

(In Subsection 53A-8-107(2) after "discontinuance" the language "or substantial reduction" was part of the bill as it passed both houses of the Legislature. However, in enrolling the word "substantial" was inadvertently omitted, but is included in the published database.)

**UTAH ORDERLY SCHOOL TERMINATION
PROCEDURES ACT AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

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

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

AMENDS:

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

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

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

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

REPEALS AND REENACTS:

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

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

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

53A-8-102. Definitions.

As used in this chapter:

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

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

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

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

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

(b) failure to renew or continue the employment contract of a career employee beyond the then current school year;

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

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

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

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

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

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

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

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

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

(a) a public school district;

(b) an applied technology center; or

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

(8) "Temporary employee" means an individual who is employed on a temporary basis as defined by policies adopted by the local board of education ~~[based upon an agreement with the employee or the employee association recognized by the board which represents the class of employee in question]~~. If the class of employees in question is represented by an employee

organization recognized by the local board, the board shall adopt its policies based upon an agreement with that organization. Temporary employees serve at will and have no expectation of continued employment.

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

53A-8-104. Dismissal procedures.

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

(2) (a) If the district intends to terminate a contract during its term or discontinue a career employee's contract beyond the then current school year for reasons of unsatisfactory performance, the unsatisfactory performance must be documented in at least two evaluations conducted at any time within the preceding three years in accordance with district policies or practices.

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

~~[(b)]~~ (c) The board shall give the career employee an opportunity to correct the problem in accordance with the district evaluation policies.

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

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

(b) The district shall issue the notice at least ~~[two months]~~ 30 days before the end of the

career employee's contract term.

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

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

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

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

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

(c) except as provided under Subsection (3)(b), the district shall give notice at least 15 days prior to the proposed date of termination;

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

(e) the notice shall advise the individual that he has a right to a fair hearing; and

(f) the notice shall state that failure of the employee to request a hearing in accordance with procedures set forth in the notice constitutes a waiver of that right and that the district may then proceed with termination without further notice.

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

(8) (a) Suspension pending a hearing may be without pay if an authorized representative of the district determines, after providing the employee with an opportunity for an informal conference to discuss the allegations, that it is more likely than not that the allegations against the employee are true and will result in termination.

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

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

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

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

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

(b) The board shall establish procedures to appoint hearing officers.

(c) The board may delegate its authority to a hearing officer to make decisions relating to the employment of an employee which are binding upon both the employee and the board.

(d) Subsection (1) does not limit the right of the board or the employee to appeal to an appropriate court of law.

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

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

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

53A-8-106. Career employee status for provisional employees.

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

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

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

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

(3) If an employee who is under an order of probation or remediation in one assignment in

a school district is transferred or given a new assignment in the district, the order shall stand until its provisions are satisfied.

(4) An employee who is given extra duty assignments in addition to a primary assignment, such as a teacher who also serves as a coach or activity advisor, is a temporary employee in those extra duty assignments and may not acquire career status beyond the primary assignment.

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

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

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

- (1) declining student enrollments in the district;
- (2) the discontinuance or reduction of a particular service or program;
- (3) the shortage of anticipated revenue after the budget has been adopted; or
- (4) school consolidation.

Section 6. Effective date.

This act takes effect on July 1, 1999.