

# Davis School District Policy and Procedures

**Subject: 2HR-004 – Employee Discipline and Dismissal Policy**

**Index: Human Resources**

**Revised DRAFT: November 4, 2020 August 13, 2021 (HB182 & job abandonment)**

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## 1. PURPOSE AND PHILOSOPHY

The Board of Education of Davis School District (Board) recognizes the need to provide orderly procedures for discipline and dismissal of employees. This policy is established in accordance with Utah Code Ann. Title 53G Chapter 11 and the Board hereby delegates to the Davis School District (District) Administration the responsibility for establishing and following procedures necessary to implement this policy.

## 2. DEFINITIONS

The following definitions are applicable to all employees for purposes of this policy:

- 2.1. **"Career employee"** means an employee of the District who has obtained a reasonable expectation of continued employment based upon Section 4 of this policy.
- 2.2. **"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. Unless expressly identified otherwise, this period is from July 1 to June 30.
- 2.3. **"Dismissal"** or **"termination"** means:
  - 2.3.1. termination of the status of employment of an employee;
  - 2.3.2. failure to renew or continue the employment contract of a career employee beyond the then-current school year;
  - 2.3.3. 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; or
  - 2.3.4. change of assignment of an employee with an accompanying reduction in pay, unless agreed to in writing.

A transfer or reassignment of an employee resulting in a loss of compensation or benefits not affecting base salary shall not be considered a "dismissal" or a "termination."

- 2.4. **"Employee"** means a career or provisional employee of the District, except, for purposes of this policy, "employee" does not include:
  - 2.4.1. the District Superintendent;
  - 2.4.2. the District Business Administrator; or
  - 2.4.3. a temporary employee.
- 2.5. **"For Cause"** means conduct which is a cause for disciplinary action up to and including termination and does not qualify for a plan of assistance. "For cause" conduct includes but is not limited to:
  - 2.5.1. a violation of a work rule, District policy, state or federal law, rule, or regulation reasonably related to the employee's job;
  - 2.5.2. a violation of standards of ethical, moral, or professional conduct including those identified in the Davis School District Employee Code of Ethics.
  - 2.5.3. commission or conviction of a felony or misdemeanor reasonably related to the employee's job;
  - 2.5.4. entering a plea of guilty, no contest, or a plea in abeyance of a felony or misdemeanor reasonably related to the employee's job;
  - 2.5.5. failure to report arrest for alleged sex offenses, drug-related offenses; alcohol related offenses, or offenses against the person under Utah Code Ann. Title 76, Chapter 5 Offenses against the Person;
  - 2.5.6. improper or unlawful physical contact with students;

- 2.5.7. improper or unlawful electronic, verbal, or written communication with students;
  - 2.5.8. theft;
  - 2.5.9. unlawful discrimination or harassment;
  - 2.5.10. failure to meet a condition of employment or maintain certification or licensure required for job;
  - 2.5.11. use of District property for personal gain;
  - 2.5.12. negligent or willful damage to District property;
  - 2.5.13. serious misconduct related to an employee's job;
  - 2.5.14. neglect of employment obligations, including but not limited to, unauthorized or excessive absences or tardiness;
  - 2.5.15. testing positive for use of a controlled substance or alcohol under [3RM-006 Substance Abuse and Drug Free Workplace](#);
  - 2.5.16. unlawful or fraudulent act related to employment including falsification of employment related documents or verbal misrepresentation of employment related information; or
  - 2.5.17. insubordination.
- 2.6. **"Insubordination"** means the failure to follow a clear and reasonable order, request, or directive of a superior.
- 2.7. **"Probationary employee"** means an employee who has been advised by the District as outlined in Section 5 or 6 that the employee's performance, behavior, or conduct is unacceptable or unsatisfactory.
- 2.8. **"Provisional employee"** means an individual, other than a career employee or a temporary employee, who is employed by the District.
- 2.9. **"Salary"** and **"Pay"** mean and include only the base salary and do not include compensation for extra duties, overtime, call-outs, travel reimbursement, fringe benefits, or any other compensation or benefit not specifically included in the base salary.
- 2.10. **"Temporary employee"** means an individual who is employed on a temporary basis. A temporary employee does not have the right to the procedures and protections outlined in this policy. Temporary employees serve at will and have no expectation of continued employment. Temporary employees include, but are not necessarily limited to the following:
- 2.10.1. substitute teachers and other substitute workers;
  - 2.10.2. seasonal employees;
  - 2.10.3. employees hired under contracts for one (1) year only or for less than one (1) year;
  - 2.10.4. employees whose positions are funded by grants;
  - 2.10.5. employees whose positions are authorized for no more than twelve (12) months.
- 2.11. **"Unsatisfactory performance"** means a deficiency in performing work tasks which may be:
- 2.11.1. due to insufficient or undeveloped skills, lack of knowledge or aptitude; and
  - 2.11.2. remediated through training, study, mentoring, practice, or greater effort.
- "Unsatisfactory performance"* does not include the conduct that is designated as for cause under [Utah Code Ann. § 53G-11-501](#) and Section 2.5 of this policy.

### 3. EMPLOYEE NOTIFICATION AND REPRESENTATION

- 3.1. Employees shall be provided with a written statement specifying:
  - 3.1.1. causes under which a career employee's contract may not be renewed or continued beyond the current school year;
  - 3.1.2. causes under which a career or provisional employee's contract may be terminated during the contract term; and

3.1.3. orderly dismissal procedures used by the District in cases of contract termination, discontinuance, or nonrenewal.

3.2. Any employee subject to disciplinary action which might result in loss of pay or employment shall have the right to be represented by their association representative or council at his/her own expense in any meeting or conference to which they are invited or required to attend with respect to the disciplinary action.

#### 4. PROVISIONAL AND CAREER STATUS

##### 4.1. Minimum Years of Service

A provisional employee must work for the District on at least a half-time basis (calculated on an eight (8) hour work day) for three (3) consecutive full contract years to obtain career employee status. An employee working for the District in more than one position where the assignments are substantially different will be identified as provisional or career in relation to each assignment separately.

##### 4.2. Extension of Provisional Status

*District Extension.* The District may extend the provisional status of an employee up to an additional two (2) consecutive years when the provisional employee exhibits job performance concerns which may be defined as unsatisfactory performance or for cause or misses extensive days of work in a contract term. If the provisional status of an employee is to be extended, the employee shall be notified in writing as early as possible but no later than the end of the contract term, which is June 30 in most instances.

##### 4.3. Extra-Duty Assignment Not Applicable

An employee who is given extra-duty assignments in addition to a primary assignment, is a temporary employee in those extra-duty assignments and may not acquire career status beyond the primary assignment. Extra-duty assignments may be modified or changed at any time.

##### 4.4. Transfer Positions

4.4.1. *Substantially Different Assignment:* An employee who has achieved career status and subsequently accepts another position that is substantially different from the position in which career status was achieved will begin a new three (3) year provisional period as required in 4.1 above. Should job performance concerns arise in the substantially different position during the new provisional period, the employee may be transferred or reassigned by the District to a position similar to his/her original assignment. The right to a fair hearing shall not apply when such transfers or reassignments are made by the District.

4.4.2. *Grant or Soft Funding Assignment:* A career employee who agrees to take a different assignment with the District that is funded by a grant or other "soft" money does not relinquish career status, and should funding for the position end, the employee will be eligible for transfer under the involuntary transfer procedures of the applicable employee agreement.

##### 4.5. Reemployment Following Voluntary or Involuntary Termination

If an employee leaves employment with the District and subsequently returns to employment with the District, regardless of whether the individual works for another education entity during the interim, the employee will be considered a provisional employee upon return and be subject to the same requirements as a new employee with regard to obtaining career status.

##### 4.6. Years of Service and/or Career Status with Other Education Entity

Years of successful service or having obtained career employee status while employed with an entity other than the District will not be considered in determining

the career or provisional status of a new employee.

**4.7. Ineligible for Career Status**

A person is an at-will employee and is not eligible for career employee status if the person:

- 4.7.1. is an unlicensed educator who holds a LEA-specific license; or
- 4.7.2. is a temporary employee as defined by this policy.

**5. CAREER EMPLOYEE EXHIBITING BOTH UNSATISFACTORY PERFORMANCE AND FOR CAUSE CONDUCT**

5.1. If a career employee exhibits both unsatisfactory performance as described in Section 2.11 and conduct described in Section 2.5; the District:

5.1.1. may:

- (a) attempt to remediate the conduct of the career employee; or
- (b) terminate the career employee for cause if the conduct merits dismissal in accordance with the procedures of this policy; and

5.1.2. is not required to develop and implement a plan of assistance for the career employee as provided in Section 7.1.3.

5.2. If the conduct of a career employee described in Subsection 5.1 is satisfactorily remediated, and unsatisfactory performance issues remain, the District shall develop and implement a plan of assistance for the career employee, as provided in Subsection 7.1.3.

5.3. If the conduct of a career employee described in Subsection 5.1 is not satisfactorily remediated, the District:

5.3.1. may dismiss the career employee for cause in accordance with the procedures of Section 9 of this policy; and

5.3.2. is not required to develop and implement a plan of assistance for the career employee as provided in Subsection 7.1.3.

**6. FOR CAUSE – Discipline**

The District may proceed with one or more of the following disciplinary actions against an employee whose behavior or conduct qualifies as for cause. The District may elect to exclude any or all of the following actions and proceed directly with termination for cause. The decision to implement any of the following disciplinary actions shall in no way prejudice the right of the District to include additional disciplinary actions or proceed with termination for cause or non-renewal on the same facts which gave rise to the progressive disciplinary action.

6.1. Verbal Warning.

6.2. Written Warning.

6.3. Disciplinary Suspension With or Without Pay. The District may impose in good faith an unpaid suspension for infractions of workplace conduct rules, such as rules prohibiting sexual harassment, workplace violence, or drug or alcohol use, or for violations of state or federal laws. This provision refers to serious misconduct, not performance issues or attendance issues.

6.4. Termination for Cause.

6.5. Other disciplinary actions. The District may take other disciplinary actions not specified in this policy.

**7. UNSATISFACTORY PERFORMANCE – Discipline**

If the District intends to non-renew or terminate during the contract term a career employee's contract for unsatisfactory performance, the individual responsible for evaluating the employee shall proceed as follows:

**7.1. Meeting and Written Notice**

The supervisor/administrator shall provide and discuss with the employee written documentation containing the following:

7.1.1. **Identification of Deficiencies** -- clearly identify the deficiencies in performance;

7.1.2. **Notice of Consequences** -- notice that the employee's contract is subject to nonrenewal or termination if, upon reevaluation, the employee's performance is determined to be unsatisfactory;

7.1.3. **Plan of Assistance** -- The supervisor/administrator shall develop and implement a written Plan of Assistance to allow the employee an opportunity to improve performance which includes at a minimum:

(a) specific, measurable, and actionable deficiencies;

(b) available resources provided for improvement; and

(c) a recommended course of action to improve employee performance:

(i) The recommended course of action shall include a timeline for implementation of the Plan of Assistance which may not exceed 120 days. For an educator, the 120 days shall be "school days" and for a classified or non-licensed employee, the 120 days shall be "scheduled work days."

(ii) The 120 days begin when the employee receives the written notice of unsatisfactory performance and ends when the determination is made that the employee has either successfully remediated the deficiency or received a notice of intent to not renew or terminate.

(iii) The timeline may continue into the next school/contract term.

(iv) The timeline should be sufficient to successfully complete the Plan of Assistance.

(v) The timeline may extend beyond the 120 days if:

[A] the employee is on leave from work during the time period the Plan of Assistance is scheduled to be implemented; and

[B] the leave was requested and approved according to District policy before the notice of unsatisfactory performance was given to the employee.

*Note: A Plan of Assistance for unsatisfactory performance is not required prior to the termination or non-renewal of a provisional employee. However, if implemented, a Plan of Assistance for a provisional employee does not restrict the District's ability to proceed with nonrenewal or termination under the terms of this policy regardless of whether the provisional employee has completed the Plan of Assistance.*

7.2. **Implementation**

The employee is responsible for improving performance, including using any resources identified by the District, and demonstrating acceptable levels of improvement in designated areas of deficiencies.

7.3. **Reevaluation**

The employee's supervisor/administrator shall conduct a reevaluation of the employee's performance with regard to the Plan of Assistance and if the employee's performance remains unsatisfactory, the District may proceed with the orderly termination procedures contained in Section 9 of this policy.

7.4. **Recurrence of Unsatisfactory Performance Within Three Years**

If, upon reevaluation of the employee's performance in Subsection 7.3 of this policy the District determines the employee's performance is satisfactory, and within a three-

year period after the initial documentation of unsatisfactory performance for the same area of deficiency the employee's performance is determined to be unsatisfactory again, the District may elect to non-renew or terminate the employee's contract by implementing the orderly termination procedures contained in Subsection 9 of this policy.

**8. NON-RENEWAL OF PROVISIONAL EMPLOYEE'S CONTRACT**

If the District intends to not offer an employment contract for a subsequent contract term to a provisional employee, the District shall give notice of that intention to the employee at least sixty (60) calendar days before the end of the provisional employee's contract term.

The District is not required to provide a cause for not offering a contract for a subsequent contract term to a provisional employee and the employee is not entitled to the protections of Subsection 9, including a hearing.

**9. ORDERLY TERMINATION PROCEDURES -- Termination or Non-Renewal**

9.1. Applicability. These Orderly Termination Procedures shall be applicable as follows:

9.1.1. **Career Employee Termination For Cause** – these procedures apply whether during the contract term or non-renewal for additional contract terms;

9.1.2. **Career Employee Termination For Unsatisfactory Performance** – following implementation of Subsection 7 of this policy these procedures apply whether during the contract term or non-renewal;

9.1.3. **Provisional Employee Termination For Cause or Unsatisfactory Performance** *during the term of the contract.*

(a) Implementation of a Plan of Assistance shall not prevent the District from proceeding with non-renewal or termination during the contract term of a provisional employee regardless of whether the Plan of Assistance has been fully implemented or completed.

(b) **Non-renewal of the contract of a provisional employee** for another contract term does not require compliance with this subsection and shall follow the procedures mandated by [Utah Code Ann. §53G-11-513\(3\)](#) and Section 8 of this policy.

**9.2. Notice of Termination**

The District may terminate the contract of a career or provisional employee during the term of the contract or non-renew the contract of a career employee by providing the employee with written Notice of Termination served by personal delivery or certified mail to the employee's last known address as shown on the records of the District at least thirty (30) calendar days prior to the proposed date of termination:

9.2.1. identifying the date of termination and the detailed reasons for termination;

9.2.2. advising the employee that he/she has the right to a fair hearing by delivering a written request for a fair hearing to the Superintendent or his/her identified designee within fifteen (15) calendar days after the Notice of Termination was either personally delivered or mailed; and

9.2.3. advising the employee that failure to request a fair hearing in accordance with the procedures set forth in the notice constitutes a waiver of that right and that the District may then proceed with termination without further notice.

**9.3. Suspension**

The District may suspend an employee who has received a notice of termination pending a requested hearing if it appears that the continued employment of the

individual may be harmful to students or to the District.

- 9.3.1. Suspension pending a hearing may be without pay if an authorized representative of the District determines, after providing the employee an opportunity for an informal conference to discuss the allegations, that it is more likely than not that the allegations against the employee are true.
- 9.3.2. If the District determines the suspension without pay is justified, the District shall provide the employee with a written notice of suspension including the facts justifying the suspension without pay.
- 9.3.3. If termination is not subsequently ordered, the employee shall receive back pay for the period of suspension without pay.

**9.4. Fair Hearing Procedure**

- 9.4.1. An employee who has received a notice of termination as described in Section 9.2 of this policy is entitled to a fair hearing provided the employee files a written request for a fair hearing with the Superintendent or his/her designee not later than fifteen (15) calendar days after personal delivery or mailing of the notice.
  - (a) Timeliness of a mailed request shall be determined by postmark.
  - (b) Failure to file a timely request shall be deemed a waiver of hearing.
- 9.4.2. The Superintendent or his/her designee shall appoint a hearing officer to schedule the date, time, and place for the fair hearing. The fair hearing shall be scheduled for a date not to exceed sixty (60) days following the date upon which the hearing officer is appointed unless otherwise stipulated to by both parties.
  - (a) The hearing officer shall be a person who is experienced in matters relating to administrative procedures, applicable education and/or employment law, and is either a member of the Utah State Bar Association or a person not a member of the Bar who has received specialized training in conducting administrative hearings.
  - (b) The hearing officer shall be notified of his/her selection by a letter from the Superintendent or designee.
  - (c) The hearing officer shall coordinate with a counsel/representative for the District and the employee in setting a date and time for the fair hearing. At least ten (10) days written notice of the fair hearing date shall be given to the employee and his/her representative unless the employee and his/her representative waive in writing such notice requirements.
- 9.4.3. Duties of Hearing Officer – The hearing officer:
  - (a) may require the parties to submit briefs and lists of witnesses prior to the hearing;
  - (b) presides at the hearing and regulates the course of the proceedings;
  - (c) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues. The fair hearing shall be an informal proceeding wherein the formal rules of evidence do not apply;
  - (d) prepares written findings and a recommendation relating to the employment of the employee.
- 9.4.4. At the fair hearing, the employee has the right to be represented by counsel at his/her own expense, to hear testimony against the employee, to cross-examine witnesses, and to examine documentary evidence.
- 9.4.5. Subpoenas may be issued and oaths administered as provided under [Utah Code Ann. §53E-6-606](#).

9.4.6. All hearings shall be recorded at the District's expense.

~~9.4.6-9.4.7.~~ The hearing officer's recommendation relating to the employment of the

employee shall be subject to the final decision of the Board.

~~9.4.8. The recommendation of the hearing officer does not limit the right of the Board or the employee to appeal to an appropriate court of law. Any final action or order of the Board may be appealed to the Court of Appeals for review. A review by the Court of Appeals:~~  
~~(a) Is limited to the record of the Board; and~~  
~~9.4.7.(b) shall be for the purpose of determining whether the Board exceeded its discretion or authority.~~

**9.5. Final Termination Notice**

In instances where an employee invokes the right to a fair hearing and the resulting action is termination, the District shall provide the employee with a written notice of final termination, including findings of fact upon which the action is based at the conclusion of all District level proceedings.

**9.6. Adjustment of Timelines**

The timelines identified in this section may be adjusted or extended by written agreement of the parties or by the hearing officer upon petition of either party for good cause shown.

**10. REDUCTION IN FORCE (RIF)**

10.1. The Orderly Termination procedures and protections of this policy are not applicable to and do not prevent the District from implementing reduction of staff necessary to reduce the number of employees due to:

- 10.1.1. declining student enrollments in the District;
- 10.1.2. the discontinuance or substantial reduction of a particular service or program;
- 10.1.3. the shortage of anticipated revenue after the budget has been adopted; or
- 10.1.4. school consolidation.

10.2. In accordance with [Utah Code Ann. §53G-11-516](#), when determining which employee(s) will be terminated due to a RIF:

- 10.2.1. a last-hired, first-fired policy may not be utilized;
- 10.2.2. results of an employee's performance evaluation and the school's personnel needs may be utilized.

10.3. Procedures for applying a RIF are identified for each class of employees as follows:

- 10.3.1. Administrators: [2HR-112 Administrators Contract Provisions](#).
- 10.3.2. Classified Employees: [8DA–Davis Educators' Agreement Section 5.6](#).
- ~~10.3.3. Licensed Educators: [9CA – Classified Agreement Section 5.3](#).~~

**11. JOB ABANDONMENT**

~~11.1. The Orderly Termination procedures and protections of this policy are not applicable to an employee who abandons his/her position.~~

~~11.2. An employee who is absent from work for five (5) consecutive working days without providing proper notification to his/her supervisor may be considered to have abandoned their employment and to have voluntarily resigned from the District.~~

~~11.3. The Director of Human Resources (Director) shall send the employee notice that the District accepts the employee's voluntary resignation to the employee's last known address.~~

~~11.4. Within five (5) working days of mailing the notice of abandonment to the last known address, the employee may submit a written request to the Direct explaining any extenuating circumstances~~



surrounding the abandonment and requesting rescission of the resignation.

11.5. Upon reviewing the extenuating circumstances, the Director may determine that the employee's circumstances warrant rescinding the voluntary resignation. However, the Director shall not be required to prove that the employee intended to abandon his/her employment in order to determine not to rescind the voluntary resignation.

~~10.4.—~~

**DEFINITIONS**

See Section 2 of this policy.

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**REFERENCES**

[Utah Code Ann. Title 53G, Chapter 11](#) - Employees

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**DOCUMENT HISTORY:**

**Adopted: September 17, 2013** – Upon adoption of this policy it is understood that Section 6.10 of the Educators' Agreement and Section 8.5 and 8.7 of the Classified Agreement will no longer apply with the exception of individuals that have already received a notice of contract non-renewal or termination. For those individuals, the 2012-2013 negotiated agreement language will govern.

**Revised: September 24, 2014** – Made technical changes as part of a five-year review.

**Revised: October 19, 2015** – Minor revisions clarifying current practice and internal references. Updates consistent with changes in State law on career employee exhibiting both unsatisfactory performance and for cause conduct.

**Revised: May 16, 2017 (by consent)** – Change in fair hearing scheduling.

March 8, 2018 - Education code references updated in accordance with 2018 recodification.

**Revised: February 5, 2019** – Removed Preliminary Conference from the Fair Hearing Process. Modified language on provisional employees and plan of assistance.

**Revised: November 4, 2020** - Updated to remove references to Level 1 and Level 2 licenses and administrative/supervisory letter of authorization.

**Revised: - Updated to comply with changes in State Law HB182 Educator Hearings Amendments. Added a section on job abandonment.**