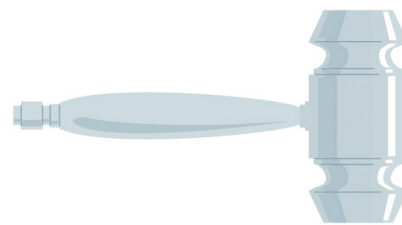


Legal Corner



By Michael I. Levin, Esq., PAESSP General Counsel

Improving Teacher Performance Through Improved Evaluation and Supervision



I was asked to write this article about “an effective evaluation process for administrators to use with teachers, e.g., good anecdotal records, an achievable, measurable, clear improvement plan, etc.” This is a great idea for an article. It is especially timely when the performance of

teachers and public education are under attack from so many sides. However, these concepts mean something to me that are probably totally different than what you think of when you think of “an effective evaluation process,” when you think of “good anecdotal records” or when you think of a “clear improvement plan.”¹

When you think of “an effective evaluation process,” you are probably thinking of the formal state required rating forms -- the PDE 436, PDE 427 and PDE 428 -- that must be used once or twice a year. When you think of “good anecdotal records,” you are probably thinking of the classroom observation forms that many school districts require principals or assistant principals to use. When you think of an improvement plan, you probably are thinking of some form that contains lists of things that must be done by specific dates and that includes a description of what the administration will do to help the struggling teacher.

In contrast, when I think of a “good evaluation process,” I do not think of the state evaluation forms -- I think of the supervisor knowing what the teacher is doing (or not doing) and taking immediate action to stop deficient performance. When I think of anecdotal

records, I think of a letter or memorandum to the teacher (a copy of which has been placed in the personnel file) that describes the deficiency in detail and with specificity -- with dates, times, places and the names of witnesses. When I think of an improvement plan, I think of clear and simple written directives that are given to the teacher mandating that the teacher take immediate action to stop the deficient performance and containing warnings to the teacher that if he or she fails to comply with the directives, he or she will be disciplined and possibly discharged.

Why do I think of these concepts differently? Two words -- “just cause.” Just cause governs the supervision and evaluation process in virtually all school districts. The reason that just cause governs the supervision and evaluation process is because the “hammer” and power that school districts and administrators have to enforce supervision and evaluation is discipline. Naturally, where there is a just cause provision, either expressed or implied, in a collective bargaining agreement, it governs discipline. Consequently, supervision and evaluation must be informed by just cause considerations. Said another way, supervision and evaluation are inextricably linked to just cause.

Without going into detail about what just cause requires, suffice it to say that just cause requires:

- (1) rules of conduct and performance;
- (2) a showing that the employee violated those rules;
- (3) warnings; and
- (4) progressive discipline.

Therefore, an effective evaluation process requires:

- (1) written rules;
- (2) directives that the teacher comply with the rules;

- (3) warnings; and
- (4) progressive discipline.

I suggest that the improvement of teacher performance requires the improvement of supervisory performance and compliance with the rules associated with just cause. Poorly performing teachers or teachers whose performance is marginal will not improve by themselves or when left to their own devices. Teacher improvement requires the active intervention of the supervisor -- and not just at the end of the year when the rating forms are required to be completed. In most instances, the responsible supervisor is the building principal or assistant principal whose job it is to evaluate and supervise the teacher. If a teacher remains poor or marginal year after year, or even throughout a year, whose fault is that? The important thing to know and to understand is that principals and school districts have the power and authority to require poor or marginal teachers to improve, and to require them to improve immediately, or to terminate them from employment. All it takes is proper performance by the supervisory staff and administration as that performance is governed by just cause.

What makes a teacher a poor performer or a marginal performer? In virtually all cases, the student and the parents know who the worst teachers in the building are. If they know, I would bet that the principal and assistant principals know as well. Assuming that is true, what are the principals and the vice principals doing either to improve the performance of the worst teachers in the building or to set the stage where the poor or marginal teachers can be dismissed? If the principal or assistant principal are not doing anything, then they are not doing their jobs. I suggest that job one of the principal or responsible assistant principal is to ensure that all teachers are performing well and that none are performing poorly or marginally. It is unfair to the students and to the taxpayers to allow teachers to continue to be employed who are poor or marginal.

Why are teachers poor or marginal? It can be summed up in one simple concept -- either they are



doing something that they should not be doing; or they are not doing something that they should be doing.² It is really as easy as that. The good and great teachers are doing things that the poor and marginal teachers are not doing. The poor and marginal teachers are failing to do things that the good and great teachers do as of course; or, they are doing things that the good and great teachers would never do. I suggest that it is the responsibility of the principal or responsible assistant principal: (1) to be able to identify the deficient performance; (2) to be able to articulate and properly describe the deficient performance; and (3) to issue directives, with warnings, to

the teacher that directs the teacher to cease and desist the deficient performance. Most importantly, this cannot wait until the end of the semester or the end of the school year -- it must be done as soon as the principal knows that there are deficiencies and must be followed with progressive discipline if the teacher persists in failing to do what is required.

Teacher performance cannot improve if the principal does not tell the teacher immediately what is wrong. Highlighting the importance of immediately addressing deficiencies, an experienced and well respected attorney for the Pennsylvania State Education Association (PSEA) once said: "If the complaint is legitimate, the teacher is advised immediately and the process of modifying patterns of conduct can begin immediately. Immediate notification also enables little things to be handled at low levels, conserving everyone's resources and actually enhancing professional-supervisory relations." I agree with these observations and stress that an "effective evaluation process" begins with prompt dialogue with the teacher about deficiencies in his or her performance.

It is not the purpose of this article, nor does space permit in this article, to describe the differences between good and great teachers on the one hand and poor or marginal teachers on the other. There could be a thousand reasons why a teacher is poor or marginal. However, those reasons can and must be identified and verbalized. The many bullet points contained in the rubrics on the Pennsylvania Department of Education (PDE) forms 426, 427 and 428 are help-

ful in capturing the language that can be used to identify deficiencies. For example, in PDE 426, under "Planning and Preparation," the following language is contained in the rubric as examples of poor or unsatisfactory performance:

"Teacher's performance demonstrates:

- ❑ Limited or partial knowledge of content and pedagogy
- ❑ Limited or partial knowledge of Pennsylvania Academic Standards
- ❑ Irrelevant or partial knowledge of students and how to use this knowledge to direct and guide instruction
- ❑ Unclear or trivial instructional goals and absence of expectations for students
- ❑ Little or no awareness of resources, materials and technology available through the school or district or professional organizations
- ❑ Inappropriate or incoherent instructional design in which plans for elements are not aligned with the instructional goals, and have few or inappropriate adaptations for individual student needs
- ❑ Little or no reflection on teaching and learning to enhance instruction
- ❑ Inappropriate assessments of student learning not aligned to the instructional goals nor adapted as needed for student needs"

Using the language of this rubric, for example, based on an observation -- whether formal or informal -- the principal might see that there is inappropriate or incoherent instructional design and that instruction was not aligned with either the applicable standards or the applicable curriculum. **The document is available on the PAESSP web site at http://www.paessp.org/images/stories/documents/legal_corner_docs.pdf.**

This is the first step of an effective evaluation. The second step is to follow up and ensure that the directives have been fulfilled. If so, you have made a difference. If not, you document it again, schedule a meeting with the teacher and then impose discipline as warranted. **The document is available on the PAESSP web site at http://www.paessp.org/images/stories/documents/legal_corner_docs.pdf.**

If the nature of the conduct is such that there is a likelihood that there will be a suspension without pay as a result of the teacher's failure to comply with the

directive, I recommend that the notice of the allegations come from the central administration and that legal counsel be involved in the process and the meeting. However, the purpose of the meeting is to ensure that the facts are accurate and to understand whether any mitigating circumstances should be taken into account. It is only after hearing the teacher's side of the story and having a thorough knowledge and understanding of the whole story that a decision should be made whether to impose discipline and what discipline to impose.

If after hearing the employee's side of the story it is determined that the directive was violated and that discipline is appropriate, progressive discipline must be initiated. Failure to provide appropriate instruction that is properly aligned to standards and curriculum is, in my opinion, a serious offense that justifies a suspension without pay. Depending upon the egregiousness of the offense, a suspension of one to five days may be warranted. **The suspension letter can be found on the PAESSP web site at http://www.paessp.org/images/stories/documents/legal_corner_docs.pdf.**

Through this method, either performance will improve, which is the objective of the evaluation and progressive discipline system, or the stage will be set for termination.

The idea of an "improvement plan" for teachers has gained favor over the years for a variety of reasons. Educators like plans. Educators are nurturing by nature and the development of an "improvement plan" seems much less threatening than a disciplinary letter with directives. I have no objections to the use of improvement plans. However, they need to be effective management tools and not a tool of the union. First, they need to clearly state the rules that the employee needs to comply with in order to "improve." Second, the rules that are mandatory must be stated as di-

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rectives, not recommendations, not suggestions. Third, the directives must require immediate compliance. Is anything other than immediate compliance with the directives fair to the students? Fourth, the improvement plan must not contain requirements for the school district. I have seen too many improvement plans that require management to do things as part of the improvement plan. Then, when discipline is imposed, the union argues that the discipline is not proper because the principal did not provide the assistance, the meetings, etc., required in the improvement plan. I am not suggesting that help and assistance should not be provided, but do not make it a part of an improvement plan. **Appendix "A" is a sample "Improvement Plan." It can be found on the PAESSP web site at http://www.paessp.org/images/stories/documents/legal_corner_docs.pdf.**

Depending upon the nature of the deficiencies and the performance of the teacher, the required rating forms must be completed properly. If the teacher is not rated, the law provides that it will be assumed that the teacher received a satisfactory rating. If there is to be disciplinary action, you do not want to confront a "satisfactory" rating while arguing that the teacher deserved to be disciplined. Where there is an unsatisfactory rating, the rating must contain anecdotal records. The applicable regulations provide the following with regard to ratings.³

“(c) Whenever an unsatisfactory rating is given, it shall be supported by anecdotal records. The records shall include specific evidence likely to be important in the event of dismissal.” 22 Pa.Code §351.26(c).

The anecdotal records, consequently, would include the kinds of memorandum or letters that I have recommended and modeled above and, if used, the improvement plan. In addition, if there are documents that have been produced by the teacher and that exhibit deficient performance, those items would also be used as part of the anecdotal records. For example, if lesson plans are deficient, the deficient lesson plans should be copied and attached to the unsatisfactory rating. If tests that the teacher developed are improper, they should be attached.

In conclusion, an "effective evaluation process" begins on the first day of the school year with an understanding of what the teachers are doing and immediate direction when they are not performing properly or effectively.

Endnotes

¹ I will be discussing generally applicable concepts in this article. I must stress, however, that there may be individual requirements in particular school districts that trump or modify what I discuss in this article. They may come from provisions in a collective bargaining agreement, provisions in an applicable school board policy or from a binding "past practice."

² For ease of reference and understanding, I will refer in this article to both concepts -- i.e., doing things that should not be done and failing to do things that should be done -- as "deficient performance."

³ There are some ambiguities and uncertainties in the law. One of these concerns the validity of rating forms. The applicable regulations require the use of the DEBE 333. See, 22 Pa.Code §351.21. However, as we all know, PDE devised and recommends the use of PDE 426, PDE 427 and PDE 428. It is suggested that PDE should update the regulations so that the use of the PDE 426, 427 and 428 forms are clearly allowed under law.

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The PAESSP is seeking principals and educators to write for the **September 2011** edition of its award-winning *Pennsylvania Administrator* magazine. **This issue does not have a specific theme, so any education topics will be accepted for review by the Editorial Review Board.**

The deadline for submitting articles is July 8, 2011. Articles should be no longer than 1,500 words. Articles must be submitted via email as a Microsoft Word document. A biographical sketch and a photograph of the author(s) (saved as a JPEG or a TIFF file) must accompany all articles. E-mail articles to sherit@paessp.org.