

# **IMPROVING EMPLOYEE PERFORMANCE THROUGH DISCIPLINE AND EVALUATION**

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## **I. Probationary Employees**

### **A. Legal Status**

1. The legal status of probationary employees varies by district.
  - a. There is no statutory definition for “probationary employee.”
  - b. “Probationary employee” is not a legal term of art.
  - c. Individual contracts, collective bargaining agreements, or board policy typically govern the legal status of probationary employees.
2. Arbitrators have consistently held that where the collective bargaining agreement excludes probationary employees from the just cause protections, probationary employees may be terminated for any reason or for no reason, so long as the reason, if any, is not unlawful or discriminatory. Elkouri & Elkouri, *How Arbitration Works*, p. 892.
3. Although the standard for termination of employment may not apply to probationary employees, other terms of employment contained in the collective bargaining agreement and/or board policies may apply, unless probationary employees are specifically excluded from coverage.

**B. Purposes for the Probationary Period**

1. For the employer, it serves an essential part of the examination and selection process, permitting the employer to observe the work ethic of the employee.
2. For the employee, it provides an opportunity to demonstrate his or her aptitude, fitness, and ability to meet performance standards of the employer. Arbitrators have noted that an employer is given very wide latitude in its dealings and treatment of probationary employees.

**C. Effective Procedures in Dealing with Probationary Employees**

1. Identify all probationary employees and the date on which each employee will complete his or her probationary period.
2. Establish a standard of performance.
3. Clearly communicate that standard of performance.
4. Evaluate and document against that standard of performance.
5. Establish reasons for any adverse employment actions which are reflective of the outcomes of the first three steps.
  - a. Establishing reasons can protect against potential discrimination claims.
  - b. The Board must, upon the request by a represented teacher or the bargaining representative, provide the teacher the basis, including the reasons, for which the board is considering non-renewal prior to the private conference.

**D. Extension of the Probationary Period**

1. An extension can be undertaken through a memorandum of understanding with the bargaining representative.
2. The memorandum of understanding (MOU) should include (1) a provision establishing the same probationary conditions for the employee as the previous probationary period; (2) a provision clarifying that the employee is not guaranteed any additional rights through the MOU; and (3) a provision clarifying that the MOU is non-precedential.

## **E. Due Process / Statutory Requirements for Probationary Teacher Nonrenewal**

1. In general, probationary employees have no property interest in their job. Without any property interest in their job, such employees cannot base a constitutional due process claim on a deprivation of a property interest in his or her position.
2. School district officials must follow the statutory procedures when nonrenewing full-time probationary teachers. Wis. Stat. § 118.22. The private conference under Wis. Stat. § 118.22 is to allow the teacher to develop facts and argument relevant to the nonrenewal decision and to allow the teacher to place the case against nonrenewal before the board. It is not to afford the teacher constitutional due process.

## **II. Evaluations**

### **A. Written Performance Evaluations**

1. Wis. Stat. § 121.02(1) (Professional Development and Performance Evaluation):
  - a. School boards are statutorily required to establish an annual professional staff development plan with employees, including instructional, administrative, and support staff, that is designed to meet the needs of the individuals or curriculum areas in each school. Wis. Stat. § 121.02(1)(b).
  - b. School boards are statutorily required to conduct written performance evaluations at the end of an employee's first year and at least every third year thereafter. Wis. Stat. § 121.02(1)(q).
  - c. To implement this statutory evaluation mandate, the Wisconsin Department of Public Instruction (DPI) has promulgated regulations. Wis. Admin. Code § PI 8.01(2)(q) requires school boards to:
    - i. adopt written position descriptions, to establish a systematic method of measuring employee job performance, and to observe employee performance;
    - ii. ensure that evaluators have the training, knowledge, and skills necessary to judge teaching performance; and
    - iii. conduct an employee's initial evaluation during his/her first year of employment.

- d. The statute and regulations do not eliminate the need to make day-to-day observations (formal or informal) of employee performance and conduct when warranted.
2. In developing a method to implement the written performance evaluation mandate, districts should consider the following suggestions:
    - a. Set standards and expectations. Create an evaluation document that translates these standards and expectations into specific behavior that can be observed and measured by the evaluator. Review any board policies or other administrative directives that may address performance expectations or procedures for conducting evaluations. Remember that the Wisconsin Court of Appeals has ruled that the common law requires a board to follow its own performance evaluation policies. Failure to comply with such policies may be enough, by itself, to invalidate a discharge.
    - b. Apply all procedures and standards equally to all employees. (Do not negatively evaluate an employee for tardiness or failure to turn in lesson plans timely if such behavior is ignored in other employees.)
    - c. Be careful to ensure that each employee feels he/she has been fairly treated in the evaluation process.
    - d. Do not rate an employee too positively at the outset; it is easier to raise a prior evaluation than to lower it.
    - e. Give specific facts and examples upon which conclusions or opinions are based in written evaluations, not just the bare conclusions or opinions. For example, do not simply state an employee's classroom is "disorderly." Note specific examples of how it is disorderly. Be prepared to back up opinions or conclusions with facts and examples.
    - f. Personally observe the employee on several occasions and in different settings, if possible. When observing in the classroom, try to remain for the entire class period. Observations should be done by the principal or other administrative staff, particularly someone with experience in the subject taught by the employee being evaluated. If a new supervisor is conducting the evaluation, he/she should review the employee's file prior to making a classroom observation. It may be desirable to have more than one person observe an employee. This would help prevent personality

conflicts from affecting the evaluation and (if all observers reach the same conclusion) would give credibility to the evaluation.

- g. Be specific when describing an employee's deficiencies. Give a narrative rather than a conclusory statement such as "needs improvement in communicating with students." Give clear and specific suggestions or (in extreme cases) directives for improvement- courses/in-service, tapes, videos, or the like to assist the employee in improving job performance. These suggestions or directives should be reasonable and obtainable. Establish a realistic timetable for the correction of identified deficiencies.
- h. Include the details of prior discussions (formal and informal) with the employee and notices to the employee regarding job performance, the deficiencies discussed, and any directives given in evaluations. Describe progress, or the lack thereof, by the employee.
- i. Put the employee on notice of the possible consequences of failing to make improvements as directed by the evaluations.
- j. Avoid the use of such inflammatory statements as "I thought you were smarter than that," in evaluations and written reports.
- k. Meet with the employee to discuss the evaluation and the district's expectations. Allow the employee the opportunity to challenge the opinions or observations included in the evaluation. If meeting at year-end, schedule another meeting at the beginning of the next year to review the evaluation and the district's expectations.
- l. Provide the employee with a copy of the written evaluation and have him/her acknowledge receipt by signing a copy of the evaluation.
- m. Follow-up regarding an employee's job performance if deficiencies were noted in the evaluation.

## **B. Importance Of Maintaining Personnel File**

1. The personnel file documents employee discipline and performance. It should provide documentation that, if necessary, can serve to justify employment decisions. Perhaps more critically, grievance arbitrators, administrative agencies and courts will rely on such records.
2. The personnel file provides evidence of employee acquiescence.

- a. Employee may receive copies at time of inclusion in personnel file.
  - b. Employees have a statutory right to inspect their personnel file. Wis. Stat. §103.13.
  - c. Employees have a statutory right to attach rebuttal statement. Wis. Stat. §103.13.
  - d. Personnel files may include employee self-evaluation or last chance letters.
3. Practical considerations in maintaining employee personnel files.
- a. Files should be kept in a central, secure location.
  - b. Restrict access to personnel files to appropriate personnel.
  - c. Do not commingle medical information or other information regarding disabilities with personnel files (ADA/WFEA requirements).
  - d. Mandate that certain materials be placed in employee personnel files as standard operating procedure:
    - ii. Job application.
    - ii. Resume and cover letter (if any).
    - iii. Evaluations.
    - iv. Disciplinary records or documentation, including:
      - Records of oral discipline.
      - Documentation of supervisor's observations.
      - Reprimand, suspension, and other forms of discipline.
    - v. Leave information and leave usage records (include all FMLA notices and designations).

### **C. Documentation of Performance Problems**

Inadequate or poor performance of job duties by employees should be documented by employers. Documentation is important for several reasons.

1. Documentation of inadequate performance provides a basis upon which an employer can defend against discriminatory discharge allegations.
2. Documentation from evaluations and from discipline procedures can demonstrate to a fact-finder that poor performance, not membership in a protected class, drove the employment decision.
3. Documentation of inadequate performance can also provide the basis for showing that “just cause” or “good cause” exists to discipline or discharge an employee as required by a contract or collective bargaining agreement.

## **III. Performance Improvement Plans**

### **A. Overview of Improvement Plans**

1. Improvement plans (also called remediation, correction, assistance, development, or intensive supervision plans) are often developed by employers after an employee is evaluated and the employee’s overall performance is deficient.
2. The improvement plan identifies the deficiencies of the employee’s performance and requires the employee to take specific corrective action within a specified period of time in order to improve performance. The employee’s performance is then carefully monitored, often with weekly reports to gauge the employee’s progress.

### **B. Identifying the Need for an Improvement Plan**

1. An employer should consider adopting an improvement plan whenever there are deficiencies in an employee’s overall job performance, especially for post-probationary employees.
2. Some collective bargaining agreement may incorporate such improvement plans as part of the overall evaluation process for employees and require them for an employee whose evaluation shows clear deficiencies.
3. Some actions taken by employees never require implementing an improvement plan. Instead, they can be the reason for immediate termination. Some actions that warrant immediate termination are: violent behavior; committing a crime at work; alcohol or drugs at work; extreme insubordination; theft; falsifying company records; gross neglect of duties; and sexual harassment.

### **C. Purposes of Improvement Plans**

1. An improvement plan helps to maintain employees who can successfully remediate problems, stops potential problems before they escalate, increases employee performance and motivation, prevents unnecessary terminations, and protects the employer from litigation.
2. An improvement plan provides documentation for the employer should further discipline or discharge become warranted by the employee's continued poor performance or bad behavior.

### **D. Elements of Improvement Plans**

1. The improvement plan notifies the employee of the district's expectations and standards and the need for the employee to improve to meet these expectations.
2. The improvement plan should provide detailed information to the employee about the problem.
3. The improvement plan should give clear, concise direction with specific goals to the employee.
4. The improvement plan should encourage communication between the employer and the employee and offer the assistance of the employer to the employee. The employer should keep an open mind and listen to the employee. The employer should ask if there is something he can do to improve the situation.
5. The improvement plan should require that the employer document all interactions. The employer should keep detailed notes, including the date and time of the meetings. The employer should note what was discussed and any specific agreements made by the employee.
6. The improvement plan should require that the employer follow up on agreed upon times to evaluate what, if any, progress has been made by the employee.

## **IV. Discipline**

### **A. Discipline Defined**

1. Discipline comes from the word “disciple,” which means to teach. Generally speaking, discipline is not designed to punish, but to get the employee’s attention and to correct undesirable conduct.
2. Employers discipline employees for a variety of reasons including: breaking rules/regulations, inappropriate behavior (harassment, fighting, insubordination, etc.), drug or alcohol abuse on the job, ineffective performance, and refusing a reasonable order or directive.
3. Employers can avoid having to discipline employees by creating detailed job descriptions, establishing clear expectations and standards, written rules, policies and procedures, and developing two-way communications between supervisors and employees.

### **B. Disciplinary Action**

1. Oral warning/reprimand.
2. Written warning/reprimand.
3. Suspension (without pay).
4. Demotion.
5. Withhold increment.
6. Discharge.
7. Other.

### **C. Just Cause**

1. There is no universally accepted definition of “just cause.” However, one can get an idea of what is meant by “just cause” by reviewing court decisions, arbitration awards, and prohibited practices cases decided by the Wisconsin Employment Relations Commission (WERC or Commission).
2. In one often-cited arbitration case, Arbitrator Carroll R. Daugherty set forth seven questions for determining whether an employer had just cause for discipline. *See, Grief Bros. Cooperaage Corp.*, 42 LA (BNA) 555

(Daugherty, 1964). He asserted that a “no” answer to any one or more of the following questions normally signifies that just cause did not exist:

- a. Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
  - b. Was the employer's rule or managerial order reasonably related to the orderly, efficient and safe operation of the employer's business?
  - c. Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
  - d. Was the employer's investigation conducted fairly and objectively?
  - e. At the investigation, did the “judge” obtain substantial evidence or proof that the employee was guilty as charged?
  - f. Has the employer applied its rule, orders and penalties even-handedly without discrimination to all employees?
  - g. Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his or her service with the employer?
3. In practice, union representatives often cite to these seven questions and argue that the school district must satisfy these tests in order to show just cause. However, school districts are not typically required to meet these tests unless the district and the union have specifically agreed to define just cause by these tests. Nevertheless, district administration should view any proposed discipline against the backdrop of these seven questions to ensure that it has cause to discipline an employee.
4. Instead of the seven-part Daugherty test, respected arbitrators in Wisconsin have considered the following factors in deciding whether a school board has “just cause” to discipline or discharge an employee:
- a. The fairness of the procedure leading up to the decision to discipline, with particular emphasis on compliance or noncompliance with any contractual obligation likely to have a substantial impact on the decision.

- b. Evidence of the board's compliance or noncompliance with employment practices the teacher might reasonably have expected it to follow.
    - c. The nature of the reasons advanced for the discipline and the reliability of the evidence offered in support of those reasons.
  5. In other cases, arbitrators apply a simple two-part test to determine just cause. *See, Outagamie County, Case 276 No. 63854 MA-12730 (McLaughlin, 4/05)*. Under this test, the employer must simply establish that:
    - a. The employee engaged in conduct in which the employer has a disciplinary interest, and
    - b. The discipline imposed reasonably reflects its disciplinary interest.
  6. If the collective bargaining agreement has a grievance procedure that is applicable, it is well settled that, under the "just cause" standard, the burden of proof in an arbitration proceeding challenging the discipline or discharge of an employee rests with the board of education. Moreover, if an employee is disciplined or discharged, due to a very serious offense, an arbitrator may require the board to submit evidence "beyond a reasonable doubt." However, most arbitrators have expressly rejected this test. In cases involving criminal conduct or moral turpitude, "clear and convincing evidence" has generally been accepted.

#### **D. Relevant Factors of "Just Cause"**

A review of cases reveals the following factors are relevant to an arbitrator's determination of "just cause."

1. Whether the employer's expectations were reasonable.

Certainly it is within the realm of reason to expect a teacher to come to school free of the influence of alcohol for six years. It may even be reasonable to hold that expectation for the duration of a teacher's employment under a last chance agreement, especially because teachers may be viewed as a role model for students. *Pulaski Community S.D., Case 34 No. 65151 MA-13137 (Mawhinney, 6/06)*.

During the course of a crisis, an employer has a reasonable expectation that its employees will come forward and make an effort to help contain the crisis. *S.D. of Pewaukee, Case 22 No. 54575 MA-9726 (Houlihan, 1/99)*.

Although the record did not show that a teacher was poor or ineffective, his failure to comply with repeated warnings to change his teaching techniques constituted “just cause” for his dismissal after 24 years with the district, where the administration’s expectations were reasonable and were not applied to the teacher in an arbitrary, capricious or discriminatory manner. *Racine Educ. Ass’n v. Racine Unified S.D.*, Case 83-CV-1288 (Racine Ct. Cir. Ct., 8 March 1984).

2. Whether the employer provided clear warnings to the employee.

Stating that the “notion of warning or notice is intrinsically tied to notions of fairness and due process, which are part and parcel of the principle of ‘just cause,’” an arbitrator held “just cause” for termination did not exist when the teacher was not warned that his conduct was inappropriate or that his employment would be terminated unless his conduct improved. *Hayward Community S.D.*, Arb. 568 217183 (Malamud, 2/83).

3. Whether the employer administered discipline in an evenhanded manner.

Because a school board had not disciplined other teachers who used corporal punishment in the past, it did not have “just cause” to terminate a teacher who administered corporal punishment to a student after a warning not to do so. *S.D. of Slinger*, Arb. 681 9114183 (Roberts, 9/83).

4. Whether the employer conducted a fair and complete investigation.

A bus driver/custodian was discharged after failing to follow the directions of a memo directing bus drivers to take a certain route to ensure the safety of students. This incident followed a previous incident where he placed children in a dangerous situation and was warned that future incidents could lead to termination. The arbitrator noted that the District failed to conduct a full investigation by interviewing all individuals involved, including the grievant. Despite this failure, the arbitrator concluded that the discharge was warranted because the grievant’s explanations were lacking in merit. *S.D. of Sturgeon Bay*, Case 35 No. 59766 MA-11402 (Greco, 3/02).

5. Whether the employer conducted effective evaluation practices.

A district had “just cause” to terminate a ten-year veteran teacher for inability to control her class following years of evaluations reflecting this problem and the withholding of an increment for poor class control despite the fact that she was highly motivated and had a number of outstanding teaching qualities. *Eau Claire Area S.D.*, Case 26 No. 31948 MA-2939 (Greco, 5/84).

6. Whether the employer had proof or documentation of the misconduct.

“Just cause” was evidenced by well documented evaluations, reprimands, and specific recommendations for improvement allowing for the non-renewal of a twenty-year veteran teacher. *New Lisbon S.D.*, Case 33 No. 52870 MA-9134 (Crowley, 5/97).

7. Whether the employer provided legitimate reasons for discipline.

A teacher’s continued tardiness for scheduled classes after receiving numerous warnings and reprimands constituted “just cause” for nonrenewal. *Bruce S.D.*, Case 29 No. 52480 MA-8990 (Knudson, 8/95)

8. Whether the discipline was reasonable in light of the conduct.

A school district had “just cause” to nonrenew a teacher’s contract for improperly assisting students during the administration of a proficiency test. *Buck v. Lowndes County S.D.*, 761 So.2d 144 (Miss. 2000)

#### **E. Progressive Discipline**

1. Progressive discipline is a system of addressing employee behavior over time, through escalating penalties. Norman Brand, *Discipline and Discharge in Arbitration*, p. 57 (ABA, 1998). Progressive discipline is a principle that is central to just cause. In this respect, employers impose some penalty less than discharge to convey the seriousness of the behavior and to afford the employee an opportunity to improve. Discharge is reserved for very serious incidents of misconduct and for repeated misconduct. Notice and opportunity to improve, together with the imposition of increasingly severe disciplinary penalties, are at the heart of progressive discipline, and if followed, can meet any just cause standard.
2. The concept of progressive discipline is based on the premise that both employers and employees benefit when an employee can be rehabilitated and retained. Discipline and Discharge in Arbitration, *supra*.
3. As part of progressive discipline, the employer must communicate employer expectations to employees with behavior problems before imposing discipline. An employer must also warn employees of the consequences of their actions and when their jobs are in jeopardy. Minor discipline provides such a warning. Discipline and Discharge in Arbitration, *supra*.

4. Many arbitrators are reluctant to uphold discipline when the employer imposes a suspension or discharge without having previously warned the employee, except in cases of serious misconduct. Arbitrators will often ask whether the degree of discipline administered was reasonably related to the seriousness of the offense. Discipline and Discharge in Arbitration, *supra*.
5. In implementing such a system, it is crucial that employers impose discipline consistently and equitably in an effort to correct employee deficiencies, not in an effort to punish employees.
6. Arbitrators expect progressive discipline to be followed to justify discharge under a just cause standard. *See, Nicolet Area Tech. College*, Case 19 No. 64910 MA-13051 (Jones, 5/06); *Antigo S.D.*, Case 58 No. 65397 MA-13215 (Gallagher, 3/06).
7. An employer should be able to issue written notices of unacceptable conduct short of discipline, but such written notices may still be challenged by the employee as discipline. In *Northland Pines S.D.*, Dec. No. 30267-A (WERC, 7/02), the WERC agreed with the District that a letter issued to the employee did not constitute discipline within the context of that case. In that case, the district administrator gave the employee a written letter stating that certain conduct was unacceptable and that, if the conduct continued, the employee would be subject to discipline. The letter was not viewed as discipline, but as a written notice that the administrator considered the conduct as unacceptable.

#### **F. Common Features of a Progressive Discipline System.**

1. Verbal Warning
  - a. The employee's immediate supervisor or manager must meet with the employee to discuss the specific performance or behavior issue. The supervisor/manager must clearly identify the problem and should reiterate the employer's performance or behavior expectations. Specific expectations of improvements need to be clearly articulated. The employee should be told the consequences if he fails to meet the expected improvements.
  - b. An employee may be allowed to offer some reason for the performance or behavior deficiency, and the supervisor/manager should be prepared to respond appropriately. However, the supervisor/manager must ensure that the employee understands that the work rule/policy must not be violated again in the future.

- c. Although this is a verbal warning, some documentation of the meeting should be made. *Milwaukee Area Tech. College*, Case 489 No. 61572 MA-11989 (Gallagher, 5/04). Typically, the supervisor should keep notes of this discipline and maintain them in a separate file, rather than the employee's personnel file. If later called to testify, the supervisor can then refer to his or her notes to support the fact that the verbal warning occurred. A written letter may be issued to the employee noting that a verbal warning was issued. The letter should clearly state that a written warning was not issued to the employee. However, the employee may still question whether this documentation constitutes a written, rather than verbal, warning. As a result, note-taking of the verbal discipline may be preferred.

## 2. Written Warning

- a. If the performance or behavioral problem is not corrected after a verbal warning to the employee, the supervisor/manager should prepare a written warning to the employee. The warning should clearly identify the performance or behavioral deficiency and restate employer expectations. St. Antoine, *The Common Law of the Workplace*, §6.7(2), p. 172 (1998) ("With progressively increasing penalties, employees have an opportunity to conform their performance and conduct to the employer's reasonable expectations.")
- b. Specific deadlines for improvement may be included on the written warning.
- c. The warning should clearly communicate to the employee that continued failure to meet employer expectations may result in further discipline, up to and including discharge. *Milwaukee Area Tech. College*, Case 489 No. 61572 MA-11989 (Gallagher, 5/04/).
- d. A copy of the written warning should be placed in the employee's personnel file.
- e. Some employers provide an opportunity for the employee to attach his/her own documentation explaining why he/she disagrees with the written warning. If such an opportunity is provided, the employee's statement should be attached to the written warning and placed in the personnel file.

### 3. Suspensions

- a. Suspensions can be issued with or without pay. Generally, suspensions are imposed pending an investigation of incidents raising discipline possibilities. However, suspensions may also occur merely as a progressive step in the discipline process as a proportionate penalty for continued failure to improve work performance or behavior. *Tomah Area S.D.*, Case 47 No. 42274 MA-5640 (Shaw, 2/90).
- b. Generally, an employee suspended without pay loses salary for the suspension period, but does not lose other benefits (such as seniority) during that time. *Iron County*, Case 54 No. 57570 MA-10676 (Emery, 2/00).
- c. Suspensions without pay usually indicate a very serious work rule or policy infraction. *Northland Pines S.D.*, Dec. No. 30602-E (WERC, 2004). Employers should utilize such suspensions with caution unless the infraction is so severe that suspension without pay is an appropriate measure.
- d. Suspensions, like written warnings, should be clearly documented. Further, the employee should be told that continued failure to improve workplace performance or behavior may lead to further disciplinary action, up to and including discharge.

### 4. Discharge/Termination.

- a. Employees who have been the subject of the progressive discipline procedure (when fairly and equitably applied) are less likely to challenge a discharge decision.
- b. When employers consistently apply progressive discipline steps, to employees who continuously fail to meet employer expectations will not be surprised by an employer's decision to discharge. *S.D. of Grantsburg*, Case 18 No. 60822 MA-11735 (Boher, 10/02).
- c. Employers who correctly utilize progressive discipline procedures will find that they have created a good record for justifying a discharge decision and have ensured that no arbitrary or capricious discipline decisions have been made with regard to a particular employee. *Shawano-Gresham S.D.*, Case 24 No. 61271 MA-11876 (Shaw, 2/03).

**G. Due Process/Statutory Requirements for Post-Probationary Teacher Nonrenewal**

1. A protected property interest is generally at stake if an expectation of continued employment arises from a collective bargaining agreement (or contract) that provides job security (such as a “cause” standard) akin to tenure. *Sanguigni v. Pittsburgh Bd. of Public Educ.*, 968 F.2d 393 (3d Cir. 1992).
2. Where property interests are concerned, an employee is almost always entitled to a pre-termination hearing, although individual circumstances will affect how elaborate such a hearing must be. *Cleveland Bd. of Educ. v. Loudermill*, 105 S.Ct. 1487 (1985).
3. Procedural due process, when constitutionally required, should meet the following general criteria for teachers:
  - a. The teacher should be given notice, prior to a hearing, of the reasons why his or her contract is not being renewed
  - b. The teacher should be given adequate notice of a right to a hearing at which she or he may respond to the stated reasons, and notice that she or he has the right to request that the hearing be open.
  - c. The hearing must be held if the teacher appears at the appointed time and place, and the right to be represented by counsel of the teacher’s choice must be afforded, even though counsel may not have a constitutional right in all circumstances to participate at the hearing.
  - d. The teacher should be given an opportunity to call witnesses and submit evidence relevant to the stated reasons for and the appropriateness of nonrenewal.
  - e. The teacher should have the right to cross-examine witnesses.
  - f. The teacher has a right to an impartial decision-maker.
4. For teachers, at a minimum, and only under circumstances where a full and timely post-termination hearing is available to the teacher, the board must provide the teacher with oral or written notice of the charges, an explanation of the administration’s evidence and documentation, and an opportunity for the teacher to present his or her side of the story and/or to dispute the appropriateness of nonrenewal.

5. Wisconsin Stat. § 118.22 sets forth the minimum and mandatory procedural requirements for nonrenewal of a full-time teacher's contract for the ensuing school year. The requirements of § 118.22 include:
  - a. At least 15 days before giving formal written notice of refusal to renew and not later than the last day in February, the board must give the teacher *preliminary written notice* the board is considering nonrenewal of the teacher's contract. Wis. Stat. § 118.22(3).
  - b. The preliminary notice must state that if the teacher files a request with the board within 5 days after receiving the preliminary notice, the teacher has a right to a *private conference* with the board prior to being given written notice of refusal to renew the contract. *Id.*
  - c. If no notice of nonrenewal is given on or before March 15, the contract then in force is automatically renewed for the ensuing school year. A teacher who receives a notice of renewal of contract, as well as a teacher who fails to receive any notice of renewal or nonrenewal on or before March 15, must accept or reject the contract in writing no later than April 15. Wis. Stat. § 118.20(2).
6. Though state statutes or school policies may establish pre-termination procedures, failure to comply with these procedures is not a violation of procedural due process if constitutional minima have been met. *Swartz v. Scruton*, 964 F.2d 607 (7th Cir. 1992). Such action may constitute a breach of contract or a violation of state law. *Scheckel v. S.D. of Wauzeka*, Case 92-3121 (Ct. App., 10 Feb. 1994) (unpublished).
7. In the event that a district fails to comply with the notice procedures set forth in Wis. Stat. § 118.22, the contract then in force shall continue for the ensuing school year. Wis. Stat. § 118.22(2).