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TEACHER AND ADMINISTRATOR EVALUATION:
THE ISSUES FROM A UNION PERSPECTIVE

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Teacher and Administrator Evaluation:
The Issues from A Union Perspective

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Introduction

We are in the midst of a period of heightened interest in issues of personnel evaluation in public schools. The recent debate on educational excellence and education reform has centered on the issue of the quality of the personnel staffing our public schools. It has been recognized that schools cannot offer high quality services if the schools are not staffed by high quality individuals. It is popular to decry the mediocrity of public school teachers and administrators and to somehow characterize public school personnel as failures who cannot be successful in other endeavors. We are all familiar with the old bromide that those who cannot succeed in the "outside world" become teachers and that teachers who cannot succeed in the classroom become administrators. This belies the real world of the public schools. There are many excellent and outstanding teachers and administrators in public schools whose performance is far more valuable than the modest compensation those individuals receive. However, it must be recognized also that there are both teachers and administrators in public schools whose performance is below minimally acceptable standards and these individuals need to improve their performance or leave education. Albert Shanker, president

of the American Federation of Teachers (AFT), has said that,

One of the great virtues of the current wave [of education reform] is that it recognizes the classroom teacher as the key to a good education.... Many of the recent reports list recommendations designed to retain our teaching force and attract new talent, but it is inevitable that any discussion of teacher quality will also deal with the question of how to get rid of incompetents.1/

Here is clear recognition on the part of a major, influential teacher union leader that (1) steps need to be taken to attract and retain good teachers (and by extension, good administrators), and (2) steps also need to be taken to rid the schools of incompetent teachers and administrators. This cannot be accomplished without an effective system of teacher and administrator evaluation.2/

Yet, the evaluation of personnel is a muddled arena with much criticism levied at the current state of practice. Evaluation theorist Michael Scriven has poignantly written:

Teacher evaluation is a disaster. The practices are shoddy and the principles are unclear. Recent work has suggested some ways to clarify the issue and to make the procedures more equitable and reasonably valid, but one cannot

1. "Old 'Cures' Floated for Incompetence," New York Times (January 22, 1984).
2. While this paper will speak of "teacher evaluation" or "teacher and administrator evaluation," the reader should assume evaluation of all school personnel including paraprofessionals, guidance personnel, librarians, other professional personnel, and non-instructional employees.

yet point to a single exemplary system in which practices come near to matching our knowledge.^{3/}

Scriven, I believe, is not engaging in hyperbole. He is not at all exaggerating the current state of practice in the evaluation of teachers and administrators. In fact, teacher evaluation is probably better off than the evaluation of administrators, for the latter has been largely ignored.

From a legal standpoint this all presents a problem of obvious nature. How can the dismissal of educational personnel who are not considered to be minimally adequate, in a process that requires some degree of formalism, be based on a system that is a quagmire of inconsistencies, replete with lack of objectivity and reliability, and devoid of clear purposes and criteria for performance? One commentator has stated the problem as follows:

Although no one would question the importance of good teaching to the provision of good education, the appraisal of teacher performance has presented numerous and nettlesome problems. One major problem inherent in teacher evaluation is that there is no clear definition of what characterizes an effective teacher or constitutes effective teaching, and, consequently, no definitive measures to be used for teacher evaluation. Any evaluation process is essentially a comparison of desired outcomes with actual outcomes. If the situation exists where not only the results but in many cases the desired outcomes are in question, then the task of evaluation becomes extremely difficult.^{4/}

3. "Summative Teacher Evaluation," in Jason Millman, ed., Handbook of Teacher Evaluation (Beverly Hills, Calif.: Sage Publications, 1981), p. 244.

4. L. Dean Webb, "Teacher Evaluation," in Stephen B. Thomas, Nelda H. Cambron-McCabe, and Martha M. McCarthy, eds., Educators and the Law (Elmont, NY: Institute for School Law and Finance, 1983), p. 69.

While the current state of teacher and administrative evaluation may be dismal, the demand for effective evaluation is great.

Criticisms of the public schools have been rampant. Declining standardized test scores have caused the public to question the performance of the public schools. Declining enrollments and reductions in force have presented to the public an image of the schools that suggests turmoil and the inability to manage effectively and efficiently. Tax revolts, revenue limitations, economic recession, and a federal government that has severely curtailed federal aid to public schools have combined to leave schools with fewer resources with which to provide services. Higher proportions of pupils with special needs have increased requirements on schools for expensive special programs and services. At the same time deteriorating working conditions and lack of competitive salaries have decreased the number and quality of college graduates seeking teaching positions.

For public schools to provide quality instruction requires quality personnel in the schools. As Shanker suggests, there is consensus that the teacher is the key to this. However, maintaining quality teaching requires fair and effective systems of teacher and administrator evaluation, something we do not now have.

Any system of personnel evaluation in public schools, to be adequate in meeting the needs of the school system, must effectively address the following questions:

- o How can we attract and retain high quality teachers?
- o How can we help good classroom teachers to improve their performance?
- o How can we help poor classroom teachers to improve their performance?
- o How can we remove irremediably sub-standard teachers from schools?
- o How can we provide competent, knowledgeable, and effective administrators who will be instructional leaders?
- o If a school district implements a master teacher, career ladder, merit pay, or some other performance based system of rank and salary differentiation, how can the necessary determination of performance be made?
- o How can we insure that the evaluation system will be equitable, effective, and efficient?

Laura Means Pope provides another list of questions concerning evaluation that is derived from judicial decisions in personnel evaluation cases in public schools.^{5/} These legal issues provide a complement to the educational issues raised above. Pope's list of questions includes:

- o What are evaluation statutes? How do they relate to tenure laws, administrative regulations, board

5. Laura Means Pope, "State Regulation of Educator Evaluation," in Joseph Beckham and Perry A. Zirkel, eds., Legal Issues in Public School Employment (Bloomington, IN: Phi Delta Kappa, 1983), pp 137-8.

- policy, and collective bargaining agreements?
- o What is statutory due process, and what are the consequences of failing to provide it?
 - o What standards of judicial review apply? What degree of compliance is required? And what remedies do courts employ?
 - o Who determines evaluation criteria? Who should do the evaluating, for what purpose, and how often? And what evaluation instruments or processes are used?
 - o When is professional performance or behavior considered remediable? When is remediation period required? And what length of period is reasonable?
 - o What pattern and content of evaluations are necessary to substantiate dismissal decisions?

A consideration of a personnel evaluation system in the public schools must include answering a set of educational questions as well as responding to legal questions. Both sets of questions are critical. Both sets of questions must be answered in the light of what will improve the quality of public education while protecting the rights of all individuals involved. The remainder of this paper will be a discussion of those questions from the perspective of a teachers' union which is concerned about both the quality of educational services and the future of public education in the United States, as well as the best interests of its own members.

An AFT Perspective on Evaluation

The American Federation of Teachers is an AFL-CIO affiliated labor union with over 580,000 members nationwide. Its membership includes elementary and secondary teachers, college professors, paraprofessionals, non-instructional school employees, state government employees, and health care workers. While the AFT's strength traditionally has been in the metropolitan areas of the Northeast, Midwest, and Far West, the AFT membership is growing rapidly in the South and Southwest. In the South Central and Southwest regions, AFT local unions bargain teacher contracts in such places as New Orleans, Corpus Christi, Oklahoma City, and Albuquerque. When proposals for education reform became a topic of national debate, the AFT position was one of openness and willingness to discuss change which would benefit the public schools and improve education. The AFT has recognized the serious problems facing public schools and has pursued policies which it thinks will provide pragmatic and reasonable solutions to those problems. While the AFT has no recent, comprehensive policy statement on teacher evaluation, traditionally it has supported the development of fair and equitable systems of evaluation which recognize and reinforce teachers' strengths and provide constructive feedback and assistance in overcoming deficiencies in instructional practice. In a 1983 policy resolution on the subject of education reform, the AFT convention, the highest AFT policy-making body, stated that,

Evaluation cannot be left to principals and supervisors who have traditionally made subjective judgements about teacher competence based more on favoritism and patronage than merit. New evaluation patterns should be negotiated and must offer protections against subjectivity and local school politics.^{6/}

In fact, in Toledo, Ohio, the school district and the teachers' union, an AFT affiliate, have instituted a program of peer evaluation of beginning teachers which removes evaluation responsibilities from principals and supervisors and provides peer assistance for teachers with deficiencies.

In 1982, in a resolution on "Teacher Preparation and Quality Education," the AFT convention adopted a policy which included the following elements relating to both pre-service and in-service teachers which have a direct bearing on evaluation:

1. The granting of the initial teacher certificate should be based on evaluation of a wide range of factors, including (a) successful completion of a rigorous college teacher education program, (b) successful completion of a written examination assessing acceptable levels of competence in basic skills, pedagogy, and subject matter knowledge, and (c) personal attributes and accomplishments.
2. State and federal funds should be appropriated for research and development of unbiased and job-related test questions to accomplish the above. Teacher

6. American Federation of Teachers, "Resolution on Education Reform," in AFT Convention Report 1983 (Washington, DC: the author, 1983) p. 66.

representatives, educational researchers, and testing specialists should be significantly involved in this process.

3. A permanent teaching certificate should only be granted after successful completion or a one-to-two year teaching internship program.
4. Inservice teachers should be afforded the opportunity for professional growth through teacher release time and compensation for time outside the normal school day spent on updating and refining teaching skills.
5. Collaborative staff development activities, such as teacher centers, be available to serve all teachers.

In a recent New York Times column, AFT president Albert Shanker, addressed three additional issues relating to the evaluation of inservice teachers: the abolition of tenure, recertification of teachers, and retesting inservice teachers. Shanker argues that there is no evidence that the abolition of tenure and the consequent easier termination of substandard teachers would lead to better teaching. He cites the examples of Texas and Mississippi, which do not have tenure, and asks if there is clear evidence that education in those states is superior to that in other states because of the lack of tenure. The obvious answer is that the lack of tenure has not led to superior education in those two states. Shanker posits that one problem with recertification is that it adds exceptional insecurity to the other disadvantages of teaching and would discourage

quality college graduates from entering teaching, especially when recertification is not required in other professions. He also suggests that recertification and retesting of inservice teachers might be more palatable if other professions, such as medicine, dentistry, pharmacy, and law had the same requirements.^{7/} He concludes by saying that

You can't blame teachers for feeling that they are being scapegoated when these proposals are floated by officials who are trying to hire teachers at \$12,000, \$13,000 and \$14,000 a year, who don't bother giving teachers a test before they're hired, and who don't follow a policy of granting tenure only to those who meet very high standards during their probationary period.^{8/}

The AFT does not oppose good teacher evaluation systems, but welcomes them. When correctly conceived, developed, and implemented, they will lead to the improvement of education.

Evaluation and the Political Economy of Education

The evaluation of teachers and administrators takes place within the context of organizations. Garms, Guthrie, and Pierce have stated that, "Organizations can be viewed as a set of opportunities to and restrictions on the ability of people to improve their well being."^{9/} This political economy approach to educational institutions as organizations stresses the need to look at incentives to particular

7. Shanker, "Old 'Cures' Floated for Incompetence."

8. Ibid.

9. Walter I. Garms, James W. Guthrie, and Lawrence C. Pierce, School Finance: The Economics and Politics of Public Education (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1978), p. 76.

behavior that individuals have in organization. Complex organizations can only be understood when the behavior of individuals within can be explained and that behavior can usually be understood as rational, self-interested persons trying to maximize their own benefits.^{10/} Any teacher and administrator evaluation system that will be successful will be one that is built on the recognition that it must satisfy the needs of everyone in the organization as a whole. The evaluation system for school personnel must satisfy three basic criteria recognized in political economy: equity, effectiveness, and efficiency. The evaluation system needs to be perceived by all who are involved with it as fair. If it is perceived as being unfair it will be resisted by those who see the inequities and may be easily sabotaged.

Personnel who feel they are treated unfairly will challenge the evaluation system in the courts, or other avenues of redress available. If the personnel system is not effective in recognizing exemplary staff, in providing media for improvement of staff showing deficiencies, and in leading to the dismissal of deficient staff who cannot improve, then the evaluation system will be regarded as a joke and will not be taken seriously. An evaluation system will be effective if everyone has a self-interest in making it work.

Finally, the system must be efficient. It is not in the public interest to have a system in which the cost exceeds

10. See William Lowe Boyd, "The Political Economy of Public Schools," Education Administration Quarterly, Vol. 18, No. 3 (Summer 1982) 111-130, for a more complete discussion of the issue.

any benefit gained from the system. The cost-benefit calculus must produce a positive yield for the school system.

Equity, effectiveness, and efficiency are inexorably linked together. A system that is not equitable will not be able to achieve maximum effectiveness. By definition, an ineffective system can hardly be efficient. Boyd argues that,

Of course, considering the perversities of the reward structure and career ladder of public schools, it is remarkable that as many public schools perform as well as they do. That they do is a tribute to dedicated educators who perform well, more or less in spite of the existing reward structure. But would it not be more reasonable to change the structure to one that encourages, rewards, and helps maintain meritorious performance?^{11/}

An equitable, effective, and efficient system of evaluating teachers and administrators could do that. The system is an obvious failure if it does not encourage, reward, and maintain meritorious performance.

It is in the self-interest of teachers to have a steady and stable job, with adequate compensation, adequate psychic rewards, and a minimum of criticism or negative intervention from administrators. If parents do not complain and students do not create problems, the satisfaction increases. A building administrator has it in his or her self-interest to have few problems from teachers, parents, or students and to have the support and approval of central office administrators, the school board, and the public. The central office administrators and school board members tend to want a smooth

11. Boyd, p. 123.

running system with a minimum of problems and the financial and emotional rewards of a system regarded as performing well. It is no accident that it is, therefore, in everyone's self-interest to have a system with competent personnel where children learn. Every group within the system has it in their self-interest to create an organization which performs the way it is supposed to.

Dissatisfied parents tend either to take their children out of the school system to other public systems or to private schools, or to become politically active to change what they are dissatisfied with in the public schools.^{12/} The former leads to declining enrollment and retrenchment and the latter to political turmoil. It is in the self-interest of all school personnel to minimize these threats through satisfying parents.

This discussion all leads to the argument that an equitable, effective, and efficient personnel evaluation system is in everyone's self-interest. This idea is not as alien as it might seem to some. It was James Madison in The Federalist No. 10 who argued that the pluralistic conflict among various self-interests would produce a stability and balance contributing to the general good. Madison understood that one could not eliminate self-interest, so the only solution was to control self-interest in a broad

12. See Boyd, pp. 119-121, and Albert O. Hirschman, Exit, Voice, and Loyalty (Cambridge, Mass.: Harvard University Press, 1970) for a more complete discussion of the "exit-voice" option.

public policy sphere. A political economic framework of analysis helps make this clear.

All parties benefit from an evaluation system which rewards and encourages those who perform well and provides a medium for improvement, or a process for dismissal, for those who do not perform up to adequate standards. This can be summed up in its negative sense by saying that "an incompetent teacher or administrator hurts us all."

Evaluation Procedures

However, the real world of teacher and administrator evaluation does not always match the ideal world described above. Just as our Founding Fathers realized that a constitution in action was not always the same as a constitution in "parchment," there are real world factors and constraints which complicate the process of personnel evaluation. L. Dean Webb discusses the conflicting purposes of evaluation.^{13/} She says that,

On the one hand, evaluation is perceived as having positive results such as the improvement of instruction and the identification and encouragement of effective teachers. However, in the lexicon of the teacher, evaluation often has been viewed as a basis to make nonretention, demotion, reassignment, or dismissal decisions. The situation created by these varying interpretations often generates negative feelings among those being evaluated and those doing the evaluating.^{14/}

In the abstract everyone welcomes good evaluation. In prac-

13. Webb, p. 69.

14. Ibid.

tice there are problems which emerge which generate the negative feelings about evaluation to which Webb makes reference. The next section will discuss some of the practical issues in evaluation of education personnel. These will be viewed from the point of view of educational issues, substantive due process, and procedural due process.

Educational Issues in Evaluation

Most systems of teacher evaluation are based on an outdated model of schooling. In the early years of the twentieth century most teachers did not possess a college degree. Teachers were high school graduates with one or more years of normal school training who often were just a few lessons ahead of their own students in what they were teaching. The only college educated person, the only true professional, in the school was the principal. He or she was a scholar who provided leadership for and supervised the teachers, who corresponded to workers in an industrial setting. This industrial model of schooling and teaching required a system of evaluation that was relatively formalistic and rigid with checklists and rating scales. The professional evaluated the workers and provided concrete evaluation of classroom performance.

Schools have changed considerably over the last few decades. Today teachers are college graduates and about one-half have earned a masters' degree or more. In their own teaching area the teacher usually has more expertise

than the principal or supervisor. The setting approaches a collegial relationship of professionals with equal rank but differentiated duties and responsibilities. The old industrial model of evaluation is no longer appropriate, but in practice it has never died. Today it is still the norm in many school systems. It is no wonder that teachers and administrators alike are unhappy and disillusioned with evaluation. They continue to be captive of an evaluation system designed for circumstances that have not existed for decades.

From an educational standpoint, three basic questions must be answered:

- o What is the appropriate way to evaluate pre-service teachers? (How can we ensure the entry of only highly qualified people into the teaching profession?)
- o What is the appropriate way to evaluate probationary teachers? (How can we structure mediated entry to ensure that only the best qualified are retained in teaching?)
- o What is the appropriate way to evaluate veteran, inservice teachers? (How can we rid the teaching corps of those who no longer meet minimum standards?)

For each of these three broad areas questions must also be addressed relating to purposes of evaluation, criteria for evaluation, evaluation procedures, and the use of evaluation results.

The Purposes of Evaluation. By purposes I do not mean how the evaluation results will be used, but rather what is being sought. By illustration, one way of differentiating among purposes is to distinguish among the following^{15/}:

- o teacher competency, referring to individual skills, knowledges, or values;
- o teacher competence, referring to the repertoire of individual competencies;
- o teacher performance, referring to what the teacher actually does on the job; and
- o teacher effectiveness, referring to the effect the performance of the teacher has on student outcomes.

In order to have an effective teacher evaluation system, a school district needs to decide for which one of these purposes, or combination of purposes, it wants to evaluate. A program to evaluate teacher competencies, for example, would be designed and implemented very differently from a program to evaluate teacher effectiveness. Most school district evaluation programs would seem to evaluate teacher performance. An evaluator cannot make a decision if the evaluator does not know what he or she is seeking.

Criteria for Evaluation. Within the purposes cited

15. Based on Donald Medley, "Teacher Competency Testing and the Teacher Educator," (Charlottesville, VA: Association of Teacher Educators and the Bureau of Educational Research, University of Virginia, 1982), as discussed in Linda Darling-Hammond, Arthur E. Wise, and Sara R. Pease, "Teacher Evaluation in the Organizational Context: A Review of the Literature," Review of Educational Research Vol. 53, No. 3 (Fall 1983), pp. 304-305.

above, the designers of an evaluation system must choose the specific criteria or mix of criteria to be used. For example, if the purpose of teacher evaluation is determined to be teacher effectiveness, then the system must decide what constitutes an effective teacher. Cohen's review of the literature on teacher effectiveness^{16/} suggests that the following are attributes of effective teaching: teacher expectations and role definitions are important; classroom management is important; there is active, direct instruction by teachers; and academic learning time is important, including time allocated to instruction, engaged time, and success rate. However, Cohen also suggests that within these domains of classroom management and instructional practices there are several alternative classroom structures for effective teaching. Teachers may choose those practices which work best with different classes and instructional goals. Under these circumstances, the choice of evaluative criteria is a difficult job which requires much study and planning. The simple point is that once a school district determines the purposes for which they want to evaluate, the development of evaluation criteria is a critical and complex next step.

Evaluation Procedures. Some evaluation criteria may

16. Michael Cohen, "Instructional, Management, and Social Conditions in Effective Schools," in Allan Odden and L. Dean Webb, eds. School Finance and School Improvement: Linkages for the 1980's (Cambridge, Mass.: Ballinger Publishing Co., 1983), pp. 24-29.

suggest particular procedures of evaluation, but often the choice is not clear. A wide variety of procedures exist and many evaluation programs use one or a combination. One listing of evaluation procedures includes teacher interviews, competency tests, indirect measures, classroom observations, student ratings, peer review, use of student achievement data, and self-evaluations.^{17/} The problems associated with the choice of purposes, criteria, and procedures is clearly stated by Darling-Hammond, Wise, and Pease when they write:

A judgement of success depends on the purposes for which a technique is used as well as its ability to measure what it purports to measure. Some of these approaches seek to measure competence while others, that rely on direct observation, seek to measure performance. Still others rely on student performance as a measure of teacher competence and performance. The generally low levels of reliability, generalizability, and validity attributed to teacher evaluation methods suggest that unidimensional approaches for assessing competence, performance, or effectiveness is unlikely to capture enough information about teaching attributes to completely satisfy any of the purposes of teacher evaluation.^{18/}

None of this presents an image of teacher evaluation as a simple process, and, in fact, it is not. A properly developed teacher evaluation system can be costly as well as complex. The cost in terms of both time and money of developing the appropriate criteria and valid and reliable procedures, training the evaluators, orienting the teachers to the system, and maintaining an ongoing evaluation of

17. Darling-Hammond, Wise, and Pease, pp. 304-308.

18. p. 308.

the teacher evaluation program can be very high. As suggested above, a school district must weigh the costs of such a program against the benefits' gained. It must also be kept in mind that a simple, but less effective or valid program can be more costly in terms of human resources wasted, lack of educational benefit, and higher incidence of litigation.

Use of Evaluation Results. Education is one of the few areas of human enterprise where if an employee is determined to have particular deficiencies, that employee is terminated from employment and a less experienced employee is hired as a replacement. No businessman who wanted to stay in business and earn a profit would tolerate such a wasteful practice. One of the uses of the results of teacher evaluation should be a staff development program. Once a school district chooses what it wants in terms of teacher competencies, performance, and effectiveness and has assessed its teachers on such criteria, then the logical next step is the development of a staff development program to meet those ends. Education and training is a sensible step to upgrading teacher proficiency. In the long run it is more effective and efficient for a school system to do this than to operate a revolving door system of teachers coming and going with the hope that somehow the right mix of staff can be found. The precise same things can also be said about the evaluation and staff development of administrators. The success of a school system depends on the effective and

efficient achievement of high quality teachers and administrators.

A final comment about educational issues in teacher and administrator evaluation is in order. Any evaluation system should be an evolving system. The purposes, criteria, and procedures should be regularly reviewed and brought up to date to reflect changing circumstances. The system should be a living, flexible system in which the teachers, administrators, school board members, and community all share confidence and which they all can support.

Substantive Due Process in Evaluation

The issue of substantive due process in evaluation is a bridge between the purely educational issues and the purely legal issues. Webb defines substantive due process in teacher evaluation in the following manner.

Violations of substantive due process occur when the government denies individual rights to liberty and property through acts that represent an arbitrary exercise of government power. In considering substantive due process claims, the courts go beyond the procedural questions to examine the justification for the action. The question of substantive fairness in school board employment decisions predicated on teacher evaluations primarily center on the question of whether the evaluations were sufficient to meet the requisite standard of substantial evidence. Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.^{19/}

The purpose of the extended discussion of education issues in teacher evaluation was the recognition that the results

^{19.} Webb, p. 76

of teacher and administrator evaluation is not just to provide valid and reliable information for staff development and employee improvement decisions and programs, but such data are also used to make other employment decisions involving promotion, transfer, and dismissal. These decisions may well involve protected rights of the employees involved. The point to be made here has been stated in a different manner.

The legal content of teacher evaluation has a moral point. It is designed to promote fairness. It is, thus, important to see the legal aspects of teacher evaluation against the background of the moral concepts that they are intended to realize.20/

This moral imperative involves the equal respect of persons and reasonableness.21/ It is important that the job decisions be made on the basis of information that is valid and reliable. Those being evaluated must also feel that the system is fair and reasonable. This is a critical point in preventing legal problems. Simply stated, a teacher or administrator who feels unfairly or unreasonably treated will go to court, and should.

Strike and Bull state that "the evaluator must distinguish between information that is and information that is not relevant to judgements about teachers' abilities."22/

20. Kenneth Strike and Barry Bull, "Fairness and the Legal Context of Teacher Evaluation," in Jason Millman, ed., Handbook of Teacher Evaluation, p. 303.

21. Strike and Bull, pp. 304-305.

22. p. 337.

They suggest that teacher competence consists of (1) command over subject matter, (2) the use of instructional methods, (3) a classroom atmosphere conducive to learning and (4) the ability to relate to students.^{23/} They would confine the substance of evaluation of teachers to those areas in the interest of being fair and reasonable.

The courts have upheld the dismissal of teachers where there were sufficient evaluation results to support a charge of lack of adequate performance and where an opportunity for remediation has been afforded.^{24/} However, the courts have insisted that the board of education meet the burden of establishing just cause,^{25/} have recognized the necessity of providing an adequate period for remediation,^{26/} and have failed to find justification for termination when there has been conflicting evidence.^{27/}

23. Ibid.

24. See *Busker v. Bd. of Educ. of Elk Point*, 295 N.W. 2d 1 (S.D. 1980); *Linfield v. Nyquist*, 401 N.E. 2d 9090 (N.Y. 1980); *Community Unit School Dist. v. Maclin*, 435 N.E. 2d 845 (Ill. 1982); *Whaley v. Anoka-Hennepin Indep. School Dist.*, 325 N.W. 2d 128 (Minn. 1982).

25. See *Munger v. Jesup Commun. School Dist.*, 325 N.W. 2d 377 (Iowa 1982); *Schultz v. Bd. of Educa. of School Dist. of Fremont Nebraska*, 315 N.W. 2d 633 (Neb. 1982).

26. See *Mason Cty. Bd. of Educ. v. State Supt. of Schools*, 274 S.E. 2d 435 (W. VA 1981); *Morris v. Bd. of Educ. of the City of Chicago*, 421 N.E. 2d 387 (Ill. App. Ct. 1981).

27. See *County Bd. of Educ. of Shelby v. Alabama Tenure Comm'n*, 392 So. 2d 842 (Ala. Civ. App. 1980); *Kloepfer v. Ambach*, 440 N.Y. Sup. Ct. 1981); and *Hollingsworth v. Bd. of Educ.*, 303 N.W. 2d 506 (Neb. 1981).

A teacher or administrator has property rights to a position if that person is tenured in the position or is in the midst of a contract period. However, dismissal can be justified if the school board can show substantial evidence of inadequate performance, especially if the teacher or administrator has been afforded an adequate opportunity for remediation. Problems arise when the record is not clear or is inadequate; no opportunity for remediation has been provided, or an inadequate remediation period is provided; or if there is conflicting evidence on the performance of the teacher or administrator. Any of these latter circumstances call into question the fairness or reasonableness of the process.

Procedural Due Process in Evaluation

Procedural due process concerns whether a teacher or administrator has been deprived of life, liberty, or property with due process of law. It is a guarantee of the Fourteenth Amendment of the U.S. Constitution. The U.S. Supreme Court has applied due process to school employees according to the following manner:

First, a determination must be made of whether the asserted individual interests are encompassed within the fourteenth amendment's protection of life, liberty, or property. If liberty or property interests are implicated, a determination must 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. The granting of tenure can vest a teacher with a property right to continued employment as can

Teachers and administrators should expect to be evaluated in a fair, open, and helpful manner. They further expect to have an equal voice and participation in both the development and implementation of any evaluation system, especially through the collective bargaining process. When deficiencies are diagnosed, opportunity for remediation should be available, with proper resources present to correct the situation. Teachers and administrators expect, deserve, and by right, require fair treatment of notice, hearing, and access to appeal when adverse action is proposed. All parties involved have a duty and obligation to improve the quality of educational services provided to all children. A teacher and administrator evaluation system should contribute to those ends.

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