

DISCIPLINE, SUSPENSION, TERMINATION AND DISCHARGE OF SUPPORT STAFF MEMBERS

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

- direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;
- determine qualifications for employment and the nature and content of personnel examinations;
- take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

For purposes of this policy:

- "Terminate" means, in the case of a **noncertificated nonlicensed** school employee, the act of severing the employment relationship with the employee.
- "Working day" means every **school** calendar day, excluding Saturday, Sunday or legal holiday.
- "Administrative leave" means the assignment of an employee to the employee's home to await further instructions pending the outcome of an investigation or inquiry into the actions of the employee in order to avoid interference in the inquiry. The use of "administrative leave" is not a disciplinary action.

Categories of Misconduct

Staff members may be disciplined for infractions that include, but are not limited to, the following categories:

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| • Absence without leave | ☒ Insubordination |
| • Abuse of leave | ☒ Neglect of duty |
| • Alcohol or drug impairment | ☒ Unauthorized possession of a
weapon on school grounds |
| • Child abuse or molestation | ☒ Unauthorized use of
property |
| • Discourteous treatment of the
school public | ☒ Unlawful conduct |
| • Dishonesty | ☒ Use of illegal drugs |
| • Excessive absenteeism | ☒ Violation of a directive of a
supervisor |
| • Fraud in securing employment | ☒ Violation of a District policy
or regulation |
| • Improper attitude | |
| • Incompetence or inefficiency | |

General Provisions for Discipline are as follows:

- *Informal consultation.* Nothing contained herein will limit a supervising administrator's prerogative to engage in informal consultation with an employee to discuss matters of concern related to the employee's performance, conduct, etc.
- *Persons authorized to impose discipline.* Any supervising licensed administrator who is the immediate or primary supervisor of a staff member is authorized to impose a penalty or penalties, short of termination.
- *Administrative discretion.* In adopting these policies/procedures, it is the intention of the District that they be interpreted and applied in a reasonable fashion. The policies are not intended to restrict or eliminate the discretion traditionally afforded to supervising administrators to determine whether discipline is appropriate. Administrators are therefore directed to continue to use reasonable discretion in determining whether a particular alleged violation merits discipline.
- *Right not to impose discipline.* The District reserves the right not to discipline a staff member for conduct that violates this policy.
- *Additional reasons for discipline.* A staff member may be disciplined for conduct that has occurred but that, at or near the time of misconduct, was not the subject of or identified as a reason for a specific proceeding under this policy.
- *Amendments.* The District reserves the right to amend this policy in any way at any time. Any amendment shall have prospective application only.
- *Severability.* If any provision of this policy is held to be invalid for any reason, such action shall not invalidate the remainder of this policy. If any provision of this policy conflicts with any provisions in any other policies adopted by the District, the provisions of this policy shall prevail.

Minor Discipline

Minor disciplinary action includes, without limitation thereto, removal from the grounds, written warning, written reprimand, or suspension. Minor disciplinary action shall be imposed by the staff member's administrative supervisor upon informing the employee of any violations of state or federal statutes, policies, rules or the New Mexico code of ethics and offering a hearing and opportunity to express the employee's side of the issue before implementing the disciplinary action. The disciplinary action shall be confirmed in writing to the employee. The discipline may only be appealed to the next level of administration. The hearing procedure shall be as follows.

Step 1 - Notice and Hearing:

- Upon the supervising administrator's determination of the existence of cause to impose discipline, the supervising administrator shall notify the staff member of intent to impose discipline, the conduct or omission on the part of the staff member that constitutes the reason for discipline, and provide the employee an opportunity to explain the employee's side of the issue. A reasonable effort to determine the circumstances of the incident will be made. The discipline may be imposed immediately or following any further investigation.

Step 2- Decision (in writing):

- At the hearing, or within seven (7) working days following the hearing, the supervising administrator shall inform the employee in writing of the disciplinary action, if imposed and summarize the discussion at the hearing.

Appeal of Minor Discipline

A staff member who wishes to object to a minor disciplinary action shall submit a written appeal request to the supervisor's superior within five (5) work days of receiving notice of the disciplinary action. Failure to request the appeal in the time frame indicated will be considered acceptance of the discipline imposed. The discipline shall be suspended if the appeal is timely made. The appeal shall specifically describe the part of the determination with which the staff member disagrees, such as:

- Determination was founded upon error of construction or application of any pertinent regulations or policies.
- Determination was unsupported by any evidence as disclosed by the entire record.
- Determination was materially affected by unlawful procedure.
- Determination was based on violation of any statutory or constitutional right.
- Determination was arbitrary and capricious.
- The penalty was excessive.

The appeal shall be based on the staff member's submission as listed above and the summary of the hearing made by the supervisor. The supervising administrator, the Superintendent, or, when appropriate, the **Board governing authority** may, at the conclusion of the appeal, uphold the discipline, modify the decision, or refer the matter back to the level from which it was appealed for rehearing and additional information. Such decision, along with specific direction as to the effective date of any discipline, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed seven (7) working days. The decision upon appeal is final for all minor disciplinary actions.

Termination Pursuant to 22-10A-24 NMSA (1978)

The following procedures will be used to impose any termination permitted under 22-10A-24 NMSA (1978) except that it does not apply to:

- A **noncertificated nonlicensed** school employee employed to perform primarily District-wide management. (22-10A-26 NMSA)

Step 1 - Notice:

- Upon the Superintendent's determination of the existence of cause to terminate, the Superintendent shall notify the staff member of intent to terminate. The notice shall be in writing and shall be delivered in person or by first-class mail. The notice shall include the following:
 - The statement that the employee has the right to request written reasons for the decision to terminate and such reasons shall be provided within ~~ten~~ five (5) working days of such request.
- The reasons shall not be publicly disclosed by the administration or **Board governing authority** ~~For an A local Board governing authority may terminate a nonlicensed school employee of with less than three (3) consecutive one (1) years of service employment the decision to terminate is not contestable under the School Personnel Act. for any reason it deems sufficient.~~
 - For a nonlicensed school employee who has been employed for more than one year ~~employees with three (3) or more years of service~~ the following appeal procedure shall apply. ~~(consult your attorney to determine what constitutes three (3) or more years of service under New Mexico law.)~~

Step 2-3 Appeal Requirements and Content:

(5) Termination may be appealed to the **Board governing authority** by ~~an employee with three (3) consecutive years of service~~ a nonlicensed school employee who has been employed for more than one year by making a request to the Superintendent within five working days of the date of receipt of the notice of termination requesting reasons for the termination decision and a meeting with the **Board governing authority**.

- The appeal shall be granted if the employee responds to the Superintendent in writing within ten (10) working days of receiving the reasons for termination with the following information:
 - A statement of contention that the employee believes the decision is without just cause.
 - A brief statement of the reason(s) why the staff member believes the decision is without just cause.
 - A statement of the facts that the employee believes support this contention.

Step 4 - Appeal Procedure:

- The **Board governing authority** shall meet to hear the employee's statement in no less than five (5) or more than fifteen (15) working days after receipt of the statement.

- The hearing shall be conducted informally in accordance with the provisions of the Open Meeting Act.
 - Hearing Procedure:
 - The employee and the Superintendent may each be accompanied by a person of their choice.
 - The Superintendent shall present the factual basis for determination that just cause exists for the termination, limited to the reasons provided to the employee.
 - The employee shall present contentions, limited to the reason(s) why the staff member believes the decision is without just cause.
 - Rebuttal to the employee's presentation may be presented as deemed relevant by the Board governing authority.
 - Witnesses called may be questioned by the Board governing authority, the Superintendent or an appointed representative, and the employee or an appointed representative.
 - The Board governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
 - No record shall be made of the hearing.
 - The governing authority shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. The Board governing authority shall notify the employee and the Superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

~~The Board shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. Such decision, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed five (5) working days.~~

Termination - Arbitration Appeal Pursuant to 22-10A-25 NMSA (1978)

An employee still aggrieved by a decision of the Board governing authority may appeal the decision to an arbitrator by doing the following:

- Submitting a written appeal to the Superintendent within five (5) working days from receipt of the Board's governing authority's written decision or refusal to grant a hearing on the issue of termination.

- Accompanying the written appeal shall be a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to subsection E of Section 22-10A-24 NMSA (1978).
- Including in the contentions a statement of facts supporting the contentions.

Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the Board governing authority's decision on termination final.

If the arbitration appeal request is timely and complete, the Board governing authority's and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select an independent arbitrator within five (5) working days of the date of the request.

A de novo (new) hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, sending such notice to the employee and Board governing authority.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.
- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The Board governing authority shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.
- Hearing Procedure:
 - The employee and the Board governing authority may each be accompanied by counsel.
 - The Board governing authority shall present the basis for determination that just cause exists for the discharge.
 - The employee shall present reason(s) why the recommendation is without just cause.

- Either party shall be permitted to call witnesses and to introduce documentary evidence.
 - Witnesses called may be questioned by, the ~~Board~~ governing authority or a representative, and the employee or a representative.
 - Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statements or records tendered, the accuracy of truth of which is in reasonable doubt.
 - A record shall be made of the hearing and each party may order the record at the expense of the party.
- The arbitrator shall notify the employee and the ~~Board~~ governing authority of the decision in writing within ten (10) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the ~~Board~~ governing authority.

The parties shall be guided by the statute and arbitrator as to the conduct of the hearing, each bearing their own costs. The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-24 NMSA (1978)
22-10A-25 NMSA (1978)
22-10A-26 NMSA (1978)

CROSS REF.: DKA - Payroll Procedures/Schedules