

## **ARTICLE VII -- DUE PROCESS AND DISCIPLINARY ACTION**

### **Section 1. Conferences-for-the-Record**

- A. The Board and Union recognize the principle of progressive discipline. The parties agree that disciplinary action may be consistent with the concept of progressive discipline when the Board deems it appropriate, and that the degree of discipline shall be reasonably related to the seriousness of the offense.
- B. All employees are accountable for their individual levels of productivity, implementing the duties of their positions, and rendering efficient, effective delivery of services and support. A Conference-for-the-Record may be held when an employee's fitness is at issue or when any employee renders deficient performance, violates any rule, regulation, policy, state or federal statute, defies an administrator's authority or when there is a substantiated administrative or preliminary personnel investigation against the unit member.

Any employee summoned to the office of a supervising administrator, or his/her designee for a Conference-for-the-Record which may lead to disciplinary action or reprimand, shall have the right to request Union representation and shall be informed of this right. If Union representation is provided, the employee shall have the right to be accompanied at the Conference-for-the-Record by a representative of the Union.

- C. Employees shall be given two days' written notice and a written statement of the reasons for the conference, except in cases deemed to be an emergency. The employee, at the time written notice is given, shall be provided a copy of any police report. The investigation shall be considered active until a final decision has been made regarding the incident.
- D. A Conference-for-the-Record, not held in accordance with these conditions, shall not be considered a part of the employee's personnel file or record.
- E. The employee shall not be represented by an attorney at a Conference-for-the-Record. The bargaining agent shall have the right to refuse representation in accordance with its own internal, nondiscriminatory rules.
- F. The use of tape recorders or other mechanical devices is expressly prohibited.

### **Section 2. Types of Separation**

Dissolution of the employment relationship between a permanent employee and the School Board may occur by any of seven distinct types of separation.

- A. Voluntary -- The employee initiates the separation by resigning, retiring, abandoning the position, or other unilateral action by the employee.

- B. Excessive Absenteeism/Abandonment of Position -- An unauthorized absence for three consecutive workdays shall constitute abandonment of position. Unauthorized absences totaling 10 or more workdays during the previous 12-month period shall constitute excessive absenteeism. Either of the foregoing shall constitute grounds for termination.
- C. Disciplinary -- The employee is separated by the employer for just cause. Just cause includes, but is not limited to: deficient or non-performance of job responsibilities; a violation of any rule, regulation or policy; misconduct in office; gross insubordination; willful neglect of duty; immorality; and adjudication of guilt or conviction of a crime involving moral turpitude or felony charge.
- D. Non-Reappointment -- The employee is separated by management's decision not to offer another annual contract. Employees whose performance has been deemed marginal by the supervising administrator, who have been counseled during the school year concerning performance, and have failed to perform acceptably shall not be reappointed. This action shall be consistent with the evaluation procedures and failure to follow these procedures shall be subject to the grievance/arbitration process. However, management's evaluation decisions are not subject to the grievance/arbitration process. Where there are non-reappointment actions against any employee, the evaluation procedures will be followed. Non-reappointment shall not be in lieu of discipline or a reduction-in-force.
- E. Reduction-in-Force -- The employee is separated by the employer because of lack of work, budgetary constraints, change in policy or staffing patterns or organizational structure without fault or delinquency on the employee's part.
- F. Termination of Project Employees -- Employees who are hired for a project(s) may be terminated at the end of the fiscal year without cause and shall be terminated at the end of the project(s).

### **Section 3. General Provisions**

- A. Disciplinary actions, i.e., demotions, suspensions and dismissals shall be effected in accordance with applicable Florida law and the provisions stated below:
  - 1. Any employee may be demoted, suspended or dismissed for just cause.
  - 2. Disciplinary action shall occur at any necessary point in time and may be based upon a single incident or a pattern of incidents, provided just cause is established.
  - 3. Written notification of any recommendation for disciplinary action shall be provided to the employee and the Union prior to School Board action. Such notification shall contain the charges, the written recommendation to the School Board and information regarding the employee's right to appeal pursuant to Florida Statutes, Section 120.569.

4. Within 20 calendar days from receipt of the notice of School Board action, the employee may exercise or not exercise the right to request a hearing before a Division of Administrative Hearing (DOAH) Administrative Law Judge. If exercised, the request shall be delivered to the Office of the School Board Clerk.
5. The decision of the Administrative Law Judge shall be final and binding on both parties.
6. The School Board may suspend or terminate the employee for just cause as provided by law which includes, but is not limited to, the failure to fulfill the obligations under the Employment Contract or the DCSAA collective bargaining agreement. Suspensions, terminations or other disciplinary action shall be in accord with the terms and conditions of the collective bargaining agreement.

The Employment Contract is in compliance with and subject to the terms of the DCSAA collective bargaining agreement. This Contract shall be renewed annually unless separation is expressly sought by the Employer.

- B. All other forms of separation, including separation by abandonment of position, non-reappointment, reduction-in-force and termination of project employee contracts shall be effected in accordance with the provisions stated below and those addressed elsewhere in this Contract:

1. The Union and any employee who is subject to non-reappointment shall be put on written notice of possible non-reappointment. Counseling and written notice of non-reappointment shall be provided in a timely manner and prior to School Board action. Any employee who has been recommended for non-reappointment shall, upon request, be provided with a review conference directly with the Superintendent or his designee.
2. The Union and any employee who is affected by a reduction-in-force shall receive written notice of the reduction-in-force at least 10 working days prior to the effective date of separation.
3. An employee recommended for termination due to abandonment of position shall have the right to request of the Chief Personnel Officer for Human Resources or designee a review of the facts concerning the unauthorized absences. Such right shall exist for a period of 10 working days after first being notified in writing by the Office of Professional Standards of the recommendation for termination.
4. Any employee separated because of abandonment of position, non-reappointment, reduction-in-force or termination of a project employee contract may not request a hearing before DOAH and such action is not subject to the grievance/arbitration procedure.

#### **Section 4. Complaints**

- A. All complaints, either verbal or written, shall be directed initially to the supervising administrator of the subject of the complaint. No complaint will be processed that is not identified as to source. Additionally, no anonymous letter or anonymous materials shall be placed in the personnel file.
- B. Upon receipt of a complaint, the supervising administrator shall acknowledge and accept the complaint, determine whether the complaint is job related and inform the complainant that the matter will be reviewed. If the complaint is not job related, the supervising administrator shall close the complaint immediately, and no record is retained in the employee's personnel file.
- C. If the complaint is job related, the supervising administrator shall hold a meeting with the affected employee within 10 work days of receipt of the initial complaint. At that meeting, a copy of the complaint and all supporting documentation shall be provided to the employee who is the subject of the complaint. After meeting with the employee, the supervising administrator shall make a determination about further fact-finding procedures.
- D. If the supervising administrator determines that the facts presented, together with the employee's response to the complaint, is complete, disposition actions, if any, should then be taken in accordance with this Article.
- E. If the supervising administrator is unable to close the complaint after meeting with the employee and the complainant, the complaint shall be forwarded to the next administrative level.

#### **Section 5. Investigations/Administrative Reviews**

- A. If a formal investigation is requested, the supervising administrator should identify the questions or issues which need to be investigated and, to the extent possible, the witness(s) who may have information. The supervising administrator shall then refer the investigative request to the Office of Professional Standards who shall determine the process for further fact-finding.
- B. Upon authorization by the Office of Professional Standards for a personnel investigation by the Miami-Dade County Public Schools Police, the police investigator shall complete the investigation and submit a written investigative report to Professional Standards. The personnel investigation shall be structured to seek information related to the allegation(s) under investigation.
- C. Upon receipt of the investigative report, the Office of Professional Standards shall review the complete file with the supervising administrator and the employee, including the initial complaint allegations and supporting evidence, and shall consider the employee's response and all supporting documents.
- D. Upon authorization by the Office of Professional Standards for an administrative review, the fact finding is conducted by the supervising administrator. The

personnel investigation shall be structured to seek information supportive to the allegation(s) under investigation.

- E. Upon receipt of an investigation or an administrative review which is concluded with the finding that there is probable cause to proceed further or with disciplinary action taken or charges filed, the Office of Professional Standards or the site supervisor shall conduct a Conference-for-the Record with the employee, during which the parties shall review the complete file, including the initial complaint allegations, supporting evidence and the employee's response and all supporting documents. Disciplinary action or performance improvement activities, if any, may be initiated.
- F. If the investigation or administrative review is concluded with the finding that there is no probable cause to proceed further or with disciplinary action taken or charges filed, the matter shall be reviewed with the employee and supervising administrator to effect disposition for closure by the Office of Professional Standards. Documents related to these procedures shall be maintained in accordance with Florida Statutes, Section 231.291.
- G. If an employee is not employed or has had a reduction in salary during the time of an appeal of a dismissal, suspension, or demotion, and is reinstated with full benefits by the School Board or the Hearing Officer, as applicable, the employee shall receive payment for days not worked which were the result of the improper disciplinary action, and shall not lose any longevity or be charged with a break in service due to said dismissal, suspension, or demotion.

## **Section 6. Employment**

- A. Bargaining unit employees shall receive an annual written employment contract. This Contract shall be in compliance with all the terms and conditions as set forth in this Agreement and shall be renewed annually unless separation is expressly sought by the employer. Separation, as defined elsewhere in this Article shall be in compliance with all applicable provisions of this Agreement.
- B. Upon approval and ratification of this Agreement, all covered employees employed, pursuant to individual employment contracts signed by members of the bargaining unit, shall be governed by the terms and conditions of this Agreement.

## **Section 7. Harassment**

- A. Employees shall be free from unnecessary, spiteful, or negative criticism or complaints by administrators and/or other persons. Under no conditions shall management representatives express such complaints or criticisms concerning an employee in the presence of other employees, students, or parents, nor shall anonymous complaints be processed.
- B. Employees should not be subjected to harassment, abusive language, upbraiding, insults, or interference by a parent or other person in the performance of the employee's duties.

## **Section 8. Reduction-In-Force**

- A. A reduction-in-force is defined as the separation of an employee for lack of work, budgetary constraints, a change in policy, staffing patterns or organizational structure, without fault or delinquency on the employee's part.
- B. The Superintendent, upon determining the need for a reduction-in-force, shall identify job classifications to be separated or reassigned based upon staffing requirements, current job assignment, the number of employees to be reduced and the needs of the school system.
- C. Seniority in accordance with affected functional areas department-wide shall be utilized to determine which members of the bargaining unit are to be laid off and recalled.
- D. Employees who are laid off will be placed in functional area "recall pools" and will be recalled on the basis of seniority (most senior first).
- E. Seniority is defined as the total length of service with the employer.
- G. The employer shall notify each employee subject to reduction-in-force by certified mail, return receipt requested, at least 10 working days prior to the effective date of separation.

## **Section 9. Recall**

- A. Employees who are separated will be eligible for recall effective the first day of separation. Job vacancies shall first be filled from the recall list provided qualified personnel are available.
- B. Employees subject to a reduction-in-force will remain eligible for a period of one year.
- C. Separated employees will be notified of vacant positions for a recall by certified mail to the employee's last known address. The employee who does not accept the offered position within five days of the written recall notice will be eliminated from further consideration.