

<b>NEW MEXICO SCHOOL FOR THE BLIND &amp; VISUALLY IMPAIRED</b>	<b>SUBJECT: NO.265 Employment, Re-Employment, Termination, Resignation of Employees</b>
<b>Effective Date: 4/14/11</b>	<b>Approved by Board: 4/14/11 Reviewed: 2/19/15</b>
<b>Distribution: All Staff</b>	<b>Kind: Board Policy</b>

## **GENERAL POLICY**

The employment, re-employment, and termination or discharge of employees is the responsibility of the Superintendent as delegated by the Board of Regents.

### **A. Contracts, Renewal, Non-Renewal, Termination.**

Except as provided for licensed school instructors with three or more consecutive years of employment with NMSBVI, in Section B., below, the following schedule shall apply for re-employment of licensed, non-licensed, and supervisory employees on contract:

#### **1. Employees' Contracts**

- a. **Licensed Employees Contracts:** Prior to the last day of the school year, the Superintendent shall serve written notice of re-employment or termination on each licensed school instructor employed by NMSBVI. The Superintendent does not need to obtain advance authorization of the Board to issue these notices. A notice of re-employment shall be an offer of employment for the ensuing school year. The employee must return the signed letter of intent within fifteen (15) calendar days of receipt of the notice of re-employment. This written acceptance of re-employment by a licensed employee creates a binding employment contract between the licensed employee and the Board until the parties enter into a formal written employment contract. A notice of termination shall be a notice of intention not to re-employ for the ensuing school year.
- b. **Licensed Administrative and Supervisory Staff Contracts:** School employees who are licensed administrators, managerial employees, and certified school instructors employed to fill the position of a certified school instructor entering military service, as defined in NMSA 1978, § 22-10A-26, shall have their status reviewed annually by the Superintendent with action to renew or not to renew such employee's contract taken no later than the last day of each school year, provided that the Superintendent's failure to give notice prior to the last day of the school year shall not be deemed to create an express or implied offer of reemployment.
- c. **Non-Licensed Employee Contracts:** Non-licensed employees shall be considered for re-employment before June 30th of each year for a term not to exceed one (1) year.

#### **2. Non-Renewal/Termination**

- a. The Superintendent may decline to re-employ a licensed school instructor with less than three years of consecutive service in the same classification, or terminate any other employee with less than three years of consecutive service, for any reason

deemed sufficient. Upon request of the licensed school instructor or other employee, the Superintendent shall provide written reasons for the decision to terminate. The reasons shall not be publicly disclosed by the Superintendent or Board. The reasons shall not provide a basis for contesting the decision.

- b. The Superintendent may terminate the employment of non-licensed employees with more than three consecutive years of employment with NMSBVI for just cause.
  - (1) All procedures and required time-lines regarding the rights of terminated employees with three or more years of consecutive employment, referred to in the following paragraphs, shall be consistent with NMSA 1978, §§ 22-10A-24 and 22-10A-25, copies of which are on file and available in the Superintendent's office, Human Resources, and Early Childhood Programs site.
  - (2) A non-licensed employee who has been employed by NMSBVI for more than three full consecutive years may be terminated only for a reason that is rationally related to the employee's competence or turpitude or the proper performance of duty and that is not in violation of the employee's civil or constitutional rights. The employee may request an opportunity to make a statement to the Board and may also request in writing the reasons for the termination action, as provided by law. Neither the local Superintendent nor Board shall publicly disclose its reasons for termination.
  - (3) The employee may be granted a hearing before the Board under the contention that the decision to terminate was made without just cause. If the employee is still aggrieved by the decision of the Board following the hearing, an appeal may be made to an independent arbitrator for a *de novo* hearing consistent with the procedures provided in NMSA 1978, § 22-10A-25.

## **B. Termination/Discharge of Tenured, Licensed School Employees**

### **1. Termination**

- a. All procedures and required time-lines regarding the rights of terminated certified school instructors referred to in the following paragraphs shall be consistent with NMSA 1978, §§ 22-10A-24 and 22-10A-25, copies of which are on file and available in the Superintendent's office and Human Resources Office.
- b. A certified school instructor who has been employed by NMSBVI for three or more consecutive years may be terminated only for a reason that is rationally related to the employee's competence or turpitude or the proper performance of duty and that is not in violation of the employee's civil or constitutional rights. The employee may request an opportunity to make a statement to the Board and may also request in writing the reasons for the termination action by submitting a written request to the Superintendent within five (5) working days from the date the written notice is served upon the employee. The Superintendent shall not publicly disclose its reasons for termination.
- c. The employee may be granted a hearing before the Board under the contention that the decision to terminate was made without just cause by providing a written

request for a hearing within ten (10) working days from the date the employee receives the Superintendent's written statement of reasons. If the employee is still aggrieved by the decision of the Board following the hearing, an appeal may be made to an independent arbitrator for a *de novo* hearing. The arbitrator shall decide whether there was just cause for the decision to terminate.

## **2. Discharge**

- a. A certified school employee may be discharged only for a reason that is rationally related to the employee's competence or turpitude or the proper performance of duty and that is not in violation of the employee's civil or constitutional rights. "Discharge" means the act of severing the employment relationship with a certified school employee prior to the expiration of the current employment contract.
- b. The Superintendent shall serve a written notice of intent to recommend discharge on the certified school employee in accordance with the law for service of process in civil actions. The notice shall state the intent to recommend discharge and the cause for the recommendation, and shall advise the employee of the right to a discharge hearing before the Board.
- c. The employee may exercise the right to a hearing by giving the Superintendent written notice of that election within five (5) working days of the receipt of the notice to recommend discharge.
- d. The procedures to be followed shall be consistent with NMSA 1978, § 22-10A-27, copies of which are on file and available in the Superintendent's office, Human Resources Office, and Early Childhood Programs site.

## **C. Assignment and Transfer of Employees**

Transfers should be viewed as opportunities for professional growth and instructional improvement.

The ultimate authority to assign, reassign and transfer staff lies with the Superintendent as delegated by the Board. While it is the intent of the Board that the desires and needs of staff members impacted by transfers are taken into consideration, in all cases, transfers will be made in the best interests of NMSBVI.

This policy covers certified staff.

1. **Voluntary Transfers (Employee-Initiated).** A staff member desiring a transfer may submit a letter of interest in response to available positions posted by the Superintendent. Letters of interest must be submitted by the deadline identified on the posted notice. A copy of the letter of interest will be sent to the supervisor of the available position to which the staff member wishes to transfer. While all employees will be given consideration by the "receiving" supervisor, it will be up to that supervisor in his or her discretion to determine whether to recommend a transfer to the Superintendent based on the needs and benefits of NMSBVI. Transfers are not automatic, and current staff must compete with non-staff members for positions.

2. **Involuntary Transfers (Employer-Initiated).** Transfers of this nature may be made in the following circumstances:
  - a. When there is a need to comply with federal or state requirements.
  - b. When there are changes in certification requirements and/or instructional skills necessary for implementation or maintenance of programs. When there is the need to reduce staff due to declining enrollment.
  - c. When there are distinct differences in pupil-teacher ratios at school sites and there is a need to more appropriately balance those.
  - d. Whenever there are other needs that would benefit NMSBVI.
3. If staff adjustment requirements cannot be met through the voluntary process, every effort will be made to consider individual and program needs in the course of the involuntary process. Final decisions, however, will be based on the needs of NMSBVI as determined in the discretion of the Superintendent. Other factors that may be evaluated in accomplishing necessary transfers are school program need and applicable training, experience based on the T&E Index, performance and evaluations, disciplinary history, and seniority (date of hire).
4. **Notification.** In any case involving a transfer, every effort shall be made to notify, in writing, the affected employee. Staff members requesting voluntary transfers shall be notified in writing of disposition of request.

#### **D. Resignations of Employees**

1. Licensed employees shall provide the Superintendent with notice of the intent to resign at least thirty (30) days prior to the effect date of the resignation. Non-licensed employees shall provide at least two (2) weeks notice of the intent to resign. Under extenuating circumstances, the Superintendent may waive these notice requirements.
2. **Written Notice.** An employee wishing to resign is to provide the Superintendent with a written statement of his/her intention to resign and to specify the reason for and the effective date of the resignation.
3. **Exit Interview.** Employees resigning are required to complete the outprocessing form near or on their last working day. The form will ensure that all necessary paperwork has been completed, employee exit interview questions and concerns are noted, and that all keys and/or other property have been returned to the school.

#### **E. Payment of Wages Upon Separation of Employment**

1. In accordance with NMSA Chapter 50, Article 4-4. A, payment of wages or compensation for termination/discharge shall be made within five (5) days of such termination.

2. In accordance with NMSA Chapter 50, Article 4-4. B, payment of wages or compensation for a voluntary separation of employment shall be made with ten (10) days of such termination.
3. NMSBVI reserves the right when the ten (10) day notice is not met, pay in lieu of notice may be given at straight-time rate.
4. Pay in lieu of notice will not be given in cases of termination during discharge for serious infractions or discharge immediately following suspension for serious infractions.