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EXPLANATION: RESIGNATION OF PROFESSIONAL STAFF MEMBERS

MSBA has updated this policy for clarity and legal compliance.

MSBA has revised this policy so that the Board no longer needs to accept resignations from at-will professional employees (those without employment contracts). MSBA has also attempted to clarify the resignation process for professional employees with contracts.

MSBA has amended the section titled "Allegations of Sexual Misconduct with a Student." In 2013 the legislature amended the Amy Hestir Student Protection Act to require districts to share information with not only other public schools, but also charter schools, regarding employees who have resigned from the district due to allegations of sexual misconduct.

MSBA has also added language to this policy that makes it clear that the district may share information with future potential employers about situations where an employee has left the district unprofessionally by failing to resign, failing to give adequate notice of resignation or breaking an employment contract with the district. Because this is factual information about the employee's performance, policy GBLB already allows districts to share this information. However, this added language is an additional reminder to employees regarding this potential consequence.

Liquidated Damages

Some districts want to charge liquidated damages to employees who break employment contracts with the district. Please be advised that liquidated damages can only be applied if the district issues an employee an employment contract, and the employee breaks the contract. At-will employees cannot be subject to liquidated damages or any other type of penalty for suddenly leaving the district, just as the district can terminate employment or lay off these employees as well. If the district does contract with employees and intends to charge liquidated damages to employees who break those contracts, the district MUST include liquidated damages in the employment contracts. It is not enough to put liquidated damages provisions in the policy. However, districts that charge liquidated damages may wish to include the following sample language above the fourth paragraph of the "Employees with Contracts" section of this policy:

If an employee under contract with the district is not released from the contract and chooses to break the contract, the district is entitled to compensation for the costs of finding a suitable replacement, training expenses and other disruptions. Because the actual damages will be difficult, if not impossible, to ascertain, the Board agrees that the following damage amounts are a reasonable estimation of the damages:

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If the written resignation is received by the superintendent or designee by:

The employee will pay:

June 1 – June 30
July 1 – July 31
August 1 or later

[amount or percentage of contract]
[amount or percentage of contract]
[amount or percentage of contract]

The district may deduct the damage amounts from the employee's paycheck or other compensation the district owes the employee if the employee has agreed to these deductions by contract or in writing or if the district otherwise determines it has the legal authority to do so. If a payroll deduction is not possible or is insufficient to cover the damage amount owed by the employee, the employee must pay the balance of the damage amount within one month of submitting his or her resignation to the superintendent or designee to prevent the Board from taking action against the employee for breach of contract.

If the employee does not pay liquidated damages as required, the Board reserves the right to pursue....

Early Resignation Incentives

Some districts also have early resignation incentives. If this is true for your district, this is a good policy in which to incorporate that incentive. Districts may wish to use the following sample language:

Early Resignation Incentive

In order for the district to recruit, employ and appropriately train replacement employees, the district will pay certificated professional staff members a monetary incentive to notify the district in writing of their resignation no later than [date] if the resignation is effective beginning the following fiscal or school year. The monetary amount will be set by the Board and may change on an annual basis.

Please note: If the district uses this optional language, the district will not be able to utilize state statute § 169.596, RSMo., which allows school districts to employ retirees on a full-time basis for up to two years if the district has an employee shortage (Critical Shortage Exception), and allows the employee to continue to collect retirement benefits through the Public School Retirement System (PSRS).

There are many conditions school districts must follow to qualify to use the Critical Shortage Exception. One in particular is that the district cannot have offered an early retirement

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incentive for the previous two years. The PSRS has determined that any policy that conditions payment upon termination of employment with the district is an “early retirement incentive,” even if the policy does not mention retirement or condition the payment specifically on the employee retiring. Specifically, PSRS has determined that policies that pay employees for submitting resignation letters to the district by a particular date are disqualifying early retirement incentives.

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| <i>MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.</i> | | | | | |
| X | Board Secretary | | Business Office | | Coaches/Sponsors |
| | Facility Maintenance | | Food Service | | Gifted |
| X | Human Resources | | Principals | | Library/Media Center |
| | Health Services | | Counselor | | Special Education |
| | Transportation | | Public Info/Communications | | Technology |

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RESIGNATION OF PROFESSIONAL STAFF MEMBERS

The district encourages employees to notify the superintendent **or designee in writing** as soon as they decide not to return or not to accept another contract with the district. Resignations become effective at the end of the school year in which they are submitted unless the district is notified otherwise.

~~A tenured teacher has a binding contract with the district for the next school year if the teacher does not notify the district of his or her resignation in writing by June 1. A probationary teacher has a binding contract with the district once the teacher and the Board have executed a contract.~~ Resignations will be submitted to the Board for notification or approval at the next regular Board meeting, and the superintendent will make recommendations to the Board in situations where an employee is seeking release from a contract.

Employees without Contracts

Employees without employment contracts are considered at-will employees and may resign at any time by submitting a written resignation to the superintendent or designee. The resignation is considered accepted once it is received by the superintendent or designee. The district requests that employees give notice at least ten business days prior to departure so that a replacement can be found or alternative arrangements can be made. The fact that an employee resigned without adequate notice may be shared with potential employers seeking information about the employee.

~~Release from Contract~~ **Employees with Contracts**

In general, professional staff members including, but not limited to, teachers and principals, have a binding contract with the district once the employee and the Board have executed a contract in accordance with law. A tenured teacher has a binding contract with the district for the next school year if the teacher does not notify the district of his or her resignation in writing by June 1.

Employees may notify the district that they will not accept a future employment contract or an extension of an existing contract by submitting a written resignation notice to the superintendent or designee at any time. The resignation is considered accepted once it is approved by the Board.

Employees who seek to resign during the course of a contract or after a contract has been executed, even if performance has not begun, must notify the superintendent or designee in writing of the request to resign. ~~Once under contract,~~ Only the Board has the authority to release an employee from a contract. The Board considers serious illness, transfer of a spouse and military service legitimate reasons for resignation of professional staff, but the Board will consider each resignation on an individual basis. An employee will not be released from a contract unless a suitable replacement is found.

The Board reserves the right to pursue all available legal remedies when an employee breaks a contract with the district including, but not limited to, filing charges to have a teaching certificate or professional license revoked or seeking a monetary judgment. In addition, the district may share with potential employers seeking information about the employee the fact that the employee broke a contract with the district.

Allegations of Sexual Misconduct with a Student

If a former district employee whose job involved contact with children was terminated, nonrenewed or allowed to resign in lieu of termination as a result of an allegation of sexual misconduct with a student, or as a result of such allegations being substantiated by the Children's Division (CD) of the Department of Social Services' child abuse and neglect review board, the district is required by law to release information regarding the sexual misconduct to a potential public school or charter school employer who contacts the district regarding the former employee. In addition, if the CD substantiates a complaint of sexual misconduct with a student against a former employee of the district, the law requires the district to release the results of the CD investigation to any potential public school or charter school employer who contacts the district.

When employment ends as a result of an allegation of sexual misconduct with a student, the district will provide appropriate due process prior to the release of information regarding the sexual misconduct to a potential public school or charter school employer, if feasible. The superintendent or designee is authorized to consult with the district's attorney to determine the appropriate level of due process to provide.

For the purposes of this policy, employees are considered "former employees" if they have resigned, been terminated, had their contracts nonrenewed, or been notified that their contracts with the district will not be renewed or that the district is pursuing termination, even if the process has not been completed.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted: 08/08/1994

Revised: 08/11/2003; 06/28/2012;

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Legal Refs: §§ 162.068, 168.101 - .130³, RSMo.
U.S. Const. amend. XIV

Camdenton R-III School District, Camdenton, Missouri

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