

Scenario 3 Response
“A Tale of Two Teachers”
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The Scenario

Teacher #1: Mr. Aybece has been in the school system for 35 years. He holds a continuing contract position. He is licensed and endorsed in mathematics. He has been teaching seventh grade math for the past five years. Under the previous principal, his evaluations were excellent. The new principal, who arrived two years ago, has noted his performance in the classroom as less than satisfactory during each of the two years.

During the first semester of this year, Mr. Aybece sent more students to the office for disciplinary reasons than any other teacher. There have been several parent complaints about his lack of classroom control. Parents claim that their children are not able to learn because of the disruptions caused by other students in the classroom and because Mr. Aybece “doesn’t deal with it.”

The principal has observed Mr Aybece three times this semester, and the resulting evaluations were negative. Each time the evaluations were shared, Mr. Aybece reacted with extreme hostility, and he has openly complained about the instructional evaluation system at faculty meetings. He has stated that the principal is harassing him and that he is going to get a lawyer.

Teacher #2: Ms. Jaykael is in her second year of teaching as a sixth grade English teacher. In her short career, this has been the only school in which she has taught.

While Ms. Jaykael’s classroom teaching has been evaluated by the principal as more than satisfactory, her attendance is a problem. She has reported late to work at least eight times each semester; she has left early on teacher work days; she refuses to accept after school assignments such as supervising ball games and other student functions; and there have been documented incidences of her leaving her class unattended to make phone calls from the teachers’ lounge. The principal has told her these behaviors need to stop, but they have continued. Recently, two students complained to their counselor that Ms. Jaykael is assigning poetry readings containing profanity and obscene words.

Ms. Jaykael has heard “through the grapevine” that the principal may not rehire her for the next school year. Believing that the best defense is a good offense, she arrives at the principal’s office and says, “You may think you can get rid of me, but you can’t. I have rights. I’m getting an attorney.”

What are the issues? What legal standing might each teacher have? What actions should the principal take? Should the two teachers be treated the same or differently?

My Analysis

There are two cases here, one straightforward and one less so.

In the case of the second teacher, in the Commonwealth of Virginia, the teacher is considered “probationary.” Consequently, the teacher can essentially be dismissed for any reason at any time.

If the principal has documented Mrs. Jaykael’s failure to be on site, on the job, during her contracted hours on numerous occasions, and has failed to accept non-contract-hours duties covered under the contract (e.g., “other duties as assigned”), the school has ample documented justification for dismissing the teacher. No

further evidence is required. As the scenario indicates that this information is, indeed, documented, Mrs. Jaykayel does not have a legal defense and will be dismissed.

The principal has the right to investigate the matter of utilizing profanity in instructional resources, but it would be imprudent to cloud the issue if the principal has decided to dismiss the teacher on the basis of failure to meet contractual obligations.

My opinion: The school is right to dismiss a teacher who habitually fails to abide by the terms of the contract. The teacher does not have a case.

Mr. Aybece's past performance is a human resources consideration, but may not be a legal consideration for purposes of the described scenario. The standards of an organization can change over time. It seems unlikely a court of law would state to the contrary lest there be a compelling legal context for such a restriction.

If the principal's observations are compliant with division guidelines and with the law, those observations would be considered appropriate duties of the principal, and would not be harassment.

If the principal has received parental complaints regarding classroom management practices, investigations into the allegations would be considered appropriate duties of the principal, and would not be harassment.

The principal has the right to investigate the matter of lacking instructional and classroom management practices, and a continuing contract does not protect a teacher from being reasonably examined for performance consistent with the established practices of the division.

Griggs v. Duke Power (401 U.S. 424 [1971]) established that non-job-related criteria are prohibited by law. There are no *Griggs* violations in the scenario, as the criterion being examined – in this case, effective classroom management – is explicitly job-related.

Chance v. Board of Examiners (2nd Cir. 1972) established that evaluation criteria must demonstrate “both content and predictive validity.” Direct observation of the teacher's classroom management practices over time meet the standard established in *Chance*.

Brito v. ZIA (10th Cir. 1973) further establishes that poorly defined and subjective evaluation criteria are prohibited. The division utilizes clear, structured documentation as part of its observation practices as a direct consequence of this and other such provisions. Once again, a formal observation is an appropriate action in this case. There is no *Brito* violation provided the principal followed established protocol and utilized established documentation.

My opinion: The school is right to dismiss a teacher who habitually fails to abide by the terms of the contract. The teacher does not have a case, unless there was a clear violation of the teacher's due process under the established observation procedures.

In Prince William County, for example, the Teacher Evaluation Handbook that accompanies the TEV-1 (et. seq.) documentation establishes the need for preconference, structured observation, and postconference. If this established procedure was followed, which would include by definition instruction from supervisor to teacher on expectations for improvement, the teacher would not have a defense for lacking compliance with expectations.