

TEACHER EVALUATIONS



TODAY'S ROADMAP

- **GENERAL BACKGROUND**
- **THE LAW**
- **EVALUATION INSTRUMENT (“THE FORM”)**
- **EVALUATION FEEDBACK (“THE SUBSTANCE”)**
- **FINAL THOUGHTS**

WHAT DOES IT MEAN “TO TEACH”

- CAN YOU
DEFINE IT?
- CAN YOU
DESCRIBE IT?
- I KNOW IT
WHEN I SEE IT.

WHAT DOES IT MEAN “TO TEACH”

- To ‘TEACH’ MEANS TO SHOW HOW, TO ACCUSTOM TO SOME ACTION OR ATTITUDE; TO DIRECT, TO INSTRUCT; TO TRAIN BY PRECEPT, EXAMPLE, OR EXPERIENCE. *CLARKE V. Bd. Of Ed.* 215 NEB. 250 (1983); §79-101(9) &(12)

“DATA DRIVEN”

“DATA DRIVEN”

While it was once thought that teaching was simply an “**art form**,” modern theory refers to teaching as more of a “**science**” that can be ***learned and improved***.

Kirp, D.L., The Classroom According to Hunter, L.A. Times, August 12, 1990 and Robert Marzano, Teacher Evaluation Model (<http://www.marzanoevaluation.com/> visited 3-12-15)

“DATA DRIVEN”

Teaching is a “**learned profession**” and educators “must possess knowledge of the research-based, cause-effect relationships between teaching and learning.” Stanley, S.J., and W.J. Popham, *Teacher Evaluation: Six Prescriptions For Success* 34-35 (1988).

“DATA DRIVEN”

Many research-based education or human resource models, methods or strategies exist to **evaluate** and supervise teachers. See, e.g., *Marzano et.al., Classroom Instruction that Works, Research-Based Strategies for Increasing Student Achievement (2001)*; *Saphier & Gower, The Skillful Teacher, Building Your Teaching Skills, 5th edition (1997)*; *Burden and Byrd, Methods For Effective Teaching, (1994)*; *Madeline Hunter, Mastery Teaching Teaching,(1982)*.

“THE LAW”

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“INCOMPETENCY, INCLUDES, BUT IS NOT LIMITED TO, DEFICIENCIES OR SHORTCOMINGS IN KNOWLEDGE OF SUBJECT MATTER OR TEACHING OR ADMINISTRATIVE SKILLS.” §79-824

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“THE LAW”

NEBRASKA DEPARTMENT
OF EDUCATION

RULE 10

REGULATIONS AND PROCEDURES FOR THE ACCREDITATION OF
SCHOOLS

TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 10

EFFECTIVE DATE
AUGUST 1, 2015
(REVISED)

State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509



“THE LAW”

- **RULE 10:** “THE SCHOOL DISTRICT **HAS A WRITTEN BOARD POLICY** FOR THE EVALUATION OF CERTIFICATED-EMPLOYEES. THE POLICY IS **APPROVED BY THE COMMISSIONER** OR DESIGNEE”

“THE LAW”

- **THE POLICY IS IMPLEMENTED BY WRITTEN PROCEDURES THAT INCLUDE:**
 - **ANNUAL WRITTEN COMMUNICATION OF THE EVALUATION PROCESS TO THOSE BEING EVALUATED**

“THE LAW”

- **THE POLICY IS IMPLEMENTED BY WRITTEN PROCEDURES THAT INCLUDE:**
 - **A DESCRIPTION OF THE DURATION AND FREQUENCY OF OBSERVATIONS AND WRITTEN EVALUATIONS FOR PROBATIONARY AND PERMANENT CERTIFICATED-EMPLOYEES**

“THE LAW”

- **THE POLICY IS IMPLEMENTED BY WRITTEN PROCEDURES THAT INCLUDE:**
 - **SPECIFIC DISTRICT-DEFINED EVALUATION CRITERIA, WHICH INCLUDE, AT A MINIMUM:**
 - **INSTRUCTIONAL PERFORMANCE**
 - **CLASSROOM ORGANIZATION AND MANAGEMENT**
 - **PERSONAL AND PROFESSIONAL CONDUCT**

“THE LAW”

- **THE POLICY IS IMPLEMENTED BY WRITTEN PROCEDURES THAT INCLUDE:**
 - **PROVISION FOR WRITTEN COMMUNICATION AND DOCUMENTATION TO THE EVALUATED CERTIFICATED-EMPLOYEE SPECIFYING ALL NOTED DEFICIENCIES, SPECIFIC MEANS FOR THE CORRECTION OF THE NOTED DEFICIENCY, AND AN ADEQUATE TIMELINE FOR IMPLEMENTING THE CONCRETE SUGGESTIONS FOR IMPROVEMENT;**

“THE LAW”

- **THE POLICY IS IMPLEMENTED BY WRITTEN PROCEDURES THAT INCLUDE:**
 - **PROVISION FOR THE CERTIFICATED-EMPLOYEE TO OFFER A WRITTEN RESPONSE TO THE EVALUATION;**

“THE LAW”

- **THE POLICY IS IMPLEMENTED BY WRITTEN PROCEDURES THAT INCLUDE:**
 - **A DESCRIPTION OF THE DISTRICT PLAN FOR TRAINING EVALUATORS;**

“THE LAW”

- IN THE EVENT A DISTRICT CHANGES ITS POLICIES OR PROCEDURES FOR CERTIFICATED-EMPLOYEE EVALUATION, IT SHALL SUBMIT THE REVISED POLICIES AND PROCEDURES TO THE COMMISSIONER OR DESIGNEE FOR APPROVAL.**

“THE LAW”

- **ALL EVALUATORS, WITH THE EXCEPTION OF THE LOCAL BOARD OF EDUCATION WHEN IT EVALUATES THE SUPERINTENDENT, POSSESS A VALID NEBRASKA ADMINISTRATIVE CERTIFICATE AND ARE TRAINED TO USE THE EVALUATION SYSTEM USED IN THE DISTRICT.**

“THE LAW”

“THE LAW”

- **79-828:** THE PURPOSE OF THE PROBATIONARY PERIOD IS TO ALLOW THE EMPLOYER AN OPPORTUNITY TO **EVALUATE, ASSESS, AND ASSIST** THE EMPLOYEE'S PROFESSIONAL SKILLS AND WORK PERFORMANCE PRIOR TO THE EMPLOYEE OBTAINING PERMANENT STATUS.

“THE LAW”

- **79-828: ALL PROBATIONARY CERTIFICATED EMPLOYEES EMPLOYED BY ANY CLASS OF SCHOOL DISTRICT SHALL, DURING EACH YEAR OF PROBATIONARY EMPLOYMENT, BE EVALUATED AT LEAST ONCE EACH SEMESTER**

“THE LAW”

COX: CANNOT
NON-RENEW A
PROBATIONARY
TEACHER IF MISS
ONE EVALUATION

EXAMPLES OF MISSING EVALUATIONS

1. NEW PRINCIPAL—NO 1ST SEMESTER EVAL B/C THOUGHT TEACHER TENURED—BAD EVENT IN SPRING OF 2ND YEAR
2. PRINCIPAL MISSED SOME TEACHER EVALUATIONS (BUSY, FORGOT?)—BOARD MEMBER'S SPOUSE HAD COMPLAINTS ABOUT PROBATIONARY MATH TEACHER

EXAMPLES OF MISSING EVALUATIONS

3. NEW ADMINISTRATION—COULD NOT FIND PROBATIONARY TEACHER'S EVALS—PRIOR PRINCIPAL SWORE HAD BEEN DONE, BUT NO PAPERWORK COULD BE FOUND
4. 1ST YEAR TEACHER—1ST SEM. ASKED FOR HELP—VIDEO OF 6 CLASSES—PRINCIPAL REVIEWED WITH HER, GAVE HER SUGGESTIONS—BUT NOTHING WRITTEN

EXAMPLES OF MISSING EVALUATIONS

- **SENT TEACHER AN E-MAIL TO SCHEDULE OBSERVATION—TEACHER NEVER RESPONDED**
- **DID OBSERVATION AND EVAL, BUT DID NOT HAVE POST-OBSERVATION TO DELIVER EVAL B/C—TEACHER NEVER AVAILABLE**
- **THOUGHT OTHER ADMINISTRATOR WAS GOING TO DO THE EVAL FOR THIS TEACHER**

“THE LAW”

- **79-828: THE PROBATIONARY CERTIFICATED EMPLOYEE SHALL BE OBSERVED AND EVALUATION SHALL BE BASED UPON ACTUAL CLASSROOM OBSERVATIONS FOR AN ENTIRE INSTRUCTIONAL PERIOD.**

“THE LAW”

- **79-828: IF DEFICIENCIES ARE NOTED IN THE WORK PERFORMANCE OF ANY PROBATIONARY CERTIFICATED EMPLOYEE, THE EVALUATOR SHALL PROVIDE THE PROBATIONARY CERTIFICATED EMPLOYEE AT THE TIME OF THE OBSERVATION WITH A LIST OF DEFICIENCIES AND A LIST OF SUGGESTIONS FOR IMPROVEMENT AND ASSISTANCE IN OVERCOMING THE DEFICIENCIES.**

“THE LAW”

- **79-828: THE EVALUATOR SHALL ALSO PROVIDE THE PROBATIONARY CERTIFICATED EMPLOYEE WITH FOLLOWUP EVALUATIONS AND ASSISTANCE WHEN DEFICIENCIES REMAIN.**

“THE FORM”

Documentation is the *Key!*

- ▶ Regardless of educational models, theory, methods or strategies, the written record controls the outcome in most personnel cases.
- ▶ The foundation of teacher evaluation & supervision is built on documentation.

The Grading Code

- Meets district standards
- Needs Improvement
- Does not meet district standards

What does “needs improvement” means?

The Grading Code



Fabulous



Above Average



Almost Fabulous



Average



Outstanding



*Maybe a
Smidge Below*



Extremely Good

Average

“THE FORM”

Real World Case

Q. You weren't meeting district standards in several areas; correct?

A. That's not true. I just needed some improvement...I was simply a little weak in those areas. That does not mean that I didn't meet district standards. The administrator just felt I needed to make some minor changes.

Q. In your view?

A. Yes, -- that was the way it was explained to us.

“THE FORM”

Real World Case

Rating code unclear, but court upheld termination of tenured teacher where 33 of 36 areas of evaluation showed met district standards, i.e., **THREE** below standards **WAS ENOUGH!!**

Eshom v. Bd., 364 N.W.2d 7 (Neb. 1985).

“THE SUBSTANCE”

**It all comes
down to....**

THE EVALUATOR

“THE SUBSTANCE”

Administrators are treated as “expert witnesses,” and as one court stated “satisfactory performance by a teacher is what the administrator says is satisfactory.” *Unified School Dist. v. Robinson* 924 P.2d 651 (Kan Ct. App. 1996).

“THE SUBSTANCE”

**The “Halo
Effect”**

**“Ratings
Inflation”**

“THE SUBSTANCE”

Research notes that: “[s]ubjective influences in the appraising process create unintentional inaccuracy. The ‘ratings inflation’ effect is where supervisors routinely rate even the worst employee ‘fair’ or ‘good.’” Patrick H. Hicks & Neil Alexander, *The five Biggest Mistakes Employers Make*, 4 JUN New. Law. 12, 16 (1996).

“THE SUBSTANCE”

**Avoid the
Halo
Effect!!!**

The Evaluation

Some Common
Issues:



The Evaluation

Prior Favorable Evaluations:



They've
always
been so
good!

The Evaluation

Prior Favorable Evaluations:

The "prior favorable evaluation" theme pervades evaluation law, as teachers, habitually rated high, claim a bad evaluation is erroneous, arbitrary, discriminatory or not supported by the record.



The Evaluation

Prior Favorable Evaluations:

For example, teacher claims “*if my evaluation is going to be artificially deflated, then an investigation of the process, is imperative. A deflated evaluation violates the purpose of evaluation.*” See,

Metro Tech Educ.Ass’n. v. Metro Tech. College Area, 13 CIR 180 (1998) (where the CIR ruled for the college despite, this unfair practice claim).



The Evaluation

Prior Favorable Evaluations:

Courts have also ruled, that “achieving tenure does not insure a teacher will be eternally competent.” *Newcomb v. Humansville R-IV School Dist.* 908 S.W. 821 (Mo. Ct. App. 1995) (upheld the firing of a teacher who had 14 years of *prior favorable ratings*, noting the board was not required in 1993-94 to base its decision solely on prior ratings).



The Evaluation

Prior Favorable Evaluations:

Another stated: “[i]f it is not possible to give a poor performance after a string of good [ones], then it would not be possible to give a good performance after string of poor [ones] and [t]he purpose of any evaluation is to monitor change.” *Iversen v. Wall Bd. of Ed.*, 522 N.W. 2d 188 (S.D. 1994) (ct upheld a grievance appeal of an unfavorable evaluation after the teacher had several years of good evaluations).

The Evaluation

Unfamiliar Subject Area:

The Evaluator

**But
I don't understand
quantum physics!**

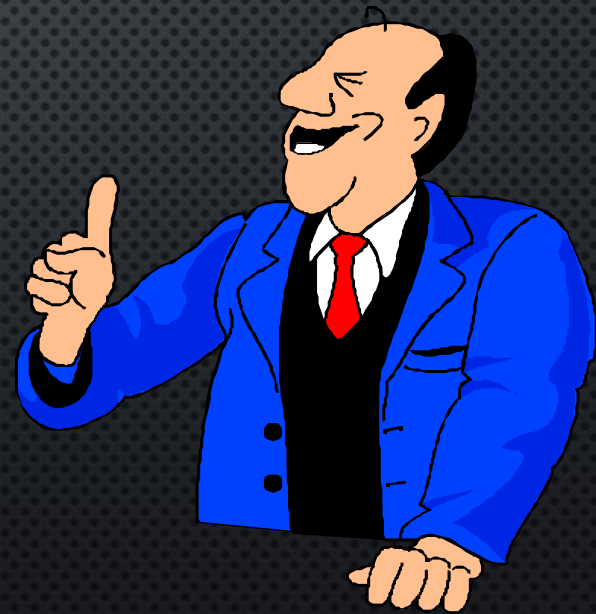


The Evaluation

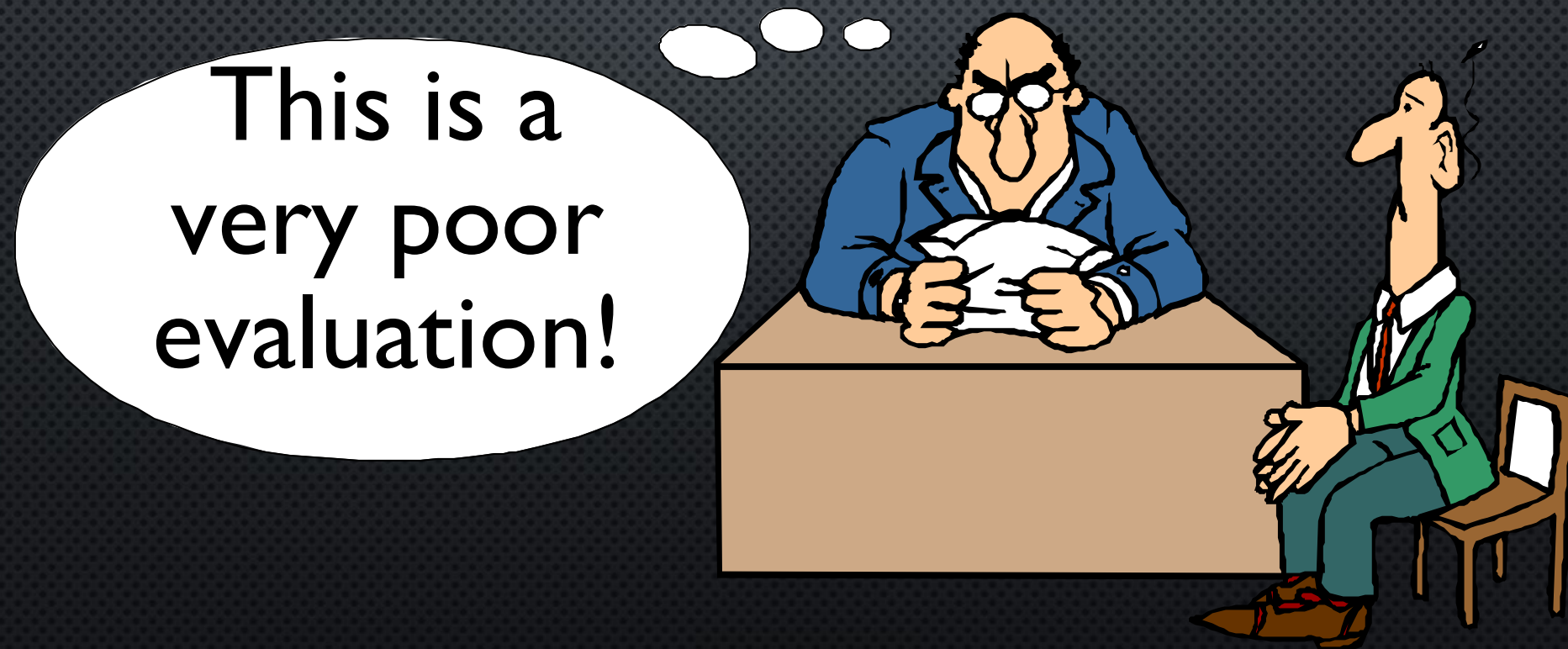
Unfamiliar Subject Area:

Agreeing that “[the teacher] lacked basic teaching skills of the subject areas she taught,” termination upheld despite claim evaluator did not understand subject area.

Eshom v. Bd. Of Ed. 364 N.W.2d 7 (Neb. 1997).



Teacher Responses & Excuses



Teacher Responses & Excuses

The 'Discrimination' defense:

Your actions are based upon my race, national origin, age, religion, sex, free speech rights, etc.



Teacher Responses & Excuses

The 'Discrimination' defense:

While the documentation system is an essential ingredient in successful teacher evaluation and termination, it can also be a double edged sword. Evaluations or comments in them can be used to either *rebut or show* discrimination, illegal or other improper motives. *Adena v. Bd.of Ed.* 613 N.E.2d 605 (Ohio 1993).



Teacher Responses & Excuses

The 'Discrimination' defense:

Documentation in the form of poor evaluations is a legitimate nondiscriminatory reason for adverse employment action.

Waizmann v. Sierra Pac. Power Co., 291 Fed. Appx. 106 (9th Cir. Nev. 2008)



Teacher Responses & Excuses

Never ask for resignation until documentation is finished and in good order. See, e.g., *Lipon v. Bd. of Ed.* 295 S.E.2d 44 (W.V. 1982) (the strict compliance rule) (If a Statute requires 2 evaluations, and principal asks for resignation after first then completes the second, argument can be made that the second evaluation is tainted should not count towards statutory compliance requirement of 2 evaluations)

Teacher Responses & Excuses

The 'Special Ed' defense:

“The special ed student in my classroom is too distracting”



WHAT TO DOCUMENT

- **DECLINE IN WORK PERFORMANCE**
- **MANAGEMENT WARNINGS**
- **RECOMMENDATIONS MADE TO RESOLVE ISSUE**
- **TIMELINE FOR DIRECTIVES, RECOMMENDATIONS**
- **ABSENCES, TARDINESS, MISUSE OF LEAVE TIME**
- **INSUBORDINATION**
- **POOR INTERPERSONAL RELATIONSHIPS WITH STUDENTS, PARENTS, OR STAFF**

TYPES OF DOCUMENTS

- WRITTEN PERFORMANCE APPRAISALS
- RECORDS OF COUNSELING EFFORTS
 - REFERENCE TO PREVIOUS MEETINGS
 - TIMELINESS
 - WITNESS/COMPLAINTS
 - EMPLOYEE RESPONSE
 - EMPLOYEE VERSION
- INCIDENT REPORTS
- WRITTEN WARNINGS
- ORAL WARNINGS

FINAL THOUGHTS

EVALUATIONS CAN HELP:

- **SUPPORT ADVERSE EMPLOYMENT ACTIONS**
- **IMPROVE PERFORMANCE!**
- **EVIDENCE**
 - **REBUT A CLAIM OF PRETEXT IN DISCRIMINATION CASES OR CIVIL RIGHTS CASES**
 - **EDUCATIONAL MALPRACTICE CASES**
 - **SUIT BY SPECIAL EDUCATION PARENTS THAT STUDENT IS NOT RECEIVING A FAPE.**

FINAL THOUGHTS

STRENGTHEN EVALUATIONS:

- MULTIPLE EVALUATIONS BY DIFFERENT EVALUATORS
- SPECIFIC AND OBJECTIVE WRITTEN PERFORMANCE CRITERIA
- NOTICE OF EVALUATION STANDARDS AND PROCEDURES
- POST OBSERVATION CONFERENCES

FINAL THOUGHTS

EVALUATIONS CAN HELP:

- SUPPORT ADVERSE EMPLOYMENT ACTIONS
- IMPROVE PERFORMANCE!
- EVIDENCE
 - REBUT A CLAIM OF PRETEXT IN DISCRIMINATION CASES OR CIVIL RIGHTS CASES
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TEACHER EVALUATIONS

