

BSD Counter Proposal

3.18.22

12:30pm

ARTICLE 4

UNSATISFACTORY PERFORMANCE / DISCIPLINE / DISMISSAL

The District reserves the right to demote or dismiss any employee for unsatisfactory performance or where other circumstances warrant such action. Information forming the basis for disciplinary action will be made available to the employee and the Association at the employee's request. **Employees are protected by the Whistle Blower Protection Act (WBPA).**

Any item placed into the employees working file shall be available for review upon **their** his/her request and 24-hours notice. The employee will also have the right to submit written response to the information placed in **their** his/her working file.

Where the District determines that the nature of the offense is such that the unsatisfactory behavior or performance of the employee can be corrected and warrants continuance of employment, the following due process shall be followed **for non-probationary employees and employees in a probation period due to transfer or hire into a different position:**

- A.** The employee shall be informed of the unsatisfactory behavior or performance by the supervisor, and be given an opportunity to correct the deficiencies.

- B.** An employee will be provided notice of the general reason for any investigatory or disciplinary meeting and reasonable time to arrange for Association representation.

- C.** Where the problem is unsatisfactory performance, the employee will be provided, in a written Plan of Assistance, specific examples, expected standards and time limits for the correction of the deficiencies, and the consequences should the deficiencies not be corrected to the satisfaction of the District.
 - 1.** The Association will be informed when an employee is being placed on a Plan of Assistance. An Association Representative will be present during the initial meeting to review a draft Plan of Assistance, unless the employee waives this representation.
 - 2.** The supervisor and the employee will sign the Plan of Assistance which shall be placed in the employee's personnel file. The employee may attach a written statement of explanation to the plan.

3. Throughout this process, all employees have a right to Association representation.

D. When the District administration recommends unpaid suspension, dismissal or demotion **for a non-probationary employee or an employee in a probation period due to transfer or hire into a different position**, the following will apply:

1. The unpaid suspension, dismissal or demotion is the result of the employee's failure to meet standards of performance or conduct that the employee knew or should have known.
2. All expectations will be reasonably related to the orderly, effective, and safe operation of the District and the District's ability to meet its responsibilities to the students and citizens.
3. Employees shall be held to standards and expectations, based upon the requirements of their position, as well as standards customarily accepted in the field of work in which the employee is employed.
4. The investigation or determination of facts regarding the employee's conduct or performance shall be conducted fairly and thoroughly.
5. There shall exist sufficient evidence of the employee's failure to meet standards or expectations to warrant unpaid suspension, dismissal or demotion.
6. The District shall consider the employee's prior work record prior to determining the level of discipline, or dismissal that shall be imposed.
7. Information not already contained in an employee's personnel file that is used for a disciplinary action, must be reduced to writing and shared with the employee before any disciplinary process occurs.

E. A **non-probationary employee or an employee who is in a probation period due to transfer or hire into a different position** who has been demoted or dismissed or given an unpaid suspension shall be entitled to a hearing, as outlined below, if a written request is filed with Human Resources within 15 calendar days of the notice of suspension, dismissal or demotion.

1. Upon receiving such a request, Human Resources shall arrange for evidence to be heard by an independent, mutually selected hearings officer who will produce findings of fact, conclusions, and a recommendation regarding

unpaid suspension, dismissal or demotion. The hearing will be recorded and the testimony at the hearing transcribed for school b Board review, if necessary. The District will make an effort to schedule the hearing so that at least one member of the School Board can attend and hear the evidence in person. The cost of the hearings officer will be borne equally between the District and the Association.

2. If either the employee or the District wishes to challenge the recommendation of the hearing officer, notice shall be given to the Board within five (5) days of receipt of the hearing officer's report. The Board will schedule time during an executive session within 30 days of receipt of the request for a hearing. The Board will review the hearing officer's report, exhibits, review testimony presented at the hearing, and hear oral argument from the administration and from the employee and/or representative.
3. The Board will then vote in open session to affirm, reverse, or modify the hearing officer's recommendation.

F. The Board hearing outlined in Section E shall be the sole remedy for an employee challenging an unpaid suspension, or demotion. Suspension or demotion is not subject to the grievance procedure of this agreement, nor to any review by the Employment Relations Board or any other court or agency.

G. **Non-probationary** ~~Employees and employees in a probationary period due to transfer or hire into a different position may seek review of unpaid suspension, demotion, or dismissal by an arbitrator selected in accordance with the Employment Relations Board. The decision of the Employment Relations Board shall be final and binding on the employee and the District. Dismissal is not subject to the~~ grievance procedure of this agreement, ~~nor to any review by any other court or agency.~~

Where the District determines that the nature of the offense is such that an administrative leave is necessary, the employee will be immediately relieved of duty until such charges are investigated by Human Resources and a decision is made regarding the appropriate discipline, if any. If the employee is cleared of any wrongdoing, the employee shall be reinstated without loss of pay or accrued benefits.

~~Prior to discharge or demotion as a result of unsatisfactory performance, an employee shall be given the reasons such action is to be taken.~~