SOMETHING OLD, SOMETHING NEW: EMPLOYEE DISCIPLINE

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TRI-STATE AREA SCHOOL STUDY COUNCIL
University of Pittsburgh
EMPLOYEE DISCIPLINE

• School Code Grounds for Dismissal
• Progressive Discipline
• Due Process
School Code: Professional Employee Discipline

The legal grounds for dismissal in Pennsylvania are as follows:
- Unsatisfactory performance based upon 2 consecutive unsatisfactory ratings
- Incompetency
- Persistent and willful misconduct
- Persistent negligence
- Persistent and willful violation of school laws and policies
- Intemperance
- Immorality
Dismissals: Unsatisfactory Performance

- Dismissal for Unsatisfactory Teaching Performance requires two (2) consecutive unsatisfactory ratings.

- A second “needs improvement” in ten (10) years constitutes an unsatisfactory rating.

- The rating must be supported by anecdotal evidence.
Dismissals: Unsatisfactory Performance

- Act 82 did not change the school code requirements under Section 1122
  - **Dismissals for incompetence or unsatisfactory teaching performance must be supported by two consecutive unsatisfactory ratings**
  - **The second unsatisfactory rating cannot be less than four months after the first rating**
  - **Ratings must use the new PDE forms or an alternate form approved by the governing board and PDE**
Dismissals: Unsatisfactory Performance Pitfalls

- Defending ratings will require the defense of statistical computations provided by PDE for teacher specific and building level data
- Unavailability of data
- Data integrity and complexity
- Arbitrators
Dismissals: The Other Grounds

Nothing in Section 1123 or Chapter 19 shall limit or constrain a district’s ability to initiate and take action on a personnel matter, including the dismissal of a classroom teacher...

- Immorality
- Incompetency
- Intemperance
- Cruelty
- Persistent Negligence in the Performance of Duties
- Willful Neglect of Duties
- Persistent and willful violation of or failure to comply with school laws or District directives or Board policies
Immorality

- Immorality is not specifically defined in the School Code, but has been defined by the Courts and the Secretary of Education in teacher dismissal cases.
- Immorality under Section 1122 has been defined as a course of conduct which offends the morals of the community and sets a bad example for the youth whose ideals the teacher is obligated to foster and elevate.
- The Secretary has held that proof of community standards regarding immorality can be established by administrators’ opinions and the school district’s receipt of parental complaints.
Incompetency

- Incompetency is likewise not defined by statute, but by the Court and Secretary of Education
- Incompetency has generally been defined as the incapacity to teach arising out of either a lack of substantive knowledge, a lack of desire to teach, or inability to teach according to proper methodology
- Incompetency also has been defined to encompass deficiencies in composure, judgment and attitude
- Courts have found specific conduct constituting incompetency to include lack of classroom control, and inability to motivate students
Intemperance

- Few cases have been brought against professional employees for intemperance; those that have, define intemperance under the School Code as a loss of self-control, inferable from a use of excessive force.

- The Secretary upheld a dismissal for intemperance where a teacher repeatedly lost control with students and staff and displayed other irrational behavior.
Cruelty

- Cruelty under the School Code has been defined as the intentional and malicious infliction of physical suffering on human beings, the wanton, malicious, and unnecessary infliction of pain on the human body, mind, feelings or emotions.

- Courts have decided that verbal abuse and belittling or demeaning comments toward students constitutes cruelty.
Persistent Negligence

- Persistent negligence of teaching duties under the School Code is an employee’s failure to be able to perform job duties as required.
- Persistent negligence in the performance of duties is sufficient for dismissal under this section, regardless of intent.
- Failure to properly conduct class, after having been informed repeatedly by supervisors to do so, constitutes persistent negligence.
- Persistent failure to create a healthy and positive learning environment has been held to be dereliction of teaching duties under the Code of Professional Conduct.
Willful Neglect

- Willful neglect of duties was added to the School Code to make it clear that just one serious act of neglect would be sufficient to sustain a dismissal, and “persistent” neglect was not always required.
Willful Violation of Laws and Rules

- Persistent and willful violation of school laws includes school district policies
- The fact that certain violations of school laws received a sanction less than dismissal does not preclude joining them with others to establish a pattern of persistent violation of school law for purpose of dismissal
Examples: Immorality and Willful Misconduct

- Course of conduct that offends the morals of the community and is a bad example to students
- Failing to immediately respond to a report of a weapon in school
- Opening and changing bid specifications prior to a bid deadline
- Multiple DUIs and other criminal convictions
- Lying/making false statements to supervisors
- Misuse of sick days
- Sexual harassment
Examples: Incompetency, Negligence, Cruelty

- Misappropriation of funds
- Assaulting a student / use of corporal punishment
- Mistreatment of students
- Work refusal / inability to complete assigned tasks
Progressive Discipline

- Written warning / Written reprimand
- Short term suspension
- Long term suspension
- Termination
Due Process

- Professional discipline requires notice and an opportunity to be heard
- Pre-

Loudermill Statement of Charges
- Loudermill Hearing
  - Prior to imposing any discipline that will result in the loss of pay
  - Prior to effecting a demotion or loss of status (could include transfers)
  - Prior to initiating a termination
Due Process: Something New!

- **Jones Resolution**
  - Board Resolution that authorizes issuance of official Statement of Charges after the *Loudermill* hearing, but prior to dismissal, and approves placing an employee on unpaid leave pending termination

Thank You!

Additional comments or questions:

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