

## Just Cause

### Definition

A provision which protects the employee against adverse personnel actions taken by the employer without just cause.

### Rationale

A "Just Cause" provision in the agreement affords the employee better protection than statutory procedures.

### The optimum Just Cause provision contains the following elements:

- 1) A mandate that actions taken against employees be for cause.
- 2) A mandate that the cause of action taken be justifiable.
- 3) Enumeration of actions subject to justification.

### Sample Provision

No employee in the bargaining unit shall be discharged, disciplined, demoted, suspended, furloughed (laid off), reprimanded, adversely evaluated, rated unsatisfactory, reduced in rank or compensation, transferred, reassigned, or deprived of any professional advantage without just cause.

Any such action asserted by the Board or any administrative agent or representative thereof shall be subject to the grievance procedure herein set forth.

All information used in forming the basis for such above action shall be made available to the employees and to the Association.

The arbitrator shall have exclusive jurisdiction to determine whether just cause exists, and if so, the appropriate penalty.

## Just Cause: The Seven Tests

1. **Notice:** Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?
2. **Reasonable Rule or Order:** Was the employer's rule or managerial order reasonably related to
  - a. The orderly, efficient and safe operation of the employer's business, and
  - b. The performance that the employer might properly expect of an employee?
3. **Investigation:** Did the employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey the rule or order of management?
4. **Fair Investigation:** Was the employer's investigation conducted fairly and objectively?
5. **Proof:** At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. **Equal Treatment:** Has the employer applied its rules, orders, and penalties even-

- handedly and without discrimination to all employees?
7. **Penalty:** Was the degree of discipline administered by the employer in a particular case reasonably related to
    - a. The seriousness of the employees proven offense
    - b. The record of the employee in his/her service with the employer?

*Just Cause the Seven tests Adolph  
M. Koven and Susan L. Smith 1992*

## TEACHER EVALUATIONS and HB 142

House Bill 142 amends RSA 189:1-a by inserting after paragraph II the following new paragraph:

“School boards shall adopt a teacher performance evaluation policy, with the involvement of teachers and principals, for use in the school district. A school board may consider any resources it deems reasonable and appropriate, including any resources that may be provided by the state department of education. In this paragraph, “teacher” shall have the same meaning as in RSA 189:14-a, V.”

House Bill 142 may provide an opportunity for teachers in districts that have not bargained over teacher evaluation procedures to do so. It is likely the bill will not affect districts’ duty to adopt teacher evaluation policies, which is already required by both a regulation and the recently enacted SB 196 (2011), which amended RSA 189:14-a, I (b). Teacher evaluation procedures are a mandatory subject of bargaining where CBAs in place have specifically negotiated evaluations.

Senate Bill 196 became law in 2011, which among other things amended RSA 189:14-a to include, “School boards shall have a teacher performance evaluation policy.” RSA 189:14-a, I (b). Once again, this law requires that school boards adopt a teacher performance evaluation policy. Notably, a reported sixteen percent of New Hampshire school districts have yet to adopt evaluation procedures.

The New Hampshire Public Employees Labor Relations Board (PELRB) has recognized that under state law and regulations, the evaluation of teachers is solely a managerial responsibility, but the procedures under which the evaluations take place and the rights of the teachers involved are a mandatory subject of bargaining because those procedures clearly affect terms and conditions of employment. *Laconia Educ. Ass’n v. Laconia School Bd.*, Dec. No. 84-75 (PELRB, Oct. 17, 1984).

The PELRB reiterated its ruling the following year, stating:

In short, the PELRB continues to draw the distinction between the adoption of *policy* and the necessary adoption of correlative procedures and/or methods which are 3 mandatory subjects of negotiation since they will of their very nature interfere with and change the conditions of employment.

*Laconia Ass'n of Support Staff v. Laconia School Bd.*, Dec. No. 85-86 (PELRB, October 25, 1985).

The New Hampshire Supreme Court has not gone as far as the PELRB to hold that evaluation policies and procedures are a mandatory subject of bargaining. However, the Court has held that where evaluation provisions are included in a collective bargaining agreement (CBA), a school district cannot unilaterally change evaluation procedures. *Appeal of White Mountain Reg'l School Dist.*, 154 N.H. 136, 142 (2006); *Appeal of Pittsfield School Dist.*, 144 N.H., 536, 539 (1999).

**NEW HAMPSHIRE'S STATE MODEL EDUCATOR SUPPORT AND  
EVALUATION SYSTEM**  
**Virginia Barry, Ph.D., Commissioner of Education**  
**New Hampshire Department of Education**  
**January 29, 2013**

The Task Force **recommended that all local** educator evaluation include the following **limited set of common components for all district** systems:

- ✓ Ensuring all educator/leader preparation programs meet the InTASC and ISLLC standards, as well as the newly approved New Hampshire rules for program approval (Ed 505.07),
- ✓ Having a comprehensive educator evaluation system in place,
- ✓ Classifying evaluation results for all educators into four New Hampshire categories of performance using common definitions of performance,
  - *Highly Effective, Effective, Needs Improvement, Ineffective*
- ✓ Incorporating student performance results into the evaluations of all educators, and Evaluating the performance of all educators at least once every three years through a summative evaluation.

*The summary of the **State Model** Educator Support and Evaluation System presented below is offered by the Phase II Task Force as a **model—not a requirement**—for how districts might design local systems to meet the recommended requirement noted above*

<b>Feature</b>	<b>Description</b>
<b>General Evaluation Framework</b>	<p>The state model system contains <b>five major components</b>, four areas of professional practice and student performance results. Each of the areas should be weighted relatively equally, although local districts have the discretion to adjust the weighting of the domains to reflect local priorities.</p> <p>Each educator evaluation should include:</p> <ul style="list-style-type: none"> <li>✓ Yearly self-reflection and goal setting</li> </ul>

	<ul style="list-style-type: none"> <li>✓ A professional portfolio documenting key aspects of teacher practice</li> <li>✓ Observations of practice by educational leaders and potentially peers</li> <li>✓ Student Learning Objectives (SLOs)</li> <li>✓ Student Growth Percentiles (SGPs, where applicable)</li> <li>✓ Shared attribution of at least part of the SLO and/or SGP results depending upon local theories of action around school improvement</li> </ul> <p>In addition to the major components listed above, <i>the Task Force recommends exploring the inclusion of measures of student voice and parent opinions in the evaluation of educators.</i></p>
<p><b>Standards of Professional Practice</b></p>	<p>The Model System is based on the four areas of effective teaching described in the Phase I report and further elaborated by the Interstate Teacher Assessment and Support Consortium (InTASC) Model Core Teaching Standards:</p> <ul style="list-style-type: none"> <li>✓ <b>Learner and Learning</b></li> <li>✓ <b>Content Knowledge</b></li> <li>✓ <b>Instructional Practice</b></li> <li>✓ <b>Professional Responsibility</b></li> </ul> <p>The Task Force expects that districts will use existing tools (e.g., Danielson, Marzano, Saphier) to help specify and measure the various aspects of professional practice, but recommends that <b>all districts map their framework to the four dimensions from the Phase I report.</b></p>
<p><b>Use of Student Performance Results</b></p>	<p>All teachers, whether in “state tested grades and subjects” or not will document student academic performance each year using <b>Student Learning Objectives (SLO)</b> in accordance with the SLO guidance developed by the Task Force. Student Learning Objectives is a general approach whereby educators establish important goals for students (in conjunction with peers and administrators) and then evaluate the extent to which the goals have been achieved.</p> <p>The NH DOE will produce Student Growth Percentiles (SGP) results documenting the individual student and aggregate growth for students based on state test data. These student level results will be provided to each district for aggregation according to attribution rules as defined by each district. These results, based on NECAP and eventually Smarter Balanced Assessment Consortium (SBAC), using the SGP model, may be incorporated into teachers’ evaluations either using a shared or individual attribution framework.</p>

The NHDOE Flexibility Waiver to the U.S. Department of Education was approved and includes the following criteria:

*All Title I schools will be required to base a substantial percentage (as determined by the district) of up to twenty percent of an educator’s evaluation determinations on student growth.*

## **Progressive Discipline**

The following progressive discipline procedures will be applied except where the serious nature of the offense may require the District to directly impose a written warning, written reprimand, or suspension without pay. Whether or not the serious nature of the offense required bypassing progressive discipline steps may be submitted to arbitration under Article (Grievance Procedure) of the Agreement.

### **Verbal Counseling/Warning**

The district shall first issue a verbal counseling/warning before imposing further discipline. Verbal counseling/warning may result in a post-conference summary memorandum. Post-conference summary memorandum will not be placed in the teacher's personnel file.

### **Written Warning**

Subject to the above, written warnings will not be used unless the employee has been verbally warned about similar actions within the last twelve (12) months. Written warnings will not be placed in the employee's file.

### **Written Reprimand**

Subject to the above, written reprimands will not be given unless the employee has received a written warning about similar actions within the last twelve (12) months. The employee will sign the reprimand to acknowledge receipt and a copy may be placed in the employee's personnel file.

### **Administrative Leave**

In the event an employee is placed on administrative leave without advance notice, a notice conforming to the specifications set forth above will be sent to the employee by certified mail addressed to the employee's last known address, within five (5) days of the employee's removal from the position, with a copy concurrently provided to the Association president. Such leave shall be with full pay.

### **Suspension Without Pay**

Subject to the above, suspension without pay will not be used unless the employee has received a written reprimand about similar actions within the last twelve (12) months. No employee will be suspended for more than five (5) continuous work days unless the severity of the employee action can be demonstrated as intentional and considered detrimental to the health and safety of others in the employment setting.

## Complaints

Any complaint made against an employee by a parent, student or other person will be promptly called to the attention of the employee. Any complaint not called to the attention of the employee may not be used as the basis for any disciplinary action against the employee. No such complaint may be used against an employee for any purpose whatsoever unless the employee has signed a written record indicating he/she received notice of the complaint.

Any criticism of any employee by a supervisor, administrator, or other agent of the employer shall be made in confidence and never in the presence of students, parents of students, other employees, or at public gatherings. All critiques made shall be confidential.