

DISCHARGE OF PROBATIONARY TEACHERS

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ABSTRACT

This article provides recommendations for evaluating and terminating probationary teachers. The author covers contractual considerations for supervisors/administrators to heed during evaluations, suggestions for avoiding grievances and lawsuits at all stages, and a checklist of things to do and not do during the termination phase to avert charges of discrimination and/or arbitrariness.

EVALUATION OF PROBATIONARY EMPLOYEES

Evaluation begins with careful study of relevant contract provisions. The following questions should serve as guidelines:

Contractual Considerations

1. Does the contract address who may supervise the employee? Look for statements concerning which titles may assume supervisory roles, and the capacity of persons occupying those titles to delegate responsibility to persons other than those enumerated.

2. Does the contract define what supervision is? For example, does it include counseling, formal and informal, as a means to improve employee performance. Are classroom observations, informal classroom visits, grade-level meetings and conferences, and team planning included in the definition? To what extent does the CBA (collective bargaining agreement) obligate the district to employ such methods in supervision of its teachers?

3. Does the contract define the purposes of supervision? For example, does it state the purpose is to raise the level of instruction, eliminate pedagogical weaknesses, or assure success in teaching of each member of the staff?

4. Is there a requirement that supervision be continuous throughout the school year? Is there a requirement as to when in the school year supervision begins?

5. Are evaluations defined as written, oral, or both?

6. Does the contract state who may perform evaluations?

7. Does the contract require that evaluations be continuous?

8. Is a minimum number of classroom observations per year required?

9. Is the timing of required classroom observations expressly stated? For example, four observations per year and at least one per academic quarter must be performed.

10. Is the length of each observation stated expressly? For example, must it be for the entire classroom period for secondary teachers or for a minimum of forty-five minutes for elementary teachers?

11. Is there a requirement for a pre-observation conference where the teacher explains the purpose of the lesson the observer will observe?

12. Is there a regulation for a post-observation conference with the teacher? If so, must such conference occur within a specified number of days following the classroom observation?

13. Is there a requirement that following negative feedback in an observation or evaluation, the observer or other person hold supervisory conferences with the teacher; refer the teacher to workshops; refer the teacher to resource personnel; or perform additional classroom observations?

14. Does the contract require that an annual performance review or end-of-year evaluation be performed and presented to the teacher prior to the end of the school year? Does the agreement state the consequences of the district's failure to comply with such requirements?

15. Is there a notice requirement such that prior to an observation the observer must give notice to the teacher that the teacher will be observed on a particular day? During a particular period or at a particular time?

16. Is there a requirement for follow-up observations? If so, does the contract specify within what period of time such follow-up observation must occur?

17. Does the teacher have the express right to rebut in writing the content of an observation or evaluation? Are time limits set forth in the contract for submission of such rebuttals?

18. Is a particular form required on which to record a classroom observation? Does the agreement provide for supplementation of the negotiated observation form?

19. Is a particular form required on which to record the annual performance review or end-of-year evaluation? Does the agreement provide for supplementation of the negotiated observation form?

20. Is there any requirement in the contract respecting the teacher's obligations during a classroom observation? For example, to display the grading book, lesson plan, or other materials germane to the observation process?

21. Is a teacher affirmatively obligated to sign the classroom observation or evaluation? How much time is expressly allowed for the teacher to sign the evaluation?

22. Is there a requirement that observations or evaluations be filed in a particular location? For example, in the personnel file in the district office? What consequences are stated for the failure of the district to file such report in the district office files?

23. With respect to negative comments in observations or evaluations, is the evaluator required to state specifically the desired performance and give the teacher positive suggestions to achieve the desired performance?

24. Does the contract state that the teacher has the burden of proof in establishing his/her competency to be appointed on tenure? Does the contract shift the burden to the district to show the employee is not performing satisfactorily?

25. Does the contract address the district's obligation to provide the teacher with satisfactory working conditions and to point out ways to improve performance?

Suggestions for Avoiding Grievances and Lawsuits in Terminating Probationary Teachers

1. Study the controlling contract in detail and develop a usable checklist that refers to all requirements set forth in the agreement. Every administrator who performs observations and evaluations should have a copy of the checklist. Use the checklist each time you observe or evaluate the teacher.

2. From commencement of employment set out an evaluation plan that satisfies the requirements of the applicable CBA.

3. Read and reread all provisions of the collective bargaining agreement that relate to observation and evaluation of covered employees.

4. Not only follow the letter and spirit of all contractual procedures relating to probationary teachers, but substantially exceed those requirements. For example, if three classroom observations are contractually required, perform five or six such observations.

5. When substantial weaknesses are observed, follow up within a short period of time with additional observations. To do otherwise may suggest that you didn't consider the weaknesses important enough to monitor.

6. Have observations and evaluations performed by more than one administrator. When two or more administrators observe similar difficulties, the district's credibility is enhanced.

7. If there are school board policies or regulations separate and apart from contractual requirements, include such requirements on the observation and evaluation checklist.

8. Reports of observations and evaluations should be written in behavioral, that is, objective and observable terms. For example, instead of merely saying

“class control was poor” say “x, y, and z left their seats without your permission and refused to return to their seats notwithstanding your statement to them ‘please return to your seat immediately’.” Instead of saying “communication skills need improvement,” say: “Telling students to ‘terminate’ conduct and not be so ‘obstinate’ used words far above the level of the students in your first-grade class. It would be better to say, ‘please, stop talking now, this is the second time I’ve asked you to stop talking this morning. If you continue to talk without permission, I’ll [move your seat].’”

9. Consider holding a pre-observation conference at which your expectations of the teacher are reviewed. Such expectations would include the content of lesson plans and the criteria you intend to apply during the observation. Your evaluation criteria should be conduct-specific and refer the teacher to the elements of the performance being assessed.

10. Always conduct a post-observation conference as soon as the practicalities of the circumstances allow. Every conclusion about the teacher’s performance should be supported by specific conduct of the pupils and teacher. This is important since it is unlikely you will recall the details of your observation two or three years later. It is very likely, however, that once you read your detailed observation, which included detailed descriptions of the conduct that formed the basis of your assessment, your memory will be refreshed. If you have held a pre-observation conference, be sure to tie the observation report to the criteria you previously reviewed with the teacher during the pre-observation conference.

11. Have several administrators observe and evaluate the teacher. This provides an opportunity to confirm weaknesses in the teacher’s performance by other qualified evaluators. The down side to such multiple evaluators is that their reports may create inconsistencies and weaken the evidence to justify an adverse employment decision.

12. Always accompany criticism with suggestions for remediation, perhaps even with a remediation plan. Suggestions for remediation should be stated in behavioral terms so that there is no doubt about what you want the employee to do.

13. If there is a board policy or contractual requirement for remediation plans, allow sufficient time for such a plan to be implemented and measured.

14. Certain conduct should not be excused under any circumstances and may warrant termination of the employee as soon as possible.

15. Use anecdotal reports, memoranda to the teacher, and student reports where appropriate to supplement formal classroom observations. Don’t forget to use such things as attendance, lateness, response to criticism, and completion of “housekeeping” tasks to supplement your evaluations as well.

16. Apply the observation and evaluation system in a uniform manner. This will avoid or at least fend off charges of discriminatory treatment.

17. Avoid language that suggests you are stereotyping.

18. Don't use the observation and evaluation process to retaliate against the employee for his/her expression of free speech. Be particularly careful that if the employee's exercise of free speech was the motivating factor in an adverse employment decision that evidence thereof does not appear in the evaluation document itself.

Termination Checklist

1. To avoid allegations of arbitrariness, make sure every conclusion about the employee's performance deficiencies is supported by observable behavior.

2. Make sure the reasons given to the employee for the district's determination to terminate the employee correspond to the record as it exists, not as the district would like it to be.

3. In formulating annual performance reviews or end-of-year evaluations, first organize facts into categories that correspond to actual evaluation categories on the negotiated evaluation forms. Don't rate the employee first and then look for facts to justify your previous conclusions.

4. Although it is sometimes difficult, be respectful to the employee who is in trouble. Perhaps courtesy and fair treatment will reduce the chances of the employee filing a grievance or commencing a law suit. Moreover, abusive treatment of the employee may result in charges of discriminatory treatment.

5. Have another administrator present during supervisory meetings at which a teacher's performance is reviewed, and when s/he is told about his/her termination. This will help deflect erroneous statements later made by the employee as to what occurred at the meeting. Follow up a supervisory meeting with a file memorandum as to what occurred at the meeting and be sure to transmit that memorandum to the teacher.

6. Don't make statements to parents, teachers, newspaper reporters, or other persons about the inadequacy of a teacher's performance.

7. Recognize when you made a mistake and take steps to correct that mistake to the extent possible.

8. In evaluating teacher performance, err on the side of setting high standards rather than lowering standards. If you don't do this, you will most likely come to regret the decision.

9. When in doubt, deny tenure. Don't expect an unsatisfactory or mediocre teacher to become satisfactory or excellent after the district confers tenure on that teacher.

10. Build a paper trail from the outset of the teacher's employment.

11. Follow Education Law §3031 requirements as to notice and provision of reasons for termination.

Using this checklist and following the suggestions in this article should produce a relatively hassle-free and, it is hoped, amicable parting of the ways for individuals who may be successful in careers other than education and school districts who wish them well.

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