

It's one, two, three strikes you're out...

Spring Personnel Decisions for Certified Employees

Spring is upon us – time for warm weather, green grass, baseball, and... personnel contracts. For probationary teachers and administrators, the District is contemplating whether or not to renew contracts and/or provide extensions. In regards to tenured teachers, the District must decide whether or not to terminate. The recent changes to the Missouri Human Rights Act do put employers back on a more level playing field when making staffing decisions; however, regardless of whether the District is considering non-renewal or termination, being able to articulate a pattern of performance issues puts the District in its best position to defend any potential civil rights claim.

While there are a number of statutory bases for terminating teachers and/or administrators, we recommend relying on “willful or persistent violation of or failure to obey the school laws of the state or the published regulations of the Board.” Termination proceedings based upon willful or persistent violation of Board policy are less burdensome and much more efficient. Furthermore, the District is not required to provide a “notice of deficiencies” and time to cure (30 days for tenured teachers and 90 days for probationary teachers), which is required when the District relies on “incompetency, inefficiency or subordination.”

Thus, the District will want to issue the employee a disciplinary memorandum citing the specific Board Policies and/or Regulations that were violated. Often Board Policy and/or Regulation GBCB (Staff Conduct) or 4630 (Staff Conduct)/4640 (Teaching Standards) are applicable when it comes to employee misconduct, but there are certainly others that can come into play as well, including but not limited to, discrimination, harassment, and retaliation (AC/1300), staff/student relations (GBH/4650), and attendance (GBCBC/4310). In the memorandum, it is also important to explain and connect the Board Policies and/or Regulations cited to the misconduct in question – describe what specific actions/inactions constitute a violation of Board Policies and/or Regulations.



The memorandum should also include very clear directives for the employee to follow moving forward, as well as a warning that further violations may be considered willful and persistent and could lead to further discipline, including termination. If the employee fails to follow the articulated directives, he may be further cited for failure to follow administrative directives.

It depends on the circumstances and severity of violations, but we generally like to see at least 3 “strikes”, i.e. disciplinary memorandums, related to the same or similar conduct/Board Policy violations prior to issuing any statement of charges. This is especially true if the employee’s previous evaluations are relatively positive. While we do not necessarily need to establish “willful or persistent” to non-renew, we do like to see a pattern of Board policy violations and/or performance deficiencies. Documenting those deficiencies in the same way prepares the file for termination if that becomes necessary before non-renewal is accomplished.

The District will also want to reflect the same performance issues in the employee’s summative evaluation for this year. If the performance issues do not fall within the preset categories, the evaluating administrator will want to note the performance issues in the comment section. The evaluator will also want to note in the summative evaluation (or provide a separate cover letter) that he or she plans to recommend non-renewal to the Board. If the evaluator would like to give the individual the option of resigning in lieu of non-renewal, we recommend giving the employee a set deadline well in advance of the Board meeting. For more tips and practical guidance on completing summative evaluations see “Being too Nice in Performance Evaluations” a September 2017 article by Brian Mayer.



For questions regarding
Spring Personnel
Decisions,
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Spring Personnel Decision Playbook:

- It takes at least 4 affirmative votes to offer or extend an employment contract.
- When voting on probationary teacher contracts, the motion should be made in the positive, one teacher at a time: "I move to renew the employment contract of _____ for the 2018-2019 school year."
- When voting on administrator contracts, the motion **MUST** be made in the positive, one administrator at a time: "I move to renew the administrator contract of _____ for the 2018-2019 school year."
- Probationary teachers and administrators must be informed of any contract non-renewal prior to April 15, if this notice does not occur, said contracts are automatically renewed for the following school year.
- Probationary teacher contracts must be offered by May 15 and failure to provide written acceptance within 15 days following the offer constitutes a rejection.
- If a probationary teacher is non-renewed due to decrease in enrollment, reorganization, or financial condition, the written notice of non-renewal must state the reason, otherwise the District must only provide the reason upon request by the probationary teacher.
- Even though the District decides to non-renew an administrative contract, the administrator may still be entitled to a tenured teaching position (likely in the building where he or she was serving as an administrator).
- If the administrator has been re-employed by the District 5 times or more (the Board has voted to re-employ him/her as administrator 5 times or more), he/she may request a statement of reasons for the non-renewal and a public hearing before the Board.
- Pursuant to § 610.021(3) RSMo, hiring, firing, disciplining, and promoting an employee may be properly closed when personal information about the employee is discussed or recorded. However, the vote on the final decision, including how each Board member voted, becomes public within 72 hours (must also provide prompt notice of the decision to the affected employee within those 72 hours).

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