

The employment, re-employment, and termination or discharge of employees is the responsibility of the superintendent as provided by law. The following procedures shall apply for reemployment or termination of employees. Procedures for the discharge of a certified school employee are addressed in Policy 219.

A. Definitions as used in this policy:

1. "certified school employee" or "certified school personnel" means a licensed school employee and "certified school instructor" means a teacher or instructional support provider.

2. "exempt employee" means

(a) a certified school instructor employed to fill the position of a certified school instructor entering military service;

(b) a person who is employed as a certified school administrator; or

(c) a non-certified school employee employed to perform primarily District wide management functions.

3. "terminate" means, in the case of a certified school employee, the act of not reemploying an employee for the ensuing school year and, in the case of a noncertified school employee, the act of severing the employment relationship with the employee;

B. Employees' Contracts:

1. Certified School Instructor Contracts.

a. no later than the fourteenth (14th) calendar day before the last day of the school year, the superintendent shall serve written notice of re-employment or termination on each tenured certified school instructor employed by the District.

b. prior to the last day of the school year the superintendent shall serve written notice of re-employment or termination on each non-tenured certified school instructor employed by the District.

c. a notice of re-employment shall be an offer of employment for the ensuing school year. The employee must return the signed letter of intent within fifteen (15) calendar days of receipt of the notice of re-employment. This written acceptance of re-employment by a certified school instructor creates a binding employment contract between such employee and the school board until the parties enter into a formal written employment contract. A notice of termination shall be a notice of intention not to re-employ for the ensuing school year.

d. Exempt employees shall have their status reviewed annually by the superintendent with action to renew or not to renew such employee's contract taken no later than the last day of April of each school year provided that the superintendent's failure to give notice prior to the last day of April shall not be deemed to create an express or implied offer of reemployment.

2. Other Employee Contracts. Other certified and non-licensed employees shall be considered for re-employment before June 30th of each year for a term not to exceed one (1) year.

C. Non-Renewal/Termination

1. The superintendent may terminate any employee with less than three years of consecutive service for any reason deemed sufficient. Upon request of such employee, the superintendent or administrator shall provide written reasons for the decision to terminate. 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.

2. The Superintendent may terminate the employment of any non exempt employee with more than three consecutive years of employment with the District for just cause in accordance with the following process:

a. Just Cause. Request for Reasons/Hearing. An employee who has been employed by the District for three consecutive years may be terminated only for a reason that is rationally related to the employee's competence or turpitude or the proper performance of duty and that is not in violation of the employee's civil or constitutional rights. The employee may request an opportunity to make a statement to the Board and may also request in writing the reasons for the termination action, as provided by law, by submitting a written request to the superintendent within five (5) working days from the date the written notice is served upon the employee. The superintendent shall provide written reasons for the notice of termination to the employee within five (5) working days from the date the written request for a meeting and the written request for the reasons were received by the superintendent. Neither the superintendent nor the Board shall publicly disclose the reasons for termination.

b. Employee Contentions to Support Hearing request. The employee's request for a hearing shall be granted if he/she responds to the superintendent's written reasons by submitting in writing to the superintendent 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 (10) working days from the date the employee receives the written reasons from the superintendent. The submission of this statement constitutes a representation on the part of the employee that he/she can support his contentions and an acknowledgment that the Board may offer the causes for its decision and any relevant data in its possession in rebuttal of his contentions.

c. Board Hearing. The Board shall meet to hear the employee's statement in no less than five (5) or more than fifteen (15) working days after the Board receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act [10-15-1.1 NMSA 1978]. The employee and the superintendent or administrator may each be accompanied by a person of his/her choice.

First, the superintendent shall present the factual basis for the determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Section 1 above. Then, the employee shall present his contentions, limited to those grounds specified the employees' written contentions. The Board may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the Board, the employee or his representative and the superintendent. The Board 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 Board shall notify the employee and the superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

d. Appeal to Arbitrator. If the employee is still aggrieved by the decision of the Board following the hearing, an appeal may be made to an independent arbitrator for a de novo hearing in accordance with NMSA 1978 § 22-10A-25. The arbitrator shall decide whether there was just cause for the decision to terminate.

e. Exempt Employees. An exempt employee may be terminated by non-renewal of the employees' contract at the end of any contract term. An exempt employee shall not be entitled to the procedures and rights described in NMSA 1978 §§ 22-10A-22 through 22-10A-25.

References: NMSA 1978 §§ 22--2, 22-10A-2, 22-10A-22 through 22-10A-26
Giangreco v. Mmurlless, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532