

KANAWHA COUNTY SCHOOLS POLICY
Series: G25 - Employee Discipline; Local Procedures

25.01 Grounds for suspension or termination. An employee may be suspended or dismissed any time for: Immorality; incompetency; cruelty; insubordination; intemperance; willful neglect of duty; unsatisfactory performance; a finding of abuse by the Department of Health and Human Resources in accordance with § 49-1-1 et seq.; the conviction of a misdemeanor or a guilty plea or plea of nolo contendere to a misdemeanor charge that has a rationale nexus between the conduct and performance of the employee's job; the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge; or jeopardizing the health, safety, or welfare of students or the learning environment. For a charge of unsatisfactory performance, the employee must first be given an unsatisfactory performance evaluation.

25.02 Progressive Discipline. Progressive disciplinary action is considered a dimension of performance evaluation. It is a corrective process to help employees overcome work-related shortcomings, strengthen work performance and achieve success. Depending on the severity of the offense, disciplinary action may take the following forms: oral warning/reprimand, written warning/reprimand, suspension or termination of employment.

25.03 Offenses Which May Warrant Disciplinary Action. The following behaviors or offenses may warrant disciplinary action, including oral and written warnings/reprimands, suspension or termination of employment due to failure to improve correctable conduct after being previously warned. This list is not all-inclusive and does not replace provisions of statutes or other Board policies and regulations regarding prohibited conduct.

1. Failure to meet performance standards identified by evaluation process and/or job description.
2. Chronic tardiness, absenteeism or failure to report to work.
3. Failure to report accident or injury to immediate supervisor.
4. Petty larceny of or damage to Board property or the property of others.
5. Smoking or other use of tobacco products on Board property or work time.
6. Failure to comply with safety rules.
7. Leaving work without authorization.
8. Insubordination or willful failure to follow a legitimate directive from a superior.
9. Use of or reporting to work under the influence of alcohol or controlled substances.
10. Profane or abusive language.
11. Breach of required confidentiality.
12. Falsification of time and attendance, medical, student or other records.
13. Actions constituting prohibited conflict of interest.
14. Harassment of a racial, sexual, religious or ethnic nature.
15. Violation of WV Board of Education Employee Code of Conduct.
16. Violation of written rules, regulations or policies.

25.04 Offenses Which Warrant Immediate Action. The following behaviors may warrant immediate disciplinary action, including suspension and termination without opportunity to improve. This list is not all-inclusive and does not replace provisions of statutes or other Board policies and regulations regarding prohibited conduct.

1. Falsification of employment application or other dishonest acts committed for personal gain.
2. Unauthorized possession of firearms or explosives.
3. Sexual harassment of a student by an employee.
4. Conviction of a felony.
5. Accessing pornographic materials through Board equipment.
6. Physical violence, or the threat thereof, toward others on Board property or work time.
7. Failure to maintain required certification/licensure.
8. Negligent supervision of students.
9. A finding of abuse by DHHR.
10. Any other action that constitutes an imminent risk of harm to students or employees.

25.05 Continuances. In any hearing scheduled to consider disciplinary action, should the employee or his/her counsel or representative request a continuance, failure by the employee to agree to a rescheduled hearing within ten working days of the original hearing will result in a suspension without pay until the hearing process is completed.

25.04 Investigations. Investigations of alleged misconduct of an employee which may serve as the basis for the administration of discipline shall be authorized by the Superintendent. Such investigations shall be conducted by the Superintendent's designee(s).

25.05 Criminal Charges. In the event an employee is charged with the violation of either state or federal criminal laws and the alleged conduct may serve as a basis for the administration of discipline, the Superintendent shall cause an investigation to be conducted. Such investigation or the administration of discipline will not be dependent on the outcome of a law enforcement agency's investigation or the prosecution of such criminal charges.

25.06 Attorney's Fees/Criminal Charges. In the event an employee is charged with criminal conduct (by way of indictment or complaint) in connection with any job-related activity and is acquitted or charges are dismissed, such employee may petition the Superintendent for reimbursement of any reasonable attorney fees actually incurred. If the Superintendent determines that the actions which were the subject of criminal charges were within the scope of the employee's duties and were taken in good faith, he may recommend to the Board that such petition for attorney fees be approved. In no event will the Board provide a defense or advance attorney fees prior to an acquittal or dismissal of charges.

25.07 Administrative Suspension with Pay. During the course of any investigation pending a Superintendent's hearing as provided in Section 25.06 of this regulation, the Superintendent may suspend an employee with pay for a period of time not to exceed 60 days. Administrative suspensions may not be extended beyond 60 days without board approval.

25.08 Administrative Suspension During the Pendency of Criminal Charges. In the event an employee is charged with criminal conduct (by way of indictment or complaint) which could result in the employee being suspended or terminated from his or her employment, the Superintendent, subject to approval of the board, may conditionally suspend the employee, without pay, pending the outcome of the criminal proceedings.

25.09 Due Process—Penalty of 5-day or Less Suspension. If after a preliminary investigation the Superintendent determines that the maximum possible penalty which may be imposed is a 5-day suspension, the Superintendent or designee may conduct a meeting during which the employee shall be apprised of the charges and afforded an opportunity to provide his or her version of such misconduct. An employee may be accompanied by counsel or other representative at this meeting. In the alternative, an employee may be afforded an opportunity to provide a written statement, in connection with alleged misconduct, to be considered by the Superintendent and the Board relative to a recommendation that discipline be administered.

25.10 Due Process—Penalty in Excess of 5-Day Suspension. If after a preliminary investigation the Superintendent determines that the possible penalty which may be imposed is in excess of a 5-day suspension, the Superintendent shall provide the employee with written notice which shall include the following:

1. Date, time and place of hearing;
2. A statement of the charges in such form as will afford the employee with a reasonable opportunity to prepare a defense; and,
3. A statement indicating: that the hearing will be recorded by mechanical means; that testimony will be given under oath; that the employee may be accompanied by counsel or other representative; and, that the employee may cross-examine the witnesses against him or her, call witnesses and present evidence.
4. All hearings shall be conducted in accordance with the procedures set forth in the above-described notice requirements.

25.12 Superintendent’s Recommendation of Suspension or Termination. If, following the observance of due process procedures as provided by Sections 25.10 and 25.11, the Superintendent determines to suspend or terminate an employee, subject to board approval, notice of the Superintendent’s decision shall be provided to the employee and shall contain findings of fact and conclusions of law. A copy of such notice shall accompany any recommendation to the board that it approve the Superintendent’s decision to suspend or terminate an employee.

25.13 Suspension Without Pay. Any period of suspension imposed following the observance of due process procedures as provided in Sections 25.10 or 25.11 may be without pay.

Reference: W.Va. Code §§18-4-10, 18A-2-7, 18A-2-8
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