

# The Dangerous Practice of Evaluating Substitute Teachers

*By Terry Ryan*

Everyone has at least one family member they don't want others to know about. The truly unfortunate among us, when opening our family closets, may be horrified to discover that our favorite cousin or uncle has just passed the bar exam. When this happens the best advice one can give is: "Don't feed them, they may come back." Remember when dealing with attorneys often "no good deed goes unpunished."

Administrators, unlike what many labor unions would have you believe, when sufficiently motivated can actually appear to be decent people. As the good and fair-minded people we administrators are, we may actually be persuaded that it is necessary and is even a "good deed" to formally evaluate substitute teachers.

Good administrators frequent classrooms so they can provide important pedagogical feedback to teachers. These fine administrators may decide they want to evaluate substitute teachers to better ensure high quality of instruction. Potential legal problems may occur, however, if these administrators decide to terminate the employment of a substitute teacher on the basis of the evaluation process.

Substitute teachers are legally designated as "at will employees." As you probably know, "at will employees" have no legal property interest. Administrators are under no legal obligation to provide substitute teachers with more than a modicum of "due process."

So what's the problem? Potentially a substitute teacher who has been evaluated can claim that they have an implied employment contract. An employment contract, once established, guarantees a legal property interest, which can be denied only through the due process of law. The claim of an implied contract, while disturbing, can become even more problematic if the substitute teacher can establish that one or more district administrators has stated something which lead the substitute to conclude (s)he had been promised an employment contract.

While this scenario may appear to be unlikely, it is possible and potentially costly to school districts. Fortunately there is a less painful solution. Don't evaluate substitute teachers. If you have decided not to utilize a substitute teacher's services, then don't. If the substitute teacher demands to know why (s)he is not being called, simply use the "broken record method" and tell him or her

(s)he is still under consideration. If you don't agree with this advice, then my cousin, Bobo the attorney, would like to represent your district; but please remember not to feed him.

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