



THE DISMISSAL PROCESS



DISMISSAL PROCESS

Dismissal Procedures

Due Process Rights and Procedures Depends on the Classification of the Employee

Temporary Professional Employees (TPE's)

Professional Employees

Support Staff

Administrators

DISMISSAL PROCESS

Typical Termination Due Process

Includes:

- Complete Investigation
- Loudermill Hearing
- Statement of Charges
- Board Hearing **OR** Arbitration

ALWAYS INVOLVE YOUR SOLICITOR IN THESE MATTERS!

DISMISSAL PROCESS

Types of Employees

- Certificated – Employee that holds a certificate from PDE
- Non-Certificated – Employee that does not hold a certificate from PDE
- Professional – Employee that holds an active certificate from PDE and is tenured and works in a permanent position
- Temporary – Employee that is non tenured (1-3 years experience) and holds active certification and works within certification area
- Permanent – Employee who hold a permanent “board approved” position

DISMISSAL PROCESS

Termination of Temporary Professional Employees

- Process is less onerous than for Tenured Employees
- Employees may be dismissed based on a **single** unsatisfactory rating
- Employee's rights under Section 514
 - Causes: incompetency, intemperance, neglect of duty, improper conduct and violation of any school laws
- Appeal to the Courts NOT to the Secretary of Education
- Board action requires only a majority vote and NOT 2/3

DISMISSAL PROCESS

Termination of Temporary Professional Employees

Under section 514 –steps in dismissal process:

1. Complete Investigation
2. Due Notice – Loudermill Hearing
3. Statement of Charges Issued (Jones Case)
4. Board Action, after board hearing, if demanded.

Remember: Union employees (Teachers) usually have a choice of either a hearing before the Board of School Directors or through the grievance procedures (arbitration)..... NOT BOTH

DISMISSAL PROCESS

Termination of a Tenured Professional Employees

Allowed Reasons:

- Failure to obtain Instructional II
- Failure to comply with Act 48
- Reasons of performance or conduct as listed in **Section 1122** – immorality, cruelty, negligence, intemperance, Unsatisfactory performance based on **2 consecutive ratings** that include classroom observations, **not less** than 4 months apart, intemperance, cruelty, Persistent neglect of duties, unaccommodating physical or mental disability, conviction of a crime (Act 24)

DISMISSAL PROCESS

Termination of Tenured Professional Employees

Rights of Tenured Professional Employees are granted under Section 1127, 1130 and 1132

Section 1127:

- Complete Investigation
- Due Process Rights – Loudermill Hearing
- Written Statement of Charges, Signed by Board President and attested by Secretary, sent registered mail setting forth time and place, when and where employee will be heard in person or by counsel, or both, before the board and setting detailed statement of charges. (Jones Case)
- Hearing date is NO sooner than 10 days and no later than 15 days from date of notice
- Employee has right to representation and right to question all witnesses

Remember: Union employees (Teachers) usually have a choice of either a hearing before the Board of School Directors or through the grievance procedures (arbitration)..... NOT BOTH

DISMISSAL PROCESS

Termination of Tenured Professional Employees

Section 1130 – Notice of Discharge

- If Termination is upheld....
- Written notice of board dismissing employee
- Sent registered mail to last known address
- Within 10 days of board hearing
- Requires 2/3 votes
- If Board overturns Superintendents recommendation for dismissal, the file is expunged

Section 1132 – Appeal

- Appeal to the Secretary of Education – Ruling is final

DISMISSAL PROCESS

Termination of Support Staff

- Status as non-professionals
- Causations under school Code section 514
- No due process rights under school code
- Due process rights are under local contract and/or board policy

Remember: Support staff union employees usually have a choice of either a Hearing before the Board of School Directors or through the grievance procedures (arbitration)..... NOT BOTH

DISMISSAL PROCESS

Termination of Administrators

- Remember the difference between “Professional” and “Non-professional”
- Certificated Administrators have same due process rights as tenured teachers (Sections 1127, 1130, 1132)
- Non-professionals have same due process rights as support staff (Section 514)

DISMISSAL PROCESS

Special Treatment – Superintendents and Assistant Superintendents under Section 24-1080

- Termination is at the end of contract – unless renewed – there is NO hearing and NO appeal rights
- District superintendents and assistant district superintendents may be removed from office and have their contracts terminated, after hearing, by a majority vote of the board of school directors of the district, for neglect of duty, incompetency, intemperance, or immorality, of which hearing notice of at least one week has been sent by mail to the accused, as well as to each member of the board of school directors.
- The board of school directors shall publicly disclose at the next regularly scheduled monthly meeting the removal of a district superintendent or assistant district superintendent from office

DISMISSAL PROCESS

Special Treatment – Business Managers under Section 24-1089

- Termination is at the end of contract – unless renewed – there is NO hearing and NO appeal rights
- The governing board shall, after due notice, giving the reasons therefor, and after hearing if demanded, have the right at any time to remove a business administrator for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth or other improper conduct.

DISMISSAL PROCESS

Causes for Termination – Immorality

22 Pa. Code § 237.3 defines immorality as: “Immorality is conduct which offends the morals of a community and is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate.”

DISMISSAL PROCESS

Examples of Immorality

- Any form of criminal conduct.
- Restraint, terroristic threats and criminal assault.
- Shoplifting.
- Corrupting minors.
- Criminal harassment.
- Illegal gambling.
- Selling counterfeit watches and other related federal offenses.
- Stealing food from an employee dining room.
- Driving under the influence of alcohol.

DISMISSAL PROCESS

Examples of Immorality

- Any form of sexual or amorous conduct toward students.
- Proposed spanking of female students.
- Any physical contact of a sexual nature.
- Male teacher concealing himself in a girls' locker room.
- Amorous relationship, with or without a sexual relationship.
- Any form or use of vulgar and profane language or displaying nudity in class.

DISMISSAL PROCESS

Examples of Immorality

- Showing of a sexually explicit film.
- Use of profane language in class.
- Misappropriation of school administered funds and utilization of school district resources for personal gain without any accounting.
- Misrepresenting the use of sick days.
- Lying to the Superintendent regarding an employee's status.
- Lying while applying for employment.
- Possession of illegal drugs.
- Distributing racial hate jokes in school.

DISMISSAL PROCESS

Causes for Termination – Incompetency

22 Pa. Code defines incompetency as “A continuing or persistent mental or intellectual inability or incapacity to perform the services expected of a professional educator.”

DISMISSAL PROCESS

Examples of Incompetency

- Carelessness with confidential student records.
- Failure to maintain proper teaching pace.
- Excessive, unexplained absenteeism.
- Inability to respond appropriately to situations.
- Use of poor English.
- Failure to follow directives.

DISMISSAL PROCESS

Examples of Incompetency

- Failure to maintain proper relationships with students.
- Lack of classroom control.
- Deficient content and quality of required reports.
- Failure to give sufficient or proper test.
- Deficient lesson plans.
- Deficient student records.
- Inability to motivate students.
- Failure to maintain good working relationships with clerical and teaching staffs.

DISMISSAL PROCESS

Causes for Termination – Intemperance

Pursuant to 22 Pa. Code § 237.5 “Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct.”

DISMISSAL PROCESS

Examples of Intemperance

- In Crecome v. West Chester Area School District, the Secretary of Education held that a teacher was intemperate in view of his repeated loss of control with students and colleagues, his attempts to use threats to manipulate outcomes, his irrational retention of grades and the roll book, and his public attempts to discredit supervisors.
- In Bond v. Philadelphia School District, the Secretary of Education concluded that a teacher was guilty of intemperance when she shouted at a Vice Principal in the hallway in the presence of students.

DISMISSAL PROCESS

Causes for Termination – Cruelty

According to 22 Pa. Code § 237.7, “Cruelty is the intentional, malicious and unnecessary infliction of physical or psychological pain upon living creatures, particularly human beings.”

DISMISSAL PROCESS

Examples of Cruelty

- Assaulting a student.
- Paddling students.
- Verbal abuse of a student.
- Belittling and intimidating students by calling them “jerks”, “brain dead”, “idiots” and “losers”.

DISMISSAL PROCESS

Causes for Termination – Negligence

According to 22 Pa. Code § 237.8 “Negligence is continuing or persistent actions or omissions in violation of a duty.”

DISMISSAL PROCESS

Persistence Negligence in the Performance of Duties

A duty may be established by law, school rules or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by the Code of Professional Practice and Conduct for Educators.

DISMISSAL PROCESS

Examples of Persistence Negligence

- Disregard of pupil disciplinary policy.
- Failure to attend meetings.
- Failure to comply with student testing and record keeping requirement.
- Repeated lateness.
- Improper release of students from class.
- Failure to prepare or file lesson plans.
- Failure to provide sickness or disability certificate as authorized by Section 1154 of the School Code.

DISMISSAL PROCESS

Examples of Persistence Negligence

- Repeated carelessness.
- Inconsistent and ineffective discipline of students.
- Lack of ability to communicate effectively.
- Poor judgment.
- Failure to turn in year-end grades, roll books and student papers.
- Manipulation of students.
- Failure to create a healthy and positive learning environment.

DISMISSAL PROCESS

Examples of Persistence Negligence

- Disregarding school district policy in classroom temperature settings.
- Refusal to comply with superiors' directives.
- Failure to submit reports.
- Refusal to answer supervisors' questions.
- Refusal to accept assignment.
- Failure to control class.
- Unprofessional behavior.
- Excessive absenteeism.
- Sleeping in class.

PASBO 62ND ANNUAL CONFERENCE AND EXHIBITS, PITTSBURGH

March 2017

29

DISMISSAL PROCESS

Causes for Termination – Moral Turpitude

According to 22 Pa. Code 237.9 Moral Turpitude includes the following:

1. "That element and personal misconduct in the private and social duties in which a person owes to his fellow human beings or to society in general, which characterizes the act done as an act of baseness, vileness or depravity, and contrary to the accepted and customary rule of right and duty between two human beings; and
2. Conduct done knowingly contrary to justice, honesty or good morals; and
3. Intentional, knowing or reckless conduct causing bodily injury to another or intentional, knowing or reckless conduct which, by physical menace, puts another in fear of imminent serious bodily injury."

(These are the crimes covered under Act 24 & 82)

PASBO 62ND ANNUAL CONFERENCE AND EXHIBITS, PITTSBURGH

March 2017

30

DISMISSAL PROCESS

Causes for Termination – Persistent and Willful Violations School Law

- Failure to keep lesson plans as required by school district.
- Improper release of students from class.
- Verbal outbursts directed to supervisors.
- Refusal to report assignments.
- Disciplining children in violation of School District policy.
- Lack of proper teaching certificate.

DISMISSAL PROCESS

Causes for Termination – Persistent and Willful Violations School Law

- Failure to report to school.
- False statements in aid of an attempt to misuse personal days or sick days.
- Failure of a principal to conduct a required fire drill.
- Wearing religious garb.
- Unauthorized absences.
- Repeatedly reporting late to school.

DISMISSAL PROCESS

Causes for Termination – Persistent and Willful Violations School Law

- Violating corporal punishment policies.
- Violating grading policies.
- Persistent insubordination.
- Leaving classroom during portions of scheduled class.
- Failure to comply with directives of supervisor.
- Leaving school prior to dismissal.

DISMISSAL PROCESS

Typically, progressive discipline has four steps.

- Verbal warning (or reprimand)
- Written reprimand and warning
- Suspension without pay (or with pay during the investigation)
- Final warning and discharge

DISMISSAL PROCESS

District Polices

Conduct/Discipline Procedures

317 Employees

317.1 Educator Misconduct

Penalties for Tardiness

318 Teachers

NEW----- Policy Maintaining Professional Boundaries

824 All Employees

DISMISSAL PROCESS

Just Cause

District must have “just cause” for imposing discipline. There is no accepted definition of “just cause.” Arbitrators use the seven tests for determining whether the District had just cause for disciplining an employee.

DISMISSAL PROCESS

Just Cause Test

1. Was employee adequately warned of consequences of their conduct? (May have been given orally or written)
2. Was District rule or directive reasonable related to efficient and safe operations?
3. Did Principal/Supervisor investigate before administrating the discipline?
4. Was investigation fair and objective?
5. Did the investigation produce substantial evidence or proof of guilt?
6. Were the rules, orders and penalties applied consistently and without discrimination?
7. Was the discipline reasonably related to the seriousness of the offense and the past record?

DISMISSAL PROCESS

QUESTIONS

ANDREWS & PRICE, LLC

William C. Andrews

1500 Ardmore Boulevard, Suite 506

Pittsburgh, PA 15221

Phone - 412-243-9700

Fax – 412-243-9660