

**Human Resource Administration in the American  
Public vs Private School System**  
By Annick Brennen, MA

Introduction

The employment of teachers in both the private and public systems is governed by law. In the private school system the relationship between teachers and the school is contractual in nature, while in the public school system both contract law and constitutional law apply to employment. The purpose of this short paper is to compare and contrast human resource administration in these two systems of education.

Power to Hire Personnel

In the public school system, education is a state function because as Furst and Russo (1993) point out, “the Constitution specifically states that any duties not enumerated to the federal government belong to states.” Thus, states has plenary power over education. The states, in turn, delegate direct supervision of schools to local boards of education that are responsible for hiring school personnel. The actions of the school board and of school administrators must be within the legal boundaries of federal and state constitutions in matters relating to personnel certification, contracts, tenure, and termination of employment, discrimination in employment, and tort liability.

In the matter of employment of teachers, private schools are not subject to constitutional laws, but to contractual law.

Employment Contracts

In both the private and public school systems, personnel are hired on a contractual basis. “A contract is an exchange of promises by two or more persons resulting in an obligation to do

or refrain from doing a particular act, which obligation is recognized and enforced by law.”

(Furst, Lecture Notes) In general, for a contract to be valid, it must contain the following elements: (1) a specific and definite offer meeting the requirements of law and an unqualified acceptance of that offer; (2) legally competent persons capable of contracting, (3) consideration, (4) legal subject matter, and (5) proper legal form.

Whereas in the private school system, individual contracts are the norm, in the public school system, contracts between the school system and employees are usually collective, and the contractual conditions must themselves be constitutional. According to Morris (1980), this means that “at least two formal, legal requirements must be met before the teacher can be said to have a legally binding contract. First, the school board itself must have proceeded in such a way as to meet all the requirements for valid, legal action, thereby binding the school district. . . . Secondly, the teacher’s contract must comply with the same general requirements of law that all contracts must satisfy.”

### Eligibility for Employment

To be eligible for employment in a professional position in the public school system, individuals should possess a valid certificate issued according to statutory provisions of a given state and a college degree with a minimum number of credit hours in a prescribed curriculum. Other requirements may include evidence of good moral character, a minimum age, United States citizenship, and satisfactory performance on a state-administered examination.

In private schools, generally, persons should not teach unless they hold a proper certificate. Adherence to this requirement is particularly significant if private schools desire state recognition.

## Employment Practices in Private Schools

Among private schools, there is a wide variation in practice in the matter of employment contracts. Contracts may specify the term of employment, they may be at will, and they may include tenure provisions. They may or may not be written. Furst and Russo state that some private schools do not provide written contracts, which allow them greater flexibility in the firing or discharge of personnel. However, there may exist an implied contract which can be just as binding and upheld just as rigidly by the courts as when the contract is in writing. Also, they continue, in nonpublic schools that are part of a system, there are frequently policies that apply system-wide just in a public school system. These policies and procedures become a part of the employment contract. Under such circumstances, the administration of the school must implement such policies without discrimination among employees. When teachers have at-will contracts, they serve at the will of the board and their employment may be terminated at any time without cause. (p. 298)

## Tenure and Termination Procedures

In the public school system, school boards cannot dismiss tenured teachers without due cause and without due process of the law. They are subject to tenure statutes that protect competent teachers and other professionals against unlawful and arbitrary board actions and that provide orderly procedures for the dismissal of unsatisfactory teachers and other professional personnel. Tenure is attained by complying with specific provisions prescribed by state statutes. The procedures for the dismissal of tenure teachers include three elements: (1) notice by a specific date, (2) specification of charges against the employee, (3) and a hearing at which the charges are discussed. Additionally, to prevent problems when dealing with

evaluations and dismissals, administrators must (1) follow state law, board policy, and master contract; (2) must meet required deadlines; and (3) must have proper documentation.

In the private school system, a few schools offer their teachers continuing employment similar to tenure in public schools. Schools having such policies have detailed procedures for terminating the employment of teachers who have been granted tenure. These procedures must be followed in order to avoid facing legal actions (Furst & Russo, p. 298).

Private schools that offer teachers one-year contract must respect the terms of the contract. They cannot terminate teachers without cause. If the termination is without cause, then there is a breach of contract and the school may be liable. On the other hand, teachers can resign during a contract, leaving the school without an effective remedy other than suing for the costs of finding a replacement (Ibid, p. 299).

### Employee Discipline

Teachers (tenured or non-tenured) in public schools may be disciplined or dismissed for such causes as incompetency, insubordination, immorality, justifiable decrease in the number of teaching positions, financial exigency, and for other good and just cause. A board of education may dismiss a teacher for almost any reason, so long as the reason is valid and meets the substantive and procedural due process requirements.

Teachers, on the other hand, have the right to be treated with respect and they have a right to be informed of the duties that are expected of them. School administrators have a duty to provide proper training, informal correction, and if needed, formal discipline when rules or duties are not performed properly.

Following proper procedures is extremely important and reduces the risk of loss to districts. When discipline is applied, it should be progressive. That is, the steps should

progress from mild corrective actions to more severe actions which could result in dismissal. The steps involved in progressive discipline are: (1) oral warning containing a clear statement of the rule, the expectation that the rule be followed, and the consequences that can occur if the rule is not followed; (2) written warning delivered personally to the employee; and (3) reprimand. Reprimand is a formal disciplinary step. It occurs after a notice has been given to the employee; an investigation has been conducted to determine if in fact, the rule was broken; and a hearing to ensure that the employee's side is heard before deciding.

The Fifth and Fourteenth Amendments to the U.S. Constitution state that no one is to be deprived of life, liberty, or property without due process of the law. Due process includes:

1. Charges. The employee must know what he or she is accused of doing or not doing. This is best done through a written memo delivered directly to the employee stating the nature of the charges, the time, date, and location of a meeting with the principal, and the right of the employee to bring a representative to the meeting.
2. Time for the employee to prepare a defense.
3. Hearing. The employee must have the opportunity to hear the specific charges, confront the accuser, and give his or her side of the story.

When school boards have just cause to discipline or dismiss a teacher, they must follow these procedures to prevent breach of contract.

In the private school system, employees do not have the constitutional right to due process. However, it is in the best interest of a school to use fundamental fairness in procedures involving employee discipline; and if the contract stipulates disciplinary procedures, they must be followed in every detail.

#### Compliance with Discrimination Laws

School boards in the public school system are also required to comply with all federal laws related to discrimination in employment, including sexual harassment. They cannot discriminate on the basis of gender, race, disability, age, religion, and maternity. However, a plaintiff has the initial burden of establishing a prima facie case of discrimination by showing existence of five factors: (1) member in a protected group, (2) application for the position, (3) qualification for the position, (4) rejection for the position, and (5) employer's continued pursuit of applicants with the plaintiff's qualifications for the position.

In the private school system, parochial schools may discriminate on the basis of religion. That is, they may have religious requirements as part of the employment agreement. However, their discrimination cannot extend beyond religion as they are also subject to the other provisions of the Title VII of the Civil Rights Act.

### Employee Privacy

In both the public and private school systems, employees have a right to some degree of privacy. Broadly speaking, they are protected against unconstitutional search and seizure, against intrusion into their private affairs (marital and family-home privacy), against stigmatization or defamation, and against disclosure of personal information that may be inserted in and disclosed by their personnel files to persons who do not have the right to know.

According to Valente (1985), "privacy interests, however clear in concept, are not absolute in right, and are subject to subordinating state interests that outweigh them. . . . Qualifying limits are placed on each privacy interest in the public schools by separate case lines dealing with each species of privacy claim." (p. 284).

## Tort Liability

School boards and administrators in both the public and private school systems are subject to tort liability. A tort is a civil wrong, excluding contracts, for which a court will award damages. The three major categories of torts are intentional interference, strict liability, and negligence. Assault, battery, and defamation are the most common types associated with personal interference; malicious trespassing is the most common interference with respect to property rights. Negligence is a breach of one's duty to protect from unreasonable risks and which result in compensable injury.. It includes four elements: duty, breach, injury, and causation. In the school setting, torts involving intentional interference and strict liability are rare; but tort involving negligence is common. Thus boards and school administrators must establish processes and procedures that do not violate federal and state laws and that accomplish the objectives of the personnel function. Especially in the public school system, in the recruitment and selection of new employees, affirmative action procedures must be followed so that the rights of protected groups are not violated. Defamation of character is a potential area of litigation with regard to the giving of references and communicating the contents of an individual's personnel file. To protect against such litigation, established procedures should outline who is responsible for writing references and under what circumstances the contents of an individual's file can be released.

## Conclusion

School boards and administrators in both school systems should be knowledgeable about the laws that govern the employment of teachers, and they must adhere strictly to these laws. They also have the duty to inform their employees of all rules and regulations governing their employment.





## References

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