



BOARD CONSIDERATIONS IN IMPLEMENTING THE CONTINUING EDUCATION REQUIREMENT

In adopting its continuing education requirement for teachers, the New Jersey State Board of Education delegated the responsibility of implementation and ongoing oversight to local boards of education.¹ To achieve its goal of assuring teachers' continued professional development, the State assigned new responsibilities to both teachers and local boards of education.

Under the Continuing Education Code, all active teachers will be required, as of September 2000, to complete 100 clock hours of state-approved continued professional development every five years. Under the Code, all local boards of education will have the obligation to supervise the development of teachers' continuing education plans, to assure that the selected training meets the goal of providing an ongoing refinement of teachers' skills and knowledge that will be relevant to students' ability to achieve high academic standards.

The specific responsibilities assigned to local districts include: the development of district inservice programs; the development of Professional Improvement Plans (PIPs) that include the contents of teachers' continuing education; the inclusion of teachers' progress towards the fulfillment of the requirement in their annual performance evaluation; and, finally, at the end of the five-year cycle, a reporting to the State of teachers' progress and all instances of non-compliance. Districts' own compliance with their administrative obligations under the Code will be assessed by the State as part of its new monitoring system.

The continuing education requirement imposes an extensive list of new administrative obligations on all local districts. While the direct responsibilities of implementing these new functions will be delegated to districts' administrative staff, boards of education will need to provide direction to the district's implementation of its continuing education obligation. To that end, it will be helpful to keep in mind that each of these obligations carries with it a concurrent right for school management that provides boards with significant authority to control and manage the professional development of their teachers. Understanding the relationship between boards' rights and responsibilities can

help districts develop the distinct, yet related, activities that are required to comply with their responsibilities to implement the continuing education requirement on the local level. The consideration of a number of factors can lead to an appreciation of that relationship and will help boards of education to provide a consistent, coordinated and comprehensive direction to their districts' approach to their local administrative obligations.

Considerations in Developing Policies

A fundamental right and responsibility of boards of education is to develop policies that set goals and provide direction to their local districts. While the Continuing Education Code does not directly mandate boards to adopt a policy on professional development, the importance of board policies is recognized and underscored by several provisions of the Continuing Education Code. First, *N.J.A.C. 6:11-13.4* provides that teachers must meet their individual responsibility "in conjunction with district board of education policies." This provision offers clear recognition of the importance and relevance of board policies. It also establishes that the new professional responsibility does not supersede other board policies, but is to be coordinated and related to those policies.

Further, in requiring the incorporation of the continuing education requirement into the existing evaluation process, the Code suggests that the procedures for assessing progress towards fulfilling the professional development requirement will be guided by board policy. Thus, it is important to consider the board's role in developing policies, the specific requirements for policies on staff evaluation, and the effect of addressing continuing education in policies.

The Board's Role in Developing Policies

The development and adoption of policies is a fundamental function of boards of education. While policies addressing terms and conditions of employment, such as compen-

¹ For a full discussion of the provisions of the continuing education requirement, please see *The Negotiations Advisor* article "The Continuing Education Requirement and Boards of Education."

² For a full discussion of boards' negotiations obligation, please see *The Negotiations Advisor* article "Negotiations of Continuing Education Issues" in the Selected Topics section.

sation or release time, must be developed through the process of negotiations,² boards retain the unilateral right to establish educational policies and to define a district's goals and direction. Statements that provide district direction for the implementation of the board's responsibilities under the Code will remain governmental policy decisions which, ultimately, will be unilaterally established by a board of education through its normal policy development process.

Statutes and code regulations frequently require boards to adopt certain policies addressing specific topics. The 1978 enactment of the State's mandated evaluation of tenured and nontenured teachers is but one example of a regulation that required all boards of education to develop and adopt a formal statement of policy.

Mandated Policy on Staff Evaluations *N.J.A.C. 6:3-4.1* (c) requires boards of education to develop written policies on supervision of instruction for nontenured teachers. *N.J.A.C. 6:3-4.3* (a) requires every board of education to adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members. *N.J.A.C. 6:3-4.3* (c) delineates the minimum elements that must be addressed in each district's policy on staff supervision. That section also requires that the policy be developed in consultation with tenured teaching staff members, under the direction of the chief school administrator. *N.J.A.C. 6:3-4.3* (d) requires the distribution of the policy no later than October 1.

Boards' Rights The State's required policy on evaluations establishes the process and the minimum requirements of the required policy. However, even the mandate for a policy recognizes boards' rights to adopt a policy that reflects local districts' needs in a number of ways. First, while staff consultation is a required approach to the development of the policy, the final authority to adopt a policy on staff evaluations is clearly reserved for the board of education. In addition, while the Code requires minimum elements to be addressed in each district's policy, much flexibility is given for each district to express its particular circumstances. For example, the Code requires the inclusion of evaluation criteria into the policy, but the specifics of those criteria are left to the local district. Finally, boards remain free to supplement the State's mandated minimum requirements with their own additional standards for the evaluation of their teachers.

Thus, the rules governing tenured and nontenured teachers' evaluations require a process of consultation with the district's teachers, but they do not, in any way, diminish boards' rights to set their local direction for the supervision and evaluation of staff.

Continuing Education Policies

The Code's required incorporation of continuing education into the existing evaluation system may obligate boards to modify existing policies, or to adopt new policies, reflecting their districts' approach to the continuing education requirement. However, even in the absence of an implied or specific directive, adopting such policies would be beneficial to boards of education.

The importance of clearly worded, relevant policies in establishing goals and providing direction cannot be overstated. Not only do policies guide the implementation of a consistent districtwide approach to staff evaluation, but district policies can also support a board's actions in litigation. For example, in a decision³ upholding an administrator's decision to impose objectives for a PIP on a teacher who would not cooperate in reaching a joint decision, the Commissioner of Education found that the administrator's challenged action was consistent with the intent of the Administrative Code, as well as the district's own policy which clearly stated that finalizing PIPs was an administrative responsibility.

The Specifics of a Policy Policies become the perfect vehicle for boards to define their commitment to their legal responsibility. Policies can also define the purpose of continuing education and express the balance boards must establish between their many obligations: their need to assist and support teachers' continuing professional development; their responsibility to assure a strong instructional program where disruptions and interruptions are minimized; and their responsibility to allocate resources effectively and efficiently.

In addition to a general principle guiding a district's efforts to support continued professional development, policies may establish specific criteria and standards that do not conflict with laws and regulations. As such, a board policy on continuing education can include: the district's expectations for the development of PIPs that include the continuing education component; criteria for the board's support of the continuing education requirement, including consideration of district resources and continuity of instruction; and criteria for the board's review of inservice programs recommended by the district's Professional Development Committee. Policies can also include an affirmation that monitoring teachers' progress towards meeting their continuing education requirement is an evaluative function. Policies can also delineate the district's criteria that will be used to measure that progress. Policies can further express the district's intention to comply with existing law which prohibits binding arbitration of disputes involving the establishment and application of evaluative criteria.⁴

Providing Comprehensive Direction Clearly, a well-considered board policy on continuing education can pro-

³ *Grieco v. Board of Education of the Town of Nutley*, SLD 83:1258 (1983).

⁴ See discussion on evaluations, later in this article. Boards are also advised to refer to, and rely on, the packet of revised policies covering all required and critical areas of the continuing education requirement that was prepared by the NJSBA Policy and Library Resources Department and sent to all boards in May 1999. This packet will be most helpful in guiding boards to effectively assume their responsibilities and to comply with their rights and obligations under the new Code.

vide a district with comprehensive direction. One word of caution: once adopted, consistent and uniform application of the district's policy will be required under all circumstances. Therefore, before policies are adopted, their contents and their implications should be carefully considered. All of the components involved in a district's compliance with its continuing education responsibilities, discussed below, will need to be discussed and assessed during the process of policy development. Input from administrators who will be responsible for the implementation of these policies will be essential in these considerations. The time and effort involved in the development of these policies will be worthwhile: well-considered policies can establish important coordination among all aspects of the administrative responsibilities required in a district's implementation of its continuing education requirement.

Considerations in Developing Local Inservice Programs

One responsibility specifically assigned to local boards of education by the Continuing Education Code involves the development of a district's inservice program. Under the Code, local boards are expected to be involved in the development of their districts' inservice program in two ways. First, the board is required to establish a district-wide Professional Development Committee. While the composition of the committees is defined by *N.J.A.C. 6:11-13.3* (d), and the procedures for appointments to the committees will be defined by the State's Professional Teaching Standards Board, the Code also appears to require that the committees will be established through formal board action. In addition, the Department of Education has stated that nothing in the rules precludes a board from forming building-based committees to provide input to the required districtwide committee.⁵

The second area of boards' involvement in the development of inservice involves the board's required review of the local committee's decision. This board obligation holds an important right, and a significant responsibility, for boards of education.

Boards' Rights

Under the Code, boards retain the final authority to approve or disapprove the inservice plans recommended by the district's Professional Development Committee. This specifically reserved right clearly means that a board is under no obligation to automatically accept the recommendations of the local committee that have been approved as meeting the State's standards by the County Professional Development Board. Rather, a board of education remains free to establish additional standards for the inservice ac-

tivities that will be offered in its district.

The Code's provisions affirm existing case law's holding that local boards have a right to design training programs. In a number of decisions, the Public Employment Relations Commission (PERC) has held that the design and content of training programs are not negotiable topics.⁶ The Code's reaffirmation of that right permits boards to assess the extent of their ability to offer in-district training activities, to prioritize among a number of recommendations, and to reject inservice that is too expensive, too narrowly focused or otherwise deemed inappropriate for the district.

Boards' Responsibilities

The Board's right to approve, or disapprove, recommended inservice activities cannot be exercised arbitrarily or capriciously. Like all other exercises of their authority, boards' decisions must be based on reasons that can be proven to be legitimately related to their operational responsibilities. Thus, decisions to approve or reject recommended in-district activities will need to reflect considerations of the recommendations of the district's Professional Development Committee as well as of districts' resources and needs. Boards will need to carefully evaluate the list of recommended inservice before granting approval to any, or all, of the proposed training.

In reviewing recommendations for inservice, board members cannot forget that they are responsible for determining whether the proposal of the local Professional Development Committee is suitable for their district. The approval the plan has received simply indicates that the proposal is consistent with the State's common standards for professional development. The County Board's approval, however, does not consider whether the plan is appropriately designed to meet local districts' needs and resources. Therefore, boards must review the proposals they receive from all aspects of their districts' perspective.⁷

For example, boards will need to consider the impact of the proposed plan on their instructional time. Is there enough time in the district's work year to accommodate the plan without cutting into needed instructional days? Can the inservice be provided after the students' instructional days? Boards will also need to consider the proposal's ability to meet the district's educational goals and the total staff's training needs. In-district programs that have a narrow focus may have limited benefits for the staff as a whole. Others may not target areas of board concerns and, while of some interest, may not squarely address the district's priorities for improving specific areas of student instruction and achievement. In addition, boards must consider the total cost of the proposal, including the cost of the selected provider designated to present the program. Will the proposal exceed the budget's allocation for professional development?

⁵ 30 *N.J.R.* 2080, Response 11.

⁶ See, for example, *Monroe Township Board of Education*, PERC No. 93-9, 19 *NJPER* 23194.

⁷ Note, that boards can continue to offer inservice training that is not approved by the various committees; however, these programs could not count towards the teachers' 100-hour continuing education requirement.

These issues will be important considerations in the board's decision. They will also be important in explaining the reasons for rejecting recommended activities and in guiding local Professional Development Committees' required reassessment and modifications of their initial recommendations. A well-considered process of board approval can thus provide valuable input into the district's design of an appropriate, effective and relevant program of district inservice.

Considerations in Developing PIPs

The Continuing Education Code⁸ requires school administrators to include the content of each teacher's continuing education in the teacher's individualized Professional Improvement Plan (PIP). This requirement adds a new element to administrators' supervisory responsibilities. However, the ultimate responsibility to assure a district's effective and constructive compliance falls on the board of education. A consideration of the current structure that governs the development of PIPs can help boards set a direction that will provide school management with a significant means of controlling what kind of continuing education is necessary for each individual teacher.

The Current Structure of PIPs

PIPs have been a required element of the minimum annual written performance report required by the State for the evaluation of teaching staff members since the late 1970s. During this time, both the purpose of PIPs and the procedures for their development have become well-defined.

A Professional Improvement Plan (PIP) is defined in *N.J.A.C. 6:3-4.3 (h) 3* as:

...a written statement of actions developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timelines for their implementation, and the responsibilities of the individual teaching staff member and the district for implementing the plan....

The contents of PIPs, developed by the supervisor and the teacher, are based upon the evaluation of the teacher's performance during the year, which includes the supervisor's assessment of noted areas of strengths and weaknesses based upon the job description, indicators of pupil progress and the teacher's effectiveness. A PIP is intended to be a blueprint to guide the teacher's continued improvement. Progress in meeting the objectives of the

PIPs then becomes part of the next year's performance evaluation, which in turn, becomes the basis of the next year's improvement plan.

Boards' Existing Rights in the Development of PIPs

The process for the development of PIPs stems from the provisions of the Administrative Code⁹ as interpreted by decisions of the Commissioner of Education and the Public Employment Relations Commission (PERC). These interpretations establish the administration's authority to finalize the contents of PIPs.

The provision of the evaluation code, cited above, establishes an expectation that PIPs, for both tenured and nontenured teaching staff members, will result from a mutual agreement between teachers and their evaluators. However, the Commissioner of Education has clarified that this requirement does not mean that affected teachers can veto their PIPs' objectives. Rather, the Commissioner of Education has held that, when an agreement cannot be reached, the administration has the final authority to determine the contents of the improvement plan.¹⁰ The administration's objectives, however, must be reasonably related to the Code's stated purpose of PIPs.

In addition, the authority of school management in developing PIPs has been affirmed by PERC. PERC's reading of the Code's requirement led to its conclusion that policies and procedures for teachers' evaluations, including PIPs, must be developed under the supervision of the district's chief school administrator. The Commission thus ruled that a Superintendent's review authority is nonnegotiable and cannot be usurped by a negotiated agreement.¹¹

Finally, after the adoption of the Continuing Education Code, the Commissioner affirmed that the development of PIPs remains controlled by the provisions of the 1978 Administrative Code. In clarifying the nature of PIPs under the new requirement, the Commissioner stated that PIPs are considered to be a part of the evaluation process where the rights of management prevail.

Continuing Education and PIPs

According to the provisions of the Code, the continuing education requirement is to be incorporated into the current system of staff evaluation and added to the well-established, existing PIP format. Nothing in the Continuing Education Code modifies the well-established standards that define the purpose of PIPs and the role of school management in developing the improvement plans. Rather, the Continuing Education Code simply adds specific guid-

⁸ *N.J.A.C. 6:11-13.2.*

⁹ *N.J.A.C. 6:3-4.1 (d) 3 and 4.3 (f) 3.*

¹⁰ *Douma v. Board of Education of East Brunswick*, SLD 81:443 (1981); *Grieco v. Bd. of Ed. of the Town of Nutley*, SLD 83:1258 (1983).

¹¹ *Upper Freehold Regional Board of Education*, PERC No. 82-105, 8 *NJPER* 13139.

ance as to the considerations that must be given to the development of continuing education objectives contained in the PIPs. Specifically, *N.J.A.C. 6:11-13.2 (b)* requires these objectives to:

- “meet the needs of the individual teacher in the context of his or her job”;
- “emphasize, but not be limited to, knowledge and skills essential to achieve the Core Curriculum Content Standards.”

These standards add a new category that must be included in teachers’ PIPs. They also direct school administrators’ participation in the development of continuing education objectives. The standards actually encourage school management to carefully monitor the relevance of identified continuing education activities to each teacher’s professional growth and development. The new standards, however, do not modify school management’s role in the development of PIPs and its right to retain the authority to finalize professional improvement plans. Thus, the directive that PIPs define teachers’ objectives provides school management with an important tool to control the direction of each teacher’s continued education: it permits boards to establish a goal that the district’s selected training not only assists the teacher to meet the State’s requirement, but also relates directly to the improvement of instruction, student achievement, and the needs of the district.

Boards’ Responsibilities

Boards will have the responsibility to assure their districts’ compliance with the obligation to include continuing education in all their teachers’ PIPs. However, to assure full compliance with the Code’s intent to integrate professional development with improved instruction, boards must also assure that each teacher’s PIP is developed carefully to reflect training that will be meaningful to both the teacher and the students of the district.

Recognizing Administrators’ Needs In assuring the appropriate use of PIPs, boards need to be particularly sensitive to the needs of their administrative staff. Administrators and supervisors are the ones who are most closely involved in the development of PIPs. This role has always called for them to be equipped with the information and skills necessary to be effective evaluators. However, the additional and very specific context of the continuing education requirement may create a need for additional information and new evaluation strategies.

First, administrators will need to be familiar with the provisions of the continuing education requirement. They will need to understand that continuing education does not, in any way, change the traditional process of developing PIPs: most PIPs will continue to involve a collaborative agreement between the teacher and the evaluator; however, should such an agreement not be possible, administrators retain their right to ultimately impose the contents

of the PIP.

In addition, the continuing education requirement will call for all evaluators’ ability to identify performance deficiencies and to recommend approved training that will be most appropriate for the teacher’s professional development and for students’ improved performance. They will need assistance and support to become familiar with the courses that have been approved for continuing education credit. Administrators and supervisors will also need to be prepared to reject courses or training proposed by a teacher which would not, in the administrator’s judgment, contribute to that individual teacher’s professional development or to student or district needs. And finally, supervisors will need to keep in mind that the contents of PIPs are not limited by the State’s continuing education requirement. Administrators remain free to include identified activities that may not count towards the teacher’s fulfillment of the required 100 hours but will, nevertheless, contribute towards the teacher’s professional development and instructional improvement.

Boards must also recognize that their principals and supervisors will be the “front line” recipients of teachers’ differing interpretations and expectations. For example, in a number of districts, teachers have uniformly approached their evaluation conferences with a number of stated expectations that the continuing education requirement changed the old process of developing PIPs. Specifically, teachers have stated that the contents of PIPs require mutual approval and can be changed at any time. Supervisors must know that they retain ultimate control of the PIP contents and that any change in an established PIP will require their approval. Evaluators will thus need to be well-informed and well-prepared to recognize their teachers’ inaccurate assertions and to administer the continuing education requirement without compromising the rights of school management.

Providing Support to Administrators To assure the effective implementation of the 100-hour requirement, boards must be prepared to support the “in the trenches” work of their supervisory staff. This responsibility will involve board-initiated and board-sponsored training opportunities for all district administrators and evaluators. Administrative training may include the development of skills necessary to skillful performance evaluation and development of PIPs. The type and extent of skill development will, of course, be based on the needs of administrative staff. It is therefore advisable for boards to consult with their administrators to identify the needs of their supervisors and to mutually design meaningful approaches to develop and refine skills necessary to effective evaluations and development of PIPs.

Boards will also want to support their administrators by providing them opportunities to obtain information on the continuing education requirement. Administrators who are informed as to the specific provisions of the Code, the definitions and clarifications that result from the

Commissioner's guideline, as well as problems and solutions that have emerged in other districts are far better prepared to handle their responsibilities. In addition, boards can assist their administrative staff by providing them with an understanding of the board's resolve that continuing education does not erode management's rights. Administrators who know that the board is committed to support and protect their right to evaluate staff are far more likely to conduct meaningful evaluations of performance.

Considerations in Evaluating Staff

The Continuing Education Code not only directs boards of education to use PIPs to identify the content of a teacher's continuing education plan, but it also directs boards to use the supervision process as a means of actively assisting, supporting and monitoring a teacher's fulfillment of the requirement.¹² The *New Jersey Register's* commentary on the Continuing Education Code, as adopted in May 1998, as well as the June 1998 amendments to the Code, provide strong affirmation of the State Board's intent to incorporate continuing education into boards' current evaluative functions.¹³ An understanding of the current legal structure governing the evaluation of staff performance, including the Administrative Code and the PERC Law, can help boards to direct a meaningful approach to their districts' extended supervisory responsibilities.

The Current Structure of the Evaluation Process

Since the late 1970s, provisions of the Administrative Code¹⁴ have required boards to evaluate the performance of tenured and nontenured teachers. The Code directs boards to conduct assessments of staff performance and establishes minimum standards to guide that supervision. Required state standards have included: review of performance, based on the teacher's job description; review of indicators of pupil progress; and review of the teaching staff member's progress toward the objectives of the PIP developed at the previous annual conference. These state-established criteria must form the minimum standards for all districts' evaluation of teacher performance. In addition, the Administrative Code has authorized boards to estab-

lish additional local criteria through a process involving consultation with the district's teachers, under the supervision of the superintendent.

Since the early 1980s, the PERC Law has provided that nothing in the law "shall be construed as permitting negotiation of the standards or criteria for employee performance."¹⁵ As such, decisions of the Public Employment Relations Commission have held that the development of criteria may not be submitted to binding arbitration.

Boards' Rights in Evaluating Staff

The evaluation of staff performance is a well-accepted and well-established right of boards of education. As the New Jersey Supreme Court has stated, the evaluation of staff performance involves the exercise of "inherent managerial prerogatives" that cannot be diminished through the process of negotiations or arbitration.¹⁶ The extent of these board rights includes a prohibition against binding arbitration of grievances that would compromise the integrity of the evaluation process. The following aspects of existing law cannot be ignored in the consideration of a district's approach to evaluating progress towards the continuing education requirement.

The Nonnegotiability and Nonarbitrability of Evaluation Criteria Boards' rights to establish criteria has been supported by well-established case law. In general, the establishment and application of evaluation criteria are nonnegotiable matters of educational policy that cannot be submitted to binding arbitration.¹⁷

The Nonarbitrability of Key Procedures Boards' rights to conduct evaluations of staff performance have been further protected by rulings on the nonarbitrability of certain procedural aspects of the evaluation process. While evaluation procedures are generally negotiable, procedures that are clearly and specifically delineated by statutory or regulatory provisions are preempted from negotiations.¹⁸ In addition, procedures that would threaten the integrity and intent of the evaluation process are outside the scope of negotiations, as negotiations or binding arbitration over these issues would represent illegal significant interference with boards' determination of educational and governmental policies.¹⁹

The Nonarbitrability of Evaluative Judgments A

¹² N.J.A.C. 6:11-13 (4) b.

¹³ See 30 N.J.R. 2080 through 2082, Responses to comments 6, 12, 17.

¹⁴ N.J.A.C. 6:3-4.1 through 4.3.

¹⁵ N.J.S.A. 34:13A:5.3.

¹⁶ *Bethlehem Township Board of Education*, 91 N.J. 38 (1982).

¹⁷ See, for example, *Teaneck Board of Education*, 161 N.J. Super. 75 (1978). Exceptions to this general rule arise only under the limited circumstances of when those criteria are used to award merit pay: *County of Essex*, PERC No. 86-149, 12 NJPER 17201, aff'd App. Div. Docket No. A-5803-85T7, June 30, 1987. For a full discussion of the negotiability aspects of the evaluation process, please see *The Negotiations Advisor* article "Teacher Evaluations."

¹⁸ *Bethlehem Township Board of Education*, *supra*.

¹⁹ See, for example, *Clinton Township Board of Education*, PERC No. 85-30, 10 NJPER 15260, and article on "Teacher Evaluations" cited above.

board's right to evaluate staff performance has been further protected by a body of case law, as well as by a 1990 amendment to the PERC Law, that preclude binding arbitration of evaluative judgments. PERC has held that written comments that are evaluative, and designed to improve performance cannot, as a matter of law, be submitted to binding arbitration.²⁰ This principle generally insulates comments in an evaluation report from arbitral review. In addition, *N.J.S.A. 34:13A-27* limits binding arbitration of a teaching staff member's increment to actions that are predominantly disciplinary; when the reason for the withholding relates predominantly to the evaluation of a teaching staff member's teaching performance, the appropriate legal forum to appeal the withholding is not binding arbitration, but the Commissioner of Education. Accordingly, PERC has restrained binding arbitration of increments withheld because of teachers' failure to meet their improvement objectives as defined in their PIPs and their concurrent failure to improve their classroom performance.²¹

Evaluations and Continuing Education

Nothing in the Continuing Education Code diminishes, reduces or interferes with boards' well-established rights to establish criteria and to conduct meaningful evaluations of staff performance. The new Continuing Education Code simply adds a new statewide standard of teachers' performance responsibilities: the requirement to continue professional development. Under the Code, boards will be required to evaluate teachers' performance in progressing towards, and completing, the required hours of continuing education. In addition, every indication in the Code's development suggests that the State Board of Education also intended that local boards' monitoring and evaluative responsibilities include an assessment of the relationship of the teacher's training to classroom effectiveness.

According to the *New Jersey Register*, the primary reason for local districts' evaluative role is that "there is no meaningful way to integrate teachers' training into their classroom performance or to identify performance inadequacies without relying on district management" to perform its primary job of evaluating and supervising teachers.²² To assure that this intent was reflected accurately in the Code, the State Board soon amended the language of *N.J.A.C. 6:11-13.5(a)*, which initially required boards to take corrective action, to require appropriate "remedial" action in the application of sound and accepted principles of progressive supervision.

Thus, incorporating continuing education into the evaluation process will involve the integration of a teacher's compliance with the new continuing education requirement as well as an assessment of that training on the teacher's instructional effectiveness. Both aspects required by Code

involve an assessment of teaching performance.

Boards' Responsibilities

A number of board responsibilities stem from a board's right to evaluate staff. A board will need to be prepared to exercise and protect its nonarbitrable right to evaluate staff. A board will also need to assure that its district's evaluation process provides appropriate and relevant assessments of teachers' performance. Meeting this responsibility will involve a consideration of a number of factors, including those listed below.

Assuring the Development and Application of Appropriate Evaluation Criteria Boards will want to assure that their districts' annual evaluations of teacher performance actually address the relationship between continuing education and improved teaching performance. This will mean that teachers' achievement of the PIPs, noted in subsequent evaluations, includes demonstrable improvement in classroom instruction. This would mean a double continuing education criteria: one which notes the teacher's accrual of continuing education hours and counts toward progress in achieving the 100 hours; and one which notes whether the continuing education activities resulted in improved performance and counts toward an assessment of teaching performance. In subsequent evaluations, the continuing education component of PIPs would be considered fully "achieved" only if they met both components of the criteria.

Boards will need to establish these expectations through their board policies and stated expectations for administrators' conduct of evaluations. If indicated, a board may also need to provide training to assure that its administrators are well-prepared and skilled evaluators. Finally, a board will also need to be prepared to hold its administrators accountable for their compliance with the district's standards for evaluating teachers. A district's existing criteria for the evaluation of its supervisory staff should be reviewed and, if necessary, modified to reflect this new component of teacher evaluations.

Anticipating Challenges to the Development and Application of Evaluation Criteria To fully exercise and protect school management's rights to conduct meaningful evaluations, boards must be prepared to face challenges to the new criteria required by the State. Local associations may argue that existing case law is not applicable to the new conditions established by the continuing education requirement. They may seek binding arbitration of grievances challenging the establishment and application of the continuing education criteria. They may claim that increments withheld because of reasons that include continuing education are disciplinary and arbitrable.

²⁰ See, for example, *Holland Township Board of Education*, PERC No. 87-43, 12 *NJPER* 17316, aff'd App. Div. Dkt. No. A-2053-86T8 (Oct. 23, 1987) and *The Negotiations Advisor* article "Discipline of School Employees Under the PERC Law."

²¹ See, for example, *Ramsey Board of Education*, PERC No. 93-47, 19 *NJPER* 24020; *Bernardsville Board of Education*, PERC No. 94-83, 20 *NJPER* 25037.

²² 30 *N.J.R.* 2080, Response to comment 6.

If faced with these union challenges, boards must be prepared to exercise and protect their rights under existing law to evaluate staff in accordance with the minimum criteria established by the State and their additional locally established standards of performance. Boards must consider that the specific language and the history of the Continuing Education Code establish a new standard for teaching performance and obligates local administrators to evaluate teachers' progress in meeting that standard. Boards must remain alert to the fact that nothing in the Continuing Education Code modifies or diminishes the body of case law governing the evaluation of teachers in New Jersey.

However, in all challenges involving the implementation and administration of the continuing education requirement, boards must also keep in mind that this is a new and undeveloped area of case law. Definitive guidance as to the interpretation that will be given to the new regulation by the Commissioner of Education, PERC, and the courts will not exist for a number of years. Meanwhile, boards must be prepared to use their best judgments, to rely on their resources, and to be willing to protect their rights through the use of existing procedures.

Readiness to Use Existing Procedures to Resolve Disputes Boards' responsibilities will also require their willingness to provide the necessary resources to initiate procedures to resolve challenges to their evaluative decisions. Disputes over the scope of legal negotiability or arbitrability should be submitted to the Public Employment Relations Commission (PERC). Similarly, PERC is the agency designated to resolve disputes over the predominant reasons for the withholding of increments and to determine the appropriate forum of appeal.²³

A board that is faced with demands to negotiate evaluation criteria or to arbitrate evaluative decisions, must be prepared to have its attorney file a scope petition with PERC seeking a negotiability ruling or a permanent restraint of arbitration. Early consultation with your legal and labor resources, including the NJSBA Labor Relations Department, will be most helpful in meeting your responsibilities and protecting your right to evaluate staff appropriately.²⁴

Assuring the Maintenance of Good District Records Maintaining good district records is always an important aspect of effective administration. Complete and accurate records become a basis for consistent district administration. They are also an essential aspect in supporting a board's case before PERC or the Commissioner of Education. In addition, within the context of continuing education, these annual records will become the building blocks of the report that districts are required to submit at the end of the five-year cycle.

The final responsibility of a board of education, at the end of a five-year cycle of continuing education, will be to report to the Department of Education all instances of teachers' noncompliance with the requirement. Accordingly, to meet this responsibility, a board will need to consider a districtwide method of collecting information on all its teachers' annual progress towards the continuing education requirement.

District reports will also need to include a description of the actions taken by the district to address teachers' failure to progress towards, or complete, their professional development responsibilities. This will require a record of the evaluation reports and recommendations discussed above, including withholdings of increments. It will also be helpful to record other administrative actions that have been taken to encourage and support the continuing education requirement, such as: agenda of inservice programs; notices issued to all staff to alert them of upcoming, or newly approved, conferences or workshops; appropriately timed memos reminding staff of the benefits of annual progress towards the 100 hours; individual letters to teachers who appear to not be taking the steps to enroll in continuing education activities; meetings or conferences that have been held with individual teachers to discuss their progress; discussions at faculty meetings, and so on.

To prepare effectively for the report due at the end of the five-year cycle, boards will therefore need to assure that their district has effective and efficient procedures to maintain ongoing records of the district's experience with the continuing education requirement. Once again, a district's supervisory staff can provide valuable input in designing effective record-keeping procedures that minimize the administrative burden of additional paper work.

Summary

While the Continuing Education Code mandates a statewide program of ongoing education for teachers, it also assigns significant administrative rights and responsibilities to local boards of education. Appropriate exercise of their rights and responsibilities can permit local boards to become active participants in the development of their district's professional development plans. Boards' involvement can also help to assure that the state mandate results in a positive local impact on teachers' instructional effectiveness, student learning, and a district's ability to achieve its own goals.

However, achieving an appropriate and constructive local impact will not be easy or automatic. Rather, fulfilling boards' administrative obligations will require the development and coordination of a number of distinct, but related, activities. Boards will need to take the time to give careful consideration to these issues to develop well-reasoned and suitable approaches designed to meet their districts' needs. In this task, boards are advised to consult and rely on their resources, including their administrative staff, the NJSBA Policy and Library Resources Department and the Labor Relations Department.

²³ For a full discussion of PERC's role in determining the appropriate forum to appeal withholdings, please see "The Regulations Governing the Discipline of School Employees Under the PERC Law."

²⁴ 30 N.J.R. 2080, Response to comment 6.