

# SCHOOL LAW

WITH WALSH GALLEGOS NEW MEXICO



EDITOR: KARLA SCHULTZ

FEB 2024 | No. 106

## PREPPING FOR END-OF-YEAR EMPLOYMENT DECISIONS

BY: KARLA SCHULTZ

It may not feel like it, but spring is just around the corner. That means now is the time to review the timelines and other requirements for making end of the year employment decisions about District personnel. Ending the employment of a District employee is one of the most significant personnel actions a district can take, and there are potential legal pitfalls to avoid. This overview of the law on termination and discharge will help your district prepare for personnel decisions as we head towards the end of the school year.

### SCHOOL PERSONNEL ACT BASICS

First, all New Mexico public school employees are employed pursuant to the School Personnel Act, 22-10A-1 NMSA 1978 through 22-10A-40. Understanding which categories the employees fall into is an important part of making employment decisions.

**LICENSED VERSUS NONLICENSED.** Under that law, school employees fall into one of two categories: licensed and nonlicensed. Licensed school personnel are those whose position requires them to hold a valid license from PED and includes “any person teaching, supervising an instructional program or providing instructional support services in a public school; any person administering in a public school; and any person providing health care and administering medications or performing medical procedures in a public school...” Only licensed employees are required to be issued employment contracts, and these are generally issued for a one-year period. Nonlicensed employees do not have to be issued contracts, though many districts issue such contracts. You may want to reconsider that practice for the upcoming school year.

**PROBATIONARY VERSUS NON-PROBATIONARY STATUS.** The School Personnel Act also categorizes probationary versus non-probationary employees. Probationary, licensed school employees are those that have “not been

offered and accepted a third consecutive contract,” but excludes licensed educational assistants. Probationary employees can be terminated at the end of their contract for any reason the district “deems sufficient.” They are also sometimes referred to as non-tenured employees.

Nonlicensed school employees and educational assistants have a shorter probationary employment period. Those employees become non-probationary after just 365 days of employment. If they have less than one year of employment with a school district, they can be terminated any time during that first year for any reason the district “deems sufficient.” It is not necessary to wait until the end of the school year as is true for licensed school personnel.

Licensed school employees who have been employed by a school district for more than two consecutive years, and nonlicensed school employees and licensed educational assistants who have been employed for more than one year, are no longer probationary and can be terminated only for “just cause.” They are often referred to as tenured employees. If terminated, these non-probationary employees are entitled to a hearing before the Board of Education, if they follow the proper process to request one.

**EXEMPTIONS FROM THE SCHOOL PERSONNEL ACT.** While most school employees fall into the licensed and nonlicensed categories, there are four categories of school district employees who are exempt from the reemployment and termination provisions of the School Personnel Act: 1) licensed school administrators; 2) unlicensed school employees who perform “primarily district-wide management functions;” 3) an individual who does not hold a valid license or has not submitted a complete application for licensure within the first three months from beginning their employment; and 4) a licensed school employee who was hired to fill the position of a licensed school employee that entered the military. The

UNDERSTANDING WHICH CATEGORIES THE EMPLOYEES FALL INTO IS AN IMPORTANT PART OF MAKING EMPLOYMENT DECISIONS . . . IT IS ESSENTIAL THESE CATEGORIES OF EMPLOYEES BE ISSUED THE PROPER CONTRACTS.



WALSH GALLEGOS  
KYLE ROBINSON & ROALSON P.C.

employment of these four categories of employees simply ends at the end of their contract. They have no right to appeal the end of their employment. That means it is essential these categories of employees be issued the proper contracts.

#### REEMPLOYMENT AND NOTICE OF EMPLOYMENT ACTION

**WRITTEN NOTICE.** Not all employees need to be given a written notice of reemployment. By law, school districts must only issue a written notice of reemployment or termination to licensed school employees on or before fifteen business days before the last day of the school year. The employment contract of licensed personnel renews automatically for a year if the district fails to provide that written notice.

Unlicensed employees, licensed administrators, and unlicensed school employees who perform “primarily district-wide management functions” do not have to be issued notice of reemployment or termination. The employment of licensed school administrators and unlicensed school employees who perform “primarily district-wide management functions” simply ends at the end of their contracts, unless they have unique contracts that say otherwise. Unlicensed employees’ employment automatically continues unless they are issued a notice of termination.

Check your policy, and your CBA, to see if there are any additional steps that must occur before a notice of termination is issued, or if there are any unique mandatory elements to a termination notice.

**REEMPLOYMENT.** A licensed school employee must accept or reject an offer of reemployment within fifteen days of getting the notice, or by the last day of the school year if they did not get a timely notice of reemployment. At least one court has said that an employee’s failure to accept reemployment within that time period means there is no binding employment contract for the following school year.

**TERMINATION.** If the District does not want to employ a licensed employee for the next school year, they should be given a timely written notice of termination at the same time licensed employees are given a notice of reemployment, but no later than on or before fifteen business days before the last day of the school year. Once they receive a notice of termination, the employee can make a written request to the Superintendent for reasons for the decision to terminate. The Superintendent must provide those reasons, in writing, within ten working days of the request. An employee who receives those written reasons, and who is a probationary employee has no further recourse for appealing the termination. However, if the employee is non-probationary or tenured, then they can also request a hearing before the Board of Education to appeal the termination and must submit, within ten working days from the date the employee receives the written reasons for termination, a written “contention that the decision to terminate was made without just cause,” specifying how or why the termination is without just cause.

**TERMINATION VERSUS DISCHARGE.** For non-probationary licensed employees, termination severs the employment at the end of the contract; discharge ends the employment during the term of the contract. Either process entitles the employee to request a board hearing, though a discharge is a lengthier process that allows for limited pre-hearing exchange of information, including depositions. If the Board upholds the termination or discharge, the employee can appeal to an arbitrator.

For nonlicensed school employees, ending their employment once they are no longer probationary is always a termination process, regardless of the time of year. Discharge does not apply to that category of employees.

While the employment of licensed school administrators and unlicensed school employees who perform “primarily district-wide management functions” ends at the end of their contracts, with no termination process being necessary, ending their employment during the contract will require the discharge process.

#### Can the Decision be Supported?

Even though a probationary employee, licensed or unlicensed, can be terminated “for any reason...deem[ed to be] sufficient,” there should be some evidence to support the termination decision – emails to the employee about job-related concerns, a sub-standard evaluation, a disciplinary memo, even documentation to show lower enrollment or loss of funding. This will allow the administration to feel confident the decision is appropriate and legally defensible. Any employee, even a probationary one, can bring a claim of discrimination or retaliation, so the District will want to be prepared to show its employment action was neither discriminatory nor retaliatory.

If the employee is no longer probationary, then the district must have “just cause” to terminate or discharge the employee and, if the employee requests a hearing, the burden of proving just cause falls on the administration. Under the School Personnel Act, “just cause” is “a reason that is rationally related to a school employee’s competence or turpitude or the proper performance of the school employee’s duties and that is not in violation of the school employee’s civil or constitutional rights...” Just cause can be shown through documentation and witness testimony. So, a thorough review of the documentation and potential witnesses can be essential before a termination or discharge decision is made.

#### Conclusion

Whether ensuring compliance with statutory timelines, double-checking your reemployment or termination notices, evaluating your employment contracts, or analyzing your documentation to support a potential employment action, be sure to seek assistance from your district’s legal counsel.

#### **FOR MORE INFORMATION**

on retainer programs or the firm, please write to P.O. Box 2156, Austin, TX 78768, visit our website at [www.WalshGallegos.com](http://www.WalshGallegos.com) or call us at 512-454-6864.

**SCHOOL LAW WITH WALSH GALLEGOS NEW MEXICO** is published bi-monthly by Walsh Gallegos Kyle Robinson & Roalson P.C., a law firm with a practice emphasizing the legal representation of public schools, junior colleges and universities throughout New Mexico and Texas. **SCHOOL LAW WITH WALSH GALLEGOS NEW MEXICO** is provided as a service under the firm’s Retainer Agreements for school districts and regional education cooperatives.

This publication is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

©2024, Walsh Gallegos Kyle Robinson & Roalson P.C. All rights reserved. Reproduction of all or part of this publication requires permission from the editor.