

Educational Support Personnel

Employment Termination and Suspensions ¹

Resignation and Retirement

An employee is requested to provide 2 weeks' notice of a resignation. ² A resignation notice cannot be revoked once given. An employee planning to retire should notify his or her supervisor at least 2 months before the retirement date.

Non-RIF Dismissal ³

The District may terminate an at-will employee at any time for any or no reason, but not for a reason prohibited by State or federal law.

Employees who are employed annually or have a contract, or who otherwise have a legitimate expectation of continued employment, may be dismissed: (1) at the end of the school year or at the end of their respective contract after being provided appropriate notice and after compliance with any applicable contractual provisions, or (2) mid-year or mid-contract provided appropriate due process procedures are provided.

¹ State or federal law requires this subject matter be covered by policy. State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. School officials should consult with their attorneys before adopting this policy or taking any action under it.

The local collective bargaining agreement may contain provisions that exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the current [*insert name of educational support CBA*]."

Administrative procedures implementing this policy should include guidelines for exit interviews. These guidelines should include a list of items to discuss with the employee, e.g., the reasons for the termination; how the district could improve its policies, procedures, and working conditions; how to reduce employee turnover; and information about the employee's benefits, including continued health insurance coverage.

² Optional provision:

In most cases, resigning employees are permitted to work until their effective resignation date.

³ If employed at-will, the employee may be dismissed at any time for a non-discriminatory reason unless the dismissal is for a reduction in force. See policy 5:270, *Employment At-Will, Compensation, and Assignment*. However, whether a specific employee is actually employed at-will depends on the specific facts. This determination is important because the dismissal of an employee having a protected property right in continued employment requires a notice and hearing. *Cleveland Bd of Educ. v. Loudermill*, 105 S.Ct. 1487 (1985). See also *Baird v. Warren Comm. Unit Schl Dist. No. 205*, 389 F.3d 685 (7th Cir., 2004)(because board members denied a dismissed superintendent procedural due process rights, they were denied qualified immunity).

It is safest to presume that all non-certificated employees are employed for the school year. In other words, the exception out numbers the rule. This is a good assumption because districts routinely assure next-year employment so that the employee will not qualify for summer unemployment. In addition, annual employment may be created through a collective bargaining agreement, past practice, an employees' handbook, personnel policy manual, or an oral promise. Thus, the sample policy addresses those employees "with an annual or longer contract or who otherwise have a legitimate expectation of continued employment." A dismissal at the end of the school year or end of a contract generally requires only minimal due process. A mid-year or mid-contract dismissal will require significantly greater due process.

Even if an employee is at-will, a district should consider giving a dismissal reason. The failure to give a reason may provoke an employee into challenging the dismissal, e.g., by alleging illegal discrimination or retaliation for exercising a protected right or whistleblowing.

Consult the board attorney to determine: (1) which employees are at-will, have annual employment, or have a different expectation for their length of employment, and (2) the level of due process to provide specific employees in the event of a dismissal.

The Superintendent is responsible for making dismissal recommendations to the School Board consistent with the Board's goal of having a highly qualified, high performing staff.

Reduction in Force and Recall ⁴

This section is applicable whenever the Board decides to decrease the number of educational support personnel or to discontinue some particular type of educational support service and, as a result of that action, an educational support employee is removed, dismissed, or his or her hours are reduced.

The Board shall use a seniority list to determine the order of dismissal or removal. The seniority list, categorized by positions, shows the length of continuing service of each full-time educational support employee. The employee with the shorter length of continuing service within the respective category of position shall be dismissed first. ⁵

Except as provided below, written notice will be given the employee by certified mail, return receipt requested, at least 30 days before the employee is removed or dismissed, or his or her hours are reduced, together with a statement of honorable dismissal and the reason therefore if applicable. ⁶ The prior written notice will be extended to at least 90 days if the lay-off is due to the District entering into a contract with a third party for non-instructional services. ⁷ The prior written notice will be shortened to at least 5 days before an employee's hours are reduced as a result of an unforeseen reduction in the student population. ⁸

Any vacancies for the following school term or within one calendar year from the beginning of the following school term, shall be offered to the employees so removed or dismissed from that category or any other category of position provided they are qualified to hold such positions. ⁹

I. Definitions

A) "Educational Support Personnel" or "Employees" means any regularly employed persons not regularly required to be certified under laws relating to the certification of teachers or school service personnel. To qualify as "regularly employed," an employee must be employed on a regular part-time or full-time basis during the school year. Employees hired on a short-term or substitute basis as temporary replacements for regular educational support personnel are not "regularly employed" for purposes of this Policy.

B) "Qualifications" means any conditions, restrictions or prerequisites for employment in a particular position, including any statutory or regulatory requirements (e.g., licenses or permits)

⁴ 105 ILCS 5/10-23.5, as amended by P.A. 95-396, grants educational support personnel significant protection during a RIF. This policy's provisions do not include the rights of the employee's exclusive bargaining representative because, where employees are represented by an exclusive representative, the bargaining agreement's RIF provision typically includes those rights and supersedes a board policy.

⁵ Unlike dismissal due to RIF, State law does not require districts to use seniority to select the employees whose hours will be reduced.

"Category of position" is not statutorily defined. Unless otherwise defined by a collective bargaining agreement, the board can define the position categories. Cook v. Eldorado Community Unit School District, 820 N.E.2d 481 (Ill.App.5, 2004). While the statute gives boards the discretion to define categories of positions, boards may not define categories differently for lay-off and recall purposes than for other purposes.

⁶ Required by 105 ILCS 5/10-23.5, as amended by P.A. 95-396.

⁷ Required by 105 ILCS 5/10-22.34c, as amended by P.A. 95-241. This statute contains the conditions precedent to entering into a contract for third party non-instructional service. These requirements are in 4:60-AP2, *Third Party Non-Instructional Contracts*.

⁸ Required by 105 ILCS 5/10-23.5, as amended by P.A. 95-396.

⁹ Id. State law does not require employees whose hours were reduced to be on the recall list.

and any additional requirements set forth in job descriptions or otherwise established by the Board of Education.

C) "Category of Position" is defined as a class or group of educational support personnel employees performing the same duties or functions and having the same qualifications for that position. The Board has determined that all current full-time educational support personnel employees shall be listed in the following categories of position for purposes of seniority under this Policy:

- Business Official—Financial Director
- District Office Secretary
- Building Secretary
- Library Aide
- Supervision Coordinator
- Special Education Paraprofessional Aide with Teaching Certification
- Special Education Paraprofessional Aide without Teaching Certification
- Special Education Paraprofessional Aides Trained in Physical Management
- Special Education Paraprofessional Aides with Bus Driver Certification
- School Bus Aide
- Speech-Language Paraprofessional
- Early Childhood Bi-Lingual Paraprofessional Aides
- Nurse
- Nurse's Aide
- Technology Director
- Director of Building and Grounds
- Building Maintenance Supervisor
- Custodial Staff
- Custodial Staff with Bus Driver Certification
- Bus Driver
- Food Service Director
- Food Service
- Food Service Cashier

The Board reserves the right, in its discretion, to revise, modify or amend the list of categories of position.

D) "Available Position" or "Vacant Position" or "Vacancy" shall include any regular full-time educational support personnel position which the Board determines is available within a specific category of position. Any substitute, short-term, temporary, or other position which is not available on a regular full-time basis shall not be considered an "Available Position" or "Vacant Position" or "Vacancy" under this Policy.

E) Seniority shall be defined as total days of continuous employment with days of continuous service computed on a prorated basis for employees working less than full-time. Days of unpaid leave of absence shall not be counted in determining seniority.

If the days of total continuous service in the district are equal between two or more employees for a position as defined in I. C) of this policy, seniority will be determined by: a) the

employee with the higher salary; then, b) legal minimum requirements for the position; then, c) by lot.

II. Seniority List Procedures

Prior to February 15th of each school term, the Superintendent or his designee shall post a tentative listing, by categories of position as set forth in Paragraph I. C) of this Policy, which sets forth the seniority of all full-time educational support personnel employed by the District. The listing shall provide the following information for each educational support employee:

- a) Name
- b) Current Position(s)
- c) Date of Hire
- c) Number of approximate years of full-time service

The approximate years of full-time service will be converted to continuous days of service should there be two employees with similar years of service needing to determine the actual number of days of service as required by policy.

Each full-time employee shall have ten (10) days from the date of posting to file specific written objections with the Superintendent to the information contained in the list. The Superintendent shall review and consider any objection and inform the employee of his decision within five (5) days. Within five (5) days of the Superintendent's decision or the deadline for such decision, whichever occurs first, the employee may file a written appeal to the Board of Education. The Board shall issue its decision within ten (10) days. Failure of the employee to make a timely objection shall be deemed to be an acceptance of his placement on the seniority list; the employee shall be prohibited thereafter from challenging the employee's seniority in any category of position until the posting of a seniority list in the following school year.

III. Reduction-In-Force and Recall Procedures

If the Board of Education decides to decrease the number of educational support personnel employees employed or to discontinue some particular type of educational support service, the Board shall first dismiss, within the respective category of position, the employee with the least seniority as defined in Paragraph I. E) of this Policy. Employees who are removed or dismissed shall receive a written notice of honorable dismissal by certified mail, return receipt requested, at least sixty (60) days before the end of the school term in accordance with applicable law.

If a vacancy occurs for the following school term or within one calendar year from the beginning of the school term following the reduction-in-force, the Board shall offer the vacant position to the full-time employee with the most seniority on the recall list who was dismissed from the same category of position and is qualified to hold the position. To be "qualified" for a position, an employee must meet all requirements for the position, including any prerequisites established by the Board of employees in the particular category of position. An employee's failure to maintain the necessary qualifications for a particular category of position will result in a waiver of recall rights to any vacancy arising in such category during the recall period. Any recalled employee shall retain his previously accumulated seniority, but shall not accrue additional seniority for the period after the honorable dismissal and prior to reemployment.

To be eligible for recall, an honorably dismissed employee must provide to the Board, in writing, prior to the last day of the school term of dismissal, the address where the employee may be reached. The employee must also notify the Board, in writing, within ten (10) calendar days of the Board's mailing of the notice of the vacancy, or within five (5) calendar days of the employee's receipt of the notice, whichever shall first occur, of the acceptance of any vacant position offered to the employee during the recall period. The employee's failure to notify the Board of acceptance of any vacancy shall constitute rejection of the offer of employment. Any employee who rejects an offer of an available full-time position in any category of position in which he is qualified shall be deemed to have waived his recall rights and will no longer be eligible for any other vacant positions that become available during the recall period.

This Reduction-In-Force policy shall not preclude the Board, in its discretion, from assigning or transferring educational support personnel employees to positions for which they are qualified.

Final Paycheck

A terminating employee's final paycheck will be adjusted for any unused, earned vacation credit. ¹⁰ Employees are paid for all earned vacation. Terminating employees will receive their final pay on the next regular payday following the date of termination, except that an employee dismissed due to a reduction in force shall receive his or her final paycheck on or before the third business day following the last day of employment. ¹¹

Suspension

Except as provided below, the Superintendent is authorized to suspend an employee without pay as a disciplinary measure, during an investigation into allegations of misconduct or pending a dismissal hearing whenever, in the Superintendent's judgment, the employee's presence is detrimental to the District. A disciplinary suspension shall be with pay: (1) when the employee is exempt from the overtime provisions,¹² or (2) until an employee with an employment contract for a definite term is provided a notice and hearing according to the suspension policy for professional employees. ¹³

Any criminal conviction resulting from the investigation or allegations shall require the employee to repay to the District all compensation and the value of all benefits received by the employee during the suspension. The Superintendent will notify the employee of this requirement when the employee is suspended. ¹⁴

¹⁰ A district may also adjust an employee's final paycheck for advanced vacation leave, *provided* that the employee agreed to deduct a specified amount of pay equaling the advanced vacation (56 Ill.Admin.Code §300.760). If employees are required to execute such an agreement before taking unearned vacation leave, add the following phrase to this sentence: "or, if the employee agreed in writing, vacation time taken that was not earned."

¹¹ Required by 105 ILCS 5/10-23.5, as amended by P.A. 95-396.

¹² Employees who are exempt from overtime requirements become eligible for overtime if they are subject to disciplinary suspensions without pay. Auer v. Robbins, 117 S.Ct. 905 (1997). Although the U.S. Dept. of Labor modified this rule in 2004, the Illinois legislature rejected these rule changes (820 ILCS 105/4a). Illinois employers must use the federal rules as they existed on March 30, 2003.

¹³ A suspension of an employee having a protected property right in continued employment requires a notice and hearing. See footnote 3 for additional discussion.

¹⁴ The first sentence of this paragraph is required by 5 ILCS 430/5-60(b), as amended by P.A. 95-947. The second sentence is optional.

LEGAL REF.: 5 ILCS 430 et seq.
105 ILCS 5/10-22.34c and 5/10-23.5.
820 ILCS 105/4a.

CROSS REF.: 5:240 (Professional Personnel - Suspension), 5:270 (Educational Support
Personnel - Employment At-Will, Compensation, and Assignment)

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The Collective Bargaining Agreement will supersede any personnel policy that is contradictory to the Collective Bargaining Agreement between the CCSD 180 Board of Education and the Teachers' Organization of Palisades – IEA/NEA.