

Evaluation of Principals

Performance evaluation has become a major issue for school principals, especially in light of recent priorities for school accountability and reform. Given the high stakes of the resulting school district actions, such as nonrenewals and terminations, litigation has continued apace. As reflected in previous coverage in this column, including the September/October 2009 issue, the principal is often on the district side of the case, with the plaintiff being the teacher-evaluated. Here, however, we focus on the parallel line of case law where the principal is the recipient of the adverse employment action based on performance evaluation and, thus, on the plaintiff's side of the courtroom table.

The following case illustrates the recent relevant case law, where the performance evaluation resulted in the superintendent's recommendation of dismissal. The accompanying question-and-answer discussion presents variations in the factual pattern and judicial decisions.

The Case

Starting in 1998, Elaine Cutler was an elementary principal in the school system of Bellefonte, Pennsylvania. She continued in this position for several years.

In August 2011, the superintendent held a meeting with the district's 10 principals, providing each of them a list of teachers to observe under the state's evaluation law and a spreadsheet to track their timely completion. Despite the superintendent's express priority and periodic reminders and the other nine principals' timely completion, Cutler did not conduct any of the observations for the 27 teachers who the superintendent had assigned to her for the 2011-2012 school year.

The superintendent provided Cutler with an unsatisfactory rating for this assigned task, along with an improvement plan for the 2012-2013 school year that included timely completion of her evaluation observations as a primary goal. The superintendent offered assistance with time management, but Cutler declined. The superintendent followed up with regular reminders,



culminating in a May 30 email indicating that six teacher observations remained outstanding. On June 17, in response to an overdue notice, Cutler promised to submit them by the end of the week, but she did not do so. On June 25, the superintendent suspended her, pending termination proceedings.

During the same school year, Cutler was also late in submitting her proposed school budget for the following

year, and she was the only principal who did not submit her school report for the district's comprehensive building plan on time. She was also the only principal who failed to conduct a state-required severe-weather drill, causing the superintendent to arrange with the responsible state agency for a rescheduled drill for Cutler's school on March 15.

After notifying her of the charges, which included the statutory grounds of persistent negligence, willful neglect of duties, and failure to follow official directives, the school board provided Cutler with a hearing. Cutler testified, explaining that she was working on the evaluations when district personnel reclaimed her school computer upon her suspension. As for her other tardy tasks, she testified that she had been "running as fast as [she] could to do what [she] needed to do," and that in prior years such matters had been met with much more flexibility. After considering the evidence, the board voted unanimously to terminate Cutler.

Under state law, Cutler filed an appeal with the chief state school officer. After an independent review of the evidence, the conclusions were that Cutler had failed to conduct the required observations and evaluations on time and that this failure amounted to willful neglect of duties; and she had failed to provide the school budget, school building plan, and mandatory severe-weather drill on time and that these failures, along with the foregoing failure, constituted persistent negligence and willful violation of official directives. Cutler then filed for judicial appeal per state law. She argued that the chief state school officer's affirmation failed to give adequate weight to her testimony about her satisfactory performance both in previous years and, for the year in question, in her other duties; her un rebutted testimony that she had performed to the best of her ability precluded willful or negligent performance of duties; and her previous years provided her with the expectation of flexibility, not rigidity.

What do you think was the judicial outcome of Cutler's appeal?

In *Cutler v. Bellefonte Area School District* (2014), Pennsylvania's Commonwealth Court upheld her termination. For Cutler's appellate claims, the court concluded that it was without authority under state law to second-guess the chief state school authorities' assessment of the evidence. Her lapses in meeting the various deadlines, including those for the assigned priority of observations and evaluations, met the criteria for persistence, negligence, and—due to the element of choice—willfulness; and the superintendent's warnings (and her fellow principals' follow through) showed that she had reasons to understand the significance of timeliness.

Would the outcome have differed if the superintendent had substantially but not completely complied with the applicable state law for the principal's evaluation?

Not necessarily. Although the applicable state laws vary, including whether they apply to educators generally or administrators specifically, and the judicial interpretations also vary in terms of strictness, the overall trend in recent years is to provide some latitude in procedural requirements, with an eye to the underlying substance.

For example, in *Karetov v. Independent School District No. 283* (2015), the Minnesota Court of Appeals upheld the school board's decision not to renew a principal's contract even though the district had not complied with the state law for evaluation of principals in terms of providing the first evaluation within 90 days and encompassing various specified elements. Observing that the superintendent had met with the plaintiff-principal twice during the first 90 days to finalize her goals for the school year and that the evaluation addressed most of the required elements, the court concluded that substantial compliance was sufficient.

As an example of a variation of this same overall trend, an Illinois Appellate Court in *Young-Gibson v. Board of*

Education (2011) upheld the removal of a Chicago principal for failing to make adequate progress in moving the school out of probationary status even though the district had not provided him with state-mandated protections, such as a written evaluation and improvement plan. The court interpreted intent of the legislature to be that the NCLB-based state law for school accountability, which provided for a principal's removal for cause and after a hearing, sufficed without the otherwise applicable procedural protections of the dismissal law.

In the several states where the local school board makes the final nonrenewal or termination decision subject to judicial appeal, doesn't the school board's prosecutorial role violate its impartiality responsibility in conducting the required hearing?

No. Courts consistently recognize the dual role of school boards, which like many other administrative agencies have both executive and adjudicative functions. For example, in *Burch-Clay v. Taylor* (2015), Vermont's highest court upheld the termination of an elementary school principal in the wake of an adverse performance evaluation from the superintendent, rejecting her claims of bias.


More specifically, the court explained: "The Board necessarily communicated about plaintiff's performance with the superintendent and others, resulting in the decision to initiate termination proceedings. The fact that the Board had thought about plaintiff's performance prior to the hearing is not dispositive, so long as it was open to consider the matter based on the evidence at the hearing." Absent preponderant proof of actual bias, the school board met the test of impartiality in this context.

Finally, would the judicial outcome of Cutler's case likely have been different if the superintendent had recommended retaining her as principal but the board decided to terminate her?

No, just as long as the school board

substantially complied with applicable procedures and had sufficient substantive grounds for the dismissal decision. For example, in *Alba v. Cranston School Committee* (2015), the superintendent had issued a favorable evaluation for an elementary principal and had recommended renewing his contract, but the school board decided against nonrenewal based on parent complaints about his performance. The principal filed suit, alleging among other claims that the school board was without authority to take such adverse employment actions without a recommendation from the superintendent to do so. The Rhode Island Supreme Court upheld the school board's action, declining to infer such a precondition without it being an express provision in the state Administrators' Rights Act or the principal's contract. Conversely, in *Tobe-Williams v. New Hanover County Board of Education* (2014), North Carolina's intermediate, appellate court remanded the nonrenewal of an elementary principal to the board for a new hearing because the board had obtained and relied in part on information without giving the principal an opportunity to respond in contravention to the requirements of applicable state law.

Conclusion

The case law concerning the nonrenewal or termination of principals in the wake of performance evaluations is similar to the corresponding case law for teachers. The common key factor is application of the pertinent provisions of state law with ample deference to school board authority. Finally, the absence of published court decisions specific to a school principal subject to adverse employment action based on a value-added measurement approach to evaluation is likely to continue in light of the Every Student Succeeds Act's shift in federal policy. 

Perry A. Zirkel is professor emeritus of education and law at Lehigh University.