

How to Conduct Effective Employee Evaluations and Take Appropriate Disciplinary Action

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Agenda

- Reforming Performance Standards
- Employee Evaluations
- Disciplinary Action
 - Education Law Protections
 - Civil Service Law Protections
 - Other Protections Available
- Scenarios
- Questions



**Education Law
Amendment:
Transitioning to new
teacher and principal
evaluation systems**

Amendment to Education Law Section 3012-d and Enactment of Section 3012-e

New Standards-based Educator Evaluation and Professional Support plans (“NYS STEPS”)

- Relevant provisions of the Education Law set forth standards related to critical employment actions for teachers and principals.
- Governor Hochul amended Education Law § 3012-d and signed Education Law § 3012-e into law on June 28, 2024, which provides for a new teacher and principal evaluation system (the “NYS STEPS”).
- Regulations under the STEPS plan were adopted via emergency action on November 5, 2024, and are currently in the 60-day comment period.
- Schools must transition to the new STEPS plan by June 30, 2025.

<https://www.nysed.gov/sites/default/files/programs/educator-quality/implementation-teacher-principal-evaluation-systems-2024-25-school-year-and-thereafter-pursuant-to-education-law-3012-d-and-3012-e-amended-chapter-143.pdf>

Amendment to Education Law Section 3012-d and Enactment of Section 3012-e

NYS-STEPS - Key Features



- Schools will be allowed to develop their own teacher evaluation programs in conjunction with the collective bargaining process.
- Evaluations are no longer required to be tied to student performance metrics.
- Along with required observations and school visits, multiple school-district determined measures may be used to assess teacher and principal performance.
- A four-level numbered rating system, with four indicating exemplary performance, replaces the former HEDI scores of highly effective, effective, developing, or ineffective.



Conducting Effective Employee Evaluations

Conducting Effective Employee Evaluations

Why Are Evaluations Important?



- Performance evaluations are an important **communication** tool.
- Engage employees in open, honest, and constructive dialogue.
- Allows a school to:
 - Provide critical feedback;
 - Acknowledge good performance;
 - Set expectations for future job performance;
 - Rehabilitate and remediate poor performance; and
 - Discuss issues that may lead to possible discipline or removal.
- Ongoing performance discussions can assist in avoiding serious problems in the future.

Conducting Effective Employee Evaluations

Best Practices for Evaluations



- Do not shy away from criticism or directly addressing poor/deficient performance.
- Supplement checklist observations & evaluations with brief narrative paragraphs to be used in citing specific criticisms of performance.
- Take advantage of informal opportunities to observe, evaluate, advise, and assist teachers. A formal improvement plan should not be the first step toward remediating performance.
- Effectively use the probationary period.
- Document, document, document!

Conducting Effective Employee Evaluations

Best Practices for Evaluations



- Clearly outline all areas of dissatisfaction.
- Make it clear that progress will be required by a certain date and how that progress will be measured.
- Be thorough, specific, and direct.
- Prepare discussion points and recommendations prior to post-observations and evaluations.
- Observe and be aware of the timelines and other restrictions specified in the relevant CBA or by law.

Conducting Effective Employee Evaluations

Best Practices for Evaluations



- Monitor and follow through on performance problems and corrective measures.
- Remain objective and seek outside counsel if needed.
- Supervise and evaluate aggressively during the early years of employment. The administration should be certain that inadequacies in performance are remedied before tenure/permanent status is considered.
- Where inadequacies of performance are identified, evaluate consistently and frequently until the evidence is conclusive, irrefutable, and overwhelming.



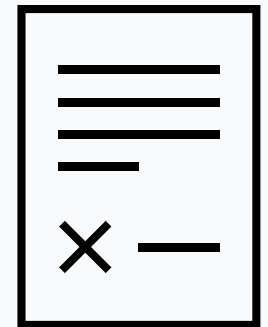
Effective Documenting Performance

Conducting Effective Employee Evaluations

Documenting Performance

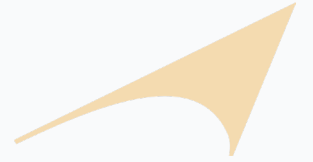


- Facts, not conclusions.
- Avoid inflammatory words.
- Directives should be succinct and pointed.
- Personalize the memoranda toward the teacher/principal.
- Do not inject personal viewpoints.
- Disinterested review.
- Destroy drafts.
- Sign and date.



Conducting Effective Employee Evaluations

Documenting Misconduct



- Maintain continuity and treat everyone consistently.
- Use reasonable, unambiguous, and enforceable language.
- Attempt to correct performance and offer assistance at the time an incident occurs, or a deficiency is observed.
- Counseling memoranda can alert a teacher/principal about potential misconduct or performance issues that do not necessarily warrant formal disciplinary action.
 - Serves as a warning to improve behavior without being considered a full disciplinary measure;
 - Can be used to support formal charges later if necessary.

Conducting Effective Employee Evaluations

Documenting Misconduct



- Hand-deliver document(s) to the employee.
- Obtain a written acknowledgment.
 - If none – note circumstances, including the refusal to sign by the employee.
- Offer the employee an opportunity to respond.
- Place relevant documentation in personnel file.





Taking Appropriate Disciplinary Action

Taking Appropriate Disciplinary Action

Who is covered under the Education Law?

- Education Law § 3020 provides discipline protection to **tenured educators**.
- A tenured educator may not be disciplined or terminated unless the school district follows certain rules under Section 3020-a of the Education Law, or at the written election of the educator, or rules specified by a CBA.
- A probationary educator or civil service employee does not have the same protections.

Taking Appropriate Disciplinary Action

Just Cause Standard



- A tenured educator may only be **disciplined** or **discharged** for “just cause.”
- Examples of serious offenses which may prompt formal disciplinary action include:
 - Testing improprieties;
 - Harassment or discrimination;
 - Physical altercations; and
 - Repetitive intermediate infractions with no improvement.
- Examples of discipline include a reprimand, fine, suspension, termination, or other action taken with intent to discipline an employee (such as a transfer to another position), or as defined in an applicable contract.

Taking Appropriate Disciplinary Action

Counseling Memoranda



COUNSELING ≠ DISCIPLINE

- Distinction between “admonitions to a teacher (or principal) that are critical of performance” and “disciplinary determinations of a punitive nature.”*
- A counseling letter is an administrative action which is not disciplinary in nature as defined by § 3020-a, *unless* the letter contains written criticism constituting a reprimand or otherwise punitive.
- Because counseling letters are not discipline, they **should not** include a penalty.
- Except for the most egregious conduct, administrators should first attempt to deal with performance shortcomings early through evaluation and counseling.

Taking Appropriate Disciplinary Action

Counseling Memoranda: Factors of Analysis

- **Factors** used to determine whether a counseling letter will be viewed as a **critical of performance** or a **disciplinary determination of a punitive nature (reprimand)**:
 - Is the letter directed toward an improvement in performance or a reprimand for prior misconduct?
 - The severity of the misconduct and the admonition/reprimand.
 - Is the letter from the teacher's immediate supervisor or from the board of education?
 - Does the letter use the word reprimand?
 - Does the letter use accusatory language of formal charges in describing the teacher's conduct?

Taking Appropriate Disciplinary Action

Counseling Memoranda: Components

COUNSELING ≠ DISCIPLINE

- A counseling letter should include:
 - A summary of the conduct that led to the issuance of the letter;
 - The district's investigation or review of the matter;
 - The teacher's response;
 - Disposition of the issue;
 - Instruction to the employee to abstain from similar conduct in the future, or to take certain conduct in the future;
 - A warning that formal disciplinary action may be taken in the event of other violations or misconduct.

Taking Appropriate Disciplinary Action

Who is covered under the Civil Service Law?

- Civil Service employees
 - Persons holding a position by permanent appointment in the competitive class (as opposed to provisional or temporary);
 - Persons holding a position by permanent appointment or employment in the classified service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States, having served therein as such member in time of war, except for persons holding the positions of private secretary, cashier or deputy of any official or department;
 - Persons holding a position by permanent appointment or employment in the classified service, who is an "exempt volunteer firefighter," except for persons holding the positions of private secretary, cashier or deputy of any official or department; and
 - Employees holding noncompetitive class positions who have completed at least 5 years of continuous service in that class, provided that position has not been designated as confidential or policy-making by the local civil service agency.
- Individuals who do not fall within the groups enumerated in the statute are not protected by Civil Service Law.

Taking Appropriate Disciplinary Action

Civil Service Law: Due Process Protections

- Section 75 of the NYS Civil Service Law protects certain public employees from being penalized or removed from their position without due process.
 - “shall not be removed or otherwise subjected to any disciplinary penalty ... except for **incompetency** or **misconduct** shown after a hearing upon stated charges.”
- Relevant Statute of Limitations
 - No more than 18 months after the occurrence of the misconduct except where the misconduct complained of and described in the charges would constitute a crime.
- Right to representation at a disciplinary meeting (prior to any hearing).
- Right to notice of the charges and to respond.
- Right to a hearing (school district or designee acts as hearing officer).
- Burden of Proof (on the school district).

Taking Appropriate Disciplinary Action

Civil Service Law: Disciplinary Consequences



- Reprimand;
- Monetary fine (not to exceed \$100 deducted from employee's wages);
- Suspension without pay (not to exceed 2 months);
- Demotion in grade and title; or
- Dismissal.

If the employee is found not guilty of the charges, he/she must be restored to his/her original position with full back pay and benefits for any period of suspension (less any unemployment).

Taking Appropriate Disciplinary Action

Review CBA or Employment Agreement

- Instructional and non-instructional employees not covered by Education Law § 3020-a or Civil Service Law § 75 may still have protections under a relevant CBA.
- Contractual “just cause” standards and hearing procedures are often like those referenced in Section 3020-a and Section 75 proceedings.
- Employees may also have their own employment agreements. This is why it is important to draft agreements with clear terms on how to discipline and terminate an employee.

Taking Appropriate Disciplinary Action

At-Will Employees



- If no protections apply under Section 3020-a, Section 75, or a CBA, the “at will” employment principles apply.
 - An “at-will” employee may be disciplined or discharged for any **legal, non-discriminatory reason**.
- Must be a **rational basis** for the discharge (i.e., not done in “bad faith”). A discharge that is arbitrary, capricious, or lacks a rational basis is subject to a review by the courts in a CPLR Article 78 Proceeding.
- Always assess the risk of a discrimination and/or retaliation claim before taking action. For example:
 - Is the employee currently on job protected leave?
 - Has the employee recently engaged in protected activity?
 - Are the employee’s pension or retiree health benefits about to vest?

Taking Appropriate Disciplinary Action

Other Potential Actions



- Negotiated Settlements
 - A written agreement resolving allegations of misconduct through mutually agreed upon terms rather than continuing with formal proceedings.
- Last Chance Agreements
 - A written agreement giving an employee who has been accused of engaging in some kind of serious misconduct one last chance to keep their job.



Hypothetical Scenarios

Scenario #1

Minor Infraction: The Case of the Custodian

Principal Smith observed Elmingdale's elementary school custodian falling asleep during the school day yesterday.

- What should Principal Smith consider or do as she navigates the disciplinary process?

Scenario #1

Minor Infraction: The Case of the Custodian

- Does the custodian fall under the Civil Service Law, a CBA, or an employment agreement?
 - If so, what provisions apply?
 - If no, has the custodian violated any district policies?
- Consider whether the behavior could be related to a disability or medical condition.
- Has the behavior been addressed or documented before?
 - If no, have a discussion with the custodian about what was observed, get his side of the story, and remind him of the policy or rule at issue.
 - If yes, consider escalating the approach, but beware of possible disability considerations.
- **Document, document, document!** Prepare notes summarizing the observations and conversation with the custodian.

Scenario #2

Intermediate Infraction: Teacher Amy

Teacher Amy, who has been teaching math at the same school for 25 years, has been accused by her co-teacher, Ryan, of continually swearing at her middle school students when they misbehave in class or aren't paying attention. The same week as co-teacher Ryan's complaint, a parent calls the assistant principal with the same complaint. This is the first time the school has received notice of this issue.

- What should the school consider as they navigate the disciplinary process?

Scenario #2

Intermediate Infraction: Teacher Amy

- Teacher Amy likely falls under Education Law § 3020's discipline protections as a tenured educator.
- Since this is the first notice or complaint about Teacher Amy's conduct, a detailed counseling memo is likely appropriate to address her behavior before it escalates.
 - Outline the conduct that led to the issuance of the memo, including details of the incident and violation of relevant policies or rules.
 - Instruct Teacher Amy to abstain from similar conduct in the future, provide her with pointed directives on how to exhibit effective classroom management skills (offer training opportunities), and advise Teacher Amy that formal discipline may result in the event of any future similar conduct.

Scenario #2

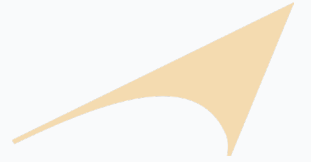
Intermediate Infraction: Teacher Amy

- Meet with Teacher Amy to deliver the counseling memo and explain why she is receiving it.
 - Inform Teacher Amy that she may have union representation at the meeting;
 - Request Teacher Amy to sign the memo acknowledging receipt.
 - Provide Teacher Amy with opportunity to provide a rebuttal.
 - Place all relevant documents in Teacher Amy's personnel file.
- Monitor and follow-up with Teacher Amy as needed.
 - Monitor Teacher Amy's performance and **document** progress.
 - Provide feedback to Teacher Amy, discuss progress, and reinforce expectations.
 - If necessary, provide supplemental counseling memo(s).
 - Consider disciplinary action if the conduct continues or does not improve.

Questions?



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