

The Board may discipline, or proceed with charges to dismiss or demote, any probationary teacher, or recommend dismissal of any tenured teacher or administrator upon recommendation by the Superintendent in accordance with the Michigan Tenure Act and/or within the provisions of law and/or the current negotiated master contract.

The Superintendent or building Principal shall make written recommendations to the Board concerning an employee on probation that, in his/her judgment should be considered for dismissal or to proceed on charges against any tenured teacher being considered for a recommendation for dismissal.

Any action for non-renewal of the Superintendent's contract or the contract of any Assistant Superintendent, Principal, Assistant Principal, Guidance Director, and other administrators who do not assume tenure in that position shall be under the provisions of law. (MCL 380.1229)

The Superintendent is authorized by the Board to suspend from active duty any teacher against whom formal charges are anticipated being filed or have already been filed, until a decision is rendered or unless the Board acts to reinstate said teacher.

#### Teacher Convictions

Generally, if a teacher is suspended, the teacher's salary shall continue during the suspension.

However, if a teacher is suspended and

- The teacher is convicted of a felony that is not a listed offense or a misdemeanor that is a listed offense, upon the Board's discretion, the teacher's salary may be discontinued upon the date of conviction.<sup>1</sup>

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<sup>1</sup> A listed offense includes any of the following:

- 1) Accosting or soliciting a child for immoral purposes (MCL 750.145a-c);
- 2) Sodomy if the victim is an individual less than 18 years of age (MCL 750.158);
- 3) A third or subsequent violation of any combination of the following:
  - a. Being engaged in indecent or obscene conduct in a public place (MCL 750.167(1)(f))
  - b. Indecent exposure (MCL 750.335a)
  - c. A local ordinance of a municipality substantially corresponding to the above;
- 4) Except for a juvenile disposition or adjudication, gross indecency between males, females, or between a male and female, if the victim was under 18 years of age (MCL 750.338-338b);
- 5) Kidnapping (MCL 750.349);
- 6) Kidnapping under age 14 (MCL 750.350);
- 7) Soliciting and accosting (MCL 750.448);

- The teacher is convicted of a felony that is a listed offense; the Board shall discontinue the teacher's salary upon the date of conviction.
- The teacher pleads guilty, no contest, or is convicted of a crime listed in MCL 380.1535a(2), the Board shall discontinue the teacher's salary.<sup>2</sup>

Under such circumstances, all discontinued wages shall be held in an escrow account until the Superintendent of Public Instruction makes a final determination of whether or not to suspend or revoke the individual's teaching certificate.

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- 8) Pandering (MCL 750.455);
  - 9) 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> degree criminal sexual assault, and second or subsequent offenses (MCL 520b-e);
  - 10) Assault with intent to commit criminal sexual assault (MCL 750.520g);
  - 11) Sexually delinquent persons (MCL 750.10a);
  - 12) The attempt or conspiracy to commit any of the above offenses;
  - 13) Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age; and (Continued next page)
  - 14) Any offense substantially similar to the above offenses under a law of the United States, any state, or any country or under tribal or military law.

<sup>2</sup> MCL 380.1535a(2) includes the following offenses:

- a) Criminal sexual conduct in any degree, assault with the intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree;
- b) Felonious assault on a child<sup>2</sup>, child abuse in the first degree, or an attempt to commit child abuse in the first degree;
- c) Cruelty, torture, or indecent exposure involving a child;
- d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410, or 7416 of the Public Health Code (concerning unlawful manufacture, delivery, or possession of controlled substances or controlled substance analogues; distribution of marijuana to minors near school property; and recruiting or inducing a minor to commit a felony);
- e) A violation of section 83, 89, 91, 145a-c, 316-17, 350, 448, 455, or 529 of the Michigan Penal Code (concerning assault with intent to commit murder or to steal while armed; attempt to murder; consumption or possession of alcohol by minors, or controlled substances at social gatherings; first and second degree murder; armed robbery; and using the Internet when committing a crime against a minor);
- f) A violation of section 158 of the Michigan Penal Code if the victim was an individual less than 18 years of age (concerning crimes against nature or sodomy);
- g) Except for a juvenile disposition or adjudication, a violation of section 338, 338a, or 338b of the Michigan Penal Code if the victim was an individual less than 18 years of age (concerning gross indecency between males, females, and between males and females);
- h) A violation of section 349 of the Michigan Penal Code if the victim was an individual less than 18 years of age (concerning kidnapping);
- i) An offense committed by a person who was, at the time of the offense, a sexually delinquent person – any person whose sexual behavior is characterized by repetitive or compulsive acts which indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sex relations of either a heterosexual or homosexual nature, or by the commission of sexual aggressions against children under the age of 16;
- j) An attempt or conspiracy to commit an offense listed in (a) or (e-i);
- k) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States; Any crime listed in 1535(1), if the superintendent of public instruction determines the public health, safety or welfare requires emergency action based on the circumstances underlying the conviction.

If the individual's teaching certificate is suspended, all wages will be forfeited. If the individual's teaching certificate is not suspended or revoked, the individual shall be paid all withheld wages without interest. Should a person's conviction be reversed on appeal, that person shall be treated in a manner consistent with applicable law.

#### Reporting Crimes and Convictions

All District employees shall disclose criminal charges or convictions to the Superintendent as prescribed by law.

Failure to report being charged or convicted of a crime may result in dismissal.

*Notice shall be provided to all employees and contractors of the duty to report criminal charges and convictions. (Optional – this is not required by statute.)*

The Superintendent will promulgate appropriate administrative rules regarding the procedures to be followed in the event of any complaints or criminal charges being filed against members of the professional staff.

Approved:     October 18, 2007  
                  MASB Rec. *and Optional*

LEGAL REF: MCL 38.71-121; 380.1229; 380.1230d; 380.1535a; 380.1539b

General Procedure for Handling Complaints about a Member of the Professional Staff (Cf. 9450)

Complaints will be investigated fully and fairly, and the employee's rights to due process<sup>3</sup> shall be protected at all times under these rules, applicable law, or in compliance with appropriate collective bargaining agreements.

Whenever a complaint is made directly to the Board as a whole or to a Board member as an individual, it shall be referred to the administration for study and possible solution. The employee involved will be informed and shall be given every opportunity for explanation, comment and presentation of the facts as the employee sees them. The employee shall also be given the opportunity to meet with the person(s) making the complaint if the employee so desires.

The employee involved may request a closed session of the Board for a full study and decision by this body. Statutory provisions for closed sessions of the Board shall be observed.

Generally all parties involved, including the administration, will be asked to attend such a meeting to present additional facts and clarify the issues. Hearsay and rumor shall be disregarded as will any emotional display.

The Board shall conduct such meetings in as fair and just a manner as possible. The Board may request a disinterested third party to act as moderator to help the Board reach a mutually satisfactory solution.

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<sup>3</sup> Due process includes both substantive and procedural due process. Substantive due process protects employees from arbitrary, capricious, irrational, or unreasonable action (requires that a rule or a disciplinary decision must be rationally related to a legitimate state interest). Procedural due process includes the concepts of proper notice to the accused and the right to a hearing before a property interest is taken away. The extent of the procedures due depends on the nature of the interest being taken away, i.e., the more that could potentially be taken away, the more procedural protections must be provided. If the maximum penalty that could be imposed is relatively small, only a small amount of procedural due process is required.

### Reporting Crimes and Convictions

Pursuant to law, any person employed by the District, who has applied for a position with the District, or who regularly and continuously works under contract in any of the District's schools that is charged with a crime listed in MCL 380.1535a(1) shall notify the District and the Department of Education that he or she has been charged with the crime.<sup>4</sup>

Any person who reports being charged with a crime, and who is subsequently not convicted, may request that the District and the Department of Education delete the report from its records. Upon such request, the District shall delete the report.

Any person employed by the District or who regularly and continuously works under contract in any of the District's schools that pleads guilty, no contest, or is convicted of a crime listed in MCL 380.1535a(1) shall immediately notify the court and prosecuting attorney that he or she is employed with the District. The person must also notify the Superintendent and the Department of Education that he or she has been convicted of the crime.

The Superintendent shall provide notice to all employees and contractors of the duty to report criminal charges and convictions. Notice shall be given regularly and in a form that the Superintendent deems appropriate. (Optional)

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<sup>4</sup> MCL 380.1535a(1) includes a conviction for *any felony* and any of the following misdemeanors: 1) criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree; 2) child abuse in the third or fourth degree, or any attempt to commit child abuse in the third or fourth degree; 3) a misdemeanor involving cruelty, torture, or indecent exposure involving a child; 4) a misdemeanor violation of Section 7410 of the Public Health Code (concerning distribution of marijuana to minors near school property); 5) a violation of section 115, 141a, 145a, 335a, or 359 of the Michigan Penal Code (concerning breaking and entering; consumption or possession of alcohol by minors, or controlled substances at social gatherings; soliciting a child for immoral purposes; indecent exposure; and damage to vacant buildings); or a misdemeanor violation of section 81, 81a, or 145d of the Michigan Penal Code (including assault and battery; domestic assault; assault and infliction of serious injury; and using the Internet to commit a crime against a minor); 6) a misdemeanor violation of Section 701 of the Michigan Liquor Control Act (concerning the prohibition of liquor sales to minors); 7) any misdemeanor that is a listed offense; and 8) a violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States – as amended by 2005 PA 130.

### Hearing Procedure – Complaints against Employees

The formal hearing provided for in Board policy shall be conducted in accordance with the following procedures and the employee shall have the following rights under the hearing procedure:

- The right of the employee to have counsel of their own choice present and to receive the advice of counsel or other person the employee may select,
- The right of the employee and his/her counsel or advisor to hear or read a full report of testimony of witnesses against the employee,
- The right of the employee and/or his/her counsel to confront and cross-examine witnesses who appear in person at the hearing,
- The right of the employee to present his/her own witnesses,
- The right of the employee to testify in his/her own behalf and give reasons for his/her conduct and address the accusations against him/her,
- The right of the employee to have an orderly hearing, and
- The right of the employee to a fair and impartial decision based on substantial evidence.

In these procedures, “counsel” means any person the employee selects to represent and advise him/her at all proceedings conducted according to these procedures.