

## Electronic Reserves

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**DOCUMENTATION OF EMPLOYEE BEHAVIORS:  
WHAT AND HOW SHOULD YOU DOCUMENT?**



Educational administrators often ask questions about written documentation of faculty and student behavior. Twenty years ago it was rare to find much written documentation about either faculty or student discipline cases. Administrators often expressed a belief that little or no documentation was good, since it gave a person a second chance. Today, increasing litigation against administrators demonstrates that such a belief is not good operational theory. On the contrary, documentation is an absolute necessity to protect both institutions and administrators. Good documentation also ensures that employee rights are protected. This article will address the main issues in documentation and offer a model for good record keeping.

[Note: Between 1995 and 2007, the author has served as consultant and expert witness in cases alleging that a school's failure to keep adequate written documentation has resulted in injury to the plaintiff. For example, if a plaintiff alleges that a teacher sexually abused him 20 years ago, his attorney will seek copies of the teacher's permanent record or file. Unfortunately, it is not unusual for a school to have no records on former employees or to have seriously deficient records. In a few cases, the only document found in a former teacher's file was the employment application. Everything else, including supervisory records, certification, and transcripts had either never been filed or had been removed. It is only reasonable in such cases for the plaintiff's attorney to characterize the school and its administrators as negligent in record keeping.]

**Contracts and Related Documents**

The faculty handbook and/or employment contract should state, at least in general terms, the expectations for teacher and staff behavior. It is unfair to tell a teacher or staff member after the fact that certain behavior is unacceptable if no standards exist or if standards are vague. Obviously, there are some behaviors that everyone ought to know are unacceptable, such as theft and other dishonesty.

The faculty handbook and/or contract should also indicate what behaviors could result in termination of employment or in nonrenewal of contract. The important factor to keep mind in any such situation is documentation. The best protection against a successful lawsuit is a written record of the reasons and events leading to termination.

Some behaviors fall into gray areas. For example: What is inappropriate behavior with students? What is sexual harassment? Is it sexual harassment if the person is joking? (See the November 1994 *NCEA Notes* for a discussion of sexual harassment.)

When an administrator believes that an employee has done something unacceptable, the administrator should ask whether the school's documents make it clear that such behavior is inappropriate. If there is any possibility that a reasonable person might not have known that such an action was prohibited, the administrator should give the employee the benefit of the doubt, advise the employee that such behavior is not acceptable and that any such subsequent behavior will be documented, and immediately take steps to ensure that all employees are made aware of the school's expectations.

The principal or other administrator should document all events that illustrate what makes an employee ineffective or undesirable. Administrators should keep in mind that professional employees may perform adequately in the classroom, but may still behave in unacceptable ways outside the classroom.

Examples are lack of cooperation or criticizing school, parish, or church officials to students. All documentation should describe the inappropriate behavior in language that is specific and verifiable. It would be better to write "Mr. Thompson sent 20 students to the disciplinarian's office in a three-day period" than to record "Mr. Thompson is having difficulty keeping order."

In cases in which employee behavior does not meet administrative expectations, the principal or other supervisor should leave a paper trail indicating that the employee was told of problems and given an opportunity to improve. One way to ensure appropriate communication and documentation is to follow a seven-point checklist when conferring with teachers who present problems.

### **Checklist for Conferencing with Employees**

The following checklist can be used in drafting a document that is presented to the employee and used to conduct the actual conference.

1. Enumerate precisely what is wrong and needs improvement. (Because it is difficult to correct other adults, administrators may fall into the trap of speaking too generally. The employee may not know exactly what he or she did that was not acceptable and may not understand what new behaviors are expected.)
2. State that the school wants the employee to improve. (Such a statement indicates good faith on the part of the administrator and can be important in subsequent litigation.)
3. State what the school will do to help the teacher. (A beginning teacher could be assigned a more experienced teacher as a mentor in matters of instruction and classroom management. A teacher could also be sent to another school to observe teachers with proven records of good teaching and discipline.)
4. Give a deadline for all parties to review improvement or lack thereof. (If no deadline is given and maintained, an employee could later claim, "I never heard back from you so I assumed everything was all right." Thus, it is absolutely imperative that the administrator give time parameters, such as two weeks, a month, or two months. A date and time for a follow-up meeting should be established before the end of the conference.)

5. Tell the employee that if there is no improvement within the time frame stated, disciplinary action will be taken. (Administrators may ask, "What sort of disciplinary action can I take?" An employee can be placed on probation, given notice of nonrenewal, or suspended for a specified time period.)
6. Give the teacher a copy of the conference document stating the first five points and ask the teacher to comment on the document to ensure understanding. (This procedure allows the employee the opportunity to ask for, and be given, clarification of any points.)
7. Have the employee sign the document and add any comments he or she wishes to include. If the employee refuses to sign, have another person witness the refusal. (This other person should be another administrator or the pastor. If neither is available, a secretary could serve as a witness. Asking a peer of the employee, such as a fellow teacher, should be avoided.)

### **Avoiding Problems**

Although there is no foolproof formula for avoiding documentation problems, careful, objective recording of facts provides the best possible protection. Objective documentation lessens the possibility of misinterpretation or multiple interpretations. Specific documentation enables the administrator to work with the teacher to identify strategies to improve behavior.

Careful, accurate record keeping also protects an administrator against defamation allegations, should the records ever be shared with a third party. It is hard to deny that one said playground rules are stupid if there were witnesses to that fact; it is easy to deny that one has an "attitude problem" or a "problem with authority."

### **Practical Considerations**

Some administrators ask if every problematic employee behavior should be formally documented in an employee's personnel file. The answer is "not necessarily." For example, if an administrator notices that a teacher is five minutes late for class one morning, but has never before been late, the administrator may decide not to confront the teacher. However, an administrator might note the tardiness in his or her calendar or log book. Whether the information would become part of a written personnel report would depend on whether subsequent problems occurred.

Problems and resentment can often be avoided if administrators ask themselves: "Is this the fair thing to do? Is it moral? Is this the action I would want or expect someone to take if I were in the employee's position? Is it the position Jesus would take?" Sometimes it is difficult to balance legal and Gospel issues, but such is the challenge facing Catholic educational administrators. 