

## UINTAH SCHOOL DISTRICT POLICY ACTION REVIEW

1st Reading	<u>5/8/19</u>	New	<u>                    </u>
2nd Reading	<u>6/19/19</u>	Revised	<u>          X          </u>
Approved	<u>6/19/19</u>	Substitute	<u>                    </u>

### **005.1200      STANDARDS OF CONDUCT AND DUE PROCESS**

*REVISES 005.1200 STANDARDS OF CONDUCT AND DUE PROCESS (LAST APPROVED 08/08/18).*

#### **1.0 GENERAL STATEMENT**

- 1.1 The Uintah School District values its employees and the investment it has in the training and skills of its employees. In an effort to foster a mutual understanding, respect and trust between the Uintah School District and its employees, the Uintah School District adopts this policy.
- 1.2 It is the responsibility of all employees of the Uintah School District to read and be informed of the Uintah School District’s Standards of Conduct. Any employee may be dismissed for cause before the completion of the term fixed in an employment agreement. Actions which may result in dismissal include, but are not limited to, those listed in this policy. In lieu of dismissal and in cases of minor offenses, an employee may be counseled, reprimanded, suspended with or without pay, placed on various forms of probation, or receive other forms of discipline as discussed in this policy.
- 1.3 If the District Administration intends to terminate an educator’s contract during its term or discontinue a career employee’s contract beyond the then current school year for reasons of unsatisfactory performance, the District Administration will follow the requirements of state law and this policy.

#### **2.0 DEFINITIONS**

- 2.1 “Contracted Employee” means an employee of the Uintah School District who was hired prior to October 9, 2013, to work 20 or more hours per week in any regular, non-temporary job; or
  - 2.1.1 an employee of the Uintah School District who was hired on or after October 9, 2013, to work 30 or more hours per week in any regular, non-temporary job.
- 2.2 “Temporary” or “At Will Employee” means an employee of the Uintah School District who was hired prior to October 9, 2013, to work fewer than 20 hours per week; or
  - 2.2.1 an employee of the Uintah School District who was hired on or after October 9, 2013, to work fewer than 30 hours per week.
- 2.3 “Career Employee” means an employee of the Uintah School District who has been employed as a contracted employee by the Uintah School District more than three consecutive successful years and who has obtained a reasonable expectation of

- continued employment based upon an agreement with the employee or the employee's association, Uintah School District practice, or policy. <sup>UCA 53G-11-501</sup>
- 2.4 "Contract Term" means the period of time during which an employee is engaged by the Uintah School District under a contract of employment, whether oral or written.
- 2.5 "Dismissal" or "Termination" means: <sup>1</sup>
- 2.5.1 termination of the status of employment of an employee;
  - 2.5.2 failure to renew the employment contract of a career employee;
  - 2.5.3 reduction in salary of an employee not generally applied to all employees of the same category employed by the school district during the employee's contract term; or
  - 2.5.4 change of assignment of an employee with an accompanying reduction in pay, unless the assignment change and salary reduction are agreed to in writing.
- 2.6 Although each action included in the definition is not technically a termination, each action included in the definition can occur only following the due process required for a termination.
- 2.7 "Employee" means a person, other than the District Superintendent, the district business administrator, or a temporary employee, who is a career or provisional employee of the Uintah School District.
- 2.8 "Provisional Employee" means a contracted employee of the Uintah School District who is not a Career Employee as defined herein. The district administration may extend the provisional status of an employee for up to two additional consecutive years (for a total of up to five consecutive provisional years) in order to allow more time for the employee to demonstrate, and for the district to be assured of, sustained acceptable performance on the part of the provisional employee. Provisional Employees have no expectation of continued employment beyond the end of the current contract term, and a district is not required to provide a cause for not offering a contract to a provisional employee who is notified in a timely manner of non-renewal. A Provisional Employee also includes a Career Employee who has been formally returned to a provisional status. A provisional employee who begins work with the district after the beginning of the school year must successfully complete that school year plus three other full academic years before he or she becomes a career employee. Provisional employees can be terminated at the discretion of the Board of Education, except that provisional employees can be discharged during the term of each contract only for cause. A career employee who accepts a position which is substantially different from the position in which career status was achieved, becomes a provisional employee in his/her new position but retains career employee status in his/her former position. A career employee whose employment with the district is ended for any reason, and who is subsequently rehired by the district, returns to provisional employee status.
- 2.9 "Temporary Employee" means an individual employed on a temporary basis as defined by policies adopted by the Board of Education. Temporary employees serve at will, have no expectation of continued employment, and may be terminated at any

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<sup>1</sup>As defined by UCA 53G-11-501.

- time without cause. There are no rights to a due process hearing if a person is released from any temporary position. UCA 53G-11-501.
- 2.10 An employee who is given an extra duty/extra curricular assignment in addition to a primary assignment, such as a teacher who also serves as a coach or activity advisor, is a temporary employee in that extra duty/extra curricular assignment, may not acquire career status beyond the primary assignment, UCA 53G-11-503 and may be terminated from the extra duty/extra curricular assignment at any time without cause.
- 2.11 “Probationary Employee” means any employee employed by the Uintah School District who, under District policy, has been advised by the district administration that his or her performance is inadequate. Depending on the status of the employee and the action placing the employee on probation, a Probationary Employee may or may not also be a Provisional Employee.
- 2.12 “Certified or Licensed Employee” means a person whose employment with the district requires that he/she currently hold one or more current professional licenses or endorsements issued through the Utah State Office of Education. Certified employees also include those who receive authorization from the Utah State School Board to be employed while earning one or more professional licenses or endorsements from the Utah State Office of Education.
- 2.13 “Classified Employee” means a person not required to hold or earn a professional license or endorsement issued through the Utah State Office of Education.
- 2.14 “Contracted Service Providers” are individuals who, by nature of their profession and regardless of employment status (full or part-time), are not required to hold a professional license or endorsement issued by the Utah State Office of Education, are paid by contract to provide specific types of services for the district but who are not employees, are not on the district payroll, and do not receive the same benefits as regular employees of the district.
- 2.15 “Frequent Disciplinary Involvements” means two or more disciplinary actions against the employee during the preceding 24 months.
- 2.16 “District Administration” means the superintendent or his/her designee.

### 3.0 GROUNDS FOR DISCIPLINE OR DISMISSAL

#### 3.1 Violation of Standards of Conduct

- 3.1.1 Violation of school rules, state and federal laws and regulations, Uintah School District policies, or directives;
- 3.1.2 Insubordination or failure to comply with official directives;
- 3.1.3 Unauthorized or personal use of Uintah School District funds, services, property, supplies, or equipment;
- 3.1.4 Conducting personal business during school or work hours;<sup>2</sup>
- 3.1.5 Intentionally or negligently causing damage to Uintah School District or school property;
- 3.1.6 Dishonesty or falsification of any information supplied to the school, district administration or a supervisor, including data on application forms,

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<sup>2</sup>A common sense interpretation of this provision is expected

employment records, claims forms, reports or other information given to the school, district administration, or a supervisor;

- 3.1.7 Unexcused absences, unexcused absences outside the district leave policy, absences not cleared with immediate supervisor prior to absence
- 3.1.8 Excessive tardiness;
- 3.1.9 Abuse of school or district leave policies;
- 3.1.10 As a teacher, excessive absence from the classroom, leaving the classroom unattended at times when students are present in the classroom, except in cases of emergency such as injury to a student requiring immediate attention, threat to health or safety of a student or personal emergency of a teacher;
- 3.1.11 Failure to maintain an effective respectful working relationship with students, parents, the community, or colleagues;
- 3.1.12 Neglect or failure to fulfill duties or responsibilities;
- 3.1.13 Failure or inability to maintain discipline at school or school-related functions;
- 3.1.14 Failure to fulfill job requirements or maintain requirements for licensure or certification;
- 3.1.15 Release of confidential student or Uintah School District information in violation of District policies;
- 3.1.16 Failure to meet dress standards as set forth in District policy; <sup>USDP 005.0800</sup>
- 3.1.17 Inability to perform the essential functions of the job, even with reasonable accommodations;
- 3.1.18 Breach of or failure to perform terms and conditions of employment contracts or other agreements with the school or Uintah School District.

### 3.2 Misconduct

- 3.2.1 Conduct that violates the criminal laws of Utah or the United States or other conduct involving moral turpitude, or which exposes the Uintah School District to censure, ridicule, damage, reproach or which because of publicity given it, or knowledge of it among students, faculty, and community, impairs or diminishes the employee's effectiveness in the Uintah School District;
- 3.2.2 Being the subject of criminal, civil, or administrative action and having exhibited behavior evidencing unfitness for duty through immoral, unprofessional, or incompetent conduct, or to have committed any other violation of standards of ethical conduct, performance, or professional competence; <sup>(UCA 53E-6-501)</sup>
- 3.2.3 The possession, use, or being under the influence of alcohol, alcoholic beverages, or controlled substances while on school property, working in the scope of the employee's duties, or attending any school-sponsored activity; <sup>(Drug Free Workplace Policy, 005.2100)</sup>
- 3.2.4 Operating a school vehicle or operating any vehicle which transports students or District employees while under the influence of alcohol or drugs or refusing to take a chemical test as set forth in District policy; <sup>(Chemical Tests, 005.0710)</sup>

- 3.2.5 Theft of, aiding and abetting in the theft of, or conspiracy to commit theft of any school or District services, supplies, equipment or any other property or thing of value;
  - 3.2.6 Sexual harassment of students, parents, or District employees as defined in District policy; (Workplace Discrimination/ Harassment Policy, 005.0330)
  - 3.2.7 Improper or unlawful physical contact with students;
  - 3.2.8 Assault on a District employee, student or parent on school property, working in the scope of the employee's duties, or attending any school-sponsored activity;
  - 3.2.9 Swearing, cursing, using vulgar, profane or crude language to or in the presence of students, parents, or District employees on school property, working in the scope of the employee's duties, or attending any school-sponsored activity. In interpreting this provision, accepted moral standards of the community will be used;
  - 3.2.10 Smoking within school district buildings or the property on which those facilities are located; UCA 26-38-1 et seq.; Utah Admin.R.449-7.4.2
  - 3.2.11 Knowingly permitting or participating in an activity which would constitute "hazing" under Utah Code Annotated Section 76-5-107.5 or having reasonable cause to believe that hazing has occurred, is occurring, or will occur, and failing to report that fact to a law enforcement agency or official;
  - 3.2.12 Unreasonably disrupting or creating an unreasonable and substantial risk of disrupting a class, activity, program, or other function of a public school; UCA Section 76-9-106
  - 3.2.13 Frequent disciplinary involvements;
  - 3.2.14 Any violation of the Ethics in Government Act; UCA 67-16-1 et seq
  - 3.2.15 Any valid reason justifying termination of employment for cause.
- 3.3 Violation of Reporting Standards
- 3.3.1 Failure to Report Prohibited Acts: A school employee with reasonable cause to believe that a student at the school has committed one or more of the following prohibited acts shall immediately report that fact to the school's designated administrator:
    - 3.3.1.1 Possession of, or drinking an alcoholic beverage on school premises or in those portions of a building, park or stadium which are being used for an activity sponsored by or through any part of the public education system;
    - 3.3.1.2 Any acts prohibited under Uintah School District policy;
    - 3.3.1.3 Any of the acts prohibited under Utah Code Ann. Section 58-37-8, pertaining to controlled substances; or
    - 3.3.1.4 Any of the acts prohibited under Utah Code Ann. Section 58-37a-5, relating to drug paraphernalia. (Utah Code Ann. 58-37-8, 53G-8-501, 53G-8-602)
    - 3.3.1.5 Possession of, control, use, or threatened use of a real, look-a-like, or pretend weapon, explosive, or flammable material in a school building or in a school vehicle, or on district property or in conjunction with any school activity, except when authorized by the responsible school administrator. (Utah Code Ann. 53G-8-205; 53G-8-205)

3.3.1.6 Upon receiving a report of a prohibited act from a school employee, the designated administrator shall immediately report the information to the student's parent or legal guardian, and may report the information to law enforcement agencies or officials. The identity of the school administrator who reported the prohibited act shall not be disclosed to the student or the parent or legal guardian. (Utah Code Ann. Section 53G-8-503)

3.3.1.7 A school employee who in good faith reports a prohibited act in accordance with these provisions is immune from any civil or criminal liability resulting from that action. (Utah Code Ann. Section 53G-8-504)

### 3.3.2 Failure To Report Neglect/Abuse:

3.3.2.1 Any school employee who knows or reasonably believes that a child is being or has been neglected, or physically or sexually abused, shall immediately notify the nearest law enforcement agency or official or the office of the State Division of Family Services. (Utah Code Ann. Section 62A-4-503)

3.3.2.2 Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions.

3.3.2.3 District policies shall ensure that the anonymity of those reporting or investigating child abuse or neglect is preserved in a manner as required by Section 78-3b-13 (2). (Utah Admin. R. 300-401-3)

### 3.4 Unsatisfactory Performance.

"Unsatisfactory Performance" means a deficiency in performing work tasks which may be due to insufficient or undeveloped skills, lack of knowledge or aptitude, poor attitude, or insufficient effort and which may be remediated through training, study, mentoring, practice, or greater effort. Unsatisfactory Performance includes but is not limited to:

3.4.1 Failure to correct deficiencies pointed out as part of the appraisal or evaluation process:

3.4.2 Failure to correct deficiencies pointed out in any other communication from supervisors or District administrators

## 4.0 FORMS OF DISCIPLINE

4.1 An employee who has committed any of the violations outlined in section 3 of this policy is subject to termination. An employee who is subject to termination under the provisions of this policy may be disciplined in lieu of termination. The decision to terminate or to discipline is at the discretion of supervisor or administrator dealing with the employee. The supervisor will consider the circumstances, the seriousness, the frequency and other factors in determining a form of discipline or termination. Any disciplinary action taken will be documented by the supervisor and may be considered in a termination action. Forms of discipline may include, but are not limited to:

- 4.1.1 Oral counseling. Oral advice, counsel, caution or warning provided to an employee. A supervisor will keep notes on such instances.
- 4.1.2 Oral reprimand. Oral reprimand or admonishment which may be accompanied with advice, counsel, caution or warning provided to an employee. A supervisor will keep notes on such instances.
- 4.1.3 Letter of Counseling. A letter of counseling is generally not included in an employee's personnel file at the time of receipt and is not considered as serious as a letter of reprimand which is generally included in an employee's personnel file. The recipient of the letter of counseling should receive a copy of the letter and be given an opportunity to respond. In the event of future disciplinary involvements, a supervisor may request that a letter of counseling be placed in an employee's personnel file, with written notification of such action to be provided by the supervisor to the employee, and the letter of counsel may be considered in the event of a termination action.
- 4.1.4 Letter of Reprimand. A letter of reprimand is a very serious form of discipline and is generally included in an employee's personnel file. A recipient of the letter of reprimand is entitled to a copy of the letter and an opportunity to respond to the letter. Frequent disciplinary involvements resulting in receipt of letters of reprimand generally result in termination of employment.
- 4.1.5 Specifically Defined Probation. An employee may be placed on a specifically-defined probation for a period of time. An employee's career status is not immediately affected by this action and the employee still has the customary career teacher's expectation of continued employment beyond the end of his or her current contract term. However, this action sets aside a period of time where the employee's conduct and performance will be more closely monitored and sets aside a time for testing and trial to ascertain fitness for continued employment. This status is usually conditioned upon the employee and supervisor entering into an agreement which includes the terms and conditions of probation.
- 4.1.6 Suspension with or without pay.
- 4.1.7 Referral to the State Board of Education. (UCA 53E-6-501)
- 4.1.8 Termination of employment for cause.
- 4.1.9 Non-renewal of Career Employee's contract.

## 5.0 DISMISSAL PROCEDURES FOR PROVISIONAL AND TEMPORARY EMPLOYEES

### 5.1 Notice of Intent Not to Offer a Contract to a Provisional Employee

- 5.1.1 The district administration shall notify a provisional employee at least 60 days before the end of the provisional employee's contract if the employee will not be offered a contract for a subsequent term of employment. Although the school year may end earlier, an employee's contract ends June 30<sup>th</sup> of each year.
- 5.1.2 In the absence of a notice, a provisional employee is considered employed for the next contract term.

5.1.3 Because provisional employees do not have an expectation of continued employment beyond the current school year, they do not have a right to grieve the decision not to renew employment and do not have a right to a hearing.

5.2 Notice of Intent to Terminate or Not Offer a Contract to a Temporary Employee

- 5.2.1 Temporary employees include persons hired pursuant to a grant or other source of funding, which may be of uncertain or limited duration; employees hired to supervise or coach extracurricular activities; persons who are specifically notified at the time of their employment that they are classified as temporary employees; and all non-contracted (hired to work fewer than 30 hours per week) employees. Temporary employees serve at will and may be terminated at any time, for any reason or for no reason.
- 5.2.2 Temporary employees do not have a right to grieve a decision to terminate or to not extend employment.

6.0 DUE PROCESS FOR DISMISSAL OF EMPLOYEE (Excluding Temporary Employees)

6.1 Not Applicable To Provisional Employees

The following due process provisions are not applicable and need not be followed when a provisional educator has not been offered a new contract at the end of the contract term. Abbott v. Board of Education of Nebo School District, 558 P.2d 1307 (Utah 1976)

6.2 Not Applicable To Employees Affected By Reductions

The following due process provisions are not applicable and need not be followed when it has become necessary to decrease the number of employees in the District due in part to declining student enrollments in the district; the discontinuance or substantial reduction of a particular service or program; the shortage of anticipated revenue after the budget has been adopted; or school consolidation. A school district may not utilize a last-hired, first-fired layoff policy when terminating school district employees.

6.3 Types of Dismissals

6.3.1 Dismissal for Unsatisfactory Performance:

If the District intends to not renew a career employee's contract for Unsatisfactory Performance or terminate a career employee's contract during the contract term for Unsatisfactory Performance, the district shall:

- (a) provide and discuss with the career employee written documentation clearly identifying the deficiencies in performance;
- (b) provide written notice that the career employee's contract is subject to nonrenewal or termination if, upon a reevaluation of the career employee's performance, the career employee's performance is determined to be unsatisfactory;
- (c) develop and implement a plan of assistance, in accordance with District procedures to allow the career employee an opportunity to improve performance;
- (d) reevaluate the career employee's performance; and



- (e) if the career employee's performance remains unsatisfactory, give notice of intent to not renew or terminate the career employee's contract.

6.3.2 Other Reasons:

If the District intends to not renew a career employee's contract or to terminate a career employee's contract for reasons other than Unsatisfactory Performance, the fact that the District has failed to perform a required evaluation shall not invalidate the District's decision to terminate for the reasons set forth in sections 3.1, 3.2, and 3.3 above.

6.4 Due process procedures when district intends to non-renew or discontinue the contract of a career employee or to terminate a career or provisional employee's contract during the contract term.

6.4.1 Pre-Termination Hearing

6.4.1.1 Before any employee is dismissed, the employee shall be given notice of an informal pre-termination hearing by the employee's supervisor or another designated by the supervisor. As a result of the hearing, the supervisor shall determine whether there are reasonable grounds to believe that the allegations against the employee are true and whether the allegations support a termination of employment. If the supervisor determines that reasonable grounds do exist, the supervisor may then recommend the District initiate the appropriate action for termination of employment. Education v. Loudermill, 470 U.S. 532 (1985)

6.4.2 Notice Of Termination

6.4.2.1 Before any employee is dismissed, the employee shall be given reasonable notice in writing of the proposed dismissal and the grounds, set out in sufficient detail to fairly enable the employee to show any error that may exist.

6.4.2.2 Such notice shall be served by personal delivery or by certified mail addressed to the individual's last-known address as shown on the records of the district, at least 30 days prior to the proposed date of termination;

6.4.2.3 The notice shall state the date of termination;

6.4.2.4 The notice shall advise the individual that he has a right to a fair hearing and that the hearing is waived if it is not requested within 15 days after the notice of termination was either personally delivered or mailed to the individual's most recent address shown on the district's personnel records;

6.4.2.5 The notice shall state that failure of the employee to request a hearing in accordance with procedures set forth in the notice constitutes a waiver of that right and that the district may then proceed with termination without further notice;

6.4.2.6 The procedure under which a contract is terminated during its term may include a provision under which the active service of the employee is suspended pending a hearing if it appears that the

continued employment of the individual may be harmful to students or to the district;

## 6.5 Suspension

- 6.5.1 The employee may be suspended with or without pay pending the outcome of the dismissal hearing.
- 6.5.2 Suspension pending a hearing may be without pay if an authorized representative of the district determines, after providing the employee with an opportunity for an informal conference to discuss the allegations, that it is more likely than not that the allegations against the employee are true and will result in termination.
- 6.5.3 If termination is not subsequently ordered, the employee shall receive back pay for the period of suspension without pay.
- 6.5.4 The procedure shall provide for a written notice of suspension or final termination including findings of fact upon which the action is based if the suspension or termination is for cause.
- 6.5.5 Suspension with or without pay may also be an end result as a form of discipline.
- 6.5.6 During the period or periods of time which schools in the District are closed as a result of emergency and acts of God, affected employees shall be totally suspended and no services shall be rendered by or required of affected employees and the salary of affected employees shall not accrue. In the event of such suspension for a period of time in excess of two weeks, affected employees may terminate their employment with the District by sending written notice of such termination to the District.

## 6.6 Hearings Before School Board or Hearing Officer (UCA 53A-8a-504)

### 6.6.1 Hearing

- 6.6.1.1 If the employee desires a hearing, the employee shall notify the district administration in writing within 15 days of receiving the notice of anticipated termination or career employee nonrenewal. Upon such request, the School Board may appoint a hearing officer who shall as soon as is practicable hold a hearing at which the employee shall be given a fair opportunity to refute the reasons given for the anticipated termination or career employee nonrenewal. The hearing officer may, but is not required to, modify the decision with respect to the status of the employee's contract. Siebert v. University of Oklahoma Health Sciences Center, 867 F.2d 591 (10th Cir. 1989); Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) Utah Code Ann. Sec. 53A-8-104(8)
- 6.6.1.2 The superintendent shall recommend to the board a list of possible candidates to serve as hearing officer. The School Board is not obligated to select a hearing officer from this list.
- 6.6.1.3 Hearings are to be held before the School Board or before hearing officers selected and appointed by the School Board to conduct the hearings and make recommendations concerning findings.
- 6.6.1.4 The hearing officer has authority to make decisions relating to the employment of the employee. Absent an appeal by the employee

or by the superintendent, the decision made by the hearing officer will be acted on.

6.6.1.5 Hearings are presumed to be closed to the public unless an open meeting is requested by both parties.

6.6.1.6 At the hearing, the employee and district administration each have the right to employ counsel, to produce witnesses, to hear testimony, to cross-examine witnesses, to examine documentary evidence, and to present evidence of innocence or extenuating circumstances. Prior to recommending dismissal of the employee, the hearing officer shall determine the existence of sufficient cause for termination. Such determination shall be based on the evidence presented in the hearing. Utah Code Ann. Sec. 53A-10-102(3)

6.6.1.7 Subpoenas may be issued and oath administered as provided under UCA 53E-6-606.

#### 6.6.2 Possible Discipline

6.6.2.1 The hearing officer shall make a decision as he or she deems lawful and appropriate and shall issue to the employee, within a reasonable time, not to exceed 30 days following the hearing officer's receipt of the written transcription of the hearing, written notification of such decision. Such notification shall be issued by way of personal delivery or certified mail.

#### 6.6.3 Appeal

6.6.3.1 Either party may request a review by the School Board. Such request for review must be made within fifteen (15) days of the date of the hearing officer's decision. Upon receipt of a request for review, the School Board shall acquire the record of the matter from the hearing officer. The School Board's review of the record and decision affirming, modifying or reversing the hearing officer's decision shall be final, and the written decision shall be provided to the superintendent and to the employee by way of personal delivery or certified mail.