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LEGAL ASPECTS OF TEACHER EVALUATION

The University of North Carolina at Greensboro

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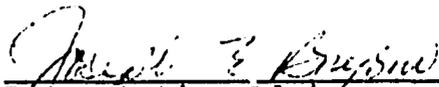
by

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Approved by


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APPROVAL PAGE

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NANTZ, Mary T. Legal Aspects of Teacher Evaluation
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Directed by: Dr. Joseph E. Bryson. Pp. 252.

A direct and visible result of the public's concern for the quality of education has been state legislated mandates for teacher evaluation. This research is a descriptive and historical study of this teacher performance evaluation movement. The study was not designed to advocate or denounce the movement but instead to provide school administrators with appropriate information regarding the educational and legal aspects of teacher evaluation in order that they can make better judgments in regard to teacher employment decisions and practices.

Questions are set forth in the introductory chapter of this study to guide the research. Data and information to respond to these questions were obtained from a review of the state statutes calling for evaluation of every teacher in a district and an analysis of the court cases which have involved teacher evaluation issues. With the legislated mandates for evaluation, many legal issues become involved in the teacher evaluation process.

An examination of the state statutes and state school board regulations reveals that thirty-four states are now implementing statewide teacher evaluation programs. Provisions are made through teacher evaluation statutes, the Fair Dismissal Act, teacher evaluation certification procedures, and

state board regulations. Information related to the purpose of these requirements, the scope of the evaluation, procedures for evaluation, frequency of the evaluation, and the use of the evaluation results is presented in this study.

An analysis of the court cases around teacher evaluation issues reveals litigations in three areas: procedural due process, substantive due process, and employment discrimination. Claims have resulted when teachers believe their rights have been violated in these areas. Finally, a major point in case law is that the judiciary will not substitute its judgment for that of the school board's; however, courts stress that school boards must provide for procedural due process and provide substantial evidence to support an employment decision.

A review of the literature suggests that teacher evaluation and its relevance to providing improved instruction will continue to be an issue in school systems, in state legislatures, and in the courts.

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CHAPTER I

BACKGROUND FOR STUDY

Introduction

The recent demand to evaluate teacher performance began with the accountability movement in the 1960's and 1970's.¹ Congressional legislation passed during this period called for the evaluation and documentation of federally funded educational programs. As a result, the research in teacher effectiveness and administrative accountability became the target of attempts to monitor and evaluate these programs.²

The accountability movement soon shifted from the federal to the state and local levels. Influenced by federal accountability and community concern about higher school expenditures, state government began to enact legislation requiring the appraisal of school district personnel. Borich suggests these movements were welcomed by tax-paying citizens, cautiously accepted by school administrators responsible for implementation, and skeptically viewed by teachers who were to be evaluated.³

¹ Gary D. Borich, The Appraisal of Teaching: Concepts and Process (Reading, Massachusetts: Addison Wesley Publishing Company, 1977), p. vii.

² Ibid.

³ Ibid., p. viii.

During the decade of the seventies and into the eighties, issues of accountability and teacher performance continue to be of particular importance. A direct and visible result of the increased concern for accountability has been the number of states requiring evaluation of all teachers. A study of the fifty state statutes by this writer in 1982 revealed that slightly more than half of the states had some form of mandated performance evaluation for teachers. In addition to these states, legislation for evaluation was pending in other states. Of these statutes enacted, more than half have been since 1970. Since 1982 still other states continue to consider teacher evaluation legislation.

While many of the states have enacted statutes or some form of state or local administrative policy requiring evaluation of teachers "to improve the quality of instructional, administrative, and supervisory services in the public schools,"⁴ state statutes generally vary widely in terms of process, content, and specificity. Some states have legislated procedures and criteria for evaluation while others have given greater flexibility to local school districts. For example, some state legislation, including that in North Carolina, requires a uniform state instrument whereas

⁴ Florida, Statutes Annotated, Section 231.29 (West, 1982); Tennessee, Rules and Regulations, State Board of Education, 0520-1-3.05.

other states have given local school boards the authority to develop criteria for evaluation.⁵ Other issues commonly addressed in performance evaluation statutes include how often appraisals are to be conducted and how the information from the appraisals may be used.

Literature on personnel evaluation indicates that evaluation generally serves two purposes: (1) a formative or developmental function with the purpose being to improve instruction by identifying an employee's area for growth and improvement; and (2) an evaluative or judgmental function with the purpose being to allow administrators to make decisions about employees.⁶ Statutes stressing evaluation for improvement and then linking evaluation to dismissal and retention have created concerns for teachers and administrators. In theory, evaluation should encourage growth and is based on the assumption that people want to grow; however, to use this same information for making personnel decisions relative to retention without creating fear within the teachers becomes difficult. Improved performance may also be difficult to achieve in such an environment where personnel decisions may be related to performance appraisal results.

⁵ North Carolina, Public School Laws, Section 115C-326.

⁶ L.L. Cummings and Donald P. Schwab, Performance in Organization: Determinants and Appraisal (Glenview, Illinois: Scott, Foresman and Company, 1973), pp. 113-114.

Statement of the Problem

Public concern for accountability has grown rapidly over the last two decades. Much of the concern can be attributed to publicized reports of illiterate students graduating from high school, wavering public confidence in the school system, declining test scores, and newly hired teachers failing to pass basic skills tests. Today with increasing emphasis on accountability, more and more states are seeking ways to improve their systems of monitoring and evaluating programs and personnel. Mandating teacher performance evaluation is one such way.

Since teacher evaluation is ultimately linked to dismissal or retention, promotion and nonpromotion, demotion and merit pay, many legal issues become linked with teacher evaluation in the interest of protecting the teacher from potentially arbitrary administrative decisions unrelated to established standards of performance. Constitutional guarantees of procedural and substantive due process and constitutional and statutory provisions barring discrimination and ensuring equal protection serve to protect the teacher from any arbitrary or capricious action.

In recent years the Civil Rights Act of 1964, along with the 1972 amendments, has greatly changed the context

within which performance appraisal is conducted.⁷ The law and courts require a valid system for performance appraisal and fairness in all employment procedures. Courts have closely examined the extent of tests used for employment purposes and have had considerable impact in determining that no test should be used for any purpose for which it has not been validated.⁸

As a result of the close scrutiny given to the area of performance evaluation, administrative evaluators are being called upon to interpret satisfactory and unsatisfactory performance and to make employment decisions using valid and legal procedures. It is certain that if administrators do not acquire the skills, the courts will make these decisions for them. Therefore a big responsibility is placed upon administrators to take the task of evaluation seriously and to establish some means for an equitable evaluation system. The overall purpose of this study is to provide educational administrators with appropriate information regarding the educational and legal aspects of teacher evaluation in order that they can make better decisions in regard to teacher employment procedures.

⁷ J. Vernon Odom, "Performance Appraisal: Legal Aspects," Technical Report, No. 3, Center for Creative Leadership, May 1977, p. 1.

⁸ Griggs v. Duke Power Company, 401 U.S. 424 (1971).

Key Questions To Be Answered

As already indicated, teacher performance evaluation has become an important component in the teacher-administrator relationship. Since many states are now mandating teacher evaluation through state statutes and since many legal issues are involved in the evaluation process, it becomes imperative that administrators know the legal aspects and have some guidelines for assuming this important responsibility. Below are listed several key questions to be answered in this study.

1. How widespread is teacher evaluation legislation in the fifty states?
2. What is the nature of teacher evaluation legislation?
3. What is the basis for teacher evaluation criteria?
Who determines what the criteria will be?
4. Based on recent court cases, what are the legally accepted processes and criteria for evaluating performance?
5. Can any specific trends be determined from analysis of court cases where performance evaluation has resulted in attempted dismissal of a teacher?

As the accountability movement gains momentum and as states continue to enact performance evaluation statutes,

these become questions that make an in-depth study of the statutes and related legislation a necessity.

Scope of the Study

This is a historical and descriptive study of the movement in teacher performance evaluation. The research presents the background of the more recent evaluation movement and then proceeds to describe the current evaluation requirements as mandated by representative state statutes and regulations.

The research describes the extent to which evaluation practices have been litigated, the reason for litigation, the results of major cases, and the possible effects these court decisions could have on school boards and school administrators.

Method, Procedures, and Sources of Information

Literature related to teacher evaluation was studied for background information. General research summaries were reviewed in the Encyclopedia of Educational Research, in various books on school law, and for a review of the literature conducted through a computer search from the Educational Resources Information Center (ERIC).

Having determined that enough information was available on the topic to conduct the study, a search was made of Dissertation Abstracts to determine if a need existed for such a study. With no evidence found to indicate such a study had been conducted, need for the study was deemed necessary.

State statutes related to teacher evaluation in all fifty states were researched, analyzed, and categorized as to the purpose to be served. Judicial cases were analyzed and briefed. To complete this function, resources included Corpus Juris Secundum, the National Reporter System, NOLPE School Law Reporter, and West Law Report. In addition, correspondence was sent to the departments of education in all fifty states requesting information relative to teacher evaluation requirements and relative to the implementation of such legislation. Other agencies contacted for information include the National Education Association, National Association of Elementary School Principals, Association for Supervision and Curriculum Development, National Association of Secondary School Principals, and North Carolina State Attorney General's Office.

Definition of Terms

The following definitions apply to certain terms used throughout this study.

Teacher Evaluation. An estimate or measure 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 school officials, parents, pupils, or the teacher himself.⁹

⁹ Carter V. Good, editor, Dictionary of Education (New York: McGraw Hill Book Company, 1973), p. 221.

Formative Evaluation. Written documentation describing what happened during an observation.

Summative Evaluation. The grading level assigned to a teacher's performance. This grading is judgmental in nature.

Data Collection. Written data collected during a formal observation of a teacher.

Performance Improvement Plan. A written plan developed by the evaluator and evaluatee to provide growth for the evaluatee.

Valid. Measures what it purports to measure, having a high correlation with a criterion related to good learning.¹⁰

Reliability. Degree to which a test or other instrument of evaluation measures consistently whatever it measures.¹¹

Teacher. A person who holds at least a current Class A certificate, or a vocational certificate issued by a State Department of Public Instruction, whose major responsibility is to teach or directly supervise teaching.

Probationary Teacher. A certified teacher described above who has not obtained career status and whose major responsibility is to teach.

¹⁰ Ibid., p. 635.

¹¹ Ibid., p. 488.

Significance of the Study

Performance appraisal, the identification, evaluation, and development of individual performance in organizations, is a critical component of management practices.¹² Appraisals are used to make vital decisions in areas of selection, placement, training, compensation, and promotion of employees. While appraisals should be as objective and accurate as possible, they are at best subjective as human judgment is often influenced by factors other than the behavior being rated. Effective use of an appraisal system requires considerable time, skill, and commitment.

As the process of identifying, evaluating, and developing human performance in organizations, a performance appraisal system must not only accurately assess current performance levels, it must also build in a means for reinforcing strengths, identifying deficiencies, and giving feedback to evaluatees on their performance.¹³

The issue of teacher performance evaluation has become a much debated topic among teachers, administrators, and state legislators, as well as teacher union organizations.

¹² Lloyd Baird, Richard W. Beatty, and Craig Eric Schneier, editors, The Performance Appraisal Sourcebook (Amherst: Human Resource Development Press, 1982), p. xi.

¹³ Ibid.

Declining enrollments and increasing costs for funding educational programs have given rise to a new emphasis on accountability. State legislatures and local districts have found that performance evaluation is an essential ingredient for maintaining that accountability; however, until the 1970's there was virtually no research on which to base a valid teacher performance evaluation system.

As a result, there will be a greater need than ever before to develop a valid, reliable, and legally discriminating teacher evaluation system. Presently there is difficulty in the assumption that teaching performance can even be evaluated in a reliable, measurable, and objective manner. Even the educational researchers who are heavily involved in empirical research have not reached a consensus on characteristics of the effective teacher although steps are being taken in this area. While some evaluation instruments are being based on the empirical data related to teacher effectiveness, many instruments, including the 1983-85 state mandated instrument in North Carolina, are still being based on a consensus of what teachers think represents good practices in teaching.¹⁴ While educational researchers are trying

¹⁴ Gary Stuck, presentation to Iredell County School Administrators, Statesville, North Carolina, March 8, 1984.

to determine appropriate criteria, it is inevitable that the courts will become involved in determining what criteria are legally acceptable.

Literature on personnel evaluation indicates evaluations may (1) serve a developmental function, with the purpose being to improve instruction by identifying an employee's areas of growth and improvement or (2) perform an evaluative or judgmental function, the purpose being to allow administrators to make decisions about employees.¹⁵ McGreal, after working for seven years in over three hundred school districts, suggests that traditional evaluation models have stressed teacher accountability while supervisory models stressed instructional improvement. This dual emphasis requires walking a fine line between accountability and improvement.¹⁶

Although legislation suggests evaluation is for improvement of instruction, generally, accountability systems are designed to obtain documentation of inappropriate teacher behavior. These types generally promote negative feelings about evaluation and less likelihood that teachers will alter

¹⁵ Cummings and Schwab, pp. 113-114.

¹⁶ Thomas L. McGreal, "Effective Teacher Evaluation Systems," Educational Leadership 39 (January 1982): 303.

classroom behavior. Systems built on the concept of improving instruction are always accompanied by an acceptable level of accountability information. The attitude that teacher evaluation is to improve instruction must prevail.¹⁷

In absence of an abundance of research linking specific knowledge and performance competencies to pupil outcomes, appraisers have generally relied on four methods to derive knowledge and performance competencies: (a) professional judgment, (b) in situ observation of classrooms, (c) theoretical frameworks of teacher behavior, and (d) experimental studies.¹⁸

Current trends in teacher evaluation are the results of recent court decisions and state statutes calling for teacher performance evaluation to be "job related." In an address to the Rocky Mountain Education Association, Richard A. King, Professor of Educational Administration at the University of New Mexico, stated:

The primary reasons for evaluating teacher performance are to provide feedback to the teacher and supervisor in order to improve the instructional process, to screen those teachers with greater responsibility for merit pay, and to aid in making decisions concerning retention (or dismissal) and tenure. Evaluation of teachers in the past placed an emphasis

¹⁷ Ibid.

¹⁸ Borich, p. 91.

on the rating of personal traits and qualities deemed to be necessary for successful teaching. The lack of correlation between such traits and actual performance led to the rating of descriptive statements of behaviors which were thought to be closely related to student achievement.¹⁹

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 in this study. Following the introduction is a review of the literature relative to the background and purpose of teacher evaluation. In addition to a general summary, literature related more specifically to the legal and judicial issues is reviewed.

Chapter three presents the legal basis for teacher evaluation which includes an analysis of the fifty state statutes relative to teacher evaluation. The statutes and regulations are analyzed and categorized according to requirements mandated.

The fourth chapter addresses how the courts have handled issues relating to litigated court cases on teacher evaluation. The chapter cites several court cases related to broad constitutional issues of discrimination and due process of law.

¹⁹ Richard A. King, "Evaluation and Dismissal of Professional Staff: An Examination of Recent Litigation and Legislative Action," paper presented to the annual meeting of the Rocky Mountain Education Research Association, El Paso, Texas, November 1977, pp. 1-2.

The chapter also attempts to determine what the courts are saying is acceptable criteria and process for teacher evaluation.

The final chapter of the study presents a review and summary of information obtained from the review of literature and from an analysis of the legal requirements stemming from state statutes and court decisions. The questions set forth in the first chapter are reviewed and answered in this chapter. Conclusions reached from a review of the state statutes and court cases are stated.

CHAPTER II

REVIEW OF SELECTED LITERATURE

Significance of Teacher Appraisal

Declining enrollments and increasing costs for funding educational programs have given rise to a new emphasis on accountability. State legislatures, as well as local school districts, have found teacher performance evaluation is an essential ingredient for maintaining that accountability.

Oldham contends that teacher evaluation is not new; rather it has been present since the hiring and firing of teachers began. What is new during the 1970's in school districts in the United States is the intensive search for improved ways to evaluate teachers and to standardize these ways. This search, he suggests, flows from two groups, teachers who are seeking the security of fair, objective standards and the public which is seeking assurance that tax dollars are well spent. The professional school administrator is caught in the middle seeing that the needs of both groups are met.¹

Major difficulties of evaluation programs, according to De Vaughn, lie in a lack of attention to the evaluation

¹ Neil Oldham, "Evaluating Teachers for Professional Growth," publication of the National School Public Relations Association, 1974, p. 1.

process, faulty instruments, poorly defined performance criteria, and the lack of participation involvement.²

Evaluation by legal mandate should, according to Redfern, cause school personnel to examine new procedures for evaluating teacher performance.³ Where state statutes allow school systems latitude in designing evaluation systems, administrators have a great opportunity to improve upon the former procedures which include rating scales and checklists that emphasize a rater's biases as heavily as the evaluatee's performance.

Administrators have failed in giving adequate attention to the important task of improving instruction through upgrading teacher and administrative performance on the job. While instruments must be as objective as possible and measure behavior of the performer as it specifically relates to increased learning, early involvement of the evaluatee as a participant in this process of building an appraisal system is also important.

² Everette J. DeVaughn, "Policies, Procedures and Instruments in Evaluation of Teacher and Administrator Performance," publication of Southeastern Interstate Project for State Planning and Program Consolidation; paper also presented at AASA Annual Convention, Atlantic City, New Jersey, February 12-16, 1972, pp. 2-3.

³ George Redfern, "Legally Mandated Evaluation," National Elementary School Principal 52 (February 1973): 46.

Building a valid and objective system based on teacher competencies is a lengthy developmental task which requires that behaviors be translated into variables and variables researched to determine and validate their proficiency levels.⁴ To be successful an appraisal system must be tailored to fit the school system's needs and have prior approval and support of the board of education. The planning process for an appraisal system should include (1) the development of the instruments; (2) the development of the evaluator's skills for assessing teachers; and (3) ongoing staff development to improve instructional leadership. If an appraisal system is valid, reliable, and legally discriminating, it must also include measurement of progress toward predetermined objectives.⁵

Although the public wants and needs evidence that teachers are effective in their work and no one questions the importance of good teachers as a provision for student achievement and for a good education system, building a teacher evaluation system presents numerous problems. A major and key obstacle to effective and applicable teacher evaluation cited by Peterson is how performance is defined, described, observed,

⁴ Borich, p. 6.

⁵ Shirley Stow and Jim Sweeney, "Developing a Teacher Performance Evaluation System," Educational Leadership 38 (April 1981): 539.

and finally evaluated. Three factors making it a difficult task include (1) the teaching art is complex; (2) what constitutes effective teaching varies by situation; and (3) the literature in some areas is unclear and at times conflicting.⁶

Two major problems in evaluation are discussed by Webb.⁷ First, inherent in teacher evaluation is the lack of a clear definition of what characterizes an effective teacher or what constitutes effective teaching, resulting in no definitive measures to be used for teacher evaluation. An evaluation process is essentially a comparison of desired outcomes with actual outcomes. When desired outcomes, as well as actual results, are not clarified, evaluation becomes a difficult task.

The second major problem identified by Webb stems from the often perceived conflicting purpose of evaluation.⁸ While evaluation, on one hand serves the purpose of improving the quality of instruction, having positive results in identification and encouragement of effective teachers, it also serves as the basis for promotion, demotion, and dismissal decisions, sometimes resulting in negative results.

⁶ Donovan Peterson, "Legal and Ethical Issues of Teacher Evaluation: A Research Based Approach," Education Research Quarterly 7 (Winter 1983): 6.

⁷ L. Dean Webb, "Teacher Evaluation," in A Legal Memorandum (Reston, Virginia: National Association of Secondary School Principals, December, 1983), p. 1.

⁸ Ibid.

A review of the literature suggests, as Webb does, that there are discrepancies in what evaluation is considered to be and in what the purposes of evaluation are. Literature on personnel evaluation indicates evaluation may (1) serve a developmental function, with the purpose being to improve instruction by identifying an employee's area of growth and improvement or (2) perform an evaluative or judgmental function, the purpose being to allow administrators to make decisions about employees.⁹ McGreal, after working for seven years in over three hundred school districts, suggests that traditional evaluation models have stressed teacher accountability while supervisory models stressed instructional improvement. This dual emphasis requires walking a fine line between accountability and improvement.¹⁰

Generally, accountability systems are designed to obtain documentation of inappropriate teacher behavior. These types generally promote negative feelings about evaluation and less likelihood that teachers will alter classroom behavior. Systems built on the concept of improving instruction are always accompanied by an acceptable level of accountability information.

⁹ Cummings and Schwab, pp. 113-114.

¹⁰ McGreal, p. 303.

The developmental function designed for improving performance is generally termed formative evaluation. Formative evaluation is designed to identify the teacher's strengths and weaknesses and to provide tips, information, and advice on ways to improve instruction. Formative evaluation should enhance the summative evaluation which relates to the judgmental function of evaluation. A summative evaluation is the grading level assigned to a teacher's performance such as satisfactory or unsatisfactory.¹¹ The summative evaluation is not necessarily meant to enhance a teacher's performance, but it provides an administrator with information that allows him to make decisions about a particular employee.

While evaluation is generally considered developmental or judgmental in nature, there are multitudes of purposes for evaluation of teacher performance. Bolton suggests the purpose may be as different as the school's need to satisfy the public's demand for accountability and the individual teacher's desire to improve the way he teaches a particular subject.¹² Purposes may include improvement of instruction,

¹¹James Raths and Hollie Preskill, "Research Synthesis on Summative Evaluation of Teaching," Educational Leadership (January 1982): p. 310.

¹²Dale L. Bolton, Selection and Evaluation of Teachers (Berkeley: McCutchan Publishing Corporation, 1973), p. 98.

rewarding superior performance, modification of assignments, protection of the individual and the organization, and promotion of individual growth and self-evaluation.¹³

Based on one hundred and fifty-five returns from a survey of school systems in the United States with over 25,000 students, Educational Research Services found four purposes of evaluation indicated. These were (1) to stimulate improvement of teacher performance, (2) to decide on reappointment of probationary teachers, (3) to recommend probationary teachers for permanent status, and (4) to establish evidence where dismissal from service is at issue.¹⁴

Two problems that often impede performance appraisal of teaching are collection of reliable and valid data and presentation of the data to the teacher in an accurate and comprehensive form.¹⁵ The appraisal process should function on a cycle in which data are carefully planned, collected, analyzed, and fed back to the teacher as part of a developmental program aimed at improving existing skills or teaching

¹³ Ibid., pp. 99-101.

¹⁴ Peter Coleman, "The Improvement of Aggregate Teaching Effectiveness in a School District," in The Appraisal of Teaching: Concepts and Process, ed. Gary D. Borich, (Reading, Massachusetts: Addison-Wesley Publishing Company, 1977), p.217.

¹⁵ Borich, p. 45.

new ones.¹⁶ The appraisal should be conducted in a cooperative manner which encourages active participation of the teacher.

Some research suggests that the advocates of performance based teacher evaluation, state mandated appraisal programs such as the Stull Bill in California, and teacher accountability systems lack empirical evidence linking teacher behavior to student outcomes in classroom settings. Berliner points out that the Coleman report of 1966 and other studies by Jencks and Mosteller and Moynihan in 1972 have minimized the role of the teacher in accounting for educational outcomes.¹⁷ These investigators claim that family background, ethnicity, and socioeconomic status are major causes affecting student achievement. This could have serious consequences since the heart of the performance based approach to teacher evaluation and teacher accountability has to be the empirically established relationship between teacher behavior as an independent variable and student cognitive and affective outcomes as dependent variables.¹⁸ Those working in these areas must recognize the inadequacies of standardized tests, problems of measurement of appropriateness of teacher behavior,

¹⁶ Ibid.

¹⁷ David C. Berliner, "Impediments of Measuring Teacher Effectiveness," in The Appraisal of Teaching: Concepts and Process, ed. Gary D. Borich (Reading, Massachusetts: Addison-Wesley Publishing Company, 1977), p. 146.

¹⁸ Ibid., p. 147.

and factors that relate to the student's background among other factors.¹⁹ Soar suggests the idea that measurement of teacher competence by way of pupil gain is not always an appropriate means.²⁰ His studies found that measuring teaching effectiveness by student gains is probably only feasible in simpler, lower level objectives.

Brody points out that while it is fairly easy to identify a bad teacher, researchers have a difficult time agreeing on qualities that make a teacher superior to another one.²¹ Popham claims there is little evidence to show that rating types of evaluation systems are sufficiently correlated with pupil growth to warrant widespread use.²² He continues to advise administrators to use moderation in appraising the value of new assessments since they may not be capable of meeting the demands of current teacher evaluation requirements. Medley reports that of all the studies done on teacher effectiveness

¹⁹ Ibid.

²⁰ Robert S. Soar, "Teacher Assessment Problems and Possibilities," in The Appraisal of Teaching: Concepts and Process, ed. Gary D. Borich (Reading, Massachusetts: Addison-Wesley Publishing Company, 1977), p. 167.

²¹ Judith A. Brody, "A Good Teacher Is Harder to Define Than to Find," The American School Board Journal 164 (July 1977): 25.

²² James Popham, "Pitfalls and Pratfalls of Teacher Evaluation," Educational Leadership 32 (November 1974): 43.

between 1905 and 1948, there were only eighteen that included some measure of change in pupils, usually gaining on achievement tests, as a measure of teacher effectiveness.²³ He also adds that more recent research indicates there is little, if any, relationship between rating of teacher effectiveness and pupil gains.²⁴

Borich and Madden pose four measurement problems that may account for the dearth of identified teacher-process and pupil-product relationships. These are:

- (1) a narrow range of measurements frequently employed in individual studies of teacher behavior;
- (2) lack of generic framework or guide from which to select behaviors to be measured in the classroom;
- (3) use of instruments with inadequate psychometric characteristics to measure these behaviors; and
- (4) inconsistent use of specific instruments across studies measuring the same or similar hypotheses.²⁵

The first problem stems from the fact that studies related tended to measure only a single criterion behavior or multiple outcomes that represented only one area of behavior. Rarely did researchers employ instruments that

²³ Donald M. Medley, "Measuring the Complex Classroom of Today," in Observational Methods in the Classroom, ed. Charles Beegle and Richard Brandt (Washington, D.C.: Association for Supervision and Curriculum Development, 1973), p. 42.

²⁴ Ibid.

²⁵ Borich, p. 139.

captured a range of both pupil and teacher affective and cognitive behaviors.

The second problem arises because few investigators provided rationale for the kinds of teacher behavior they assessed. Both problems reveal that a single type of behavior or a single set of variables cannot provide an adequate picture of classroom instruction for appraisal purposes. In the case of selection of instruments, few sources currently exist whereby one can judge the reliability and validity of other instruments with similar objectives.²⁶

Some more recent projects are beginning to determine relationship between teacher behavior and student achievement. A study in the Des Moines (Iowa) Community School District created a teacher performance evaluation system that used criteria from existing research and a cycle of operating procedures that included the setting of job improvement targets. The system was to be validated by use of student gain scores on custom-tailored, criterion referenced tests. The most salient finding of the study was the discovery that performance appraisal centering on teacher effectiveness criteria coincided with

²⁶ Ibid., pp. 139-141.

extraordinary results in standardized test scores.²⁷ The validation here is particularly important because researchers have found it difficult to go beyond a rater's perception to evaluation of teacher performance in terms of student's behaviors.

With a shortage of research linking specific knowledge and performance competencies to pupil outcomes, appraisers have generally relied on four methods to derive knowledge and performance competencies: (a) professional judgment, (b) in situ observation of classrooms, (c) theoretical frameworks of teacher behavior, and (d) experimental studies.²⁸

Current trends in teacher evaluation are the results of recent court decisions and state statutes calling for teaching performance evaluation to be "job related." In an address to the Rocky Mountain Educational Administration, Richard A. King, professor of Educational Administration at the University of New Mexico, stated:

Recent court decisions calling for teaching performance evaluation to be more "job related" have resulted in changes in the appraisal of teaching performance to attempt to evaluate the attainment of pre-established job standards of "position expectancies."²⁹

²⁷ Shirley B. Stow, "Using Effectiveness Research in Teacher Evaluation," Educational Leadership 37 (October 1979): 58.

²⁸ Borich, p. 91.

²⁹ King, p. 3.

The Equal Employment Opportunity Act of 1972 requires that tests used for employment and performance evaluation be shown to measure what they purport to measure. In addition it has been ruled that such "tests" of teaching performance can include both formal written evaluation and the accumulated data from a teacher's professional file.³⁰

As a principle of law, systems of evaluation must be job related. As a principle of measurement, Peterson establishes the importance of an instrument's validity and reliability.³¹ The legal principle of validity requires that an instrument measure what it purports to measure. Criteria such as appearance and grooming used in some of the traditional checklists become questionable as being related to the job of a teacher, particularly where the appearance is not a distraction to learning taking place. Two major concepts related to validity as a principle of measurement that Peterson cites are predictive validity and content validity.³² Predictive validity establishes a direct connection between a teacher's behavior and a student's achievement. Content validity refers to the extent that knowledgeable people are in agreement that items in an evaluation system are clearly articulated and representative of concepts to be measured. In the process of providing content validity,

³⁰ Ibid. p. 6.

³¹ Peterson, p. 8.

³² Ibid.

consensus, rather than statistical measures, results in content validity.³³ Systems of evaluation must be valid from a legal and measurement perspective to be of value in teacher appraisal.

Reliability also has legal and measurement implications. Legally, the courts are concerned that documented evidence by a qualified evaluator be used in any evaluation system, particularly when dismissal is an issue. Although researchers vary in their approach to establishing instrument reliability, generally there are two major concerns. First is the degree to which two or more persons observe the same teacher at the same time and independently draw the same conclusions. The second concern is to what degree this can be done in varying contexts over time.³⁴

In summary, Peterson suggests six points that are essential to appropriate evaluation of teacher performance:

- (1) Only performance teachers can control should be summatively evaluated, i.e. their own behavior.
- (2) Items in the evaluation system should stem from researched performance that directly relates to student learning rather than items chosen only because they are "valued," i.e. consensus based upon group opinion.
- (3) Groups of performances (examples are how instruction is organized and managed) must be identified, classified, defined, and examples given to make explicit the basis on which evaluations are to occur.

³³ Ibid., p. 9.

³⁴ Ibid.

- (4) Instruments designed to detect and record teacher performance must be developed and validated and observers trained and tested for reliability.
- (5) Formative evaluation should result from observations scheduled during significant periods of extended teaching, e.g. over the period of a unit or sequence of instruction.
- (6) Summative evaluation must be based on a representative sample of teacher performance and where resources are adequate should be the end result of a series of formative evaluations.³⁵

It is the recognized responsibility of the administrator to actively supervise, to constructively evaluate, and to assist teachers in reaching their potential. In order for this to happen, the evaluators must be adequately trained in observation skills as well as in skills for diagnosing and developing professional improvement plans for teachers. Klasson, Thompson, and Lubben state that a school system's chances of defending actual appraisals and employment decisions will be enhanced when these things occur:

1. Your appraisers are adequately trained in the use of appraisal techniques which use written qualification criteria for promotion, transfer, and similar situations.
2. Your appraisers have substantial opportunity to observe a representative sample of an employee's job related performance.
3. Multiple appraisers are used when it enhances the overall quality of assessment.
4. The administration and scoring of performance appraisals are standardized and controlled.³⁶

³⁵ Ibid.

³⁶ Gary L. Lubben, Duane E. Thompson, Charles R. Klasson, "Performance Appraisal: The Legal Implications of Title VII," Personnel (May-June 1980) p. 82.

A valid appraisal system, according to Borich, has four stages: (1) identification of metatheory or underlying philosophy, (2) selection or construction of theories, based on philosophy, describing teacher behavior in relation to student outcomes, (3) design of a prototypic model, and (4) trial and revision of model to test validity.³⁷ A valid system should not require subjective statements by principals or panels on whether a teacher is performing competently. Rather it should emphasize objective assessments of teacher performance.

Regardless of the problems involved in the efforts to establish some valid and reliable system for the evaluation of teacher performance, state legislatures are hastily moving toward mandated evaluation with little concern for the time it takes to develop a sound evaluation system.

Legal Issues of Teacher Evaluation

Constitutional mandates, federal and state statutes, and administrative regulations govern the employment relationship in public schools.³⁸ The Fair Dismissal Act passed in most of the states and state mandates for teacher evaluation passed in more than half the states create circumstances

³⁷ Borich, p. 59.

³⁸ Joseph Beckham, "Critical Elements of the Employment Relationship," in Legal Issues in Public School Employment, ed. Joseph Beckham and Perry A. Zirkel (Bloomington, Indiana: Phi Delta Kappa, 1983), p. 1.

that call for administrators to become informed and involved in employment procedures. The legal issues, according to Beckham, have become linked to assessing educational quality and safeguarding the teachers and students from any potential arbitrary decisions unrelated to teacher evaluation standards.³⁹

Educational personnel have protection under the First Amendment of the United States Constitution. The Tinker case established that neither students nor teachers shed these constitutional rights at the schoolhouse gate.⁴⁰ Substantive constitutional freedoms which include freedom of speech and latitude in use of educational materials and the selection thereof have been upheld in recent court cases. To protect the rights guaranteed by the First Amendment, courts have generally used the "balancing test" established in Pickering v. Board of Education⁴¹ where individual rights of teachers as citizens are balanced against the state's interest, as an employer.

The Fourteenth Amendment provides "equal protection" and basic due process rights that are critical in the teacher employer relationship.⁴² Procedural due process covered by

³⁹ Joseph Beckham, Legal Aspects of Teacher Evaluation (Topeka, Kansas: National Organization of Legal Problems in Education, 1981), p. 3.

⁴⁰ Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

⁴¹ Pickering v. Board of Education, 391 U.S. 563 (1968).

⁴² U.S. Constitution, Amendment XIV, Section 1.

the Fourteenth Amendment, is probably the most important single concept for persons who evaluate teachers.⁴³ Procedural due process encompasses the procedure followed particularly as administrators are engaged in summative evaluations where decisions are made that directly affect teacher welfare.

Peterson provides the following as the accepted procedure for evaluating teachers and includes the violations of procedural due process that become most evident in teacher evaluation:

- (1) teacher awareness of the criteria and purposes of evaluation;
- (2) direct observation of the teacher in the classroom or other teaching situations;
- (3) conferring with the teacher to negotiate and to outline any areas in which the evaluator requires the teacher to make changes;
- (4) assisting the teacher with time, materials, or in-service course work that address the areas in which the teacher needs to make change;
- (5) provision for time commensurate with the complexity of the changes that the teacher is required to make; and
- (6) re-observation and evaluation to establish whether or not specified changes have been made.⁴⁴

Violations of procedural due process become most evident in the following circumstances:

- (1) when an evaluator recommends dismissal of a teacher without having directly observed

⁴³ Peterson, p. 7.

⁴⁴ Ibid.

- the teacher; or
- (2) when evaluations are not properly documented; or
 - (3) when directions for making change are not clear and are not in writing; or
 - (4) when there is inadequate time and assistance provided the teacher to make improvements; and finally,
 - (5) when evaluators fail systematically to check the degree to which the teacher has been able to change.⁴⁵

In determining the requisite elements of due process, Beckham lists three factors generally required for judicial consideration; the teacher's private interest that will be affected by official action; the potential for erroneous deprivation of that private interest; and the fiscal and administrative burdens that additional or substantive procedural requirements might entail.⁴⁶

Application of the safeguards mandated by the Fourteenth Amendment requires a teacher to establish that official action denied a liberty or property interest associated with public employment. When this requirement is met, the court determines how much due process is required to ensure justice to the parties. However, meeting the requirements for due process may guarantee no more than the right to a hearing. It does

⁴⁵ Ibid.

⁴⁶ Beckham, The Legal Aspects of Teacher Evaluation, pp. 7-8.

not ensure a person will be reinstated in a position if no arbitrary or capricious action can be shown on the part of the school official.⁴⁷

Federal statutes implementing the Fourteenth Amendment, along with its equal protection clause, provide more specific limitations on the teacher evaluation process. Of particular importance have been the various titles of the Civil Rights Act of 1964.⁴⁸ These titles prohibit discrimination based on national origin, sex, race, or religion. Regulations of Title VII known as the Equal Employment Opportunities Act define the relationship of screening and evaluation instruments to job requirements. Beckham lists three teacher evaluation issues related to the Fourteenth Amendment's equal protection clause. These include the use of objective non-racial criteria, racially motivated intent, and use of nationally normed tests and their reasonable relationship to the job.⁴⁹

Tests which are used by decision-makers to aid in employment decisions have been closely scrutinized by the

⁴⁷ Ibid., p. 8.

⁴⁸ Equal Employment Opportunities, 42 United States Code, Section 2000e (1976).

⁴⁹ Beckham, The Legal Aspects of Teacher Evaluation, p. 13.

courts for any discriminatory intent. The courts have had an impact in determining that no test should be used for any purpose for which it was not developed and for which it has not been validated.⁵⁰ The test must be appropriate to the decision to be made and must be designed to measure precisely the characteristics of an individual that are related to the employment decision in question. The Equal Employment Opportunity Commission established by the Civil Rights Act of 1964 and recent court decisions involving the use of tests have made job-relatedness the central criterion for use in employment decision-making.⁵¹

Performance appraisal must comply with the guidelines found in Title VII and Equal Employment Opportunity Commission. This allows for testing only within the framework of a validated instrument. As of 1980, there were no cases in the Federal Courts addressing the specific issue of performance appraisal validation.⁵² The courts have addressed issues dealing only with specific components

⁵⁰ David A. Potter, "Job Analysis of Teaching: Final Report," NIE, November, 1980, p. 1.

⁵¹ Ibid., p. 2.

⁵² Public School Employee Performance Appraisal, publication of the State Department of Public Instruction, Raleigh, North Carolina, 1981, Section 6, p. 3.

of performance appraisal. Thus the overall thrust of the guidelines has been to prevent the use of poorly-defined rating criteria.

According to the Equal Employment Opportunity Commission guidelines, a defensible performance appraisal system must meet the following criteria:

1. The overall appraisal process should be formalized, standardized, and as objective as possible.
2. The performance appraisal system should be as job-related as possible.
3. A thorough, formal job analysis for all employment positions being rated should be completed.
4. Although useful, subjective supervisory ratings should be considered only as one component of the overall evaluation process.
5. Evaluators should be adequately trained in the use of appraisal techniques that employ written qualification criteria for promotion or transfer decisions.
6. Evaluators should have substantial daily contact with the employee being evaluated.
7. If the appraisal involves various measures of performance, the weight of each measure in relation to the overall assessment should be fixed.
8. Opportunities for promotion or transfer should be posted and the information made available to all interested individuals.
9. An employee-initiated promotion/transfer procedure should be established that does not require the immediate supervisor's recommendation.
10. Whenever possible, the appraisal should be conducted by more than one evaluator. All such evaluations should be done independently.
11. The administration and scoring of the performance appraisal should be standardized and controlled.⁵³

53 Ibid.

In addition to federal law governing teacher evaluation, state law further regulates teacher evaluation and board policies related to evaluation. Zirkel identifies three categories of state legislation and regulations that form an interlocking framework. These include teacher tenure, collective bargaining, and teacher certification laws.⁵⁴ In addition to these, more than half the states have statutes mandating teacher evaluation. Inevitably all of the evaluation statutes and regulations become integral to the fair dismissal or tenure law.⁵⁵ Taken together, the tenure law and evaluation mandates create a dilemma for the administrator who wants to help an employee improve but who may also be faced with the decision to terminate an employee to improve the school system. A study by Beckham in 1980 found that twenty-eight states and the District of Columbia have legislated legal requirements for teacher evaluation and that seventeen states incorporate language on teacher evaluation in statutes dealing primarily with termination or dismissal for cause, notice

⁵⁴ Perry Zirkel, "Teacher Evaluation," A Legal Memorandum (Reston, Virginia: National Association of Secondary School Principals, December, 1978), p. 2.

⁵⁵ Laura Means Pope, "State Regulations of Educator Evaluation," in Legal Issues in Public School Employment, ed. Joseph Beckham and Perry Zirkel (Bloomington, Indiana: Phi Delta Kappan, 1983), p. 139.

of inadequacy, unfitness, or probationary employment status. Another three states reference teacher evaluation only as a duty of the local school administrator or board.⁵⁶

Certification standards are generally spelled out in each state. Certification requirements may include evidence of specific job experiences, satisfactory completion of educational requirements, minimum score requirements on job-related examinations, and any other requirements that may be reasonably related to a valid state purpose.⁵⁷ Certification ensures that a person has met state requirements and is qualified for employment in a particular position.

Collective bargaining and teacher evaluation laws are interrelated by determining the category of the scope of negotiations as mandatory, permissive, or illegal issue. Where Oklahoma and Iowa allow teacher evaluation as a permissive issue for local teacher-board negotiations,⁵⁸ Connecticut does not recommend evaluation as being negotiable.⁵⁹

⁵⁶ Beckham, The Legal Aspects of Teacher Evaluation, p. 50.

⁵⁷ Beckham, "Critical Elements of the Employment Relationship," p. 4.

⁵⁸ Oklahoma, Statutes Annotated, Section 6-102.2; Iowa, Code Annotated, Section 279.14.

⁵⁹ Connecticut, General Statutes, Section 10-151b; "Teacher Evaluation in Connecticut," p. 3.

State statutes and regulations mandating teacher evaluation are fast becoming an important part of state law governing evaluation. While these mandates vary widely in scope and specificity, many address the purpose of evaluation, the scope of evaluation, procedures for evaluation, frequency of evaluation, and intended use of results.

A review of the state legislation mandating evaluation indicates the primary purpose of such legislation is for the improvement of instruction rather than for teacher dismissal. The Tennessee mandate provides an example:

Local boards of education shall develop evaluation procedures for all professional school personnel. The evaluation procedure shall be designed for the purpose of improving the instructional program.⁶⁰

The scope of evaluation varies widely from state to state. Where some states such as North Carolina require a uniform instrument to be used statewide,⁶¹ other legislatures require local boards to establish evaluation criteria.⁶²

⁶⁰ Tennessee, Rules and Regulations, Section 0520-1-3-.05.

⁶¹ North Carolina, Public School Laws, Section 115C-326.

⁶² Alaska, Administrative Code, Section 19.020.

Alaska emphasizes such factors as teaching skills and interpersonal relationships with parents, students, and supervisors. Hawaii requires evaluation on the basis of "efficiency, ability, and other such criteria as the department shall determine."⁶³

Procedures for evaluation generally indicate a written evaluation based on actual classroom observation.⁶⁴ A copy of the written evaluation must be given the employee. In many cases, including Florida⁶⁵ and Oklahoma,⁶⁶ teachers must have prior knowledge of what criteria will be used in the evaluation. Where deficiencies are found in the teacher's performance, evaluators are required to provide assistance for teacher improvement.⁶⁷

The frequency of evaluation is addressed in several ways in the statutes. Many states consider the tenured or non-tenured status of an employee in setting the number of required evaluations. Usually the number required for tenured employees is less than the number for nontenured.

⁶³ Hawaii, Revised Statutes, Section 297-46.

⁶⁴ Arizona, Revised Statutes, Section 15-537.

⁶⁵ Florida, Statutes Annotated, Section 231.29.

⁶⁶ Oklahoma, Statutes Annotated, Section 6-102.2.

⁶⁷ Florida, Statutes Annotated, Section, 231.29.

For tenured employees the number ranges from once a year in Arkansas⁶⁸ to every three years in Oklahoma.⁶⁹

Evaluation results are not usually a matter of public record but may be "reviewed upon demand at reasonable times by the person evaluated or some other person designated in writing by the person evaluated."⁷⁰ Evaluation results may, however, be used as evidence in a proceeding relative to evaluated employee's certification or performance. Information is maintained in a confidential personnel file.

Judicial Decisions Related to Teacher Evaluations

With the employment relationship governed by constitutional rights, state and federal statutes, and administrative regulations, substantial litigation is generated each year regarding adverse decisions.⁷¹ The right to use teacher evaluations as a principal basis for making employment decisions is contained in many of the state statutes. Careful

⁶⁸ Arkansas, Statutes Annotated, Section 80-1264.6.

⁶⁹ Oklahoma, Statutes Annotated, Section 6-102.2.

⁷⁰ Alaska, Administrative Code, Section 19.040.

⁷¹ Nelda H. Cambron-McCabe, "Procedural Due Process," in Legal Issues in Public School Employment, ed. Joseph Beckham and Perry A. Zirkel (Bloomington, Indiana: Phi Delta Kappa, 1983), p. 78.

analysis of recent decisions makes it clear that courts will compel universal standardization and unprecedented rigor in teacher-evaluation practices. Particularly in the application of equitable standards, state and federal courts rely on court mandates requiring uniformity in the application of procedural safeguards and substantial evidence to justify dismissal on the basis of inadequate performance.⁷²

Courts become involved in teacher evaluation cases only at the appeal stage.⁷³ A review of the cases reveals major areas of litigation involve issues related to procedural and substantive due process and employment discrimination. While constitutional guarantees of "due process" and "equal protection" protect employees from any action deemed arbitrary, capricious, or unreasonable, the state statutes further refine and govern the standards required for these rights to be preserved in the teacher evaluation process.

One of the central issues in litigation is the adequacy of procedural due process followed by school authorities.⁷⁴

⁷² Beckham, Legal Issues in Teacher Evaluation, p. 2.

⁷³ Zirkel, "Teacher Evaluation," p. 2.

⁷⁴ Cambron-McCabe, p. 78.

Cases show a wide variety of procedural claims instituted against school officials, ranging from infringement of particular aspects of due process guarantees to complete denial of due process rights. It is important that school officials become familiar with guidelines established by the courts since both constitutional and statutory provisions grant teachers procedural protections.

Traditionally the courts have accepted the authority of school boards and administrators to determine standards of teacher performance in substantive issues.⁷⁵ Consequently, the court's decisions have been confined to a review of the administrative record to assess if sufficient facts are available to justify a particular action. However, in recent years, courts are engaging in a more detailed analysis of what constitutes unsatisfactory teacher performance.⁷⁶ In these cases the courts are concerned with whether teachers are providing, and students receiving, quality programs and services.

Claims of discrimination in employment decision-making have also resulted in numerous lawsuits brought under the

⁷⁵ Beckham, Legal Aspects of Teacher Evaluation, p. 3.

⁷⁶ Ibid.

equal protection clause of the Fourteenth Amendment.⁷⁷ The Civil Rights Act of 1964 also requires scrupulous fairness in employment procedures and demands valid procedures of appraising performance.⁷⁸ The traditional supervisory rating as a performance appraisal procedure is being questioned by the courts. Under Title VII of the Civil Rights Act, it is not necessary to prove intent to discriminate in order to prove discrimination. Any test or performance appraisal system that leads to disproportionate numbers in hiring, promotions, or dismissals of employees from either a majority or minority group may be prima facie evidence of discrimination.

In a constitutional case brought under the equal protection clause of the Fourteenth Amendment, the plaintiff must show that the defendant intended to discriminate. Therefore, if employers promote disproportionate numbers of persons from one group on the basis of performance appraisal, but have no intent to discriminate against others not promoted, a plaintiff may have a prima facie case under Title VII, but not a prima facie case on constitutional grounds.⁷⁹

⁷⁷ Martha M. McCarthy, "Discrimination in Employment," in Legal Issues in Public School Employment, ed. Joseph Beckham and Perry A. Zirkel, (Bloomington, Indiana: Phi Delta Kappa, 1983), p. 22.

⁷⁸ Odom, p. 1.

⁷⁹ *Ibid.*, pp. 9-10.

The courts tend to vary their criteria for discrimination with degrees of adverse impact. The greater the adverse impact, the greater their concern and doubt regarding validation of selection procedures.⁸⁰

In establishing an evaluation system that meets qualifications for nondiscrimination, recent court cases reveal these characteristics as being important: (1) Performance rating must be job-related with variables rated developed through a thorough job analysis, (2) raters must be able to observe the performance they are to rate and should not base evaluations on vague subjective factors, (3) ratings should be collected and scored under standardized circumstances, and (4) care should be taken through choice of measures to ensure that ratings are not biased by prejudice regarding race, sex, or religion.⁸¹

Zirkel suggests case law concerning teacher evaluation is difficult to summarize because of the great variety of statutory provisions and the scarcity of reported decisions.⁸² In Pennsylvania, for example, which has probably the longest and most developed legal history concerning teacher evaluation, only about one hundred teachers have

⁸⁰ Ibid.

⁸¹ Ibid., p. 12.

⁸² Zirkel, p. 6.

been charged with incompetency in any proceeding since 1940.⁸³ In 1978 this was less than 2.7 cases per year of which only fifty percent of the cases had the charges upheld.⁸⁴

Courts tend to be strict about compliance with procedures mandated in state statutes and regulations. Zirkel lists three Pennsylvania cases which provide examples here.⁸⁵ First, dismissal charges against teachers on grounds of incompetency were not sustained in cases where the rating system was not strictly followed as in Appeal of Sullivan County Joint Board.⁸⁶ Second, dismissal charges were not upheld where the evaluation form did not show unsatisfactory ratings as in Appeal of Cable.⁸⁷ Third, dismissal charges were not upheld where required anecdotal records were not provided as in New Castle Area School District v. Bair.⁸⁸

As teacher evaluation has come to play an important role in employment decisions, courts have increased their scrutiny of both procedural and substantive aspects of

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Appeal of Sullivan County Joint Board, 189 A. 2d 249 (Pa. 1963).

⁸⁷ Appeal of Cable, 61, D & C 298 (Pa. Comwlth. 1948).

⁸⁸ New Castle Area School District v. Bair, No. 493 C.D. 1976 (Pa. Comwlth. May 2, 1977).

employment decisions.⁸⁹ Where standards for evaluation have been promulgated at the state or local level, courts expect the school district to adhere to these procedural safeguards. In addressing procedural fairness for nontenured teachers, Judge Stevens, now Justice Stevens, suggests the weight to be afforded state law in determination of due process rights:

In our opinion, the questions whether a nontenured teacher, whose contract is not renewed, has any right to a statement of reasons or to judicial review of the adequacy or accuracy of such a statement are a matter of state law, not federal constitutional law. There are sound policy reasons to support either a statutory requirement, or an administrative practice, that a complete and accurate written statement of the reasons for such an important decision be promptly delivered to the teacher. But since, by hypothesis, no constitutionally protected property or liberty interest of the teacher is impaired by the Board's action, she has no federally protected right to a fair hearing or to a fair statement of reason. The fact that a state, or a School Board, may voluntarily communicate more information to her or receive more information from her, than the Constitution requires, is not in itself sufficient to create a federal right that does not otherwise exist.⁹⁰

⁸⁹ Beckham, Legal Aspects of Teacher Evaluation, p. 33.

⁹⁰ Jeffries v. Turkey Run Consolidated School District, 492 F. 2d 1 (7th Cir. 1974).

A Florida teacher's reinstatement hinged on whether required state criteria and procedures were followed in her notice of nonrenewal.⁹¹ Although the school board claimed it had no petition for review of a decision not to renew and was not obligated to follow a standard it had not adopted, the Florida appeals court pointed out that Florida statutes require school superintendents to establish procedures for assessing the performance of instructional personnel.⁹² Therefore the teacher had been denied due process.

In a California case, the school district's decision not to renew was challenged on the basis that the district had not met announced notification of deadlines and did not provide the teacher with written evaluations.⁹³ The California court, in requiring the teacher's nonrenewal be reviewed to ensure compliance with evaluation standards, made clear its reluctance to interfere with the school district's evaluation of teacher performance. However, specific statutory and administrative provisions relative

⁹¹ Witgenstein v. School Board of Leon County, Fla. App., So.2d 1069 (1977).

⁹² Florida, Statutes Annotated, Section 231.29.

⁹³ Anderson v. San Mateo Community College District, 151 Cal. Rptr. 111 (Cal. App. 1978).

to evaluation must be subject to judicial review or they would lack enforcement. The court said:

A balance must be struck between a teacher's need for employment and a school district's need for flexibility. This balance can best be achieved by allowing a teacher who charges noncompliance with evaluation procedures recourse to judicial review of such procedures while continuing the present protection of a school district from interference with the merits of a nonrenewal decision.⁹⁴

In providing substantive due process, school officials must in their appraisal of a teacher's classroom performance use rating and observation records that provide evidence to support an employment decision as it relates to a teacher's impact on students.⁹⁵ Thus a school board's decision to terminate a teacher based on unsatisfactory performance must provide substantial evidence that meets the court's requirements. Substantial evidence implies that it is such that a reasonable mind would accept it as adequate to support the same conclusion.

The court's role, in a litigation involving substantive due process, is to determine if the evidence presented at a hearing is sufficient, as a matter of law, to support the determination of the school board to terminate an employee

⁹⁴ Ibid., p. 447.

⁹⁵ Beckham, Legal Aspects of Teacher Evaluation, p. 40.

based on "just cause." In making this determination, the courts have stated:

There are few, if any, objective criteria for evaluating teacher performance or for determining what constitutes just cause for terminating teaching contracts of tenured teachers. Each case must therefore, be assessed on its own facts.⁹⁶

A Nebraska math teacher was reinstated after the courts found that the evidence presented to discharge the teacher on the grounds of incompetency did not support the charges of the board.⁹⁷ The superintendent conceded he had not evaluated the teacher but based his decision on the recommendation of the elementary supervisor. Likewise, the elementary supervisor conceded she had not spent enough time in the teacher's classroom. The principal who had evaluated the teacher had rated her performance as satisfactory.

A South Dakota teacher whose contract was not renewed on the grounds of incompetency challenged the evaluation of her teaching performance, claiming the evaluations were insufficient to meet the requisite standards of substantive evidence.⁹⁸ Formal evaluation for each of the teacher's

⁹⁶ Sanders v. Board of Education, 262 N.W. 2d 461, 465 (Neb. 1978).

⁹⁷ Schulz v. Board of Education of School District of Fremont, Nebraska, 315 N.W. 2d 633 (Nebraska 1982).

⁹⁸ Busker v. Board of Education of Elk Point, S.D., 295 N.W. 2d 1 (1980).

three years in the district had contained criticism of her methods of instructional organization, her lack of classroom order, and her lack of discipline. Suggestions for improvement had been given the teacher, but, by her own admission, she had not followed through on the corrective measures, stating her methods of teaching were better. The Supreme Court of South Dakota found evidence sufficient to support the charge of incompetence and upheld the board's nonrenewal of the teacher's contract.

In the case of Scheelhaase v. Woodbury Central Community School District,⁹⁹ the Eighth Circuit Court of Appeals specifically reversed the Iowa federal district court's findings that a teacher's professional competence should not be determined solely on the basis of her student's standardized test scores. The court concluded the board could rely on the presumption that test results reflected adversely on the teacher's competency.

The court's response was:

It is possible that the discretion of a Board may, at times, to those more generously endowed seem to have been exercised with a lack of wisdom. But the board's decisions in the exercise

⁹⁹ Scheelhaase v. Woodbury Central Community School District, 488 F. 2d 237 (8th Cir. 1973).

of its discretion are not vulnerable to our correction merely if they are "wrong," sustainable only if they are "right".... It is our holding that the administration of the internal affairs of the school district before us has not passed by judicial fiat from the local board, where it was lodged by statute, to the federal court. Such matters as the competence of teachers, and the standards of its measurement are not without more, matters of constitutional dimensions. They are peculiarly appropriate to state and local administrations.¹⁰⁰

In addition to procedural and substantive issues, the area of employment discrimination has produced a substantial amount of litigation. Beckham discusses three teacher evaluation issues that have occupied federal courts in interpreting the constitutional guarantees of the equal protection clause of the Fourteenth Amendment. First, a substantial body of judicial opinion has developed relative to the use of objective, non-racial criteria in teacher evaluation when staff reduction has been compelled due to court-ordered desegregation. Second, in those instances where teacher evaluations have led to employment decisions which are alleged to be racially motivated, but unrelated to reduction required by desegregation, federal courts have declined to require objective criteria but have considered questions of discriminatory intent and evaluation validity.

¹⁰⁰ Ibid.

Third, in cases where nationally normed tests are used, courts have avoided questions of overt discrimination by scrutinizing the relationship between the evaluation mechanism and job performance.¹⁰¹

One of the earliest cases dealing with performance appraisal is Singleton v. Jackson Municipal Separate School District.¹⁰² In the decision the court required that in an absolute reduction in staff as a result of court-ordered desegregation, the staff members or teachers dismissed or demoted "must be selected on the basis of objective and reasonable non-discriminatory standards"¹⁰³ to be developed and promulgated by the school board prior to evaluation.

In Jones v. Pitt County Board of Education a black teacher whose contract was nonrenewed challenged the school board's decision as racially motivated.¹⁰⁴ The burden was on the defendant to establish by clear and convincing evidence its assertion that the plaintiff's nonretention

¹⁰¹ Beckham, Legal Aspects of Teacher Evaluation, p. 13.

¹⁰² Singleton v. Jackson Municipal Separate School District 419 F. 2d 1211 (5th Cir. 1969).

¹⁰³ Ibid. at 1218.

¹⁰⁴ Jones v. Pitt County Board of Education, 528 F. 2d 414 (4th Cir. 1975).

was based on professional incompetency. In appraising the teacher's performance on three occasions the principal assessed her overall performance as weak with particular difficulty in instruction and discipline. The teacher appealed the trial court's ruling that the nonrenewal was not racially motivated. On appeal she challenged the evaluation reports as subjective in nature, contending they were based on subjective criteria and were internally inconsistent. The court of appeals held that the school board's decision was supported by clear and convincing evidence.¹⁰⁵

Recent court decisions concerning faculty evaluation and dismissal have shown that tests used for these purposes can not be arbitrary, capricious, or unreasonable. Recent changes in appraisal of teaching attempt to evaluate the attainment of pre-established job standards. Trends are due in part to the state and court decisions calling for performance evaluation to be job-related. In Griggs v. Duke Power, black employees brought action challenging the requirement of a high school diploma or passing an intelligence test as a condition for employment in or

¹⁰⁵ Ibid., pp. 418-419.

transfer to jobs at other plants.¹⁰⁶ The court held that employment tests and measurement procedures must demonstrate a "reasonable measure of job performance."¹⁰⁷

Baker v. Columbus Municipal Separate School District used the Griggs decision when black teachers challenged the school board's use of cutoff scores on National Teacher's Examination as a precondition to retention and employment. The court ruled that "no relationship can be established" between the cutoff score and effective teaching.¹⁰⁸

As the courts have demonstrated that school boards will not be upheld when procedures and fairness are not followed, likewise, the courts have held for school boards where these have been granted. In Vorm v. David Douglas School District, the court of appeals affirmed a lower court's ruling that the Board did not fail in articulating performance standards, had established a teacher's performance standards, and had established a teacher's performance as inadequate. Further the statement provided the teacher by the superintendent adequately notified the teacher of the facts to support dismissal.¹⁰⁹

¹⁰⁶ Griggs v. Duke Power, 401 U.S. 424 (1971).

¹⁰⁷ Ibid., pp. 433-436.

¹⁰⁸ Baker v. Columbus Municipal Separate School District, 329 F. Supp. 706 (Miss. 1971).

¹⁰⁹ Vorm v. David Douglas School District No. 40, Or. App., 608 P. 2d 193.

Recent case law suggests that effective administrators identify deficiencies through regular evaluation, observe numerous times and provide consultations during a suitable remediation period, and evaluate the employee further at the end of the period to determine whether other action is appropriate. Good administration for evaluation requires establishment of criteria, attentive implementation of evaluation procedures, documentation of observation, and candid communication with employees.

CHAPTER III

LEGAL BASIS FOR TEACHER EVALUATION

Analysis of State Mandates

The present age of accountability, characterized by declining enrollments, declining test scores, and increasing budget cuts, has had a tremendous impact on education legislation. One manifestation of this legislation has been legally mandated teacher evaluation. Although such legislation dates back to 1949 in Pennsylvania, more than half the legislation passed has been since 1970. Many of these efforts have been an attempt by state legislatures or state school boards to mandate better education.

Since many legal issues become involved in the teacher performance evaluation process, it is important to analyze this legislation which has become a significant component in the teacher-administrator relationship. Possessing appropriate information relative to the legal aspects, administrators can make better decisions in regards to employment procedures.

A review and analysis of the fifty state statutes reveal that the requirements for teacher evaluation, where they exist, differ in purpose, scope, frequency of evaluation, and intended use of evaluations. Some state requirements are very clearly stated; others are very vague. Many state statutes

place much emphasis on procedures for evaluation. This emphasis includes procedural due process requirements which refer to deadlines for notification of deficiencies, required plan of assistance, and time to improve before any dismissal proceedings can occur. Procedures guarantee confidentiality of evaluation to be filed in personnel records.

Provisions for evaluation are made in several different ways. These include state statutes calling specifically for evaluations of all teachers, regulations by state boards of education setting policy for evaluating all teachers, state accreditation standards requiring evaluation as a part of that procedure, and teacher certification procedures requiring evaluation during the first year or two of initial certification period. Other state statutes require evaluation as part of the Fair Dismissal Act where only teachers to be terminated must have written evaluations.

Table I indicates the states which have some form of statewide mandate for evaluation of probationary or career teachers. The table reveals thirty-four states that have required evaluation in the form of a state statute or state board regulation. Of these, five states require evaluation only for their probationary teachers. As revealed in the table, twenty-eight of these mandates have come since 1970, while eleven came in the 1980's. This review will discuss primarily these statutes and regulations dealing with evaluation of all teachers.

TABLE I

STATEWIDE MANDATES FOR TEACHER EVALUATION			
STATE	STATUTE	REGULATION	YEAR
Alaska		x	1975
Arizona	x		1981
Arkansas	x		1979
California	x		1972
Connecticut	x		1974
Florida	x		1961
Georgia		x probationary	
Hawaii	x		1965
Idaho	x probationary		1984
Indiana	x probationary		1978
Iowa	x		1976
Kansas	x		1973
Kentucky	x	x	1981
Louisiana	x		1977
Massachusetts	x probationary		1951
Mississippi	x		1986*
Missouri	x		1983
Nevada	x		1973
New Jersey	x		1976
New Mexico	x		1973
North Carolina	x		1982
North Dakota	x probationary		1983
Ohio		x	1983
Oklahoma	x		1977
Oregon	x		1979
Pennsylvania	x		1949
South Carolina	x		1979
South Dakota	x		1969
Tennessee		x	1979
Texas	x		1981
Utah	x		1984
Vermont		x	1981
Virginia		x	1982
Washington	x		1976
West Virginia		x	1976

* Passed in 1983 for implementation in 1986.

In two simple sentences Iowa's law enacted in 1976 requires that

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....¹

At the other extreme are statutes like those in Kansas and California that elaborate in greater detail on the specifics of evaluation. The Kansas statute begins with the legislative intent of the act which includes providing for a "systematic method of improvement of school personnel in their jobs and to improve the educational system of this state."² The statute further defines the policy of personnel evaluation, adoption, filing, forms, content, and time. Evaluation procedures for employees of a public and non-public school system must be written in a policy to be filed with the school board. Evaluations are to be written and maintained in a personnel file with any written response for a period of at least three years. Time specifies two evaluations per employee for the first two consecutive years with employees evaluated once during the third and fourth year and after the fourth year, evaluated once every three years.³

¹ Iowa, Code Annotated, Section 279.14.

² Kansas, Statutes Annotated, Section 72-9001.

³ Ibid., Section 72.9003.

The Kansas statute further specifies that certain criteria be considered but does not mandate a state instrument. Guidelines state that

(a) Consideration should be given to the following: personal qualities and attributes, efficiency, personal qualities, professional deportment, ability, health (both mental and physical), 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 attributes toward support for and expectations with regard to educational programs should be reflected.⁴

The mandate further requires that employees to be evaluated and those to conduct the evaluation be involved in developing the policy. Opportunity for self-evaluation should be a part of the evaluation procedure.⁵ Written evaluation documents must be presented to employees and signed by them with time allocated for any written response by the employee. The statute concludes by citing penalties for failing to file policies as required.⁶

The Iowa and Kansas statutes represent less specific and more specific types of legislation on teacher evaluation.

⁴ Ibid., Section 72-9004.

⁵ Ibid.

⁶ Ibid., Section 72-9005.

While most states are not as vague as Iowa, neither are they as explicit as that of Kansas. California's Stull Act enacted in 1972 and later amended represents one of the most comprehensive of the recent teacher evaluation legislative mandates.

California's Stull Act, described as a "teacher tenure law" and teacher evaluation law, governs evaluation in all elementary and secondary public schools in California. Although a major portion of the law covers the fair dismissal procedures for employees, Shannon suggests that the teacher evaluation section has far more impact than the teacher tenure section.⁷ He proposes three reasons for the significance of teacher evaluation:

1. It represents a brand new approach to teacher evaluation because in it the State Legislature has coupled a requirement that teacher evaluation standards be adopted in each school district, with a set of specific and definite guidelines for the local formulation of such standards;
2. Its effective implementation, with its express commitment for follow-up counseling of teachers with deficiencies, could serve to improve the teaching profession by upgrading teacher competency or counseling out of the profession persons who simply can not come up to standards; and
3. Its requirements for involving teachers in the development of the actual standards for professional evaluation should augur for better understanding and enforcement of the standards adopted.⁸

⁷ Thomas A. Shannon, "Evaluation of School Personnel," speech given before the Kansas Association of School Boards Annual Law Conference (Third Law Conference, Topeka, Kansas) June 1972, p.4.

⁸ Ibid.

The comprehensiveness of the legislation is stated in the intent "to establish a uniform system of evaluation and assessment of the performance of certificated personnel within each school district of the state."⁹

The California legislation requires that each local board adopt a uniform set of written objective evaluation guidelines to evaluate the professional competency of certificated personnel. These guidelines make the following requirements:

- (a) Establish standards of expected pupil achievement at each grade level in each area of study.
- (b) Evaluate and assess certificated employee competency as it reasonably relates to:
 - (1) Progress of pupils toward the standard established pursuant to subdivision (a).
 - (2) The instructional techniques and strategies used by the employee.
 - (3) The establishment and maintenance of a suitable learning environment within the scope of employee's responsibilities.¹⁰

These principles envision measuring student's expected progress in each area against a standard, suggesting the need for a pretest and posttest. The competence of a teacher then would be judged by the degree to which he can bring the students along to meet or exceed the standard. The principles also suggest there must be a job description

⁹ California, Education Code, Section 44660 (formerly 13485).

¹⁰ Ibid., Section 44662.

which details the duties normally performed by one in that position.

The Stull Bill does not stop with requiring a written evaluation; it also mandates a staff development program:

The evaluation shall include recommendations, if necessary, as to the areas of improvement in the performance of the employee.... 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.¹¹

Thus the legislation obligates the evaluator to follow-up counseling for a deficient certificated employee whose standards are judged not to be up to expectations. The evaluator has to notify the employee in writing of the unsatisfactory performance, confer with the employee, and provide assistance to help him upgrade his performance. Shannon declares this requirement may be the greatest contribution of the Stull Act to public education in California.¹²

Evaluation of personnel has to be in writing and presented to the employee no later than sixty days prior to the end of the school year in which the evaluation takes place. The employee then has the opportunity to rebut

¹¹ Ibid., Section 44664.

¹² Thomas A. Shannon, "Legal Problems in Implementing The Stull Act," in Mandated Evaluation of Educators: A Conference on California's Stull Act (Stanford, California, 1972), p. 20.

or respond in writing on the evaluation report.¹³ All of this becomes a part of the employee's personnel file.

Several legal issues then are involved if an evaluation can lead to the dismissal of an employee. These include (1) whether evaluation guidelines required by the Stull Act are adopted in sufficient time by local boards to permit adequate evaluation of the probationary teacher, (2) whether the guidelines are reasonable under the prevailing circumstances, (3) whether the guidelines are written in reasonably clear and precise language so persons evaluating and those being evaluated can understand the intent, purpose, and effect of the guidelines, (4) whether the guidelines are known in sufficient time to allow action on them, (5) whether the guidelines are actually observed by school personnel, (6) whether adequate follow-up counseling for deficient performance is actually provided, (7) whether the rate of progress, if any, is measured by school district personnel, and (8) whether there is the prognosis of adequate follow-up counseling.¹⁴

Redfern states the uniqueness of the California evaluation process is that it is a competency based program with a heavy weight on the learning outcomes of students.

¹³ California, Education Code, Section 44663-44664.

¹⁴ Shannon, "Legal Problems in Implementing the Stull Act," pp. 24-25.

A practitioner's competence is judged in relation to predetermined standards of progress with stress on results rather than progress.¹⁵ In addition employees are to be evaluated on the quality of their performance on their assigned duties and on their ability to create and maintain suitable learning environment for those whom they teach or direct.

Somewhat different from the California legislation which joins teacher evaluation with a "teacher tenure law" is the South Carolina legislation which joins guidelines for teacher training and certification with evaluation. The South Carolina intent is to provide for a fair and comprehensive program for training, certification, initial employment, and evaluation of public educators. While the legislation was established to "upgrade standards for educators in this State in a fair and professional and reasonable manner," the legislation further seeks to "assure that prospective teachers have basic reading, mathematics, and writing skills."¹⁶ This legislation is comprehensive in that the goal is to improve the educator training program and procedures for evaluating those programs, to ensure that prospective teachers know and understand their teaching areas, and to enable

¹⁵ Redfern, p. 46.

¹⁶ South Carolina, Code of Laws, 1976, Chapter 26 [New] Training Certification and Evaluation of Public Educators, Section 59-26-10.

the use of evaluation standards that aid in determining if beginning teachers can apply fundamental teaching skills in the classroom.¹⁷

The South Carolina law establishes the Educator Improvement Task Force to develop an observational instrument to be used for local school districts to evaluate a teacher during his provisional year of teaching. The instrument for evaluation is such that it can be used to inform the teacher of his strengths or weaknesses. Likewise, the legislation calls for an instrument to be developed that can be used by colleges and universities to evaluate all student teachers. This instrument is also designed to allow for feedback and assistance on identified deficiencies.

Another section of the legislation further establishes procedures to evaluate all teachers under annual and continuing contracts.¹⁸ Provisional teachers are to be evaluated a minimum of three times a year with results of the evaluation provided in writing. Teachers under annual contract must have a minimum of two evaluations annually "using an instrument that at least meets the criteria that is

¹⁷ Ibid.

¹⁸ Ibid., Section 59-26-40.

established by the State Board of Education for an acceptable instrument."¹⁹

This section requires evaluators to complete a training program for developing reliability in rating and continues to emphasize that school districts "shall give the results of teacher evaluation in writing to a teacher" and "shall counsel him concerning his strengths and weaknesses as a teacher."²⁰ Deficiencies indicated are to be used as a guide to establish staff development programs. Following employment of a maximum of two years under annual contracts of successful completion of a provisional year and one year contract, a teacher may receive a continuing contract and have full procedural rights existing under fair employment and dismissal.

Some state statutes requiring teacher evaluation go much further in requirements attempting to provide for the "establishment of procedures for shared educational accountability in the public education system."²¹ The Louisiana statute stresses the accountability nature of the legislation as it establishes the guidelines:

The superintendent of education shall develop a guide for educational accountability for

¹⁹ Ibid.

²⁰ Ibid.

²¹ Louisiana, Revised Statutes, Title 17.

the public schools of the state.... Such guide shall be the basis for a comprehensive plan for an education accountability program.... The educational accountability program shall apply to all parish and city school systems in the state.²²

The legislation further defines "educational accountability" as meaning the respective responsibilities and duties, under the provision of the legislation of local school boards, administration, principals, teachers, and other personnel; the State Department of Education and its personnel; parents, students, and any other governing authority.²³

Included as part of the program of educational accountability are:

- (1) Establishment of basic statewide skills and concepts for each grade level and subject area, including but not limited to reading, writing, and mathematics;
- (2) Performance objectives leading directly to the achievement of pupil proficiencies;
- (3) Evaluation instruments including, but not limited to, tests to provide necessary evaluation;
- (4) An overall evaluation design to provide for continuous and comprehensive review of the progress

²² Ibid., Section 391.3.

²³ Ibid., Section 391.2.

of school pupils toward established goals and objectives;

(5) A uniform system of evaluation of the performance of school personnel; and

(6) An annual report by chief school administrator in each school district on results of evaluation of progress.²⁴

While all these measures for accountability are required as a part the same legislation requiring teacher evaluation in Louisiana, the measures are representative of what other states are moving toward in separate legislation.

Although some states do not have legislation mandating teacher evaluation, they have regulations that are established in the administrative code. Alaska is an example of a state that has a comprehensive teacher evaluation procedure. Chapter 19 of the Alaska Administrative Code establishes the purpose of these evaluations as being "directed toward improving the quality of instruction and facilitating the learning process in the public schools."²⁵ The regulation adds that formal evaluations shall also serve as a "method for gathering data relevant to subsequent employment status decisions

²⁴ Ibid., Section 391.1 - Section 391.3.

²⁵ Alaska, Administrative Code, "Evaluation of Professional Employee," Section 19.010.

pertaining to the person being evaluated."²⁶ The scope of evaluation includes 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."²⁷ The standards established must be relevant.

The procedure for evaluation calls for formal written evaluation of professional employees once per contract year for each certificated staff member regardless of tenured or nontenured status. The evaluation must be signed by the evaluator and the evaluatee.

The previously described statutes and regulations represent various ways state government has attempted to deal with accountability and the use of teacher evaluation as a means of maintaining accountability. While not all states address the matter in the same way, many states, to some degree, specify certain mandates for the evaluation process. Purpose of evaluation, scope of evaluation, procedures for evaluation, frequency of evaluation, and use of evaluation results are all usually detailed in the state mandates. The remainder of this chapter will analyze the state statutes as they relate to these general areas.

²⁶ Ibid.

²⁷ Ibid., Section 19.020.

Purpose of Teacher Evaluation

Generally, the purpose of evaluation may be primarily for teacher dismissal or for teacher improvement. The majority of the statutes and regulations mandating teacher evaluation are intended for the "purpose of improving the quality of instructional, administrative, or supervisory service in the public school."²⁸ The Tennessee State Board regulations state simply that the evaluation procedure shall be designed for the purpose of "improving the instructional program."²⁹

Guiding principles established by the Connecticut State Board of Education to implement the Connecticut teacher evaluation law establishes the primary purpose of evaluation as the "improvement of the student learning experience."³⁰

Still stressing improvement but more comprehensive, the Louisiana statute in its statement of the purpose for evaluation of teachers and principals provides for

...the purpose of aiding classroom teachers in planning classroom goals and improving teaching skills, for the purpose of identifying teachers in need of professional improvement in order to aid such teachers in improving their teaching

²⁸ Florida, Statutes Annotated, Section 231-29.

²⁹ Tennessee, Rules and Regulations, Section 0520-1-3-.05.

³⁰ "Connecticut's Teacher Evaluation Law," publication of the Connecticut State Department of Education, p. 1.

competency and also for the purpose of aiding principals in improving their skills.³¹

Alaska's requirement provides an example of the dual purpose of evaluation. The evaluation of the performance of professional personnel shall be toward improving the quality of instruction and facilitating the learning process in the public schools. In addition the formal evaluation shall also serve as a method for collecting data relevant to subsequent employment status decisions.³²

Table II indicates the purpose or purposes of the teacher evaluation requirements as identified in the state mandates. The purpose identified by the legislation may emphasize a means of improvement in the quality of instruction, a procedure for the collection of data that leads toward employment decision making, or a means to satisfy both purposes. Some states requiring evaluation do not state the purpose of their legislation. As shown in the table of states that give an intended purpose, there are twelve states that give improvement of instruction or personnel as their primary function and sixteen that give a both dismissal and improvement. While many states give a dual purpose, the emphasis seems to be on improvement.

³¹ Louisiana, Revised Statutes, Title 17, Section 24.3.

³² Alaska, Administrative Code, Section 19.010.

TABLE II

THE PURPOSE OF TEACHER EVALUATION		
STATE	DISMISSAL	IMPROVEMENT
Alaska	x	x
Arizona		x
Arkansas	x	x
California		x
Connecticut		x
Florida		x
Hawaii	x	x
Kansas		x
Kentucky		x
Louisiana		x
Mississippi	x	x
Missouri		x
Nevada	x	x
New Jersey		x
New Mexico		x
North Carolina	x	x
Ohio		x
Oklahoma	x	x
Oregon	x	x
Pennsylvania	x	x
South Carolina	x	x
South Dakota	x	x
Tennessee		x
Texas	x	x
Utah	x	x
Virginia		x
Washington	x	x
West Virginia	x	x

ARIZONA. The Arizona statutes state there shall be a system of evaluation and assessment of performance of certificated teachers to improve instruction and maintain instructional strengths.³³

³³ Arizona, Revised Statutes, Section 15-537.

CALIFORNIA. The intent of the California legislation is to establish a uniform system of evaluation and assessment of the performance of certificated employees.³⁴

CONNECTICUT. The primary purpose of teacher evaluation is for the improvement of student's learning experiences.³⁵

FLORIDA. The Florida statutes require the superintendent to establish procedures for assessing the performance duties and responsibilities of all instructional, administrative, and supervisory personnel for the purpose of "improving the quality of instructional, administrative, and supervisory services in the public schools of the state."³⁶

HAWAII. Mandated by state statute, the Department of Education perceives teacher evaluation as a means to monitor quality. Based on the concept of mutual respect for and confidence in the integrity of the involved parties, evaluation becomes a tool to bring about excellence in education.³⁷

KANSAS. The legislative intent of this statute is to provide for a "systematic method for improvement of school personnel

³⁴ California, Education Code (1983) 44660.

³⁵ Connecticut, "Teacher Evaluation in Connecticut," p.1.

³⁶ Florida, Statutes Annotated, Section 231.29.

³⁷ Hawaii, Revised Statutes, Section 297-46; "Program for Assisting Teaching in Hawaii," Hawaii Department of Education, 1984, p. 1.

in their job and to improve the educational system of the state."³⁸

LOUISIANA. The program of evaluation of teachers and principals in the public schools is for the purpose of aiding classroom teachers in planning classroom goals and improving teaching skills, for the purpose of identifying teachers in need of professional improvement in order to aid such teachers in improving their teaching competency, and for the purpose of aiding principals in improving their skills.³⁹

MASSACHUSETTS. Massachusetts requires evaluation as part of the teacher certification process. An evaluation committee under the auspices of the employing school district must evaluate an applicant before that person completes his second year of service under a provisional certificate. The purpose of the evaluation is to determine applicant's readiness to obtain a permanent certificate in terms of professional growth and performance.⁴⁰

MISSISSIPPI. Statutes focus on the accountability of performance. The legislature declares that the purpose of

³⁸ Kansas, Statutes Annotated, Section 72-9001.

³⁹ Louisiana, Revised Statutes, Section 17: 24.3.

⁴⁰ Massachusetts, Annotated Laws, Chapter 17:38G.

these sections of the statutes is to provide a means to obtain and provide meaningful information to the citizens about public elementary and secondary schools in the state. The statute requires the state department of education to provide to all local districts technical assistance and training in the development, implementation, and administration of a personnel appraisal and compensation system for all school employees. In addition the state department must provide financial, training, and other assistance to implement and maintain a state program of educational accountability and assessment of performance. This statute enacted in 1983 calls for the plan of evaluation to go into effect in July, 1986 with the state board giving its recommendation January 5, 1986.⁴¹

MISSOURI. While brief in content, the Missouri statute calls for the local boards of education to provide "a comprehensive, performance-based evaluation for each teacher employed by the district."⁴² Such evaluation shall be ongoing and specific and frequent enough to "provide for demonstrated standards of competency and academic ability."⁴³

⁴¹ Mississippi, Code Annotated, Section 37-3-43 - Section 37-3-46.

⁴² Missouri, Annotated Statutes, Section 168.128.

⁴³ Ibid.

NEVADA. The intent of this statute is that a uniform system be developed for objective evaluation of teachers and certificated school support personnel in each school district.⁴⁴

NEW MEXICO. Accountability is the issue in New Mexico Legislature's intent for legislation requiring a study of student performance as a factor in accountability.⁴⁵ While not specifically requiring teacher evaluation, the New Mexico statute prescribes that a principal shall be responsible for "...the planning, operation, supervision, and evaluation of the educational program of the school of which he is assigned." This includes submitting recommendations to the superintendent concerning evaluation, promotion, transfer, and dismissal of all personnel assigned to the school to which he is assigned.⁴⁶

With a student's performing below expectations in basic skills, the legislature and the public sought to determine who or what was to blame and what could be done. The ensuing regulation by the state board of education

⁴⁴ Nevada, Revised Statutes, Section 391.3125.

⁴⁵ Accountability: A Summary Report, State Department of Education, Santa Fe, New Mexico, October, 1982, p. 2.

⁴⁶ New Mexico, Statutes Annotated, Section 22-10-6.

determined to identify, evaluate, and retain the most competent teacher and evaluations possible.⁴⁷

NORTH CAROLINA. The North Carolina statute provides for uniform performance standards and criteria to be used in evaluating professional public school employees.⁴⁸ The North Carolina Administrative Code specifies that the primary purpose of the employee performance appraisal system is to "assist employees to improve the instructional program for students."⁴⁹ The appraisal system should also encourage job-performance improvement and professional growth. A second purpose of the appraisal system is to assist management and leadership personnel in making personnel decisions.⁵⁰

OREGON. Oregon indicates the purpose of 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."⁵¹

⁴⁷ Accountability: A Summary Report, pp. 1-2.

⁴⁸ North Carolina, Public School Laws, Section 115C-326.

⁴⁹ North Carolina, Administrative Code, Section 16.0600.

⁵⁰ Ibid.

⁵¹ Oregon, Revised Statutes, 342.850.

PENNSYLVANIA. Rating systems are to be used to determine whether a professional employee shall be dismissed for incompetency and to rate the services of a temporary professional employee.⁵²

SOUTH CAROLINA. Intent of this legislation is to provide a fair and comprehensive program for training, certification, initial employment, and evaluation of public educators. Evaluation standards will aid in determining whether beginning teachers can apply fundamental teaching skills in the classroom.⁵³

SOUTH DAKOTA. South Dakota's statute provides that all teachers be evaluated to identify deficiencies that might result in nonrenewal of contract.⁵⁴

TENNESSEE. Tennessee's regulation providing an evaluation system indicates the purpose is for improving the instructional program.⁵⁵

UTAH. Utah's statute is designed to provide for periodic, fair, objective, and consistent evaluation of education performance. The evaluation will identify successful teachers

⁵² Pennsylvania, Public School Code, Section 1123.

⁵³ South Carolina, Code of Law, Section 59-26-10.

⁵⁴ South Dakota, Compiled Laws Annotated, Section 13-43-9.1.

⁵⁵ Tennessee, Rules and Regulations, 0520-1-3-.05.

selected for placement on the career ladder.⁵⁶

WASHINGTON. The intent and purpose of this legislation is to guarantee that school districts "be held accountable for the proper operation of their districts to the local community and its electorate."⁵⁷ Further, the legislation seeks to guarantee that certificated staff

be held accountable for proper and efficient conduct of classroom teaching...which will provide students with opportunity to achieve those skills generally recognized as requisite to learning.⁵⁸

Scope of Evaluations

Statutes and regulations vary widely in the degree to which they address the scope of the evaluation. The scope of the evaluation refers to the degree that criteria is mandated for evaluation purposes. While some states leave the criteria up to the local school districts, others specify general areas such as interpersonal relationships and administrative processes. Still others such as North Carolina require that a uniform instrument with uniform

⁵⁶ Utah, Code Annotated, Section 53-54-2 - Section 53-54-3.

⁵⁷ Washington, Revised Code, Section 28A. 58.758.

⁵⁸ Ibid., Section 28A. 58.760.

criteria be used statewide. Provisions for uniform criteria are sometimes not made in the statute but specified in other regulations.

ALASKA. Alaska's regulation calls for emphasis on such factors as teaching or administrative skills, processes and techniques, and interpersonal relationships with students, parents, peers, and supervisors as well as additional factors which the school district considers relevant to the effective performance of its professional employees. The standard must be measurable and relevant.⁵⁹

ARIZONA. Arizona's statute does not specify criteria but calls for the establishment of criteria of expected teaching performance in each area of teaching and of techniques for the assessment and evaluation of that performance.⁶⁰

CALIFORNIA. Employees must be evaluated on competencies related to progress of students toward established standards; instructional techniques and strategies; adherence to curricular objectives; establishment and maintenance of a suitable learning environment, within scope of each employee's responsibility. The statute does not limit local school

⁵⁹ Alaska, Administrative Code, Section 19.020.

⁶⁰ Arizona, Revised Statutes, Title 15, Section 15-537.

district's authority to develop and adopt additional evaluation guidelines and criteria.⁶¹

CONNECTICUT. The Board of Education must establish minimum performance criteria for teacher evaluation with members of educational organizations helping to develop the criteria. Local school systems must establish educational goals that become the basis for evaluation. Achievement toward the mutually determined objectives and accomplishment of general responsibility and specific tasks of a teacher's position form the basis for the criteria.⁶²

FLORIDA. A complete statement of the following criteria shall include ability to maintain appropriate discipline, educational qualifications, knowledge of subject matter, efficiency, student progress toward instructional goals, based on student ability, and satisfactory use of assessment criteria and procedure by evaluator.⁶³

HAWAII. Criteria must be determined and responsibilities for the applications of criteria assigned. Evaluations should be on the basis of efficiency, ability, and such

⁶¹ California, Education Code (1983), Section 44662.

⁶² Connecticut, General Statutes, Section 10-151b; "Teacher Evaluation in Connecticut: Questions and Answers," Connecticut State Department of Education, September 1977, pp. 2-3.

⁶³ Florida, Statutes Annotated, Section 231.29.

other criteria as the department of education determines.⁶⁴

IDAHO. Criteria are to be established for supervision and evaluation of all certificated employees, but the criteria are not cited in the statute.⁶⁵

IOWA. The board must establish evaluation criteria, but the criteria is not specified in the statute.⁶⁶

KANSAS. The statute lists several criteria or guidelines to be used including efficiency, personal qualities, professional deportment, ability, health (both physical and mental), results and performance, including the capacity of teachers to maintain control of students.⁶⁷

LOUISIANA. The statute does not specify criteria but does require that criteria be established for expected teaching performance in each area of teaching and that techniques be established for assessment and evaluation of performance. Job descriptions are required for all certified teachers.⁶⁸

⁶⁴ Hawaii, Revised Statutes, Section 297-46.

⁶⁵ Idaho, Code , 22-513, Section 5.

⁶⁶ Iowa, Code Annotated, Section 279.14.

⁶⁷ Kansas, Statutes Annotated, Section 72-9004.

⁶⁸ Louisiana, Revised Statutes, Section 17:24.3; 17:391.5.

NEW MEXICO. The Board of Education has directed the Department of Education to identify criteria defining effective classroom teaching performance and to develop uniform personnel evaluation structures utilizing the criteria of effective classroom teaching.⁶⁹

NORTH CAROLINA. The statute calls for uniform performance standards and criteria to be developed by the State Board of Education in consultation with local boards.⁷⁰ The State Board regulations establish criteria to be used for evaluation of personnel.

Regulations call for a job description with performance standards and criteria for the evaluation. Planning, overseeing, updating, managing daily instruction, differentiating instruction, individualizing instruction, supervising and use of human resources, human relations, and performance of non-instructional duties are all areas included for evaluation purposes and match with functions in the job description. Local boards are authorized to use additional information.⁷¹

⁶⁹ Accountability: A Summary Report, p. 5.

⁷⁰ North Carolina, Public School Laws, Section 115C-326.

⁷¹ North Carolina, Administrative Code, 16.0600.

PENNSYLVANIA. An approved rating system shall give due consideration to personality, preparation, technique, and pupil reaction in accordance with standards and regulations for scoring as defined by the Department of Public Instruction.⁷²

Procedures for Teacher Evaluations

Procedures for evaluation are similar in all the states. Requirements include formal written evaluations signed by both the evaluator and the person evaluated. In most cases the principal is the evaluator. As in Alaska, the person must be informed that he has the right to review each written evaluation prior to its final submission and comment on it in writing.

ALASKA. Alaska requires written evaluations that are signed by the evaluator and the evaluatee. Each person has the right to review his evaluation and comment on it in writing. Evaluations may include information other than specific observations of the evaluator. Local procedures adopted must be consistent with standards and guidelines established by the State Board of Education.⁷³

⁷² Pennsylvania, Public School Code, Section 1123.

⁷³ Alaska, Administrative Code, Section 19.030.

ARIZONA. Arizona requires a written evaluation based on actual classroom observations. A copy of the evaluation must be given to the certificated teacher within five days. The teacher has the right to initiate a written reaction or response to the assessment and evaluation. The Arizona statute further states:

Each evaluation shall include recommendations as to the areas of improvement in the performance of the teacher if the performance of the teacher warrants improvement. After transmittal of an assessment, a board designee shall confer with the teacher to make specific recommendations as to areas of improvement in the teacher's performance. The board designee shall provide assistance and opportunities for the certificated teacher to improve his performance and follow up with the teacher after a reasonable period of time for the purpose of ascertaining that a teacher is demonstrating adequate classroom performance.⁷⁴

ARKANSAS. The Arkansas statute limits its statements on evaluation mainly to the procedures. The statute requires evaluation to be in writing with evaluation criteria and procedures established in the manner prescribed in Act 400 of 1975. When an administrator charged with supervision of a teacher needs to admonish a teacher for a reason that may lead to termination or nonrenewal, the administrator should bring the matter to the teacher in writing and document efforts undertaken to assist the teacher to correct

⁷⁴ Arizona, Revised Statutes, Section 15-537.

whatever appears to be the cause leading to potential non-renewal or dismissal. A personnel file is maintained on employees with the teacher allowed to submit written information for inclusion in the file.⁷⁵

CALIFORNIA. Evaluation must be made in writing and a copy given to certificated employee no later than thirty days before the last school day for that district. The employee has the right to initiate a written reaction to the evaluation. This response becomes a permanent part of the file. A conference must be scheduled to discuss the evaluation. The evaluation should include recommendations, if necessary, as to areas of improvement in the employee's performance. Following an unsatisfactory performance, the employing authority must confer with the employee making specific recommendations as to area of improvement and endeavor to assist the employee. An employee may be required to participate in an appropriate staff development program.⁷⁶

FLORIDA. A written record must be made and maintained in the school district with a copy given to the employee.

⁷⁵ Arkansas, Statutes Annotated, Section 80-1264.6.

⁷⁶ California, Education Code, Sections 44663 - 44664.

Prior to evaluation, each employee must know what criteria and procedure will be used. Prior training programs must be provided to ensure that all individuals with evaluation responsibilities understand the proper use of the assessment criteria and procedures. The written evaluation should be shown to the individual employee and discussed with him by the evaluator. When the evaluation shows an employee is not performing in a satisfactory manner, the evaluator must give notification in writing describing the unsatisfactory performance. The evaluator must make recommendations and provide assistance to correct deficiencies within a reasonable time.⁷⁷

HAWAII. The statute is very brief and does not state procedures other than to say the department of education shall establish an evaluation program for all teachers and educational officers.⁷⁸

IDAHO. If a teacher's work is found unsatisfactory, a probationary period must be established. The teacher should be notified in writing of areas of work that are deficient including conditions for the probation.⁷⁹

⁷⁷ Florida, Statutes Annotated, Section 231.29.

⁷⁸ Hawaii, Revised Statutes, Section 297-46.

⁷⁹ Idaho, Code, Section 33-513.

IOWA. The board must implement evaluation procedures, but these are not specified. If an exclusive bargaining representative has been certified, the board must negotiate in good faith with respect to evaluation procedures pursuant to Chapter 20.⁸⁰

KANSAS. Every board must adopt a written policy of personnel evaluation procedures and file the policy with the state board. The procedures must apply to all employees and require that evaluations be made in writing with evaluation documents and responses maintained in a personnel file for not less than three years. Persons to be evaluated should participate in their evaluations including an opportunity for self-evaluation.⁸¹

LOUISIANA. Evaluations shall be made by the principal of the school and other personnel as designated by the school system guidelines. The evaluation shall provide for the setting of classroom goals at the beginning of the period for which the evaluation will be conducted with an evaluation of how well goals are met. Goals to be evaluated are to be set by the teacher and principal or other evaluation personnel designated. The teacher must be provided a written copy of

⁸⁰ Iowa, Code Annotated, Section 279.14.

⁸¹ Kansas, Statutes Annotated, Sections 72-9003 - 72-9004.

the evaluation not later than fifteen days after the evaluation takes place. The teacher must also be given a chance to file his own evaluation and response to become a permanent part of the official file. Post-evaluation conferences are to be held to inform the teacher of the results as to his strengths and weaknesses. Documentation must be available to validate the evaluation. Items that can not be documented must be removed from the evaluation. When necessary, assistance must be provided to assist the teacher to improve. Due process for teachers must be assured.⁸²

MISSOURI. The statute does not specify procedures but indicates that suggested procedures shall be provided by the state department of elementary and secondary education.⁸³

NEVADA. Objective evaluation policy which may include self, student, administrative, or peer evaluation, shall be developed by each board of trustees with input from representatives of teacher personnel or their designees. Probationary periods should include conferences and written evaluations at designated time periods. Evaluations of probationary or postprobationary teachers should include, if necessary, recommendations for improvements in teaching performance. A reasonable effort should be made to help

⁸² Louisiana, Revised Statutes, Section 17:24.3 and Section 17:391.5.

⁸³ Missouri, Annotated Statutes, Section 168.128.

a teacher correct deficiencies. Written copies of evaluations should be given the teachers no more than fifteen days after the evaluation. The evaluation and any response become part of the teacher's permanent file.⁸⁴

NORTH CAROLINA. The state statute directs the State Board, in consultation with local boards, to establish uniform performance standards and criteria and to develop rules and regulations to ensure the use of these standards.⁸⁵

NORTH DAKOTA. The statute requires that first year teachers be evaluated in the form of written performance review with the first review completed by December fifteenth and the second one completed by February twenty-eighth.⁸⁶

OHIO. Ohio's State Board of Education requires that certificated and classified staff should be supervised and evaluated according to a planned sequence of observations and evaluation conferences.⁸⁷

OKLAHOMA. Local boards, with input from representatives selected by local teachers, must establish a written policy of evaluation for all teachers and administrators.

⁸⁴ Nevada, Revised Statutes, Section 391.3125.

⁸⁵ North Carolina, Public School Laws, Section 115C-326.

⁸⁶ North Dakota, Code, Section 15-47-27.1.

⁸⁷ Ohio, Administrative Code, Section 3301-35-03.

The statute allows procedures for evaluating members of the negotiations unit to be a negotiable item. The policy for evaluation must be made available to teachers. Evaluations must be made in writing and be maintained in a personnel file. Teachers must sign the evaluation and be given the opportunity to respond to the evaluation.⁸⁸

OREGON. Oregon's statute requires the local school board to develop an evaluation process while in consultation with school administrators and teachers. Where there is a local bargaining unit, Oregon's statute requires the board to consult with teachers belonging to and appointed by the bargaining unit. The evaluation process must include a job description and performance standards, a pre-evaluation interview including the establishment of performance goals for the teacher, and evaluation based on written criteria, a post-evaluation interview in which results are discussed with the teacher and a written program of assistance, if necessary, established. Evaluation reports must be signed by school official, delivered to the teacher, and a copy maintained in the personnel file.⁸⁹

⁸⁸ Oklahoma, Statutes Annotated, Section 6-102.2.

⁸⁹ Oregon, Revised Statutes, Section 342.850.

SOUTH DAKOTA. The statute requires each school board to adopt official standards, criteria, and procedures for evaluation of professional performance. The school board shall address in its policy the following: purpose of evaluation, frequency, procedure, areas subject to evaluation, and use of evaluation.⁹⁰

UTAH. School districts are directed to develop a procedure to evaluate teachers for placement and advancement on the career ladder. The procedure should be fair, consistent, and valid; incorporate clearly stated job descriptions; involve teachers in establishing the evaluation instruments; and inform teachers in writing prior to the evaluation on procedures and criteria.⁹¹

Frequency of Evaluations

In determining the frequency of evaluations, some states consider the tenured or nontenured status of an employee. For most states that differentiate between the two, the number of evaluations required for the tenured employee is usually less than the number required for the probationary or nontenured employee. Table III shows the frequency of evaluations as required by the state statutes or regulations.

⁹⁰ South Dakota, Compiled Laws Annotated, Section 13-43-26.

⁹¹ Utah, Code Annotated, Section 53-54-3.

TABLE III

FREQUENCY OF EVALUATIONS		
STATE	TENURED	NONTENURED
Alaska	annually	annually
Arizona	annually	twice per year
Arkansas	annually	annually
California	biennially	annually
Connecticut	annually	annually
Florida	annually	annually
Hawaii	annually	annually
Idaho		annually
Indiana		annually
Kansas	annually*	twice per year**
Louisiana	triennially	annually
Missouri	on-going***	on-going
Nevada	annually	four per year
North Carolina	annually	annually
North Dakota		twice per year
Oklahoma	triennially	twice per year
Oregon	biennially	annually
South Carolina		three per year
Tennessee	triennially	annually
Texas	annually	annually
Utah	periodic	frequent
Washington	twice per year	twice per year

* After fourth year, once every three years
 ** For the first two years
 *** Frequent enough to provide for demonstrated standards of competency and academic ability.

ALASKA. Alaska's requirement does not differentiate between tenured and nontenured personnel as it specifies that written evaluations must be made at least once per contract year for each certificated staff member without regard to tenured or nontenured status.⁹²

ARIZONA. Arizona's statute, calling for evaluations to be a continuous process, differentiates between tenured and nontenured status by requiring assessment and evaluation of performance at least twice each year for probationary teachers and at least once each year for personnel with continuing status.⁹³ Additional evaluations may be done as deemed necessary.

ARKANSAS. The statute calls for evaluations to be in writing annually.⁹⁴

CALIFORNIA. Evaluation 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. When any permanent employee receives an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves

⁹² Alaska, Administrative Code, Section 19.030.

⁹³ Arizona, Revised Statutes, Section 15-537.

⁹⁴ Arkansas, Statutes Annotated, Section 80-1264.6

a positive evaluation or is separated from the system.⁹⁵

CONNECTICUT. In 1973 the Connecticut legislation added an amendment to the Tenure Act requiring teacher evaluation. Superintendents are required to evaluate their teachers annually. Connecticut General Statutes 10-151b later removed teacher evaluation from the Tenure Act and allowed the State Board of Education to establish guidelines for development of local evaluation plans.⁹⁶

FLORIDA. Assessment shall be made at least once a year for each individual.⁹⁷

HAWAII. The evaluation shall be performed at least once in each school year.⁹⁸

IDAHO. At least one evaluation should be made prior to the beginning of second semester of the school year. Evaluation is required for employees who are not employed on a renewable contract.⁹⁹

KANSAS. Every employee is to be evaluated twice a year during the first two consecutive years of employment and every employee during third and fourth year of employment

⁹⁵ California, Education Code, Section 44664.

⁹⁶ Connecticut, General Statutes, Section 10-151b.

⁹⁷ Florida, Statutes Annotated, Section 231.29.

⁹⁸ Hawaii, Revised Statutes, Section 297-46.

⁹⁹ Idaho, Code, Section 33-513.

shall be evaluated at least once a year. After the fourth year, employees are to be evaluated at least once in three years.¹⁰⁰

LOUISIANA. Evaluation and assessment of certificated employees shall be made on a continuing basis, at least once a year for probationary personnel, and at least every third year for personnel with permanent status.¹⁰¹

NEVADA. Probationary teachers must have a conference and written evaluation no later than November 1, January 1, March 1, and May 1 of the school year. Postprobationary teachers must be evaluated at least once each year.¹⁰²

NORTH CAROLINA. Local boards must adopt rules and regulations that provide for annual evaluations of all professional employees defined as teachers and other school employees.¹⁰³

NORTH DAKOTA. Each local district is required by state statutes to have an established system through which two written evaluations are prepared for every teacher during his first year of teaching. The first one must be completed and made available to the teacher no later than December 15

¹⁰⁰ Kansas, Statutes Annotated, Section 72-9003.

¹⁰¹ Louisiana, Revised Statutes, Section 17:391.5.

¹⁰² Nevada, Revised Statutes, Section 391.3125.

¹⁰³ North Carolina, Public School Laws, Section 115C-326.

with the second review completed and available no later than February 28.¹⁰⁴

OKLAHOMA. The statute requires that probationary teachers be evaluated at least two times per school year, one time prior to November 15 and one time prior to February 10 of each year. Every tenured teacher must be evaluated at least once every three years.¹⁰⁵

OREGON. Local districts are required to have evaluations for all probationary teachers at least once a year with multiple observations. Any other teacher should be evaluated at least biennially.¹⁰⁶

TENNESSEE. Regulations require annual evaluation on probationary teachers with tenured teachers evaluated once every three years.¹⁰⁷

UTAH. The evaluation system shall provide for frequent comprehensive evaluations of teachers with less than three years of teaching experience and periodic evaluations of other teachers.¹⁰⁸

¹⁰⁴ North Dakota, Code, Section 15-47-27.1.

¹⁰⁵ Oklahoma, Statutes Annotated, Section 6-102.2.

¹⁰⁶ Oregon, Revised Statutes, Section 342.850.

¹⁰⁷ Tennessee, Rules and Regulations, Section 0520-1-3-.05.

¹⁰⁸ Utah, Code Annotated, Section 53-54-3.

Use of Evaluation Results

The individual evaluation is not a matter of public record but may be "reviewed upon demand at reasonable times by the person evaluated or some other person designated in writing by the person evaluated."¹⁰⁹ This procedure is representative of what most states require. Unless otherwise mutually agreed upon by the person evaluated and the school board or its designee, the evaluation may not be made public except as evidence in a proceeding relative to evaluated employee's certification or employment.

ALASKA. Evaluations are not for public record but may be reviewed upon demand at reasonable times by the evaluatee.¹¹⁰

ARIZONA. Copies of the assessment and evaluation report are confidential and do not constitute a public record. The copies can not be released or shown to anyone except (1) to the certificated teacher evaluated who may make any use of it, (2) to authorized district officers for personnel matters or hearings related to personnel, (3) for introduction of evidence or discovery in any court action

¹⁰⁹ Alaska, Administrative Code, Section 19.040.

¹¹⁰ Ibid.

between the governing board and the certificated teacher in which the competency of a teacher is at issue or where the evaluation was an exhibit at a hearing, the result of which is challenged.¹¹¹

CALIFORNIA. The evaluation may be used to determine pupil progress toward established standards of expected pupil achievement at each grade level in each area of study. Employing authorities may also use the evaluation to require certificated employees to attend appropriate staff development.¹¹²

CONNECTICUT. The Connecticut law allows information obtained through the teacher evaluation program to be used to make necessary administrative decisions. This includes decisions on continuation of employment. The State Department of Education recommends that teacher evaluation not be included as an issue of the collective bargaining of teacher contracts.¹¹³

FLORIDA. The assessment must be made known to the superintendent and the school board for the purpose of reviewing continuing contract.¹¹⁴

¹¹¹ Arizona, Revised Statutes, Section 11-537.

¹¹² California, Education Code, Section 44660 - 44664.

¹¹³ Connecticut General Statutes 10-151b; "Teacher Evaluation in Connecticut," p. 3.

¹¹⁴ Florida, Statutes Annotated, Section 231.29.

IDAHO. The evaluations are used to determine whether the probationary teacher will be reemployed for the following year. If the evaluation is used not to reemploy a person, the employee must be notified by a specified time with a statement of reason for the decision. Thus the evaluation may be used to make employee decisions.¹¹⁵

LOUISIANA. Copies of evaluation must be given to the employee and are to be retained by the school as confidential. Evaluation does not become public record but may be used for any hearing related to personnel matters, as introduction of evidence or discovery in any court action between the board and teacher when the competency of the teacher is at issue or when the evaluation is an exhibit at a hearing, the result of which is challenged. The superintendent may use collective data of all evaluations to provide statistical analysis and evaluations of educational personnel to the media and other agencies but may not give a report of any individual teacher.¹¹⁶

MASSACHUSETTS. The evaluation is used to determine if an applicant may be granted a permanent certificate. Other

¹¹⁵ Idaho, Code, Section 33-513.

¹¹⁶ Louisiana, Revised Statutes, Section 17:391.5.

alternatives include (1) renewal of the provisional certificate for two more years with a reevaluation to follow and (2) denial of a renewal and failure to grant permanent certificate upon which the applicant may request a hearing and the board must comply.¹¹⁷

NORTH CAROLINA. According to the Administrative Code, information from performance appraisal shall be used as

- (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.¹¹⁸

Teachers and principals can record their written comments and register their dissent on the appraisal instrument.¹¹⁹

NORTH DAKOTA. The evaluation of first year teachers is used to determine renewal or nonrenewal of contract. Failure to renew requires written notification of decisions with detailed description of reasons presented to the teacher no earlier than April fifteenth and no later than May first.¹²⁰

¹¹⁷ Massachusetts, Annotated Laws, Chapter 71:38G.

¹¹⁸ North Carolina, Administrative Code, Section 16.0600.

¹¹⁹ Ibid.

¹²⁰ North Dakota, Code, Section 15-47-27.1.

CHAPTER IV
AN ANALYSIS OF JUDICIAL DECISIONS
RELATED TO TEACHER EVALUATION

Introduction

As indicated by a review of the mandates for teacher evaluation, school boards have considerable flexibility in implementing teacher evaluation systems that not only serve to improve employee performance but also serve to furnish data that ultimately provides information necessary for making employment decisions. While school boards have considerable power in employment decisions, constitutions, statutes, and state agency regulations all place restraints on these powers as is evidenced by the litigation.

Courts become involved in teacher evaluation issues only at the appeal stage. Traditionally, courts have accepted the authority of school boards and administrators to determine the standards of teacher performance.¹ A review of the courts' involvement in litigation on teacher evaluation reveals that the courts reiterate they will not substitute their judgment for that of the boards of education.

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

Instead courts have permitted boards of education to use a broad interpretation of inadequate performance and then made their determinations on the facts unique to each case.

One court has stated the principle in this manner:

When there is a rational basis for an administrative board's discretionary determinations which are supported by substantial evidence insofar as factually required, the court has no right to substitute its judgement for the administrative board's or to interfere with the latter's bona fide exercise of its discretions.²

However, if school boards fail to follow written procedures laid out in evaluation statutes or regulations, fail to meet deadlines for notification to teachers, or fail to grant review of the board's decision, the courts are quick to intervene. Therefore, the major focus of court involvement has been related to procedural requirements that must be followed in the teacher evaluation process.

In more recent years, however, courts are also becoming involved in a detailed analysis of what constitutes unsatisfactory teacher performance. In these cases, courts are concerned with whether or not teachers are providing, and students are receiving, appropriate educational services.³ Thus, the

² *Celestine v. Lafayette Parish School Bd.*, 284 So. 2d 650, 653 (La. Ct. App. 1973).

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

judiciary is evidencing a greater willingness to review decisions of school administrators to ensure that relevant, probative, and substantial evidence supports the findings and conclusions relative to statutory causes for dismissal.⁴ Consequently, recent litigation is involved not only with procedural due process but also with substantive due process.

In 1978 the case law concerning teacher evaluation issues was limited because of the recency of teacher evaluation statutes and regulations. A scarcity of reported decisions was also attributable to the reluctance of administrators to demote or discharge teachers on the basis of "incompetency."⁵ In spite of the fact that principals may still be reluctant to dismiss solely on the basis of incompetency, there is a growing abundance of case law in this area, including cases where incompetency or inadequate performance is the key factor.⁶

A review of court cases involving teacher evaluation is organized around three major areas: (1) Procedural due process, (2) substantive due process, and (3) employment discrimination. Procedural due process cases involve those

⁴ Webb, p. 2.

⁵ Zirkel, "Teacher Evaluation," p. 6.

⁶ Clyde H. Nestler v. Chapel Hill-Carrboro City Schools Board of Education, 311 S.E. 2d. 57 (N.C. App. 1984).

where teachers appealed their dismissal based on procedural issues such as a board's failing to follow prescribed policy. Substantive due process cases include those that go beyond the procedural issues to examine the justification of an action or to determine if there is adequate evidence to support a governmental action. Employment discrimination includes cases where the "equal protection" clause of the Fourteenth Amendment or Title VII of the Civil Rights Act of 1964 has been violated through discriminatory practices of employers.

In each of the three categories, two landmark cases are cited with these followed by other cases where specific issues are identified. A review of these cases reveals that the courts are consistent in supporting the employee against any action that might be seen as arbitrary or capricious action of an employer.

The first series of court cases selected for review are those cases related to procedural due process in teacher evaluation. These cases include:

(1) Landmark cases

- (a) Board of Regents v. Roth, 408 U.S. 564 (1972).
- (b) Perry v. Sindermann, 408 U.S. 593 (1972).

(2) Other cases

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

- (b) Pollard v. Board of Education Reorganized School District No. III, Platte County, Missouri, 533 S.W. 2d 667 (Mo. Ct. App. 1976).
- (c) Orth v. Phoenix Union High School System No. 21, Ariz. App., 613 P. 2d 311 (1980).
- (d) Miller v. Independent School District No. 56 of Garfield County, Okla., 609 P.2d 756 (1980).
- (e) Wilt v. Flanigan, 294 S.E. 2d 189 (W. Va. 1982).
- (f) Board of Education of School District No. 131 v. Illinois State Board of Education, 403 N.E. 2d 277 (App. Ct. Ill. 1980).
- (g) Board of Directors of Maine School Administrative District No. 75 v. Merrymeeting Educator's Association, Me., 354 A. 2d 169 (1976).
- (h) Cantrell v. Vickers, 495 F. Supp. 195 (Miss. 1980).
- (i) Vorm v. David Douglas School District, Or. App., 608 P. 2d 193 (1980).
- (j) Board of Education of Benton Harbor Area Schools v. Wolff, 361 N.W. 2d 750 (Mich. App. 1984).

The second category of cases selected for review are those related to substantive due process in evaluation. Protection from arbitrary action is the focus of substantive due process and may often include protection of First Amendment rights. In teacher evaluation substantive due process claims

go beyond the procedural issues to determine if there is sufficient evidence to justify a decision of the school board. Cases selected include:

(1) Landmark Cases

- (a) Pickering v. Board of Education, 391 U.S. 563 (1968).
- (b) Mt. Healthy City Schools District Board of Education v. Doyle, 429 U.S. 274 (1977).

(2) Other Cases

- (a) Schwartz v. Bogen, 281, N.Y. S. 2d 279 (1967).
- (b) Ganyo v. Independent School District No. 832, Minn., 311 N.W. 2d 497 (1981).
- (c) Schulz v. Board of Education of the School District of Fremont, Neb., 315 N.W. 2d 633 (1982).
- (d) Scheelhaase v. Woodbury Central Community School District, 488 F. 2d 237 (8th Cir. 1973).
- (e) Busker v. Board of Education of Elk Point Independent School District #61-3 of Union County, S.D., 295 N.W. 2d 1 (1980).
- (f) Nestler v. Chapel Hill-Carrboro City School Board of Education, 311, S.E. 2d 57 (N.C. App. 1984).
- (g) Crump v. Durham County Board of Education, 327 S.E. 2d 599 (N.C. App. 1985).

The third category of cases selected for review are those related to employment discrimination. These cases are

those where the "equal protection" clause of the Fourteenth Amendment or Title VII of the Civil Rights Act of 1964 has been violated through discrimination in personnel evaluation.

Cases selected include:

(1) Landmark Cases

(a) Singleton v. Jackson Municipal Separate School District, 419 F. 2d 1211 (5th Cir. 1969).

(b) Griggs v. Duke Power, 401 U.S. 424 (1971).

(2) Other Cases

(a) Mary E. Jones v. Pitt County Board of Education, 528 F. 2d 414 (4th Cir. 1975).

(b) Bettye Joe Baker v. Columbus Municipal Separate School District, 329 F. Supp 706 (Miss. 1971).

Procedural Due Process in Teacher Evaluation

The United States Constitution provides a means for resolving disagreements about what is fair by determining how a decision should be made and by whom it should be made. This concept known in the law as "due process" is enshrined in the Fourteenth Amendment: "No state shall... deprive any person of life, liberty, or property, without due process of law."⁷ While state law may not provide the probationary teacher specific procedural

⁷ United States Constitution, Amendment XIV, Section 1.

protections, a teacher's interest in public employment may be constitutionally protected. Likewise, state statutes may provide procedural protection beyond the Constitutional protection. The United States Supreme Court addresses these interests in two landmark cases which serve as legal precedent for addressing procedural rights of nontenured teachers as well as tenured teachers: Board of Regents v. Roth⁸ and Perry v. Sindermann.⁹

Board of Regents v. Roth

408 U.S. 564 (1972)

Facts

David Roth, an assistant professor of political science at Wisconsin State University, was hired for a fixed term of one academic year. At the end of the year, he was informed without any explanation that he would not be rehired for the ensuing year. A state statute provided that all university teachers would be hired initially on probation and given permanent status only after four years of continuous service demonstrating efficiency and good behavior. University rules provided some opportunity for review of the "dismissal" of a nontenured teacher "dismissed" before the end of the year but provided that no reasons be given the nontenured teacher who was not retained.

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

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

Roth contended the real reason for his dismissal was his criticism of the university administration and that he had been deprived his procedural due process rights because of the university's failure to advise him of the reasons for its decision. The District Court granted summary judgment for Roth on the procedural issue. The Court of Appeals affirmed.

Decision

The Supreme Court reversing the lower courts held that the Fourteenth Amendment does not require opportunity for a hearing prior to the nonrenewal of a nontenured teacher's contract, unless he can show that the nonrenewal deprived him of an interest in "liberty" or that he had a "property" interest in continued employment despite the lack of tenure or a formal contract. The nonretention of Roth, absent any charges against him or stigma or disability foreclosing other employment, is not tantamount to deprivation of "liberty" and the terms of his employment provided him no "property" interest protected by procedural due process.

Justice Stewart delivered the opinion of the Court:

The requirements of procedural due process apply only to the deprivation of interest encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite... But to determine whether due process requirements apply in the first place, we must look not to the "weight" but to the nature of the interest at stake.... For the words "liberty"

and "property" in the Due Process Clause of the Fourteenth Amendment must be given some meaning.¹⁰

In giving the reasons for its decision, Justice Stewart stated:

The State, in declining to rehire the respondent did not make any charges against him that might seriously damage his standing and association in the community.... Had it done so, this would be a different case....

Similarly, there is no suggestion that the State, in declining to re-employ the respondent imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities.... Had it done so, this, again, would be a different case....

To be sure, the respondent has alleged that the nonrenewal of his contract was based on his exercise of his right to freedom of speech. But this allegation is not now before us. The District Court stayed proceedings on this issue, and the respondent has yet to prove that the decision not to rehire him was, in fact, based on his free speech activities.

Hence, on the record before us, all that clearly appears is that the respondent was not rehired for one year at one university. It stretches the concept too far to suggest that a person is deprived of "liberty" when he is simply not rehired in one job but remains free to seek another.¹¹

Perry v. Sindermann

408 U.S. 593 (1972)

Facts

Robert Sindermann had been employed in the state college system of the State of Texas for ten years, the last four as a professor at Odessa Junior College under a series of one

¹⁰ Board of Regents of State College v. Roth, 408 U.S. 564, 569-572. (1972).

¹¹ Ibid. at 573-575.

year contracts. At one time he was successful enough to be appointed to serve as the co-chairman of his department.

During his last two years, controversy arose between Sindermann and the college administration. As president of the Texas Junior College Teacher Association, Sindermann became involved in public disagreements with the policies of the college's Board of Regents. In particular, he aligned himself with a group advocating the elevation of the college to a four-year status, a change opposed by the Regents. At the end of the 1968-69 academic year, the Board of Regents voted not to offer him a new contract for the next year. In a press release the Regents set forth allegations of Sindermann's insubordination.

The Regents provided Sindermann with no official statement of the reasons for nonrenewal of his contract. Further, they allowed him no opportunity for a hearing to challenge the basis for his nonrenewal.

Sindermann brought this action to Federal District Court alleging their decision not to rehire him was based on his public criticism of the administration's policies and thus infringed his freedom of speech. He also alleged their failure to provide opportunity for a hearing violated the Fourteenth Amendment's guarantee of procedural due process.

The District Court granted summary judgment for the petitioners and concluded the respondent had no reason to

take action since his contract ended May 31, 1969, and the Junior College had no tenure system. The Court of Appeals reversed the judgment of the District Court on the grounds that despite lack of tenure, nonrenewal of respondent's contract would violate the Fourteenth Amendment if in fact it was based on his protected free speech, and that if respondent could show that he had an "expectancy" of re-employment, the failure to allow him an opportunity for a hearing would violate the procedural due process guarantee.

Decision

In affirming the Court of Appeals, the United States Supreme Court held that:

1. Lack of a contractual or tenure right to re-employment, taken alone, did not defeat respondent's claim that the nonrenewal of his contract violated his free speech right under the First and Fourteenth Amendments....
2. Though a subjective "expectancy" of tenure is not protected by procedural due process, respondent's allegation that the college had a de facto tenure policy, arising from rules and understandings officially promulgated and fostered, entitled him to an opportunity of proving the legitimacy of his claim of job tenure. Such proof would obligate the college to afford him a requested hearing where he could be informed of the grounds of his nonretention and challenge their sufficiency.¹²

Discussion

According to the United States Supreme Court, the application of the procedural guarantee in teacher employment

¹² Perry v. Sindermann, 408 U.S. 593 (1972).

cases involves a two stage analysis. First, there must be a determination of whether the asserted individual interests are encompassed within the Fourteenth Amendment's protection of life, liberty, and property. If liberty or property interests are implicated, a determination must then be made of what process is due. A property interest is a legitimate entitlement to continued employment that is created under the laws, rules, regulations, and contracts of the state. Granting of tenure can vest a teacher with a property right to continued employment. A liberty interest is involved whenever governmental action creates a stigma or damages a teacher's reputation to the degree that it forecloses any opportunity for future employment.¹³

If either a liberty or property interest is involved in an adverse employment decision, procedural due process must be afforded.¹⁴ Establishment of a right to due process does not mean that a teacher is automatically reinstated but that a teacher is entitled to notice of reasons for a school board's action and to an opportunity for a hearing on the disputed issues of fact.

¹³ Board of Regents v. Roth, 408 U.S. 564, 573 (1972).

¹⁴ Ibid.

Once a teacher has established a right to procedural due process, the courts determine the extent of due process required based on balancing of the school board's interest in expeditious removal of an employee whose contract interferes with the efficiency of public education against the weight of the employee's property or liberty interest.¹⁵

Due process is an essential element of any teacher evaluation program since it protects individuals against arbitrary or unreasonable laws and procedures by governmental officials. Due process requires (1) policies and procedures that are fair, necessary, and freely available to those affected, (2) nondiscriminatory application of procedures and policies, (3) notice and charges, (4) a hearing before an impartial tribunal, and (5) an opportunity to appeal the decision.¹⁶

When teacher evaluations are a factor in the employment decisions, the courts look to standards of procedural due process embodied in employment contracts, state laws, board regulations, or court decisions.¹⁷ Where standards for teacher evaluation have been promulgated at the state or local level,

¹⁵ Pickering v. Board of Education, 391 U.S. 563, 568 (1968).

¹⁶ Patrick Dolan and Benson Munger, "Evaluation and Process: Guidelines for Administrators," National Elementary School Principal, 52 (February 1973): 87.

¹⁷ Webb, p. 2.

school systems are expected to adhere to these legislative or administrative procedural safeguards.

Many of these procedural safeguards have been discussed in the analysis of procedures cited in the state mandates. Examples include statutes that specify a deadline for completing evaluations, conducting a formal conference, conducting a stated number of evaluations, or providing assistance and enough time for improvement to take place. That courts have expected school systems to abide by these regulations is evidenced in the litigation where employment decisions hinge on whether these procedures have been followed.

Some states have statutes or regulations requiring school districts to advise teachers of criteria and procedures to be used in the evaluation process in addition to providing adequate notice of an unsatisfactory evaluation.¹⁸ Several cases serve to illustrate that courts expect school boards to follow written policy and to provide for constitutionally protected due process rights.

Witgenstein v. School Board of Leon County

347 So. 2d 1069 (1977)

Facts

Two discharged teachers, Judith Witgenstein and Susan Still, sought review of an order of the school board declining

¹⁸ See Chapter III of this dissertation for a discussion of state statute requirements.

to accord them administrative hearings. The petitioners were employed by the school board pursuant to annual contracts of employment for 1972-73, 1973-74, and 1974-75. Witgenstein was notified by a letter dated March 21, 1975, from the principal that her contract would not be renewed for an additional year. Still was notified the same by a letter dated March 23, 1975. The petitioners were informed they were not recommended for further employment based on the principal's intention to "obtain services of another person whose qualifications would better meet the needs of the District."¹⁹

Witgenstein filed a grievance alleging that neither her evaluation nor the manner in which it was conducted complied with evaluation procedures. Her grievance was finally denied by the board on June 24, 1975. Witgenstein complained that she was not properly evaluated or apprised of purported deficiencies in her teaching performance and that she was entitled to another year of employment during which time she would be properly evaluated.

Still chose not to file grievance, instead seeking assistance from her bargaining representative which objected to the way she was evaluated and requested another year of employment. Still was also denied relief.

¹⁹ Witgenstein v. School Board of Leon County, Fla. App., 347, So. 2d 1069, 1070 (1977).

Both petitioners then sought to bring action in Leon County Circuit Court against their respective principals, the superintendent, and the Board. Each action was based upon negligence and breach of contract, seeking damages and a judgment instating them to another year of employment during which time they would be properly evaluated. Both actions were dismissed by the circuit court for failure to exhaust their administrative remedies. Witgenstein and Still then filed a petition with the Board requesting reinstatement for an additional year due to supervisory staff's failure to evaluate them properly in accordance with existing policy.

The Board denied relief for the teachers on the grounds:

(1) That it lacked jurisdiction to grant the relief requested since it was the prerogative of the superintendent not the Board to nominate members of the instructional staff....

(2) That having taken judicial notice of its rules, the Board found it had not adopted any rule pertaining to an evaluation policy on instructional staff; therefore the policy never having been adopted it never became part of the Petitioner's contracts.

(3) That since Petitioners had already grieved their complaints before the Board they received final agency action.²⁰

Decision

The District Court of Appeals of Florida held that the Board was required to "adopt rules of practice relating to

²⁰ Ibid. at 1071.

the assessment of all instructional, administrative, and supervisory personnel within the district" and that the

Teachers were entitled to an assessment of the performance by persons having direct supervision of them and were entitled to be shown a written report of the assessment with persons responsible for its preparation....²¹

The District Court of Appeals also held that if there was a disputed issue of material fact as to whether teacher performance had been appropriately assessed in accordance with statutes, the school board would be required to hold a hearing with appropriate persons providing testimony subject to cross-examination.

Since Florida statutes require superintendents to establish procedures for assessing the performance of duties and responsibilities of all instructional staff in a school district, the board had no choice but to have a policy. The additional requirements included:

- (1) Prior to preparing the written report of assessment, each individual shall be informed of the criteria and procedure to be used;
- (2) The written report of assessment for each individual shall be shown to him and discussed by the person responsible for preparing the report....²²

²¹ Ibid. at 1072.

²² Florida, Statutes Annotated, Section 231.29.

Thus, the court concluded that if the board was aware of an evaluation policy established by the superintendent, the board had a responsibility to adopt appropriate regulations. Even, assuming no responsibility there, the board still had the responsibility, under the state's Administrative Procedure Act to provide a hearing to the teachers where there was a dispute as to whether teacher performance was assessed in accordance with state statute. The court ordered reinstatement of the teachers.

Discussion

A school board's teacher evaluation system must comply with state mandated procedures where they exist. Emphasis is also given to the fact that teachers are entitled to written assessment of their performance by persons having direct supervision over them. Teachers are also entitled to an opportunity to refute in writing any criticism of their performance.

Pollard v. Board of Education Reorganized School

District No. III, Platte County, Missouri

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

Facts

Vera Pollard, a teacher challenging the termination of employment by the Board of Education of Platte County, initiated an appeal after the Circuit Court affirmed the decision of the Board of Education.

Pollard had received a letter from the Board notifying her that she needed to improve in these areas:

- (1) Relationship with students
- (2) Enthusiasm in teaching
- (3) Disciplinary policies
- (4) Relationship with parents.²³

According to state statute she was given thirty days to show satisfactory improvement. After the thirty day period, Pollard was notified of her termination and again cited the same four reasons. She requested a hearing after which she received notice that her contract was terminated.

On appeal Pollard made four claims:

- (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) Heresay was improperly admitted at the hearing on June 21, 1973, and
- (4) She did not get a fair and impartial hearing on June 21, 1973, because a hearing officer testified as a witness against her.²⁴

The Circuit Court affirmed the decision of the Board of Education terminating the employment of Pollard, a tenured teacher.

Decision

On appeal, the Missouri Court of Appeals reversed the decision and held that where the board of education relied

²³ Pollard v. Board of Education, Reorganized School District No. III, Platte County, Missouri, 553 S.W. 2d 667, 668 (Mo. Ct. App. 1976).

²⁴ Ibid. at 669.

upon statutory ground of incompetency, inefficiency, or insubordination in line of duty as basis for discharging the teacher, the board was bound by terms of the statute:

- (1) to state in 30-day warning letter the specific causes which, if not removed, could have resulted in charges;
- (2) that warning letter which announced that the teacher needed improvement in certain areas was insufficient to meet statutory mandates of notice as to specific causes;
- (3) that even if charges were listed with sufficient particularity in second letter sent teacher, it would not cure the defects in the allegations in the previously sent 30-day warning letter;
- (4) that board could not argue on appeal that its charges were insufficient to show that the teacher possessed a mental condition making her unfit to instruct or associate with children where board never gave teacher slightest hint in its proceedings against the teacher that it was relying on such ground.²⁵

Discussion

School boards must follow state statutes in meeting notification deadlines for deficiencies and must use clarity in identifying deficiencies.

Orth v. Phoenix Union High School System No. 21

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

Carl Orth, a tenured teacher since 1965, received unsatisfactory ratings on a teacher evaluation program

²⁵ Ibid. at 667.

adopted in June of 1977 as required by Arizona statute. Having received the unsatisfactory rating in the fall of 1977, he was given more extensive evaluation in December and received unsatisfactory ratings in fifteen of eighty-five areas of evaluation which resulted in an overall unsatisfactory evaluation rating in a recommendation that he not be retained. As a part of this evaluation, he received a list of objectives for improvement with a target date of March 14, 1978. The evaluation was not accompanied by a letter or notice regarding his future employment.

On January 9, 1978, Orth received a letter intended to serve as a "reminder." The letter referred to documents identifying specific objectives for his improvement, ways the target objectives could be achieved, and the target date for demonstrating improvement. The appellant was reevaluated in March of 1978, and on April 12, 1978, he received a notice of intent to dismiss from the president of the District School Board. His dismissal would take place thirty days later because of classroom inadequacy.

Orth requested a hearing and one was held on May 18 and June 12, 1978. On July 6, the hearing commission recommended dismissal. Official notice was received by Orth on July 19, 1978. Orth filed suit in Superior Court seeking reinstatement on the sole contention that the District failed to

comply with Arizona statute requiring a preliminary notice of inadequacy be sent to a teacher prior to dismissal proceedings. The Superior Court entered judgment in favor of defendants and the teacher appealed.

Decision

The Court of Appeals held that:

(1) letter, which principal sent to teacher failed to meet 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 evaluation" did not establish that board of education had authorized principals to issue preliminary notice of inadequacy within meaning of statute requiring that such a notice be issued by a school board or its authorized representative.²⁶

Discussion

The courts continue to emphasize that procedures must be followed in dismissal attempts. A "reminder" letter does not meet statutory requirements for preliminary notice of inadequacy. A preliminary notice should contain a list of deficiencies with such particularity as to furnish the teacher an opportunity to correct deficiencies.

²⁶ Orth v. Phoenix Union High School System No. 210, Ariz. App., 613 P. 2d 311 (1980).

Miller v. Independent School District No. 56

Okla., 609 P. 2d 756 (1980)

Facts

Melody Miller, a nontenured secondary teacher, brought action against the board of education claiming her contract was wrongfully nonrenewed. The District Court granted summary judgment to the school district and the teacher appealed.

While Miller was employed by the District during the years 1974-1975, 1975-76, and 1976-1977, she was not yet a tenured teacher. The written contract complied with the state's written contract requirement. When the board voted not to renew her contract on March 7, 1977, she was sent a letter which she received on March 31, 1977, ten days before the April 10th statutory deadline.

At the board's April 4, 1977, meeting, Miller appeared before the board and requested reasons for her nonrenewal, but no reasons were given. That request and following requests were denied. At the time of the nonrenewal of contract, the board had a policy called General Policies which called for nonrenewals to be notified in writing, giving reasons. No distinction was made between tenured and non-tenured teachers.

Decision

The Oklahoma court held that (1) a rule adopted by the board of education which provided for notice in writing

of reasons for not offering a teacher a new contract was not inconsistent with statute providing for automatic renewal if teacher was not notified to the contrary by certain date, (2) the policy statement containing such rule was by implication included in plaintiff's contract of employment, and (3) the plaintiff was not necessarily entitled to reinstatement by reason of noncompliance with board of education rule but was entitled to reasons and an opportunity to be heard.²⁷

Discussion

Issues reviewed by the Supreme Court of Oklahoma led the court to the conclusion that Miller, while nontenured, had shown she had the right to reasoned, meaningful, and factual explanation of nonrenewal of her contract and entitlement to an opportunity to challenge its sufficiency before the Board took final action. The court made it clear that it did not hold that Miller is necessarily entitled to reinstatement but that she is entitled to notice with reasons and an opportunity to be heard.

Wilt v. Flanigan

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

Facts

Faylee Wilt, a probationary teacher, sought reinstatement

²⁷ Miller v. Independent School District No. 56, Okla., 609 2d 756 (1980).

to her former position after the board refused to rehire her or grant her a continuing contract. Wilt appealed a decision of the Circuit Court of Berkeley County which affirmed action of the Board of Education. She contended that her performance as a teacher was not evaluated openly and honestly as required by the West Virginia Board of Education which required that every employee is entitled to know how well he is performing his job and "should be offered the opportunity for open and honest evaluation of his performance on a regular basis."²⁸ The regulations further provided that decisions concerning promotion, demotion, transfer, or termination of employment

should 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 assistance of regular evaluation.²⁹

Decision

The Supreme Court of Appeals held that the principal's annual evaluation of teacher lacked openness and honesty required by policy promulgated by West Virginia Board of Education where evaluation dramatically increased areas in which teachers needed to improve from zero in prior years to

²⁸ West Virginia, Board of Education Policy, No. 5300 (6) (a).

²⁹ Ibid.

eighteen and where evaluation was based on observation that was not result of open and fair evaluation of teacher's performance. Further, the court held the board of education failed to comply with policy entitling every employee to know how well he is performing in his job, as result of its reliance on principal's observation which lacked openness and honesty.

In holding for the teacher, the Supreme Court of Appeals of West Virginia held that the teacher was entitled to be reinstated to her former position and given open and fair opportunity to prove her competency as a teacher.³⁰

Discussion

Where the State Board of Education policy requires that every employee is entitled to an opportunity to improve his job performance prior to termination, local boards must follow this written policy. Thus, where even a probationary teacher can show opportunity was not provided prior to termination notice, the teacher is entitled to reinstatement with an open and fair opportunity to improve.

Failure of a school board to follow evaluation procedure established by the state board policy prohibits a board from discharging, demoting, or transferring an employee for any remediable conduct which has not been called to his attention.

³⁰ Wilt v. Flanigan , 294 S.E. 2d 189 (W. Va., 1982).

Board of Education of School District No. 131 v.

Illinois State Board of Education

403 N.E. 2d 277 (App. Ct. Ill. 1980)

Facts

John Murray, hired as a full time teacher by the Board in 1966, was discharged from his position on April 4, 1977. Following an administrative hearing, his discharge was reversed and he was ordered reinstated. The Board then sought administrative review after which the Circuit Court reversed the decision of the hearing officer as against manifest weight of evidence. Murray appealed the case which was heard by the Appellate Court of Illinois, April, 1980.

An evaluation of Murray's performance for the 1971-72 school year, although favorable in some areas, criticized him in two areas: (1) classroom discipline and control, and (2) teaching techniques in that his teaching assignments lacked structure and he failed to give clear instructions to the students. Records failed to disclose evaluations for the 1972-73 and 1973-74 school years; however, the end of the 1974-75 school year the teacher received another partly unfavorable evaluation. Most evidence at the administrative hearing concerned his performance in the 1975-76 and 1976-77 school years.

In January and February of 1976 the defendant was criticized for failing to plan constructive activities for his

class, for failing to maintain an adequate standard of instruction, and for failing to complete the department's assigned duties. A formal evaluation in March of 1976 found him deficient in a number of areas including rapport with students, familiarity with subject, variety of teaching techniques, effectiveness of class activities, and teacher's evidence of preparation. While some improvement was shown, deficiencies were not removed from the last evaluation.

However, Murray was rehired for the next year. Close supervision followed in the 1976-77 school year, but again in February, 1977, he was advised of deficiencies in his teaching performance. The teacher, at this time, signed a statement indicating that a forty-five day period was adequate for him to remedy his deficiencies. Murray was closely monitored during March, 1977, but according to the administration still failed to show adequate improvement.

On April 4, 1977, the Board voted to dismiss Murray for cause. The first reason was that he failed to remedy the deficiencies cited in the February 22 notice. Four other charges given were: (1) negligence, (2) insubordination and failure to cooperate with supervisors, (3) incompetency, and (4) that the best interest of the school required his dismissal. Following statute procedures, a hearing was conducted and the hearing officer struck these last four charges on basis that the Board failed to make a finding of irremediability with respect to the charges, that the charges were

excessively vague, and that in any event, they were unsupported by evidence. The Board disagreed with the finding, arguing that the charges were irremediable or that its notices to remedy, with its first charge, satisfied statutory notice to remedy requirements with respect to the other allegations.

Decision

Considering only the first charge, that of failing to correct deficiencies, the Appellate Court supported the hearing officer's determination that Murray had not been given a reasonable remediation period, thus reversing the Circuit Court's decision. The Court ordered Murray's reinstatement. To assure his statutory protected opportunity to remediate, it was incumbent for the school board in this case "to ground its dismissal decision on observations and evaluations made after, and not during, the agreed upon remediation."³¹

Discussion

In determining that the charges against the teacher were remediable, no evidence was presented to show that damage had been done to the student, faculty, or school and that the conduct resulting in such damage could not have been corrected

³¹ Board of Education of School District No. 131 v. Illinois State Board of Education, 403 N.E. 2d 277 (App. Ct. Ill. 1980).

had the teacher been warned by his superiors. The full remediation period must then be provided a teacher. In this case the Board had relied on forty-five calendar days. Since a remediation period is only triggered by official school board action, the court determined, at most, Murray was given only forty-one calendar days between his notice to remedy and his dismissal. Murray further pointed out that only fifteen school days had elapsed between his receipt of the notice and his final observation. Since in this case, some evidence of improvement had been noted, the reasonable period became even more critical. Thus, school boards must arrive at a better understanding of what is meant by a reasonable period for remediation.

Board of Directors of Maine School Administrative District

No. 75 v. Merrymeeting Educators' Association

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

Facts

A fourth grade teacher, Florence Small, had earned the status of a continuing contract teacher. The Board and Merrymeeting Educators' Association were parties to a collective bargaining agreement relative to the Board's nonrenewal of Small's contract. Notified by the Board that her contract would not be renewed, she took various steps for resolution of grievance specified in the arbitration.

The arbitrator determined the Board had acted without just cause in not renewing her contract, thus violating the existing collective bargaining agreement. He directed the Board to renew her teaching contract whereupon the present litigation ensued.

The Board contended the arbitrator exceeded his authority because he had not construed the terms of the contract. The Association and Small argued that the arbitrator stayed properly within the confines of the arbitration agreement. Litigants agreed that right of a continuing contract teacher to engage in binding arbitration when renewal of teaching contract is denied is a proper subject of grievance arbitration.

Facts in the case showed Mrs. 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 experience that will acquaint her with acceptable teaching practices and help her implement these teaching strategies in her classroom.³²

This was followed on June 18, 1973, with a notification from the superintendent of schools:

Your performance as a teacher must improve dramatically if you are to continue. I recommend that you visit

³² Board of Directors of Maine School Administrative District No. 75 v. Merrymeeting Educators' Association, Me., 354 A. 2d 169, 171 (1976).

other teachers early next fall and that you be visited frequently by the building principal.³³

Mrs. Small received her contract for the 1973-74 year, and following directives of the superintendent, approached her building principal who refused to comply with suggestions of the superintendent. The arbitrator determined she was told essentially to "do it on her own." The principal testified he had forgotten the superintendent's request that he assist her when he refused to give her assistance. Subsequently, Mrs. Small was notified she would not get a contract for the 1974-75 school year.

Decision

The court determined that since Mrs. Small had spent eight years in the school system, it was reasonable for the arbitrator to conclude that equitable solution of problems could best be met if cooperative efforts outlined in a June 18 letter were met. Mrs. Small was deprived of the requisite assistance to improve her performance; dismissal without affording her the opportunity lacked "just cause." Thus, in holding for the teacher, the Court showed procedural fairness in evaluation proceedings requires a teacher to be given the opportunity to improve and to obtain assistance in correcting deficiencies.³⁴

³³ Ibid.

³⁴ Ibid. at 172.

Discussion

In this case, collective bargaining arbitration was involved. The arbitrator was determined to be within his limits when the court examined terms of the arbitration agreement. Provisions for evaluation were made in the agreement where evaluations must be made by qualified people with the report to be included in personnel file and the right of teachers to know the content of such reports. Both teacher and administrators have a dual obligation to have the teacher benefit by recognition of deficiencies and to make the school system stronger by helping correct these deficiencies. Again the court has said assistance must be provided.

Cantrell v. Vickers

495 F Supp. 195 (N.D. Miss. - 1980)

Facts

The plaintiff, Carol Cantrell, brought suit against the school district, its superintendent, and its trustees when she was denied reemployment for the 1979-80 school year. Mrs. Cantrell, a third grade teacher, was in her tenth year of service to the school district at the time.

Mrs. Cantrell taught with another teacher in a two-room classroom of approximately fifty-two students. The students fell into accelerated, average, and below average, with approximately fifty per cent of the children in the accelerated

group. Mrs. Cantrell, evaluated on two occasions by her principal during the 1978-79 school year, received "satisfactory" ratings, the highest on the rating scale. Her prior performance had been rated satisfactory, and she was regarded as an excellent teacher. The principal recommended her for the 1979-80 school year.

At the March 15, 1979, meeting of the board of trustees, the superintendent recommended all teachers for reemployment except Mrs. Cantrell and her team teacher, Mrs. Bradwell. Prior to the meeting, a group of concerned parents had appeared before the board to voice complaints against the methods used by the Cantrell-Bradwell team to compel students to complete academic assignments. Grievances of the parents were presented by their attorney in an executive session held by the board. The board had received the complaints but deferred their actions until their March 15, 1979, meeting when all teachers except Cantrell and Bradwell were recommended.

At the March 19, 1979, meeting of the board, the superintendent recommended the reemployment of Mrs. Cantrell based on her entering a plan of improvement drawn by the superintendent. The plans were mailed to Bradwell and Cantrell for their signatures. On March 22, 1979, Mrs. Cantrell met with the superintendent where they discussed the areas of concern related to her performance as a classroom teacher. The plan for improvement was presented, but she refused to sign it,

stating she was innocent of any wrongdoing in the performance of her duties as teacher and that she was unaware of any basis for the action. She also contended that although she had requested a copy of the charges against her, she had never been given any.

On March 26, 1979, Mrs. Cantrell received a letter from the superintendent removing her from the position as teacher giving the reason, "that you have been guilty of neglect of duty in refusing to implement an Individual Plan of Improvement."³⁵ She was advised that she could request a hearing before the board, with the right to counsel, to present evidence and to cross-examine witnesses. On that same day she met with the superintendent and directed a letter to him in which she stated: (1) she had been placed on probation; (2) she had not received notification of charges against her even though she had made requests; and (3) she had not been afforded a hearing on the charges. Following an injunction on April 11, 1979, she was reinstated in her position.

Mrs. Cantrell taught the 1979-80 school year during the pendency of the action. On March 4, 1980, she received a letter from the superintendent that her contract was renewed for 1980-81 school year. A plan of improvement listing twelve specific areas of concern was given to her. Mrs. Cantrell was not given an opportunity to refute or answer the charges. She

³⁵ Cantrell v. Vickers, 495 F Supp. 195 (N.D. Miss. 1980).

received no copies of the written complaints from parents and no identification of those making the charges against her.

The court viewed the charges as ambiguous, with the plan giving the superintendent almost "unbridled authority to terminate the employment of Mrs. Cantrell."³⁶

Decision

The court held that (1) the plan of improvement infringed upon the right of expression guaranteed Mrs. Cantrell by the First Amendment of the Constitution of the United States, and her refusal to sign the plan was justified (Perry v. Sindermann); (2) Mrs. Cantrell's removal from her teaching position under the circumstances shown by evidence, without prior notice and hearing, violated the due process provisions under the Fourteenth Amendment.³⁷

Discussion

The courts have demonstrated that procedural fairness in evaluation proceedings is important to ensure that the teacher is not subject to arbitrary and capricious action. Although procedural due process is not a constitutional provision for nontenured teachers, some states provide protection for the nontenured teacher through state statutes or board regulations.

³⁶ Ibid. at 199.

³⁷ Ibid.

More specifically, these cases have shown (1) where statutes or policies require school districts to advise teachers of the criteria and procedures for evaluation as well as adequate notice within specified deadlines, school boards must comply; (2) where state statutes require that reasons given are sufficiently clear to provide teachers with directions for correcting deficiencies and that a minimum time to correct these deficiencies be given, the courts are adamant in enforcing this procedural requirement; (3) where school boards make policy that exceeds the state requirements, this policy must be enforced; and (4) where evaluation requires improvement of performance, procedural fairness requires that teachers be given the opportunity to improve and to obtain assistance in correcting deficiencies.

While cases cited have revealed that the courts require local boards to comply with all state and local policies or mandates and to provide for all constitutionally protected rights, cases reveal that where districts have made provisions for procedural fairness, the courts have held for the boards. Two cases reveal the courts handling of these issues.

Vorm v. David Douglas School District

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

Facts

Clifford Vorm, a tenured teacher, was dismissed on grounds of inadequate performance. Vorm appealed from order of the

Fair Dismissal Appeals Board affirming the school district's dismissal.

In an appeal to the Court of Appeals of Oregon, Vorm argued that (1) "inadequate performance" is a statutory term requiring interpretation or definition through standards adopted by the Fair Dismissal Appeals Board or the school district; (2) the agency's findings and conclusions relating to the adequacy of a teacher's performance are insufficient absent the existence or articulation of such applicable standards in the agency's order; (3) hearsay evidence of parent complaints entered in his personnel file may have influenced the FDAB's decision; and (4) one of the FDAB panel members should have been disqualified because of his statement made regarding teacher dismissal.³⁸

Decision

The Court of Appeals affirmed the lower decision by holding that (1) the school district had adopted written performance standards which were part of the district's "Teacher Evaluation Manual" and had not failed to articulate these performance standards, (2) the statement provided the teacher by the school district superintendent adequately notified the teacher of facts to support his dismissal, and (3) the hearsay evidence of parent complaints which were relevant

³⁸ Vorm v. David Douglas School District, No. 40, Or. App. 608 P. 2d 193, 195 (1980).

to and supportive of the facts relied on to support dismissal were properly used by the school district.³⁹

Discussion

When school boards follow statutory procedures and present clear evidence to support dismissal through proper evaluation procedures, the courts will support school districts in dismissal of incompetent teachers. It should be noted also that school boards must have a standard against which to measure adequate performance and that this standard must be articulated to teachers. Hearsay evidence of parents could be entered as evidence only to extent that it was relevant to and supportive of the facts already available.

Board of Education of Benton Harbor

Area Schools v. Wolff

361 N.W. 2d 750 (Mich. App. 1984)

Facts

The local school board dismissed Nancy Wolff, a tenured teacher, for failing to establish and maintain discipline. The teacher began experiencing classroom difficulties during the 1979-80 school year. Problems centered around the teacher being unable to establish effective methods of classroom control. The control problems carried over into the instructional process in the classroom.

³⁹ Ibid. at 193.

Administrators made numerous observations of the teacher's classroom and conferenced with the teacher. The central office staff provided suggestions for improving the deficiencies. Formal observations were made by the building principal on November 9 and November 20, 1979. Supervisors made daily informal observations and one formal observation. While some improvement was being shown, discipline problems and the detrimental effect on instruction were still evident. Specific steps for improvement were provided for the teacher.

On January 24, 1980, the teacher was still rated unacceptable on eight of eleven areas. Two additional administrators were called in to observe. The classroom was found lacking in an environment conducive to learning. The Director of Elementary Education for the district who had made formal observations and suggestions for improvement finally concluded that the teacher had to be removed because her performance was handicapping students.

Observations and evaluations made in February found the classroom chaotic. Upon determination that the performance was unsatisfactory, the teacher was assigned to a non-instructional position on February 29, 1980. Charges were filed on March 11, 1980, alleging eleven areas of unsatisfactory performance. The board followed procedures, and June 30, 1980, the petitioner board found several charges substantiated and

ordered the teacher dismissed. Charges substantiated were (1) failing to establish classroom control over students, and (2) creating an ineffective learning environment and a resulting adverse effect on the district.

Wolff appealed the decision to the State Tenure Commission alleging the record did not support a finding of reasonable and just cause for dismissal. The commission found that despite extensive efforts made by the district to provide assistance in effective classroom control, the teacher had not been provided an adequate opportunity to correct the deficiencies. Therefore the commission ordered that the teacher be reinstated and provided additional training with a reasonable remediation period.

The school board petitioned for review, and the circuit court affirmed. The school board then appealed.

Decision

The Court of Appeals of Michigan held for the school board, reversing the lower decision. On review the Court of Appeals noted that while the commission consistently required the teacher be given an opportunity to correct deficiencies prior to discharge, no provision for this was found in the teacher tenure act or any Michigan appellate court decision. While this Court agreed with the principle of prohibiting discharge without notification

and a reasonable opportunity to improve, the Court went on to state that the opportunity must necessarily be limited to providing the teacher with a reasonable time to improve, considering all the circumstances. In the Court's opinion the school board had clearly established reasonable and just cause. The Board had provided assistance as early as November with three consultants offering assistance in mathematics, reading, and effective classroom management techniques. The Board, in the Court's opinion, had gone beyond its obligation to notify the teacher of inadequate performance and to allow her a reasonable time to improve.⁴⁰

Discussion

The school district in this case had started its plan of assistance early in the school year. Formal and informal observations were made regularly by several evaluators and consultants. Documentation of this assistance was provided. Too many school districts wait until January or February to begin any documentation or plan of assistance thereby not giving adequate time for improvement.

Substantive Due Process in Teacher Evaluation

Violations of substantive due process occur when the government denies individual rights to liberty or property through

⁴⁰ Board of Education of Benton Harbor Area Schools v. Wolff, 361 N. W. 2d 750, 755 (Mich. App. 1984).

acts representing arbitrary or capricious exercise of power.⁴¹ In determining substantive due process claims, the courts examine evidence presented as justification for an action taken. Substantial evidence must be such that a reasonable mind can accept it as adequate to support the decision.⁴²

The First Amendment providing for the exercise of freedom of speech, press, and assembly guarantees that teachers do not automatically lose these rights. However, these rights must be balanced against the state's interest, as an employer, in furthering the goals of education. To protect the individual rights guaranteed by the Constitution, the courts have established a series of tests which balance the rights of an individual teacher against the state's interest as an employer.⁴³ Two landmark cases are selected to reveal the court's position in this area.

Pickering v. Board of Education of Township High School

District 205, Will County

391 U.S. 563 (1968)

Facts

Disagreeing with the way the Board and district superintendent had handled past proposals to raise revenue for

⁴¹ Webb, p.6.

⁴² Application of Ed Phillips and Sons Company, 86 S.D. 326, 195 N.W. 2d 400, 405 (1972).

⁴³ Pickering v. Bd. of Education, 391 U.S. 563 (1968).

the schools, Marvin Pickering, a teacher in the township, wrote a letter to the local newspaper, shortly after a newly proposed tax increase, criticizing the Board and the district superintendent's handling of earlier proposals. Some of the statements in the letter were false. Following determination by the Board, after a full hearing, that the letter was detrimental to the efficient operation and administration of the schools of the district, the Board requested his termination in that the interests of the school system required the teacher's dismissal.

Pickering claimed that his writing of the letter was protected by the First and Fourteenth Amendments, but his claim was denied by the Board on the ground that his acceptance of a teaching position in the public schools obliged him to refrain from making statements about the operation of the schools which in the absence of such position he would have the undoubted right to engage in. He then sought review in the Circuit Court of Will County which affirmed his dismissal on the grounds that the appellant's letter was "detrimental to the interest of the school system," that this was supported by substantial evidence, and that the interests of the schools overrode the appellant's First Amendment rights.⁴⁴

⁴⁴ Ibid.

Decision

Pickering appealed the case to the Supreme Court of the United States which found that the appellant's rights to freedom of speech were violated and that the teacher should be reinstated.

Justice Marshall, delivering the opinion of the Court, stated:

To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on the premise that has been unequivocally rejected in numerous prior decisions of this Court.⁴⁵

Justice Marshall then gave the "balancing test" used in First Amendment cases:

The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public service it performs through its employees.⁴⁶

Discussion

The court found before it a case in which a teacher had made erroneous public statements upon issues that were

⁴⁵ Ibid, at 568.

⁴⁶ Ibid.

the subject of public attention. These statements were critical of his employer but were neither shown nor could be presumed to have in any way impeded the teacher's proper performance of his daily duties in classroom or to have interfered with the regular operation of the schools generally.

Mt. Healthy City School District

Board of Education v. Doyle

429 U.S. 274 (1977)

Facts

Doyle, an untenured teacher, was advised by the Board of Education that he would not be rehired. Reasons cited were those given by the superintendent: his lack of tack in handling professional matters, with specific mention of his call to a radio station announcing a new dress code for teachers and to an obscene gesture incident. Doyle brought action against the Board for reinstatement and damages, claiming the refusal to rehire him violated his rights under the First and Fourteenth Amendments.

Decision

Doyle proved his termination was based on at least one unconstitutional factor, retaliation for exercising his right to free speech. Nevertheless, the Supreme Court reversed and remanded the lower court's ruling for Doyle.

Accepting that Doyle had proven unconstitutional motivation on the School district's part, Justice Rehnquist ruled that this showing merely shifted a second, and different, burden to the school district. While it could introduce evidence on the state's interest, the school district could introduce additional evidence showing that it would have reached the same decision, to terminate Doyle, based solely on other factors.

Justice Rehnquist stated:

...Clearly the Board legally could have dismissed the respondent had the radio station incident never come to its attention. One plausible meaning of the court's statement is that the Board and Superintendent not only could, but in fact would have reached that decision had not the constitutionally protected incident of the telephone call to the radio station occurred.... A borderline or marginal candidate should not have the employment question resolved against him because of constitutionally protected conduct. But that same candidate ought not be able, by engaging in such conduct, to prevent his employer from assessing his performance record and reaching a decision not to rehire on the basis of that record, simply because the protected conduct makes the employer more certain of the correctness of its decision.⁴⁷

Discussion

Mt. Healthy articulated the test established in Pickering by requiring that a plaintiff first establish that the conduct was constitutionally protected. When the activity found to

⁴⁷ Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 286-287 (1977).

be protected by the Pickering balancing test is the substantial or motivating factor in dismissing an employee, a prima facie First Amendment violation is established. The burden then shifts to an employer or defendant to prove that the employee would have been discharged even if the protected activity had not been considered.

Overview

The formal adoption and implementation of a teacher evaluation system by a state or local school board is an attempt to monitor the effectiveness of an educational program delivered in a school district. When school districts can provide evidence to support their findings of "good cause" for dismissal and where the cause found can reasonably be said to relate to the welfare of school and pupils, the reviewing court normally limits its examination to whether the board proceeded within the limits of its jurisdiction and to whether any prejudicial abuse of discretion existed.⁴⁸

In the evaluation process where the focus is on teacher performance, rating criteria and observation must provide evidence which supports an employer's decision as it relates to the teacher's impact on students. As a result of standards established in teacher evaluation statutes,

⁴⁸ Beckham, Legal Aspects of Teacher Evaluation, p. 40.

the means for determining a teacher's incompetency or inadequate performance may be specified with greater particularity.

The following cases reveal the court's action where school boards have based their decisions to dismiss teachers on grounds of unsatisfactory performance. The first three cases reveal where districts have not been upheld because school boards did not have appropriate standards for measurement or had failed to show substantial evidence. The last three cases show school boards are upheld in dismissals where school boards provide substantial evidence and follow procedural due process.

Schwartz v. Bogen

281 N.Y. S. 2d 279 (1967)

Facts

A New York City teacher was denied a license as a high school department chairperson as the result of her standard of performance on an examination. The teacher sued the Board of Examiners of New York Board of Education for refusing to let her examine the standard against which her standard of performance was measured.

Decision

The Supreme Court, Appellate Division, held that refusal of the Board of Examiners to permit petitioner to examine the standard was unreasonable and substantially impaired

the petitioner's right of appeal; results of the examination should be so stated that an appellant can check the conclusions by some objective comparison.⁴⁹ The Board was ordered to furnish the petitioner with the standard answers and rating directions applicable to the essay-type parts of her examination and to provide a reasonable time for her to prepare and file appeal if desired.

Discussion

This ruling indicates there must be a standard against which a performance is measured and that this standard must be made known to persons against whom the criteria is applied. A person has the right, therefore, to inspect the rating schedule upon which one's training and experience are evaluated in order to have a proper review.

Ganyo v. Independent School District No. 832

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

Facts

Joy Ganyo appealed from an order of the district court which left standing the action of the school district terminating her position as a tenured teacher. She contended the charges leading to her termination were not supported by substantial evidence and that a reasonable time had not been allowed for her to remedy any deficiencies.

⁴⁹ Schwartz v. Bogen, 281 N.Y. S. 2d 279 (1967).

As a teacher of oral communications and English literature, she had taught seventeen years in the same district with eight years experience prior to her coming to the present district. Ganyo was observed by the assistant principal and assistant superintendent during the 1978-79 school year. Her evaluation listed eight areas of deficiencies including poor classroom control, inappropriate record-keeping and instructional criteria and student evaluation. She was observed twice in February of 1979, and on February 26, the school board decided to terminate Ganyo. The eight reasons were framed as statutory grounds and were cited in substance. She requested and was given a hearing which was held March 30 and 31, 1979. On March 31, the Board voted to terminate Ganyo at the end of the school year.

Decision

The Supreme Court of Minnesota reversed the school board's decision and held that the decision of the school board to terminate the tenured teacher was not supported by substantial evidence on the entire record and that eight weeks was not reasonable time for a teacher of seventeen years to remedy the practices which were labeled as deficiencies for the first time.⁵⁰

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

Discussion

While the court determined not to set aside a decision of the school board unless that decision is found arbitrary, unreasonable, or not supported by substantial evidence, the court found that the record as a whole contained little probative evidence to substantiate the alleged deficiencies. While the law does not require having more than one person to conduct the evaluation, the severity of terminating a tenured teacher suggests such a decision would be wise. The assistant principal was the only observer of Ganyo after the deficiency notice was served; therefore his testimony stood alone to substantiate that insufficient or no improvement had been made.

Schulz v. Board of Education of the School

District of Fremont

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

Facts

Sharon Schulz was employed by the local school system in 1960 and taught for one year. In 1968 she was rehired and taught continuously until 1980 when her contract was terminated. On April 15, 1980, Mrs. Schulz was notified in writing by the School Board that it had voted to consider terminating her contract at the end of the 1979-80 school year. The reason given for her dismissal was that she had not satisfied the adopted performance standards.

Some of Schulz's evaluation records from 1974-80 were were offered in evidence. Although the reports indicated she was failing to receive approval from some parents, the records revealed her as a serious and devoted teacher with average or above performance. Several comments were recorded regarding her introverted personality and the fact that she did not smile as much as she might.

Decision

The Supreme Court of Nebraska reversed the decision of the district court and held that the evidence that school board members and parents were dissatisfied with a tenured teacher who continued to receive above average rating during the entire time she taught was insufficient to support the conclusion that the teacher should be terminated for incompetence.⁵¹

In its ruling the court said:

There is little doubt that Mrs. Schulz might do herself a favor by being less rigid.... Perhaps such teachers do not win popularity contest, but neither can they be said to be incompetent. Teachers are not required to entertain their students, only to teach them.⁵²

⁵¹ Schulz v. Board of Education of School District of Fremont, Neb., 315, N.W. 2d 633 (1982).

⁵² Ibid. at 638.

The court reaffirmed its decision already made in Sanders v.

Board of Education:

The critical issue here is what conduct is sufficient to constitute just cause for the termination of the contract of a tenured teacher under current statutory requirements. There are few, if any, objective criteria for evaluating teacher performance or for determining what constitutes just cause for terminating teaching contracts of tenured teachers. Each case must therefore be assessed on its own facts.⁵³

The court further affirmed from the same case that

...incompetency or neglect of duty is not measured in a vacuum nor against a standard of perfection, but, instead must be measured against the standard required of others performing the same or similar duties.⁵⁴

Discussion

The court ruled here that school boards can not dismiss a teacher as incompetent when the teacher has received average or above ratings during the entire time he taught. The court further emphasized that in dismissing any tenured teacher, each case must be assessed on its own facts. The complaints of parents or board members can not be considered as evidence unless they are substantiated.

⁵³ Sanders v. Board of Education 263 N.W. 2d 461, 465 (1978).

⁵⁴ Ibid.

Scheelhaase v. Woodbury Central Community

School District

488 F. 2d 237 (8th Cir. 1973)

Facts

At the conclusion of the 1969-70 school year, after ten years of employment, a grade teacher was nonrenewed on grounds of professional incompetence as evidenced by low scholastic accomplishment of her students on the Iowa Tests of Basic Skills (ITBS) and Iowa Test of Educational Development (ITED). Under the Iowa law, teachers were hired on a year to year basis with a private conference and public hearing required for nonrenewal. These were held prior to dismissal.

The teacher filed suit contending that she had been discharged solely because of the showing of her students in the tests given them, that such use of the tests, "finds no support in educational policy," that the superintendent had failed to interpret the tests properly, and that the tests showed her students to be making normal progress.⁵⁵

The appellants insisted her scores were low for her pupils, that the tests had been properly employed, and that "use of ITBS scores as a measure of teacher competence stood as a reasonable and valid exercise of administrative

⁵⁵ Scheelhaase v. Woodbury Central Community School District, 488 F. 2d 237, 239 (8th Cir. 1973).

discretion."⁵⁶ In addition the appellants argued there was no constitutionally protected right to renewal.

The trial court held for the teacher on the grounds that nonrenewal for professional incompetence as indicated by low scholastic achievement of students on specified tests was arbitrary and capricious since teacher's competency could not be determined solely on the basis of student's achievement on tests.

Decision

The United States Court of Appeals, Eighth Circuit, upon hearing the case, held for the school board. In stating its decision, Judge Smith made the following statement:

In the performance of its duties, the Board is empowered to act in accordance with its best discretion. It is possible that the discretion of a Board may, at times, to those more generously endowed, seem to have been exercised with a lack of wisdom. But the Board's decisions in the exercise of its discretion are not vulnerable to our correction merely if they are 'wrong,' sustainable only if they are 'right.'⁵⁷

Discussion

This case resulted in the court's ruling that a school board does have some discretion in establishing standards of measurement for its teachers and that a school board's

⁵⁶ Ibid.

⁵⁷ Ibid. at 241.

exercise of its discretion is not vulnerable to correction by the court merely if it is "wrong," sustainable only if it is "right." Any abuse of a board's use of discretion that can be shown to be arbitrary or capricious will not be tolerated by the courts. However, this was not the case in Scheelhaase as no evidence was entered to show the decision being arbitrary or capricious.

Busker v. Board of Education of Elk Point Independent

School District # 61-3 of Union County

S.D., 295 N.W. 2d 1 (1980)

Facts

Yvonne Busker was hired by the Board in 1974 as a mathematics teacher and taught for three consecutive years in the school district. On March 17, 1977, Busker received a letter stating the Board's intent not to renew her contract for the following year. In response to Busker's written request, the Board delivered another letter on March 23 stating incompetency in regard to her teaching responsibilities as the basis for nonrenewal. After following all procedural requirements, the board affirmed its decision not to renew Busker's contract. The decision was based on evaluations conducted by her principals in the course of her classroom teaching performance. Each year she was criticized for her method of instructional organization

and given corrective measures to take which she refused to follow, stating her methods were better.

Pursuant to the South Dakota Code, the decision was appealed to the circuit court where Busker stipulated, for purpose of appeal, the Board had complied with all statutory procedural requirements in regards to the nonrenewal of her teaching contract. An evidentiary hearing resulted in the court's finding that the Board's decision not to renew the contract was arbitrary and capricious.

Decision

An appeal from a judgment of the Circuit Court of Union County reversing the Board's decision was reversed by the Supreme Court of South Dakota. The issue involved in the non-renewal was whether the trial court erred by substituting its own judgment for that of the Board when there allegedly was substantial credible evidence to support the Board's decision not to renew. Since a previous case in South Dakota had already set precedent that the judiciary "may not invade the province of the school board's decision-making unless such decision is being done contrary to law,"⁵⁸ the court was limited to the question of whether the Board acted lawfully in making its decision.

⁵⁸ Moran v. Rapid City Area School District, 281 N.W. 2d 595 (S.D. 1979).

In examining the evidence based on evaluation and formal observations of the principals, the court ruled that the nonrenewal was supported by substantial, credible evidence; therefore there was no arbitrary or capricious action shown by the board.⁵⁹

Discussion

The courts indicate where evaluations show a teacher consistently demonstrates an inability to teach her students and there is substantial evidence to support this conclusion, the court will not substitute its judgment for that of the school board.

Nestler v. Chapel Hill-Carrboro City
School Board of Education

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

Facts

Dr. Clyde Nestler, a science teacher in the school system, had been employed since the fall of 1971. He was placed on conditional status for the 1972-73 school year but was removed from such status the following year, thus becoming a career teacher. He was observed and evaluated by four different principals from 1971 through 1978, and his performance was rated satisfactory. In the fall of 1978 Dr. Robert Monson became the new principal. His observation

⁵⁹ Busker v. Board of Education of Elk Point Independent School District #61-3 of Union County, S.D., 295 N.W. 2d 1 (1980).

of Nestler raised concerns in regard to his competence. In December of 1978 Nestler was placed on conditional status. In May of 1980 Nestler had shown some improvement but was continued on conditional status for the 1980-81 school year. In May of 1981 Monson concluded Nestler had not shown sufficient improvement in his instructional methodology and therefore recommended that he be dismissed.

Other teachers, along with Nestler, testified on his behalf, but based upon the evidence to support inadequate performance, the Board approved his termination. Dr. Nestler then petitioned the superior court for review which held there was not substantial evidence to support the claim of inadequate performance. The board of education appealed.

Decision

The Court of Appeals of North Carolina held that the Superior Court had substituted its judgment for that of Board of Education, that substantial evidence did in fact support the Board's decision to terminate Nestler, and that the statute providing for dismissal of career teachers for inadequate performance was not unconstitutionally vague.⁶⁰

Discussion

In this case the teacher was tried solely on the grounds of inadequate performance which is a statutory reason given

⁶⁰ Nestler v. Chapel Hill-Carrboro City School Board of Education, 311 S.E. 2d 57 (N.C. App. 1984).

for dismissal or demotion of a tenured teacher.⁶¹ The court ruled that the term "inadequate performance" is one a person of ordinary standing can comprehend in regard to how he is to perform. The court also noted there were certain objective standards followed in evaluating the teacher and that these standards had been applied fairly.

Crump v. Durham County Board of Education

327 S.E. 2d 599 (N.C. App. 1985)

Facts

Following a hearing, the Durham County Board of Education dismissed Vivian Crump, a tenured teacher, from her teaching position on the grounds of inadequate performance. The dismissal had been recommended by the superintendent and approved by the Professional Review Committee. The decision was reviewed and affirmed by the Superior Court after which Crump appealed the case.

In August of 1983 Crump had been a junior high teacher in Durham County for twenty-seven years. During the 1980-81 school term, many discipline problems became evident in her classroom. The principal discussed these concerns with her. Shortly before the 1981-82 school year began, the teacher received a letter from a student's parent listing several specific disturbances by students which she had allegedly

⁶¹ Ibid.

done nothing about. This letter was put in her personnel file. During the 1981-82 year the principal and the coordinator of mathematics and science programs met with the teacher and suggested ways she could improve her effectiveness in the classroom. The coordinator followed up with periodic visits. At the end of the 1981-82 school term, the principal recommended several steps for the teacher to take to improve and placed her on marginal status. During the 1982-83 school year no improvement was made even with the assistance being provided; therefore the superintendent recommended in April of 1983 that the teacher be dismissed on grounds of inadequate performance.

Decision

The Court of Appeals of North Carolina affirmed the School Board's dismissal of the teacher. In responding to the contention of the teacher, the court held the teacher had failed to show that her dismissal was arbitrary or capricious. Rather, the court found the records clearly showed a thoughtful, patient, persistent, but unavailing, effort to help the teacher correct deficiencies.

Second, the court overruled her contention that inadequate performance is unconstitutionally void for vagueness. The court emphasized that this charge had been rejected in Nestler for the reason that the term inadequate performance in regard

to job can be readily understood by a person of ordinary intelligence who knows what the job encompasses. The teacher in this case understood that her job entailed maintaining discipline in the classroom. Third, the court found that evidence presented was substantial to support the conclusion of the board.⁶²

Discussion

The court continued to recognize inadequate performance as a term readily understood by anyone knowing a particular job. Where substantial evidence is present, and no arbitrary or capricious action can be shown by the petitioner, the court will support school boards when procedural due process has been followed.

Employment Discrimination in Teacher Evaluation

Employment discrimination produces a substantial amount of litigation related to teacher evaluation.⁶³ Two potential bases of discrimination charges are the equal protection clause of the Fourteenth Amendment⁶⁴ and Title VII of the Civil Rights Act of 1964.⁶⁵

⁶² Crump v. Durham County School Board, 327 S.E. 2d 599 (N.C. App. 1985).

⁶³ Beckham, Legal Aspects of Teacher Evaluation, p. 12.

⁶⁴ U.S. Constitution, Fourteenth Amendment, Section 1.

⁶⁵ Equal Opportunity Employment, 42, U.S.C. Section 2000e (1976).

A review of the literature revealed three evaluation issues related to Constitutional guarantees: (1) the use of objective, non-racial criteria in teacher evaluation when staff reduction has been compelled due to court ordered desegregation, (2) instances where evaluations have led to employment decisions alleged to be racially motivated but unrelated to desegregation; (3) use of nationally normed tests.

Title VII of the Civil Rights Act prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Two areas of discrimination noted here are (1) disparate treatment where employer can justify practice by showing decision was based on legitimate occupational qualifications and (2) disparate impact where employer must justify practice by showing it is a business necessity.⁶⁶

The following cases reveal how the courts have responded in issues related to discrimination in employment decisions. Two cases establishing legal guidelines are presented first.

Singleton v. Jackson Municipal Separate School District

419 F 2d., 1211 (5th Cir. 1970)

Facts

This case involved a reduction in staff occurring under court-ordered desegregation. Teachers and other staff were

⁶⁶ Beckham, Legal Aspects of Teacher Evaluation, p. 27.

affected as the court ordered that assignments be made to reflect the racial composition of the entire school system. This would result in dismissal or reassignment of personnel as a result of the court order creating a unitary school system. Teachers would be reassigned or dismissed on the basis of a teacher performance appraisal to be used.

Decision

The Fifth Circuit Court of Appeals held that the equal protection and due process clauses of the Fourteenth Amendment required that if there was to be an absolute reduction in staff as a result of the court-ordered desegregation, staff members or teachers dismissed or demoted must "be selected on the basis of objective and reasonable non-discriminatory standards" to be developed and promulgated by the school board prior to the evaluation.⁶⁷ In the case of filling a vacancy, there can be no recruitment from a different race, color, or national origin until each displaced staff member who is qualified has had an opportunity to fill the vacancy.⁶⁸

Discussion

Singleton set the guidelines to deal with reduction of school staff during conversion from a dual to a unitary school

⁶⁷ Singleton v. Jackson Municipal Separate School District 419, F. 2d 1211 (5th Cir. 1969).

⁶⁸ Ibid. at 1218.

system. The objective criteria has been required only where there is reduction in school staff because of desegregation and was not intended to apply otherwise.

Griggs v. Duke Power Company

401 U.S. 424 (1971)

Facts

Black employees brought action against Duke Power challenging the company's requirement of a high school diploma or passing of an intelligence tests as condition of employment in or transfer to jobs at the plant. These requirements were not directed at or intended to measure the ability to learn to perform a particular job or category of jobs.

Decision

The United States Supreme Court held that the Civil Rights Act requires the elimination of any arbitrary, artificial, and unnecessary barriers to employment that discriminate. If the employment practice cannot be shown to be related to job performance, it is prohibited. Although there appeared no intent on Duke Power to use the test to discriminate, this did not make the tests acceptable since they were not shown to be job-related.

The United States Supreme Court concluded that nothing

in the Civil Rights Act

precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance.... What Congress had commanded is that any tests used must measure the person for the job and not the person in the abstract.⁶⁹

Discussion

The principal issue in Griggs was whether Duke Power could require a high school diploma or passing scores on two standardized tests to determine employees to be considered for higher paying jobs. Since neither requirement was shown to measure an applicant's fitness for a particular job, the Company was enjoined from using the high school diploma and standardized intelligence test to determine consideration of applicants. The Court found no evidence that the Company had intended to discriminate against black employees; however, the court said

... good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minorities and are unrelated to measuring job capability.⁷⁰

Other cases are cited that have been important in establishing standards in issues related to discrimination.

⁶⁹ Griggs v. Duke Power Company, 401 U.S. 424, 436 (1971).

⁷⁰ Ibid. at 432.

Jones v. Pitt County Board of Education

528 F. 2d 414 (4th Cir. 1975)

Facts

A black teacher challenged the school district's decision not to renew her contract as being racially motivated. The principal's observations of the teacher's performance on three occasions led to an overall evaluation that the teacher was weak in instruction and discipline. The principal discussed these with the teacher and requested that she attend workshops to improve her teaching. The teacher refused to attend the workshops. At the conclusion of the 1971 school year, the teacher was terminated and advised of her rights to a hearing. On June 24, 1971, the council voted unanimously not to recommend retention of the teacher.

Decision

The United States District Court for the Eastern District of North Carolina found the discharge was not racially motivated but was based on professional incompetence. The plaintiff appealed charging that the evaluation reports of her evaluation were based upon subjective criteria and were internally inconsistent.⁷¹ The Court of Appeals affirmed the district court's decision indicating the Board had

⁷¹ Jones v. Pitt County Board of Education, 528 F. 2d 414, 417 (4th Cir. 1975).

established by clear and convincing evidence its assertion that the teacher's nonretention was based on professional incompetency.⁷²

Discussion

In this case involving the termination of a black teacher who charged racial discrimination, the court placed the burden of proof on the board of education to establish clear and convincing evidence that its nonretention of the teacher was based on professional incompetency. Adequate documentation is crucial in the evaluation process when any dismissal or nonretention is necessary.

Baker v. Columbus Municipal Separate School District

329 F. Supp 706 (1971)

Facts

Action was taken by eight black teachers and the national and state teacher organizations against the school district to challenge the alleged unlawful discrimination in the retention and employment of teachers for summer school teaching positions based on particular scores on national teachers examinations. A cutoff score of 1000 was announced to the faculty without any investigations regarding its validity or

⁷² Ibid. at 417-418.

reliability as a means for selecting teachers. The Board was unaware of the disparate results worked by the National Teachers Examination requirement.

Decision

The United States District Court held that the use of the cut off score of 1000 on the National Teachers' Examination for retention and employment was unconstitutional racial classification. The court ruled that

There is no evidence developed to date to correlation, positive or negative, between the NTE score and teacher effectiveness. The NTE does not claim predictive validity, i.e. "the ability to forecast teaching performance.... Use of the NTE with a cut-off score as a means of selecting teachers cannot be considered reasonable unless steps are first taken to relate the score to the experience and needs in the particular school district.⁷³

Discussion

It is unconstitutional for school boards or public officials to discriminate on the basis of race in hiring and retention of teachers. In this case the courts found evidence that the school district was continuing to operate a dual system of schools based on race after segregation was declared unconstitutional. As in Griggs, the school board was unable to show a relationship between the test cutoff score and job performance.

⁷³ Baker v. Columbus Municipal Separate School District, 329 F. Supp. 706 (1971).

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

Concern for the quality of education provided in the public schools has become a national issue. A direct and visible result of this concern has been the number of states mandating evaluation of all teachers. This research has been a descriptive and historical study of the teacher performance evaluation movement. The study was not designed to advocate or to denounce the movement. Rather, the purpose of the study has been to provide educational administrators with appropriate information regarding the educational and legal aspects of teacher evaluation in order that they can make better judgments in regard to teacher employment decisions.

A review of the literature has indicated that teacher performance evaluation is an important component in the teacher-administrator relationship. With the many state mandates for teacher evaluation, many legal issues become involved in the evaluation process. This chapter will summarize these issues as they relate to the questions set forth in the introductory chapter of this study.

The first question that guided this research was to identify how widespread the teacher evaluation legislation is in the fifty states. A review of the fifty state statutes and an inquiry sent to all fifty states reveal that thirty-four states have implemented state mandates for evaluation of teachers either through state statute or state school board regulations. An additional state has already mandated teacher evaluation to be implemented July 1, 1986. Other state legislatures are discussing mandates for teacher evaluation. There is reason to believe, therefore, that the movement will continue to become more widespread.

Provision for teacher evaluation is made in several different ways. Many states have statutes detailing specific guidelines calling for evaluation of all teachers. Regulations by state boards of education provide a second way in which states have mandated performance evaluation. The authority of state boards to require evaluation is granted under the general statutes of the state. In some states, the mandate is enmeshed in the teacher certification procedures or in the Fair Dismissal Act.

The second question posed in the first chapter was concerned with the nature of evaluation legislation. The third chapter of this study provides a comprehensive analysis of state statutes and administrative policies as they address

five areas of requirements for teacher evaluation mandates. The five areas examined include purpose of evaluation, scope of evaluation, procedures for evaluation, frequency of evaluation, and use of evaluation results.

A review of the literature has indicated that conflicting purposes of evaluation create problems in evaluation. While evaluation, on the one hand, serves to improve the quality of instruction through identification and encouragement of effective teachers, it also serves as a basis for making employment decisions related to promotion, demotion, and dismissal.

While the purpose of evaluation may be primarily that of teacher improvement or teacher dismissal, the reason most often cited by the mandates is that of teacher improvement. With emphasis on quality instruction, the mandates focus on helping classroom teachers improve planning and teaching skills, thus resulting in improvement in the instructional program and student learning experience.

However, when teachers do not improve as a result of the evaluation process, the formal evaluation provides a method for collecting data relevant to employment decisions. Clearly stated, well-documented evidence is essential when improvement does not take place and dismissal proceedings must be initiated.

When teacher evaluation is provided as a part of the certification process, evaluation serves the purpose of

determining an applicant's readiness for obtaining a permanent certificate.

The scope of the evaluation, or criteria required for evaluation, varies from state to state. Some statutes and regulations list the criteria to be included in the evaluation while other mandates require local units to establish the criteria. Formalized criteria must be based on competencies related to effective teaching which leads to improved student learning. The courts continue to emphasize that criteria utilized in a performance appraisal system must be job-related.

Where criteria are detailed in the state mandates, reference is given to such factors as teaching skills, processes, and techniques; efficiency; planning and managing instruction; and interpersonal relationship skills. Criteria must coincide with job descriptions where these are required.

Procedures call for formal written evaluations based on direct observation of teacher performance. These evaluations must be signed by the evaluator and the evaluatee with a copy given to the teacher and one copy placed in a personnel file. Each person has a right to review the evaluation and comment on it in writing.

Procedures often require administrators to provide recommendations for improvement where the teacher's performance

warrants it. According to state statutes, teachers must be afforded the opportunity, assistance, and time to improve.

Following procedures laid out in the state mandates is crucial in the evaluation process because regardless of the documentation, if procedures are not followed, school boards stand to lose when dismissal becomes necessary.

The frequency of evaluation is determined by tenured and nontenured status of the teacher when there is a difference specified. Of the states specifying the frequency of evaluations in their mandates, eight states require the same number of evaluations for all teachers. Other states require more evaluations for nontenured teachers, with one state requiring as many as four a year and twelve requiring only one a year. Evaluations of tenured personnel range from two per year in one state to one every three years in three states.

Evaluations may not be used for public information but may be reviewed upon demand at reasonable times by the evaluatee. The evaluation may be used for introduction of evidence in any court action between a governing board and the teacher whose competency is at issue.

Evaluations are also used to determine if probationary teachers will be reemployed the following year. Data collected on evaluations can also be used as a basis for determining staff development activities needed by groups of individuals.

A third question closely related to the second question was determination of the basis for teacher evaluation criteria. More specifically, the question asked who determines what criteria will be used for evaluation purposes. Teachers want fair, objective standards and the public wants assurances that educators are accountable for tax dollars spent to provide quality education. Researchers are involved in an intensive search for improved ways to evaluate teachers and to standardize criteria. Presently, lack of a clear definition of what constitutes effective teaching results in no definite measures for teacher evaluation.

Criteria for teacher evaluation are determined at several levels. In some cases state mandates list the criteria to be used. In other mandates the state board is required to develop uniform criteria with input from representative teachers. In other states, local units are allowed to develop criteria with involvement of representative teachers. Ultimately the courts will determine the appropriateness of evaluation criteria as they have called for appraisal systems to be job-related. Criteria must be designed to measure the characteristics of an individual that are related to the employment decision in question.

Statutes specifying criteria call for criteria related to competencies necessary to promote student progress toward established standards. Instructional techniques and strategies,

adherence to curricular objectives, and maintenance of a suitable learning environment are included in the criteria.

Some states base criteria on predetermined educational goals. Achievement toward the mutually determined objectives and accomplishment of general responsibility and specific tasks of a teacher's position form the basis for the criteria in this situation.

An important fourth question examined the legally accepted processes and criteria for evaluating performance based on the recent court interpretations. In litigation in the area of evaluation, courts have protected the constitutional rights of employees, have not interfered with local board's rights to evaluate, and have strictly enforced procedural requirements of evaluation.

Three areas of litigation have been examined in this research where the courts have addressed the appropriateness of process and criteria used in a performance appraisal system. These areas include procedural due process, substantive due process, and employment discrimination.

The courts have determined that procedural due process is one of the most important concepts for those evaluating teachers. In this area the courts have established the following points.

1. Teachers must be made aware of the criteria prior to their being used for evaluation purposes.

2. Teachers must be given notice of deficiencies and given the opportunity, time, resources, and assistance to help them remove any deficiencies.

3. Provisions for time commensurate with the complexity of the changes to be made must be given.

4. Substantial assistance must be provided by the evaluator or employer to help remedy the deficiencies.

5. Reobservation of teachers is necessary to determine if sufficient changes have been made or not.

6. Evaluations must include actual observations in a classroom.

7. Appraisers must be adequately trained to observe and use the evaluation instrument.

8. The administrator or evaluator has a legal responsibility to actively supervise, to constructively evaluate, and to assist teachers in reaching their potential.

9. Evaluation must follow all the legal processes provided for in any negotiated contracts and in the state or local mandates such as deadlines for notification of deficiencies and the right to a hearing or review.

In determining substantive due process claims, the courts are concerned that evidence presented is justification for an action taken and does not constitute arbitrary, capricious, or unreasonable exercise of power. The courts have established

that educational personnel, including teachers, have protection under the First Amendment. Several points have been established by the courts in this area.

1. In determining just cause for a tenured teacher, each case must be assessed on its own facts.

2. Before a tenured teacher can be dismissed for just cause as incompetency or inadequate performance, the school board must meet its burden of establishing, as a matter of law, the existence of just cause.

3. Incompetency is not measured in a vacuum nor against a standard of perfection but must be measured against a standard required of others performing the same or similar duties.

4. Such matters as competence of teachers and standards of its measurement are not, without more, matters of constitutional dimensions which permit the court to overrule the school board's exercise of its discretion.

5. Substantial evidence means such relevant and competent evidence as a reasonable mind might accept as adequate to support a conclusion.

6. The courts do not substitute their judgment for those of the school board but in cases of substantive issues will confine their actions to review of administrative records to determine that sufficient facts are available to justify the board's action.

7. Statutes providing for dismissal of career teachers for inadequate performance are not unconstitutionally vague.

8. Items in evaluation should stem from researched performance that directly relates to student achievement.

9. Only behaviors teachers can control should be summatively evaluated.

10. Evaluations should not be based on vague subjective factors but on observable behaviors.

Courts have also had considerable impact in issues related to discrimination in employment decisions. Both the equal protection clause of the Fourteenth Amendment and Title VII of the Civil Rights Act of 1964 serve to protect employees from discrimination. Key points established by the courts in these areas include the following.

1. No test should be used for any purpose for which it is not validated or for which it was not developed.

2. Job-relatedness is the central criterion in using tests for employee decision-making.

3. Absence of intent to discriminate does not redeem an employment practice that does in fact discriminate.

4. The "equal protection" clause provides that classes of personnel must be evaluated with similar criteria.

5. Evaluation instruments cannot discriminate against minorities, women, handicapped, and older workers.

6. Employee tests and measurement procedures must be a reasonable measure of job performance.

A fifth and final question guiding the research was whether or not any specific trends could be determined from the analysis of court cases where performance evaluation resulted in attempted dismissal of teachers. Courts become involved in teacher evaluation only at the appeals stage. All court cases reviewed were appeals by teachers who had been dismissed from their jobs as a result of the evaluation process. The trends revealed by a review of the literature and court decisions provide the framework for the conclusions reached in this study.

Conclusions

Several conclusions can be drawn from an analysis of the cases used in this research.

1. Current trends in performance appraisal are the result of court decisions and state statutes calling for evaluations to be "job related." While rating scales are still used in some districts, there is a move away from rating scales to measurement procedures that represent attainment of job standards as "position expectancies."

2. Systems of evaluation must be valid from a legal and measurement perspective to be of value to the teacher evaluation process.

3. The teacher must know in advance the criteria and standards for evaluation and then be given an opportunity to improve during a remediation period after the notification of any deficiencies.

4. Courts do not substitute their judgment for that of the school board in substantive due process claims.

5. Each litigation must be handled on the facts unique to each case; however, the courts have supported school systems in dismissal actions where the local districts have followed legal guidelines.

Recommendations

Some general recommendations can be made based on the research in this study. These recommendations include the following:

1. Many incompetent teachers can be screened out with improved certification procedures and through more effective recruitment and initial selection procedures.

2. Administrators can eliminate some future concerns by conducting more thorough evaluations during the probationary period of a teacher's employment so that problems can be identified and remediated at the earliest possible time.

3. School systems must have a thorough understanding of the legal issues as they relate to performance appraisal to ensure that knowledgeable people are carrying out all aspects of the requirements.

4. Care should be taken that corrective measures and observations do not become evidence of harrassment.

5. Appropriate training programs in the evaluation system should be provided to administrators and teachers in a school system.

Since this research verifies that teacher evaluation legislation is widespread and that legal guidelines are already established and, in some cases, continue to be established, by state and federal law, the Constitution, and the judiciary, there are implications for future research provided in this study. These include the following considerations:

1. What impact has the teacher evaluation legislation had on "improving instruction"? Are teachers more "effective" as a result of evaluation?

2. How effectively is the evaluation legislation being carried out in the local units? Are administrators qualified as evaluators? Is there a concern for legalities?

3. What impact has the teacher evaluation legislation had on teacher education institutions and the training procedure?

4. How vital are the teacher effectiveness research-based studies to the implementation of teacher evaluation legislation?

Teacher evaluation and its relevance to the quality of instruction provided in the public schools will continue to be an issue in school systems, in state legislatures, and in the courts.

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APPENDIX

ALASKAAS 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 RegulationsChapter 19 Evaluation of Professional Employees4 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.

CONNECTICUT

10-151b. 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.

INDIANA20-6.1-4-10.5. 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.

KANSAS

KS. 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.

KENTUCKYKRS 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.

LOUISIANALRS 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 purposes 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 certified 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 supervisor and an annual summary conference between the supervisor and the teaching staff member.

NEW MEXICOSection 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.

PENNSYLVANIA

Section 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 judgement 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.07.065 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 29A.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 to 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 service, and can only do so with the assistance of regular evaluation.