

## Employee Discipline and Discharge: Practice and Pitfalls



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## Key Legal Concerns



- Probationary v. Continuing Contract
- Establish grounds for teacher termination
- Remediability
- Legal claims based on the employee's perception of unfair treatment

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## Probationary Teachers



- First 3 consecutive years (of at least 60 days) of teaching in Minnesota in a single district
- One year in another district if teacher already has continuing contract status in a district

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### Probationary Teachers



- Non-renewal or renewal of annual contract as the School Board "shall see fit"
- If non-renewed, written notice before July 1
- If reasons for non-renewal requested, must provide reasons in writing within 10 days

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### Probationary Teachers



- Must be immediately discharged if license revocation because of conviction for child or sexual abuse
- May be discharged during probationary period for cause, effective immediately, after a hearing held upon due notice

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### Legal Framework



#### Subd. 9 End-of-year termination (remediation required)

- Inefficiency;
- Neglect of duty, or persistent violation of rules;
- Conduct unbecoming a teacher; or
- Other "good and sufficient" grounds 2

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**Remediability**



**What is it?**  
 Ask “whether damage has been done to the students, faculty, or school and whether the conduct resulting in that damage could have been corrected had the teacher’s superiors warned her?”

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**Remediability**



If conduct is remediable, discharge cannot occur until after the teacher is given a reasonable opportunity to correct the deficiencies. (Subd. 9)

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**Remediability**



**What behavior is remediable?**

- Performance-related problems
- Certain isolated instances of misconduct
- Insufficiently–documented past problems

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## Remediability



### WRITTEN NOTICE OF DEFICIENCY should include:

- > What performance or conduct deficiencies must be changed;
- > What resources will be provided to help change them;
- > What standards will be used against which teacher's conduct will be evaluated; and
- > What the disciplinary outcome will be if sufficient progress is not made.

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## Remediability



### What behavior is irremediable?

- sexual misconduct
- physical force
- breach of confidentiality/ethics
- theft or dishonesty

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## Legal Framework



### Subd. 13 Immediate termination

- 1) Immoral conduct, insubordination, or felony conviction;
- 2) Conduct unbecoming a teacher requiring "immediate removal;"
- 3) Failure without justifiable cause to teach without written release from school board;

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## Legal Framework



### Subd. 13 Immediate termination

- 4) Gross inefficiency that has not been corrected after reasonable written notice;
- 5) Willful neglect of duty; or
- 6) Continuing disability and failure to qualify for reinstatement after 12-month leave.

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## Legal Framework



### What must you prove?

#### **"JUST CAUSE" STANDARD**

Arbitrator decides whether school district has proved

- 1) That the conduct of the complained of actually occurred; and
- 2) That the proven conduct is sufficiently egregious to discharge either immediately after a hearing (subd. 13) or effective at the end of a school year (subd. 9).

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## Legal Framework



### Higher standard of personal conduct

"Schools must teach by example the shared values of a civilized social order."

Teachers are:

- "role models"
- in a position of "special public trust"; and
- those whose "character and conduct" must be above those "not working in so sensitive a relationship"

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### Legal Framework



#### What must be considered?

- 1) The teacher's prior record;
- 2) Severity of teacher's conduct in light of prior record;
- 3) Actual or threatened harm or damage to students, faculty or school; and
- 4) Whether conduct could have been corrected if warned.

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### Making the Disciplinary Decision



#### Do we know the real story?

##### **INVESTIGATE**

- ✓ Gather *all* the facts
- ✓ Get the whole story – from supervisor, employee, co-workers, students, third parties
- ✓ Tennessean Warnings
- ✓ Right to representative (Weingarten Right)

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### Making the Disciplinary Decision



#### Have we kept track of the problem?

##### **DOCUMENT**

- ✓ Work record/past discipline or warnings/length of employment
- ✓ Contemporaneous
- ✓ Consistent with or related to the reason for discharge
- ✓ Favorable performance reviews
- ✓ Merit salary increases

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**Making the Disciplinary Decision** 

**Have we kept our promises?**

**KNOW YOUR POLICIES**

- ✓ Employee handbook
- ✓ Supervisor handbook
- ✓ Collective bargaining agreement
- ✓ Individual employment contract

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**Making the Disciplinary Decision** 

**Have we been consistent?**

**KNOW YOUR PRACTICES**

- ✓ Look at similar situations in the past
- ✓ Consistency is vital in promoting the perception of fairness, employee morale, and showing the absence of illegal discrimination
- ✓ May have to prove a legitimate, nondiscriminatory reason

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**Making the Disciplinary Decision** 

**Do you know the big picture?**

**KNOW THE CONTEXT**

- ✓ Protected class status
- ✓ Motives
- ✓ Can the problem be fixed? (Remediability)
- ✓ Disciplinary alternatives
- ✓ Consider the Seven Tests of "Just Cause"

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### Seven "Just Cause" Tests



- 1) Notice
- 2) Reasonable Rules and Orders
- 3) Investigation
- 4) Fair investigation
- 5) Proof
- 6) Equal Treatment
- 7) Penalty

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### Making the Disciplinary Decision



Do we agree with the reason?

#### ARTICULATE THE REASONS

- ✓ Decide exactly why the employee is being disciplined or proposed for discharge
- ✓ Put it in writing
- ✓ Identify decision-maker

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### Making the Disciplinary Decision



Do we agree with the decision?

#### REACH CONSENSUS

- ✓ Consider all the circumstances
- ✓ Participation by all appropriate individuals, including neutrals inside and outside the school district

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**Making the Disciplinary Decision** 

**Does it look like we're "getting even?"**  
**POTENTIAL CLAIMS**

- ✓ Whistleblowing
- ✓ Unfair labor practice
- ✓ Discrimination or harassment
- ✓ Medical leave
- ✓ Work injury

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**Giving Notice of the Proposed Discharge** 

**How should we break the news?**  
**TELLING THE EMPLOYEE**

- ✓ Carefully plan the interview
- ✓ Include decision-maker and human resources representative
- ✓ Use neutral site?
- ✓ Right to representative

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**Giving Notice of the Proposed Discharge** 

**How honest should we be?**  
**TELLING THE EMPLOYEE**

- ✓ Be clear and concise (orally and in writing)
- ✓ Be honest and open
- ✓ Show respect and appreciation
- ✓ Provide constructive direction

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## Giving Notice of the Proposed Discharge



How should we act?

### **RESPECT AND DIGNITY**

- ✓ An employee who is humiliated in view the presence of co-workers is more likely to take legal action

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