

1 **UTAH ORDERLY SCHOOL TERMINATION**
2 **PROCEDURES ACT AMENDMENTS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Lyle W. Hillyard**

6 AN ACT RELATING TO PUBLIC EDUCATION; MODIFYING DEFINITIONS IN THE
7 ORDERLY SCHOOL TERMINATION PROCEDURES ACT; MODIFYING DISMISSAL
8 PROCEDURES; PROVIDING FOR WAIVER OF HEARINGS; PROVIDING FOR
9 SUSPENSION WITHOUT PAY; PROVIDING FOR ISSUANCE OF SUBPOENAS AND AN
10 APPEAL PROCESS; CLARIFYING PROVISIONAL EMPLOYEE STATUS; AND PROVIDING
11 AN EFFECTIVE DATE.

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **53A-8-102**, as last amended by Chapters 123 and 234, Laws of Utah 1995

15 **53A-8-104**, as last amended by Chapter 173, Laws of Utah 1998

16 **53A-8-105**, as last amended by Chapter 51, Laws of Utah 1994

17 **53A-8-107**, as last amended by Chapter 234, Laws of Utah 1995

18 REPEALS AND REENACTS:

19 **53A-8-106**, as last amended by Chapter 51, Laws of Utah 1994

20 *Be it enacted by the Legislature of the state of Utah:*

21 Section 1. Section **53A-8-102** is amended to read:

22 **53A-8-102. Definitions.**

23 As used in this chapter:

24 (1) "Career employee" means an employee of a school district who has obtained a
25 reasonable expectation of continued employment based upon Section 53A-8-106 and an agreement
26 with the employee or the employee's association, district practice, or policy.

27 (2) "Contract term" or "term of employment" means the period of time during which an

28 employee is engaged by the school district under a contract of employment, whether oral or
29 written.

30 (3) "Dismissal" or "termination" means:

31 (a) termination of the status of employment of an employee;

32 (b) failure to renew the employment contract of a career employee;

33 (c) reduction in salary of an employee not generally applied to all employees of the same
34 category employed by the school district during the employee's contract term; or

35 (d) change of assignment of an employee with an accompanying reduction in pay, unless
36 the assignment change and salary reduction are agreed to in writing.

37 (4) "Employee" means a ~~[person, other than]~~ career or provisional employee of a school
38 district, but does not include:

39 (a) the district superintendent, or the equivalent at an applied technology center or the
40 Schools for the Deaf and the Blind~~[-or]~~;

41 (b) the business administrator at an applied technology center or the Schools for the Deaf
42 and the Blind; or

43 (c) a temporary employee~~[-who is a career or provisional employee of the district].~~

44 (5) "Provisional employee" means an individual, other than a career employee or a
45 temporary employee, who is employed by a school district.

46 (6) "School board" or "board" means a district school board or its equivalent at an applied
47 technology center or the Schools for the Deaf and the Blind.

48 (7) "School district" or "district" means:

49 (a) a public school district;

50 (b) an applied technology center; or

51 (c) the Schools for the Deaf and the Blind.

52 (8) "Temporary employee" means an individual who is employed on a temporary basis as
53 defined by policies adopted by the local board of education ~~[based upon an agreement with the~~
54 ~~employee or the employee association recognized by the board which represents the class of~~
55 ~~employee in question]~~. Temporary employees serve at will and have no expectation of continued
56 employment.

57 Section 2. Section **53A-8-104** is amended to read:

58 **53A-8-104. Dismissal procedures.**

59 (1) The district shall provide employees with a written statement of causes under which
60 a career employee's contract [shall] may not be renewed or continued beyond the then-current
61 school year, under which a contract of each class of personnel [shall] may not be renewed or
62 continued beyond the then-current school year, and under which a contract can be otherwise
63 terminated during the contract term, and the orderly dismissal procedures which are used by the
64 district in cases of contract termination, discontinuance, or nonrenewal.

65 (2) (a) The district shall notify a career employee, at least [~~one month~~] 30 days prior to
66 issuing notice of intent not to renew or continue the employee's contract beyond the then-current
67 school year, that continued employment is in question and the reasons for the anticipated
68 nonrenewal or discontinuance.

69 (b) The board shall give the career employee an opportunity to correct the problem.

70 (c) The board may grant the career employee assistance to correct the deficiencies,
71 including informal conferences and the services of school personnel within the district.

72 (3) (a) If the career employee does not correct the problem as determined in accordance
73 with the evaluation and personnel policies of the district and the district intends to not renew or
74 discontinue the contract of employment of a career employee at the end of the then-current school
75 year, it shall give notice of that intention to the employee.

76 (b) The district shall issue the notice at least [~~two months~~] 30 days before the end of the
77 career employee's contract term.

78 (4) A district shall notify a provisional employee at least [~~two months~~] 60 days before the
79 end of the provisional employee's contract if the employee will not be offered a contract for a
80 subsequent term of employment.

81 (5) In the absence of a notice, an employee is considered employed for the next contract
82 term with a salary based upon the salary schedule applicable to the class of employee into which
83 the individual falls.

84 (6) If the district intends to not renew or discontinue the contract of a career employee or
85 to terminate a career or provisional employee's contract during the contract term:

86 (a) the district shall give written notice of the intent to the employee;

87 (b) the notice shall be served by personal delivery or by certified mail addressed to the
88 individual's last-known address as shown on the records of the district;

89 (c) except as provided under Subsection [~~(3)~~] (4)(b), the district shall give notice at least

90 15 days prior to the proposed date of termination;

91 (d) the notice shall state the date of termination and the detailed reasons for termination;

92 and

93 (e) the notice shall advise the individual that he has a right to a fair hearing, and that failure
94 of the employee to request a hearing in accordance with procedures set forth in the notice
95 constitutes a waiver of that right and that the district may then proceed with termination without
96 further notice.

97 (7) The procedure under which a contract is terminated during its term may include a
98 provision under which the active service of the employee is suspended pending a hearing if it
99 appears that the continued employment of the individual may be harmful to students or to the
100 district.

101 (8) (a) Suspension pending a hearing may be without pay if an authorized representative
102 of the district determines that it is more likely than not that the allegations against the employee
103 are true and will result in termination.

104 (b) If termination is not subsequently ordered, the employee shall receive back pay for the
105 period of suspension without pay.

106 ~~[(8)]~~ (9) The procedure shall provide for a written notice of suspension or final termination
107 including findings of fact upon which the action is based if the suspension or termination is for
108 cause.

109 Section 3. Section **53A-8-105** is amended to read:

110 **53A-8-105. Hearings before district board or hearing officers -- Rights of employee**
111 **-- Subpoenas -- Appeals.**

112 (1) Hearings are held under this chapter before the board or before hearing officers selected
113 ~~[under Section 53A-8-106]~~ by the board to conduct the hearings and make recommendations
114 concerning findings.

115 (2) At the hearings, an employee has the right to counsel, to produce witnesses, to hear
116 testimony against ~~[him]~~ the employee, to cross-examine witnesses, and to examine documentary
117 evidence.

118 (3) Subpoenas may be issued and oaths administered as provided under Section
119 53A-7-204.

120 Section 4. Section **53A-8-106** is repealed and reenacted to read:

121 **53A-8-106.** Career employee status for provisional employees -- Extra duty
122 assignments.

123 (1) A provisional employee must work for a school district on at least a half-time basis for
124 three consecutive years to obtain career employee status.

125 (2) Policies of an employing school district shall determine the status of a career employee
126 in the event of the following:

127 (a) the employee accepts a position which is substantially different from the position in
128 which career status was achieved; or

129 (b) the employee accepts employment in another school district.

130 (3) If an employee who is under an order of probation or remediation in one assignment
131 in a school district is transferred or given a new assignment in the district, the order shall stand
132 until its provisions are satisfied.

133 Section 5. Section **53A-8-107** is amended to read:

134 **53A-8-107. Necessary staff reduction not precluded.**

135 Nothing in this chapter prevents staff reduction if necessary to reduce the number of
136 employees because of the following:

137 (1) declining student enrollments in the district;

138 (2) the discontinuance or substantial reduction of a particular service or program;

139 (3) the shortage of anticipated revenue after the budget has been adopted; or

140 (4) school consolidation.

141 Section 6. **Effective date.**

142 This act takes effect on July 1, 1999.

Legislative Review Note
as of 2-4-99 10:59 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel