

MASA/MOSPRA
Spring Conference 2024

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BALANCING EMPLOYEE ACCOUNTABILITY AND STAFFING NEEDS

Understanding Classifications of Employees

Professional/Certificated

- Certificated Administrators
- Other Administrators
- Teachers (Tenured and Probationary)

Support

- Exempt Support
- Non-exempt Support

Which Job Protections Apply....

State and Federal Law

- 1) Property Interest
 - a) Continued Employment
 - b) To Practice Profession
 - c) Due Process
- 2) Free from Discrimination, Harassment and Retaliation
- 3) Whistleblower Protections

Which Job Protections Apply....

Board Policy

MSBA

- 1) Professional
 - a) GCG Definitions
 - b) GCPD Suspension
 - c) GCPE Termination
- 2) Support
 - a) GDA Definitions
 - b) GDPD Suspension
 - c) GDPE or Non-renewal Termination

MCE

- 1) Certificated
 - a) PRF 4130 Certificated Contracts
 - b) P4140 Reemployment
 - c) P4700 Due Process
 - d) PRF 4730 Nonrenewal; Termination
Probationary
 - e) PRF 4731 Termination Permanent Teacher
- 2) Support
 - a) P4711 Suspension or Termination

Which Job Protections Apply....

Other

- Language in the Employment Contract
- Language in the Collective Bargaining Agreement

Support Staff



"Support staff" - all positions in the district that are not otherwise designated as "professional" or "certificated" positions



Exempt and Non-Exempt



Exempt – typically managers, supervisors and administrators



Must meet federal criteria for exemption (Professional, Administrative, Executive, certain IT related) (and salary)



Most "At Will Employees"



"At Will" are not employed through a contract and can be terminated at any time, for any reason or no reason, so long as not for an unlawful reason, but CAUTION needed

Support Staff

- **Termination for any reason, so long as not an unlawful reason**
 - Common “unlawful reasons”: adverse employment action due to protected classification; discrimination; retaliation; whistleblower; associated with such individual.
- **Treat with Professionalism, Courtesy and Fairness**
 - Notice of concerns/deficiencies and opportunity to address
 - Employee should not be surprised
 - Progressive discipline
 - Conduct can be so severe that notice and opportunity are not appropriate
 - No notice or hearing required for “At Will” employees unless your policy states otherwise

Professional/ Certificated Staff



"Professional staff" designates positions that legally require a certificate issued by DESE or are otherwise designated by the district



Includes administrative and supervisory positions



Exempt – teachers, administrators, and other leaders



Must meet federal criteria for exemption (Professional, Administrative, Executive, certain IT related) (and salary)



Many in contracted positions



"At Will" are not employed through a contract and can be terminated at any time, for any reason or no reason, so long as not for an unlawful reason, but CAUTION needed

Professional Staff

Property Interest in Profession and Continued Practice – by law, policy and contract

Treat with Professionalism, Courtesy and Fairness

- Notice of concerns/deficiencies and opportunity to address
- Employee should not be surprised
- Progressive discipline
- Conduct can be so severe that immediate action is necessary
- State law sets forth processes for discipline of teachers and certificated administrators. Other contracted staff, refer to Board policy and court decisions

Professional Staff - Teacher

Teacher – Any employee of a school district regularly required to be certified under laws relating to the certification of teachers, not superintendent, assistant superintendent, or others regularly performing supervisory functions, but including certified teachers who teach pre-K level in a program in which no fees are charged.

Probationary Teacher - Teacher employed in the same school district for five successive years or less. In the case of any probationary teacher who has been employed in any other school system as a teacher for two or more years, the board of education shall waive one year of his probationary period.

Professional Staff - Teacher

Permanent (Tenured) Teacher – A teacher who meets the definition of a "permanent" teacher in the Missouri Teacher Tenure Act, including:

- Teachers employed as a teacher in the district for five successive years and who continue to be employed.
- Teachers who have been employed in any other school system as a teacher for two or more years, who have been employed as a teacher in the district for four successive years and continue to be employed.
- Teachers who were tenured in the district, resigned or permanently separated from employment and re-employed. Once re-employed, the first school year is probationary. For the succeeding year, employment constitutes a permanent contract.

Professional Staff - Teacher

Permanent (Tenured) Teacher cont.

- A permanent teacher promoted to a supervisory position, including a principal or assistant principal
- A permanent teacher first employed as a principal or assistant principal
- shall retain tenure in the position previously held in the district, or,
- after serving two (2) years as principal or assistant principal, shall have tenure as a permanent teacher.
- Any teacher employed under a part-time contract by the district shall accrue credit toward permanent status.

Non-Renewal is NOT Discipline

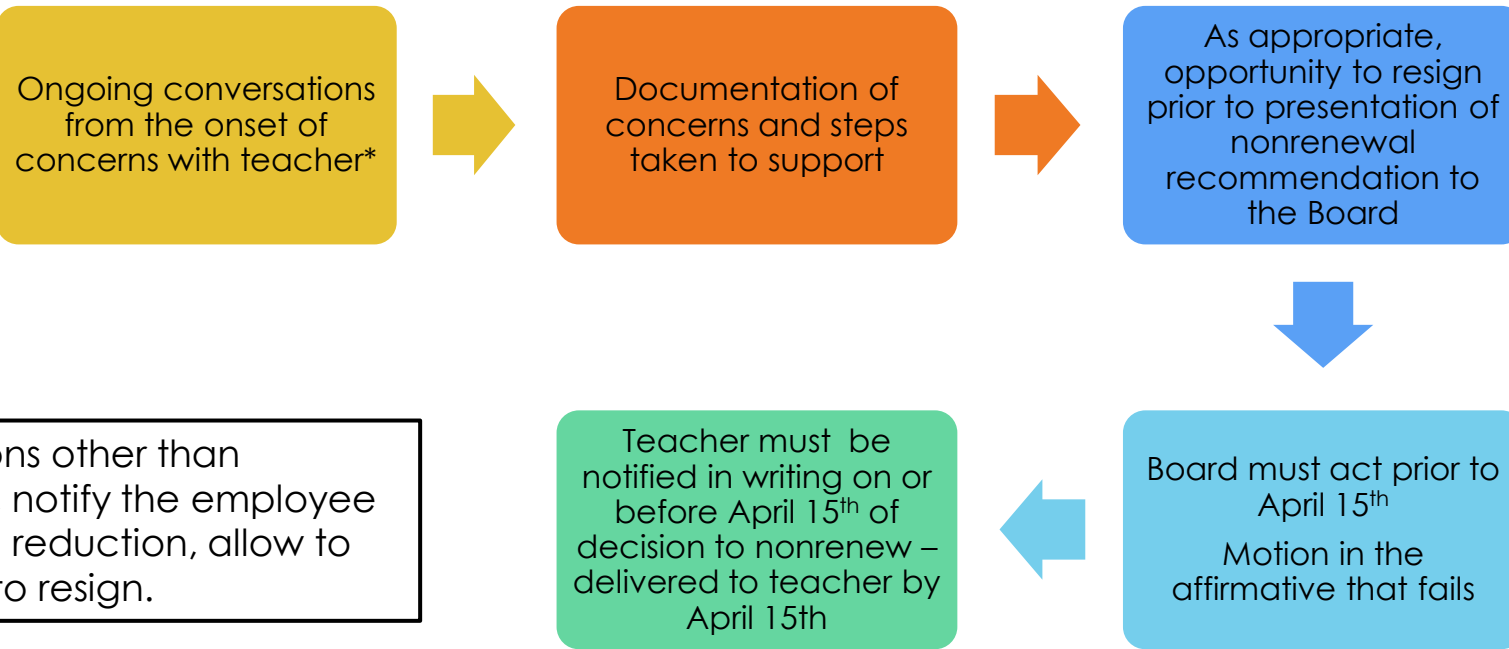
Non-Renewal is the failure to renew a contract at the end of the term.

- ▶ No ongoing right to employment. The contract is year to year for probationary employees.
- ▶ Employed 5 years and not extended, can request a statement of reasons for non-renewal. Policy may also require for any non-renewal.
- ▶ Due to decrease in pupil enrollment, district reorganization or financial condition of the district, state in the notice of nonrenewal.

Termination is the affirmative act of ending the employment relationship during the term.

- ▶ Specific process required for probationary teachers during contract term and for permanent teachers.
- ▶ Board policy outlines.

Nonrenewal



*If nonrenewal for reasons other than performance concerns, notify the employee early of the anticipated reduction, allow to seek employment and to resign.

Ask....

What are your concerns?
Issues with
employee/performance?
Are they documented?

What steps have you
taken to support/improve
performance? Were the
supports effective? Are
these efforts
documented?

What notice has the
employee received?
Documented?

What additional
supports/improvement
opportunities are
available?

What is best for
students/staff?

Is the employee capable
and willing to work to
improve?

What do we need to be
thinking about- any issues
that the employee is likely
to raise?

Consider next steps.

Ending the Employment Relationship

Resignation

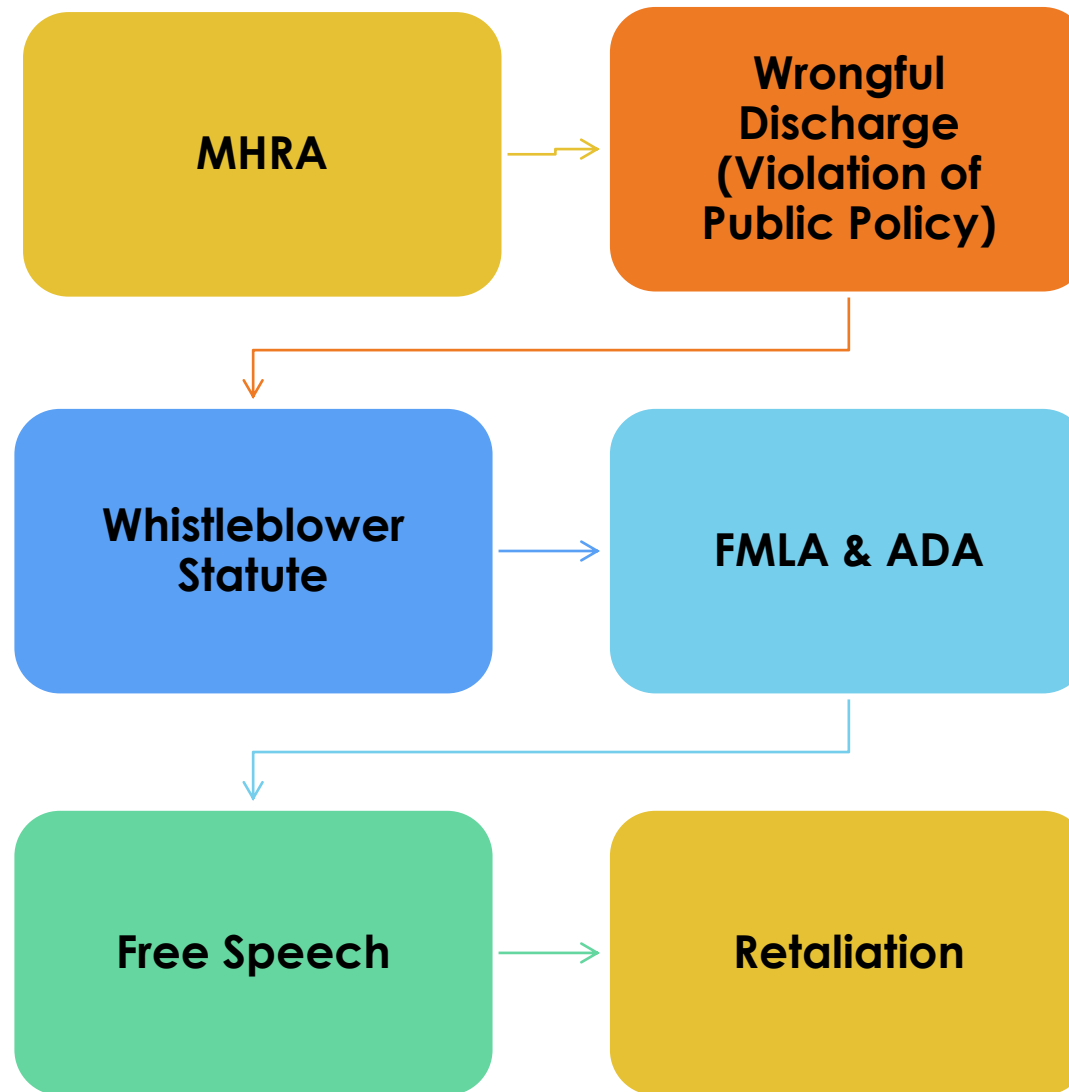
Non-Renewal of Probationary Teachers (Not disciplinary but may be considered in lieu of discipline)

Termination of Teachers (Tenured or Mid-Contract)

Termination of Support Staff (Most At Will)

It is a Brave New World

If District cannot articulate a reason for non-renewal, it exposes District to a claim that nonrenewal decision was based on an unlawful reason. Potential liability --



Professional Staff Admin Leave - GCPD



Administrative Leave – Involuntary paid leave, without charge to any annual or sick leave, due to misconduct or investigation of misconduct of an employee.



Any professional staff member may be placed on paid administrative leave.



A probationary teacher may be placed on administrative leave when the district notifies the teacher.



Written notice within 7 days following admin leave with ongoing notice to Board.

Professional Staff Termination - GCPE

Probationary Teachers

A probationary teacher may be terminated during the course of a contract for any legal reason including, but not limited to, the reasons for terminating a tenured teacher.

If a probationary teacher has been doing unsatisfactory work, the Board shall provide the teacher with a written statement setting forth alleged incompetency/deficiencies to furnish the teacher an opportunity to correct or overcome. If satisfactory improvement is not made within 90 days, the Board may terminate the employment of the probationary teacher. Termination on other grounds may progress immediately.

Tenured Teachers

Tenured teachers may be terminated for a variety of reasons set forth in state law.

Cause for Discipline – Tenured Teacher Act

Physical or mental condition unfitting the teacher to instruct or associate with children

Immoral conduct

Incompetency, inefficiency or insubordination in the line of duty

Willful or persistent violation of or failure to obey the school laws of the state or the published regulations of the Board of Education of the school district employing him or her

Excessive or unreasonable absence from performance of duties

Conviction of a felony or crime involving moral turpitude

Termination Process – Tenured Teacher



A tenured teacher's contract may not be terminated until after service of written charges, notice of a hearing, if requested by the teacher, a hearing by the Board.



If incompetency, inefficiency or insubordination, provide opportunity to remediate for at least 30 days before service of notice of charges. Not required for other termination proceedings.



20-30 days notice of hearing. Teacher may request a hearing. If not requested, Board may proceed to terminate.

Cause for Discipline –Tenured Teacher Act

More efficient to pursue discipline based upon willful or persistent violation of board policy than proceeding based upon inefficiency, incompetency or insubordination.

Less time to walk through the process (not required to provide notice of deficiencies and opportunity to cure).

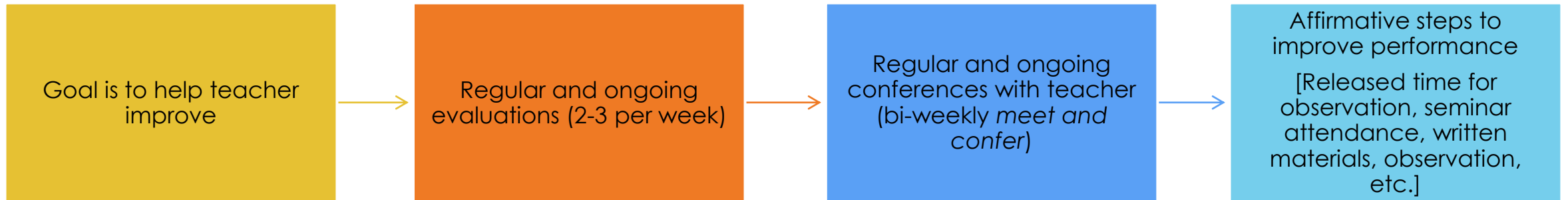
Notify employees of policy requirements.

Document violations of board policy.

Demonstrate willful and persistent, so must show employee on notice of requirements.

Remediation Plan

Remediation Plan



Remediation Plan – Document Observations

2-3 times per week

Use additional evaluators

Do not use formative observation form

Focus on deficiencies

Observations should include each class but don't need to include entire class

Remediation Plan



Observe beginning, transition of activities, and ending of instructional activity



Focus on students



Document and share documentation



Focus on deficiencies during observations



Not covered by District's evaluation policy

Timelines

Statement of Charges Timeline



Statement of Charges Include:

Specific instances of incompetence (e.g., date, place, time, individuals)

Tie back to deficiencies

Notice of Hearing



If for incompetency:

Provide no earlier than 90 days after probationary teacher received notice of deficiency;

30 days for tenured teacher



If for any other reason:

No reason to delay issuance

Hearing Timeline



Requesting Board Meeting

10 days from receipt of charges to request Board hearing



Hearing

Hearing must take place during window period between 20 and 30 days from receipt of charges

Document, Document, Document



WHAT ARE THE
MOST EFFECTIVE
METHODS FOR
DOCUMENTING?



FORMAT?



PAPER/ELECTRONIC/
OTHER?



CONTENT?



WHEN DO WE
DOCUMENT?

Documenting Performance Concerns

- Find a method that you will consistently follow. Paper and/or electronic.
- Be organized
 - Make sure accessible later
 - Must be maintained securely
- Performance evaluations needs to accurately reflect what is happening in the classroom
- Facts only: names, dates, conduct/observations, violations, context. Prepare expecting it to become a trial exhibit in the future. Avoid characterizations, inferences. Stick to facts.
- When – anytime there is a significant violation/deficiency
- What do you do with the documentation? It depends. First issue may maintain in your personal file, or if could result in suspension of termination if not corrected, document in the evaluation system.
- Anything that those who come after us will need to know needs to be recorded.

**Significant
Employment
Decisions
Require
Evidentiary
Support**

PIP

Job Market

**Memo to
Teacher**

Evaluation

Conference

**Teacher's
Refusal to Meet
and Confer**

Good documentation means...

Knowing Your Audience...



Teacher, Staff, Administrator, Board
of Education



Judge, Jury, Lawyer, Newspaper
Reporter

Good documentation means...

Writing Well...



Using Correct Grammar and Spelling



Using correct syntax



Avoiding pronouns



Avoiding emotion

Remember: A well written document affects credibility of the documentation and the person creating the document.

Good documentation means...

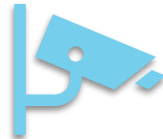
Doing your homework ...



Review the appropriate Board Policy



Review Personnel File &/or Student Record



Review Video



Review background documents



Common Mistakes



Mistake 1

**Failure to Timely
Identify Non-
Performing
Probationary Teachers**



Mistake 1

**Failure to Timely Identify
Non-Performing
Probationary Teachers**



Mistake 2

**Not Preparing an
Effective Notice of
Deficiency**



Mistake 3

**Misunderstanding the
Remediation Process**



Mistake 4

**Not Abiding by
Timelines**



Mistake 5

**Falsely Believing You
Can Give a
Nonrenewal for No
Reason**



Mistake 6

Failing to Document



Mistake 7

**Misunderstanding
The Board's Role**



Reminders



Accuracy Counts



Follow Board Policy and Procedures



Document all Efforts



Keep Focused on Improvement

Administrator Contracts

Multi-Year

- 1-3 years administrators (168.201)
- 1-3 superintendent (non-metro)
- 1-5 superintendent (metro)
- Property interest for the entirety of the contract term
- Cannot non-renew mid-contract
- Release provisions – For cause, mutual agreement, buyout clause

Due Process

- 14th Amendment protects life, liberty and property interest
- Property interest in profession
- Practice of Profession
 - Licensure
 - Contractual
- Due Process is to be heard and treated fairly
 - Determined by property interest at stake

Termination

- Payout compensation due
- If certificated, the reasons for teacher termination apply
- If not certificated, typically included in contract that reasons for teacher termination apply
- Good cause, as determined by board
- Failure to fulfill contract terms

Questions....

What would
you like to
know?

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ATTORNEYS AT LAW