



**BOARD OF EDUCATION**  
 \_\_\_\_\_ **SCHOOL DISTRICT**

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**REVISED POLICY - VOL. 21, NO. 2**

**NONDISCRIMINATION AND**  
**EQUAL EMPLOYMENT OPPORTUNITY**

The Board of Education does not discriminate in the employment of professional staff on the basis of any characteristic protected under State or Federal law including, but not limited to, race, color, age, sex, creed or religion, genetic information, handicap or disability, marital status, citizenship status, veteran status, military service (as defined in 111.32, Wis. Stats.), sexual orientation, national origin, ancestry, arrest record, conviction record, use or non-use of lawful products off the District's premises during non-working hours, or declining to attend an employer-sponsored meeting or to participate in any communication with the employer about religious matters or political matters, or any other characteristic protected by law in its employment practices. **However, it is not employment discrimination if a Board refuses to employ or terminates from employment an individual who has been convicted of a felony and who has not been pardoned for that felony.**

The District Administrator shall appoint and publicize the name of the compliance officer whose responsibility it will be to require that Federal and State regulations are complied with and that any inquiries or complaints are dealt with promptly in accordance with law. S/He shall provide proper notice of nondiscrimination for Title II, Title VI, Title VII, Title IX, Section 504, Genetic Information Nondiscrimination Act (GINA), and the Age Act (ADEA) to students, their parents, staff members, and the general public.

111.31 et seq., **111.335(d)(2)**, 118.195, 118.20, Wis. Stats  
 42 U.S.C. 2000e et seq., Civil Rights Act of 1964  
 42 U.S.C. 12112, Americans with Disabilities Act of 1990  
 42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act  
 29 U.S.C. 701 et seq., Rehabilitation Act of 1973  
 20 U.S.C. 1681 et seq., Title IX  
 29 C.F.R. Part 1635



# NEOLA of WISCONSIN

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### REVISED POLICY SPECIAL UPDATE – JULY 2012

#### REDUCTION IN STAFF

It is the responsibility of the Board of Education to provide the staff necessary for the implementation of the educational program of the District and the operation of the schools and to do so efficiently and economically.

The Board reserves the right to abolish positions in the District and to reduce the staff whenever reasons of decreased enrollment of students, return to duty of regular professional staff members after leaves of absence, suspension of schools or territorial changes affecting the District, or other circumstances warrant.

The District Administrator shall develop administrative guidelines for the reduction of staff based on the best interests of the District and consistent with the terms of any applicable interdistrict agreements, and applicable law.

Where appropriate, attrition may be used to achieve the necessary number of position reductions.

#### **OPTION #1**

Selection of staff for reduction once positions have been identified, will be based on the following considerations:

- A. qualifications of the employees being considered for reduction
- B. performance of employees, based on performance evaluations
- C. input from direct supervisors
- ( ) ~~length of service to the District~~

The District Administrator shall determine the appropriate employees for reduction considering all factors that he or she deems important and in the best interests of the District.



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[ ] **OPTION #2**

~~Selection of staff for reduction once positions have been identified, will be based on seniority. The District Administrator or designee shall maintain a seniority list for each building and each job category. When a reduction in force is necessary, the Administrator shall select the least senior employee for reduction, provided that other staff has the necessary certification. ( ) The District Administrator may determine that it is necessary to retain the least senior employee when in the best interests of the District, in which case the next least senior employee shall be considered.~~

[END OF OPTIONS]



**OPTION #1**

No employee ~~that is reduced~~ **whose position has been eliminated** shall have any right to be contacted by the District in the event that a vacancy opens in the future for which the laid off employee may be qualified. Likewise, no **such** employee is entitled to a future position or is provided any preference over other applicants. **Any employee whose position was eliminated under this policy may file a grievance, under Policy 3340.** Staff whose employment ended with the District due to a reduction in force, shall not be prevented from applying for future positions with the District.

[Note: ~~If this option is selected, staff reduction results in termination of employment and the affected employee is likely entitled to access to the grievance procedure, Policy 3340.~~]



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[ ] **OPTION #2**

Any employee ~~reduced~~ **whose position has been eliminated** shall have a right to be recalled to his or her position or another vacancy in the district for which the individual is qualified for a period of \_\_\_ year(s) after the date the employee was reduced. If such an employee is offered an opportunity to return to the same or similar position and rejects the opportunity, **the employee** shall have no further right to recall.

When a vacancy occurs in a position for which there has been a reduction in staff in the prior \_\_\_\_\_ years, the administrator responsible for hiring shall attempt to make contact in order of ~~seniority~~ **greatest length of service to the District** at the time of last employment, with former employees that have remaining recall rights. The administrator shall attempt to make contact at the last known contact information. Any employee that wishes to be contacted for such positions must inform the district office of any change of address or other contact information.

If an employee is recalled, he or she must again qualify for the position, and may be required to undergo pre-employment background checks or physical examinations consistent with Board policy and applicable law.



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**[ ] OPTION #3**

Any employee reduced under this policy shall have the following benefits for a period of \_\_\_\_\_ year(s):

- ( ) the District will contact the employee in the event a vacancy opens up in the same or similar position previously held;
- ( ) if employee returns to employment, he or she shall retain all accrued benefits, including any applicable sick leave accumulation and length of service credit accrued at the time of reduction;
- ( ) [Add additional recall benefits if desired]

**Note:** Providing some level of recall benefits reduces the likelihood that reduction in force is a "termination" subject to the statutory grievance procedure.

**[END OF OPTIONS]**

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**REVISED POLICY - VOL. 20. NO. 2, PHASE 2**

**VACANCIES**

It shall be the policy of the Board of Education to employ the person best suited to perform the duties of a particular District vacancy at any level.

~~Vacancies shall be announced, consistent with any applicable terms of a collective bargaining agreement, and all members of the professional staff shall be considered for any District vacancy, providing they are properly qualified.~~

~~Whenever possible, Vacant positions shall be posted internally for a period of \_\_\_\_\_ days before being posted externally. Internal posting does not provide any preference for internal candidates.~~ <sup>may</sup> be posted internally <sup>and/or</sup>

The District Administrator shall establish procedures to facilitate identification and evaluation of candidates for administrative, supervisory, and other leadership positions.



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### REVISED POLICY - VOL. 20, NO. 2 - PHASE 3

#### STAFF DISCIPLINE

The Board of Education retains the right and the responsibility to manage the work force. When the discipline of a staff member becomes necessary, such action shall be consistent with ~~any procedural and substantive due process rights of the individual, as well as the requirements of any applicable Board policy, collective bargaining agreement and State and Federal law.~~ **The District Administrator or designee may issue discipline, short of termination, when she/he deems appropriate, however, student performance on examinations may not form the basis for staff discipline.**

#### **Investigation of Possible Criminal Activity**

The District may be required to investigate potential wrongdoings on the part of its employees. Such investigations may require that the employee answer questions relating to the activity. Employees may be required to answer ~~such questions, consistent with any applicable collective bargaining agreement.~~ Failure to cooperate in an investigation may result in discipline, up to and including termination of the employee. In cases where this possible wrongdoing may involve criminal activity, the District shall inform the employee that answers to questions relating to the employee's conduct may be used by the District for determining appropriate discipline, but will not be provided to law enforcement officials in the course of their independent criminal investigation, unless otherwise required by law. Employees must also be informed that refusal to answer questions may be considered in determining discipline.

#### **[ ] OPTION #1**

~~Staff may be disciplined for violations of Board policy or for other failure to meet the expectations and obligations of their position. Discipline may only be issued when just cause exists to issue discipline. Just cause as used in this policy shall mean that the District has concluded through a preponderance of evidence that a violation has occurred and the level of discipline is appropriate under the circumstances, considering the employee's disciplinary record.~~



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Keep

### OPTION #2

Staff may be disciplined for violations of Board policy or for other failure to meet the expectations and obligations of their position. No staff member may be subject to arbitrary or capricious disciplinary action.

[END OF OPTIONS]

### OPTION #1

Disciplinary action will normally follow a progressive discipline model that is designed to correct inappropriate conduct on the part of staff members. Progressive discipline will generally progress as follows:

- A. Oral Reprimand, with a written record placed in the employee file
- B. Written Warning
- C. Suspension, the length of which is determined by the administration to effect the corrective goal of discipline; and
- D. Termination, pursuant to Policy 3140

The District Administrator may skip one or all steps in the progressive discipline model when she/he deems that the severity of the offense requires more substantial discipline, or in the case of termination, where the District Administrator determines that the conduct is so egregious as to require the staff members immediate termination of employment, consistent with Policy 3140.

### OPTION #2

The District Administrator may issue discipline to staff members when she/he deems appropriate. The level of discipline may range from oral reprimands to suspension or termination. ~~consistent with Policy 3140.~~ The level of discipline shall be consistent with the seriousness of the offense as determined by the District Administrator.

[END OF OPTIONS]





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**All instances of staff discipline are subject to the employee grievance procedure, ~~set forth in Policy~~ \_\_\_\_\_.**

Franklin v. City of Evanston, 384 F.3d 838 (7th Cir. 2004)  
Garrity v. New Jersey, 385 U.S. 493 (1967)



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### REVISED POLICY SPECIAL UPDATE - JULY 2012

#### TERMINATION, NON-RENEWAL AND RESIGNATION

##### **TERMINATION AND NON-RENEWAL**

Teacher contracts may be terminated or non-renewed upon a majority vote of the full membership of the Board of Education.

<sup>Keep</sup>  
 **OPTION #1**

All employees are at will employees that may be terminated or whose contracts may be non-renewed for any reason provided that the decision is not arbitrary or capricious, or in violation of any applicable law.

**OPTION #2**

~~No professional staff member that has completed \_\_\_ years of service to the District may be terminated without just cause as that term is defined in Policy 3139. Prior to that time, a staff member may be terminated or for any reason, provided that the decision is not arbitrary or capricious, or otherwise in violation of applicable law. A professional staff member may be non-renewed for any reason provided that the decision is not arbitrary or capricious, or otherwise in violation of applicable law.~~

**OPTION #23**

~~No professional staff member that has completed \_\_\_ years of service to the District may be terminated or non-renewed without just cause as that term is defined in Policy 3139. Prior to that time, a staff member may be terminated or non-renewed for any reason, provided that the decision is not arbitrary or capricious, or otherwise in violation of applicable law.~~

##### **[END OF OPTIONS]**

In the event the District Administrator intends to recommend the non-renewal of a teacher's contract, he or she shall comply with applicable statutory non-renewal procedures. No teacher may be terminated or non-renewed solely on the basis of the results of mandatory student examinations.



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Any decision to terminate  or non-renew a staff member's employment contract shall be subject to review consistent with the grievance procedure, ~~in Policy 3340 - Grievance Procedure.~~

### **RESIGNATION**

A professional staff member may resign in accordance with the terms of his/her employment contract. A resignation, once submitted and accepted by the Board, is final and may not be rescinded without approval by the Board.

An administrator, other than a business manager, principal, or assistant principal, may resign by filing a written resignation with the District Administrator.

A resignation, once accepted, may not then be rescinded.

The District Administrator may act for the Board in the acceptance of a resignation.

The District Business Manager, Principal, and any assistant principals employed by the district may resign employment with the District in accordance with the terms of his/her contract. A resignation, once submitted and accepted by the Board, may not be rescinded without further action by the Board.

118.22, Wis. Stats.

118.24, Wis. Stats.

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**REVISED POLICY - VOL. 21, NO. 1**

**PHYSICAL EXAMINATION**

The Board of Education requires any candidate, as a condition of employment, to submit to an examination, including a test for tuberculosis, in order to determine the physical capacity to perform assigned duties. Such examinations shall be done in accordance with 118.25 Wis. Stats., the District Administrator's guidelines, and/or the terms of the collective bargaining agreement.

keep  
X

The Board shall also require the candidate to submit to a test for controlled substances the results of which must indicate there is no evidence of non-prescribed drug use. ~~Such examinations shall be done in accordance with the District Administrator's guidelines and/or the terms of the negotiated, collectively-bargained agreements and/or due process of law.~~

**Employees will be required to execute a release that complies with the requirements of the Health Insurance Portability and Accountability Act in order to allow the report of the medical examination to be released to the Board/District Administrator and to allow the District Administrator or his/her designee to speak to the health care provider who conducted the medical examination in order to get clarification. ~~(see Form 3160-F2).~~**

Reports of all such examinations or evaluations shall be delivered to the District Administrator, who shall protect their confidentiality. Reports will be discussed with the employee or candidate. **In compliance with the Genetic Information Nondiscrimination Act (GINA) and Board Policy 3122.02, the successful candidate who is required to submit to a medical examination, as well as the health care provider that is designated by the Board to conduct the examination, are directed not to collect genetic information or provide any genetic information, including the candidate's family medical history, in the report of the medical examination.** ~~The reports, and any documents acquired containing genetic information, will be maintained in a separate confidential personnel medical file in accordance with the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act (GINA). In the event of a report of a condition that could influence job performance, the District Administrator shall base a nonemployment recommendation to the Board upon a conference with the examining physician and substantiation that the condition is directly correlated to defined job responsibilities and reasonable accommodation will not allow the employee or prospective employee to adequately fulfill those responsibilities. Freedom from tuberculosis in a communicable form is a condition of employment.~~





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~~Employees will be notified of the results of the medical examination upon receipt.~~ Any and all reports of such examination will be maintained in a separate confidential personnel file in accordance with the Americans with Disabilities Act, as amended ("ADA") and the Genetic Information Nondiscrimination Act (GINA).

In the event of a report of a condition that could influence job performance, the District Administrator shall base a nonemployment recommendation to the Board upon a conference with the examining physician and substantiation that the condition is directly correlated to defined job responsibilities and reasonable accommodation will not allow the employee or prospective employee to adequately fulfill those responsibilities. Freedom from tuberculosis in a communicable form is a condition of employment.

The Board shall assume the fees for examinations.

118.25, Wis. Stats.

29 C.F.R., Part 1630

29 C.F.R. Part 1635

42 U.S.C. 12101 et seq. Americans with Disabilities Act of 1990, as amended

42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act

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**REVISED POLICY - VOL. 21, NO. 1**

**UNREQUESTED LEAVES OF ABSENCE/FITNESS FOR DUTY**

It is the policy of the Board of Education to protect students and employees from the effects of contagious diseases and other circumstances which—~~that~~ render professional staff members unable to perform their duties.

The Board authorizes the District Administrator to place a professional staff member on unrequested leave of absence for physical or mental inability to perform assigned duties in conformance with the law and consistent with the terms of the collective bargaining agreement.

The District Administrator shall require that the professional staff member submit to an appropriate examination, ~~by~~

- ( ) a healthcare provider designated and compensated by the District;
- ( ) a healthcare provider of the professional staff member's choice;
- ( ) provided such healthcare provider has been approved by the District;
- (+) ~~or both.~~

[ ] Where the healthcare provider designated by the Board disagrees with the healthcare provider designated by the professional staff member, the two (2) healthcare providers shall agree in good faith on a third impartial healthcare provider who shall examine the professional staff member and whose medical opinion shall be conclusive and binding on the issue of medical capacity to perform assigned duties. The expenses of a third examination shall be borne by the Board.

**The professional staff member will be required to execute a release that complies with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) in order to allow the report of the medical examination to be released to the Board/District Administrator and to allow the District Administrator to speak to the health care provider who conducted the medical examination in order to get clarification. Refusal to submit to an appropriate examination or to execute the HIPAA release will be grounds for disciplinary action, up to and including termination.**



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**As required by Federal law and regulation and Board Policy 3122.02, the District Administrator shall direct the provider designated by the Board to conduct the examination not to collect genetic information or provide any genetic information, including the individual's family medical history, in the report of the medical examination.**

**Pursuant to State law and in accordance with the Americans with Disabilities Act, as amended (ADA) and the Genetic Information Nondiscrimination Act (GINA), the results of any such examination shall be treated as a confidential medical record and will be exempt from release, except as provided by law. If the District inadvertently receives genetic information about an individual who is required to submit to an appropriate examination from the medical provider, it shall be treated as a confidential medical record as required by the ADA.**

If, as a result of such examination, the professional staff member is found to be unable to perform assigned duties, the professional staff member shall be placed on leave of absence until proof of recovery, satisfactory to the District Administrator, is furnished.

Should a professional staff member refuse to submit to the examination requested by the District Administrator such refusal shall subject the professional staff member to disciplinary action, ~~consistent with any applicable collective bargaining agreement.~~

The Board may designate any period of leave under this policy as qualifying leave under State and/or Federal FMLA leave entitlement consistent with Policy 3430.01 as provided by law.

111.32, et seq., the Wisconsin Fair Employment Act

29 C.F.R., Part 1630

29 C.F.R., Part 1635

42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, **as amended**

42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination

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**REVISED POLICY - VOL. 20, NO. 2 - PHASE 3**

**PROFESSIONAL GROWTH REQUIREMENTS**

The Board of Education believes that study is a prerequisite for professional growth of staff and, therefore, encourages the participation of professional staff members in in-service and other training programs.

The District Administrator shall plan programs of staff development for professional staff members. Such staff development programs should be designed to address the professional development needs of staff members who are working at a particular level, involved in a particular course or subject, or need to be prepared for a new assignment. The development plan should be designed to meet the needs of staff members or curriculum areas in each school.

Whenever feasible, principals should participate with their staff members in order to ensure better follow-up and support.

The Board (shall) (may) reimburse staff members for the costs incurred in participation therein, subject to prior approval of the District Administrator.

~~Participation in the program shall be voluntary unless considered part of the duties of any participating staff member consistent with the provisions in a collective bargaining agreement or other contractual arrangements.~~

**Professional staff members are expected to comply with the Professional Development Plan requirements of their license and provide timely verification of progress towards fulfilling this responsibility.**

121.02(b), Wis. Stats.  
P.I. 8.01(2)(b), Wis. Adm. Code