

**Coaches: Employment Contracts,
Compensation, Discipline and Discharge**

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I. Employment Contracts

A. Teacher/coaches

-coach who teaches for you is entitled to a continuing coaching contract (279.19A(2))

-individual written contract (# of contract days, annual compensation, other matters mutually agreed) for each *interscholastic athletic coaching duty* (does not apply to non-athletic positions) (279.19A(1))

-coaching contracts must initially be offered on same date as teaching contracts (279.19A(2))

-coach may resign within 21 days after contract offered (279.19A(2))

-termination or resignation of teaching contract automatically terminates any individual coaching contracts, but termination or resignation of a coaching contract does not affect the teaching contract (279.19A(8))

-board may require coach who has resigned to continue to work for 1 year subject to certain conditions (teaching contract, good faith effort to fill position, not filled by June 1, notice within 7 days after June 1) unless master contract provides otherwise (279.19A(3), (5) and (6))

-board may require teacher to accept coaching contract subject to certain conditions (previous coach no longer teaching or was terminated as coach, good faith effort to fill position, not filled by June 1, notice within 7 days after June 1) unless master contract provides otherwise (279.19A(4),(5), and (6))

B. Non-teacher coaches

-coach who does not have a teaching contract with your district is employed at will and the continuing contract/termination procedures of Chapter 279 do not apply. These individuals serve at the pleasure of the board. (279.19B)

-be sure not to offer Chapter 279 continuing contract protections to these individuals either through board policy or written contract.

C. Preference in hiring

-when considering applications for employment, board must give priority to coach with teacher's license over a coach with authorization (§ 279.19B).

II. Compensation of Coaches

A. Teacher/coaches

-annual pay usually determined by the master contract

B. Non-teacher/coaches

-pay can be as determined by the board. Often pay is based upon master contract schedule.

-coaching work performed by individual who is not a teacher in the district is not exempt from FLSA minimum wage and overtime provisions. Must track hours worked and determine an hourly rate that is above minimum wage. Hourly rate can be based upon master contract pay, but must be converted to an hourly rate.

C. Wages/payments by outside groups (for example, booster clubs)

-avoid these situations. Creates issues regarding who is the employer, and issues under the gift law. Donations should be to the school, not the employee.

III. Discipline

A. Coaches can be disciplined just like teachers or other staff, through use of verbal or written reprimands, or suspensions with or without pay.

-they are not autonomous. Exercise your authority to direct and control the work.

-use progressive discipline if misconduct or poor performance warrants.

B. Documentation

Components of a document (failure to properly document can delay or prevent desired personnel actions):

1. Name of person preparing the document
2. Name of the employee to be evaluated/disciplined
3. Date of the document

4. Legible writing or typing (someone will have to read it)
5. Date of the rule/performance violation
6. Statement of the specific rule/standard violated
7. Identification of the employee's awareness of the standard/rule violated
8. Identification of previous violations/warnings
9. Detailed description of the rule/standard violation (i.e., the disciplinary event)
10. Exhibits or witnesses' verification of the rule/standard violation briefly highlighted, if possible
11. Description of the school interest harmed by the rule/standard violation
12. Corrective action or penalty to be imposed
13. Articulation of future performance expectations
14. Time frame for review of performance
15. Statement of consequences for future performance problems
16. Date and signature of supervisor/investigator
17. Employee signature acknowledging receipt of disciplinary action/memo

Documentation process

1. Everything you write as a supervisor could someday become part of a legal action (including your notes and emails)
2. If it is important enough to do discipline, it is important enough to put into writing.
3. Use notes or a log to help you keep facts straight as they happen (although we may try to keep them private, don't count on them never being reviewed is a dispute arises). They will be the basis for written discipline/evaluation comments.
4. Keep reminder notes simple and non-accusatory, and don't write anything down that you are unwilling to discuss with an employee (helps avoid the argument of the "secret book").
5. If written discipline is to be issued, do it promptly. Don't postpone for "convenience," or to wait for time to do a more perfect memo. Even hand-written notes/memos dated and signed will suffice if the facts are accurate.
6. If it is worth remembering, write it down. If it's not written down, it's not worth remembering (can be notes regarding verbal reprimands or discussions). Don't focus on minor issues. Look at important incidents and behaviors which reflect significantly on job performance and conduct.
7. Focus on job-related standards and behaviors. Stick with facts. For example, record chronic lateness, but don't record opinions about personal

characteristics that may cause the behavior (such as alcoholism, emotional instability, etc.).

8. Get the employee's side of the story, if appropriate on the document itself (works for disciplinary memos or summative evaluation, may not work on an observation form/formative evaluation). Shows that employee's position was considered, and helps make sure that position doesn't change.
9. Documentation is not to "build a case." It is to be a good faith effort to record facts. Focus on good faith efforts to turn around the employee (which can be "tough love," if appropriate).
10. In the first documentation to the employee after previous verbal warnings, make a bridge to the past. Mention the previous discussions/warnings.
11. If it is in writing and shared with the employee, it should go to the personnel file. Know your district's practices regarding such files (located at building, central office, etc.). The fact it goes into the file may irritate the employee, but it really is for the protection of both the employer and employee, in that it insures a record is kept of the incident. The employee should be given the chance to respond with a document to the file, if desired.
12. Note the corrective action taken or to be taken, and the consequences of failure to improve.
13. In determining whether to issue a written document (disciplinary) look at these four criteria:
 - a. The severity of the offense
 - b. The employee's past record
 - c. The employee's length of service
 - d. The past practice or past actions in similar incidents
14. Be cautious when "pulling" old warnings from a file, following improvement. If there is a change in administrative staff, relevant past occurrences can be lost. Instead, consider adding a notation to the file documenting the improvement shown. The memo should mention the specific written warning to be neutralized, the employer's appreciation for the correction in the performance or behavior, a statement pointing out why the correction was important to the job success, and conclude with a statement affirming the employee's responsibility to maintain the improvement (or hope that the improvement continues).
15. When determining the number of warnings to issue before recommending termination, look at:

- a. The seriousness of the matter
 - b. The interval since the prior warning
 - c. The district's practice in similar situations with other employees
 - d. The employee's length of service
 - e. The employee's overall record
 - f. The compelling need for individual consideration (discretion)
 - g. The unfortunate timing which might cast doubt on the your motives.
16. Strive for consistency. It decreases the chance of a disparate treatment (discrimination) claim, help's solidify support from the superintendent, can help defeat an issue of poor timing, and supports the district's defense in litigation.
 17. If termination is to be recommended, have all your document "ducks" in a row before you make the final decision. The ISEA has argued that anything arising after a notice of termination is issued is irrelevant, since it could not have been a part of the decision made by the administration.

Tips for Drafting Documents

1. Be Precise -- Include specific examples of problems that you observe and incorporate into your comments as much detail as you can.
2. Avoid Vagueness -- Whenever possible, avoid phrases such as "It seems", "You appear", and words like "possibly", "maybe", and "perhaps".
3. Be Consistent in Evaluations -- Refer back to previous evaluations and make sure that you have observed those areas of performance which were noted as less than satisfactory. If you do not make note of them again, then there may be a presumption that the employee has improved in that area even though that may not be the case.
4. Try To Be Uniform -- Your standards for employees should be relatively uniform. You have the right to expect more from an experienced employee than from a probationary employee. But within groups of employees with similar years of experience, your standards should be as uniform as possible. And it is important that you be able to articulate what those standards are.
5. Offer Concrete Suggestions for Improvement or Change -- Supervisors are expected to be able to provide employees with specific suggestions for improvement or change. Identify ways to improve with as much detail as possible. Offer the employee multiple ways to improve: seminars, courses, reading material, classroom observation of other teachers,

mentoring, AEA personnel, etc. And then follow up to see how the employee has responded to your suggestions.

6. Avoid Any Implication of a Personality Clash -- Even if part of an employee's problem is attitudinal, you should be careful to limit your observations and comments to specific and objective or verifiable problems and you should do so using language which is precise and detached.
7. Limit Your Comments Regarding Termination -- Be careful not to refer to termination, because only the Board can terminate a teacher's contract. Be sure that you can follow through once you have told an employee that their failure to improve will cause you to recommend termination.
8. Memorialize Complaints -- If you receive complaints about a teacher's performance or conduct, prepare a written record of the complaints, and, if they are valid, be sure to incorporate them into the evaluation.
9. Differentiate Between the Important and the Unimportant -- Most courts will not uphold a termination of an employee whose shortcoming is that he is occasionally late to work or does not complete some report in a timely manner. Identify and concentrate on the major areas of concern with regard to performance.

IV. Discharge/Termination

A. Non-teacher coaches

-Serve at the "pleasure of the board." Can be terminated or discharged at any time.

-At will employee is not entitled to a due process hearing with the board *unless* one is provided for in contract/board policy or according to Constitutional principles.

-Liberty interest – an at will coach may be entitled to some due process if the termination harms his or her reputation (liberty interest in good name). Due process requires notice and an opportunity to be heard. The due process may be given by the administration, but also can be provided by the board.

-Veterans are entitled to a discharge hearing. (35C.6)

B. Teacher/coaches

-termination procedures/process same as for a teacher (279.19A(2))

-right to board hearing/appeal to court for both immediate and end of year terminations.

Seven Learnin's from *Board of Directors v. Cullinan*, 745 N.W.2d 487 (Iowa 2008)

Learnin' #1 – *These cases take time – LOTS OF TIME – especially when every step of the Chapter 279 process is used.*

Time Line of the Process (May 2002- April 2008):

*May 2002 – parents raised serious complaints about Coach conduct, but waited until after season ended and new contract issued to do it. Coach not terminated, but put on a remediation plan, and directed not to correct players in private.

*December 2003 – Coach met alone with player to discuss his game performance/future, which led to a complaint of harassment. Coach suspended for two games, and observations by administration through rest of season showed concerns with player morale.

*April 28, 2004 – Notice and Recommendation to Terminate Contract issued.

*June 15-16 and July 13, 2004 – Hearing held before the Board

*July 16, 2004 – Board issued unanimous decision to terminate.

*November 22, 2004 – Adjudicator Harvey Nathan ruled that there was no just cause for termination, and that the Board's decision was not supported by a preponderance of the evidence.

*November 30, 2004 – Board rejected Adjudicator's decision.

*December 1, 2004 – Board files Petition for Judicial Review with Story County District Court.

*June 1, 2005 – District Court ruled there was no just cause for termination, and that the Board's decision was not supported by a preponderance of the evidence.

*June 22, 2005 – Board filed Notice of Appeal to Iowa Supreme Court.

- * December 19, 2005 – Briefs submitted to Iowa Supreme Court.
- *August 26, 2006 – Case transferred to Iowa Court of Appeals for consideration.
- *October 3, 2006 – Oral argument before Iowa Court of Appeals.
- *March 14, 2007 – Decision of Iowa Court of Appeals (2-1 against District).
- *April 3, 2007 – Petition for Further Review filed with Iowa Supreme Court.
- *May 15, 2007 – Petition for Further Review granted.
- *August 28, 2007 – Oral argument before Iowa Supreme Court.
- *Feb. 29, 2008 – Decision of Iowa Supreme Court (unanimous in favor of the District).
- *March 14, 2008 – Petition for Rehearing filed by Coach.
- *April 1, 2008 – Petition for Rehearing denied.

Learnin’ #2 – *“Just cause” for termination can consider performance over time, and the failure of an employee to show improvement. When the reason includes a failure to improve over time, the conduct from past years is relevant for the Board to consider.*

*The reasons for the recommended termination were:

- Failure to effectively lead the program.
- Failure to adequately remediate leadership deficiencies in program.

*Coach argued that “remediation plan” was for one year only and plan was successfully completed in 2003-04, such that the Board should not have received evidence about the conduct from 2002-03 and previous seasons.

*Noting that the reasons for termination included a failure to remedy preexisting problems, the Iowa Supreme Court stated that “...the board appropriately considered [the Coach’s] coaching history in deciding whether to terminate his coaching contract.” Past concerns give context to current issues. Board can look at entire history to determine if the current conduct is the “proverbial straw that broke the camel’s back.”

Learnin’ #3 – *Notice must be drafted so that it includes past conduct. Be sure your reasons give the Board the ability to look at full performance history.*

*The Coach argued that he didn’t know that the past conduct would be cited to the Board.

*The Iowa Supreme Court recognized that the Coach could not credibly argue that he was “caught by surprise” by the presentation of information about his past conduct. The

Court noted that the Coach had been informed throughout his career about the need for respect toward athletes, and the grounds for termination indicated that the failure to remedy the past problems would be part considered at the hearing. The Court found it important that the Board had found cause for termination not only based upon the December 2004 incident, but based upon his failure to satisfactorily correct his performance.

*In addition, the District provided the Coach a letter explaining that past conduct would be considered (this was *not made a part of the record* but should have been), and the exhibits exchanged by both the Superintendent and Coach ahead of the hearing included documents related to the past incidents.

Learnin' #4 – *Hearsay evidence can be used to support termination, which helps avoid a parade of witnesses, or the use of player/student testimony in the hearing. However, carefully consider whether your case will be strengthened by direct testimony from student witnesses.*

*Adjudicator and District Court were concerned that the player from the December 2004 incident did not testify.

*In this case, there were three “concerns” being presented to the Board – the current issue with one player (Dec. 2004), the current concerns about the morale of all the players, and the past performance concerns. Rather than bring in the students to testify as to their direct interactions/experiences with the Coach, the Superintendent called as a witness one parent from the previous years, the parent of the player involved in the Dec. 2004 incident, and the administrators involved in the investigation of these matters. There was **no direct testimony from any player.**

*When do you bring in players/students to testify about what a teacher/coach has done, or when can you rely on the investigation/conclusions of administrators who investigate these matters?

*The Coach had listed players as potential witnesses for the hearing and asked for subpoenas for their attendance, but did not call them to testify.

*The Iowa Supreme Court upheld the use of hearsay evidence, strengthening its recent decision in *Walthart v. Board of Directors*, 694 N.W.2d 740 (Iowa 2005). A Board may rely on hearsay evidence if it has sufficient indicia of reliability, looking at the credibility of the witness (such as the parent or administrator), the credibility of the declarant (such as a student), the circumstances in which the statement was made, the consistency of the statement with corroborating evidence, and other factors. Here, the Iowa Supreme Court found the player statements to parents and administrators to be credible because they “... were made by teenagers who were obviously distressed by the situation; they were made to trusted individuals, i.e., their parents; and they carried a consistent message – the players expressed the view that the coach was threatening and intimidating toward them.”

Learnin' #5 – *The Board makes the findings in a Chapter 279 termination proceeding, and it is those findings that will be upheld if supported by a preponderance of the evidence. Be sure the Board's decision makes specific findings on matters of fact and credibility, and makes clear statements as to the Board's conclusions on each possible incident that could support just cause for termination.*

*An appeal of a Board's termination decision is considered based upon the record made before the Board. A reviewing court is to reverse, modify, or grant any other appropriate relief from the board decision or the adjudicator's decision if the decision is in violation of law, made upon unlawful procedure, unsupported by a preponderance of the evidence, or arbitrary/capricious. The statute does not clearly state which decision is subject to review by a court – the Board's or the Adjudicator's.

*The Iowa Supreme Court concluded that it is the Board's decision that is under review – and it is the Board's findings of fact that are entitled to weight, especially when the Board makes findings on credibility.

*The Iowa Supreme Court criticized the Adjudicator, District Court, and Court of Appeals because they relied too heavily on the December 2004 incident to determine if just cause was present, because the Board did not rely solely on that incident in deciding the termination. The Court wrote: "Whether or not the December 16 was alone sufficient to constitute just cause, it was certainly enough to trigger the termination proceedings and open the door to the board's consideration of [the Coach's] failure to remediate the problems that have followed him throughout his career in the Ames district."

*The Iowa Supreme Court gave substantial weight to Board's view of the evidence, including its specific findings on credibility.

Learnin' #6 – *The teacher/coach has a right to back pay and reinstatement if the Board's decision is reversed. Plan for the worst.*

*The Coach asked to be returned immediately to his position once the District Court judge ruled in his favor. The District Court denied this remedy, finding that his right to reinstatement and back pay would effectively protect his interests should the Coach prevail on further appeal.

*The teacher/coach will be entitled to back pay, and that should be relatively simple to calculate based upon established salary schedules.

*The teacher/coach will also be entitled to return to the position from which s/he was terminated. In lieu of returning to the position, the teacher/coach may agree to a "front pay" amount that compensates the teacher/coach for giving up the right to return to the job. This can be achieved only with the agreement of the teacher/coach.

*You will need to determine what to do with the staff member who has been replacing the teacher/coach during the years of the appeal. This may require a new termination process to begin.

Learnin' #7 – *The legislature could make changes to this process at any time! If they make changes, let's push for positive ones.*

*In 2008, the Governor vetoed HF 2645, which would have:

1. taken the board out of the termination hearing process (except for a private “meeting”), with the adjudicator’s decision being final.
2. made hearsay evidence insufficient to support a termination (students would need to be called to give testimony).
3. allowed the coach time for discovery, but no discovery by the superintendent on what the teacher will allege in defense.
4. eliminated the probationary period.

*Positive changes would be:

1. exempting all coaching contracts from Chapter 279 continuing contract procedures.
2. making the board decision final in coaching termination matters.
3. clarifying the issue of which school year a summer coaching contract attaches to.