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EXPLANATION: TERMINATION OF PROFESSIONAL STAFF MEMBERS

MSBA has added language to this policy in an attempt to protect districts from claims that the district did not provide adequate due process to employees when complying with the requirements of Senate Bill 54 (2011), § 162.068, RSMo. This new law requires districts to disclose to a potential public district employer who contacts the district regarding the possible employment of a school employee whose job involved contact with children whether the employee was dismissed or resigned in lieu of being fired as a result of allegations of sexual misconduct. Although the law is unclear, it appears to require districts to disclose the allegations even if the allegations have not been substantiated by the Children's Division (CD) of the Department of Social Services. Districts that fail to disclose information as required in the statute become legally liable for damages to any student who becomes a victim of the former employee's sexual misconduct at a subsequent employing district. The district also becomes liable to the subsequent employing district. The statute explicitly states that the district will be liable for the legal fees, costs and expenses incurred by the subsequent employing district if the appropriate information is not revealed. Needless to say, this is a severe financial penalty.

MSBA is concerned that districts following this new law could be sued by a former employee for violating the former employee's due process liberty interest in his or her reputation by releasing stigmatizing statements regarding the employee without first providing the employee adequate due process as is required under the Missouri and U.S. Constitutions. To prove a violation of an employee's liberty interest, the employee must prove that 1) the employee was stigmatized by the allegations, 2) the allegations were made public, and 3) the employee denied the allegations. *Putnam v. Keller*, 332 F.3d 541 (8th Cir. 2003).

When a district provides another potential employer a negative reference regarding an employee who left due to allegations of sexual misconduct, the district is making the allegations public. Allegations of sexual misconduct are certainly stigmatizing, which means that if the employee denies the allegations, the district needs to provide adequate due process to the employee prior to providing the information to the potential employer to avoid this federal constitutional claim. Due process has been provided if an employee has received a termination hearing before the Board; however, many employees resign, are nonrenewed or are at-will employees and are not entitled to a hearing before the Board. This policy was revised to remind districts that in some narrow circumstances they may be obligated to provide a hearing or some other due process to an employee who is leaving the district, even if the employee is not otherwise entitled to a hearing or normally provided a hearing.

MSBA recommends that districts offer an opportunity for a hearing before the Board to employees who are terminated, nonrenewed or allowed to resign in lieu of termination due to

FILE: GCPE
Critical

REFERENCE COPY

allegations of sexual misconduct with a student. This will help provide school districts protection from federal claims while still complying with the new state law. Appropriate language has been added to this policy.

MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.

	Board Secretary		Business Office		Coaches/Sponsors
	Facility Maintenance		Food Service		Gifted
X	Human Resources	X	Principals		Library/Media Center
	Health Services		Counselor		Special Education
	Transportation		Public Info/Communications		Technology

REFERENCE COPY

FILE: GCPE
Critical

TERMINATION OF PROFESSIONAL STAFF MEMBERS

Noncertificated Personnel

Employees with Contracts

Employees with contracts will be terminated after due process in accordance with the contract and law.

Employees without Contracts

The superintendent may terminate employees who are not under contract. The superintendent shall report any such termination or suspension to the Board of Education, and the decision will stand approved unless reversed by the Board.

Certificated Personnel

Employees whose positions require a teaching certificate in accordance with law (certificated personnel) shall be terminated in accordance with the provisions of the Teacher Tenure Act of Missouri or other applicable law. In addition to termination, the district reserves the right to file and prosecute charges with the State Board of Education for the revocation of a teaching certificate, pursuant to state law. The district may also petition the office of the Attorney General to file charges with the State Board of Education on behalf of the school district for any reason other than annulment of contract.

The superintendent or designee shall immediately provide written notice to the State Board of Education and the Attorney General upon learning that a certificated employee has pled guilty to or was found guilty of any offense that would authorize the State Board to seek discipline or revoke a teaching certificate.

Tenured Teachers

I. Method

- A. A tenured teacher shall not be terminated by the Board of Education of a school district except for one or more of the following causes:
 - 1. Physical or mental condition unfitting him or her to instruct or associate with children.
 - 2. Immoral conduct.

3. Incompetency, inefficiency or insubordination in the line of duty.
 4. 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.
 5. Excessive or unreasonable absence from performance of duties.
 6. Conviction of a felony or crime involving moral turpitude.
- B. In determining the professional competency or efficiency of a tenured teacher, consideration should be given to regular and special evaluation reports prepared in accordance with district policy and to any written standards of performance adopted by the Board.
- C. A tenured teacher's contract may not be terminated by the Board of Education until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for termination of such contract, notice of a hearing on charges and, if requested by the teacher, a hearing by the Board of Education.
- D. If the charges are for incompetency, inefficiency or insubordination, at least 30 days before service of the notice of charges, the superintendent will give the teacher a warning in writing stating specifically the causes which, if not removed, may result in charges. Thereafter, the superintendent or designee and the teacher shall meet in an effort to resolve the matter. Thirty days' notice is not necessary for termination for charges other than incompetency, inefficiency and insubordination.
- E. Notice of a hearing upon charges, together with a copy of charges, shall be served on the tenured teacher at least 20 days prior to the date of the hearing. The notice and copy of charges may be served upon the teacher by certified mail with personal delivery, addressed to the employee at his or her last known address. If the teacher or the teacher's agent does not within ten days after receipt of the notice request a hearing on the charges, the Board may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested by either the teacher or the Board of Education, it shall take place not less than 20 or more than 30 days after notice of the hearing has been furnished to the tenured teacher.
- F. On the filing of charges in accordance with this section, the Board may suspend the teacher from active performance of duty until a decision is rendered by the Board, but the teacher's salary shall be continued during such suspension unless the law requires the suspension to be without pay. If a decision to terminate a teacher's employment

REFERENCE COPY

FILE: GCPE
Critical

is appealed and the decision is reversed, the teacher shall be paid his or her salary lost while the appeal was pending.

II. Termination Hearing

If a hearing is requested on the termination of a tenured contract or is otherwise used for the termination of a professional staff member under this policy, it shall be conducted by the Board of Education in accordance with the following provisions:

- A. The hearing shall be public.
- B. Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses.
- C. Testimony at hearings shall be on oath or affirmation administered by the president of the Board of Education who shall have the authority to administer oaths in accordance with law.
- D. The Board shall have the power to subpoena witnesses and documentary evidence as provided in § 536.077, RSMo., and shall do so on its own motion or at the request of the teacher against whom charges have been made. The Board shall hear testimony of all witnesses named by the teacher. However, the Board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than ten.
- E. The Board of Education shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the conclusion thereof, furnish the Board of Education and the teacher, at no cost to the teacher, a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the Board is taken by the teacher.
- F. All costs of the hearing shall be paid by the Board except the cost of counsel for the teacher.
- G. The decision of the Board of Education resulting in the demotion of a tenured teacher or the termination of a tenured contract shall be by a majority vote of the members of the Board of Education, and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished to the teacher within three days thereafter.

III. Appeal

- A. The teacher may appeal the decision of the Board of Education to the circuit court of the county where the district is located. The appeal shall be taken within 15 days after service of a copy of the decision of the Board of Education upon the teacher, and if an appeal is not taken within that time, the decision of the Board of Education shall become final.
- B. The appeal may be taken by filing notice of appeal with the Board of Education, whereupon the Board of Education, under its certificate, shall forward to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the Board of Education, which shall thereupon become the record of the cause. Such appeal shall be heard as provided in Chapter 536, RSMo.

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 in the opinion of the Board of Education any probationary teacher has been doing unsatisfactory work, the Board of Education, through its authorized administrative representative, shall provide the teacher with a written statement definitely setting forth his or her alleged incompetency and specifying the nature thereof in order to furnish the teacher an opportunity to correct his or her fault and overcome the incompetency. If improvement satisfactory to the Board of Education has not been made within 90 days of receipt of the notification, the Board of Education may terminate the employment of the probationary teacher immediately. Termination on other grounds may progress immediately.

Any motion to terminate the employment of a probationary teacher shall include only one person and must be approved by a majority of the members of the Board of Education. A tie vote thereon constitutes termination. A probationary teacher will receive due process as required by law prior to termination. The district may utilize the process for dismissal of tenured teachers.

Certificated Administrative Staff Ineligible for Tenure

Certificated employees ineligible for tenure (other than the superintendent) in their present positions, such as principals and assistant principals, may be terminated during the course of a contract for any legal reason including, but not limited to, the reasons for terminating instructional personnel. No improvement period is required prior to the notice of charges. If an administrator other than the superintendent is also a tenured teacher, the district will provide the terminated administrator a

REFERENCE COPY

FILE: GCPE
Critical

teaching position if a position is available in accordance with law, unless the teaching contract has also been terminated. An administrator will receive due process prior to termination as required by law. The district may utilize the process for dismissal of tenured teachers.

Allegations of Sexual Misconduct with a Student

If a former district employee whose job involved contact with children was terminated, nonrenewed or allowed to resign in lieu of termination as a result of an allegation of sexual misconduct with a student, or as a result of such allegations being substantiated by the Children's Division (CD) of the Department of Social Services' child abuse and neglect review board, the district is required by law to release information regarding the sexual misconduct to a potential public school employer who contacts the district regarding the former employee. In addition, if the CD substantiates a complaint of sexual misconduct with a student against a former employee of the district, the law requires the district to release the results of the CD investigation to any potential public school employer who contacts the district.

When employment ends as a result of an allegation of sexual misconduct with a student, the district will provide appropriate due process prior to the release of information regarding the sexual misconduct to a potential public school employer, if feasible. The superintendent or designee is authorized to consult with the district's attorney to determine the appropriate level of due process to provide.

For the purposes of this policy, employees are considered "former employees" if they have resigned, been terminated, had their contracts nonrenewed, or been notified that their contracts with the district will not be renewed or that the district is pursuing termination, even if the process has not been completed.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted: FIELD(AdoptDate)

Revised:

Cross Refs: AC, Prohibition against Discrimination, Harassment and Retaliation
HPA, Employee Walkouts, Strikes and Other Disruptions

FILE: GCPE
Critical

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JFCF, Hazing and Bullying
JHG, Reporting and Investigating Child Abuse/Neglect

Legal Refs: §§ 162.068, 168.101, .114, .116, .118, .120, .126, RSMo.
| U.S. Const. amend. XIV

FIELD(DistrictLocationLine)