

# P-4: Administrative Procedures

## Discipline of District Employees

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### REFERENCES

[Board Policy P-4](#)

[Board Policy P-10: Personnel Evaluations and Surveys](#)

[P-10: Administrative Procedures, Personnel Evaluations and Surveys](#)

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### DEFINITIONS

**At-Will/Temporary Employee:** Unless there is an applicable written understanding that states otherwise, at-will/temporary employees are those who:

- A. are in the first 90 days of employment; or
- B. work less than 30 hours per workweek in an hourly, non-benefitted position; or
- C. are employed as seasonal employees for less than 6 months at a time.

**Career Employee:** A district employee who has obtained career status in accordance with state law, any applicable written agreement with the employee's association, board policy, and/or district administrative procedures.

**Dismissal:** An employment action which results in:

- A. termination of the status of employment of an employee;
- B. failure to renew or continue the employment contract of a career employee beyond the then-current school year;
- C. reduction in salary of an employee not generally applied to all district employees in the same category during the employee's contract term; or
- D. change of assignment of an employee with an accompanying reduction in pay, unless the assignment change and salary reduction are agreed to in writing.

**Unsatisfactory Performance:** A deficiency in performing work tasks which may be:

- A. due to insufficient or undeveloped skills, or a lack of knowledge or aptitude; and
- B. remediated through training, study, mentoring, or practice.

**Unsatisfactory Conduct:** Conduct that is designated as a cause for discipline or, for licensed personnel a reason for action to be taken against an employee's license, including but not limited to:

- A. a violation of board policies or district administrative procedures, State Board of Education rules, or any law;
  - B. a violation of work rules;
  - C. a violation of standards of ethical, moral, or professional conduct; or
  - D. insubordination.
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### PROCEDURES FOR IMPLEMENTATION

#### I. Causes for Discipline

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, the Employee Handbook, board policies and administrative procedures, 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;
  3. providing or selling an intoxicant or other controlled substance to a minor;
  4. being addicted to or dependent on an intoxicant or other controlled substance;
  5. engaging in misfeasance, malfeasance, or nonfeasance;
  6. using district property for financial gain or personal benefit;
  7. damaging district property through willful or grossly negligent conduct;
  8. wasting or misusing district supplies, resources, or equipment;
  9. 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;

10. failing to cooperate with a district investigation or giving false information as part of a district investigation;
11. improperly disclosing district or student information;
12. failing to disclose a conflict of interest or engaging in other unethical behavior;
13. engaging in workplace violence;
14. voluntarily:
  - a. writing letters of support for employees, parents, or students who are involved in legal custody proceedings or other legal disputes;
  - b. testifying on behalf of employees, parents, or students who are involved in any legal proceeding, including custody disputes;
  - c. meeting or communicating with an attorney who represents employees, parents, or students involved in any legal proceeding, including custody disputes;
  - d. providing documents to an attorney or individual involved in any legal proceeding, including custody disputes, in violation of board policy, state or federal law; or
  - e. acting as a mediator for custody disputes or visitation disagreements;
16. 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;
17. knowingly possess, view, create, distribute or store any pornographic or indecent material in any form on district property;
18. failing to follow grading or testing protocols and procedures, including any action that results in unreliable or inaccurate test results; or
19. 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 which 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.

## II. Due Process Requirements

- A. All disciplinary actions of employees will comply with the applicable procedural due process requirements, including Utah Code Ann. §53G-11-501 et seq., and any applicable written/negotiated agreement.
- B. If a career licensed employee exhibits both unsatisfactory performance and unsatisfactory conduct as defined above (see, Definitions),
  1. the district:
    - a. may attempt to remediate the conduct or terminate for cause if the conduct merits dismissal; but
    - b. is not required to develop and implement a plan of assistance, if applicable (see, Utah Code Ann. §53G-11-514 and the district's administrative procedures for Board Policy P-10, Personnel Evaluations).
  2. With licensed educators, if the district chooses to attempt to remediate unsatisfactory conduct, and the conduct is successfully remediated, but the unsatisfactory performance issues remain, the district will develop and implement a plan of assistance.

3. If the district chooses to attempt to remediate the conduct of licensed personnel, and the unsatisfactory conduct is not satisfactorily remediated, the district may terminate the career employee for cause and is not required to develop and implement a plan of assistance.

### **III. Disciplinary Actions**

- A. In instances in which an employee has damaged, lost, or stolen district supplies, property, or resources, the employee may be subject to disciplinary action as well as cost recovery actions, including taking deductions from wages and/or other legal redress.
- B. Formal disciplinary actions are those actions taken by the district that are documented and placed in the affected employee's human resource services department (HR) personnel file, and/or may remove an employee's property right. Examples of formal disciplinary actions include, but are not limited to:
  1. written reprimand;
  2. suspension with or without pay;
  3. probation;
  4. demotion; and
  5. dismissal.
- C. Informal disciplinary actions are those actions taken by a supervisor and are not placed in the affected employee's HR personnel file. Examples of informal disciplinary actions include, but are not limited to:
  1. coaching;
  2. verbal warnings;
  3. written warnings; and
  4. letters of expectation.
- D. In order to ensure consistency of discipline, all formal disciplinary actions must be approved by an HR administrator prior to being administered to an employee.
- E. Discretionary factors
  1. When deciding the specific type and severity of the appropriate discipline, the supervisor must consistently apply the applicable rules, policies, and standards.
  2. The supervisor may also consider any of the following factors:
    - a. The employee's prior knowledge of the applicable rules, policies, and standards; past work record; and/or previously imposed discipline.
    - b. The severity of the infraction; the effect of the infraction on department, school, and/or district operations; the nature of the infraction (whether it caused or could cause damage to persons or property); and the repeated nature of the infraction.
- F. At the time disciplinary action is imposed, the employee will be notified of the discipline, the general reasons for the discipline, the effective date, and the length of the discipline, if applicable.
- G. Disciplinary actions are subject to grievance procedures as provided by the applicable collective bargaining agreement. The employee and the district may agree in writing to waive or extend any grievance step or the time limits specified for any grievance step.

### **IV. Actions Pending an Investigation**

- A. If HR reasonably believes that an employee endangers or threatens the physical or emotional wellbeing of others, poses a threat to the public, or is charged with aggravated or repeated misconduct, the district may take the following actions, pending an investigation and determination of facts:
  1. place the employee on paid administrative leave;
  2. place the employee on leave without pay as allowed by law; or
  3. temporarily reassign the employee to another position or work location at the same rate of pay.
- B. Placing an employee on paid administrative leave is not considered discipline and is not subject to grievance procedures.

### **V. Lesser Discipline Appeal Procedures**

- A. This section does not provide for administrative appeals rights for:
  1. a reduction in force;
  2. a legitimate financial emergency; or
  3. a change in job title.
- B. There are no administrative appeal or hearing rights for verbal or written warnings.
- C. Disciplinary actions which are eligible for an internal appeal, but not for a hearing, are: written reprimand; suspensions with pay; and probation.
  1. The employee's second level supervisor, or his/her designee, will be the appeal officer.
    - a. If the superintendent is the employee's first level supervisor, an impartial hearing officer will be the appeal officer.

- i. The impartial hearing officer shall be selected from the same list of hearing officers used for district termination hearings, see Section VI.E. below.
2. If the superintendent is the appeal officer, the superintendent may appoint a designee to perform these duties.
3. A written request for appeal must be received by HR within 10 working days from the date the employee's discipline was delivered.
  - a. The appeal officer will be notified by HR of the appeal request.
4. Within 10 working days after submitting the appeal request, the employee must contact the appeal officer to make an appointment to discuss the appeal.
  - a. Employees should document attempts to contact the appeal officer to preserve their right to an appeal.
  - b. If the employee fails to contact the appeal officer within the requisite 10 days, the employee's appeal will be dismissed.
5. The appeal officer must meet with the employee as quickly as reasonably possible, but no later than 10 working days from the date of the initial meeting request, unless a longer period of time is agreed to in writing by both the employee and the appeal officer.
6. After meeting with the employee, and thoroughly reviewing all the relevant information, the appeal officer may determine to uphold the imposed discipline, or reduce or increase the severity of the discipline.
  - a. Any decision to increase the severity of the discipline must be made in consultation, and with the approval of, HR.
7. The appeal officer will provide the employee with a written decision within 10 working days of the date of the appeal meeting.

## **VI. Dismissal Procedures**

- A. The dismissal procedures outlined in this section do not apply to at-will/temporary employees who have not yet attained career status. At-will/temporary employees, who have not attained career status, may be discharged for no cause and are not entitled to the procedures outlined in this section.
- B. The following dismissal procedures shall be followed unless they conflict with applicable law or an applicable employee written/negotiated agreement. If a conflict exists, the applicable law or agreement will control.
  1. Notice of Dismissal:
    - a. Before any career or provisional employee is dismissed, the employee shall be given written notice at least 30 calendar days prior to the effective date of dismissal. The notice shall contain the date of dismissal and the specific reasons for dismissal. The notice may be delivered in person or sent by certified mail, addressed to the employee's last-known address as shown on the district's records.
    - b. The notice shall advise the employee that he or she has a right to a fair hearing and that the hearing is waived if it is not requested within 15 days after the Notice of Dismissal was either delivered in person or mailed to the employee. The notice shall state that the employee's failure to request a hearing in accordance with procedures set forth in the notice constitutes a waiver of that right, and will result in the dismissal becoming final.
    - c. This notice may include a designation of Not Eligible for Rehire. See, Section VII below.
- C. Suspension pending dismissal:
  1. The employee may be suspended with or without pay pending the outcome of the dismissal hearing.
  2. Suspension pending a hearing may be without pay if an authorized representative of the district determines, after providing the employee with 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 and will result in termination. If termination is not subsequently ordered, the employee shall receive back pay for the period of suspension without pay.
- D. Hearings:
  1. If the employee requests a hearing within 15 days as provided in the Notice of Dismissal, an impartial hearing officer shall be appointed in accordance with any applicable written/negotiated agreement and state law.
  2. After requesting a hearing, if the employee fails to respond within five business days to communications from the hearing officer or HRS personnel, the hearing shall be dismissed for failure to participate, and the employee will have no further opportunity to appeal their termination.
  3. At the hearing, the employee and district each have the right to utilize legal counsel, to produce witnesses, to hear testimony, to cross-examine witnesses, to examine relevant documentary evidence, and to present relevant evidence.
    - a. If either party intends to employ legal counsel, they will notify the other party at least 14 calendar days in advance.

4. The hearing officer will conduct the hearing and make a decision which is binding upon the employee, the district and the board.
5. The hearing officer shall hold the hearing within a reasonable time.
6. During the hearing, the employee shall be given a fair opportunity to refute the reasons given for the dismissal.
7. The hearing shall be private and not open to the public unless both the district and the employee agree otherwise.
8. Within a reasonable time after the conclusion of the hearing and the receipt of any transcript and post-hearing submissions, the hearing officer shall provide the director of human resources with a written decision including findings and conclusions regarding the matter.

**VII. Not Eligible for Rehire**

- A. District employees that have been separated involuntarily or voluntarily may be assigned a designation of "Not Eligible for Rehire" (NER) upon end of employment for egregious violations of board policy, administrative procedures, or state and/or federal law.
- B. An NER designation prohibits a former employee, for a minimum of five years from the date of separation and/or the designation of NER, from:
  1. re-applying for employment with the district;
  2. becoming employed by the district;
  3. providing services to or on behalf of the district, including but not limited to services provided as a consultant and/or contractor; or
  4. participating in any district paid volunteer services or capacity.
- C. The district will notify the employee or former employee of the NER designation:
  1. in the intent to terminate letter that the employee receives; or
  2. in the termination notice; or
  3. in a separate letter in the event that the egregious misconduct surfaced after the employee was involuntarily or voluntarily separated from employment.
- D. Appeal process
  1. If the NER designation is part of the intent to terminate letter, the appeal process will follow the appropriate appeal rights for the negotiated agreement of the employee and will be identified in the intent letter. In this case, the employee may elect to appeal both the termination and NER designation, just the termination, or just the NER designation.
  2. If the NER designation notification was sent as a separate letter and not accompanied by any other disciplinary process, the former employee will be given 10 business days from the date of the notification to send a written appeal to the executive director of human resources or his/her designee.
    - a. The former employee shall state a reason and provide any relevant information as to why the NER designation should not be assigned.
    - b. Appeal rights will be included in the letter that is sent to the former employee.
    - c. The decision of the executive director of human resource services or his/her designee will be the final and binding decision.
- E. Petition for removal of NER designation
  1. After five years, the former employee may petition for removal of NER designation by submitting a detailed request to the executive director of human resources or his/her designee.
  2. Consideration of overturning the designation earlier than five years is at the sole discretion of the executive director of human resources or his/her designee and based on new evidence or information that indicates that the individual should no longer have the designation of NER.
    - a. If the sole reason for the NER designation was a criminal arrest or conviction which has since been expunged, the district will consider the expungement to be compelling evidence to reconsider the NER designation. The former employee must still make a written request and provide all necessary information to the executive director of human resources as indicated above.
  3. The executive director of human resources' decision on whether or not to remove the NER will be final.