

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 § OR CONTINUE § the employment contract of a career employee
32a § BEYOND THE THEN CURRENT SCHOOL YEAR § ;

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 § DISTRICT § business administrator § OR THE EQUIVALENT § at an applied
41a 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].~~ § IF THE CLASS OF EMPLOYEES IN QUESTION IS REPRESENTED BY AN
55a EMPLOYEE ORGANIZATION RECOGNIZED BY THE LOCAL BOARD, THE BOARD SHALL ADOPT ITS
55b POLICIES BASED UPON AN AGREEMENT WITH THAT ORGANIZATION. § Temporary employees

55c 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) **§ (i) IF THE DISTRICT INTENDS TO TERMINATE A CONTRACT DURING ITS TERM OR**
 65A **DISCONTINUE A CAREER**
 65a **EMPLOYEE'S CONTRACT BEYOND THE THEN CURRENT SCHOOL YEAR FOR REASONS OF**
 65b **UNSATISFACTORY PERFORMANCE, THE UNSATISFACTORY PERFORMANCE MUST BE**
 65c **DOCUMENTED IN AT LEAST TWO EVALUATIONS CONDUCTED AT ANY TIME WITHIN THE PRECEDING THREE**
 65d **YEARS IN ACCORDANCE WITH DISTRICT POLICIES OR PRACTICES.**

65e (b) § 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)~~] (c) § The board shall give the career employee an opportunity to correct the problem
 69a **§ [-] IN ACCORDANCE WITH THE DISTRICT EVALUATION POLICIES.**

70 (c) (d) § The board may grant the career employee assistance to correct the
 70a 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 **§ [f] (3) [f] [~~(4)~~]** § (b), the district shall give notice
 89a 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 ~~§ [5] ; § and~~
93a **§ (f) THE NOTICE SHALL STATE § 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 § . AFTER PROVIDING THE EMPLOYEE WITH AN OPPORTUNITY FOR AN
102a **INFORMAL CONFERENCE TO DISCUSS THE ALLEGATIONS, § that it is more likely than not that the**
102b 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) ~~§ (a) §~~ 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.

114a **§ (b) THE BOARD SHALL ESTABLISH PROCEDURES TO APPOINT HEARING OFFICERS.**

114b **(c) THE BOARD MAY DELEGATE ITS AUTHORITY TO A HEARING OFFICER TO MAKE**
114c **DECISIONS RELATING TO THE EMPLOYMENT OF AN EMPLOYEE WHICH ARE BINDING UPON BOTH**
114d **THE EMPLOYEE AND THE BOARD.**

114e **(d) SUBSECTION (1) DOES NOT LIMIT THE RIGHT OF THE BOARD OR THE EMPLOYEE TO**
114f **APPEAL TO AN APPROPRIATE COURT OF LAW. §**

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.

132a h (4) AN EMPLOYEE WHO IS GIVEN EXTRA DUTY ASSIGNMENTS IN ADDITION TO A
 132b PRIMARY ASSIGNMENT, SUCH AS A TEACHER WHO ALSO SERVES AS A COACH OR ACTIVITY
 132c ADVISORY, IS A TEMPORARY EMPLOYEE IN THOSE EXTRA DUTY ASSIGNMENTS AND MAY NOT
 132d ACQUIRE CAREER STATUS BEYOND THE PRIMARY ASSIGNMENT. h

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 § h [f] **substantial** [f] h § reduction of a particular service or
 138a 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