

## **G-6100 © GCQF DISCIPLINE, SUSPENSION, TERMINATION AND DISCHARGE OF PROFESSIONAL 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:

- "Discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract.
- "Terminate" means, in the case of a licensed school employee, the act of not reemploying an employee for the ensuing school year.
- "Working day" means every calendar day, excluding Saturday, Sunday or legal holiday.
- "Just cause" means a reason that is rationally related to an employee's competence or turpitude or the proper performance of assigned duties and that is not in violation of the employee's civil or constitutional rights.
- "Administrative leave" means the assignment with pay 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**

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

- Absence without leave
- Abuse of leave.
- Child abuse or child molestation.
- Dishonesty.
- Excessive absenteeism.
- Fraud in securing appointment.
- Improper attitudes.
- Incompetence
- Insubordination.
- Misuse or unauthorized use of school property.
- Neglect of duties.
- Unauthorized possession of a weapon on school grounds.
- Unlawful conduct
- Unprofessional conduct.
- Use, possession, or distribution of illegal narcotics or drugs or alcohol.
- Violation of a District policy or regulation.

## **General Provisions for Discipline**

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 a licensed 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 disciplinary action, short of termination or discharge.

*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, was not known about or dealt with at the time.

*Amendments.* The District reserves the right to amend this policy in any way at any time. Any amendment shall have future 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.

### **Termination Pursuant to 22-10A-25 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 licensed instructor employed to fill the position of a licensed school instructor entering military service;

A person who is employed as a licensed school administrator; or

A non-licensed school employee employed to perform primarily District-wide management.

### **NOTICE OF REEMPLOYMENT–TERMINATION**

State Board of Education regulations require that on or before the fourteenth calendar day prior to the last day of the school year, during an existing employment contract, the Gallup-McKinley County School Board shall serve notice of termination. State statute allows the notice to be given up until the last day of the school year. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year.

### **Termination decisions; local school board; governing authority of a state agency; procedures pursuant to 22-10A-24 NMSA (1978).**

- A local school board or governing authority of a state agency may terminate an employee with fewer than three years of consecutive service for any reason it deems sufficient. Upon request of the employee, the superintendent or administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the superintendent, administrator, local school board or governing authority. The reasons shall not provide a basis for contesting the decision under the School Personnel Act [Chapter 22, Article 10A NMSA 1978].

- Before terminating a non-certified school employee, the local school board or governing authority shall serve the employee with a written notice of termination.
- An employee who has been employed by a school district or state agency for three consecutive years and who receives a notice of termination pursuant to either Section 22-10-12 NMSA 1978 [recompiled] or this section, may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate him by submitting a written request to the local superintendent or administrator within five working days from the date written notice of termination is served upon him. The employee may also request in writing the reasons for the action to terminate him. The local superintendent or administrator shall provide written reasons for the notice of termination to the employee within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or administrator. Neither the local superintendent or administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.
- A local school board or governing authority may not terminate an employee who has been employed by a school district or state agency for three consecutive years without just cause.
- The employee's request pursuant to Subsection C of this section shall be granted if he responds to the local superintendent's or administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or administrator a contention that the decision to terminate him was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the employee believes support his contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or administrator. The submission of this statement constitutes a representation on the part of the employee that he can support his contentions and an acknowledgment that the local school board or

governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of his contentions.

- A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. The employee and the local superintendent or administrator may each be accompanied by a person of his choice. First, the superintendent shall present the factual basis for his determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section. Then, the employee shall present his contentions, limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the employee or his representative and the local superintendent or administrator or his representative. The local school board or 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 proceeding. The local school board or governing authority shall notify the employee and the local superintendent or administrator of its decision in writing within five working days from the conclusion of the meeting.

**Appeals; independent arbitrator; qualifications; procedure; binding decision pursuant to 22-10A-25 NMSA (1978)**

- An employee who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section 22-10-14 NMSA 1978 [recompiled] may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection E of Section 22-10-14 NMSA 1978 [recompiled] and including 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 him for any appeal and render

the local school board's or governing authority's decision final.

- The local school board or governing authority and the employee shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.
- The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.
- A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional or labor organization of which the employee is a member.
- Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether there was just cause for the decision of the local school board or governing authority to terminate the employee.
- The de novo hearing shall be held within thirty working days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the employee and the local school board or governing authority.
- Each party has the right to be represented by counsel at the hearing before the independent arbitrator.
- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.
- The independent arbitrator may issue subpoenas for the attendance of

witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

- The rules of civil procedure shall not apply to the de novo hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator shall require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.
- The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.
- The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority fails to meet its burden of proof or if the employee rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.
- No official record shall be made of the hearing. Either party desiring a record of the arbitration proceedings may, at his own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not be deemed an official transcript of the proceedings nor shall it imply any right of automatic appeal or review.
- The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the independent arbitrator within ten working days from the conclusion of the de novo hearing.
- The sole remedies available under this section shall be reinstatement or

payment of compensation reinstated in full but subject to any additional compensation allowed other employees of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the employee during the period the compensation was terminated.

- Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10-14 NMSA 1978 [recompiled], such departure shall be presumed to be harmless error.
- The decision of the independent arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school or state agency is located.
- Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.
- Local school districts shall file a record with the department of education of all terminations and all actions arising from terminations annually.

#### **22-10A-27. Discharge hearing; procedures.**

- A. A local school board or the governing authority of a state agency may discharge a certified school employee only for just cause according to the following procedure:
  - 1. the superintendent shall serve a written notice of his intent to recommend discharge on the certified school employee in accordance with the law for service of process in civil actions; and
  - 2. the superintendent shall state in the notice of his intent to recommend discharge the cause for his recommendation and shall advise the certified school employee of his right to a discharge hearing before the local school board or governing authority as provided in this section.
- B. A certified school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise his right to a hearing before the local school board or governing authority by giving the local superintendent or administrator written notice of that election within five working days of his receipt of the notice to recommend discharge.
- C. The local school board or governing authority shall hold a discharge hearing



no less than twenty and no more than forty working days after the local superintendent or administrator receives the written election from the certified school employee and shall give the certified school employee at least ten days written notice of the date, time and place of the discharge hearing.

- D. Each party, the local superintendent or administrator and the certified school employee, may be accompanied by a person of his choice.
- E. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.
- F. The local school board or governing authority shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and shall have the power to administer oaths.
- G. The local superintendent or administrator shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, he had just cause to discharge the certified school employee.
- H. The local superintendent or administrator shall present his evidence first, with the certified school employee presenting his evidence thereafter. The local school board or governing authority shall permit either party to call, examine and cross-examine witnesses and to introduce documentary evidence.
- I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the local school board or governing authority.
- J. The local school board shall render its written decision within twenty days of the conclusion of the discharge hearing.

### **Additional Provisions and Conditions**

During the pendency of any hearing, neither the licensed staff member nor the supervising administrator shall contact the Superintendent or a Board member to discuss the merits of the supervising administrator's recommendation except as provided by this policy.

This policy addresses only discipline, termination or discharge and has no application to any of the following:

- Letters or memorandums directed to a licensed staff member containing directives or instructions for future conduct.

- Counseling of a licensed staff member concerning expectations of future conduct.
- Placing an employee on administrative leave with pay and assignment of the employee to home during work hours in order to conclude a review of the employee's actions or activities pending an administrative recommendation.

The Board shall file annually a record with the Secretary of Education of all terminations and all actions arising from terminations.

*Adopted:* July 10, 2006

LEGAL REF.: 10-7E-1 to 10-7E-26 NMSA (1978) Public Employee Bargaining Act 10-15-1 NMSA (1978) Open Meeting Act 22-10A-24 NMSA (1978) 22-10A-25 NMSA (1978) 22-10A-26 NMSA (1978) 22-10A-27 NMSA (1978) Discharge hearing; procedures. 22-10A-28 NMSA (1978) Appeals; independent arbitrator; qualifications; procedure; binding decision. 22-10A-29 NMSA (1978) Compensation payments to discharged personnel. 22-10A-30 NMSA (1978) Supervision and correction procedures. 22-10A-31 NMSA (1978) Denial, suspension and revocation of licenses. 22-10A-32 NMSA (1978) Licensed school employees; required training program. 6.67.2.8 NMAC Notice of reemployment or termination of licensed personnel.

CROSS REF.: DKA - Payroll Procedures/Schedules  
GCJ - Professional Staff Noncontinuing and Continuing  
Status