

EMPLOYEE DISMISSAL

Dismissing school employees is sometimes a necessary role of a school board. Dismissal procedures are complex because, in the public school context, the process is governed by state and federal constitutional law and state contract law.

Dismissal proceedings often involve several individuals, such as the superintendent, an attorney for the administration, the teacher and his/her representative, the board attorney and the school board members. This document provides a general overview of the process of dismissing school employees and the school board's role.

1. Are the dismissal procedures the same for all school employees?

No. The appropriate procedures will vary depending on the type of employee involved.

2. For purposes of identifying the appropriate dismissal procedure, what are the various types of school employees?

"At will" employees are those employees who serve without an employment contract. Some employees have employment contracts that have a defined period of employment and do not automatically renew. Teachers, including principals and superintendents, are licensed employees with an indefinite contract.

3. How are "at will" employees dismissed?

Absent an agreement or contract that specifies the time or duration of service, the employment is at the will of the employer and employee. The "at will" employee can quit or be dismissed at any time for any reason as long as the employer's reason is not a prohibited dismissal ground (See question 11). There are no required procedures absent a local school board policy or a collective bargaining agreement. "At will" employees typically include cafeteria workers, custodians, and secretaries. The decision to dismiss "at will" employees is sometimes delegated to the superintendent with subsequent ratification by the school board. (Indianapolis Public School "at will" employees must, however, be afforded a hearing and an appeal to the board. IC 20-25-3-12)

4. How are employees who have an employment contract that does not automatically renew dismissed?

The board can dismiss an employee with an employment contract that does not automatically renew by either refusing to continue the contract once it expires or by cancelling it during the term of the contract. Refusing to renew a contract after it expires does not require any due process procedures, unless the board has created a right to continue employment through board policy or a provision in the contract.

A refusal to renew the contract for the following year does not take board action because the contract expires by its own terms. Written notice from an administrator that the person will not be considered for contract renewal is necessary to avoid the creation of an expectation that there will be re-employment. Employees who receive a written employment contract that does not automatically renew include temporary contract teachers, coaches and bus drivers.

A cancellation during the term of the contract requires certain due process procedures because an employment contract is a property right protected by the due process clause of the United States Constitution. Absent specific procedures being stated in a collective bargaining agreement, employment contract or statute, dismissal procedures should include adequate notice, a statement of reasons for the dismissal, and an opportunity for a hearing. Likewise, if the employment contract, collective bargaining agreement and statutes are silent on dismissal grounds, an employee with an employment contract may be dismissed during the term of the contract on any ground reasonably related to the school corporation's interest. A contract dismissal during its term requires a majority vote of the quorum present at an open school board meeting.

5. How are teachers dismissed?

The school can dismiss a teacher by voting to cancel the teaching contract effective at the end of the school year or at any time during the contract's term. The procedure for cancelling the contract of a teacher is governed by IC 20-28-7.5-1 through IC 20-28-7.5-4. The principal or superintendent must provide the teacher with a written notice of a preliminary decision to cancel the teacher contract. This notice must be delivered to the teacher by registered or certified mail or in person. The notice must contain the reasons for the decision and include the teacher's right to a conference with the superintendent or assistant superintendent, which must be requested within 5 days of the teacher's receipt of the notice. After a conference with the superintendent or assistant superintendent, the teacher may request a private conference with the school board. The administrator who attended the conference must make a written recommendation to the school board on the cancellation of the teacher's contract. A contract cancellation requires a majority vote of the quorum present at an open school board meeting.

6. What are the grounds for cancelling a teacher's contract?

The grounds are stated in IC 20-28-7.5-1. The following grounds apply to the dismissal of all teachers:

- Immorality
- Insubordination
- Incompetency
- Neglect of duty
- Conviction of certain felonies
- Good or just cause

A probationary teacher may be dismissed for any reason considered relevant to the school corporation's interest.

7. Before considering whether to cancel a contract, can board members assist in the fact-gathering stage of the case?

Constitutional due process requires the school board to be a fair, impartial decision maker. Discussing potential charges against an employee can give, if nothing else, the appearance of impropriety. This “appearance” must be balanced with the rule that mere familiarity with the facts will not necessarily disqualify a board member. Therefore, board members should avoid being involved in the investigation of charges against an employee.

8. What occurs during a conference between the board and a teacher?

The school board “allows the teacher to present evidence to refute the reason or reasons for contract cancellation and supporting evidence provided by the school corporation. Any evidence presented at the private conference must have been exchanged by the parties at least seven (7) days before the private conference.” And the school board must “consider whether a preponderance of the evidence supports the cancellation of the teacher’s contract.” IC 20-28-7.5-2(f)

9. What is the board’s role at a conference to cancel a contract?

The school board is the decision-making body. Its members listen to the evidence and decide the case based solely on evidence presented at the conference. After the conference, the board makes its decision at an open board meeting and adopts formal findings of fact with the assistance of its attorney. The school board must vote on the cancellation of the teacher’s contract within 30 days of the receipt of the teacher’s request for the conference with the school board.

10. If a dismissed employee challenges his/her contract cancellation, can the court substitute its judgment for that of the school board?

No. A trial court is prohibited from re-weighing the evidence. If the procedural requirements are followed, including the assignment of legal grounds for cancellation, if the record from the conference reveals that there is substantial evidence to support the decision, and if the conference was fair, the board’s decision must be upheld by a trial court. (This does not apply to an arbitrator under a “just cause” provision of a bargaining agreement.)

11. What are the prohibited grounds for dismissing an employee?

There are many different discrimination laws that protect employees. School board members should be aware that every employment decision has potential ramifications under these laws. School employers are prohibited from dismissing an employee on the basis of the following:

- Age

- Race
- Color
- Sex (including pregnancy)
- Religion
- National origin
- Disability
- Genetic information
- Political reasons
- Marital status
- Residence
- Union membership or activity
- Filing a worker's compensation claim
- Serving as a juror or responding to a summons

In addition, with few exceptions, school employers may not make adverse employment decisions based on a constitutionally protected status or activity, such as an employee's religion, association or speech.

This document provides a brief overview of dismissing school employees; for a detailed explanation of the process of dismissing employees, please refer to the latest edition of the ISBA Employee Discharge Manual.

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