

**EMPLOYEE DISCIPLINE  
AND  
DISCHARGE:  
PRACTICE AND PITFALLS**

*Presented by*

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## **I. Contractual Requirements And/Or Standards**

- A. Collective bargaining agreements
- B. Individual employment contracts
- C. School district policies
- D. Employee manuals/handbooks

## **II. Statutory Requirements Or Restrictions**

- A. Continuing Contract Law (“tenure”) (Minn. Stat. § 122A.40)
  - Applies to Teachers, Principals and employee required to hold a license from the state department
  - Not applicable to superintendents
  - Not necessarily applicable to activity director (not required to hold a license from MDE)
- B. Public Employees Labor Relations Act (“PELRA”) (Minn. Stat. Ch. 179A)
  - According to PELRA, “all contracts must include a grievance procedure providing for compulsory binding arbitration of grievances”
  - *Independent Review* available even if no grievance process exists (not necessarily true for “at-will” employees)
- C. Veterans’ Preference Laws
  - For a military veteran, employee is entitled to a form hearing and termination must be based on “incompetency or misconduct.”
  - However, veteran serving during their probationary period not entitled to same protections.
- D. Open Meeting Law
  - School board must close meetings for preliminary consideration of allegations against employees. If discipline is deemed warranted further meetings relating to those allegations held after that conclusion is reached must be open. However, such meetings must be open at the request of the subject of the meeting.
- E. Data Practices Act

- Data on employees is generally private data except for:
  - The existence and status of any complaints regarding the employee (the information that can be release in this circumstance is very narrow [e.g. “a complaint has been made and an investigation is pending”])
  - Final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action

**III. Who Should Be Involved In The Decision-Making? (Keep in Mind elements of data privacy [i.e. limited need to know] and providing sufficient due process)**

- A. Investigation
- B. Evaluation, monitoring and supervision
- C. Discipline/discharge planning and decision-making

**IV. Are There Any Reporting Obligations?**

- A. Maltreatment of Minors Act (reporting allowed to law enforcement, social services, or the Department of Education)
  - A person who knows or has reason to believe a child is being maltreated . . . or has been maltreated within the preceding three years shall immediately report to police and/or MDE (immediate oral report and written report within 72 hours (excluding weekends and holidays). Minn. Stat. 260E.06 and 260E.09.
- B. Board of Teaching
  - According to statute, the school “must report to the Professional Educator Licensing and Standards Board, the Board of School Administrators . . . . [whichever has jurisdiction over the teacher's or administrator's license] when its teacher or administrator is discharged or resigns from employment after a charge is filed [that would constitute grounds for immediate discharge [e.g. immoral conduct, insubordination, or conviction of a felony, etc.] See Minn. Stat. 122A.20 Subd. 2
- C. State Auditor
  - Whenever an employee or officer of a school district “discovers evidence of theft, embezzlement, unlawful use of public funds or property” must

promptly report to law enforcement and the state auditor (in writing). Minn. Stat. 609.456 Subd. 1.

D. Law Enforcement

**V. Does The District Need To Investigate?**

A. Who should conduct the investigation?

B. Are there immediate steps administration needs to implement to protect safety or ensure a proper investigation?

C. What standards will apply?

D. Who will be present during interviews?

E. Where should the interviews take place?

F. *Tennessee* notices given to persons who are requested to provide private data about themselves

G. Proper documentation of investigation and conclusions

H. *Loudermill* principles – (i.e. notice of allegations/charges and opportunity to be heard)

**VI. What Is The Deficiency?**

A. Poor performance

B. Attendance

C. Competency

D. Acts of misconduct (criminal or noncriminal)

**VII. What Is The Evidence That Supports These Deficiencies?**

A. Performance evaluations

B. Investigation - documentation/witnesses

C. Documentation of previous discipline

**VIII. Progressive Discipline**

A. Definition – A sequence of disciplinary actions where the severity of the discipline

imposed increases with each subsequent incident of misconduct or performance problem.

B. Steps of Progressive Discipline

- Oral directive or warning
- Written directives
- Written warning
- Notice of deficiency/written reprimand
- Unpaid disciplinary suspension(s)
- Termination of employment

C. Progressive discipline is the norm in many cases of misconduct or performance problems. However, the type and severity of the discipline should be commensurate with the misconduct or performance problems. School district policies and collective bargaining agreements should reserve to the school district discretion to by-pass one or more of the steps of progressive discipline and to impose the appropriate level of discipline under the circumstances.

**IX. Just Cause Standard for Discipline**

- A. NOTICE. Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
- B. REASONABLE RULES/DIRECTIVES. Was the employer's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the employer's business and (b) the performance that the employer might properly expect of the employee?
- C. ADEQUATE INVESTIGATION. Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did violate or disobey a rule or order of management?
- D. FAIR INVESTIGATION. Was the employer's investigation conducted fairly and objectively?
- E. PROOF. At the investigation, did the employer obtain substantial and compelling evidence or proof that the allegations against the employee were substantiated?
- F. EQUAL TREATMENT. Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?

- G. FAIR PENALTY. Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee?

**X. Remediability Standard**

- A. Remediable teacher deficiencies or misconduct require that school districts proceed under Minn. Stat. § 122A.40, Subdivision 9 (Termination), while irreparable deficiencies or misconduct can proceed under Minn. Stat. § 122A.40, Subdivision 13 (Immediate Discharge).

- B. Is the conduct remediable?

- Inappropriate recordkeeping
- Inefficient or incompetent teaching
- Ineffective parent communication
- Lack of cooperation with staff
- Lack of clear instructional criteria and student evaluations
- Inadequate lesson plans
- Failure to follow building procedures and guidelines
- Low instructional standards
- Inadequate student control and discipline

- C. What is Not Remediable?

- Sexual abuse
- Serious sexual harassment
- Some non-felony criminal behavior
- Falsification of student grades
- Theft from other teachers
- Willful and serious neglect of student safety

- Insubordination
- Failure to correct gross inefficiencies in student behavior management or gross failure to teach the curriculum after reasonable written notice.

D. Case Law on Remediability Standard.

- Several factors should be weighed when determining remediability: the prior record of the teacher, the severity of the conduct in light of the teacher's record; whether the conduct resulted in actual or threatened harm, either physical or psychological; and whether the conduct could have been corrected had the teacher been warned by superiors. *Downie v. Independent Sch. Dist. No. 141*, 367 N.W.2d 913 (Minn.App. 1985).
- If teacher's conduct is remediable, he or she should be dismissed at the end of the school year, while if conduct is not remediable, he or she should be discharged immediately, and to determine whether the conduct is remediable, school board should consider: teacher's prior record; severity of the conduct in light of the record; threatened physical or psychological harm; and whether conduct could have been corrected had the teacher been warned by superiors. *Matter of Peterson*, 472 N.W.2d 687 (Minn.App. 1991).
- Absence of documentation of prior complaints or warnings given to teacher prevented determination that one incident of teacher's inappropriate conduct toward student was irremediable so as to allow his immediate discharge. *Beranek v. Joint Independent School District No. 287*, 395 N.W.2d 123 (Minn.App. 1986).
- Even if teacher's actions were in response to students' misbehavior, and even if teacher only grabbed one student's hair, pushed him sharply to a bench, and gave one student several jabs to the chest, teacher's conduct was outrageous and not remediable. *Russell v. Special School Dist. No. 6*, 366 N.W.2d 700 (Minn.App. 1985).
- School district acted properly in proceeding under statute allowing immediate dismissal of teacher where incidents on April 6 allowed school district to characterize teacher's conduct as irremediable, even though teacher's conduct before April 6, while indicating physical abuse toward students, was not so outrageous as to be irremediable and teacher had received notice of deficiency. *Russell v. Special School Dist. No. 6*, 366 N.W.2d 700 (Minn.App. 1985).
- School board properly discharged continuing contract teacher, citing his commission of theft by swindle as immoral conduct unbecoming a teacher,

and record supported board's conclusion that teacher's continued presence in small school district would result in faculty disorder and unsatisfactory learning environment. *Matter of Shelton*, 408 N.W.2d 594, review denied (Minn.App. 1987).

- Although school board should not be required to wait for harm to come to their students before discharging a teacher, absence of harm is one fact that should be considered in determining whether conduct is remediable. *Kroll v. Independent School Dist. No. 593*, 304 N.W.2d 338 (Minn. 1981).

## **XI. What Should Happen At The Disciplinary Meeting?**

- A. Who should be there?
  - School district personnel
  - School district legal counsel
  - Union representation (*Weingarten* rights)
- B. What should employee be given at the meeting?
  - Disciplinary documents
  - “No retaliation” warning
  - The disciplinary meeting is not a hearing

## **XII. Formal Disciplinary Action/Recommendation**

- A. Is school board action required for the disciplinary action or discharge?
- B. Comply with open meeting law and notice requirements
- C. Provide employee with notice of school board action
- D. Tenured teachers or veterans may be entitled to be paid pending completion of hearing proceedings

## **XIII. Post-Discipline Issues**

- A. Grievance rights
- B. Statutory right to a hearing
- C. Employee requests for reason for his/her discharge or non-renewal

- D. Data Practices Act requests
- E. Access to personnel file

**XIV. What Other Laws May Apply?**

- A. Americans With Disabilities Act
- B. State and federal anti-discrimination statutes
- C. Family Medical Leave Act
- D. Constitutional due process rights
- E. Free speech rights
- F. Other constitutional rights
- G. Defamation
- H. Invasion of privacy

**XV. Ten Rules of Thumb for Employee Discipline**

- A. The Personnel File Should Tell The Story.
- B. If It's Not In Writing, It Doesn't Exist.
- C. Say What You Mean and Mean What You Say.
- D. Administrators Have The Authority And Obligation To Establish And Enforce High Performance Standards.
- E. Monitoring An Employee Who Has Exhibited A Deficiency In An Area Is Not Harassment.
- F. Use The Appropriate Level Of Documentation.
  - Verbal reprimand
  - Letter of expectation
  - Written reprimand
  - Notice of deficiency

G. Use The Appropriate Level of Discipline.

- Reprimand / warning
- Remedial measures
- Suspension without pay
- Termination

H. Utilize Progressive Discipline, But Remember That A Lockstep Approach Is Not Required.

I. Post-Discipline Follow-Through And Monitoring Is Important.

J. Be Consistent And Fair With All Employees.