

How to Write it Right: An Advanced Course on Discipline and Performance Documentation

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FOOTHILL-DE ANZA
Community College District

Background Facts

ABC-CCD's negotiated faculty evaluation process includes these elements:

- A 3-person evaluation team: 2 peer faculty (with one usually the department head) and one administrator (usually the dean over the area)
- Evaluation of 3 areas: Performance in teaching or other primary assignment; professional contributions to the District; and collegiality. These are evaluated using negotiated rubrics for each category.
- Evaluation in each area is rated satisfactory, needs improvement or unsatisfactory.

Background Facts (Con't)

- The team also provides a summative rating which is not required to be a mathematical averaging of the individual area ratings.
- A summative rating of “unsatisfactory” results in nonrenewal. A summative rating of “needs improvement” in Years 1 or 2 results in renewal with an improvement plan. A summative rating of “needs improvement in Year 3 results in an improvement plan. A summative rating of “needs improvement” in year 4 results in nonrenewal/denial of tenure.

Dr. Green is a contract faculty member in the science department.

Writing it Right...and What Went Wrong?

Scenario Part 1: Improving the Evaluation

The Evaluation (Year 1): How to Make it Better?

While we are giving Dr. Green satisfactory ratings in all areas, and a summative rating of satisfactory, we must note that Dr. Green was habitually late returning work to students, resulting in several complaints. We know Dr. Green has been addressing some challenging personal issues this semester, and we appreciate that she has clearly made more of an effort to get work back to students in a timely fashion since this issue was brought to her attention. However, she also got her grades in late in the Fall, and got them in just under the wire in the Spring. This was very frustrating for the Department Chair and Dr. Green needs to be less cavalier about her paperwork. She needs to be aware of the impact on the chair and be a better “team player” in the Department. Goals for next year should include improving in these areas.

The Evaluation: How to Make it Better?

Discussion:

1. What is wrong with this evaluation segment and how could it be made better?
2. HR becomes aware of this situation. What would you advise the Dean and Department Chair about what else should have occurred during the year regarding this issue?

The Evaluation: Practice Tips

Language should be:

- ✓ Objective
- ✓ Descriptive & Specific
- ✓ Focused on Behavior & Actions

The Evaluation: Practice Tips

Example regarding objective language

Subjective:

Dr. Green needs to be less cavalier about her paperwork.

Objective:

Dr. Green submitted Fall grades 2 weeks after the deadline, despite at least three reminders she received regarding the deadline from Chair Lee.

The Evaluation: Practice Tips

Example regarding descriptive/specific language:

Vague:

Dr. Green was habitually late returning work to students, resulting in several complaints.

Specific:

Dr. Green did not return the anatomy research papers to her anatomy class until 4 weeks after they were submitted, which was also only one week before the final exam.

The Evaluation: Practice Tips

Example regarding action-based language:

Judgmental:

Dr. Green needs to be less cavalier about her paperwork

Factual:

Dr. Green's responsibilities include the timely submission of grades. However, she submitted Fall grades 2 weeks late, and Spring grades were submitted at midnight of the due date, and only after Chair Lee sent at least three email reminders.

The Evaluation: Practice Tips

What *not* to include:

Information not relevant to performance

- *We know Dr. Green has been addressing some challenging personal issues this semester*

Personal feelings or opinions:

- *This was very frustrating for the Department Chair*

Conclusion statements:

- *She needs to be aware of the impact on the chair and be a better “team player” in the Department.*

The Evaluation: Practice Tips

- In sum:
 - Describe positives, opportunities to improve and means to improve
 - Be specific
 - Deliver evaluations timely
 - Adhere to negotiated subject matter
 - Be honest and don't sugarcoat!

Scenario Part 2: Improving the Discipline Notice

The Reprimand: How to Make it Better?

Dear Karen,

Regretfully, I must inform you that your conduct the other day made Mr. Lee feel very uncomfortable and embarrassed. You have many fine attributes as a science instructor, which we all (including Mr. Lee) truly appreciate. However, you really can't just barge into people's offices. It isn't professional. If you have concerns regarding Mr. Lee, please make arrangements to meet with him and when you do meet with him, present your concerns in a calm and clear fashion.

I also must note my concern that your classroom observations, thus far, are not showing the sort of growth in teaching methods that we would expect during your second year.

This is a written reprimand. It will be placed in your personnel file. Consistent with your CBA, you have 10 days to submit a response, which will be attached to the reprimand.

Sincerely, Bob.

The Reprimand: How to Make it Better?

- Dean Marks has asked H.R. to review his draft reprimand and make suggestions.

What do you advise?

The Reprimand: Discipline Practice Tips

- Be concrete
- Focus on the conduct, not the person
- Link the conduct to its negative impacts
- Focus on what you know, not how you know it
- Be accurate—don't exaggerate
- Describe what is expected
- *Always* end with an action/accountability plan

Scenario Part 3: Crafting Performance Goals

Crafting Performance Goals

The evaluation team is preparing Dr. Green's year-2 evaluation. They have decided to rate Dr. Green as "needs improvement" in the areas of teaching, but satisfactory in the areas of Professional Contributions and Collegiality—while noting as a "collegiality concern" that Dr. Green is "too emotive" in her communications. They thus give her a summative rating of satisfactory, and Dr. Green receives her third contract (a 2-year contract.)

Crafting Performance Goals

Write 5 performance goals to be included in Dr. Green's improvement plan, to address the performance and collegiality concerns.
(Use evaluation practice tips.)

Scenario Part 4: Preparing a NUC/NUP

Preparing the NUC/NUP: Practice Tips

- Discussion & Review
(Turn to template NUC/NUP in the handout)

Preparing the NUC/NUP: Practice Tips

- The purpose of the 90-day notice is to afford the employee an opportunity to correct his or her faults and to overcome the grounds for the charge.
- Groundwork for intended disciplinary action
- Statement of Charges cannot add new facts regarding unprofessional conduct or unsatisfactory performance not included in the 90-day notice

Preparing the NUC/NUP: Practice Tips

- Be comprehensive: include everything within jurisdictional reach (4 years)
- Document all prior discipline, feedback, opportunities to improve
- Link conduct to
 - *Statutory* causes
 - *Morrison* factors
 - Negative impacts

Preparing the NUC/NUP: Practice Tips

- Be factual and detailed
- State expectations
- Provide notice of placement in personnel file
- Attach documentary evidence relied upon in the Notice
- Attach most recent evaluation
 - **Fatally defective if evaluation not attached!**

Preparing the NUC/NUP: Practice Tips

Cause for Discipline under Education Code § 87732

- Immoral or unprofessional conduct
- Dishonesty
- Unsatisfactory performance
- Evident unfitness for service
- Persistent violation of rules
- Crime of moral turpitude

Preparing the NUC/NUP: Practice Tips

Cause for Discipline under Education Code § 87732

- Unprofessional conduct and unsatisfactory performance require a 90-day notice

Preparing the NUC/NUP: Practice Tips

The *Morrison* Factors:

- Likelihood of adverse effect on students
- Degree of adversity anticipated
- Proximity in time
- Extenuating or aggravating circumstances
- Motives resulting in the conduct
- Likelihood of recurrence
- Chilling effect of discipline

Preparing the NUC/NUP: Practice Tips

Unsatisfactory Performance

Assess by reference to objective evaluation criteria such as:

- Lack of knowledge of the subject matter;
- Inability to teach the subject in a clear and precise manner;
- Inability to maintain a classroom conducive to learning; and
- Inability to work harmoniously with fellow colleagues.

Education Code section 87732(c)

Preparing the NUC/NUP: Practice Tips

Dishonesty

- Subject to analysis under the Morrison factors.
- The Morrison Court noted that there are many different levels of dishonesty from the “smallest fib” to a “flagrant lie.”
- Theft in connection with work responsibilities is a form of dishonesty.

Education Code section 87732(b)

Preparing the NUC/NUP: Practice Tips

Evident Unfitness for Service

- Morrison factors apply

“Unfitness for service” is based on a fixed character trait or defect in temperament (cannot be remedied) as opposed to unprofessional conduct which is not a fixed trait (and can be remedied).

Education Code section 87732(d)

Scenario Part 5: Preparing the NOI

Preparing the Notice of Intent

- Include President's recommendation to terminate. (Education Code Section 87671(c)).
- Include all relevant evaluations. (Education Code Section 87671(b)).
- Attach all documents relied upon to assert the charges.
- Do not include charges of unprofessional conduct/unsatisfactory performance not covered in a prior 90 day notice within same academic year.

Thank You!

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