

7900 ~~EMPLOYEE CORRECTIVE ACTION AND TERMINATION-SUSPENSION~~ ~~OR TERMINATION OF DISTRICT EMPLOYEES AND CORRECTIVE ACTION~~

I. PURPOSE AND PHILOSOPHY

Weber School District values its employees and also expects value from its employees. The District holds its employees to high standards of excellence while ensuring employees receive treatment in the face of allegations of misconduct of poor performance. The purpose of this policy is to define the status of our employees and put into policy the statutory process for addressing misconduct and poor performance, up to and including the process of termination. This policy is to be read in conjunction with applicable negotiated agreements.

II. POLICY

It is the policy of Weber School District, where appropriate, to apply corrective action principles to remedy concerns about employee conduct and job performance. All corrective action will be taken in accordance with basic principles of due process and fairness. Employees have varying levels of employment rights, depending on their status as an employee, as defined in this policy. The District reserves the right to terminate an employee for misconduct and/or for job performance in accordance with the procedures set forth in this policy.

III. DEFINITIONS

- A. "Career Employee" means an employee of the District who has obtained a reasonable expectation of continued employment and whose contract will not be terminated without notice and cause.
 - 1. Except as provided in the paragraphs below, an employee who works for the District on at least a half-time basis becomes a career employee upon the successful completion of at least three (3) full consecutive academic school years with the District as a provisional employee.
 - 2. The District may extend the three-year provisional status of an employee up to an additional two (2) consecutive years upon notification to the employee within sixty days of the end of the employee's contract term.
 - 3. An employee with career employee status, and then accepts a position with the District which is substantially different from the position in which career status was obtained shall become a provisional employee for two subsequent years in that new position. For example, a person who was a teacher and becomes an administrator or an administrator who becomes a District Facilitator.
 - 4. An employee with career status who is separated from employment with the District and later returns to work with the District shall upon return be a provisional employee.

5. An employee with career status in another school district in Utah and then transfers to Weber School District in the same or substantially similar position shall become a provisional employee in Weber District for two years after hire.
- B. "Provisional Employee" means any employee who is employed at least half-time who has not achieved career employee status and who may be non-renewed at the end of a contract term with or without cause, in accordance with the procedures in this policy and the negotiated agreement.
- C. "Classified Employees" means all non-certified employees of the District.
- D. "Temporary Employee" means all employees employed on a temporary at-will basis, including seasonal employees who are employed for less than the full academic year and who may be terminated at any time without cause.
 1. An employee who is given extra duty assignments in addition to a primary assignment, such as a teacher who also serves as a coach or activity advisor, is a temporary employee in those extra duty assignments and may not acquire career status beyond the primary assignment.
 2. Classified employees in their first 90 days of employment are temporary employees.
- E. "Contracted Service Providers" means individuals who are paid by contract to provide specific types of services for the District but who are not employees, are not on the District payroll, and do not receive the same benefits enjoyed by regular employees of the District. CSP have no expectation of employment or continued contractual services and their services can be severed at any time in accordance with the terms of the contract.
- F. "Contract Term or Term of Employment" means the period of time during which an employee is engaged by the District under a contract of employment, whether oral or written.
- G. "Dismissal or Termination" means an employee shall be deemed to be discharged upon occurrence of any of the following events:
 1. Termination of the status of employment of an employee.
 2. Failure to renew the employment contract of a career employee.
 3. Reduction in salary of an employee not generally applied to all employees of the same category employed by the District during the employee's contract term.
 4. Change of assignment of an employee with an accompanying reduction in pay unless the assignment change and salary reduction are agreed to in writing.
- H. "Unsatisfactory Performance" means a deficiency in performing work tasks which may be due to insufficient or undeveloped skills or a lack of knowledge or aptitude; and remediated through training, study, mentoring, or practice.
- I. "Misconduct" means conduct by an employee that is cause for corrective action, up to and including termination, and includes:

1. a violation of work policies;
 2. a violation of District policies, State Board of Education rules, or law;
 3. a violation of standards of ethical, moral, or professional conduct; or
 4. insubordination.
- J. "Corrective action" means disciplinary action taken by the District in response to misconduct. Corrective action includes the following: verbal warning, written warning, reprimand, probation, suspension without pay, and termination.
- K. "RIF" means a reduction in force, or a termination for any of the reasons set forth in this policy and Utah Code 53G-11-516. If a RIF becomes necessary, an employee will receive a Notice of Termination in accordance with the procedures outlined in Section V.C.
- L. "Insubordination" means the act of willfully ignoring, disobeying, or refusing to follow a reasonable directive(s) from an authority figure.
- M. "Malfeasance" means intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.
- N. "Misfeasance" means the improper or unlawful performance of an act that is lawful or proper.
- O. "Nonfeasance" means failure to perform either an official duty or legal requirement.

IV. CAUSES FOR DISCIPLINE INCLUDING TERMINATION

Employees may be disciplined for any of the following reasons:

- A. Improper conduct, which includes but is not limited to:
1. violating any established statute, law, rule, regulation, policy, or directive, including but not limited to those found in the applicable written/negotiated agreement, board policies¹, applicable rules of professional conduct, and state and federal law;
 2. bringing an intoxicant or other controlled substance onto district property, consuming it on district property, being under the influence of an intoxicant or other controlled substance while on district property, or reporting for work under the influence of an intoxicant or other controlled substance, except as prescribed by a physician; (see Policy 7300)
 3. providing or selling an intoxicant or other controlled substance to a minor when the conduct results in a criminal arrest;
 4. engaging in misfeasance, malfeasance, or nonfeasance;

¹ The following are the most commonly violated policies: Policy 7120 Code of Conduct Between Employees and Students; Policy 7145 District Personnel Electronic Device Policy; Policy 7300 Alcohol and Drug Abuse Policy; Policy 7340 Employee Social Media Policy; Policy 8800 Selection of Learning Materials

5. using district property for financial gain or personal benefit;
 6. damaging district property through willful or grossly negligent conduct;
 7. wasting, misusing, or misappropriating/stealing district/employee/student supplies, resources, or equipment;
 8. knowingly providing false, misleading, or inaccurate information to the district, including but not limited to information on application forms, employment records, or time cards/clock;
 9. failing to cooperate with a district investigation or giving false information as part of a district investigation;
 10. improperly disclosing district or student information;
 11. failing to disclose a conflict of interest or engaging in other unethical behavior;
 12. engaging in workplace violence;
 13. using the title or credentials associated with a degree that has not yet been awarded on a transcript from an accredited institution of higher education;
 14. knowingly possessing, viewing, creating, distributing, or storing any pornographic or indecent material in any form on district property;
 15. failing to follow grading or testing protocols and procedures, including any action that results in unreliable or inaccurate test results; or
 16. engaging in an improper or unlawful relationship with a student
- B. unlawful discrimination, bullying, cyber-bullying, harassment, abusive conduct, or retaliation in violation of board policy, or state or federal law.
- C. Neglect of duty, including but not limited to:
1. inefficiency or incompetence in one's work performance;
 2. failing to maintain skills and adequate performance levels; or
 3. loafing or malingering
- D. Unsatisfactory attendance, including but not limited to:
1. having unexcused or excessive tardiness or absences;
 2. failing to provide proper notice of absences and tardiness under district, building, or department procedures;
 3. providing false or misleading information regarding an absence or leave; or
 4. abusing leave policies.
- E. Insubordination.
- F. No longer meeting the essential requirements of the position, including:

1. failure to maintain or secure necessary skills, training, certificates, and licenses for the position; or
 2. inability, incapacity, or failure to perform essential job functions despite reasonable accommodations provided for by relevant law.
- G. Conduct that a reasonable person would understand to involve intimidation, physical harm, emotional harm, or threats of physical or emotional harm against any individual in the workplace.
- H. Conduct which results in a substantial disruption to the work environment or educational mission of the district.
- I. Conduct which exposes the district to censure, ridicule, damage, or reproach.
- J. Any other reason the district, in its sole discretion, deems reasonable and appropriate.

V. PROCEDURES FOR TERMINATION

A. Termination for Performance

1. If the District intends to terminate the contract of a career employee for reasons of unsatisfactory performance, the District shall follow the procedures set forth in the negotiated agreements and state law, including documenting efforts to remediate the performance through a plan of assistance in accordance with the steps outlined in the negotiated agreement.
2. Prior to terminating the contract of a licensed career employee for unsatisfactory performance, the District will ensure the employee has been evaluated in accordance with the District's evaluation plans and procedures.

B. Termination for Misconduct

1. If the District intends to terminate the contract of a career employee for misconduct, the District must provide notice in accordance with this policy and state law, and the cause or causes for termination.
2. The District may attempt to remediate a career employee's misconduct by issuing progressive corrective action prior to termination but may terminate without any effort to remediate and without any prior corrective action if the misconduct is egregious or severe.
3. If a career employee exhibits both unsatisfactory performance and misconduct the district may attempt to remediate the conduct or terminate for cause if the misconduct merits dismissal; the district is not required to provide a plan of assistance for the unsatisfactory performance prior to dismissing for cause.

C. Notice of Intent to Nonrenew or Terminate

1. If the District intends not to renew the contract of a provisional employee, the District shall send notice of non-renewal at least 60 days before the end of the provisional employee's contract term.

2. If the District intends to terminate an employee's contract during the contract term (including provisional employees during the contract term and career employees at any time), for either unsatisfactory performance or for misconduct, the District shall:
 - i. Give written notice of that intent to the employee;
 - ii. Serve the notice by personal delivery or by certified mail addressed to the individual's last known address;
 - iii. Serve the notice at least 30 days prior to the proposed date of termination;
 - iv. State the date of termination and detailed reasons for termination.
 - v. Give notice of the individual's right to appeal the decision to terminate employment and the right to a hearing and the right to legal counsel, to present evidence, cross-examine witnesses and present arguments at the hearing.
 - vi. Notify the employee that failure to request a hearing within 15 days after the notice of termination was either personally delivered or mailed to the employee's most recent address shown on the district's personnel records shall constitute a waiver of the right to contest the decision to terminate.

VI. DUE PROCESS RIGHTS FOR EMPLOYEES

A. Administrative Leave

1. An employee may be placed on paid administrative leave pending an investigation to ensure the integrity of the investigation. Factors to consider when determining whether to place an employee on paid investigation leave include, but are not limited to:
 - i. The allegation is disputed and requires interviewing witnesses and gathering evidence.
 - ii. The allegation is one that involves physically or emotionally harming students.
 - iii. The allegation involves students who may be less likely to be forthcoming if the employee is still at work or the employee is in a position of authority over other witnesses.
 - iv. There is a likelihood that the employee may implicitly or explicitly interfere with the investigation by talking to witnesses and/or pressuring witnesses to be less than forthcoming.
 - v. There is a likelihood that witnesses would make comments to the employee that might put the employee in an uncomfortable position.
 - vi. If law enforcement is involved in a potential criminal investigation of the employee

2. Employees who drive district vehicles who were involved in a vehicular accident will also be placed on leave pending the results of drug and alcohol testing, pursuant to Policy 7300.
3. Employees will be provided a Notice of Administrative Leave that sets forth the expectations while on administrative leave and explains the investigative process.

B. Corrective Action and Termination

1. Prior to implementing corrective action, up to and including termination, the District shall determine, through an investigative process, whether the evidence supports the allegations. The District will provide the employee facing corrective action with the opportunity to respond to the allegations as part of the investigative process.
2. The District shall ensure that any District-issued corrective action is consistent with other corrective action issued for similar misconduct and that the corrective action is proportionate to the misconduct.
3. Prior to terminating an employee, the employee will be provided an explanation of the basis for termination, evidence supporting the termination, and an opportunity to respond to the evidence and termination.

VII. EMPLOYEES RIGHT TO HEARING

- A. An employee who has received a Notice of Termination may request a hearing within 15 days of receipt of the Notice. If the employee does not request a hearing within 15 days, then the employee shall have waived any right to a hearing and to contest the decision.
- B. If an employee requests a hearing, an independent hearing officer will be selected from a list of hearing officers agreed upon through the employee negotiation process. The hearing officer shall make findings and recommendations to the Board of Education.
- C. A hearing will be held within 60 days of the appointment of a hearing officer, unless agreed upon in writing by both parties, and will align with the provisions set forth in the negotiated agreement.
- D. At the hearing, the employee and administration each have the right to counsel, to produce witnesses, to hear testimony, and to cross-examine witnesses.
- E. The final decision or action of the Board may be appealed to the Utah Court of Appeals as provided in Utah Code § 53G-11-515(5).

VIII. NECESSARY REDUCTION IN FORCE ("RIF") NOT PRECLUDED

- A. Nothing in this policy prevents staff reduction if necessary to reduce the number of employees because of the following:
 1. declining student enrollments in the district;
 2. the discontinuance or substantial reduction of a particular service or program, including due to a restructuring of a department or program;
 3. the shortage of anticipated revenue after the budget has been adopted; or

4. school consolidation.

IX. NOTIFICATION TO UTAH PROFESSIONAL PRACTICES ADVISORY COMMISSION

- A. The District shall notify the Utah Professional Practices Advisory Commission (“UPPAC”) upon the following:
 - 1. if an educator is determined, in any judicial or administrative proceeding, to have violated any of the Utah Educator Standards.
 - 2. within 30 days of receiving an allegation from a parent that an educator has violated any of the Utah Educator Standards.
 - 3. when any criminal charges are filed by a prosecuting agency.
- B. For each matter about which notice is given, the District shall also notify UPPAC of the related investigation or proceeding, any disciplinary action taken (or that no action was taken), the evidence supporting that decision, and any evidence that may be relevant if UPPAC chooses to investigate the matter.
- C. In submitting the notification to UPPAC, the District may make a recommendation to the UPPAC Executive Secretary regarding whether UPPAC investigation would be appropriate under the circumstances, taking into consideration any employment action taken by the District.