

Office of Labor Relations

* * *

Frequently Asked Questions

These FAQs are intended as legal advice for Principals and other supervisors and as such are protected from disclosure as attorney-client communication. The purpose of these FAQs is to ensure greater predictability that supervisors' actions will not be overturned. As a result, some of the advice contained herein may go beyond bare minimum contractual or legal requirements and does not necessarily constitute the administration's interpretation of a particular contractual or legal provision. Principals and other supervisors may utilize this advice in their discretion. Therefore, these FAQs do not constitute a policy or directive of the Chancellor or the Department of Education without limitation. The Office of Labor Relations reserves the right to change these FAQs at will.

For questions regarding these FAQs or for any labor relations inquiry, contact David Brodsky, at dbrodsky@schools.nyc.gov or Karen Solimando at ksolimando@schools.nyc.gov.

TABLE OF CONTENTS

USING THIS MANUAL	1
I. HIRING AND ASSIGNMENT	3
1. Hiring.....	3
Q: How is pedagogical staff hired in schools?	3
Q: What is the status of the seniority and other transfer plans?	3
Q: What is the Open Market System?	3
Q: What is the Human Resources Committee?	3
Q: What if I cannot agree with my Chapter leader about who should be on the committee?	3
Q: Am I responsible for interviewing all applicants?	3
Q: What role, if any, does seniority have in the hiring process?	4
Q: Must I consider internal incumbent employees before hiring someone from outside the DOE?	4
2. New or Redesigned Schools.....	4
Q: What is the hiring process for new or redesigned schools?.....	4
Q: Who decides whether the person is qualified?.....	4
Q: The rule in the first year refers to selecting 50% of my new staff from the impacted school. Does that mean I have to select 50% regardless of qualifications?.....	4
3. Lead Teacher.....	4
Q: What is the Lead Teacher position?.....	5
Q: Who determines the number and location of Lead Teacher positions?.....	5
Q: What is the selection process for the Lead Teacher position?.....	5
II. HOURS OF WORK	6
1. Official Hours.....	6
Q: What is the workday for teachers?.....	6
Q: Can I hold faculty conferences that go beyond 3:45pm?.....	7
Q: What is the work-day for other UFT represented titles?	7
Q: Can I set the schedules for secretaries working in my school?	7
Q: Can I set the schedules for social workers and school psychologists working in my school?8	
Q: Can I set the schedules for guidance counselors working in my school?.....	8
2. Small Group Instruction.....	8
Q: When does the Small Group Instruction commence?.....	8
Q: Can a school modify the use of the time dedicated for Small Group Instruction?.....	8
Q: Which students should attend Small Group Instruction?.....	8
Q: Can I rotate the children that attend the Small Group Instruction?	8

Q: Are all students required to attend Small Group Instruction?.....	8
Q: Am I bound by the one-to-ten teacher-student ratio?	8
Q: Can I group 2 teachers together for the Small Group Instruction?.....	8
Q: Can I exceed the 10:1 (or 5:1) ratio if I assign paraprofessionals to work with teachers during the Small Group Instruction period?	8
Q: Can teachers (e.g. physical education) be assigned as ‘floaters’ during the Small Group Instruction period?	9
Q: What if a teacher is absent?	9
Q: Do teachers have to teach “in-license” during Small Group Instruction?	9
Q: Can I require lesson plans for the 37.5 minute instruction time?	9
Q: May I observe teachers’ performance during the Small Group Instruction period?	9
Q: Can occupational and physical therapists provide services during the Small Group Instruction period?	9
Q: Do school psychologists provide instruction during the Small Group Instruction period?...9	
Q: Can guidance counselors, SETSS teachers, and related service providers provide mandated (IEP-driven) service during the 37.5 minutes?	10
Q: Can Speech Teachers provide mandated services to students with IEPs during the 37.5 minutes?	10
3. Professional Development / Faculty Conferences.	10
Q: When does the staff receive professional development?	10
Q: Can I continue to conduct monthly faculty and grade conferences?	10
Q: Can I conduct grade/department conferences in addition to faculty conferences?.....	10
Q: Can I conduct grade conferences after school?	10
III. ABSENCES, LATENESS, RELIGIOUS ACCOMMODATIONS, AND LEAVES	11
1. Absences / Lateness.	11
Q: Are teachers required to be in the classroom at the start of the school day?	11
Q: How many personal and sick days do teachers get each year?.....	11
Q: When can I deny a request for a personal business day (not a self-treated sick day)?	11
Q: Can I require that a teacher provide a doctor’s note for any or all of the <i>self</i> -treated sick days?	11
Q: What is a “non-attendance” day?.....	11
Q: Can I deduct time or salary for absences and/or excessive lateness?	11
Q: What do I do if a service provider – e.g., occupational therapist – is consistently late?	12
Q: When can I ask an employee to clock in?.....	12
Q: Can an employee be rated unsatisfactory for excessive absenteeism even though many – or all – absences are excused (e.g., for medical reasons)?	12
Q: If I suspect that an employee’s self-treated absence is fabricated, may I reprimand this employee?	13

Q: What do I do if an employee (teacher, paraprofessional, or other staff member) fails to show up for work?.....	13
Q: What if I forgot to send the first letter (i.e., the letter after a 10 consecutive school-day absence) and the employee has been absent for 20 consecutive school days?.....	13
2. Religious Accommodations.	13
Q: What if an employee asks for a day off or early release to observe a religious holiday or Sabbath?.....	13
Q: Should I ask the employee to provide evidence that the day s/he is seeking to take off is in fact a religious holiday?.....	14
Q: Must I give the teacher the entire day off for religious observance or Sabbath observance?.....	14
Q: Must the employee attempt to reach an alternate arrangement?.....	14
Q: If I grant the day off, may a day be deducted from the employee’s CAR?	14
Q: If I decline to grant a teacher’s request for a religious observance day, can that teacher use one of his/her personal business days?	14
Q: If I granted particular religious observance days in the past, must I do so in the future? ...	14
3. Leaves.	15
Q: What types of leaves of absence are available to employees?.....	15
Q: What do I do if I suspect that an employee is on a fraudulently obtained leave of absence?.....	15
Q: How do I handle a request for an extended leave of absence based on either the birth/adoption of a child, the employee’s own serious health condition, or because the employee needs to care for a child, spouse or parent with a serious health condition?	15
Q: What do I do if a teacher requests permission to teach at a charter school?	16
Q: What are the rules regarding a request for time off to attend a funeral?	16
Q: If I approve a request for a day off to attend a funeral, can I request that the employee use a CAR day?.....	16
Q: If an employee takes an unpaid leave of absence for restoration of health or adjustment of personal affairs what are his/her rights upon return?.....	16
Q: Is a teacher entitled to annual leave?	16
IV. MEDICAL EXAMINATIONS	17
1. Examinations by Medical Bureau.	17
Q: If I am concerned that an employee is not fit to be in the school, can I direct that employee to attend a medical examination?.....	17
Q: What information should I provide to the Medical Bureau?	17
Q: How long does it take for the Medical Bureau to schedule an appointment?	17
Q: What happens if the Medical Bureau finds the employee fit?	17
Q: What happens if the Medical Bureau finds the employee unfit?.....	17
Q: What if the employee does not show up for a medical examination?	17

Q: What if a teacher returns from a medically excused leave of absence – i.e., the medical bureau determines s/he is fit to return – and nevertheless continues to be absent and/or late from work?.....	17
2. Injury in the Line of Duty	18
Q: What is an injury in the line of duty?.....	18
Q: What do I do if an employee claims that s/he suffered an injury in the line of duty?	18
Q: How soon after an accident or incident must an employee report an injury in the line of duty?.....	18
Q: Where can I find ILOD forms?.....	19
V. PROGRAMMING	20
1. Preferences.	20
Q: What are the standards for granting a teacher’s program preference?	20
Q: Am I required to honor the teachers’ program preferences?	20
Q: Does seniority determine teachers’ classroom assignments?	20
Q: Is seniority relevant with respect to teachers who request shop/trade classes in middle and high school schools?	20
Q: How are speech improvement teachers assigned?.....	20
Q: How many times can I decline to honor a program preference on the basis that it is not advisable or feasible?.....	20
Q: How soon after being denied a preferred assignment must a teacher lodge a grievance?...21	
Q: If circumstances change in my school after the distribution of teachers’ programs, can I modify programs?.....	21
Q: What if a teacher decides that s/he does not want the program that s/he chose?.....	21
Q: What do I do if a teacher only puts one grade preference on his/her preference sheet?.....	21
Q: Can I reassign a teacher mid-year?.....	21
Q: Can a teacher be programmed for multiple periods in a row?.....	21
Q: What is an “IEP” Teacher?.....	21
Q: How many periods does the IEP teacher have for the IEP assignment?	21
Q: What if a teacher does not have enough IEP-related work to fill the time dedicated to IEP work?	22
Q: Who is entitled to the IEP Assignment?	22
Q: Are Education Evaluators (with special education licenses) always given preference with respect to the IEP assignment?	22
2. Cluster Teachers.	22
Q: What is a “cluster teacher”?.....	22
Q: How many teaching periods can I assign to a cluster teacher?.....	22
Q: What if a cluster teacher is not programmed for a maximum teaching load?	22
Q: Can I remove a teacher from a “cluster” position and assign this teacher to a classroom?.23	

3. Other Teaching Positions.	23
Q: What are the procedures for creating Other Teaching Positions (OTP) (e.g., reading specialists) in elementary schools?	23
Q: Does seniority determine an OTP assignment?	23
Q: How many teaching periods a week can I assign to an OTP?	23
Q: If an OTP teacher is not programmed for as many teaching periods as other teachers, can I direct the teacher to conduct professional development or other tasks for the remaining periods?	23
4. Preparation Periods.	23
Q: May a teacher use a preparation period as s/he sees fit?	23
Q: Can I ask a teacher to spend time with a coach, or other person providing support, during his/her preparation period?	24
Q: Can I ask a teacher to cover another class during his/her preparation or professional period?	24
Q: Will a teacher receive additional compensation for covering another class during his/her preparation or professional period?	24
Q: Can a teacher provide additional service in a shortage area in lieu of preparation periods?	24
Q: If a teacher is in a non-teaching position (i.e. compensatory time position), is that teacher entitled to preparation periods?	24
Q: Are IEP teachers entitled to preparation periods?	25
5. Professional Activity Periods - General.	25
Q: What is a professional activity period?	25
Q: What authority do I have over these professional periods?	25
Q: Who determines the number of available positions, responsibilities, and qualifications required for each activity?	26
Q: May a teacher perform a professional activity that is not specified in the agreement?	26
Q: May a teacher perform an administrative assignment not on the menu?	26
Q: Can I observe a teacher's performance during the professional activity period?	26
Q: Do related service providers – e.g. occupational therapists and physical therapists – have professional activity assignments?	26
6. Professional Activity Periods – Selection Process.	26
Q: How does a teacher select a professional activity?	26
Q: Who determines the professional activity assignment for teachers?	26
Q: What are the standards I should follow when making professional activity assignments?	26
Q: May I decline to place a teacher in any of his/her professional activity preferences?	27
Q: May I assign a teacher to cafeteria duty, schoolyard duty, or hallway duty over his/her objection?	27

Q: Can I ask a teacher to spend time with a coach, or other person providing support, during his/her professional period?	27
Q: Is a homeroom assignment a substitute for a professional activity?.....	27
Q: What should I do if my UFT chapter leader disagrees with the number of positions available for certain activities?	27
Q: Can the UFT grieve the number of positions available for certain activities?	27
Q: Can a teacher grieve or arbitrate his/her professional activity assignment?.....	27
Q: Does a teacher performing AM or PM bus duty also have a professional activity period?	27
Q: Can I split teachers' professional activity assignments so that they work more than 1 activity?.....	28
Q: May I change a teacher's professional activity assignment mid-term?	28
Q: Does a teacher in a compensatory time position also have a professional activity assignment?.....	28
Q: Does an athletic coach have a professional activity period?	28
7. Compensatory Time Positions.	28
Q: What are compensatory time positions?	28
Q: What are some instructional positions that are often confused with compensatory time positions?	28
Q: How are compensatory time positions created?	28
Q: How are compensatory time positions assigned?	29
Q: How do I ensure that the most qualified teacher gets the job?	29
8. Posting/Qualifications.	29
Q: Who establishes job qualifications for job postings?.....	29
Q: How can I guarantee that the most qualified person for the job is selected?.....	29
VI. SCHOOL BASED OPTION (“SBO”)	30
Q: What is an SBO?.....	30
Q: What are the various types of SBOs?	30
VII. DISCIPLINARY LETTERS, COUNSELING MEMORANDUM AND NON-FILE LETTERS	31
1. Disciplinary Letters.	31
Q: How do I evaluate pedagogues?	31
Q: How do I discipline pedagogues?	31
Q: Can employees grieve material in their personnel files?	31
Q: What best practices should be followed for writing disciplinary letters?.....	31
Q: Can I include reports or witness statements in a personnel file?	32
Q: If I witnessed the incident do I still need to conduct an investigation and follow the other steps above?	33

Q: What do I do if the employee or union representative approaches the student witnesses and talks to them about the incident?	33
Q: Can an employee bring a lawyer to a disciplinary conference instead of his/her union representative or an employee?.....	33
Q: If I observed the teacher’s lesson and want to memorialize the observation, do I still have to follow the rules above?.....	33
Q: What if I fail to follow one, or several, of the steps regarding disciplinary letters and the teacher demands that the letter be removed from the file?.....	33
2. Disciplinary File Letters Based on Third Party Reports (e.g., OSI Reports).	33
Q: How should a report from the Office of Special Investigations (“OSI”) or other third party investigative report affect how I write a letter?	33
Q: Should I participate in the OSI investigator’s interview of witnesses?	34
Q: What if I disagree with the report’s conclusion?	34
Q: What if I agree with the report’s conclusion that the allegation should be substantiated but there is a flaw (e.g., an adult witness was not interviewed) in the investigation?	34
3. Counseling Memorandum for File.	34
Q: What is a counseling memorandum?	34
Q: Are there any rules with respect to what language must be included in a counseling memorandum?	34
Q: What purpose does a counseling memorandum serve in disciplining an employee?.....	35
Q: Can I include specific incidents in a counseling memorandum?.....	35
4. Non-File Unofficial Letters.	35
Q: Can I write a letter that is not for an employee’s personnel file?	35
5. Removal of Disciplinary Letters.	35
Q: What are the rules regarding removal of disciplinary letters?	35
Q: How do I calculate three years?.....	36
Q: Which employees may seek to remove letters that are 3 years old or older?.....	36
Q: What is the process that should be used for the removal of letters from personnel files?...36	
Q: What do I do with materials removed from teachers’ files?.....	36
Q: When can teachers review their personnel files?.....	37
Q: Can principals require that teachers review their personnel files after school?.....	37
VIII. OBSERVATIONS AND LESSON PLANS.....	38
1. Observations.....	38
Q: Did the 2005 UFT contract change the way principals should conduct observations?	38
Q: What does the 2005 UFT agreement mean when it states that teachers cannot be disciplined for a) the format of bulletin boards; b) the arrangement of classroom furniture; and c) the exact duration of lesson units?.....	38
Q: What are the elements of a formal observation?.....	38

Q: Are teachers allowed to bring their UFT representative to the post-observation conferences?	39
Q: Must a formal observation be for an entire period?	39
Q: How many formal observations must be given each year?	39
Q: Who conducts the formal observations?	40
Q: If an interim acting principal or assistant principal conducts a formal teacher observation, is an appointed principal obligated to sign the observation too?	40
Q: How many formal unsatisfactory observations per year are required to sustain an unsatisfactory rating?	40
Q: Can a teacher request to perform a project in lieu of receiving a formal observation?	40
Q: If I am a new principal and the “status quo” regarding evaluations has been very lax and ineffective (e.g., teachers propose non-specific goals and objectives), how can I move to a more formal evaluation system?	40
Q: May I conduct informal observations?	40
Q: What are the steps for an informal observation?	40
Q: What do I do if a teacher’s classroom is routinely mismanaged, chaotic and lacks adequate instruction but when I conduct a formal observation the lesson plan is done very well?	41
2. Lesson Plans.	41
Q: Are teachers required to prepare lesson plans?	41
Q: What authority do I have to ensure that teachers are planning properly?	41
Q: What if a teacher argues that I am dictating format, whereas I believe it is content?	42
Q: Can I collect/copy lesson plans?	42
Q: Can I request that teachers plan for an entire week in advance?	42
Q: Can I request to see lesson plans from prior weeks/months?	42
Q: Is a teacher required to have lesson plans with them during their class?	42
Q: Can I require lesson plans for the 37.5 minute instruction time?	42
3. School Policies.	42
Q: Can I create a written dress code policy for my school?	42
Q: Can I create an attendance policy?	43
Q: What should my attendance policy be?	43
Q: How do I apprise my staff of the school policies?	43
IX. DISCIPLINE - ATTENDANCE AND LATENESS – PEDAGOGUES	44
Q: What are the expedited disciplinary procedures for discipline of tenured pedagogues with attendance and/or lateness problems?	44
Q: What lateness or attendance problems are appropriate for this expedited process?	44
Q: How do I commence an expedited arbitration process against a tenured pedagogue?	44
Q: What steps can I take prior to commencing an expedited arbitration to ensure an appropriate discipline is handed out by the arbitrator?	44

X. DISCIPLINE – TERMINATION AND SUSPENSION	46
1. Terminating Tenured Pedagogues.....	46
Q: Can I terminate a tenured pedagogue?.....	46
Q: May I terminate a tenured pedagogue for job abandonment?	46
Q: What is the process for termination for job abandonment?	46
2. Terminating Probationary Pedagogues.....	47
Q: How do I know whether a pedagogue is serving probation and when their probationary period is completed?	47
Q: What if a probationary pedagogue works past his or her completion date?.....	47
Q: How can I extend a pedagogue’s probationary period?.....	47
Q: When can a probationary pedagogue be terminated?	48
Q: What are sufficient grounds to terminate a probationary pedagogue?	48
Q: Can a probationary pedagogue be terminated even if s/he received only one observation?.....	48
Q: Must a probationary pedagogue to whom I gave an unsatisfactory rating be terminated?	48
Q: Does an unsatisfactory rating automatically terminate a probationary pedagogue?	48
Q: What procedure must be followed for termination of a probationary pedagogue?	48
3. Terminating Non-Pedagogues including, Parent Coordinators, Paraprofessionals and School Aides.....	49
Q: What are disciplinary options, short of dismissal?	49
Q: When and how can I terminate non-pedagogical employees (e.g. School Aides, Paraprofessional and Parent Coordinators)?.....	49
Q: If I terminate a non-pedagogue, such as a paraprofessional or a school aide, what should the termination letter state and do I need to meet with the employee to deliver the termination letter?	50
Q: Does an employee’s disciplinary history carry over into the next year?	50
Q: On what grounds can I suspend employees such as paraprofessionals, parent coordinators, school aides and non-tenured pedagogues without pay?	50
Q: Can I suspend an employee without pay during the pendency of an OSI investigation?.....	50
Q: What is the procedure for suspending a non-tenured pedagogue or non-pedagogue?	51
4. Suspension – Arrested Employee.	51
Q: What do I do if an employee reports that s/he has been arrested?.....	51
Q: If an employee has been arrested, should s/he continue to work?	51
5. Suspension – Tenured Employee Charged With Sexual Misconduct with a Minor.	51
Q: Can a tenured pedagogue charged with sexual misconduct be suspended without pay?	51
Q: Will a person suspended without pay for sexual misconduct be terminated?	51
6. Suspension – Tenured Employee Convicted of Felony.....	51
Q: Can a tenured pedagogue be suspended without pay if convicted of a felony?	51

XI. RATING EMPLOYEES.....	53
1. Rating for Pedagogical and Non-Pedagogical Employees – General.....	53
Q: Who am I responsible for evaluating?	53
Q: Do all employees receive a formal rating sheet?	53
Q: How do I rate non-pedagogical employees?.....	53
Q: How do I rate custodians?.....	53
2. Rating Teachers Unsatisfactory.	53
Q: What are the requirements for rating a teacher unsatisfactory?.....	53
Q: Is a teacher required to receive a satisfactory rating in all categories in order to receive an overall satisfactory rating?.....	53
Q: Can I change a rating from satisfactory to unsatisfactory if the teacher engages in misconduct after I rate him/her?	53
Q: Am I required to have a certain amount of documentation to sustain an unsatisfactory rating?	54
Q: Can a teacher appeal an unsatisfactory rating?.....	54
Q: What are the consequences of a teacher receiving an unsatisfactory rating?	54
Q: Is a teacher automatically discontinued or denied completion of probation as a consequence of receiving an unsatisfactory rating?	54
XII. GRIEVANCES	56
Q: What aspects of the grievance process have changed under the 2005 UFT contract?	56
Q: What do I do if I receive a grievance regarding a letter to file, observation report or other material in the file?	56
Q: How soon must an employee lodge a grievance after a particular act?	56
Q: May a Step 1 grievance be submitted orally?	56
Q: What should I do when an employee submits a grievance?	56
Q: What should I say or do at the grievance hearing?	56
Q: Who must attend the grievance hearing?	56
Q: What if an employee wants to bring his/her union representative but the representative is never available?	56
Q: How soon after hearing the grievance must I write my decision?.....	57
Q: What should I write in my grievance decision?.....	57
Q: Should I keep a record of when I gave the employee my grievance decision?	57
Q: Can an employee appeal your Step 1 decision?.....	57
Q: Must I appear at a grievance hearing at the Chancellor level in-person?.....	57
Q: Can a central or district union representative come into the school to meet with a teacher and gather information regarding a grievance?	57
Q: What is a “safety” grievance?.....	58
Q: What is a “workload” grievance?	58

Q: What is a “request for conciliation”?	58
APPENDIX A	59
Privacy Acknowledgement for Student Witness Statements	59
APPENDIX B	60
SAMPLE LETTERS	60
Summons to Disciplinary Conference.....	60
Summons To Disciplinary Conference Based On An SCI or OSI Investigation	61
Sample Disciplinary Letter for Professional Misconduct	62
Sample Corporal Punishment Letter No. 1	63
Sample Corporal Punishment Letter No. 2	65
Sample Corporal Punishment Letter with OSI Report	67
Sample Absences and Lateness Letter No. 1	69
Sample Absences and Lateness Letter No. 2	70
Sample Warning Letter For Potential Job Abandonment (for UFT Employees)	71
Sample Termination Letter For Potential Job Abandonment	72
Sample Termination Letter for Paraprofessional, School Aide or Parent Coordinator Based on SCI Report	73
Sample Counseling Memorandum	74
APPENDIX C	75
Technical Assistance Conference Form	75
APPENDIX D	76
Sample Grievance Decision.....	76

USING THIS MANUAL

This collection of guidelines and questions is intended to assist principals and other supervisors in their role as the instructional leaders. As the facts of a particular case will vary, supervisors are encouraged to email their Senior Regional Counsel, Integrated Service Center (“ISC”) or Labor Relations as the need arises. As with all matters, Principals should keep their LIS apprised of significant labor relations or disciplinary matters.¹

Should you have any questions regarding any legal issue, your primary contact is your Senior Regional Counsel or Integrated Service Center listed below. Should you have any questions regarding this manual, you may contact David Brodsky with the Office of Labor Relations at dbrodsky@schools.nyc.gov. In addition, you may send general legal questions to: Asklegal@nycboe.net.

Senior Regional Counsel

Regions 1 & 2	Michelle Johnson, Esq. Senior Regional Counsel – Regions 1 & 2 1 Fordham Plaza Bronx, New York 10458 (718) 741-8897 (phone) (718) 741- 5851 (fax) mjohnson12@schools.nyc.gov
Region 3 & District 75	Thomas Fox, Esq. Senior Regional Counsel – Region 3 & Citywide Special Education 30-48 Linden Place Flushing, New York 11354 (718) 281-3425 (phone) (718) 281-3488/7608 (fax) TFox@schools.nyc.gov
Regions 4 & 5	Matthew Fleming, Esq. Senior Regional Counsel – Region 4 & 5 2811 Queens Boulevard Long Island City, New York 11101 (718) 391-8219 (phone) (718) 391-8223 (fax) Mfleming4@schools.nyc.gov
Region 6 & 7	Robin Merrill, Esq. Senior Regional Counsel – Regions 6 & 7 715 Ocean Terrace Staten Island, New York 10301 (718) 390-1433 (phone) RMerril@schools.nyc.gov
Region 8 & Alternative High Schools	Judith Kay, Esq. Senior Regional Counsel – Region 8 & Alternative Programs 131 Livingston Street Brooklyn, New York 11201 (718) 935-3620 (phone) (718) 935-2383 (fax) JKay@schools.nyc.gov
Region 9 & 10	John Petrak, Esq. Senior Regional Counsel – Region 9 & 10 333 Seventh Avenue New York, New York 10001 (212) 356-3876 (phone) jpetrak@schools.nyc.gov

¹ Note: After the reorganization of the Department, community superintendents and high school superintendents will replace Local Instructional Superintendents (“LIS”). The Office of Labor Relations will issue further guidance.

ISC Counsel

Lisa Becker, Esq.
Senior Counsel
131 Livingston Street
Brooklyn, New York 11201
(718) 935-5930 (phone)
lmbecke@schools.nyc.gov

Debra Maldonado, Esq.
Senior Counsel
131 Livingston Street
Brooklyn, New York 11201
(718) 935-5927 (phone)
dmaldon3@schools.nyc.gov

I. HIRING AND ASSIGNMENT

1. Hiring.

Q: How is pedagogical staff hired in schools?

A: Under the current UFT agreement, principals have final say over all hiring decisions for UFT staff in the school after consulting with the school's Human Resources Committee. All staff (including transfers and excesses) apply through an Open Market System (discussed more fully below).

Q: What is the status of the seniority and other transfer plans?

A: The following transfer plans are eliminated: seniority, integration, clinical and School Based Option (SBO).

Q: What is the Open Market System?

A: Teachers are hired through the Open Market System. Under the Open Market System, principals, with the input of a Human Resources Committee, will consider internal candidates (like any other candidate) and will hire applicants to fill the school's vacant positions. Significantly, the final hiring decision now lies with the principal. Staff will no longer be able to claim vacancies or "bump" junior teachers from their positions.

The Open Market period is from April 15th through August 8th. Specific guidelines will be issued each spring by the Division of Human Resources. In general, the process is as follows:

February/March: Projected vacancies will be created in Galaxy and posted; the Open Market system is available online for transfer applications; and the Human Resources Committee shall be formed.

March/April: Human Resources Committee and principals begin interviews and select candidates. Budgets are released to schools/Galaxy for creation of vacancies and selections for both internal and external candidates.

May/June: Budgets finalized.

August: Open Market transfer selections are completed and finalized.

Q: What is the Human Resources Committee?

A: The Human Resources Committee is a school-based committee that shall be made up of UFT members and supervisors; the particular mix or number of committee members should be determined at the school level. The Committee will review applicants but is not required to invite every applicant to an interview.

Q: What if I cannot agree with my Chapter leader about who should be on the committee?

A: You should attempt to work it out at the school level, but you as the principal have the final say.

Q: Am I responsible for interviewing all applicants?

A: No, you do not need to interview all applicants. Per the advice of the Human Resources Committee, you should interview a subset of applicants.

In addition, you (or your assistant principal) should also (1) review the applicant's personnel file if possible; (2) contact that person's prior supervisor; and (3) review that person's service history.

Q: What role, if any, does seniority have in the hiring process?

A: None. Principals should select the best qualified applicant.

Q: Must I consider internal incumbent employees before hiring someone from outside the DOE?

A: There is no rule either way. However, you are encouraged to review all applications in order to take maximize the chances of getting the most qualified candidate. There are many qualified teachers in excess who should be considered and would be a good fit for your school.

2. New or Redesigned Schools.

Q: What is the hiring process for new or redesigned schools?

A: Rules for hiring in the first year of a new or redesigned school are as follows: staff is selected by a personnel committee consisting of: 2 UFT appointments; 2 superintendent appointments; and the principal or project director of the new school. (Note: The principal and 2 superintendent appointments outnumber the UFT appointments.) In addition, "where appropriate," a school planning committee representative and parent representative may also sit on the committee. (Source: Teachers' Contract, Article 18G).

- Year One: All staff shall be selected by the personnel committee. If another school is impacted (i.e., closed or phased out) staff from that school may apply and at least 50% of the pedagogical positions shall be selected from among the "appropriately licensed most senior applicants from the impacted school staff," ***who meet the new school's qualifications***. Note: it is important that the personnel committee develop and apply detailed qualifications, e.g. demonstrated success in using data to promote learning among high-need students. Any remaining vacancies are filled by the personnel committee by transferees, excesses, and/or new hires.
- Years Two and Three: The Open Market System that applies to all other New York City Public Schools applies. See discussion above of Open Market System.

NOTE: The term "Redesigned" is not defined in the Teachers' Contract. If you have any questions regarding whether your school is "redesigned" contact your Senior Regional Counsel, ISC Counsel or the Office of Labor Relations.

Q: Who decides whether the person is qualified?

A: In year one, the personnel committee has wide discretion to determine if an individual applicant meets the unique qualifications for the school. In year two and beyond, the principal has final say.

Q: The rule in the first year refers to selecting 50% of my new staff from the impacted school. Does that mean I have to select 50% regardless of qualifications?

A: No; *only* if qualified.

3. Lead Teacher.

Q: What is the Lead Teacher position?

A: Lead Teachers are teachers who spend half the day teaching and the other half providing professional support to the teaching staff. Each teacher receives a \$10,000.00 differential over their current salaries.

Q: Who determines the number and location of Lead Teacher positions?

A: The Chancellor.

Q: What is the selection process for the Lead Teacher position?

A: Positions are advertised through a city-wide posting and assigned to individual schools. Selections are done in a two-stage process: first, a regional personnel committee, made up of four representatives of the Regional Superintendent, two representatives of the Union and two parent representatives (chosen from among volunteers of the relevant Community Education Councils and/or presidents of the Parent Associations) shall select a pool of applicants with the best qualifications according to criteria established by the committee, (other than in District 9 where the current selection committee is maintained). Selections, to the extent possible, are made by consensus. Second, each participating school establishes its own personnel committee, made up of the principal, administration representatives, staff representatives and parent representatives, with a majority of teachers, to make selections from the pool selected by the regional personnel committee. Selections, to the extent possible, are made by consensus and the principal has the ability to veto any selections of such school committee.

II. HOURS OF WORK

1. Official Hours.

Q: What is the workday for teachers?

A: Effective February 6, 2006, teacher schedules are as follows:

- **Teachers in Single Session Schools:** The workday shall be as follows:

> Monday through Thursday: Six (6) hour and twenty (20) minute schedule for all students plus thirty-seven and a half (37.5) minutes that shall be used for small group instruction, tutorials or test preparation (this is referred to in this document as “Small Group Instruction (SGI)”). The SGI period shall have a teacher-student ratio of one to ten. Self-contained special education classes shall have a ratio of one to five.

> Friday: Six (6) hour and twenty (20) minute school day for all students.

NOTE: A school may modify the Small Group Instruction period – *i.e.* conduct Small Group Instruction before school, increase the teacher-student ratio, or reconfigure the aggregate time (*i.e.* 150 minutes) – through an SBO.

NOTE: The day shall start no earlier than 8:00 a.m. and end no later than 3:45 p.m. See below for impact on faculty conferences.

- **Teachers in Multi-Session Schools:** Principals in multi-session high schools may follow the above-referenced configuration of 37.5 minute blocks for SGI Monday –Thursday. However, if this configuration is not feasible due to space or scheduling limitations, as determined by the principal, the additional time may be added to existing periods and the workday shall be six (6) hours and fifty (50) minutes every school day.
- **Teachers in Former Extended Time Schools:** All UFT represented employees who worked in ETS schools for the 2005-06 school year and work in former ETS schools during the 2006—07 school year shall continue to receive ETS salaries, as set forth in the respective collective bargaining agreements, during the 2006-07 school year only. Those employees who continue to receive ETS salaries during the 2006-07 school year shall report to work on August 28, 2006 for a week of professional development. They will work the equivalent of the additional daily work time specified in the former ETS agreement during the 2006-07 school year in the form of 30 additional hours of professional development in configurations approved by the parties. After the 2006-07 school year, employees will no longer receive ETS salaries and will no longer work the additional time.
- **Self-contained District 75 Sites:** For the 2006-2007 school year, District 75 sites and classes shall be 6 hours and 50 minutes (*i.e.* the additional time is added to existing periods).

NOTE: The principal and the UFT chapter leader in District 75 schools may agree (without an SBO) to use the standard general education configuration (*i.e.* Monday –Thursday: 6 hours and 57.5 minutes; Friday: 6 hours and 20 minutes) and, in this instance, the Small Group Instruction teacher-student ratio may be no greater than one to five. In the absence of an agreement, such sites and classes shall have a six (6) hour and fifty (50) minute school day.

- **Regional Self-contained Special Education Classes (i.e. non District 75):** There are 3 scheduling options:

1. Monday – Friday: six (6) hour and fifty (50) minute school day;
2. Monday – Thursday: six (6) hour and fifty-seven and a half (57.5) minute school day (with the extra time added to each period); and Friday: six (6) hour and twenty (20) minute school day; or
3. Monday through Thursday: six (6) hours and twenty minute (20) day, plus 37.5 minutes for Small Group Instruction with a teacher-student ratio of no more than one to five; and Friday: six (6) hour and twenty (20) minute school day.

Q: Can I hold faculty conferences that go beyond 3:45pm?

A: Pursuant to a recent arbitration decision, faculty conferences cannot extend beyond 3:45 in single session schools. The rule now for faculty conferences is that they may be held before or after the instructional day provided they don't start before 8:00 a.m. or extend beyond 3:45 p.m.

Q: What is the work-day for other UFT represented titles?

A: Beginning February 6, 2006, their schedules are follows:

- **Secretaries**: School secretaries serving in a school workday is seven (7) hours and twenty (20) minutes, inclusive of a lunch period that shall be equal in length to the lunch period for teachers in that school. School secretaries shall have *one* ten (10) minute break each day.
- **Paraprofessionals and Substitute Teachers**: Paraprofessionals and substitute teachers' workdays shall be the same as the teachers' workday. (see above.)
- **Nurses and Therapists**: Nurses and Therapists' workday is six (6) hours and fifty-five (55) minutes, including a 30 minute lunch break.
- **School Psychologists and Social Workers**: School Psychologists and Social Workers's workday is six (6) hours and fifty (50) minutes, exclusive of a lunch period of no less than 30 minutes (and no greater than the length of a teacher's lunch period).
- **Guidance Counselors**: Guidance Counselors' workday is six (6) hours and thirty (30) minutes, exclusive of a lunch period.
- **Lab Specialists**: Lab Specialists' workday is six (6) hours and thirty (30) minutes, exclusive of a lunch period of no less than 30 minutes (and no greater than the length of a teacher's lunch period) and including a twenty (20) minute relief period.
- **Attendance Teachers**: Attendance Teachers' workday is either 8:20 a.m. to 3:40 p.m. or 8:30 a.m. to 3:50 p.m.
- **Teachers of the Homebound**: Teachers of the Homebound workday will be seven (7) hours, inclusive of a forty-five (45) minute lunch break.
- **Adult Education Teachers**: Adult Education Teachers will work an additional ten (10) minutes per day of preparation time.

Q: Can I set the schedules for secretaries working in my school?

A: Yes.

Q: Can I set the schedules for social workers and school psychologists working in my school?

A: Yes. You are responsible for setting the schedules for social workers and school psychologists working in your school provided that the workday does not exceed the contractual limits (see above).

Q: Can I set the schedules for guidance counselors working in my school?

A: Yes. You can establish the workday for guidance counselors.

2. Small Group Instruction.

Q: When does the Small Group Instruction commence?

A: If your school has a configuration such that the Small Group Instruction component is at the end of the day, then the period shall be following the regular 6 hour and 20 minute day.

Q: Can a school modify the use of the time dedicated for Small Group Instruction?

A: Yes, through the contractual SBO process. The Chancellor will issue guidelines each spring.

Q: Which students should attend Small Group Instruction?

A: Ideally, your school's struggling learners should attend Small Group Instruction. In schools with small numbers of struggling students, you may offer enrichment or differentiated instruction to high-achieving students.

Q: Can I rotate the children that attend the Small Group Instruction?

A: Yes. For example, your school may create two cohorts of students and each cohort shall attend Small Group Instruction two (2) days per week (provided that busing options are available).

Q: Are all students required to attend Small Group Instruction?

A: Schools may designate certain students as mandatory because they are at-risk.

Q: Am I bound by the one-to-ten teacher-student ratio?

A: Yes unless you have an SBO modifying the ratio. If you do not have an SBO and exceed the specified teacher-student ratios, the UFT may commence an expedited arbitration and seek a cease and desist order as well as monetary penalties.

Q: Can I group 2 teachers together for the Small Group Instruction?

A: Yes. For example, two (2) teachers can be responsible for providing instruction to a group of up to twenty (20) students.

Q: Can I exceed the 10:1 (or 5:1) ratio if I assign paraprofessionals to work with teachers during the Small Group Instruction period?

A: No. You may not exceed the ratio without an SBO, even if you assign paraprofessionals to assist teachers. Paraprofessionals may “push-in” during the Small Group Instruction period as support for the teacher, but cannot replace a teacher and provide unsupervised instruction to students.

Q: Can teachers (e.g. physical education) be assigned as ‘floaters’ during the Small Group Instruction period?

A: Yes; In order to plan ahead you may have “floaters” that cover absent teachers or provide additional instruction. Keep in mind all teachers should be actively engaged with students during this time. Therefore, if there are no coverage issues “floaters” should be pushed into a classroom and participate in the delivery of instruction.

Q: What if a teacher is absent?

A: In addition to using “floaters” to cover absent teachers, you can/should also use substitute teachers who are assigned to your school for the day. You may ask teachers to prepare and maintain on file a substitute lesson plan or some guidance for substitutes for Small Group Instruction in the event of their absence.

Q: Do teachers have to teach “in-license” during Small Group Instruction?

A: No. There is no contractual requirement that teachers must teach in license during Small Group Instruction. You should use your professional judgment in Small Group Instruction assignments.

Q: Can I require lesson plans for the 37.5 minute instruction time?

A: Yes. You have the same tools available to you to maintain quality assurance of instructional time that you would at other times of the instructional day. You may require lesson plans or some less formal evidence of planning, formally/informally observe teachers during this time, and should a teacher fail to adequately perform during this small group time, that teacher may be disciplined and U rated in the same manner you would during the rest of the instructional day.

Q: May I observe teachers’ performance during the Small Group Instruction period?

A: Yes. This is critical instructional time for many of our struggling students. Therefore, you may observe teachers during the Small Group Instruction period and should a teacher fail to adequately perform during this time that teacher may be disciplined and U rated in the same manner you would during the rest of the instructional day.

Q: Can occupational and physical therapists provide services during the Small Group Instruction period?

A: These titles are not licensed pedagogues so they cannot provide direct service to students without a prescription. During the Small Group Instruction period (or extended portion of the workday), OTs and PTs can provide services to children with priority given to unserved children. OTs and PTs can support teachers with the implementation of certain activities i.e. handwriting without tears, sports activities, etc. OTs and PTs can also train teachers to implement handwriting programs and other activities typically provided by the classroom teacher to children with IEPs.

Q: Do school psychologists provide instruction during the Small Group Instruction period?

A: No. Psychologists are not licensed pedagogues. Their day has been extended by 10 minutes and they should continue to perform tasks appropriate to their title during the additional 10 minutes.

Q: Can guidance counselors, SETSS teachers, and related service providers provide mandated (IEP-driven) service during the 37.5 minutes?

A: Yes.

Q: Can Speech Teachers provide mandated services to students with IEPs during the 37.5 minutes?

A: No. An arbitrator recently ruled that Speech Teachers cannot provide mandated services to students during this the additional time. However, Speech Teachers should be actively engaged with students during the 37.5 minutes providing intervention for students with speech issues (provided it's not a formal session towards compliance with the IEP), working with groups of children struggling with reading and other activities you deem appropriate. Speech Teachers are required to work during the 37.5 minutes like all other teachers.

3. Professional Development / Faculty Conferences.

Q: When does the staff receive professional development?

A: Teachers are required to report to work on the Thursday and Friday preceding Labor Day. Professional development shall be provided on the following days: Thursday preceding Labor Day, Friday preceding Labor Day, Election Day, and Brooklyn-Queens day.

NOTE: The workday for teachers and paraprofessionals on professional development days shall be six (6) hours and fifty (50) minutes. All other UFT represented employees work their normal hours.

Q: Can I continue to conduct monthly faculty and grade conferences?

A: Yes. Pursuant to a recent arbitration decision, faculty conferences cannot extend beyond 3:45 p.m. Therefore, faculty conferences shall be held on Mondays either before or after the instructional day provided the conferences do not start before 8:00 a.m. or end after 3:45 p.m.

NOTE: Your school may vary the day of the week and time for faculty conferences with an SBO.

Q: Can I conduct grade/department conferences in addition to faculty conferences?

A: Yes.

Q: Can I conduct grade conferences after school?

A: Yes; grade/department conferences may be after school. While the recent arbitration did not address grade/department conferences, you should try to schedule them between 8:00 a.m. and 3:45 p.m. in single session schools.

III. ABSENCES, LATENESS, RELIGIOUS ACCOMMODATIONS, AND LEAVES

1. Absences / Lateness.

Q: Are teachers required to be in the classroom at the start of the school day?

A: Yes. Classroom-based teachers are required to be *in their class* ready to teach at the start of the school day – *i.e.*, when the students arrive. The time that it takes the teacher to get to his/her class is not part of their contractual workday.

Likewise, all other employees must be at their work assignments at the beginning of their workday.

Q: How many personal and sick days do teachers get each year?

A: Ten (10) self-treated sick days, 3 of which can be used for personal business and 2 of the 3 days may be used to care for a sick family member. The remaining 7 days are for self-treated sick days.

Q: When can I deny a request for a personal business day (not a self-treated sick day)?

A: If you (a) did not receive advance notice and notice could have been provided; or (b) the personal activity is something that can be conducted either after school or on the weekend.

Q: Can I require that a teacher provide a doctor's note for any or all of the *self*-treated sick days?

A: Normally no, that is why these days are called “self-treated” days. However you may require a note if (1) there is a pattern of improper use of sick day days/absences (*e.g.*, before/after a holiday or weekend), in which case you should put the employee on notice that you will require a note for absences on days before or after holidays or weekends as a result of the pattern; or (2) the employee is absent for more than 3 consecutive days.

Q: What is a “non-attendance” day?

A: A non-attendance day is when an employee is permitted to take time off for certain reasons – such as attendance at a conference or convention; court subpoena; death in the family; funeral; graduation; jury or grand jury duty; legislative hearing; line of duty injury; military duty; quarantine; requirement of school system; school visits and meetings in New York City; student suspension hearing/meeting; summer training; and transit delay. A non-attendance day is not deducted from the employee's CAR balance. A request for a non-attendance day must be approved by the principal and, in some cases, the LIS. Consult your Senior Regional Counsel or ISC Counsel if you have any questions.

Q: Can I deduct time or salary for absences and/or excessive lateness?

A: Yes.

Classroom-based Teachers: They are considered both “late” and “fractionally absent” if they do not report to class on time.

If the fractional absence is *approved* by you for personal business or for illness, then the teachers' CAR balance is reduced. If the aggregate of fractional absences is more than 3 hours and 20 minutes during a school year, then one day is deducted from the CAR balance and for each 6 hours an additional day is deducted. If the balance in CAR is not sufficient to cover the fractional absences, then there is a salary deduction.

If the fractional absence is **approved** as non-attendance, there is no salary deduction or CAR deduction.

If the fractional absence is **not approved** for personal business (e.g., the employee's business could have been conducted after work hours), or illness or non-attendance (e.g., an employee attended a graduation of a non-relative), then the following rules apply: (1) if the aggregate of fractional absences during a school year is 30 minutes or less, then there is no salary deduction but such absences are recorded as lateness; and (2) if the aggregate of fractional absences is greater than 30 minutes, then the employee's salary shall have the appropriate salary deductions. (Source: Chancellor's Regulation C-601).

Non-Teaching Staff (e.g. secretaries): They are considered to be late if they are up to 5 minutes late after the start of the work day or 3 minutes late after the time set for their return from lunch and fractionally absent if later than the 5/3 minute window. Their salary or CAR balance may be docked/reduced as described above. (Source: Chancellor's Regulation C-601).

Non-Pedagogues (e.g. school aides): These employees are required to be at their work locations at the start of their scheduled workday. If late, contact your Senior Regional Counsel, ISC Counsel or the Office of Labor Relations to discuss appropriate disciplinary measures.

Q: What do I do if a service provider – e.g., occupational therapist – is consistently late?

A: You should begin progressive discipline and contact your Senior Regional Counsel or ISC Counsel for advice regarding CAR deductions. If you are not the rating officer, you should contact their immediate supervisor (e.g. the principal of the school of majority) to ensure that proper disciplinary steps are taken.

Q: When can I ask an employee to clock in?

A: The rules regarding clocking in depend on the employee's position and applicable collective bargaining agreements. In general, they are as follows:

- School Aides, Paraprofessionals and Parent Coordinators: These employees should clock in and out every day.
- Teachers (Tenured and Probationary), Secretaries, and Guidance Counselors: As a general rule, these employees should not clock in/out. However, in the event the employee has a demonstrated lateness problem, in addition to progressive discipline and salary deductions, you may require that the employee clock in/out.
- Transient Pedagogues (e.g., School Psychologists, Adaptive Physical Education Teachers): As a general rule, these employees should not clock in/out. However, in the event the employee has a demonstrated lateness problem, in addition to progressive discipline and salary deductions, you may require that the employee clock in/out.

Q: Can an employee be rated unsatisfactory for excessive absenteeism even though many – or all – absences are excused (e.g., for medical reasons)?

A: Yes. Excused absences “which are so numerous as to limit the effectiveness of service” may lead to discipline and/or an unsatisfactory rating. However some absences may be legally protected; therefore, contact your Senior Regional Counsel, ISC Counsel or the Office of Labor Relations prior to discipline, termination or unsatisfactory rating. (Chancellor's Regulation C-601).

While it's always ideal to treat employees consistently, you're not always required to do so in the area of time and attendance. For example long term employee A with no history of time and attendance problems is stricken with a serious illness and misses a month of school to treat the illness. If there are no other problems with the employee's performance you may choose to S rate the employee for the year. Simultaneously, employee B has been absent a similar number of days, but has a history of poor time and attendance. In this example, you may absolutely U rate employee B even if you chose to S rate employee A. There are distinguishing factors which would justify a different end of year rating.

Q: If I suspect that an employee's self-treated absence is fabricated, may I reprimand this employee?

A: Yes. You should contact your Senior Regional Counsel or ISC Counsel **and** the Special Commissioner of Investigation for the New York City School District ("SCI"); <http://www.nycsci.org/> or 212-510-1400. If, after an investigation by you and/or SCI, you determine an employee was not in fact sick, you should follow the disciplinary steps listed below (i.e. investigation, disciplinary conference, and, if appropriate, disciplinary letter to the file). In addition, the absence is unauthorized and you may dock this employee's salary.

Q: What do I do if an employee (teacher, paraprofessional, or other staff member) fails to show up for work?

A. After absences on 10 consecutive school days, you should notify that employee, in writing and by regular and certified mail return receipt requested, that s/he must contact the school immediately. If, after another 10 consecutive school days, the employee has not responded or submitted a request for a leave of absence (so that s/he is absent 20 consecutive school days), send the employee a second letter stating that s/he shall be deemed to have resigned. (Source: Teachers' Contract, Article 5(f)) (See Sample Letters Attached as Appendix B).

Q: What if I forgot to send the first letter (i.e., the letter after a 10 consecutive school-day absence) and the employee has been absent for 20 consecutive school days?

A: That is okay. Confirm that the employee has not been in contact with medical or requested a leave of absence and, if not, simply send a final letter informing the employee that s/he has been deemed to have resigned.

~ Best Practice ~

Make sure that your letters to an employee regarding an extended unexcused absence are sent via regular **and** certified mail, return receipt requested. Keep evidence that the letters were delivered to the employee.

2. Religious Accommodations.

Q: What if an employee asks for a day off or early release to observe a religious holiday or Sabbath?

A: Pursuant to Chancellor's Regulation C-606, you should make an effort to accommodate the request under the following guidelines:

First, consider whether or not the requested day is a religious holiday. For example, a request for the day off before Christmas to travel/shop is not a legitimate request for a religious holiday.

Second, if the request is for a religious holiday, then consider whether or not a modified schedule (e.g., an early departure) can accommodate the request.

Third, if a modified schedule is not feasible, then consider the request for a full day off. You may deny the request for a full day off for religious observance: (1) in cases of emergency; (2) if the individual's presence is indispensable to the orderly transaction of business; (3) for positions dealing with health or safety where the person holding such position must be available for duty whenever needed; or (4) if the individual's personal presence is regularly essential on any particular day or days or portion thereof for the normal performance of that person's duties. You should consider the ability to (a) provide required services in the absences of that person; (b) maintain proper supervision; and (c) avoid disruption to the workplace.

NOTE: Do not deny a request for a religious observance day because you dispute whether or not attendance at religious services is mandatory. If you receive a request for a day that you believe is not a legitimate religious observance day, consult your Senior Regional Counsel or ISC Counsel before denying the request.

Q: Should I ask the employee to provide evidence that the day s/he is seeking to take off is in fact a religious holiday?

A: You may ask the employee whether s/he needs the entire day off or only part. For example, you may ask if s/he needs to attend services for the entire day at a house of worship or whether attendance at an afternoon service suffices.

Q: Must I give the teacher the entire day off for religious observance or Sabbath observance?

A: No, depending on the requirements of the religion and the balancing of the factors set forth above. Teachers are required to explore other efforts to accommodate their requests, which include consideration of alternative work schedules, e.g., leaving early. Consult with your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations before denying a request for a religious observance day.

Q: Must the employee attempt to reach an alternate arrangement?

A: Yes. Chancellor's Regulation C-606 also places a duty on the employee to consider alternative arrangements.

Q: If I grant the day off, may a day be deducted from the employee's CAR?

A: The employee can choose one of the following two options: (1) an employee may take time off for religious observation and use 1 of his/her 3 **personal** days (see question above regarding personal and sick days), in which case the time will be charged against his/her accrued annual leave or overtime balance/compensatory time; or (2) an employee may use a non-attendance day for religious observance, in which case the employee is paid his/her salary less the cost of a per diem substitute.

Note: In the event an employee has used all of his/her personal days and seeks a religious observance day, if the request is granted this employee may charge the day against future accrued leaves or treat as non-attendance day.

Q: If I decline to grant a teacher's request for a religious observance day, can that teacher use one of his/her personal business days?

A: No. If you allow a teacher to use a personal business day, that is, in essence, the same as granting the request for a religious observance day. If you deny a request for a religious observance and the teacher is absent, treat the absence as unauthorized and consult your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations.

Q: If I granted particular religious observance days in the past, must I do so in the future?

A: No. Each year's request should be considered anew and the decision should be made after consideration of the factors described above. Consult with your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations before denying a request for a religious observance day.

3. Leaves.

Q: What types of leaves of absence are available to employees?

A: There are a variety of leaves that may be available to employees. Should an employee request a leave of absence, contact the Medical, Leaves & Benefits division of the Division of Human Resources.

See: <http://www.nycenet.edu/Offices/DHR/MLB/>.

Q: What do I do if I suspect that an employee is on a fraudulently obtained leave of absence?

A: If you believe an employee is on an illegitimate leave of absence –e.g. working at another job, in good health while on a medical leave or ILOD leave – you should contact your Senior Regional Counsel or ISC Counsel **and** the Special Commissioner of Investigation for the New York City School District (“SCI”); <http://www.nycsci.org/> or 212-510-1400.

Q: How do I handle a request for an extended leave of absence based on either the birth/adoption of a child, the employee's own serious health condition, or because the employee needs to care for a child, spouse or parent with a serious health condition?

A: Contact your HR Partner in the field for guidance. (See: <http://www.nycenet.edu/Offices/DHR/MLB/>) For medical leave of absence applications, principals have the authority to approve or disapprove applications. When you receive an application from an employee requesting a leave of absence for medical reasons, you should contact your ISC or Senior Regional Counsel to determine what action should be taken. You should be particularly diligent when receiving an application from an employee who has already had a medical leave of absence approved recently.

Pursuant to the Family Medical Leave Act (“FMLA”), the Department will grant eligible employees up to twelve (12) weeks of unpaid leave during a twelve (12) month period to spend time with a newborn, newly-adopted, or newly-placed child; to care for a child, spouse or parent with a serious medical condition; or due to the employee's own serious health condition. The 12 month period begins on the first day of the employee's first Family or Medical leave. To be eligible for FMLA leave, an employee must meet certain eligibility requirements, including having worked for the Department for at least one year, and having completed at least 1,250 hours of work in the 12 month period immediately preceding the leave. This leave may be with or without pay depending on the type of leave and the number of days in the employee's CAR.

Note: The FMLA is a complicated statute and mandates that employers provide certain notifications according to a specific timetable. Moreover, there are special rules that apply to schools for instructional staff. Therefore, it is important that all inquiries made by employees regarding FMLA leave be immediately directed to the Division of Human Resources and/or the Office of Legal Services.

Note: The FMLA requires employers to display, in a conspicuous area, a poster notifying employees of their FMLA rights. Confirm that your school has such a poster. If not, contact the Division of Human Resources.

~ *Best Practices* ~

Immediately upon receipt of a request for FMLA leave, or a request for time off to care for a newborn, newly adopted or newly placed child or to care for a child, spouse or parent (employees may not use the phrase “FMLA”), send an email to both (a) your school’s personnel liaison; and (b) Edna Handy, Medical, Leaves & Benefits, Division of Human Resources.

Confirm that your school has an FMLA poster in a central location (e.g. staff lunchroom).

Q: What do I do if a teacher requests permission to teach at a charter school?

A: In general, a teacher may request a leave of absence for up to 2 years to teach in a New York charter school and approval of this request may not be unreasonably denied. This request should be forwarded to the payroll secretary for processing.

Q: What are the rules regarding a request for time off to attend a funeral?

A: All employees are allowed up to four work days off – which shall be treated as “non-attendance” days – for a death in the immediate family – defined as parent, grandparent, sibling, spouse, domestic partner, child, grandchild, or parent of a spouse or any relative residing in the employee’s household. Any additional days will be deducted from the employee’s CAR balance.

In the event of a death of someone not in the employee’s immediate family, consult your Senior Regional Counsel or ISC Counsel to determine what rules apply and to whom.

Q: If I approve a request for a day off to attend a funeral, can I request that the employee use a CAR day?

A: No. If you grant a request for time off to attend a funeral – and the employee has not exceeded 4 days in the event of a death of a family member or 1 day for a non-family member – then the day should be considered a non-attendance day. A request for time off beyond the 4/1 limits may result in CAR deductions.

Q: If an employee takes an unpaid leave of absence for restoration of health or adjustment of personal affairs what are his/her rights upon return?

A: Employees who are on an approved leave of absence for restoration of health or adjustment of personal affairs for one year have a right to return to their last school of employment. If the absence is over one year, then s/he has a right to return to the district the employee worked in prior to the leave.

Q: Is a teacher entitled to annual leave?

A: No. Teachers are not entitled to annual leave. While a teacher may use 3 of his/her 10 accumulated days for personal business – such as a house closing or other activity that can only be handled during business hours – such days are not equivalent to “vacation” or annual leave.

IV. MEDICAL EXAMINATIONS

1. Examinations by Medical Bureau.

Q: If I am concerned that an employee is not fit to be in the school, can I direct that employee to attend a medical examination?

A: Yes. There are basically two avenues for sending an employee to the Medical Bureau (1) by the principal; or (2) by the Superintendent (in which case the employee could be removed from the payroll if s/he fails to attend the examination).

If you suspect that the employee may not attend the medical examination then use option 2 and contact your LIS and ask that s/he direct that the employee to appear for an examination at the Medical Bureau because if the employee fails to attend his/her examination, s/he may be removed from the payroll system.

Q: What information should I provide to the Medical Bureau?

A: Supply as much information as possible – e.g., a description of the erratic behavior that triggered the request for review by the Medical Bureau. Please keep in mind that the employee may receive a copy of any correspondence from you to the Medical Bureau.

Q: How long does it take for the Medical Bureau to schedule an appointment?

A: It varies depending on the Medical Bureau's schedule and volume of examinations. If you are concerned about scheduling in a particular case you should contact the Medical Bureau scheduling unit at 718-935-2733.

Q: What happens if the Medical Bureau finds the employee fit?

A: S/he is returned to work but can be reassessed by the Medical Bureau based on new information as many times as is warranted. Also, if the employee is fit for work, then the erratic behavior may be written up as a disciplinary matter. (See Discussion below regarding disciplinary letters, p. 26).

Q: What happens if the Medical Bureau finds the employee unfit?

A: The employee can be placed on a leave of absence. Whether or not an employee is entitled to a leave of absence with pay will depend on whether the employee was injured in the line of duty and whether or not s/he has days in his/her CAR bank.

Note: The Medical Bureau does not impose discipline or commence termination proceedings. Thus, if discipline is warranted you need to follow the appropriate steps.

Q: What if the employee does not show up for a medical examination?

A: The employee may be taken off payroll and have a letter placed in his/her file however, prior to removing someone from payroll, you should consult your Senior Regional Counsel or ISC Counsel and LIS.

Q: What if a teacher returns from a medically excused leave of absence – i.e., the medical bureau determines s/he is fit to return – and nevertheless continues to be absent and/or late from work?

A: You should treat this absence as an unauthorized leave of absence, or excessive absences, which can result in disciplinary action and a payroll deduction. See Discussion below regarding disciplinary letters.

2. Injury in the Line of Duty

Q: What is an injury in the line of duty?

A: An injury in the line of duty (“ILOD”) is an injury that occurs while the person was performing services for the Department and was not caused by the employee through his/her own negligence.

Q: What do I do if an employee claims that s/he suffered an injury in the line of duty?

A: First, the employee must be given a Comprehensive Injury Report (“CIR”) and s/he must complete and submit the CIR to the school secretary within 24 hours.

Second, you, or your designee (e.g., assistant principal), should investigate and determine if the employee’s recitation of events is accurate and if the injury occurred in the line of duty. An injury is not in the line of duty if it results from the employee’s own negligence or recklessness. If the employee is taking time off, you or your payroll secretary should give the employee the OP 198 Form See <http://www.nycenet.edu/Offices/DHR/MLB/Medical.htm>.

Third, you or the LIS must sign the CIR and indicate “approved” or “disapproved” – this indication reflects whether the events as reported are accurate (e.g., did the incident actually occur during work time) and is not an approval/disapproval of the medical aspects of the ILOD claim. If you disapprove a claim you are doing what is also known as raising “the administrative bar.” When claims are disapproved (a.k.a. administrative bar raised) typically there is no medical review however, that doesn’t necessarily preclude a review performed by the Medical Bureau. If you encounter a situation like this, or have any ILOD issue, consult your Senior Regional Counsel or ISC Counsel.

NOTE: The ILOD claim may also be disapproved if it was not submitted on a timely basis (i.e. .within 24 hours of the incident).

If the employee is seeking time off, s/he must give the OP 198 to the principal/designee, with any supporting documentation. The principal will then make a recommendation as to whether the claim should be approved or disapproved – based on the investigation referred to above.

NOTE: If you disapprove a claim, the employee may note which absences should be considered ILOD for payroll purposes pending any grievance or employee challenge to your denial. However, until a final determination, employees should use accumulated sick time pending any disposition to the grievance. If the employee is out of sick leave they can apply to borrow time or take a leave of absence without pay.

Q: How soon after an accident or incident must an employee report an injury in the line of duty?

A: Employees should report any work-related accident/incident to his/her supervisor before the close of business on the day of the accident/incident, but no later than 24 hours after the accident/incident has occurred unless reasonable grounds exist for failure to report within these time limits.

NOTE: See medical FAQs <http://www.nycenet.edu/NR/rdonlyres/708AD9BD-F9A0-45DE-BFF5-D05AAC10A317/0/FAQforMedical.pdf>.

Q: Where can I find ILOD forms?

A: Your payroll secretary should have the two (2) forms (i.e. the CIR and OP 198): Alternatively, you can find them on the DOE website at: <http://www.nycenet.edu/Offices/DHR/MLB/Medical.htm>.

V. PROGRAMMING

1. Preferences.

Q: What are the standards for granting a teacher's program preference?

A: Teachers request classroom assignments within schools through program preference sheets submitted to principals each spring. You should honor a teacher's program preference provided that it is "advisable and feasible." (Source: Teachers' Contract, Article 7).

Q: Am I required to honor the teachers' program preferences?

A: No. You do not need to honor a teacher's preference if you have a legitimate educational reason to reject it.

Q: Does seniority determine teachers' classroom assignments?

A: No. You determine class assignments based on qualifications. Experience should be a factor in determining qualifications, but seniority should **only** determine a class assignment if the qualifications among teachers are equal though, generally, no two candidates are equal.

Q: Is seniority relevant with respect to teachers who request shop/trade classes in middle and high school schools?

A: Program requests by teachers of industrial arts/technology education, home economics/home and career skills, and trade subjects to retain their subjects and rooms should be honored if "consistent with the needs of the school." In other words, you may deny such a request if the needs of the school/students support a change in assignment. Also, in the event of a vacancy in a shop (or similar) class, the most senior applicant shall be given the preference if consistent with the needs of the school/students. (See: Teachers Contract, Article 7(A)(3)).

Q: How are speech improvement teachers assigned?

A: Speech improvement teachers should apply to postings and submit a preference indicating priority in school sites. The assignment decision is based on qualifications and seniority is relevant only if qualifications are equal.

Q: How many times can I decline to honor a program preference on the basis that it is not advisable or feasible?

A: Arbitration decisions have been vague regarding how many times you can reject a teacher's preference, only stating that it cannot be done repeatedly.

NOTE: The UFT contract does not alter your authority to deny a teacher's preference for valid educational reasons but rather limits the ability of **elementary school teachers** to grieve their programs. (There is no restriction regarding when a middle school or high school teacher may file a grievance.) They can only grieve if: "(1) in any year an elementary school teacher fails to be granted one of his/her stated program preferences; or (2) for two years in succession the elementary school teacher has been denied his/her first priority of program preference." If the teacher meets either criterion, ***it means only that s/he can grieve the rejection. It does not mean the teacher is entitled to the program.*** If you have a valid educational reason you will likely prevail if the issue is arbitrated and, thus, you can, and should, reject the teacher's preference and deny the grievance at Step I. (Source: Teachers' Contract, Article 7C).

~ *Best Practice* ~

This is another reason why documenting – good and bad – performance of a teacher throughout the school year is critical. Having documentation regarding performance (both good and bad) will help you support a particular assignment.

Q: How soon after being denied a preferred assignment must a teacher lodge a grievance?

A: Within two (2) school days after rejection. (Source: Teachers' Contract, Article 22B5).

Q: If circumstances change in my school after the distribution of teachers' programs, can I modify programs?

A: Yes. All programs may be changed "if necessary because of changes in subject enrollments, staff changes, and programming exigencies." (Source: Teachers' Contract, Article 7).

Q: What if a teacher decides that s/he does not want the program that s/he chose?

A: You are not obligated to change the program. If you determine a change is in the best interests of the students you may attempt to accommodate the request. However, in such a case, that teacher's initial preference for that year will be considered to have been honored for the purpose of future grievances, i.e., to prevent an elementary teacher from grieving the following year.

Q: What do I do if a teacher only puts one grade preference on his/her preference sheet?

A: Give the teacher one opportunity to correct this by returning the preference sheet to the teacher with the specific instruction that s/he must list three preferences and failure to do so again will result in the preference sheet being considered deficient thus, waiving the right to submit a preference sheet for consideration. It's advisable to include a deadline for a response.

Q: Can I reassign a teacher mid-year?

A: Yes. You have wide discretion, based on educational necessity, to assign your staff to whatever position you deem appropriate. However, when changing an assignment, it is a best practice to document the educational reason.

Q: Can a teacher be programmed for multiple periods in a row?

A: Yes. However in middle and high schools, "wherever administratively possible," teachers should not be programmed for more than 3 consecutive teaching assignments in a row or more than 4 consecutive working assignments in a row, except for teachers of subjects normally programmed for double periods.

Q: What is an "IEP" Teacher?

A: An IEP Teacher is a special education teacher whose time is divided between teaching and preparing for and participating in the IEP team meetings of students *initially* referred to special education.

Q: How many periods does the IEP teacher have for the IEP assignment?

A: The minimum number of periods for this assignment has been established for your school. Contact your Regional Administrator of Special Education (“RASE”) if you have any questions. The IEP assignment consists of regularly scheduled periods for IEP-related work which consists of (1) preparing for and attending IEP meetings of children initially referred to special education, and (2) covering the classes of special education teachers attending the IEP meetings of their own students on requested reevaluations and triennials. The minimum number of periods for this task is five (5) per week.

The remaining periods per week (not including the contractual preparation and professional periods, see below) should be assigned by you and at your discretion for: (1) instruction of students with disabilities (e.g., SETSS or part-time Collaborative Team Teaching or Special Education class); (2) individual and group instruction for identified special education or identified general education students at-risk of academic failure; (3) participating in Pupil Personnel Team/Instructional Support Committee meetings; (4) providing interventions recommended by the Pupil Personnel Team/Instructional Support Committee; and/or (5) administration of curriculum-based assessments for “at-risk” general education students

Q: What if a teacher does not have enough IEP-related work to fill the time dedicated to IEP work?

A: You may assign the tasks set forth in subsections (1) through (5) in the preceding answer.

Q: Who is entitled to the IEP Assignment?

A: Special Education teachers who were education evaluators in 2002-2003 and have held the position since then. Otherwise, former education evaluators may assert a preference for the IEP teacher position and this preference should be treated like all other teacher preferences.

Q: Are Education Evaluators (with special education licenses) always given preference with respect to the IEP assignment?

A: No. If an Education Evaluator exercised the preference for the IEP teacher position and held this position each year since 2003-2004, s/he will continue to receive the assignment in future years so long as they continue to assert such preference. If in any year a former Education Evaluator declines the IEP assignment then s/he loses preferential treatment.

2. Cluster Teachers.

Q: What is a “cluster teacher”?

A: A cluster teacher refers to “teaching personnel in the elementary schools who are specially assigned to the teaching of classes in music, art, science, health education, other subjects or the fundamental skills and who are not assigned to a homeroom class.” (Source: Teachers’ Contract, Article 7C).

Q: How many teaching periods can I assign to a cluster teacher?

A: You can assign a cluster teacher the same schedule as other teachers with a minimum of:

- At least 20 forty-five minute teaching periods per week (but no more periods than the other teachers in the school); and
- 5 preparation periods per week.

Q: What if a cluster teacher is not programmed for a maximum teaching load?

A: As with all teachers who do not have a full teaching load, you may assign the remaining periods (other than lunch and preparation periods) for professional activities that you see fit and that you can direct.

Note: There is one exception: Librarians have at a maximum 20 forty-five minute teaching periods per week and the remaining periods are for professional work associated with the library.

Q: Can I remove a teacher from a “cluster” position and assign this teacher to a classroom?

A: Yes. You have wide discretion, based on educational necessity, to assign people to whatever positions you deem appropriate. However, it is a best practice to document the educational reason for the change.

~ **Note** ~

In elementary schools with an eight period day, all teachers receive one professional activity period per week to be assigned through the professional activity assignment process. (See: Sections 5 and 6 below)

3. Other Teaching Positions.

Q: What are the procedures for creating Other Teaching Positions (OTP) (e.g., reading specialists) in elementary schools?

A: OTP positions are instructional positions that are established in **consultation** with the UFT chapter of the school. However, where the administration and the UFT cannot agree, **you determine** which positions are created, the qualifications for the positions, and *select the most qualified teacher*. (See 7C2 of the Teachers’ Contract).

Q: Does seniority determine an OTP assignment?

A: No. Experience should be a factor in assessing qualifications, but seniority should only determine an OTP assignment where the qualifications among applicants are equal.

Q: How many teaching periods a week can I assign to an OTP?

A: OTP teachers can be programmed for as many periods as other teachers in the school, but must be programmed for at least twenty 45 minute teaching periods per week.

Q: If an OTP teacher is not programmed for as many teaching periods as other teachers, can I direct the teacher to conduct professional development or other tasks for the remaining periods?

A: Yes. If a teacher is not programmed for a full teaching schedule the remaining time (other than lunch and preparation periods) can be used for professional activities that **you** select and direct.

4. Preparation Periods.

Q: May a teacher use a preparation period as s/he sees fit?

A: No. Preparation periods are to be used for “professional preparation time in such a manner as to enable [teachers] to further their professional work for the purpose of their greater classroom effectiveness.” Preparation periods are to be used for “preparation for classes, preparation of teaching material, presentation of or attendance at

demonstration lessons, participation in teacher training, and conferences with the principal, with other teachers, with guidance counselors or with parents.” (Source: Teachers’ Contract, Article 7).

Q: Can I ask a teacher to spend time with a coach, or other person providing support, during his/her preparation period?

A: Only as part of a program to assist an unsatisfactory teacher or teacher who is at risk of an unsatisfactory rating you can direct that a coach or other person visit a teacher during his/her preparation period for the purpose of preparing or improving upon lessons. However, you should have documented the previous failure of the teacher to appropriately plan and deliver satisfactory lessons. Please contact your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations before directing the use of a preparation period.

First Year New Teachers: During the first year of employment of a teacher who has not previously worked as a teacher, two preparation periods per week shall be designated as “professional support periods” and shall be used in a manner directed by you. For example, you may direct that these periods be used for observation of classes conducted by experienced teachers; or for consultation with others familiar with instructional strategies for the classroom, planning, curriculum and behavior management.

Q: Can I ask a teacher to cover another class during his/her preparation or professional period?

A: Yes. You may ask a teacher to cover another class during his/her preparation or professional period in the case of an “emergency,” which includes the unavailability of a substitute teacher. To the extent possible, coverage assignments should be made on a rotational basis. (Source: Teachers’ Contract, Article 7N4).

Q: Will a teacher receive additional compensation for covering another class during his/her preparation or professional period?

A: A teacher may be asked to cover one (1) class *per term* during his/her preparation or professional period without receiving additional compensation. Thereafter, the teacher will receive compensation at the applicable coverage rate.

Note: If an elementary school teacher loses a preparation period due to administering a standardized test, the preparation period must be rescheduled within five (5) school days. (Source: Teachers’ Contract, Article 7).

Note: In an elementary school that has an eight period day, and therefore, one professional activity period per week, teachers are **NOT** compensated if such professional period is used for a coverage.

Q: Can a teacher provide additional service in a shortage area in lieu of preparation periods?

A: Yes. The Chancellor may authorize a school to permit teachers licensed in “shortage” license areas to teach up to 5 additional periods per week in lieu of preparation periods where DHR cannot fill a vacancy. Regularly appointed teachers with full teaching programs are eligible to work in these shortage areas. These shortage area positions will be filled in order of seniority. Teachers will be compensated for this additional service at the “special per session” rate specified in the Teachers Contract. (Source: Teachers’ Contract, Article 7O).

NOTE: The decision to permit these additional services is within the Chancellor’s discretion and not subject to the grievance and arbitration procedure.

Q: If a teacher is in a non-teaching position (i.e. compensatory time position), is that teacher entitled to preparation periods?

A: In high schools, teachers who do not have a full teaching load will receive preparation periods on a pro-rated basis (*i.e.*, for every 5 teaching periods the teacher will receive 1 preparation period). If this is your practice in a middle school, then you should continue the practice. If you are in a high school and it is your practice to not provide any preparation periods for teachers with less than a full teaching load, then continue that practice.

Q: Are IEP teachers entitled to preparation periods?

A: Yes. IEP teachers should have the same professional and preparation periods as other teachers.

5. Professional Activity Periods - General.

NOTE: The following section applies to teacher in high schools, middle schools, and elementary schools that have 8-period days.

Q: What is a professional activity period?

A: Professional activity periods are periods during which teachers perform various instructional, professional development, and/or administrative duties. In high schools and middle schools, all teachers receive one professional period per day. In elementary schools on an eight period day all teachers receive one professional period per week.

Q: What authority do I have over these professional periods?

A.: The contract contains a menu of activities (see below) for teachers during their professional activity periods and you, after consulting with the UFT chapter leader, will determine how many positions are available for each menu item (which may be zero), as well as the responsibilities, and qualifications required for each activity. While the principal should consider the views of the chapter leader and other school staff and parents (as appropriate), the ultimate decision of the number of positions available for each activity as well as the responsibilities and qualifications rests with you.

The current rules afford principals in schools with professional activity periods an enormous resource with which to offer additional intervention time for struggling students, enrichment opportunities in the form of new student clubs and activities, professional development for staff and also to address any problems with safety and disruption by adding the presence of teachers in hallways, cafeterias or school yards.

The menu will be from among the following:

- Small group instruction (not to exceed 10 students)
- One to one tutoring
- Advise student activities such as clubs, teams or publications
- Perform student assessment activities (including portfolios, performance tests, IEPs, ECLAS, etc.)
- Professional development/prepare staff development workshops and demonstration lessons
- Common planning time
- Conflict resolution for students
- Cafeteria Duty (administrative activity)
- Schoolyard Duty (administrative activity)
- Hallway Duty (administrative activity)
- AM Bus Duty (administrative activity)
- PM Bus Duty (administrative activity)
- Homeroom (administrative activity)

- Provide inter-disciplinary articulation
- Develop multi-cultural curriculum
- Develop Programs to integrate technology into the daily life of the classroom

Q: Who determines the number of available positions, responsibilities, and qualifications required for each activity?

A: You decide the number of available positions, responsibilities, and qualifications. While you must consult with the UFT chapter leader, you are responsible for the ultimate decision.

Q: May a teacher perform a professional activity that is not specified in the agreement?

A: Yes, the teacher may participate in an activity not listed on the menu if s/he volunteers to do so and you approve.

Q: May a teacher perform an administrative assignment not on the menu?

A: Only if you obtain an SBO allowing such administrative assignment.

Q: Can I observe a teacher's performance during the professional activity period?

A: Yes. You should take reasonable steps to confirm that the teacher is not only actually performing the activity, but doing so satisfactorily.

NOTE: Professional activity periods are *not* free periods, rather they are working assignments and should a teacher fail to adequately perform the work during these assignments that teacher may be disciplined and/or given an unsatisfactory rating based on their performance.

Q: Do related service providers – e.g. occupational therapists and physical therapists – have professional activity assignments?

A: No. These are not classroom teachers so their workday is not structured in the same manner as teachers.

6. Professional Activity Periods – Selection Process.

Q: How does a teacher select a professional activity?

A: Teachers shall indicate three preferred professional activities, in priority order, on preference sheets.

Q: Who determines the professional activity assignment for teachers?

A: You.

Q: What are the standards I should follow when making professional activity assignments?

A: You should assign teachers to professional activities based on qualifications and availability of positions. You should select the most qualified teacher for the professional activity.

Q: May I decline to place a teacher in any of his/her professional activity preferences?

A: Yes. You may decline to honor a teacher's first three professional activity preferences based on lack of qualifications or availability of assignments and ask that s/he select three other preferences. You may assign one of the second set of three preferences provided that s/he is qualified and is not needed to serve in another activity because an insufficient number of teachers applied for the other activity (e.g., tutoring or student activities).

Q: May I assign a teacher to cafeteria duty, schoolyard duty, or hallway duty over his/her objection?

A: Yes. If an insufficient number of qualified teachers choose any particular activity, you may involuntarily assign a teacher to that activity in reverse seniority order.

NOTE: A teacher may not be involuntarily assigned to an *administrative* activity for consecutive years.

Q: Can I ask a teacher to spend time with a coach, or other person providing support, during his/her professional period?

A: Yes. Teachers who are either new to the school system or in danger of receiving U-ratings may be assigned to professional development during their professional activity periods.

Q: Is a homeroom assignment a substitute for a professional activity?

A: Yes. In schools where principals offer homeroom duty as a professional activity option, that homeroom assignment fulfills the professional activity requirement meaning those teachers cannot be assigned a menu activity during their professional activity period. Thus, it's advised that homeroom only be included in the professional activity menu when it clearly serves the needs of the school as compared to other possible menu selections such as small group instruction; tutoring; student activities; or hallway monitoring, etc.,.

Q: What should I do if my UFT chapter leader disagrees with the number of positions available for certain activities?

A: You should engage in meaningful consultation with the chapter leader to get his or her view as to why a different configuration of assignments is appropriate. If you are not persuaded by the chapter leader you have no obligation to alter the number of positions in your professional activity plan. Your contractual obligation is to "consult" not "agree."

Q: Can the UFT grieve the number of positions available for certain activities?

A: No. The UFT can file an appeal to the Chancellor and thereafter to the City's Office of Labor Relations, a mayoral agency, for a final decision.

Q: Can a teacher grieve or arbitrate his/her professional activity assignment?

A: No. A teacher, or the union, has the right to grieve the failure of a principal to follow the process set forth for assigning Professional Activity periods (e.g. failure to consult, assigning activities not on the contractually agreed to menu, etc.) however the assignment of a particular activity to a teacher is not grievable.

Q: Does a teacher performing AM or PM bus duty also have a professional activity period?

A: No. The bus duty professional activity assignment satisfies that teacher's professional activity requirement, and thus will use their professional activity period as a preparation period.

Q: Can I split teachers' professional activity assignments so that they work more than 1 activity?

A: No. An arbitrator recently ruled that teachers can only be assigned one activity for his/her professional activity assignment. You may assign more than one activity (split assignments) only through the SBO process.

Q: May I change a teacher's professional activity assignment mid-term?

A: Yes. Also, in the event a teacher is in danger of receiving a U rating, you may reassign a teacher to professional development. Consult your Senior Regional Counsel or ISC Counsel prior to reassignment decisions.

Q: Does a teacher in a compensatory time position also have a professional activity assignment?

A: Teachers in compensatory time positions continue their working assignment during professional periods pursuant to a plan that must be submitted to and approved by you.

Q: Does an athletic coach have a professional activity period?

A: Teachers serving as athletic coaches may use their professional activity periods to further the work of their activity. If an athletic coach chooses to do this, s/he must, at the beginning of each term submit to the principal for approval a plan for the use of the professional periods.

7. Compensatory Time Positions.

Q: What are compensatory time positions?

A: A compensatory time position is a full-time or part-time position in lieu of teaching (e.g., programmer, dean, lunchroom coordinator) that is neither a teaching position nor professional activity.

Q: What are some instructional positions that are often confused with compensatory time positions?

A: The following positions are considered *instructional* positions, and therefore, you can create them without having to follow any of the rules regarding compensatory time positions: (a) mediation specialist, (b) Coordinator of Student Activities ("COSA"), (c) non-English coordinator, (d) bilingual coordinator, (e) narcotics education coordinator, and (f) health coordinator.

Q: How are compensatory time positions created?

A: Compensatory time positions can be created by one of three ways:

- Principal's Discretion: You have the discretion to create the following positions: 1 lunchroom coordinator position for each lunchroom (in all schools); 1 dean position for up to 1000 students and 2 deans for more than 1000 students (in middle and high schools); and 1 programmer position (in high schools). Note these positions are *in addition* to the compensatory time positions that you agree to create as explained below. (Source: Teachers' Contract, Article 7A6, 7B8, 7C4).
- Recreated: You and the UFT chapter may agree to the re-creation of compensatory time positions without an SBO vote: deans, programmers, crisis intervention teachers, grade advisors and, in high schools, attendance coordinators. The chapter must agree to recreate these positions each year. (Source: Teachers' Contract, Article 7A6, 7B8, 7C4).

- Special SBO Process: You and the UFT chapter may agree to modify the collective bargaining agreement, including the creation (recreation) of compensatory time positions pursuant to a Special SBO process, which requires agreement between you and the UFT chapter and ratification by 55% of UFT members voting.

Q: How are compensatory time positions assigned?

A: These jobs are posted at your school and you must select the most senior qualified teacher who applies. This is a two step process: first, determine who is qualified; and second, from the pool of qualified applicants, select the most senior teacher. However, if a qualified junior teacher has never had a compensatory time assignment then s/he will have priority over a more senior teacher who has had such a compensatory time assignment – other than with respect to the programmer position where this policy of rotation does not apply. (Source: Teachers’ Contract, Article 7B3).

Q: How do I ensure that the most qualified teacher gets the job?

A: By ensuring that the job criteria reflect specific needs and calls for demonstrated “ability.”

~ Best Practice ~

You have the final say in drafting criteria for compensatory time positions. It is important that you include specific criteria pertinent to the position. For example, for lunchroom coordinator and dean, you might want to include “demonstrated ability in behavior management.”

8. Posting/Qualifications.

Q: Who establishes job qualifications for job postings?

A: You. Whenever you post for new jobs that you have the right to create – e.g., Other Teaching Positions (defined above), certain Compensatory Time Positions, per session positions – you have the final decision as to what the job qualifications are and you determine whether the person is qualified. While in some instances the contract may require “consultation” with the UFT chapter leader – such as in connection with Other Teaching Positions (see above) – consultation is not synonymous with “approval by” – you are the ultimate decision-maker with respect to qualifications and selection.

Q: How can I guarantee that the most qualified person for the job is selected?

A: By being specific and clear in job descriptions and the requisite criteria. Whether you are preparing a job posting for a new assignment or participating on a personnel committee set forth specific qualifications that you believe are important for the job, rather than only basic experience and licensure qualifications.

For example, if a demonstrated ability to teach reading to at-risk children or to work with parents is important for a specific position, then this should be set forth in the job description.

VI. SCHOOL BASED OPTION (“SBO”)

Q: What is an SBO?

A: An SBO is the process whereby you and the UFT chapter agree to propose to the UFT represented school staff deviations from certain requirements of the UFT teachers’ contract, such as staffing, class size, rotation, etc. If you and your chapter leader don’t agree, the proposal cannot be presented to the staff for a vote. After you and the UFT chapter reach agreement on the SBO proposal the UFT chapter arranges for a vote. The proposal must be approved by fifty-five percent (55%) of the staff who vote and the SBO must specify which provisions of the contract will be altered. The proposal must be approved by the UFT district representative and president, the LIS, and the Chancellor. (Source: Teachers’ Contract, Article 8B).

Q: What are the various types of SBOs?

A: The following are examples of SBOs:

- Special SBO Process for Compensatory Time Positions: This SBO is used to create those compensatory time positions (i.e., non-instructional positions) that a principal cannot create unilaterally. (See Discussion above regarding compensatory time positions; source: Special Circular No. 6R, 1997-1998).
- Other Types: You may use an SBO to modify provisions of the Agreement regarding “class size, rotation of assignments/classes, teacher schedules and/or rotation of paid coverages.” (Source: Teachers’ Contract, Article 8).
- If you want to use the SBO process to modify other aspects of the collective bargaining agreement, contact your Senior Regional Counsel or ISC Counsel.

VII. DISCIPLINARY LETTERS, COUNSELING MEMORANDUM AND NON-FILE LETTERS

1. Disciplinary Letters.

Q: How do I evaluate pedagogues?

A: The best way to document evaluations is through (1) letters for the employee's file; (2) formal observation reports and (3) informal observation reports

Q: How do I discipline pedagogues?

A: In general, you follow the concept of progressive discipline however the first step in progressive discipline for pedagogues is usually through a disciplinary letter that shall be placed in the employee's file. Disciplinary letters are used to document when an employee engages in an act of misconduct (e.g., violation of a school policy, Chancellor's Regulation, or Department rule; insubordination; or dereliction of duty); commits an act of corporal punishment or verbal abuse; or has excessive absences and/or lateness.

NOTE: In the event of a minor incident – such as an occasional lateness or missing of a staff meeting – a verbal warning may be the appropriate first step however, should the incident be repeated a disciplinary letter is warranted.

NOTE: While observation reports – both informal and formal – are forms of evaluating pedagogues they are considered evaluations of performance and are not considered disciplinary in nature. Disciplinary letters address instances of misconduct. See Section below regarding Observations and Lesson Plans.

Q: Can employees grieve material in their personnel files?

A: No. The 2005 UFT contract eliminated the rights of UFT represented employees to grieve any material placed in their file. This includes disciplinary letters for misconduct or observations, both formal and informal. If you receive a grievance that appears to be a material in file grievance, contact your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations.

Q: What best practices should be followed for writing disciplinary letters?

A: In general, you or an AP should investigate and have a disciplinary conference with the employee prior to issuing a disciplinary letter for misconduct. In most cases, these steps can be followed with a modest investment of time and effort – a couple of hours over a few days.

1. **Investigate.**

- Interview all relevant witnesses separately.
 - > If an entire class witnessed an incident, interview all adults and select a sampling of 3-4 students, either at random or those students nearest the incident.
- If OSI is investigating, participate in the interviews of children and witnesses, whenever possible.
- Ask detailed questions: “who else was present,” “what was said,” and “anything else.”
- Keep detailed notes (include dates and times).
- If practicable, have another supervisor participate.

2. **Schedule A Disciplinary Conference With Employee.**

- Summon employee to a disciplinary meeting, in writing, and state that s/he may bring a union representative (for cases not involving corporal punishment or verbal abuse you do not need to invite the

employee in writing however it is a good practice to summon the employee in writing so that you may later demonstrate that the employee was given an opportunity to bring a union representative).

- For corporal punishment or verbal abuse cases **only**, you must provide 48 hours notice to the employee. (Source: Chancellor's Regulations A-420 and A-421). (A LIS or Regional Superintendent must give 48 hours notice in **all** cases where s/he summons an employee.)
- In all other cases provide whatever notice is practicable.

3. **Conduct Disciplinary Conference.**

- Preferably have another supervisor participate.
- Present allegations.
- Ask employee what happened.
- If the employee denies the misconduct, ask him/her **(1) to identify witnesses who would substantiate his/her story;** and **(2) why other witnesses may be wrong or would lie.**
- Do not share student witness statements and names unless and until the employee signs the privacy acknowledgment; if s/he refuses to sign, provide the written statements without the names of the student witnesses but with the names of the student victim and adult witnesses. (See Sample Privacy Acknowledgement attached as Appendix A).

4. **Supplemental Investigation.**

- Interview any additional relevant witnesses identified by the employee and reconcile discrepancies.

5. **Prepare Letter.** Include:

- Date of disciplinary meeting and attendees;
- Recitation of allegations, summary of investigation, and evidence (attach witness statements);
- Employee's response (include exact statements);
- Whether employee identified any witnesses, whether such witnesses were credible or had relevant information;
- Whether employee provided any basis for doubting credibility of contrary witnesses;
- Definitive conclusion of fact (e.g., "I conclude that on April 1, 2006 you hit Johnny in the face."). Do not use phrases like "it appears that" or "witnesses state that you;" make a decision about what happened.
- **Letters to all employees:** Include disciplinary conclusion – e.g., "This incident may lead to further disciplinary action, including an unsatisfactory rating and charges that may lead to your termination." You must include this in all cases, regardless whether you believe disciplinary charges will be brought.
- **Letters to Non-Tenured Pedagogues and Non-Pedagogues:** If serious, consult Senior Regional Counsel or ISC Counsel regarding suspension or termination.
- In the event the employee refuses to attend the meeting, your attempts to conduct the meeting should be detailed in the letter.

6. **Delivery / Acknowledgement.**

- Provide copy to employee and obtain his/her signature.
- Recommended Method of Delivery: provide a copy of the letter to the employee with a witness (your secretary or another supervisor) and request that the employee sign acknowledging receipt. If employee refuses to sign, mark the letter "refused to sign" and you and a witness should sign and date the letters.
- The employee may prepare written response to the letter. If s/he does so, affix employee response to the letter in the file.

NOTE: Sample disciplinary letters are attached as Appendix B.

Q: Can I include reports or witness statements in a personnel file?

A: Yes, provided that the reports and/or statements are attached to the supervisor's letter.

Q: If I witnessed the incident do I still need to conduct an investigation and follow the other steps above?

A: Yes. If the incident is corporal punishment or verbal abuse, you must interview any other relevant witnesses. For other incidents of misconduct, you should try to obtain witness statements, if possible, to support your version of the incident.

In any case, you should follow steps 2-6 above even if you witnessed the incident.

Q: What do I do if the employee or union representative approaches the student witnesses and talks to them about the incident?

A: This is an independent act of misconduct and a potentially terminable offense. Contact your Senior Regional Counsel or ISC Counsel if you believe this has happened for guidance. For investigations being conducted by the Office of Special Investigations (OSI) or the Special Commissioner's Office of Investigations (SCI), contact the office handling the investigation.

Q: Can an employee bring a lawyer to a disciplinary conference instead of his/her union representative or an employee?

A: No – if an employee insists on bringing a lawyer, do not proceed with the conference and document the reasons.

Q: If I observed the teacher's lesson and want to memorialize the observation, do I still have to follow the rules above?

A: No. The "best practices" described above apply to disciplinary letters for misconduct. Observations address performance issues, and as such, the "best practices" for those types of letters vary. (See: Discussion below regarding observations).

Q: What if I fail to follow one, or several, of the steps regarding disciplinary letters and the teacher demands that the letter be removed from the file?

A: Do not remove the letter. Contact your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations.

2. Disciplinary File Letters Based on Third Party Reports (e.g., OSI Reports).

Q: How should a report from the Office of Special Investigations ("OSI") or other third party investigative report affect how I write a letter?

A: The investigative report is part of your evidence that you should discuss with the employee at the disciplinary conference and you may rely on it in reaching a conclusion. Since you make the final determination about whether the allegations of misconduct are substantiated or not, you should contact the investigator to discuss any questions you have regarding the report. You should present the report, and any other pertinent information you have to the employee at the disciplinary meeting.

Note: Regardless of the existence of a report you should still follow the best practices for disciplinary letter writing discussed above.

Q: Should I participate in the OSI investigator's interview of witnesses?

A: Yes, unless the OSI investigator asks you not to for some reason. By being present during the interviews of witnesses, you will be able to state to the employee during the disciplinary meeting that the account of the witness statements is accurate and witnesses are credible.

Q: What if I disagree with the report's conclusion?

A: As supervisor, you are responsible for making any final decisions regarding discipline of any employee in your school. If necessary, you may conduct additional interviews. However, prior to reaching a conclusion contrary to the OSI report's conclusion, contact your Senior Regional Counsel or ISC Counsel.

Q: What if I agree with the report's conclusion that the allegation should be substantiated but there is a flaw (e.g., an adult witness was not interviewed) in the investigation?

A: In the event that you believe there is a significant flaw in the report, prior to conducting the disciplinary meeting you should talk to the investigator and your Senior Regional Counsel or ISC Counsel and take whatever steps are necessary to complete the investigation, e.g., interview additional witnesses. In the event of minor inconsistencies, you should reconcile such inconsistencies in your disciplinary letter.

If the flaw is simply the way in which the report is written and not substantive, you can correct the error when writing your disciplinary letter – e.g., "In the report the investigator refers to the witnesses as 'she'. However, as we discussed at the disciplinary meeting, the witnesses were boys and the investigator had informed me that this was just a typographical error. Notwithstanding this error, I agree with the report's conclusion that on April 1, 2003 you struck Johnny in the face."

As with all labor relations matters, you may also contact your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations to assist you in reconciling an error in the report.

3. Counseling Memorandum for File.

Q: What is a counseling memorandum?

A: A counseling memorandum is a non-disciplinary memo to an employee's personnel file wherein you make certain suggestions to the teacher. It cannot be grieved by the teacher. You may not use it in your rating or discipline of a teacher, except to prove that you gave notice of the school policies or performance deficiencies to the teacher when the teacher denies notice. (Source: Teachers' Contract, Article 21B). As a result, these memos are of very limited value as a disciplinary tool, particularly in view of the fact that disciplinary letters are no longer grievable.

Q: Are there any rules with respect to what language must be included in a counseling memorandum?

A: Yes. In order to be a counseling memo you must include the following language:

- **"COUNSELING MEMO"** -- Must be written at the top of the memo in bold print, capital letters and underlined.
- **"A counseling memo is not disciplinary in any manner and cannot be used in any action against an employee except to prove notice if the employee denies notice."** – must be in the conclusion of the memo and appear in bold print.

NOTE: If a teacher complains that a counseling memo does not have these two statements the remedy is simply to include them. Of course, to be a legitimate counseling memorandum, even if you include these two statements, you cannot elsewhere imply that the employee is subject to discipline.

NOTE: Do not include the language typically included in disciplinary letters – i.e., “may be subject to disciplinary action.”

Q: What purpose does a counseling memorandum serve in disciplining an employee?

A: Little, because as stated above, you cannot use a counseling memorandum in the disciplinary process except to prove notice (e.g., notice regarding a school policy) when the teacher denies that s/he received notice.

Q: Can I include specific incidents in a counseling memorandum?

A: Yes. The contract states that the latest incident recounted in a counseling memo cannot be more than a month prior to the writing of the memo and the first and last incident in the memo cannot be more than four months apart.

However, remember that a counseling memo can only be used to prove that you notified the teacher of some rule or policy or performance deficiency if the teacher denies that s/he was notified. You may wish to use counseling memos as a benign first message to a teacher needing to correct a minor performance problem, but follow it up with a disciplinary letter if not corrected within a reasonable period.

BEST PRACTICE: *If you want to discipline a teacher, do not use a counseling memo; write a disciplinary letter!*

4. Non-File Unofficial Letters.

Q: Can I write a letter that is not for an employee’s personnel file?

A: Yes, but they are of limited use.

One use is to warn or put a teacher on notice of school rules or policies or your expectations for the teacher. However a Counseling Memorandum serves the same purpose (see above).

Another use for a non-file letter is to document an event and use the letter to later refresh your recollection regarding an incident when testifying at a teacher’s rating appeal or disciplinary hearing. However, your own personal log would suffice for this purpose.

If you wish to document a particular incident of misconduct you should not use a “non-file” letter or Counseling Memorandum, but rather a disciplinary letter.

5. Removal of Disciplinary Letters.

Q: What are the rules regarding removal of disciplinary letters?

A: Under the 2005 UFT agreement, any disciplinary letter or observation placed in a teacher’s or other UFT represented employee’s personnel file which is (1) three years old or older; ***and***; (2) has not been used in a disciplinary proceeding (3020-a charges, discontinuances or U-ratings), shall be removed from the employee’s file at the employee’s request. When in doubt about removal, do not remove and consult your Senior Regional Counsel or ISC Counsel.

Q: How do I calculate three years?

A: Three years is measured from the date the letter was placed in the employee's file (which should be the date the employee signed the letter acknowledging receipt or administration indicated "refused to sign").

Q: Which employees may seek to remove letters that are 3 years old or older?

A: Only employees represented by the UFT – i.e. teachers, paraprofessionals, social workers, secretaries, nurses and therapists, school psychologists, social workers, guidance counselors, lab specialists, attendance teachers, teachers of the homebound, and adult education teachers.

NOTE: The rule regarding removing letters from the file after three years does not apply to non-UFT titles, such as school aides, family workers, or parent coordinators.

Q: What is the process that should be used for the removal of letters from personnel files?

A: The process is as follows:

1. Teachers, and other UFT-represented personnel, should follow the school's current procedures for viewing their personnel file by making an appointment with you or your designee.
2. On a mutually-convenient date and time (and not during working time), the employee may, in the presence of an administrator (i.e. principal or assistant principal), review his/her personnel file and flag (e.g. with post-its) what documents s/he would like removed.
3. An administrator shall review those documents flagged by the employee for removal.
4. If the principal agrees that such documents shall be removed, then (a) make copies of all the documents to be removed; and (b) give the original documents to the employee. If you are not sure whether a document should be removed from the file – consult your Senior Regional Counsel or ISC Counsel.

~ Record Retention Laws ~

Do not destroy or discard those documents that are removed from personnel files. Letters that are removed from personnel files will be kept in a central repository and maintained under the control of the New York City Law Department. These letters will be used solely in defense of the Department of Education or the City of New York in litigation or administrative actions and as otherwise required by law, and DOE supervisors will not have access to them. The records will be destroyed 6 years after an individual retires, resigns or terminates.

Q: What do I do with materials removed from teachers' files?

A: Copies of the file letters should be placed in manila folders with the employee's last name, first name, file number, district number and school name and number. If there are more than 50 folders at a site, they should be placed in a box which you can order by e-mailing Angie Russo at arusso4@schools.nyc.gov. Each box should have an official archive label on it listing the contents by teacher file number. You can obtain labels from the DFO

web site at <http://www.nycenet.edu/Offices/DFO/BusinessOperations/DoeRecordsArchiving/Default.htm>. The regular vendor for inter-office mail, Deluxe Delivery Services, will pick up all boxes and file packages for delivery to the central repository.

Q: When can teachers review their personnel files?

A: During non-working hours. Upon a teacher's request, the principal, or designee, should set up a mutually convenient time within a reasonable period of time from the employee's request. Teachers may voluntarily review their files during their lunch period or after school.

NOTE: Professional and preparation periods are *working* periods and therefore teachers should not be reviewing their personnel files during these periods.

Q: Can principals require that teachers review their personnel files after school?

A: No. A teacher cannot be required to review his/her file after school though a principal may offer this time to teachers and they may voluntarily agree to review their files after school. Remember a supervisor must be present during a teacher's review of his/her file.

VIII. OBSERVATIONS AND LESSON PLANS

1. Observations.

Q: Did the 2005 UFT contract change the way principals should conduct observations?

A: No. You should continue your practice regarding formal observations and informal observations (as frequently as you deem appropriate).

Q: What does the 2005 UFT agreement mean when it states that teachers cannot be disciplined for a) the format of bulletin boards; b) the arrangement of classroom furniture; and c) the exact duration of lesson units?

A: Exactly what it says – do not discipline specifically on these bases. Principals can and should counsel and, where appropriate, discipline for poor instructional or classroom management skills, poor student engagement, or teacher-dominated lessons. There will be times when the issues are related – for example, a teacher exhibits poor classroom management which may be remedied by a different arrangement of classroom furniture – and in such instances principals can and should counsel and/or discipline.

For example in the case of bulletin boards – “format” is not the same as “content.” You can absolutely discipline for content-based reasons. (e.g. you shouldn’t discipline a teacher who uses red paper instead of yellow or wants to use staples instead of tacks; however, you can and should discipline a teacher who displays examples of poor student work, fails to display any student work, etc.)

Q: What are the elements of a formal observation?

A: A formal observation is one where the teacher and the supervisor have prepared in advance and have a pre- and post observation conference.

The elements of a formal observation are:

1. **Pre-Observation**: A pre-observation conference is held during which the supervisor indicates the elements of the lesson s/he expects to see. For teachers who received an unsatisfactory rating during the prior school year, or who are at risk of receiving an unsatisfactory rating (in the opinion of the supervisor), the supervisor should conduct a one-on-one pre-observation conference. For teachers who have satisfactory ratings or are not at-risk of being U rated, the supervisor’s expectations may be conveyed through faculty conferences and/or memorandum distributions.
2. **Observation**: The observation may be either: (1) a “composite” (i.e., series of short observations highlighting different parts of a lesson); or (2) full period.
3. **Post-Observation**: There should be a post-observation meeting in which the supervisor discusses the observation with the teacher and points out the positive and negative portions of the lesson; areas for improvement; and any resources or strategies the supervisor is directing the employee to utilize to improve. Keep notes of the employee’s response.
4. **Prepare Report**: Prepare observation report as soon as practicable. The structure is:
 - Pre-observation conference recap;
 - Narrative portion (i.e., non-critical detailed description of what you observed);

- Post-observation conference recap – including positive and negative aspects of lesson and recommendations regarding strategies for improvement and support and resources that will be provided, as well as any comments/responses from the teacher.

NOTE: Your criticisms in post-observation recaps must relate to things you observed and documented in the narrative portion (e.g., do not criticize a teacher for giving the wrong answer unless you described this in your narrative). Do not include comments that indicate that a teacher has committed misconduct – i.e. broke certain rules – because misconduct should be the subject of a separate disciplinary letter.

- Conclusion whether the lesson is unsatisfactory or satisfactory.

5. **Signature:** The signature of the employee indicating s/he received the report (remember, an observation report should be for the file, and, therefore, must be signed by the teacher or there should be an indication by you or a witness that the teacher refused to sign).

Q: Are teachers allowed to bring their UFT representative to the post-observation conferences?

A: No. Teachers may bring their union representatives only to disciplinary meetings – e.g., meetings regarding violation of school policies, rules, or other misconduct.

Q: Must a formal observation be for an entire period?

A: No. At your discretion, a formal observation may be either: (1) a “composite” of observations (i.e., series of short observations highlighting different parts of a lesson); or (2) a full period observation.

Q: How many formal observations must be given each year?

A: The following are the **minimum** number of required classroom observations:

Community School Districts (“CSD”): New (both new teachers and teachers who are new to the school) and probationary teachers, a minimum of two formal observations per year.

High School: New and probationary teachers receive a minimum of two formal observations per term. Tenured teachers receive one full period or one composite per school term.

All Teachers: All teachers receive at least one formal observation per year.

NOTE: While there is no minimum number of observations required, if you are planning to rate a teacher unsatisfactory or have problems with his or her performance, it’s recommended that you conduct more than the minimum formal observations as well as a number of informal observations.

Note: Tenured Pedagogues

Arbitrators will demand to see additional formal observations when bringing charges for incompetence against tenured teachers and other pedagogues. In some cases it’s advisable to have at least one performed by the principal’s supervisor, such as a LIS or a member of the LIS’ or Regional Superintendent’s supervisory staff. Please contact your Regional Counsel or ISC Counsel for more information regarding disciplinary action against tenured pedagogues.

Q: Who conducts the formal observations?

A: At least one of the formal observations must be performed by you (the principal) each year.

Q: If an interim acting principal or assistant principal conducts a formal teacher observation, is an appointed principal obligated to sign the observation too?

A: No, however it does not hurt – particularly if it is likely that the interim acting assistant principal may not be in the same school in coming years.

Q: How many formal unsatisfactory observations per year are required to sustain an unsatisfactory rating?

A: There is no specific requirement. See discussion below regarding Rating Employees

Q: Can a teacher request to perform a project in lieu of receiving a formal observation?

A: Yes.

The evaluation of teachers is governed by “Teaching for the 21st Century.” According to this document, there are two options for evaluation – Component A: Annual Performance Option, or Component B: Formal Observation. A teacher’s eligibility to choose either option depends on the teacher’s performance and tenure with the Department.

Component A: Annual Performance Option: A satisfactory, tenured, teacher may choose, in conjunction with his/her supervisor, this component as the applicable performance evaluation mechanism. Pursuant to this process, a teacher will prepare a written statement of their annual performance option identifying goals and objectives for the school year, and, at the end of the year, the impact of these activities will be summarized and evaluated.

Component B: Formal Observation: Teachers who are new to the school, probationary teachers, tenured teachers who received an unsatisfactory rating the prior year, and tenured teachers in danger of receiving an unsatisfactory rating must have formal classroom observations by a principal or supervisor early in the term. See Discussion above regarding Formal Observations.

Q: If I am a new principal and the “status quo” regarding evaluations has been very lax and ineffective (e.g., teachers propose non-specific goals and objectives), how can I move to a more formal evaluation system?

A: To move from a lax observation system to a more rigorous observation system you should first assess the current system – e.g., ask teachers to demonstrate through portfolios and objective data that their current methods are best for instruction for the kids. If you are not satisfied, you may move to a formal observation system though you should consult with your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations. Remember, you may *always* do informal observations.

Q: May I conduct informal observations?

A: Yes. You may conduct as many informal observations as you like and you may write informal observation reports for teachers’ files. An informal observation report is simply a written description of what you saw while the teacher was performing his or her duties along with suggestions for improvement.

Q: What are the steps for an informal observation?

A: You should conduct a post-observation conference and then memorialize the informal observation in the form of a letter or report as soon as practicable. The steps for an informal observation are as follows:

1. **Observation**

- No advance notice necessary.
- May be either composite or one full period.
- No time limitation regarding length of observation.

2. **Post Observation Discussion**

- Discuss your observations, strengths, areas/programs for improvement, repercussions for non-improvement.
- Union representative may not be present (unless misconduct is involved in which case you can address with a union representative present or schedule a separate disciplinary conference).

3. **Written Report or Letter**

- Write “Informal Observation Report” on the top of the letter/report.
- Describe what you saw while the teacher was performing his/her duties and suggestions for improvement.
- Include employee’s responses from post-observation discussion.

4. **Delivery and Signature**

- Obtain employee’s signature and, if s/he refuses to sign, you or a witness should mark it “refused to sign.”

Q: What do I do if a teacher’s classroom is routinely mismanaged, chaotic and lacks adequate instruction but when I conduct a formal observation the lesson plan is done very well?

A: You or an AP should conduct informal observations on a more frequent basis. Then, document the observations in reports to be placed in the employee’s file. You may also want to prepare a disciplinary letter for the file if employee failed to implement suggested improvements.

2. **Lesson Plans.**

Q: Are teachers required to prepare lesson plans?

A: Yes. Teachers must write lesson plans. As noted in the Teachers’ Contract, “[t]he development of lesson plans by and for the use of the teacher is a professional responsibility vital to effective teaching.” (Source: Teachers’ Contract, Article 8E).

Q: What authority do I have to ensure that teachers are planning properly?

A: You may:

- Review your teachers’ lesson plans to ensure that they are planning through spot-checks of all teachers’ lesson plans (though you should not regularly collect all teachers’ lesson plans, e.g., every Tuesday).
- Regularly collect lesson plans of teachers who are at risk of an unsatisfactory rating.
- Require specific content of lesson plans if you believe that such content is necessary for effective planning. It is a good idea to tie this to an observation, i.e., better planning would improve the lesson.
- Dictate the formatting or organization (in addition to content) of a plan if the teacher received an unsatisfactory rating the previous period or is on notice that they are at risk of an unsatisfactory rating and you believe formatting and organization changes are important for proper planning.

Q: What if a teacher argues that I am dictating format, whereas I believe it is content?

A: Since you are likely focusing on only the unsatisfactory teachers – or those at risk of a u-rating – one strategy is to give the teacher notice that they are at risk of a u-rating and you can then dictate formatting as well as content.

Q: Can I collect/copy lesson plans?

A: Yes, as part of documentation for a u-rating you may copy lesson plans to show inadequate planning.

~ Best Practice ~

Explain in writing at the beginning of the year (possibly at a faculty conference) your expectations for the requirement that a teacher must have lesson plans and what constitutes an adequate lesson plan.

Q: Can I request that teachers plan for an entire week in advance?

A: Yes. You may require that teachers plan in advance to ensure scaffolding from one lesson to the next, although how much detail a plan has days in advance will depend upon the individual teacher – e.g., you will give more discretion to teachers who have exhibited proper planning and lesson delivery. You also should allow flexibility for plans to be altered during the week.

Remember, you will only be regularly collecting plans if the teacher has received an unsatisfactory rating, or is in danger of an unsatisfactory rating, and this is a part of an effort to improve the teacher's planning.

Q: Can I request to see lesson plans from prior weeks/months?

A: Yes, you may request to see old lesson plans – e.g. from the prior week – to see how the teacher arrived at the point in a particular lesson and to ensure scaffolding.

Q: Is a teacher required to have lesson plans with them during their class?

A: Yes. Teachers are required to have the lesson for a class with them when they are teaching that class.

Q: Can I require lesson plans for the 37.5 minute instruction time?

A: Yes. You have the same tools available to you to maintain quality assurance of instructional time that you would at other times of the instructional day. You may require lesson plans or some less formal evidence of planning, formally/informally observe teachers during this time, and should a teacher fail to adequately perform during this small group time, that teacher may be disciplined and U rated in the same manner you would during the rest of the instructional day.

3. School Policies.

Q: Can I create a written dress code policy for my school?

A: No. However, at the start of the school year, you should convey the expectation that teachers are expected to dress in an appropriate and professional manner throughout both the school year and summer school.

Note: In the event a teacher's attire is inappropriate you should informally counsel the teacher that his/he attire is inappropriate; explain that it adversely impacts the learning environment (be specific – e.g., students are distracted and leering/joking around rather than concentrating, or parents/staff members are upset and uncomfortable). If the problem persists, you may discipline this teacher with a disciplinary letter and be sure to explain how the inappropriate attire negatively impacts the learning environment.

Q: Can I create an attendance policy?

A: Yes.

Q: What should my attendance policy be?

A: You should convey to all employees, verbally and in writing, that they are expected to be at school every day prepared to perform their duties. While many schools define excessive absences as 10 in a school year, we advise against establishing a policy with a specific number. The number 10 is based on the number of sick days teachers and other employees accrue annually as per their contract. However, establishing a policy that specifies a number of absences considered to be excessive will have the effect of establishing a specific number of absences for which teachers and other staff members cannot be disciplined. While that doesn't mean you must unsatisfactorily rate an employee who misses, for example 7 or 8 days of work, you as the principal should exercise your judgment as to whether an employee's attendance record rendered their overall performance unsatisfactory. Therefore, you should utilize your discretion reasonably when rating employees unsatisfactory based on their time and attendance record. However, there may be situations where it is appropriate to distinguish between employees even though they may have similar time and attendance records for a particular school year. If you believe you have such a situation you should consult your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations.

Q: How do I apprise my staff of the school policies?

A: At the first faculty conference with your staff, you should review and distribute school policies.

~ Best Practice ~

At faculty conferences, in addition to other business, you should:

- At the first conference, distribute school policies and Chancellor's Regulations C-105, A-420, and A-421.
- Take attendance, have sign-in sheets, and obtain signed acknowledgements with respect to school policies (which will verify that employees received policies).
- Regularly remind staff about policies.

IX. DISCIPLINE - ATTENDANCE AND LATENESS – PEDAGOGUES

Q: What are the expedited disciplinary procedures for discipline of tenured pedagogues with attendance and/or lateness problems?

A: As you already know, for employees with attendance and/or lateness problems, in most cases principals should follow progressive discipline – informal warning, disciplinary letter, suspension and, if warranted, termination. With respect to tenured pedagogues with chronic attendance/lateness problems, now principals may commence an *expedited* arbitration process before an arbitrator who may issue any discipline – e.g. suspension, monetary fines – short of termination.

Q: What lateness or attendance problems are appropriate for this expedited process?

A: Any tenured pedagogue (e.g. teacher, secretary, guidance counselor), who (i) after warning and disciplinary letters, exhibits excessive absences (e.g. by February, a teacher is absent 10 + times and late on several occasions and had received intervening warnings and disciplinary letter(s)) or (ii) abused sick leave (e.g. submitted a forged medical excuse, pattern of absences on Mondays and Fridays, etc.) should be disciplined through this process. This process can be used for attendance issues that began prior to the 2005 UFT contract. To determine whether you have an employee who should be referred, please consult with the Office of Labor Relations or your Senior Regional Counsel or ISC Counsel.

Q: How do I commence an expedited arbitration process against a tenured pedagogue?

A: Effective immediately, you should do the following:

1) Fill out the electronic form located at link below and submit to: attedancereferral@schools.nyc.gov.

http://www.nycboe.net/schools/principals/weekly/20060215/time_attendance_referral_form.dot

You can also request a copy from your Senior Regional Counsel or ISC Counsel or the Office of Labor Relations.

2) The Office of Labor Relations (“OLR”) will contact you within five (5) days of receipt of the intake form. If you and OLR decide to proceed, you will send all relevant documents – e.g. warning, counseling memoranda, disciplinary letters, attendance records, school attendance policy – to OLR.

Within one (1) month, an arbitrator will conduct an expedited informal hearing. The arbitrator will hear four (4) cases per day. (Note, a principal, or a designee, shall attend (in person) however the hearing should take no longer than 1-2 hours.)

The arbitrator will issue a short decision within fifteen (15) days of the hearing. The decision will be final and binding on the parties and may be introduced in any subsequent 3020-a hearing seeking termination.

Q: What steps can I take prior to commencing an expedited arbitration to ensure an appropriate discipline is handed out by the arbitrator?

A: As soon as you observe an attendance and/or lateness problem, begin the progressive discipline process – i.e. verbal warning/informal meeting, counseling memoranda, disciplinary letters to the file, and appropriate CAR and/or salary deductions. As soon as it is apparent that progressive discipline is not effective – and do not wait until the end of the year – contact your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations.

Attendance Documents Checklist

To be in the best possible position to prevail during the expedited attendance arbitration you should have the following documents:

- Employee attendance record (including documents regarding salary deductions)
- All disciplinary letters/memoranda (including from prior school's if appropriate)

X. DISCIPLINE – TERMINATION AND SUSPENSION

1. Terminating Tenured Pedagogues.

Note: In all situations that could potentially result in physical harm to children you have the absolute discretion to immediately reassign a teacher or any employee for a reasonable period of time to duties not involving care and custody of children while you investigate. The reassignment may be in the school building or to another Department site such as the Regional office. You should consult with your LIS and Senior Regional Counsel or ISC Counsel prior to reassigning. Empowerment School principals should consult with ISC Counsel prior to reassigning.

Q: Can I terminate a tenured pedagogue?

A: You can request that termination proceedings pursuant to Section 3020-a of the New York State Education Law be commenced against a teacher. Tenured employees (including UFT school secretaries) must be formally charged and prosecuted under Section 3020-a of the Education Law before they can receive a suspension without pay or termination. The first step is to engage in a Technical Assistance Conference (“TAC”) with the Administrative Trials Unit. Attached as Appendix C is a sample TAC Request form.

If you believe that a tenured pedagogue should be terminated, you should contact your Senior Regional Counsel, ISC Counsel, or Maxine Forrester Lyons with the Administrative Trials Unit at 212-374-6730 or mforres@schools.nyc.gov to arrange for a TAC.

NOTE: For tenured teachers, consult with your Senior Regional Counsel or ISC Counsel to commence 3020-a proceedings.

NOTE: For non-tenured teachers, follow the disciplinary letter writing steps set forth above.

Q: May I terminate a tenured pedagogue for job abandonment?

A. Yes. According to Article 5F of the Teachers Contract, a teacher who is “absent for 20 consecutive school days without notice shall be deemed to have resigned unless they have reasonable cause for failure to notify.” (See discussion above regarding Absences.)

Q: What is the process for termination for job abandonment?

A: As a best practice you should do the following:

- After an employee is absent 10 consecutive days, send a letter to the employee requesting that s/he contact the school immediately.
- After s/he is absent an additional 10 consecutive days (i.e. for a total absence of 20 consecutive days) then send a letter informing the employee that s/he has been deemed to have resigned. Both letters shall be sent by regular and certified mail return receipt requested. See Sample letters attached as Appendix B.

~ **Best Practice** ~

Should you be involved in the disciplinary hearing of a tenured teacher based on incompetence (i.e. 3020-a proceeding), it will be useful to demonstrate that you offered various forms of support such as coaches during preparation periods. You should document these efforts in “logs of assistance.”

2. Terminating Probationary Pedagogues.

Q: How do I know whether a pedagogue is serving probation and when their probationary period is completed?

A: Teachers and other non-supervisory pedagogues serve a three year probationary term following their appointment date. This period is reduced by up to two years for regular service as a substitute prior to their appointment. As part of the Chancellor’s initiative to make excellence a requirement for a teacher to earn tenure, the Tenure Notification System (TNS) will provide principals, by e-mail, with detailed information about the completion of probation date for all probationary pedagogues. The TNS will require principals to provide responses to whether probationary pedagogical staff members are on track to successfully complete probation as early as one year prior to their scheduled completion date. For questions about the TNS please contact your designated HR Partner.

Q: What if a probationary pedagogue works past his or her completion date?

A: Usually, that person becomes tenured automatically. Therefore, if you discover that a probationer who should have been terminated is about to reach his or her probationary completion date, you should remove him or her from the assignment prior to the probationary completion date and contact your Senior Regional Counsel or ISC Counsel and the Office of Labor Relations.

~ **Best Practice** ~

Beware of who is receiving tenure!! Principals should ask their Payroll Secretary to keep current data and, when in doubt regarding someone’s tenure-eligibility, double-check the service history with your HR Partner and the TNS.

Q: How can I extend a pedagogue’s probationary period?

A: Only by a written agreement between the pedagogue and Superintendent or a Principal who has been delegated this authority. However, until he or she has agreed, ***in writing***, to extend probation, you should proceed with the necessary steps to discontinue or deny completion of probationary service. You should discuss with your Senior Regional Counsel or ISC Counsel or HR Partner and have them prepare the written agreement.

~ **Best Practice** ~

Classic Case: Teacher's completion of probation date is September 1. In June, employee verbally agrees to extend probation but does not sign a stipulation. The employee returns September 1st without a written extension of probation agreement. That teacher now has tenure!

Remember, you must have a written agreement and should continue with the denial of completion process until you receive a **signed** stipulation from the employee. Contact your Senior Regional Counsel or ISC Counsel or HR Partner to arrange for the stipulation.

Q: When can a probationary pedagogue be terminated?

A: Any time prior to their completion date, either in the beginning, middle or end of the term. This is referred to as either (a) a denial of completion of probation, if it is done in the final 60 days of their probationary term; or (b) a discontinuance, if it is done prior to 60 days before the end of the probationary period. There is no requirement that you keep a probationary teacher for any particular period of time.

Q: What are sufficient grounds to terminate a probationary pedagogue?

A: Probationary employees are essentially at-will employees who can be terminated so long as it's not for an illegal reason (e.g. race, gender or age) or if the termination is arbitrary and without any rational basis. Termination should ideally occur after attempts to help the pedagogue have failed to result in satisfactory job performance.

Q: Can a probationary pedagogue be terminated even if s/he received only one observation?

A: Yes.

Q: Must a probationary pedagogue to whom I gave an unsatisfactory rating be terminated?

A: No. If you believe, after providing support and assistance, that he pedagogue has the potential to improve and develop into a satisfactory performer, you have no obligation to seek their termination. (Note: If the pedagogue is in his/her last year of probation and you aren't seeking termination, you would need to extend their probationary period for an additional year. If the employee refuses to agree to an extension, s/he should be terminated.)

Q: Does an unsatisfactory rating automatically terminate a probationary pedagogue?

A: No. Although grounds for an unsatisfactory rating may also be grounds for a denial or discontinuance, the law requires that specific and separate written notification be given that the pedagogue's probationary term is being discontinued or completion of probation is being denied. Therefore, simply giving the employee the rating sheet indicating that you are recommending termination, will not result in their termination.

Q: What procedure must be followed for termination of a probationary pedagogue?

A: In Community School District Schools, the LIS serving as the Community Superintendent must give the employee a 30-day notification for a discontinuance and a 60-day notification for a denial of completion of probation along with whatever ratings and documentation support the termination. In non-Community School District Schools (e.g., most High Schools and District 75), the LIS responsible for that school sends such notice. In

Empowerment Schools, principals of Community School District schools have been delegated the authority to discontinue/deny completion of probation as per the notice requirements above.

3. Terminating Non-Pedagogues including, Parent Coordinators, Paraprofessionals and School Aides.

Q: What are disciplinary options, short of dismissal?

A: Generally, the steps of progressive discipline are as follows:

Step 1: **Verbal Warning.** If the misconduct is serious or blatant, you should begin with Step 2.

Step 2: **Letter to the file.** (See Discussion above regarding Disciplinary Letters)

Step 3: **Suspension** – with or without pay.

School Aides/Paraprofessionals/Parent Coordinators: You may suspend without pay.

Tenured Pedagogues: Consult with ATU to commence 3020-a proceed.

Probationary Teachers: You may suspend without pay though you should simultaneously be starting the discontinuance/denial of completion of probation process.

NOTE: Prior to suspending any employee with or without pay, you should consult with your Senior Regional Counsel, ISC Counsel or the Office of Labor Relations.

Step 4: **Termination.**

You may terminate a non-pedagogue after following the above progressive discipline steps.

NOTE: There are 2 exceptions to progressive discipline: (1) where an employee's conduct is so egregious (e.g. sexual misconduct, fraud, certain instances of corporal punishment, etc.) that it warrants immediate termination without following the progressive disciplinary steps set forth above; or (2) certain non-pedagogical employees (e.g. School Aides, Paraprofessionals, Parent Coordinators) who work the equivalent of less than one school term (defined as 5 months) may be terminated without following any of the progressive disciplinary steps set forth above. Contact your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations to confirm whether immediate termination is warranted.

NOTE: The decision to terminate is not based solely on the last act of misconduct rather it should be based on the last act in addition the prior acts of misconduct. Should the termination be grieved, arbitrators want to see that the employee was put on notice that their performance/conduct was unacceptable and they were warned that the failure to improve would result in their termination.

Q: When and how can I terminate non-pedagogical employees (e.g. School Aides, Paraprofessional and Parent Coordinators)?

A: Non-pedagogical employees can be terminated for “good and sufficient reason” after you give “due consideration to the matter.” Essentially, this means you should follow the principles of progressive discipline and the 4th step will be termination. “Due consideration” means that you conducted a fair investigation, giving the employee the opportunity to respond to the evidence prior to making a decision. You should follow the steps outlined for teacher disciplinary letters discussed above with your disciplinary conclusion being termination.

You may have other non-pedagogical employees (e.g. School Business Manager) who have protections under New York State Civil Service Law, which requires a different disciplinary process to seek termination. Regardless, you should always follow the principles of progressive discipline by documenting poor performance or misconduct and warning the employee that they could face termination if the problem(s) persist.

~ Best Practices ~

Advise employee of disciplinary problem at earliest possible stage; thus, they cannot claim there was no notice of performance deficiency.

Prior to terminating, review your documents – you should have documents memorializing each step of progressive discipline as well as prior meetings with the employee advising him/her that if the deficiency was not remedied the employee may face termination.

Q: If I terminate a non-pedagogue, such as a paraprofessional or a school aide, what should the termination letter state and do I need to meet with the employee to deliver the termination letter?

A: When considering termination of a non-pedagogue, after having followed progressive discipline, you should (a) conduct a disciplinary conference; and (b) if you determine termination is appropriate, then prepare a disciplinary letter and conclude with termination. If your termination decision is based on prior issues relating to this employee, you should expressly refer to the prior issues in your letter and attach prior letters to your termination letter. (For example, if you terminate an employee for repeated acts of insubordination, in the final letter refer to all acts of insubordination). You do not need to meet with the employee a second time in connection with the termination letter. See Appendix B for sample letters.

Q: Does an employee's disciplinary history carry over into the next year?

A: Yes. For example, if in June an employee has three disciplinary letters in his/her file regarding particular improper conduct and in the following September s/he continues to engage in the same improper conduct, you should continue with progressive discipline and proceed with suspension or termination (depending on the circumstances).

Q: On what grounds can I suspend employees such as paraprofessionals, parent coordinators, school aides and non-tenured pedagogues without pay?

A: A suspension without pay is generally within your discretion (except for tenured pedagogues). Generally, it should be used when the employee had first received a written warning regarding the same type of behavior. Of course there are some incidents that are severe enough to require suspension (or termination) as the first disciplinary step.

Q: Can I suspend an employee without pay during the pendency of an OSI investigation?

A: No. Generally we do not suspend employees without pay during an OSI or SCI investigations. Such employees may be reassigned to a district/regional office. However if there are egregious circumstances, contact your Senior Regional Counsel or ISC Counsel to determine if suspension without pay is warranted. Employees

who have been arrested and charged with certain types of criminal conduct may be suspended without pay pending the disposition of the criminal case. See discussion below on Arrested Employees.

Q: What is the procedure for suspending a non-tenured pedagogue or non-pedagogue?

A: You should follow the steps for preparing a disciplinary letter set forth above and conclude the letter suspending the employee.

4. Suspension – Arrested Employee.

Q: What do I do if an employee reports that s/he has been arrested?

A: Per Chancellor's Regulation C-105, you should advise the employee that s/he must immediately notify the Office of Personnel Investigation ("OPI").

Q: If an employee has been arrested, should s/he continue to work?

A: It depends on OPI's directive. Upon learning of an arrest, OPI will notify you whether or not the employee should be removed (i.e., suspended) from contact with children pending resolution of the arrest.

If you learn of an arrest and have not received a directive from OPI, you should immediately contact your Senior Regional Counsel or ISC Counsel. If an employee is suspended due to an arrest, that suspension may be with or without pay depending on that person's rights under law and applicable collective bargaining agreements.

5. Suspension – Tenured Employee Charged With Sexual Misconduct with a Minor.

Q: Can a tenured pedagogue charged with sexual misconduct be suspended without pay?

A: Yes after a finding by a hearing officer of probable cause. A tenured pedagogue who is charged under either criminal law or 3020-a with an act/acts constituting sexual misconduct of a minor shall be suspended without pay upon a finding by a hearing officer of probable cause that sexual misconduct was committed.

NOTE: Sexual misconduct includes the following conduct involving a student or a minor who is not a student: sexual touching, serious or repeated verbal abuse of a sexual nature, action that could reasonably be interpreted as soliciting a sexual relationship, possession or use of illegal child pornography, and/or actions that would constitute criminal conduct under the New York Penal Law.

Q: Will a person suspended without pay for sexual misconduct be terminated?

A: If a teacher is suspended without pay, the Department will commence proceedings against that teacher under 3020-a seeking termination. The agreement mandates discharge for any person who has (1) engaged in sexual misconduct; or (2) pleads guilty to, or has been found guilty of, criminal charges for such conduct.

6. Suspension – Tenured Employee Convicted of Felony.

Q: Can a tenured pedagogue be suspended without pay if convicted of a felony?

A: The 2005 UFT contract provides for an automatic suspension without pay for up to 3 months pending the final outcome of a 3020-a proceeding.

NOTE: In this instance, there is no probable cause hearing.

XI. RATING EMPLOYEES

1. Rating for Pedagogical and Non-Pedagogical Employees – General.

Q: Who am I responsible for evaluating?

A: You can evaluate any person working in your building including, but not limited to, all pedagogical staff, paraprofessionals, school aides, parent coordinators and custodians.

Q: Do all employees receive a formal rating sheet?

A: No. Only pedagogical employees receive formal rating sheets. This includes teachers, social workers, guidance counselors, psychologists, school secretaries and assistant principals.

Note: With respect to parent-coordinators and other non-pedagogues, you must follow the concept of progressive discipline. For parent coordinators specifically, please consult the general guide at:

<http://www.nycenet.edu/offices/dhr/forms2/PARENTCOORDINATORhandbookdecember4revised.pdf>.

Q: How do I rate non-pedagogical employees?

A: There is no formal rating sheet for non-pedagogues (except custodians, see next question). You should evaluate such employees through file letters (discussed above) which put them on notice that their performance is not acceptable.

Q: How do I rate custodians?

A: You rate a custodian twice per year in consultation with your plant manager.

2. Rating Teachers Unsatisfactory.

Q: What are the requirements for rating a teacher unsatisfactory?

A: The pedagogical rating sheet contains a variety of categories in which you will rate the employee (e.g., personal and professional qualities, pupil guidance and instruction, student outcomes and growth, classroom or shop management and participation in community activities). The teacher should receive this rating sheet along with the supporting documentation between 10 and 4 school days prior to the end of the school year, or whenever a teacher who has taught for 20 school days leaves your school. Failure to provide the rating sheet within that time period does *not* mean you cannot rate the teacher unsatisfactory, however, you should make every effort to provide the rating sheet within the aforementioned time period.

Q: Is a teacher required to receive a satisfactory rating in all categories in order to receive an overall satisfactory rating?

A: No. The overall rating is based on the principal's judgment and an unsatisfactory rating in 1 category may warrant an overall rating of unsatisfactory (e.g. attendance).

Q: Can I change a rating from satisfactory to unsatisfactory if the teacher engages in misconduct after I rate him/her?

A: Yes. If you rate a teacher satisfactory and they subsequently commit some act of misconduct during the remainder of the rating period, you can – and if warranted, you should – change the rating to unsatisfactory. You can also change a rating when you subsequently learn of and conclude that misconduct took place during the rating period in question.

Q: Am I required to have a certain amount of documentation to sustain an unsatisfactory rating?

A: No. There is no particular amount of documentation required to sustain an unsatisfactory rating. For example, one particularly poor lesson could be sufficient to justify an unsatisfactory rating for the entire year. The same is true of one disciplinary letter memorializing an incident of misconduct. Incidents involving danger to children will always support an unsatisfactory rating or termination.

While you are required to conduct a certain number of observations each year, even if you do not conduct the requisite number of observations you may still rate an employee unsatisfactory.

Q: Can a teacher appeal an unsatisfactory rating?

A: Yes but only internally and not to a neutral arbitrator. The appeal of an unsatisfactory rating is heard at the Department’s Office of Appeals and Review (“OAR”), which will issue an *advisory* recommendation regarding whether it should be sustained. You are not required to attend the hearing in person, but rather your participation is by phone. The appeal hearing will include a presentation of file documents as well as testimony by the rating officer and/or others regarding incidents or observations which may not have been memorialized to the file. The administration will have the ability to demonstrate that the documents were representative of the teacher’s entire performance. The Chancellor has the final say as to whether to reverse an unsatisfactory rating.

Q: What are the consequences of a teacher receiving an unsatisfactory rating?

A: An unsatisfactory rating has several potential adverse consequences including ineligibility for salary step increase (*i.e.*, person cannot move up a salary step); inability to renew a temporary license; rendering substitutes ineligible to work for the DOE; ineligibility for per session assignments that require satisfactory ratings in the postings; and the basis to proceed with termination.

Q: Is a teacher automatically discontinued or denied completion of probation as a consequence of receiving an unsatisfactory rating?

A: No. An unsatisfactory rating – or even three consecutive unsatisfactory ratings – will NOT automatically result in the discontinuance or denial of tenure nor will it result in immediate dismissal of an employee. State law requires separate written notification.

- Termination of Probationary Pedagogical Employee: The CSD LIS in CSD schools (or LIS in high schools) must accompany an unsatisfactory rating with a discontinuance or denial of completion of probation letter.² In Community School District Empowerment Schools, the authority to discontinue/deny completion of probation has been delegated to principals.
- Tenured Pedagogical Employees: Charges are filed and section 3020-a hearings are commenced.
- All Non-Pedagogical Employees: Other employees must receive progressive discipline and proper notification. See discussion above regarding termination of non pedagogical employees.

Note: You cannot simply terminate parent coordinators or other non-pedagogical employees for poor performance; you must follow progressive discipline. The only exception *may* be if a non-pedagogical

² In the event the CSD LIS delegates their statutory authority to the network LIS, the network LIS may prepare the discontinuance or denial of completion of probation letter.

employee (e.g. parent coordinators) has worked less than 1 term (5 months) in which case you may proceed directly to termination without following the rules of progressive discipline. You should consult your Senior Regional Counsel or ISC Counsel in these circumstances.

XII. GRIEVANCES

Q: What aspects of the grievance process have changed under the 2005 UFT contract?

A: Two aspects of the grievance process were eliminated: (1) letters, observation reports and other material in the file are no longer subject to the grievance process; and (2) Step II (the Superintendent level) has been eliminated except for reorganization grievances (which don't proceed to the Chancellor's level).

Q: What do I do if I receive a grievance regarding a letter to file, observation report or other material in the file?

A: Advise the employee and chapter leader that material in file is no longer grievable under the UFT contract and that you will not hear the grievance.

Q: How soon must an employee lodge a grievance after a particular act?

A: An employee must "present a grievance to the head of the school within thirty school days after the employee has knowledge of the act or condition which is the basis of the complaint." (Source: Teachers' Contract, Article 22B). Grievances need not be in writing.

Grievances regarding assignments and programs must be presented within two (2) days of the assignment. (Source: Teachers' Contract, Article 22B).

Q: May a Step 1 grievance be submitted orally?

A: Yes. However be sure that the grievant specify what article of the contract s/he is grieving.

Q: What should I do when an employee submits a grievance?

A: First, determine what contractual article the employee is grieving. If you believe the grievance has merit, you talk to your Senior Regional Counsel, ISC Counsel or the Office of Labor Relations about a resolution. Next, if it is not resolved, you should schedule a meeting with the employee to hear the grievance.

Q: What should I say or do at the grievance hearing?

A: You should make sure the grievant or chapter has given you a clear explanation of which contractual article was allegedly violated and why. The employee cannot simply grieve your professional judgment. Many grievances involve the allegation that the "Matters Not Covered" article of the collective bargaining agreement has been violated. If this provision is being grieved, you should ask the employee what Department-wide policy, rule or regulation is being violated.

Q: Who must attend the grievance hearing?

A: The employee and head of the school must attend the Step 1 hearing. The employee may be represented by a union representative or a teacher of his/her choice however the employee still needs to be present and cannot simply send a representative.

Q: What if an employee wants to bring his/her union representative but the representative is never available?

A: You should adjourn the conference only once as an accommodation. The employee may bring another union representative (e.g., district representative) or colleague.

Q: How soon after hearing the grievance must I write my decision?

A: You must communicate your decision to the employee and his/her representative within five (5) school days of receiving the complaint. If the grievance was presented in writing, the decision must be in writing.

For reorganization grievances – i.e., grievances involving assignments – you have 2 days after receiving the complaint to issue a decision.

Q: What should I write in my grievance decision?

A: You may include a rationale for denying a grievance, however, you must state: (a) when the act that is being grieved occurred (i.e., when did you do the thing that the employee is complaining about – this is important because many grievances could be denied as untimely if there were a clear record); (b) when the employee sent you the grievance, and (c) whether you are sustaining or denying the grievance. See Sample grievance decision at Appendix D.

Q: Should I keep a record of when I gave the employee my grievance decision?

A: Yes. This is very important. Just as there are time limits for initially filing a grievance, there is also a time limit for appealing your decision. Many grievances are not appealed in a timely fashion. However, the administration often cannot prove this because no record was kept of when the grievance decision was given to the employee. Therefore, please also ask the employee to sign **and** date the grievance decision so we have evidence of when the employee received the decision. If the employee refuses to sign, you and a witness should sign and date the decision and mark it “refused to sign.”

Q: Can an employee appeal your Step 1 decision?

A: Yes. As per the 2005 UFT contract, appeals of your Step 1 decision go directly to the Chancellor’s level (now referred to as Step 2).

Q: Must I appear at a grievance hearing at the Chancellor level in-person?

A: No. You may, and are encouraged, to appear at these hearings for UFT members by telephone. Hearings for DC 37 grievances at the Chancellor’s level require either your personal appearance or you may not appear at all; you cannot appear by telephone. In such cases, you should forward the necessary documentation to the advocate who will appear on your behalf, prior to the hearing. If you are not sure who will be representing you, please contact your Senior Regional Counsel, ISC Counsel or the Office of Labor Relations.

Q: Can a central or district union representative come into the school to meet with a teacher and gather information regarding a grievance?

A: Generally, yes but the representative cannot meet with a teacher during his/her work time (including the preparation period). See Article 19A of the Teachers Contract. You cannot bar a union official from your school. However you may ask the union representative to contact you ahead of time to arrange a mutually convenient time. Also, as a visitor to the building, the union representative is required to sign in upon arrival and follow all other security procedures, e.g., go through a metal detector. You may ask your LIS or other regional administrator to speak to the union and ask that the union representative leave immediately after conducting his/her business (e.g., a witness interview).

Q: What is a “safety” grievance?

A: A “safety” grievance is a complaint by a teacher or chapter leader to a principal alleging that there has been a violation of the school safety plan (e.g., unsafe student dismissal). This grievance should be brought to your attention as soon as possible. Generally, you should meet with the grievant; if appropriate, explain that there has not been a violation but that you will nonetheless attempt to resolve any issues. These grievances are not processed through the standard grievance/arbitration procedure. If you receive a “safety” grievance, contact your Senior Regional Counsel, ISC Counsel or the Office of Labor Relations.

Q: What is a “workload” grievance?

A: A school secretary, guidance counselor, school psychologist or social worker may submit a workload grievance – in short, disputing his/her assignments. If you receive a workload grievance, you (or your designee) should meet with the employee and his/her union representative, listen to the employee’s explanation of the dispute, and then reach a determination within 5 school days and convey this determination to the employee. While the contract does not explicitly require a written response, it is a good practice to write a brief letter stating that: (i) you, the employee and union rep. met; (ii) the employee stated that his/her workload was excessive and insert reasons given by the employee; and (iii) if appropriate, you determined that the workload is not excessive.

A workload grievance cannot go to arbitration. However a teacher can appeal your determination to the LIS. The LIS shall appoint a designee who will jointly investigate with a UFT representative to determine if the workload is appropriate. The LIS designee and UFT representative will submit a recommendation to the LIS for his/her determination. Then, the UFT may appeal the LIS’ determination to the Chancellor who shall make the final determination which is not subject to further review.

Q: What is a “request for conciliation”?

A: The UFT contract provides for a conciliation process with respect to a professional disagreement regarding educational issues (curriculum mandates, textbook selections, etc.) If you receive a request from your chapter leader, contact your Senior Regional Counsel, ISC Counsel, or the Office of Labor Relations.

APPENDIX A

Privacy Acknowledgement for Student Witness Statements

This is to acknowledge that, upon my request, I have been provided with a copy of a statement written by each of the following students:

I understand that the statements have been provided for the limited purpose of responding to an allegation that was made against me. Although I am permitted to share the statement with my Union Representative and/or counsel, I am prohibited from disclosing the identity of the writer and the substance of the statement to anyone else.

I further acknowledge that retaliation against the author of the statement, or any discussion of the content of the statement with the author of the statement, is strictly prohibited and may result in disciplinary action including termination of employment.

Name

DATE:

Union Representative

DATE:

Declined to Sign:

Witness

APPENDIX B

SAMPLE LETTERS

Summons to Disciplinary Conference

[school letterhead]

[Date]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

I have scheduled an appointment for you to meet with me in my office on [date and time].

[If this involves an allegation of corporal punishment (see Chancellor’s Regulation A-420) or verbal abuse (see Chancellor’s Regulation A-420) then you must give a short statement of the reason for the meeting. For example: “The purpose of the meeting is to investigate an allegation of corporal punishment.” In addition, A-420 and A-421 are the only times that you must give 48 hours notice prior to the disciplinary meeting.]

Because this conference may lead to disciplinary action, you may bring a union representative.

Sincerely,

[Name], Principal [School]

~Note ~

This letter is to be used when conducting an investigation into an allegation which could lead to disciplinary action, such as corporal punishment, verbal abuse, insubordination, or other professional misconduct. The employee does not have to sign this letter. Keep a copy of this record in your files.

Summons To Disciplinary Conference Based On An SCI or OSI Investigation

[school letterhead]

[Date]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

I have scheduled an appointment for you to meet with me in my office on **[date and time]**. The purpose of the meeting is to discuss the report of the Special Commissioner of Investigation which concludes that you **[insert conclusion; for example: "initiated inappropriate sexual contact with one of your students."]**

[If this involves an allegation of corporal punishment (i.e., a violation of Chancellor's Regulation A-420) or verbal abuse (i.e., a violation of Chancellor's Regulation A-421) you must give a short statement of the reason for the meeting. For example: "The purpose of the meeting is to investigate an allegation of corporal punishment." In addition, A-420 and A-421 are the only times that you must give 48 hours notice prior to the disciplinary meeting.]

Because this conference may lead to disciplinary action, you may bring a union representative.

Sincerely,

[Name], Principal [School]

cc: [Local Instructional Superintendent]

Sample Disciplinary Letter for Professional Misconduct

[school letterhead]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

On [date and time], I met with you and your union representative, [name of union representative], in [place of meeting] to discuss my observation of your professional misconduct on [date at time or period].

[Insert description of your observations. Be specific. For example: “At the beginning of the sixth period, I saw you in the cafeteria instead of your regular assignment in the outside yard. I asked you why you were not at your assignment and you ignored me. I directed you to report to your assignment and you walked away. Later during the same period, I saw you leaving the main office as I entered it. You said “Let me tell you, you are not to direct me to do anything. You are not my supervisor.”]

During our meeting on [date of meeting] you [provide a summary of what was said here. If possible, include the employee’s exact statements or, if s/he does not respond, state as much. For example: “When I asked you why you did not perform your scheduled assignment, failed to follow my directions, and spoke to me in an unprofessional manner, you said `I was very frustrated because the students had been misbehaving all morning.”]

I conclude that the conduct you [insert your factual conclusion, e.g.: “On (DATE) at the beginning of sixth period you ignored my directive to report to your assignment and walked away; you later told me not to direct you to do anything and that I’m not your supervisor.”

You are reminded of your obligation to adhere to your scheduled program, follow my supervisory directions, and address me in a professional manner. Please be advised that this incident may lead to further disciplinary action including an unsatisfactory rating and your termination.

[For non-pedagogues, (e.g., paraprofessionals, school aides or parent coordinators) if the misconduct warrants a suspension without pay conclude with: “As a result, you are hereby suspended without pay for one week starting today. Report to work next on [insert date].” If you believe termination is warranted, conclude with: “You are hereby terminated effective today.” If you are terminating an employee based on prior instances of misconduct, attach the prior letters and conclude with: “Based on the above-referenced acts and prior incidents memorialized in the attached disciplinary letters, you are hereby terminated effective today.”]

Sincerely

[Name], Principal [School]

I have received a copy of this letter and understand that it will be placed in my file.

[Employee’s Name]

[Date]

Sample Corporal Punishment Letter No. 1

[school letterhead]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

On April 11, 2003, Jane D., the mother of your student, John D. (class 4-1) complained to me as follows:

At noontime on April 10, 2003, while you were with your class outside the student cafeteria, you grabbed John by his neck and shoved him against the wall, causing him to strike his head against the wall.

I have investigated the complaint made by Jane D. My investigation included my discussion with Jane D. and interviews with John D., Frank S. and [other pupil witnesses identified by first name, last initial.], who wrote witness statements. John wrote that on April 10 he was arguing with Frank S. and you came over to him and grabbed him by the neck and threw him against the wall. Frank also wrote a statement stating the same thing. In addition, Ms. Jones, the school nurse, submitted a statement that John came to her office on April 10 with a small cut on the back of his head.

On April 14, 2003, I had a conference with you and Alma Alpha, the UFT Chapter Chairperson, in my office in order to give you an opportunity to respond. Also present was Robert Jones, your immediate supervisor. At the conference, I informed you of the complaint as it is stated above and gave you the opportunity to review the student and nurse's witness statements. [**"You refused to sign the privacy acknowledgment (attached), and therefore, I gave you the student statements without the full student names." -- OR -- "After signing the attached acknowledgment, I gave you the witness statements to review and the statements are attached to this letters."**]

Your response was that "John and another pupil (Frank) were fighting; I intervened, but not in the manner described to you by Jane D. or the witnesses." I asked you whether any possible witnesses would corroborate your story. You stated that you did not know. I asked you why these witnesses would lie; you stated you did not know. You did not say anything else.

I have evaluated all the investigatory results, including your responses at our April 14 conference and conclude that at about noontime on April 10, 2003 while outside the student cafeteria with your class, you seized John D. by his neck and shoved him against the wall causing his head to strike the wall. I base this on the statements of the students, which are consistent, and on the fact that the child did go to the nurse that day with a cut on his head. I also note that while you did not admit to the conduct, you did not categorically deny it, nor did you provide me with a reason why John D. would lie.

In so doing, you committed an act of corporal punishment which is prohibited by the Chancellor's Regulations and New York State Education Law, and which constitutes unacceptable teacher conduct.

I further note that you were given a copy of the School's Policy manual in September at the orientation meeting. At page ___ of this manual, it sets forth the prohibition on corporal punishment. A copy of this manual is attached to this letter.

This incident may lead to further disciplinary action, including an unsatisfactory rating and termination. **NOTE:** [For tenured pedagogues: You should contact the Administrative Trials Unit to set up a TAC to see if you have enough to bring charges against the teacher].

[For all other employees, contact your Senior Regional Counsel or ISC Counsel to determine whether you should terminate the employee immediately.]

[For paraprofessionals, school aides, and parent coordinators, if termination is warranted, conclude with: “As a result of the above, your employment is terminated effective today.”]

Sincerely,

[Name], Principal [School]

I have received a copy of this letter and understand that it will be placed in my file.

[Employee’s Name]

[Date]

Attachment: Witness Statements; Privacy Acknowledgement; School Policy Manual

~Note ~

At disciplinary meetings in which there are witness statements or an OSI/SCI report, give the employee and his/her union representative an opportunity to review these documents and memorialize this fact in your letter by stating: “I gave you an opportunity to review the attached documents.”

Sample Corporal Punishment Letter No. 2

[school letterhead]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

On [date of meeting] I met with you and your union representative, [insert name], to review an allegation against you that was made by [insert student name]. Specifically, it was alleged that on date of incident you [state specific allegation, for example “on [date] you grabbed John Doe by the arm, twisted it, and ejected him from the classroom in violation of Chancellor’s Regulation A-420,” or “you called John a ‘moron’ when he asked you to explain the homework assignment in violation of Chancellor’s Regulation A-421.”]

At our meeting, I shared with you the specific allegation made against you as stated above. I shared the witness statements and gave you an opportunity to review these statements. **[NOTE: Only provide student witness statements with names of students if the employee signs the privacy acknowledgment. If the employee does not sign, then s/he may have the witness statements without the names of the students. Be careful not to disclose other documents with the names of the students in the absence of a signed privacy acknowledgment.]**

In response, you stated that, [state what the employee said]. **If the employee denies the allegation, ask (a) why the employee believes the witnesses would lie, and (b) if there are any witnesses who would corroborate the employee’s version of events. Include the employee’s response in this letter. If the employee gives reasons why witness would lie, or answers yes to question (b), you must investigate these new facts to determine whether the witness statements remain reliable, or whether the additional witnesses alter your conclusion, before substantiating in this letter.]**

After reviewing the complaint against you, the complainant’s statement, the witness(es)’ statements, and your explanation, I conclude that [insert your specific findings. For example: “you grabbed John Doe by the arm, twisted it, and ejected him from the classroom” or “you called John a ‘moron’ when he asked you to explain the homework assignment”] on [insert date].

[Note, if there are contradicting witness statements, then you must explain why you believed one story over the other. For example: “While you claim that you did not twist John’s arm, or eject him from the classroom, six students stated that they witnessed you do so, and their statements were consistent as each contained the same details.”]

This violates [Chancellor’s Regulation A-420 which prohibits corporal punishment and/or Chancellor’s Regulation A-421 which prohibits verbal abuse.] I note that you were given a copy of Chancellor’s Regulations A-420 or 421 at our first faculty conference in September (see attached copy of your signed acknowledgement of receipt).

[If you substantiate corporal punishment, include the following: “You are hereby advised that the above-described conduct may lead to further disciplinary action, including an unsatisfactory rating, and disciplinary charges that could lead to the termination of your employment.” Consult with the

Administrative Trials Unit if you believe there is sufficient evidence to initiate disciplinary charges leading to the employee’s termination.]

[Probationary Teacher: If you substantiate corporal punishment and believe termination is warranted, please consult your ISC or Senior Regional Counsel.

[School Aide, Parent Coordinator or Paraprofessional: If you substantiate corporal punishment and the discipline warrants more than a letter in file, conclude with: “You are hereby suspended without pay until [insert date] OR terminated effective today.”]

[If you do not substantiate corporal punishment, but you find the employee exercised poor judgment, conclude with: “I conclude that you exercised poor judgment when you [state what the action was, e.g., “you said ‘you are a twit’ in front of your class.”] When appropriate, include, “If you have difficulty in managing your class, please consult a supervisor who will provide you with professional development to improve your classroom management skills.”]

Sincerely,

[Name], Principal [School]

I have received a copy of this letter and understand that it will be placed in my file.

[Employee’s Name]

[Date]

Attachment: Witness Statements; Privacy Acknowledgement; School Policy Manual,

Sample Corporal Punishment Letter with OSI Report

[school letterhead]

[Employee Name]
[School and Position]
[Employee File No.]
[SCI or OSI Report No.]

Dear [employee name]:

On May 14, 2003, I had a conference with Ms. Jones, your immediate supervisor, you and Ms. Alpha, the UFT Chapter Chairperson, to discuss a corporal punishment allegation against you. The Office of Special Investigations substantiated the allegation that on April 10, 2003, at approximately 12:00 pm, you grabbed John D. by the neck and pushed him against the wall. The investigator interviewed Jane D., John's mother, John D., Frank S. and **[other pupil witnesses]**, who wrote witness statements. John wrote that on April 10 he was arguing with Frank S. and you came over to him and grabbed him by the neck and threw him against the wall. Frank also wrote a statement stating the same thing. In addition, Ms. Jones, the school nurse, submitted a statement that John came to her office on April 10 with a small cut on the back of his head.

At the conference I gave you a copy of the report and witness statements and an opportunity to review these documents. **["You refused to sign the privacy acknowledgment (attached), and therefore, I gave you the student statements without the student names." -- OR -- "After signing the attached acknowledgment, I gave you the witness statements to review and the statements are attached to this letter."]** I also gave you an opportunity to respond. Your response was that "John and another pupil (Frank) were fighting; I intervened, but not in the manner described to you by Jane D. or the witnesses." I asked you whether any possible witnesses would corroborate your story. You stated that you did not know. You did not say anything else.

[Note: You should participate in OSI's investigation and state that you find certain witnesses credible. If you do not participate in the investigation, speak to at least one witness yourself and state that you find the witnesses credible.]

I have evaluated all the investigatory results, including your responses at our May 14 conference, and I conclude that at about noontime on April 10, 2003 while outside the student cafeteria with your class, you grabbed John by his neck and you shoved him against the wall causing his head to strike the wall. I base this on the statements of the students, which are consistent; and, the fact that the child did go to the nurse that day with a cut on his head. I also note that while you did not admit to the conduct you did not flat out deny it, nor did you provide me with a reason why John would lie.

In so doing, you committed an act of corporal punishment which is prohibited by the Chancellor's Regulations and New York State Education Law, and which constitutes unacceptable teacher conduct.

I further note that you were given a copy of the School's Policy manual in September at the orientation meeting. At page ___ of this manual, it sets forth the prohibition on corporal punishment. Another copy of this manual is attached to this letter.

[If you/OSI substantiate corporal punishment, include the following: "You are hereby advised that the above-described conduct may lead to further disciplinary action, including an unsatisfactory rating, and disciplinary charges that could lead to the termination of your employment." Consult with the

Administrative Trials Unit if you believe there is sufficient evidence to initiate disciplinary charges leading to the employee's termination.]

[Probationary Teacher: If you substantiate corporal punishment and believe termination is warranted, please consult your ISC or Senior Regional Counsel.

[School Aide, Parent Coordinator or Paraprofessional: If you substantiate corporal punishment and determine the discipline warrants more than a letter in file, conclude with: "You are suspended without pay until [insert date] or you are hereby terminated effective today."]

[If you do not substantiate corporal punishment, but you find the employee exercised poor judgment, conclude with: "I conclude that you exercised poor judgment when you [state what the action was, e.g., "you said 'you are a twit' in front of your class."] When appropriate, include, "If you have difficulty in managing your class, please consult a supervisor who will provide you with professional development to improve your classroom management skills."]

Sincerely,

[Name], Principal [School]

I have received a copy of this letter and understand that it will be placed in my file.

[Employee's Name]

[Date]

Attachment: Witness Statements; Privacy Acknowledgement; School Policy Manual, OSI Report

Sample Absences and Lateness Letter No. 1

[school letterhead]

[Date]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

On [date], I met with you to discuss your lateness and/or absences so far this year. You attended the meeting with your union representative, [insert name]. I provided you with the attached copy of your CAR. During this period, you have been late (or absent) insert number times as summarized below:

Month	Days Late	Time Arrived at School	Time Lost
-------	-----------	------------------------	-----------

At the meeting I asked you [recite verbatim what you stated at the meeting, for example: “I asked you why you had been late so many times.”] You responded [write the employee’s response.]

I conclude that your record of [lateness/absences] is excessive. I reminded you at the meeting that you are expected to be in school each day at or before the designated starting time and to serve as a role model for our students by demonstrating the highest standards of punctuality.

[For pedagogues include: “Please be advised that your poor attendance may lead to further disciplinary action, including an unsatisfactory rating and your termination.”]

[For non-pedagogues include: “This letter constitutes a warning. If your attendance does not improve, you will be subject to further disciplinary action, including suspension without pay or termination.” If this is a second or third letter regarding absences or lateness, include “As a result of the above, you are hereby suspended without pay for one/two/three week/s starting today. Report to school on [date.]”]

Sincerely,

[Name], Principal [School]

I have received a copy of this letter and understand that it will be placed in my file.

[Employee’s Name]

[Date]

Attachment: CAR; School Attendance Policy and Acknowledgement

Sample Absences and Lateness Letter No. 2

[school letterhead]

[Date]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

On March 15, 2004, we met to discuss your lateness and absences for this year. Also present was Ms. Jones, your union representative and Ms. Williams, Assistant Principal. According to school records, since January 7, 2004 you have been late and absent on the following days:

[list the days late with the amount of time late and the days absent.]

This is a total of 15 days late totaling 320 minutes and a total of 6 days absent, during approximately six months of school. In addition, on November 5, 2003, and January 7, 2004, I gave you letters detailing your lateness and absences to that point. These letters are attached hereto. At the meeting I gave you an opportunity to respond, but you refused to do so.

I conclude that your record of [lateness/absences] is excessive.. I reminded you at the meeting that you are expected to be in school each day at or before the designated starting time and to serve as a role model for our students by demonstrating the highest standards of punctuality.

[Paraprofessionals, School Aides and Parent-Coordinators]: Conclude with: “I have provided you with two prior warnings this year, including one suspension, regarding your lateness and absences, but nevertheless your attendance record has not approved. As a result, your services are terminated effective today.”]

[Pedagogues]: Conclude with: “This incident may lead to further disciplinary action including an unsatisfactory rating and charges that could lead to your termination.”] [NOTE TO AUTHOR: For tenured pedagogues: You should contact your Senior Regional Counsel, ISC Counsel or Office or Labor Relations to determine whether this employee should be referred to the expedited Time and Attendance Disciplinary Procedure (see discussion above at Section IX). If serious enough, you may also contact Theresa Europe at the Administrative Trials Unit to set up a Technical Assistance Conference to determine whether there is sufficient cause to bring the employee up on charges to seek termination. For probationary pedagogues: contact your ISC or Senior Regional Counsel to determine whether discontinuance/denial of completion of probation is warranted.]

Sincerely,

[Name], Principal [School]

I have received a copy of this letter and understand that it will be placed in my file.

[Employee’s Name and Date]

Sample Warning Letter For Potential Job Abandonment (for UFT Employees)

[school letterhead]

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

[Date]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

As of today, you have been absent ten consecutive days since insert date. During this period of time, the school has not received any telephone calls or other communication from you to explain your absence.

Please contact the school immediately.

Sincerely,

[Name], Principal [School]

Sample Termination Letter For Potential Job Abandonment

[school letterhead]

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

[Date]

**[Employee Name]
[School and Position]
[Employee File No.]**

Dear **[employee name]**:

I attempted to contact you on **[date]**, regarding the fact that you had been absent for **[NUMBER]** consecutive days without contacting the school. To date you have not responded to that letter.

You have been absent without notice for more than 20 consecutive school days and you are deemed to have resigned from your employment with the New York City Department of Education as of **[date]**. Therefore, you are no longer to report to any Department office or school building."

Sincerely,

[Name], Principal **[School]**

cc: **[Local Instructional Superintendent]**

Sample Termination Letter for Paraprofessional, School Aide or Parent Coordinator Based on SCI Report

[school letterhead]

[Date]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

We met on date in place with [include names of everyone in attendance at meeting] to discuss the findings of the Special Commissioner of Investigation (“SCI”) that you engaged in [insert conclusion of SCI, such as, “inappropriate behavior when you kissed and hugged a female student”]. After giving you the opportunity to review the SCI findings, I asked if you had any response.

You stated [insert everything employee said in his defense].

After reviewing the SCI findings as well as your responses, and giving due consideration to the matter, I am following the SCI recommendation and terminating your employment for [again insert SCI conclusion, such as “inappropriately kissing and hugging a female student”]. [NOTE TO AUTHOR: As in any case when you are relying on a report by someone else, make sure that you are reconciling any inconsistent statements and providing a rationale for why you are accepting the report’s conclusion, e.g., the witnesses all gave consistent accounts.]

Effective today, you are hereby terminated from your employment with the New York City Department of Education.

Sincerely,

[Name], Principal [School]

cc: LIS’s name, Local Instructional Superintendent

Sample Counseling Memorandum

[school letterhead]

COUNSELING MEMORANDUM

VIA HAND DELIVERY

[Employee Name]
[School and Position]
[Employee File No.]

[date]

Dear [employee name]:

On January 5, 2004, I conferred with you regarding your late arrival to the faculty conference held in the auditorium on December 22, 2003. You arrived at the faculty conference fifteen minutes late, at 3:30 p.m. instead of at 3:15 p.m.

I asked you to explain the reasons for your late arrival. You stated that you were delayed because you had to make a personal call on your cell phone. You did not indicate that this call was an emergency. You stated that you did not know that you had to be at the meeting at 3:15 p.m. You apologized for your tardiness.

I emphasized that each staff member must be punctual at the monthly faculty conferences because information discussed at these conferences is essential to effective management of the school, and each staff member is accountable for compliance with directives issued at the conference.

In the future, I expect that you will arrive on time to each faculty conference. If there is an urgent situation requiring your attention that may delay your arrival, you are to contact me promptly or, if I am not available, an assistant principal, to discuss the situation and receive direction.

Sincerely,

[Name], Principal [School]

A counseling memorandum is not disciplinary in any manner and cannot be used in any action against an employee except to prove notice if the employee denies notice.

I have read this memo and understand that a copy will be placed in my official personnel file.

NAME

DATE

APPENDIX C

Technical Assistance Conference Form

REVISED 12/1/03

REQUESTED BY _____

DIRECT TELEPHONE # _____

NAME OF EMPLOYEE _____

FILE #: _____ SOCIAL SECURITY #: _____

TITLE/LICENSE _____

ALLEGATION(S) _____

TENURED YES NO DATE COMPLETED PROBATION _____ APPOINTMENT DATE _____

NUMBER OF U-RATINGS: _____ LIST ALL U-RATINGS/YEARS/SCHOOLS: _____

SCHOOL/ASSIGNMENT _____

PRINCIPAL _____

ADDRESS _____

DIRECT TELEPHONE # _____ FAX # _____

REGION AND DISTRICT ___ / ___ REGIONAL SUPERINTENDENT _____

ADDRESS _____

DIRECT TELEPHONE # _____ FAX # _____

LOCAL INSTRUCTIONAL SUPERINTENDENT (LIS) _____

DIRECT TELEPHONE # _____ FAX # _____

REGIONAL PERSONNEL MANAGER _____

DIRECT TELEPHONE # _____ FAX # _____

HAS THE PERSON BEEN REMOVED FROM THE CLASSROOM? YES NO

REASSIGNED TO _____ DATE REASSIGNED _____

REASSIGNED AT THE REQUEST OF _____

REPORT (S) ARREST YES NO OSI YES NO SCI YES NO A-420 YES NO

COMMENTS _____

DATE OF TAC _____

APPENDIX D

Sample Grievance Decision

[school letterhead]

VIA HAND DELIVERY (If employee is not in school, then send via certified mail)

[Date]

[Employee Name]
[School and Position]
[Employee File No.]

Dear [employee name]:

You filed a grievance on [date] claiming that your rights pursuant to Article 17 of the collective bargaining agreement were violated when I exceded you from your position in the school. I held a meeting in my office with you and Joe Smith, your UFT chapter leader, on (DATE), to discuss your grievance.

I deny your grievance because you failed to demonstrate you being exceded from your position violated Article 17 of the collective bargaining agreement.

Sincerely,

[Name], Principal [School]

[Employee Name]

[Date of receipt of decision]