The teacher may submit for inclusion in the file written information in response to any of the matter contained therein.

CALIFORNIA**Section 44660. Legislative Intent: Establishment of a Uniform System.**

In order for a school district to act upon charges of an employee's inadequacy under former Ed. Code, 13407 [Now 44938], a written notice of incompetency must include if applicable to the employee, an evaluation of his performance made pursuant to the Stull Act (Ed Code 13485 et seq.). Such act requires evaluation and assessment of each permanent certificated employee every other year, and a conference with the employee concerning the evaluation (Ed. Code 13489 now 44664). Thus where a teacher was due for a Stull Act evaluation during the school year in which he was given notice of his alleged incompetency, such evaluation was applicable to him within the meaning of Ed. Code 13407, and was an express precondition of his dismissal on the ground of incompetency.

A school district that filed charges seeking a teacher's dismissal on ground of unprofessional conduct, incompetence, and failure to follow district rules established adequate standards to evaluate his teaching performance, under Ed. Code, 44660, by providing him with periodic evaluation reports with unsatisfactory ratings supported by specific instances and including recommendations for improvement. Perez v Commission on Professional Competence (1983, 4th Dist) 149 Cal App 3d 1167, Cal Rptr 390.

Section 44662. Evaluation and Assessment Guidelines.

(a) The governing board of each school district shall establish standards of expected pupil achievement at each grade level in each area of study.

(b) The governing board of each school district shall evaluate and assess certificated employee competency as it reasonably relates to:

1. The progress of pupils toward the standards established pursuant to subdivision (a).
2. The instructional techniques and strategies used by the employee.
3. The employee's adherence to curricular objectives.
4. The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

(c) The governing board of each school district shall establish and define job responsibilities for those certificate noninstructional personnel, including, but not limited to supervisory and administrative personnel, whose responsibilities

cannot be evaluated appropriately under the provisions of subdivision (b), and shall evaluate and assess the competency of such noninstructional certificated employees as it reasonably relates to the fulfillment of those responsibilities.

(d) The evaluation and assessment of certificated employee competence pursuant to this section shall not include the use of publishers' norms established by standardized tests.

(e) Nothing in this section shall be construed as in any way limiting the authority of the school district governing boards to develop and adopt additional evaluation and assessment guidelines or criteria.

Amended Stats 1983 ch 498 section 29, effective July 28, 1983.

44663. Employee's Copy of Evaluation and Written Reaction; Discussion of Evaluation.

Evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee no later than 30 days before the last schoolday scheduled on the school calendar adopted by the governing board for the school year in which the evaluation takes place. The certificated employee shall have the right to initiate a written reaction or response to the evaluation. Such response shall become a permanent attachment to the employee's personnel file. Before the last schoolday scheduled on the school calendar adopted by the governing board for the school year, a meeting shall be held between the certificated personnel and the evaluator to discuss the evaluation.

Amended Stats 1983 ch 498 section 30, effective July 28, 1983.

44664. Frequency of Evaluation and Assessment; Areas of Improvement; Unsatisfactory Performance; Persons Excluded.

(a) Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis, at least once each school year for probationary personnel, and at least every other year for personnel with permanent status. The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. In the event an employee is not performing his or her duties in a satisfactory manner according to standards prescribed by the governing board, the employing authority shall notify the employee in writing of such fact and describe such unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in such performance. When a permanent certificated

employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

(b) Any evaluation performed pursuant to this article which contains an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction may include the requirement that the certificated employee shall, as determined necessary by the employing authority, participate in a program designed to improve appropriate areas of the employee's performance, and to further pupil achievement and the instructional objectives of the employing authority.

(c) Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provision of Section 44660, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board.

44670.3. Assisting Local School Personnel.

Staff development programs authorized by this article shall assist personnel at the local school site to

(a) Improve instructional, human development and counseling skills based on a systematic assessment of pupil and personnel needs at the school.

(b) Ensure that curricula and instructional materials are keyed to the educational needs of each pupil, with particular emphasis on pupils who have not achieved proficiency in basic reading, writing, and computational skills, limited and non-English-speaking pupils, disadvantaged pupils, and pupils with exceptional abilities or needs.

(c) Develop curricula and instructional materials in a wide variety of areas such as arts and humanities, physical, natural and social sciences, physical and mental health, and career education.

(d) Improve the school and classroom environments, including relationships between and among pupils, school personnel and community members, including parents.

(e) Improve pupil attendance.

(f) Maintain an awareness of current information concerning the use of drugs and other controlled substances which affect campus safety and pupil achievement.

44670.4 Programs Designed for Certificated Personnel.

Local staff development programs shall be designed by certificated personnel, including the school principal, consistent with rules and regulations adopted by the school district governing board and with school improvement objectives

established annually through a process which involves teachers and other school personnel, the principal, parents and other community members, and in the secondary school, students. Such improvement objectives shall address, but need not be limited to, the general objectives specified in Section 44670.3 and the capacity of school personnel to provide the services required of them.

CONNECTICUT10-151b. Evaluation by Superintendents of Certain Educational Personnel.

(a) The superintendent of each local or regional board of education shall, in accordance with guidelines established by the state board of education for the development of evaluation programs and such other guidelines as may be established by mutual agreement between the local and regional board of education and the teachers' representative chosen pursuant to section 10-153b, continuously evaluate or cause to be evaluated each teacher. The superintendent shall report the status of such evaluations to the local or regional board of education on or before June first of each year. For purposes of this section, the term "teacher" shall include every employee of a board of education, below the rank of superintendent, who holds a certificate or permit issued by the state board of education.

(b) On or before January first of 1983, and triennially thereafter, each local and regional board of education shall submit, in writing, to the state board of education a report on the development and implementation of teacher evaluation programs consistent with guidelines established by the state board of education.

FLORIDAFLA. Sec. 231.29 Record of Personnel.

(1) The Department of Education shall maintain a complete statement of the academic preparation, professional training and teaching experience of each person to whom a certificate is issued. The applicant, or the superintendent, shall furnish the information making up such records on forms furnished by the department.

(2) For the purpose of improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the superintendent shall establish procedures for assessing the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed in his district. A complete statement of the criteria and procedure shall include, but shall not be limited to, the following provisions:

- (a) Assessment for each individual shall be made at least once a year.
- (b) A written record of each assessment shall be made and maintained in the district.
- (c) The principal or the person directly responsible for the supervision of the individual shall make the assessment of the individual to the superintendent and the school board for the purpose of reviewing continuing contract.
- (d) Prior to preparing the written report of assessment, each individual shall be informed of the criteria and the procedure to be used.
- (e) The written report of assessment for each individual shall be shown to him and discussed by the person responsible for preparing the report.

(3) The assessment file of each individual shall be open to inspection only by the school board, the superintendent, the principal, and the individual himself and such other persons as the teacher or the superintendent may authorize in writing.

HAWAII

HI Sec. 297-46 Evaluation of Teachers and Educational Officers. The department of education shall establish an evaluation program for all teachers and educational officers. The evaluation shall be performed at least once in each school year. The program shall define the criteria for evaluation and assign responsibilities for the application of the criteria. The evaluation of a teacher or educational officer shall be on the basis of efficiency, ability, and such other criteria as the department shall determine.

IDAHOIda. 33-513 Section 5.

To establish criteria and procedures for the supervision and evaluation of certificated employees who are not employed on a renewable contract, as provided for in section 33-1212 Idaho Code. Such procedures shall require at least one(1) evaluation prior to the beginning of the second semester of the school year, and when any such teacher's work is found to be unsatisfactory, a probationary period shall be established which shall continue until the time for the reissuing of the yearly contract as provided in this paragraph. Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho Code, a decision to place certificated personnel on probationary status may be made in executive session and the individual placed on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file. This procedure shall not preclude recognition of unsatisfactory work at a subsequent evaluation and the establishment of a reasonable period of probation. In all instances, the teacher shall be duly notified in writing of the areas of work which are deficient, including the conditions of probation. Until the third year of continuous employment by the same school district, including any specially chartered district, each certificated employee shall be given notice in writing, whether he will be reemployed for the ensuing year. Such notice shall be given by the board of trustees no later than the fifteenth day of May of each year. If the board of trustees has decided not to reemploy the certificated employee, then the notice must contain a statement of reasons for such decision and the employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees.

INDIANA

20-6.1-4-10.5. Cancellation of indefinite Contract of Semi-permanent Teacher by School Corporation - Grounds.

(a) An indefinite contract with a semipermanent teacher may be cancelled in the manner specified in section 11 [20.6.1-4-11] of this chapter only for the following grounds:

- (1) Immorality
- (2) Insubordination; which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school cooperation;
- (3) Neglect of duty;
- (4) Substantial inability to perform teaching duties;
- (5) Justifiable decrease in the number of teaching positions;
- (6) Good and just cause; or
- (7) The cancellation is in the best interest of the school corporation.

(b) An indefinite contract with a semipermanent teacher may not be cancelled for political or personal reasons.

(c) The principal of the school at which the teacher teaches shall provide the teacher with a written evaluation of the teacher's performance before January 1, of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal within thirty (30) days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation. [IC 20-6.1-4-10.5, as added by Acts 1978, P.L. 110, Section 2, p. 1085.]

IOWA

IA Section 279.14. Evaluation Criteria and Procedures.

The board shall establish evaluation criteria and shall implement evaluation procedures. If an exclusive bargaining representative has been certified, the board shall negotiate in good faith with respect to evaluation procedures pursuant to Chapter 20.

KANSASKS. Section 72-9001 Legislative Intent.

It is hereby declared that the legislative intent of this act is to provide for a systematic method for improvement of school personnel in their jobs and to improve the educational system of this state.

72-9002. Definitions.

As used in this act, unless the context otherwise requires;

- (a) "Board means the board of education of a school district and the governing authority of any non-public school offering any of grades kindergarten to 12 in any accredited school.
- (b) "State board" means the state board of education.
- (c) "Employees" means all certificated employees of school districts and of nonpublic schools.
- (d) "School year" means the period from July 1 to June 30.
- (e) "Accredited" means accredited by the state board, whether the accreditation applies to a single school, to all of the schools of a district or to one or more nonpublic schools.

72-9003. Policy of Personnel Evaluation; Adoption; Filing; Form; Contents; Time.

Prior to January 15, 1974, every board of education shall adopt a written policy of personnel evaluation procedures in accordance with this act and file the same with the state board. Every policy so adopted shall:

- (a) Be prescribed in writing at the time of original adoption and at all times thereafter when amendments thereto are adopted. The original policy and all amendments thereto shall be promptly filed with the state board.
- (b) Include evaluation procedures applicable to all employees,
- (c) Provide that all evaluations are to be made in writing and that evaluation documents and responses thereto are to be maintained in a personnel file for each employee for a period of not less than three years from the date each evaluation is made.
- (d) Provide that commencing not later than the 1974-75 school year, every employee in the first two (2) consecutive years of his employment shall be evaluated at least two (2) times per year, and that every employee during the third and fourth years of his employment shall be evaluated at least one (1) time each year, and that after the fourth year of his employment every employee shall be evaluated at least once in every three (3) years.

72-9004. Same, Criteria, Development of; Evaluation Procedure. Evaluation policies adopted under K.S.A. 1979 Supp. 72-9003, and amendments thereof, should meet the following guidelines or criteria:

(a) Consideration should be given to the following personal qualities and attributes; Efficiency, personal qualities professional deportment, ability, health (both physical and mental), results and performance, including in the case of teachers, the capacity to maintain control of students, and such other matters as may be deemed material.

(b) Community attitudes toward, support for an expectations with regard to educational programs should be reflected.

(c) The original policy and amendments thereto should be developed by the board in cooperation with the persons responsible for making evaluations and the persons who are to be evaluated and, to the extent practicable, consideration should be given to comment and suggestions from other community interests.

(d) Evaluations of the superintendent of schools and of any similar employee of the nonpublic schools shall be made by the board. The board shall place primary responsibility upon members of the administrative staff in making evaluations of other employees.

(e) Persons to be evaluated should participate in their evaluations including an opportunity for self-evaluation.

72-9005. Evaluation documents; Presentation to Employees; Acknowledgement; Limited Availability.

Whenever any evaluation is made of an employee, the written document thereof shall be presented to the employee, and the employee shall acknowledge such presentation by his or her signature thereof. At any time not later than two (2) weeks after such presentation, the employee may respond thereto in writing. Except by order of a court of competent jurisdiction, evaluation documents and responses thereto shall be available only to the evaluated employee, the board, the appropriate administrative staff members designated by the board, the school board attorney upon request of the board, the state board of education as provided in K.S.A. 72-7515, the board and the administrative staff of any school to which such employee applies for employment, and other persons specified by the employee in writing to his or her board.

72-9006 State Board Policy Preparation Assistance; Failure to File Policies; Penalties.

Upon the request of any board, the state board shall provide assistance in the preparation of original policies of personnel evaluation or amendments thereto. In the event that any board has failed to file an adopted policy

as provided by this act on or before January 15, 1974, or if any board fails to file any adopted amendment to such original policy within a reasonable time after adoption thereof, the state board may apply penalties as prescribed by rules and regulations applicable to accreditation of schools.

KENTUCKY**KRS 156.101**

As a means of improving the educational productivity of Kentucky's public schools, of providing a method by which the citizens of the Commonwealth can be assured of measures of accountability of the performance of certified school employees, and of providing encouragement and incentives for certified school employees to improve their performance, the state board of education shall establish a statewide program for improving the performance of all certified school personnel, including instructional leaders.

The certificated employee evaluation programs shall contain the following provisions:

Effective January 1, 1985, each certificated school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the state department of education; and

The state department of education shall develop written guidelines for local school districts to follow in developing and implementing an evaluation system and shall require the following:

- All evaluations shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;
- The immediate supervisor of the certified school employee shall be conducted openly and with full knowledge of the teacher;
- Evaluation shall include a conference between the evaluator and the person evaluated;
- Evaluators shall be trained in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system; and
- The evaluation system shall include a plan whereby the person evaluated is given assistance for becoming more proficient as a teacher or administrator.

LOUISIANA

LRS Section 17: 391.5 School Personnel Assessment and Evaluation

A. The state Department of Education shall develop a set of guidelines for assessment and evaluation of the performance of certified teachers, administrators, and other professional school personnel in the state for adoption by each school board. The guidelines shall be reviewed by the Joint Legislative Committee on Education of the Louisiana Legislature. Such guidelines shall be submitted by the superintendent of education to the local school boards no later than June 1, 1978, and shall include but not be limited to the following:

(1) The establishment of criteria of expected teaching performance in each area of teaching and of techniques for the assessment and evaluation of that performance.

(2) Assessment and evaluation of competence of certified teachers as it relates to the established criteria.

(3) The preparation, with the assistance of the State Department of Education, of job descriptions for all certified teachers, administrators, and other professional school personnel, such job descriptions to include a list of all duties, and

(4) The establishment of criteria and the assessment of the performance of other school personnel.

In the development of these guidelines and procedures, the State Department of Education shall avail itself of the advice of the state certified teachers and other school personnel

B. A committee composed of twelve members, six of whom will be appointed from the State Department of Education by the superintendent, one member appointed by the Louisiana School Board's Association, one member appointed by the Louisiana Association of School Superintendents, one member appointed by the Louisiana Principal's Association, one member appointed by the Louisiana Teachers' Association, one member appointed by the American Federation of Teachers, shall develop a set of guidelines for assessment and evaluation of the performance of professional personnel in the State Department of Education. Such guidelines shall be reviewed by the Joint Legislative Committee on Education of the Louisiana Legislature.

C. No later than August 15, 1978, each school board shall adopt a system of personnel evaluation and assessment based on the guidelines submitted by the superintendent of education. Evaluation and assessment of performance of each certified employee shall be made on a continuing basis, at least once each school year for probationary personnel, and at least every third year for personnel with permanent status. The evaluation shall consist of an appraisal of the performance of the employee in the extension of teaching duties and responsibilities. In the event an employee is considered not performing his duties in a satisfactory manner then the

employing authority shall thereafter confer with the employee making specific recommendations as to areas of considered performance of the employee and to assist him to correct such considered deficiencies within a prescribed period of time. Assistance may include but not be limited to in-service training programs or such other appropriate programs.

D. No evaluation and assessment shall be made except in writing and a copy thereof shall be transmitted to the school employee not later than fifteen days after the evaluation takes place. The employee shall have the right to initiate a written reaction or response to the evaluation. Such response and evaluation shall become a permanent attachment to the single official personnel file for the employee. After the evaluation has been transmitted to the employee and before the end of the school year, a meeting shall be held between the certified employee and the appropriate official of the local governing board in order that the employee may respond to the evaluation and have the opportunity to amend, remove, or strike any proven inaccurate or invalid information as may be found within the written evaluation and from the employee's file. The employee shall have the right to receive proof by documentation of any item contained in the evaluation that the employee believes to be inaccurate, invalid or misrepresented. If documentation is not presented, such items shall be removed from the evaluation.

E. Copies of the assessment and evaluation report of any school employee retained by the school board are confidential, do not constitute a public record, and shall not be released or shown to any person except:

(1) To said school employee or his designated representative (s).

(2) To authorized school district officers and employees for all personnel matters and for any hearing which relates to personnel matters, and

(3) For introduction in evidence or discovery in any court action between the board and the certified teacher in which either;

(a) the competency of the teacher is at issue; or

(b) the assessment and evaluation was an exhibit at a hearing, the result of which is challenged.

The superintendent of education shall make available to the news media and other agencies such data as may be useful for conducting statistical analyses and evaluations of educational personnel, but shall not reveal information pertaining to the assessment and evaluation report of a particular teacher.

F. Each school board shall annually file a report with the superintendent of education containing such information relative to the evaluation of school personnel according to the guidelines set by the superintendent as the superintendent shall direct. Based on such report, the State Department of Education shall annually compile a report listing the results of assessment in the various school districts and proposals for the improvement of school personnel and shall file such report with the education committee of the two houses of the legislature.

MASSACHUSETTS**Chapter 71: 38G**

The first certificate which the board may grant to any eligible applicant shall be a provisional certificate for two years from the date thereof. Before the board grants any other certificate, the applicant shall be evaluated by an evaluation committee in the manner hereinafter provided.

Each evaluation committee shall be under the auspices of the school committee which employs the applicant and shall consist of persons who hold a permanent certificate or who have been exempted from holding a certificate under section two of chapter two hundred and seventy-eight of the acts of nineteen hundred and fifty-one. Each evaluation committee shall consist of three persons, one of whom shall be appointed by the school committee, one nominated by the applicant, or, if the applicant chooses, by the applicable local professional bargaining agent, and appointed by the commissioner of education; and the third shall be appointed by the other two members of the evaluating committee from professional in the same field as the applicant or as closely allied thereto as possible. In the event the other two do not nominate a person within ten working days after they have been appointed, the commissioner of education shall appoint a third independent member. Whenever an employee of any school committee, state college, or any public agency is appointed to membership on an evaluation committee, his employer shall grant him sufficient leave for his regular duties, without loss of income or any other benefits to which he is entitled by reason of his employment to attend meetings of the evaluation committee and to perform the duties imposed upon him by reason of his membership of the evaluation committee.

Before an applicant completes a second year of service under his provisional certificate, he shall be evaluated by the evaluation committee described in the preceding paragraph as to his readiness to obtain a permanent certificate in terms of his professional growth and performance. Any evaluation made by the evaluation committee shall be based on criteria determined by the board. Each evaluation committee shall be established in sufficient time so that its recommendations shall be forwarded to the board not later than January fifteenth of the last school year in which the applicant is able to teach under his provisional certificate.

The evaluation committee may recommend to the board that the applicant be granted a permanent certificate, and if the applicant has met the other requirements established by the board, the board shall grant the applicant a permanent certificate.

The evaluation committee may, as one of its alternatives, recommend that the applicant's provisional certificate be renewed for an additional two years, and if the applicant has met the other requirements established by the board, the board shall grant the applicant a renewal of his provisional certificate for two years. No renewal certificate may be granted thereafter. During his second year of service under a renewal provisional certificate the applicant shall be reevaluated in accordance with the provisions that govern the evaluation of an applicant under an initial provisional certificate.

If the evaluation committee recommends that a renewal of the original provisional certificate shall not be granted to an applicant or if the evaluation committee recommends that a permanent certificate shall not be granted to an applicant or the board denies a renewal of a provisional certificate or of a permanent certificate to an applicant because he has not met all the requirements of eligibility as provided in this section, the board shall notify the applicant of the adverse recommendation of the evaluation committee or the denial of certification by the board, and such notice shall be accompanied by a report of the evaluation committee or a report of the reasons for the denial of certification by the board, as the case may be, and a description of the procedures by which the applicant may initiate an appeal before a hearing officer as hereinafter provide and such notice shall be mailed to the applicant by registered or certified mail no later than February first of the year in which the evaluation committee has made its recommendations. The board shall provide the applicant with a list of five qualified hearing officers from which the applicant, if he requests a hearing, may select one person, and the applicant shall so notify the board in writing of his selection of a hearing officer prior to February tenth of such year. The board shall mail the applicant by registered or certified mail a notice stating the time and place of the hearing at least ten days before the scheduled date of the hearing and the hearing shall be held before March twentieth of such year. The board shall employ and compensate a stenographer who shall take stenographic notes of the hearing. The applicant shall be entitled to be represented by counsel and may call witnesses to testify in his behalf and may examine and cross-examine witnesses. It shall be the responsibility of the hearing officer to consider whether the criteria established by the board were adhered to and appropriately applied, and to make a recommendation as to whether or not the evaluation and the determination regarding eligibility should be accepted.

The hearing shall be reviewed by the board. If the board then decides, based on the facts found by the hearing officer, that the provisional certificate should not be renewed or that a permanent certificate should not be granted, as the case may be, it shall so notify the applicant by registered or certified mail on or before April seventh of such year and the applicant shall have the right to judicial review as provided in Chapter Thirty A.

MISSISSIPPI**Section 37-3-43. State Program of Educational Accountability and Assessment of Performance - Declaration of Purpose.**

(1) The legislature hereby declares that the purpose of sections 37-3-43 to 37-3-47 is to initiate and maintain a state program of educational accountability and assessment of performance by the state department of education which will obtain and provide meaningful information to the citizens about the public elementary and secondary education schools in the state. This information about educational performance should relate to educational goals adopted by the department to student achievement in areas of the school curriculum, and to investigation of meaningful relationships within this performance.

(2) The legislature further declares that public school districts shall participate in the state accountability and assessment program and adopt compatible district plans in order to achieve improved educational accountability and to report meaningful information and results to the public.

Section 37-3-45. State Program of Educational Accountability and Assessment of Performance - Duties of State Department of Education.

(1) The state department of education shall develop a state accountability and assessment program which will:

(a) Establish a procedure for the continuing examination and updating of adopted state goals for elementary and secondary education.

(b) Identify goal-related performance objectives that will lead toward achieving stated goals.

(c) Establish procedures for evaluating the state's and school district's performance in relation to stated goals and objectives. Appropriate instruments to measure and evaluate progress shall be used to evaluate student performance.

(2) The state's program shall provide for an annual review which shall include assessing the performance of students in at least the public elementary and secondary schools in such areas of knowledge, skills, attitudes and understandings, and other characteristics or variables that will aid in identifying relationships and differentials in the level of educational performance that may exist between schools and school districts in the state.

(3) The state department of education shall:

(a) Promulgate rules for the implementation of this section.

(b) Enter into such contracts as may be necessary to carry out its duties and responsibilities under this section.

(c) Establish recommendations for components of school district accountability programs and provide technical assistance to school districts in planning and implementing their plans.

(d) Provide in-service training for personnel who will be involved in carrying out the state's program of educational accountability and assessment of performance.

(e) Monitor periodically the assessment and evaluation of programs implemented by school districts and make recommendations for their improvement and increased effectiveness.

(f) Annually report and make recommendations to the governor and legislature, the state board of education, school boards, and the general public on its findings with regard to the performance of the state elementary and secondary education school system.

(4) The state department of education may establish a state advisory committee on educational accountability to make recommendations as assist it in carrying out its responsibilities under this section.

Section 37-3-46. Assistance to Local School Districts to Establish Program of Educational Accountability and Assessment of Performance; Personnel Appraisal and Compensation System for School Employees; Programs to Prevent Dropouts. From and after July 1, 1983, the state department of education shall:

(a) Provide to local school districts financial, training and other assistance to implement and maintain a state program of educational accountability and assessment of performance.

(b) Provide to local school districts technical assistance and training in the development, implementation and administration of a personnel appraisal and compensation system for all school employees. The state board of education shall report to the legislature on January 5, 1986, with recommendations based upon the personnel appraisal and compensation system developed under this subsection.

(c) Provide to local school districts technical assistance in the development, implementation and administration of programs designed to keep children in school voluntarily and to prevent dropouts.

MISSOURI

168.128. Teacher Records, How Maintained - Evaluations, How Performed and Maintained.

The board of education of each school district shall maintain records showing periods of service, dates of appointment, and other necessary information for the enforcement of sections 168.102 to 168.130. In addition the board of education of each school district shall cause a comprehensive, performance-based evaluation for each teacher employed by the district. Such evaluations shall be ongoing and of sufficient specificity and frequency to provide for demonstrated standards of competency and academic ability. All evaluations shall be maintained in the teacher's personnel file at the office of the board of education. A copy of each evaluation shall be provided to the teacher by an appropriate administrator. The state department of elementary and secondary education shall provide suggested procedures for such an evaluation.

NEVADANV Section 391.3125 Evaluation of Teachers, Certificate School Support Personnel.

1. It is the intent of the legislature that a uniform system be developed for objective evaluation of teachers and certificated school support personnel in each school district.

2. Each board of school trustees, following consultation and involvement of elected representatives of teacher personnel or their designee, shall develop an objective evaluation policy which may include self, student, administrative or peer evaluation or any combination thereof. In like manner, counselors, librarians and other certificated school support personnel shall be evaluated on forms developed specifically for their respective specialties. A copy of the evaluation policy adopted by the board of trustees shall be filed with the department of education.

3. The probationary period must include a conference and a written evaluation for the probationary employee no later than:

- (a) November 1;
- (b) January 1;
- (c) March 1; and
- (d) May 1,

of the school year.

4. Each postprobationary teacher shall be evaluated at least once each year.

5. The evaluation of a probationary teacher or postprobationary teacher, shall, if necessary, include recommendations for improvements in teacher performance. A reasonable effort shall be made to assist the teacher to correct deficiencies noted in the evaluation. The teacher shall receive a copy of each evaluation not later than 15 days after the evaluation. A copy of the evaluation and the teacher's response shall become a permanent attachment to the teacher's personnel file.

NEW JERSEY

NJAC 6: 3-1.19 Supervision of instruction; observation and evaluation of nontenured teaching staff members

(a) For the purpose of this Section, the term "observation" shall be construed to mean a visitation to a classroom by a member of the administrative and supervisory staff of the local school district, who holds an appropriate certificate for the supervision of instruction, for the purpose of observing a nontenured teaching staff member's performance of the instructional process:

1. Each of the three observations required by law shall be conducted for a minimum duration of one class period in a secondary school, and in an elementary school for the duration of one complete subject lesson.

(b) The term "evaluation" shall be construed to mean a written evaluation prepared by the administrative or supervisory staff member who visits the classroom for the purpose of observing a teaching staff member's performance of the instructional process....

(d) Each policy for the supervision of instruction shall include addition to those observations and evaluations hereinbefore described, a written evaluation of the nontenured teaching staff member's total performance as an employee of the district board of education....

(f) The purpose of this procedure for the observation and evaluation of nontenured teaching staff members shall be to identify deficiencies, extend assistance for the correction of such deficiencies, improve professional competence, provide a basis for recommendation regarding reemployment, and improve the quality of instruction received by the pupils served by the public schools....

NJAC 6:3-1.21 Evaluation of tenured teaching staff members

(a) Every district board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certificated personnel.

(b) The purpose of the annual evaluation shall be to:

(1) Promote professional excellence and improve the skills of teaching staff members;

(2) Improve pupil learning and growth;

(3) Provide a basis for the review of performance of tenured teaching staff members.

(c) The policies and procedures shall be developed under the direction of the district's chief school administrator in consultation with teaching staff and shall include but not be limited to:

.....
(6) Preparation of individual professional improvement plans;

(7) Preparation of an annual written performance report by the supervision and an annual summary conference between the supervisor and the teaching staff member.

NEW MEXICO

Section 22-10-6. School Principals; Additional Duties.
The position of school principal is hereby recognized.
In addition to other duties prescribed by law, a public school principal shall be responsible for:

(A) Assuming administrative responsibility and instructional leadership, under the supervision of the local superintendent of schools, with regard to the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school to which he is assigned;

(B) Submitting recommendations to the local superintendent concerning evaluation, promotion, transfer and dismissal of all personnel assigned to the school to which he is assigned; and

(C) Performing any other duties assigned him by the local superintendent pursuant to local school board policies. Nothing in this section shall be construed as a limitation on the powers, duties and obligations of a local school board.

NORTH CAROLINA

**NC Public School Laws of North Carolina Section 115C-326.
Uniform Performance Standards and Criteria for Professional
Employees.**

The State Board of Education in consultation with local boards of education, shall develop uniform performance standards and criteria to be used in evaluating professional public school employees. It shall develop rules and regulations to insure the use of these standards and criteria in the employee evaluation process. The performance standards and criteria shall be adopted by the Board by July 1, 1982, and may be modified in the discretion of the Board.

Local boards of education shall adopt rules and regulations by July 1, 1982, to provide for annual evaluation of all professional school employees defined as teachers by G.S. 115C-325 (a) (6). Local boards may also adopt rules and regulations requiring annual evaluation of other school employees not specifically covered in this section. All such rules and regulations adopted by local boards shall utilize performance standards and criteria adopted by the State Board of Education pursuant to the first paragraph of this section; however, the standards and criteria used by local boards are not to be limited by those adopted by the State Board of Education.

**North Carolina Public Education - Public Instruction
NCAC - Section .0600 Performance Appraisal System
.0601 General Provisions.**

(a) Every local board of education shall provide for the annual evaluation of all professional employees. This evaluation shall be based upon performance standards and criteria as specified in this section. A local board of education may adopt additional performance standards and criteria which are not in conflict with this section.

(b) The primary purpose of the employee performance appraisal system is to assist employees to improve the instructional program for the students. The appraisal system encourages job-performance improvement and professional growth, which contributes to the effectiveness with which employees carry out their work. A second purpose of the performance appraisal system is to assist management and leadership personnel in making personnel decisions.

(c) Teachers shall be evaluated by the principal or the superintendent's designee.

(d) The principal shall be evaluated by the superintendent or the superintendent's designee.

(e) Teachers and principals shall be informed of their job descriptions and the performance standards and criteria by which they will be appraised.

(f) All teachers and principals shall be provided an orientation on the performance appraisal system by the local school administrative unit.

(g) Information obtained through performance appraisal shall provide:

(1) A basis for self-improvement on the part of the professional personnel, and

(2) Data to be used in planning staff development activities for individuals and groups of individuals at the school, administrative unit, regional and State levels.

(h) Teachers and principals shall have the right to record written comments or to register dissent on their performance appraisal instruments.

(i) A rating scale shall be adopted by each local board of education for use on the teacher and principal performance appraisal instruments to include the following categories: Exceeds Performance Expectations; Meets Performance Expectations; Needs Improvement in Performances; and Not Applicable. In addition, a local board may adopt a four point scale to include the category of Performs Unsatisfactorily or a five-point scale to include the categories of Superior Performance and Performs Unsatisfactorily.

History Note: Filed as Temporary Rule Eff. July 1, 1982, for a period of 120 days to expire on October 28, 1982; Statutory Authority G.S. 115C-326.

.0602. Teacher Performance Standards and Criteria.

(a) The following are Broad Program Functions. They refer to planning, operating, and updating the grade level instructional program as a total program extending over the school year.

(1) Major Function: Planning the Program

(A) Contributes as requested to the development of annual objectives for the school

(B) Develops an annual instructional plan that includes the formulation of objectives, strategies, timelines, and evaluation procedures consistent with annual school objectives.

(2) Major Function: Overseeing the Program

(A) Applies curriculum scope, sequence, continuity, and balance in carrying out the annual instructional plan.

(B) Implements learning strategies that address the student needs identified in the annual instructional plan.

(C) Uses appropriate evaluation methods to determine whether the annual instructional plan is working.

(D) Makes changes in the annual instructional plan

when evaluation indicates a need, and seeks advice and assistance if required.

(3) Major Function: Updating the Program

(A) Renews competence and keeps up with advances in child growth and development and uses this knowledge to improve the instructional program.

(B) Renews competence and keeps abreast of new knowledge, research, and practice in subject area(s) and applies this knowledge to improve the instructional program.

The following are particular Technical Functions. They refer to the means by which the teacher adapts the broad program functions to lessons and units of study on a daily basis.

(A) Prepares daily lesson plan, makes classroom presentations, conducts discussions, encourages practice, and corrects student work in a manner that demonstrates subject area competence.

(B) Correlates subject matter to students' interests, needs, and aptitudes.

(C) Uses resource, materials, and enrichment activities that are related to the subject(s).

(D) Employs instructional methods that are appropriate to the instructional objectives.

(E) Involves students, parents, and others as needed to help insure that students keep up with daily lessons.

(5) Major Function: Differentiating Instruction.

(A) Identifies students' strengths and weaknesses in relation to objectives to determine if grouping is required because of differing skill levels.

(B) Groups students as needed for effective teaching.

(C) Differentiates curriculum content when employing grouping, using the school's media center to support and supplement instructional activities.

(D) Provides instructional activities that aid students in becoming independent learners.

(6) Major Function: Individualizing Instruction

(A) Monitors individual student achievement of objectives as teaching occurs.

(B) Provides individual students with prompt feedback on their progress and provides necessary remediation.

(C) Adjusts instruction to objectives and individual student needs on a daily basis.

(D) Arranges to have appropriate materials and equipment available to satisfy individual needs.

(7) Major Function: Supervising

- (A) Manages the daily routine so that students know what they are to do next and are able to proceed without confusion.
- (B) Keeps student talk and movement at a level that lets each student attend to his or her instructional task without interruption.
- (C) Maintains a pleasant working atmosphere that does not stifle spontaneity and warmth.

The following are indirect Facilitating Functions. They refer to a moderately related set of activities that do not involve direct teaching between teacher and student, but have important effects on the success of that direct teaching. Non-instructional duties refer to the teacher's essential role in the logistics of administering a program to a large social group of several hundred students in a limited space.

(8) Major Function: Human Resources.

- (A) Uses student talent as a resource in instructing, developing materials, and operating equipment.
- (B) Makes appropriate use of volunteers and resource teachers with special skills and knowledge.
- (C) Makes use of appropriate community resources to extend classroom learning.
- (D) Makes effective use of other professional personnel to improve instruction and classroom management.

(9) Major Function: Human Relations.

- (A) Shows respect for the worth and dignity of all students.
- (B) Is aware of and encourages tolerance of cultural differences when they are not inconsistent with the instructional objectives.
- (C) Establishes rapport with parents.

(10) Major Function: Non-Instructional Duties.

- (A) Carries out non-instructional duties as assigned or as a need is perceived.
- (B) Adheres to established laws, rules and regulations.

NORTH DAKOTA

Section 15-47-27.1 First Year Teachers - Evaluation- Renewal and Nonrenewal.

Each school district and the director of institutions in this state shall have an established system through which two written evaluations are prepared during each school year for every teacher who is in his or her first year of teaching. The evaluation must be in the form of written performance reviews, and the first review must be completed and made available to first-year teachers no later than December fifteenth and the second review must be completed and made available no later than February twenty-eighth of each year. If a school board or the director of instruction determines not to renew the contract of a first-year teacher, written notification of the decision of nonrenewal must be given to the teacher no earlier than April fifteenth nor later than May first. Failure by a school board or the director of instruction to provide written notification of nonrenewal to a first-year teacher by May first constitutes an offer to renew the contract of the teacher for the ensuing school year under the same terms and conditions as the contract for the current year. Such notification of nonrenewal given to a first year teacher must contain a detailed description of the reason or reasons for the non-renewal.

OHIO

Section 3301-35-03 Educational Resources.

Resources for implementation of the educational program shall be allocated in accordance with adopted policies which cover paragraphs (A) to (K) of this rule. Board policies shall be available to parents, pupils, and school personnel.

(A) Certificated and classified staff shall be recruited, employed, assigned, evaluated, and provided inservice education without discrimination on the basis of age, color, national origin, race, or sex.

.....

(8) Certificated and classified staff shall be supervised and evaluated according to a planned sequence of observations and evaluation conferences.

(9) Certificated and classified staff shall have opportunities to participate in inservice education which shall include:

- (a) Cooperative planning, implementation and evaluation;
- (b) Job-related training in areas of need identified in personnel evaluations;
- (c) Orientation activities for new employees.

Annual inservice education for certificated staff shall include instructional methods, subject matter updates, and strategies for preventing and correcting disruptive behavior.

(10) Records shall be maintained on staff participation in inservice education and educational program development.

OKLAHOMA

Section 6-102.2 Establishment of Written Policy of Evaluation
Prior to October 15, 1977, each board of education shall establish, following consultation or involvement by representatives selected by local teachers, a written policy of evaluation for all teachers, including administrators, in accordance with this act. In those school districts in which there exists a professional negotiations agreement made in accordance with Sections 509.1 et seq. of Title 70 of the Oklahoma Statutes, the procedure for evaluating members of the negotiations unit shall be a negotiable item. Nothing in this act shall be construed to annul, modify or to preclude the renewal or continuing of any existing agreement heretofore entered into between any school district and any organizational representative of its employees. Every policy so adopted shall:

1. Be prescribed in writing at the time of adoption and at all times when amendments thereto are adopted. The original policy and all amendments to the policy shall be promptly made available to all teachers;
2. Provide that all evaluations be made in writing and that evaluation documents and responses thereto are to be maintained in a personnel file for each teacher;
3. Provide that commencing not later than the 1977-78 school year every probationary teacher shall be evaluated at least two times per school year, once prior to November 15 and once prior to February 10 of each year, and that every tenured teacher shall be evaluated at least once every three (3) years, except as otherwise provided by law; and
4. Provide that, except for superintendents who shall be evaluated by the local school board, all certificated personnel, including administrators, shall be evaluated by certificated administrative personnel designated by the local school board.

Section 6-1-2.3 Copy of Evaluation to Teacher.

Whenever any evaluation is made of a teacher, a true copy of the evaluation shall be presented to the teacher. The teacher shall acknowledge the written evaluation by his signature thereon. Within two (2) weeks after the evaluation, the teacher may respond and said response shall be made part of the record. Except by order of a court of competent jurisdiction, evaluation documents and the responses thereto shall be available only to the evaluated teacher, the board of education, the administrative staff making the evaluation, the board and the administrative staff of any school to which such teacher applies for employment, the hearing panel described herein and such other persons as are specified by the teacher in writing.

OREGON

342.850. (1) The district superintendent of every school district, including superintendents of education service districts, shall cause to have made at least annually but with multiple observations an evaluation of performance for each probationary teacher employed by the district and at least biennially for any other teacher. The purpose of the evaluation is to allow the teacher and the district to determine the teacher's development and growth in the teaching profession and to evaluate the performance of the teaching responsibilities. A form for teacher evaluation shall be prescribed by the State Board of Education and completed pursuant to rules adopted by the district school board.

(2) (a) The district school board shall develop an evaluation process in consultation with school administrators and with teachers. If the district's teachers are represented by the local bargaining organization, the board shall consult with teacher's belonging to and appointed by the local bargaining organization in the consultation required by this paragraph.

(b) The district board shall implement the evaluation process that includes:

(A) The establishment of job descriptions and performance goals for the teacher, based on the job description and performance standards;

(B) A preevaluation interview which includes but is not limited to the establishment of performance goals for the teacher, based on the job description and performance standards;

(C) An evaluation based on written criteria which include the performance goals; and

(D) A post-observation conference in which (i) the results of the evaluation are discussed with the teacher and (ii) a written program of assistance for improvement, if needed, is established.

(c) Nothing in this subsection is intended to prohibit a district from consulting with any other individuals.

(3) Except in those districts having an average daily membership, as defined in ORS 327.006, of fewer than 200 students, the person or persons making the evaluation must hold teaching certificates. The evaluation shall be signed by the school official who supervises the teacher and by the teacher. A copy of the evaluation shall be delivered to the teacher.

(4) The evaluation report shall be maintained in the personnel files of the district.

(5) The evaluation report shall be placed in the teacher's personnel file only after reasonable notice to the teacher.

(6) A teacher may make a written statement relating to any evaluation, reprimand, charge, action or any matter placed in the teacher's personnel file and such teacher's statement shall be placed in the personnel file.

(7) The personnel file shall be open for inspection by the teacher, the teacher's designees and the district school board and its designees. District school boards shall adopt rules governing access to personnel files, including rules specifying whom school officials may designate to inspect personnel files.

PENNSYLVANIASection 1123. Rating System.

In determining whether a professional employe shall be dismissed for incompetency, and in rating the services of a temporary professional employe, the professional employe or temporary professional employe shall be rated by an approved rating system which shall give due consideration to personality, preparation, technique, and pupil reaction, in accordance with standards and regulations for such scoring as defined by rating cards to be prepared by the Department of Public Instruction, and to be revised, from time to time, by the Department of Public Instruction with the cooperation and advice of a committee appointed by the Superintendent of Public Instruction, including representation from district superintendents of schools, classroom teachers, school directors, school supervisors, and such other groups or interests as the Superintendent of Public Instruction may deem appropriate. Rating shall be done by or under the supervision of the superintendent of schools or, if so directed by him, the same may be done by an assistant superintendent, a supervisor, or a principal, who has supervision over the work of the professional employe or temporary professional employe who is being rated: Provided, That no unsatisfactory rating shall be valid unless approved by the district superintendent.

SOUTH CAROLINA

SC Code of Laws of South Carolina, 1976 Chapter 26 [New] Training, Certification and Evaluation of Public Educators. 59-26-10. Intent; Guidelines for implementation.

It is the intent of this chapter to provide for a fair and comprehensive program for the training, certification, initial employment and evaluation of public educators in this State. The following guidelines, which further constitute the intent of this chapter shall be adhered to by all state and local officials, agencies and boards in interpreting and implementing the provisions of this chapter so that the program provided for herein shall:

- (a) Upgrade the standards for educators in this state in a fair professional and reasonable manner.
- (b) Assure that prospective teachers have basic reading, mathematics and writing skills.
- (c) Improve the educator training programs and the evaluation procedures for these programs.
- (d) Insure that prospective teachers know and understand their teaching areas and are given assistance toward the achievement of their potential.
- (e) Enable the use of evaluation standards that will aid in determining whether beginning teachers can apply fundamental teaching skills in the classroom.

59-26-30. Special Project for Development of Teacher Examinations and Evaluation Instruments.

The State Board shall:

(a) Establish a special project under the director who is employed by the Educator Improvement Task Force. Such employees and consultants may be employed by the director as he deems necessary to fulfill the mandates of this chapter. The salary and expenses of the director and other personnel shall be paid out of appropriations for the Department of Education. In considering employment of a director and other personnel, first consideration should be given to persons who have been involved in areas of the testing of teacher and prospective teacher competencies and identification and evaluation of teacher competencies.

(b) Delegate responsibilities to the director that shall include but not be limited to:

- (1) Development of selection of a basic skills examination in reading, writing and mathematics that is suitable for determining whether students should be fully admitted into an undergraduate teacher education program. The examination shall be designed so the results can be

reported in a form that will provide the colleges, universities and student with specific recommendation about his strengths and weaknesses. Procedures, test questions and information from existing examinations shall be used to the maximum extent in the development of examination. The examination shall be validated in accordance with current legal requirements. The passing score on the examination shall be set at a level that reflects the degree of competency in the basic skills that in the judgment of the State Board and Task Force, a prospective school teacher reasonably should be expected to achieve.

(2) Development or selection of South Carolina Teaching Examinations that can measure the cognitive teaching area competencies desired for initial job assignments in typical elementary and secondary schools in the state. The examination shall contain a minimum amount of common or general knowledge questions. They shall be designed so that results can be reported in a form that will provide a student with specific information about his strengths and weaknesses. Procedures, test questions and information from existing examinations and lists of validated teacher competencies shall be used to the maximum extent in the development of the examinations. An examination that is completely developed by an organization other than the special project may be considered for use as a whole only if the project director and a majority of the members of the Educator Improvement Task Force conclude that the development and maintenance of a specific area test is impractical or would necessitate exorbitant expenses. The examination shall be validated and ready for use as soon as practical, but no later than July 1, 1982. The teaching examinations shall be developed or selected only for those areas in which area examinations of the National Teacher Examination are not applicable.

(3) Develop an observational instrument to be used by the local school district to evaluate a teacher during his provisional year of teaching in such form that the results of the evaluation can be used to inform the teacher of his strengths and weaknesses. The instrument shall be validated in accordance with current legal requirements.

(4) Report at least once each month to the Educator Improvement Task Force and provide advice and assistance to the Task Force when it is requested.

(5) Submit all major questions to the Task Force for a decision on each question. When it is impractical to submit a question to the entire Task Force, the director shall consult with the chairman who may provide guidance in the matter.

(6) Develop a training program for observer reliability in using the instrument developed in subsection (b)(3) and develop policies and procedures to insure that all observers who use the instrument have had the reliability training prior to use of the evaluation instrument.

(7) Develop an evaluation instrument to be used by colleges and universities to evaluate all student teachers. The instrument shall be developed on the basis of acceptable criteria for teaching effectiveness. The instrument shall be designed to provide feedback and assistance to the student teacher regarding any identified deficiencies.

59-26-40. Provisional period; annual contract; continuing contract; persons trained outside the state; teachers certified under trades and industrial education certification process.

A person who receives a teaching certification as provided in Section 3 may be employed by any school district under a nonrenewable provisional contract. All school districts shall comply with procedures and requirements promulgated by the Board of Education relating to aid, supervision, and evaluation of persons teaching under a provisional contract. All teachers working under a provisional contract shall be paid at least the beginning salary on the state minimum salary schedule.

Each school district shall use the evaluation instrument developed in accordance with Section 3 to evaluate all provisional teachers at least three times. The results of a teacher's evaluation shall be provided to the teacher in writing. Each school district shall give provisional teachers appropriate advice and assistance to help remedy any deficiencies that are detected by the three required evaluations. Such advice and assistance shall include, but not be limited to, state procedures and programs developed in accordance with Section 3 of this act.

At the end of a one-year provisions contract period, the evaluation shall be reviewed by the school district to determine if the provisional teacher has performed at the level required by the evaluation instrument. If the evaluations indicate that the provisional teacher is deficient in teaching ability, the school district may employ such teacher for an additional year under a provisional contract or the district may terminate his employment. If employment is terminated, another school district may employ him under a new one-year provisional contract. No person may be employed as a provisional teacher for more than two years, This paragraph shall not preclude his employment under an emergency certificate in extraordinary circumstances if such employment is approved by the State Board of Education.

During the one-year provisional contract period the employment dismissal provisions of Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code shall not apply.

After successful completion of the one-year provisional period, a teacher who is fully certified may be employed by any school district under a one-year annual contract. The decision by the school district to continue a teacher's employment beyond an annual contract shall be based on written evaluations conducted at least two times annually using an evaluation instrument that at least meets the criteria established by the State Board of Education for an acceptable instrument. Evaluators shall complete a program of reliability training. School districts shall give the results of a teacher's evaluation in writing to the teacher and shall counsel him concerning his strengths and weaknesses as a teacher. School districts shall use deficiencies identified by the evaluations of teachers on annual contracts as a guide to the establishment of staff development programs.

A teacher shall be employed for a maximum of two years under annual contracts. This paragraph shall not preclude his employment under an emergency certificate in extraordinary circumstances if such employment is approved by the State Board of Education.

The teacher failing to receive the annual or continuing contract shall not be employed as a classroom teacher in any public school in this state for a minimum of two years. Prior to reentry as a provisional or annual contract teacher, he must complete six units of credit for certificate renewal and six units of credit for remediation in areas of identified deficiencies. The teacher shall reenter at the contract level which he had attained before dismissal and continue toward the next contract level. The provisions of this paragraph granting an opportunity for reentry into the profession shall be available to a teacher once and only once.

After the successful completion of a provisional year and one annual contract, a teacher shall receive a continuing contract and shall have full procedural rights that currently exist under law relating to employment and dismissal. The provisions of Article 5, Chapter 25, of Title 59 of the 1976 Code and Article 3, Chapter 19, of Title 59 shall not apply to teachers working under one-year annual contracts. Teachers working under one-year annual contracts who are not recommended for reemployment at the end of the year may have an informal hearing before the district superintendent. The superintendent shall schedule the hearing no sooner than seven nor later than thirty working days after he receives a request for such teacher for a hearing. At the hearing all of the evidence

shall be reviewed by the superintendent. The teacher may provide such information, testimony, or witnesses as the teacher deems necessary. The decision by the superintendent shall be given in writing within twenty days of the hearing. The teacher may appeal the superintendent's decision to the school district board of trustees. Any such appeal shall include a brief statement (1) of the questions to be presented to the board, and (2) wherein the teacher believes the superintendent to have erred in his judgment. Failure to file such an appeal with the board within ten days of the receipt of the superintendent's decision shall cause the decision of the superintendent to become final judgment in the matter. The board of trustees shall review all the materials presented at the earlier hearing and, after examining these materials, the board may or may not grant the request for a board hearing of the matter. Written notice to the board's decision on whether or not to grant the request shall be rendered within thirty-five calendar days of receipt of the request. If the board determines that hearing by the board is warranted, the teacher shall be given notice of the time and place of such a hearing which shall be set not sooner than seven nor later than fifteen days from the time of the board's determination to hear the matter. The decision of the board shall be final.

If a person has completed an approved teacher training program at a college or university outside this state, and had no teaching experience, he shall have the same status as a person who has completed such program at a college or university in this State. If a person has completed an approved teacher training program at a college or university outside this state, has passed the examination he is required to take for certification purposes and has one year of teaching experience, he may be employed by a school district as a provisional teacher. If a person has completed an approved teacher training program at a college or university outside this State, has passed the examination he is required to take for certification purposes, and has more than one year of teaching experience, he may be employed by a school district as one who has completed the one-year provisional period.

When any teacher has been awarded a continuing contract in one district of the state, such continuing status shall be transferable to any other district in the state where such teacher is employed.

Teachers certified under the trades and industrial education process shall be exempt from the provisions of this act which require the completion of scholastic requirements for teaching at an approved college or university and a provisional contract period. Such teachers may be employed by a school district for a maximum of five years under annual contracts prior to being employed under a continuing contract. Before being employed under a continuing contract these teachers shall pass the Basic Skills Examinations developed in accordance with Section 3(b) (1), the state approved skill examination in their area which is currently required, the teaching examination developed in accordance with Section 3(b) (2), and successfully complete the performance evaluations as required for all teachers who are employed under provisional contracts. Certification renewal requirements for such teachers shall be those which are promulgated by the State Board of Education.

SOUTH DAKOTA

SD. Section 13-43-26. Official Teacher Evaluation Policy-Adoption by School Boards.

Each school board shall adopt official standards, criteria, and procedures for the evaluation of the professional performance of members of the teaching profession employed in the school district. A copy of the school board's official evaluation policy shall be forwarded to the division of elementary and secondary education.

The school board, in its policies shall address the following:

- (1) The purpose of the evaluations;
- (2) The frequency of the evaluations;
- (3) The procedure to be used in making the evaluations;
- (4) The areas subject to evaluation; and
- (5) The use of the results of the evaluations;

If a school board has failed to adopt and file its official evaluation policy consistent with this section, the evaluation policy promulgated by the commission shall be the school board's policy.

TENNESSEE

TN State Board of Education - Rules and Regulations
0520-1-3-.05 Certification and Evaluation of Teachers-
Requirement D.

(1) Certification- A teacher or principal shall hold a valid Tennessee teacher's certificate or permit covering the work which he is to do.

(2) Evaluation

(a) Local boards of education shall develop evaluative procedures for all professional school personnel. The evaluative procedure shall be designed for the purpose of improving the instructional program. The Evaluative Criteria shall be on file with the Commissioner of Education.

(b) Annual evaluation shall be made of probationary teachers with tenured teachers being evaluated once every three years. Tenured teachers may be evaluated on a staggered basis.

TEXAS

TX 149.41 Texas Education Code-13.302:

(a) The State Board of Education shall adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder level assignment purposes. The criteria must be based on observable, job-related behavior, including teachers' implementation of discipline management procedures.

(b) The board shall solicit and consider the advice of teachers in developing the appraisal process and performance criteria.

(c) In developing the appraisal process, the board shall provide for using not fewer than two appraisers for each appraisal. One appraiser must be the teacher's supervisor and one must be a person as approved by the board of trustees. An appraiser who is a classroom teacher may not appraise the performance of a teacher who teaches at the same school campus at which the appraiser teaches, unless it is impractical because of the number of campuses. The board also shall provide for a uniform training program and uniform certification standards for appraisers to be used throughout the state. The board shall include teacher self-appraisal in the process.

.....
 (f) Appraisal for teachers and administrators must be detailed by category of professional skill and characteristics and must provide for separate ratings per category. The appraisal process shall guarantee a conference between teacher and appraisers, or between administrators and appraisers, and the conference shall be diagnostic and prescriptive with regard to remediation as needed in overall summary of performance by category and identify the required performance for advancement to the next level.

UTAH53-54-4.

Each school district shall develop a procedure to evaluate its teachers for placement and advancement on the career ladder. The evaluation procedure shall: (1) be fair, consistent, and valid according to generally accepted principles of personnel administration; (2) incorporate clearly stated job descriptions; (3) be in writing; (4) involve teachers in the development of the evaluation instrument; and (5) prior to any evaluation inform the teacher in writing about time frames in an evaluation procedure, the evaluation process, the types of criteria to be used in the evaluation and the factors to be evaluated and the procedure for requesting a review of the evaluation. Nothing in this section shall preclude informal classroom observations.

VIRGINIA**Standards of Quality of the Virginia Public Schools
Section 12 Policy Manual**

Each school division shall maintain and follow an up-to-date policy manual which shall include, but not be limited to:

1. Valid copies of Article 3 of Chapter 15 of Title 22.1 of the Code of Virginia concerning grievances, dismissal, etc., of teachers and the implementation procedure prescribed by the General Assembly and the Board of Education.
2. A system of two way communication between employees and the local school board and its administrative staff, based on guidelines established or approved by the Board of Education, whereby matters of concern can be discussed in an orderly and constructive manner;
3. A cooperatively developed procedure for personnel evaluation appropriate to tasks performed by those being evaluated;
4. A policy for the selection and evaluation of all instructional materials purchased by the school division, with clear procedures for handling challenged controversial materials;
5. The standards of student conduct and attendance developed by the locality and procedures for enforcement.

WASHINGTON

RCW 28A.67.065 Minimum criteria for the evaluation of certificated employees, including administrators-Procedures-Scope-Penalty.

(1) The superintendent of public education shall, on or before January 1, 1977, establish and may amend from time to time minimum criteria for the evaluation of the professional performance capabilities and development of certificated classroom teachers and certificated support personnel. For classroom teachers the criteria shall be classroom management, Professional preparation and scholarship; effort toward improvement when needed; the handling of student discipline and attendance problems; and interest in teaching pupils and knowledge of subject matter. Such criteria shall be subject to review by November 1, 1976, by four members of the legislature, one from each caucus of each house, including the chairpersons of the respective education committees.

Every board of directors shall, in accordance with procedures provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920, establish evaluative criteria and procedures for all certificated classroom teachers and certificated support personnel. The evaluation criteria must contain as a minimum the criteria established by the superintendent of public instruction pursuant to this section and must be prepared within six months following adoption of the superintendent of public instruction's minimum criteria. The district must certify to the superintendent of public instruction that the evaluative criteria has been so prepared by the district.

It shall be the responsibility of a principal or his or her designee to evaluate all certificated personnel in his or her school. During each school year all classroom teachers and certificated support personnel, hereinafter referred to as "employees" in this section, shall be observed for the purposes of evaluation at least twice in the performance of their assigned duties. Total observation time for each employee for each school year shall be not less than sixty minutes. Following each observation, or series of observations, the principal or other evaluator shall promptly document the results of the evaluation in writing and shall provide the employee with a copy thereof within three days after such report is prepared. New employees shall be observed at least once for a total observation time of thirty minutes during the first ninety calendar days of their employment period.

Every employee whose work is judged unsatisfactory based on district evaluation criteria shall be notified in writing of stated specific areas of deficiencies along with a suggested specific and reasonable program for improvement on or before February 1st of each year. A probationary period shall be established beginning on or before February 1st and ending no later than May 1st. The purpose of the probationary period is to give the employee opportunity to demonstrate improvements in his or her area of deficiency. The establishment of the probationary period and the giving of the notice to the employee of deficiency shall be by the school district superintendent and need not be submitted to the board of education for approval. During the probationary period the evaluator shall meet the employee at least twice monthly to supervise and make a written evaluation of the progress, if any, made by the employee. The evaluator may authorize one additional certificated employee to evaluate the probationer and to aid the employee in improving his or her areas of deficiency; such additional certificated employee shall be immune from any civil liability that might otherwise be incurred or imposed with regard to good faith performance of such evaluation. The probationer may be removed from probation if he or she has demonstrated improvement to the satisfaction of the principal in those areas specifically detailed in his or her initial notice of deficiency and subsequently detailed in his or her improvement program. Lack of necessary improvement shall be specifically documented in writing with notification to the probationer and shall constitute grounds for a finding of probable cause under RCW 28A.58.450 or 28A.67.070 as now or hereafter amended.

The establishment of a probationary period shall not be deemed to adversely affect the contract status of an employee within the meaning of RCW 28A.58.450, as now or hereafter amended.

(2) Every board of directors shall establish evaluative criteria and procedures for all superintendents, principals, and other administrators. It shall be the responsibility of the district superintendent or his or her designee to evaluate all administrators. Such evaluation shall be based on the administrative position job description. Such criteria, when applicable, shall include at least the following categories; Knowledge of, experience in, and training in recognizing good professional performance, capabilities and development; school administration and management; school finance; professional preparation and scholarship; effort toward improvement when needed; interest

in pupils, employees, patrons and subjects taught in school; leadership; and ability and performance of evaluation of school personnel.

(3) Each certificated employee shall have the opportunity for confidential conferences with his or her immediate supervisor on no less than two occasions in each school year. Such confidential conference shall have as its sole purpose the aiding of the administrator in his or her professional performance.

(4) The failure of any evaluator to evaluate or supervise or cause the evaluation or supervision of certificated employees or administrators in accordance with this section, as now or hereafter amended, when it is his or her specific assigned or delegated responsibility to do so, shall be sufficient cause for the nonrenewal of any such evaluator's contract under RCW 28A.67.070, as now or hereafter amended, or the discharge of such evaluator under RCW 28A.58.450, as now or hereafter amended.

WEST VIRGINIA

5300 West Virginia Board of Education Policy.

West Virginia Board of Education Policy No. 5300 (6)(a) provides:

(a) Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment shall be based upon such evaluation, and not upon factors extraneous thereto. Every employee is entitled to the opportunity of improving his job performance prior to the terminating or transferring of his services, and can only do so with the assistance of regular evaluation.

APPENDIX B

Name _____ Position _____

School _____ Grade Level _____

Subject Area _____ Date _____

Certification _____ Initial _____ Continuing _____

_____ Management of Inst. Time _____ Instructional Feedback

_____ Management of Student Behavior _____ Facilitating Inst.

_____ Instructional Presentation _____ Interacting within the Educational Environment

_____ Instructional Monitoring of Student Performance _____ Performing Non-Instructional Duties

Critical Practice(s) and/or Strengths:

Goal(s):

Strategies (in sequence)	Class of Credit	Target Dates	Resources	Date Achieved

APPENDIX C

PLAN OF ASSISTANCE

Certified _____ School District
 Classified _____ , Oregon
 Employee _____
 Job Classification _____

It has been determined that your performance is below acceptable standards and that you need assistance.

You and I should study the deficient performance and plan a corrective program to include:

Performance to be improved

Plan to bring about this improvement (specific statements of things to be done).

- (1) What is to be done:
- (2) When is it to be done:

Monitoring Activities:

- (1) Who is to monitor:
- (2) When will the monitoring occur:

Other (be specific)

The above will be accomplished or noticeable improvement achieved on or before _____, by which time we will have a review conference. We may at that time agree that improvement is satisfactory, or we may wish to revise performance goals.

 Employee's Signature

 Supervisor's Signature

(Does not necessarily mean agreement but indicates the report has been read and discussed).

Copies: Employee
 Supervisor
 Employee File

Date _____

Date _____