

**DIFFICULT
PERSONNEL DECISIONS**

DOING WHAT IS RIGHT

THE RIGHT WAY

“DISMISSAL”

“SUSPENSION”

“TERMINATION”

DOING WHAT IS RIGHT
THE RIGHT WAY

By

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INTRODUCTION

Termination, dismissal and suspension of a teacher are serious steps and should not be taken without significant consideration and forethought. However, if necessary, you should not fear doing what is right.

Any teacher who has taught in the system continuously for at least ninety (90) days is required to be treated in the same manner as a teacher put on annual contract and must be dismissed, suspended or terminated in the manner provided for the dismissal or termination of your initial contract teachers.

The dismissal or suspension of either a continuing contract or an initial contract teacher requires application of the same process and is more particularly described in the section entitled **DISMISSAL AND SUSPENSION REQUIREMENTS**.

Termination of an initial contract teacher can be accomplished without the requirements of a hearing or complying with a full due process procedure if the initial contract teacher is notified in writing of the reasons for termination by April 15 of each year.

Any school district may, by contract or policy, give an initial contract teacher a right to a hearing; however, absent such provision, notice and reasons are all that is required.

The termination of a continuing contract teacher is discussed in greater detail under the section of this booklet entitled *THE TERMINATION TRAIL*.

State law has provided a method for the termination of continuing contract teachers and the dismissal or suspension of all teachers when there is a legitimate reason. Administrators and school boards need not fear the process provided two conditions are met. First, there must be reasonable proof that the teacher is inadequate in some way or that his continued presence in the school system would be detrimental to the education of children. The specific statutory reasons are incompetency, neglect of duty, immorality, insubordination, unsatisfactory performance, or any other good or just cause. The second condition requires that the proper procedures are followed in dismissing, suspending or terminating a teacher.

Both ingredients are essential for proper dismissal or suspension of any teacher or termination of a continuing contract teacher to take place. They have been included to protect the teacher from an unfair dismissal, suspension or termination, and provide some guidelines to the administrator and school board that may improve education by requiring improved supervision, evaluation, and inservice programs.

State law has provided an identical method for dismissal and suspension of a teacher. These, however, should not be confused as the same thing. Dismissal is the termination of a contract of a teacher prior to its expiration. It allows the school to discontinue payment of contract services to the teacher upon completion of the dismissal. The

suspension of a teacher is a temporary leave from school. There are two types of suspension. Suspension with pay means the removal of a teacher from the classroom during the school year without termination of salary pending the outcome of a hearing concerning the suspension or dismissal of a teacher. Suspension without pay means the removal of a teacher from the classroom during the school year with the termination of salary for a period not to exceed one (1) calendar year commencing upon completion of a hearing. Thus, it is possible to suspend a teacher from school without a hearing provided the teacher receives pay until such time as a formal due process hearing can be scheduled and held pertaining to either suspension without pay or dismissal of the teacher.

State law setting forth the rules and regulations concerning dismissal, suspension and termination procedures may change from time to time. It is imperative that you consult with your legal counsel concerning all aspects of those procedures, and specifically to find out whether the rules and procedures set forth in this booklet may have changed or been amended since its publication.

DISMISSAL AND SUSPENSION REQUIREMENTS

DOING WHAT IS RIGHT THE RIGHT WAY

The dismissal and suspension process involves two participants -- a teacher and a school board. Each may, and should, have assistance from others who are important to the process. Those assistants will fall under the category of, first, attorneys for each participant; and second, witnesses who will help present the factual situation for both participants. These witnesses consist usually of administrators -- either supervisors, principals, or superintendents, fellow teachers, students, parents, and anyone else having direct knowledge of the point in issue.

Each player follows the process according to rules established in Chapter 7, Title 21 of the Wyoming Education Code of 1969, as amended, and the Administrative Procedures Act found in Chapter 3, Title 16 of the Wyoming Statutes. **Each participant should read the rules carefully before proceeding with the game.**

There are several pitfalls along this trail that either participant may fall into by failing to comply with the time lines, rules, regulations, or other procedural requirements. Pay careful attention to the time lines each participant is required to comply with.

Before you are ready to begin playing, there are certain terms you need to understand. Review those terms now.

- (1) *Board:* The board of trustees of any school district in the State of Wyoming offering instruction in any of the grades kindergarten through twelve (K-12).

- (2) *Continuing contract teacher:*
- (a) Any initial contract teacher who has been employed by the same school district in the State of Wyoming for three (3) consecutive school years, and has had his contract renewed for a fourth consecutive school year or,
 - (b) a teacher who has achieved continuing contract status in one (1) district who without a lapse of time has taught two (2) consecutive school years and has had his contract renewed for a third consecutive school year by the employing school district.
- (3) *Dismissal:* The cancellation of any teacher's contract of employment by the board of trustees while such contract is in effect. In a continuing contract teacher's case, dismissal shall mean cancellation of his contract any time other than at the end of the school year where proper notice has been given.
- (4) *Initial contract teacher:* Any teacher who has not achieved continuing contract status.
- (5) *Superintendent:* The chief administrative officer of any school district.
- (6) *Suspension:*
- (a) Suspension with pay means the removal of a teacher from the classroom during the school year without termination of salary pending the outcome of a hearing in accordance with W.S. §21-7-110.
 - (b) Suspension without pay means the removal of a teacher from the classroom during the school year with the termination of salary for a period not to exceed one (1) calendar year commencing upon completion of a hearing held under W.S. §21-7-110.
- (7) *Teacher:* Any person employed under contract by the board of trustees of a school district as a certified professional employee.
- (8) *Termination:* The failure of the board of trustees of a school district in Wyoming to re-employ a teacher at the end of a school year in any given year.

DISMISSAL OR SUSPENSION SHOULD NOT COME AS A SURPRISE

A teacher should not receive a written notice of suspension or dismissal for incompetency, neglect of duty, immorality, insubordination, unsatisfactory performance, or other good or just cause as a complete surprise. Generally staff should know what is expected of them and when they are violating school policy and/or administrative expectations. There may be instances of such a serious neglect of duty, act of immorality, or act of insubordination where a single incident never before having occurred could result in the suspension or dismissal of a teacher. Most often, however, at some point a principal or person responsible for making an appraisal of teaching capabilities should make an evaluation or evaluations. State law mandates evaluation of the performance of each initial contract teacher in writing at least twice annually and evaluation of the performance of each continuing contract teacher in writing at least once each year. A conference between the teacher and the evaluator should follow with suggestions given that might improve classroom teaching. As many follow-up evaluations and conferences as deemed necessary should be conducted.

Records of the evaluations and conferences should be placed in the teacher's file. If these procedures are followed, no teacher will ever receive a suspension or dismissal notice for incompetency or unsatisfactory performance without having been forewarned. In most cases of neglect of duty or insubordination, the teacher will also have been forewarned.

Evaluation and performance records, with evidence of a conference to discuss methods of improving instructional techniques, or in single incidents of misconduct, letters of reprimand or memos to the file, will be essential in presenting the board's case in case of a dismissal hearing. The records may provide evidence of attempts to strengthen areas of weaknesses and help provided to the teacher. The records should indicate the teacher had a clear understanding that if he took the action warned against or proceeded in the conduct he had been warned to stop, such action may result in suspension or dismissal.

DISMISSAL AND SUSPENSION GROUNDS

Incompetence is only one reason for the suspension or dismissal of a teacher. The Wyoming Education Code of 1969 specifies five other reasons for dismissal (§110).

The legally acceptable reasons for teacher suspension and dismissal are:

1. Incompetence
2. Neglect of duty
3. Immorality
4. Insubordination
5. Unsatisfactory performance
6. Other good or just cause

UNSATISFACTORY PERFORMANCE is a reason which was added to the list after the others had previously been listed by the Wyoming Legislature. Presumably it was not intended to be the same as incompetency or neglect of duty. Thus, though a teacher may not be incompetent or have neglected to perform a duty, if that teacher is not satisfactorily meeting the performance requirements of your district as determined by your district, the teacher may be suspended or dismissed for unsatisfactory performance.

If the superintendent, or any member of the board designated by the superintendent or designated by the board pursuant to a majority vote of the board, believes that a teacher should be suspended or dismissed for any of the above designated reasons, he/she is ready to begin down the trail at the square marked WRITTEN NOTICE.

WRITTEN NOTICE REQUIRED FOR DISMISSAL AND SUSPENSION

Suspension or dismissal proceedings are initiated by the superintendent or any member of the board delivering a written notice of the dismissal to the teacher.

The first pit fall for the board along the trail that will result in the teacher prevailing is:

- 1) a failure to provide a written notice (an oral notice will not do);
- 2) a failure to provide the reasons for suspension or dismissal. The reasons must be specific enough to notify the teacher of what it is he/she is being suspended or dismissed for.

Generally, written notices are delivered by registered mail or served upon the teacher by a law enforcement officer authorized to serve papers and provide a written return of service. This provides a written receipt verifying receipt of written notice.

TO BEGIN DOWN THE TRAIL

If a teacher is to be suspended or dismissed for incompetence, unsatisfactory performance, or frequently, neglect of duty and insubordination, the superintendent or board member must return to the start if he has failed to follow the evaluation policy of the school district. In this event, there is no point in proceeding any further down the trail. Generally this will require that the administrator provide not only evaluations but also follow-up conferences, and make an effort to remediate the teaching problem if incompetence or unsatisfactory performance is given as the reason for suspension or dismissal.

In any situation in which a school has provided notice of a recommendation of dismissal or suspension and while preparing for the hearing has discovered that it has not properly followed policy or conducted the appropriate evaluations nor prepared appropriate documentation, the board participant has the option of proceeding with the hearing and/or the appeal with a high likelihood of losing, or withdrawing the recommendation for suspension or dismissal and returning to start the process over.

SUSPENSION MAY BE USED PENDING A DISMISSAL OR TERMINATION HEARING

The Wyoming Legislature in 1998 amended the statutes to provide that a teacher may be suspended with pay pending a suspension or dismissal hearing. Thus, when the superintendent or board determines that there are adequate reasons to suspend or dismiss a teacher, the superintendent may give the teacher notice that he/she is on suspension with pay pending the due process hearing provided for in W.S. 21-7-110. The suspension with pay may be immediate upon delivery of the written notice. There is no requirement to give the teacher time to request a hearing or to make any other response. The suspension with pay is immediate. The reasons allowed by law for dismissal are identical to those allowed for suspension. Most often, when there is a sufficient legal basis to pursue a suspension involving the formal notice and hearing procedures and mandating the same proof as for a dismissal, the board will elect to pursue the dismissal rather than the suspension. The Legislature, however, in 1998 specifically amended the law to provide that a teacher may be suspended without pay for not more than one (1) year which provides a valid alternative to dismissal.

THE DISMISSAL AND SUSPENSION HEARING

Any teacher who is to be suspended or dismissed prior to the expiration of his contract has a property interest in employment and is entitled to a hearing on the reasons for suspension or dismissal. There is, however, a difference in the proceeding specifically mandated by the statutes for continuing contract as opposed to initial contract teachers, which probably was a legislative oversight. Nonetheless, it raises a legitimate question as to whether or not an initial contract teacher who is to be suspended or dismissed has a right to a hearing before an independent hearing officer. W.S. §21-7-110(c) specifically requires that a continuing contract teacher who receives notice of dismissal or suspension is entitled to a hearing before an independent hearing officer. There is no statutory provision that indicates an initial contract teacher is also entitled to a hearing before an independent hearing officer. However, because the initial contract teacher does have a property interest - at least for the duration of his teaching contract - he/she would be entitled to a hearing. The reasons for having the hearing before an independent hearing officer regarding suspension or dismissal apply equally to continuing and initial contract

teachers and therefore it is recommended that you proceed with the hearing before an independent hearing officer for both initial and continuing contract teachers in case of a dismissal or suspension.

Any teacher receiving notice of a recommended suspension or dismissal must make a written request for hearing within seven (7) days after receipt of the notice of recommendation for dismissal or suspension.

If the teacher should fail to deliver the written request for a hearing to the superintendent within seven (7) days after receipt of notice, then no hearing is required and the superintendent or board member making the recommendation may make the recommendation to the board of trustees either at a special board meeting called for that purpose or at a regularly scheduled board meeting. Discussion concerning the purpose for the recommendation should be held in executive session in order not to damage any property or liberty interest of the teacher. Thereafter, formal action on the recommendation would need to be taken in open session. The teacher would then need to be advised in writing of the decision of the board.

Assuming the teacher does make a request for a hearing, then within five (5) days following receipt of the request, the superintendent and teacher are to meet and jointly select a hearing officer. To the extent possible, the hearing officer should be impartial, experienced in education, labor and employment matters, and in the conduct of hearings. If the superintendent and teacher are unable to agree who the hearing officer should be, then the district judge shall select a hearing officer. The statutes do not provide a time within which the district judge is to select the hearing officer, however, this request should be made immediately after the expiration of the five (5) days and a request should be made for the district judge to do that expeditiously as the hearing officer who is selected must set up the hearing and conduct it within forty-five (45) days after notice of recommendation for dismissal or suspension is given to the teacher.

Expenses of the hearing officer who is ultimately selected are to be paid equally by the school district and the teacher.

The hearing officer is required to set the date for the hearing and notify the teacher and superintendent of the hearing date, time, and location within five (5) days after selection. He may schedule the hearing any time but in no event later than forty-five (45) days after notice of the recommendation for dismissal, suspension or termination.

Your district should have rules and regulations governing contested case hearings providing for hearings to be conducted by an independent hearing officer, which rules should comply with the Wyoming Administrative Procedures Act. These rules will govern the administering of oaths, the accepting and rejecting of evidence and testimony, the issuance of subpoenas if necessary, and generally provide the teacher an opportunity for presentation of evidence, cross-examination of witnesses, etc.

The board should take care to make sure it follows along the trail and complies with the deadlines set forth in the Teacher Education Code. Assuming each procedural step is complied with, you will move to the date set for the hearing. At the hearing, the superintendent shall have the burden of proving the recommendation for dismissal, suspension or termination is based upon reasons provided in the notice of dismissal, suspension or termination (discussed above).

The superintendent or representative of the school district should always request that the hearings be conducted in a closed session to avoid subsequent claims of damage to liberty and property interests of the teacher. The teacher, however, has the right to have the hearing held in public. If the teacher requests that the hearing be held in public, care should be taken to make certain the formal record of the hearing reflects that it was the teacher who requested the open hearing, not the school district. Absent the teacher exercising this right, the hearing should be closed to the public.

The hearing is conducted in the same manner as trials, which most of us have viewed on television. Opening statements are generally made by both sides; witnesses are sworn in prior to testimony, and each side is given an opportunity to cross-examine the other's witnesses; exhibits are marked and introduced and either admitted or rejected as evidence; and at the conclusion of the presentation of evidence each side is given an opportunity to make a closing argument.

In every case in which a formal due process hearing is to be conducted, the school district should be represented by legal counsel. If the attorney who is representing the administration presenting the case at the time of the hearing is the school's regularly retained counsel, that counsel cannot then, after the hearing officer makes proposed findings of fact and conclusions of law and submits them to the board of trustees for a final decision, also advise the board of trustees what it should do. Separate legal counsel must be retained to advise the board when it is deliberating on its final decision. Alternatively, the school district may hire outside legal counsel to assist the administration in conducting the hearing and then the regular school counsel may advise the board of trustees when it is deliberating and preparing to make a final decision on the proposed findings of fact and recommendations made by the hearing officer.

SUCCESS AT THE HEARING

PREPARATION - If there is a legitimate reason for the dismissal, suspension or termination, appropriate preparation for the hearing translates into success. It is the duty of every school board member and administrator to do what is in the best interests of the school. Sometimes this means dismissing, suspending or terminating personnel. Although

any decision detrimental to a member of your staff will be difficult, it is not something you should be afraid of if it is in the best interests of the school and the students.

Before delivering the recommendation notice to the staff member, the superintendent or board member making the recommendation should have consulted with the school's legal counsel and determined that there is a sufficient legal basis for the recommendation and sufficient evidence to prove the reasons that are the basis for the recommendation.

Documents introduced as evidence to support the reasons for termination should be carefully reviewed by the administration and the attorney who will assist the administration in presenting the documentation as evidence. Take care to make certain the evidence is admissible and to determine through which witness it will be admitted. Witnesses whom will need to testify in support of the reasons for the recommendation should be consulted and, if possible, interviewed before delivering the notice to the teacher to make certain he/she will in fact testify as anticipated. Each of those witnesses should be interviewed and prepared for the hearing by the attorney who will assist the administration in conducting the hearing. Each witness should, in advance of his being called as a witness, know what questions he will be asked and what documents he will be asked to review and testify about.

The administration and the attorney for the administration will need to carefully consider and anticipate the teacher's response and the position that the teacher will be taking. Witnesses may need to be called or documents introduced as exhibits to refute anticipated testimony of the teacher or witnesses to be called by the teacher.

Do not overlook staff handbooks and school district policies that have any bearing upon the dismissal, suspension or termination. Take care that the administration is following the policies, rules or regulations, or if the teacher is alleged to have violated such policies, rules or regulations, that there is not any other directive or rule inconsistent with the position taken by the school district.

Never proceed through a hearing on the basis that "I KNOW WHAT IS BEST FOR THIS SCHOOL" or "THIS IS WHAT I WANT". You will have better success if you approach the reason for the action as being: this is what we have to do for our children and it is the students who will suffer if the recommendation is not upheld.

Remember that it is always much easier to find witnesses, parents, students, community members, etc., who are willing to come out and speak in favor of somebody rather than opposed to them. Often, no matter how egregious the act or performance of the staff member being dismissed, suspended or terminated, he can find some students, parents, and even fellow staff members who will speak in support of him. Be prepared for a large number of people from the community attending such hearing, particularly if it is an open hearing, in support of the staff member. Similarly, you need to understand and be

prepared for the fact that it is difficult to find witnesses who are willing to go to a hearing, take an oath, and testify why a teacher should be dismissed, suspended or terminated.

If the termination is for incompetence or unsatisfactory performance, you should have sufficient documentation of evaluations, conferences, attempts to remediate, re-evaluation, and subsequent conferences to persuade the hearing officer that you have made a serious good faith effort to remediate the teacher's teaching problems, such remediation was ineffective, and it is now in the best interests of the students for a better teacher to be employed. In the instances of insubordination, neglect of duty, or immorality, depending upon the seriousness of them, you may also need to prove warnings, evaluation, conference, and re-occurrences of similar problems. Occasionally a single incident of insubordination, neglect of duty, or immorality may be sufficient to warrant a dismissal, suspension or termination. In that instance, you need to be prepared to present testimony why a single incident is so serious as to warrant the dismissal, suspension or termination without giving the employee a second chance. Such incidents may include acts such as drug convictions, child abuse, or willful endangerment of a child, etc.

Present all of the evidence you have in support of your position. Do not hold back.

It is generally best, with incompetence or unsatisfactory performance, if you have more than one administrator who can testify in support of the recommendation. This avoids the defense that the problem is merely a personality problem between the administrator and the teacher. Seldom is it a good idea to use students as witnesses. This is particularly true if the dismissal, suspension or termination is for incompetence or unsatisfactory performance.

Be prepared for the publicity that will be generated from such a hearing. Anticipate the newspaper and radio contacting you for information. Make certain you discuss this with your attorney and know what information can be released and what cannot. Usually there is very little information that can be released.

Do not be afraid to subpoena witnesses who have valuable information but who simply do not want to talk to you in anticipation of a hearing because they do not want to get involved. Often there are fellow teachers who, because they belong to the same education association or because they do not want to say anything negative about a fellow staff member, may have valuable information that you can use by subpoenaing them to testify at the time of the hearing. It can be dangerous to call a witness, however, if you do not know what he will testify to. If you intend to call such a witness, you should be confident that once they are sworn to tell the truth, they will do so, and this will include providing information when it will be helpful to your case. Anticipate, however, that if he is forced to testify, he may also attempt to say something positive about his fellow staff member.

The hearing officer is required to review the evidence and testimony and render written findings of fact and recommendations regarding the teacher's dismissal, suspension

or termination. These must be provided to the teacher, superintendent, and members of the board within twenty (20) days following the hearing. The board must review the findings of fact and recommendations made by the hearing officer within twenty (20) days after receipt. Generally that should be done sooner, if possible. If the board determines to dismiss, suspend or terminate a teacher's employment, contrary to the hearing officer's recommendation, the written order must include a conclusion with reasons supported by the record. The conclusion or reasons cannot be based upon information that the board members might have but was not testified to or presented at the time of the hearing. This should not be done without guidance and advice from the school board's attorney.

Either party may appeal the final decision of the board in the manner provided by the Wyoming Rules of Appellate Procedure within thirty (30) days after entry of the final decision. This appeal is to the district court. If appealed, the district court will review the record of the hearing, consisting of a typed transcript of the testimony, and the exhibits presented at the hearing, to determine whether the decision is supported by substantial evidence or whether the decision was arbitrary and capricious. It is possible that after the district court rules on the appeal, the decision of the district court could be further appealed to the Wyoming Supreme Court, also by notice of appeal filed within thirty (30) days of the entry of the decision by the district court.

THE TERMINATION TRAIL

A termination is the failure of the board of trustees to re-employ either an initial contract teacher or a continuing contract teacher at the end of the school year. The difference between termination and dismissal is that the dismissal occurs and will be effective prior to the expiration of the teaching contract. A termination occurs at the end of the teaching contract and results in the nonrenewal of the teaching contract for the subsequent school year.

The termination trail is almost identical to the dismissal and suspension procedure with the exception that the termination trail for initial contract teachers dead ends after appropriate notice of the reasons for termination are given. To terminate an initial contract teacher, he must be notified in writing of the reasons for termination, by April 15 of each year. An initial contract teacher's employment may be terminated for any reason not specifically prohibited by law (i.e., race, color, sex, handicap, age, exercise of First Amendment rights, etc.). The board is not limited to the reasons set forth in W.S. §21-7-110(a) (i.e., incompetency, neglect of duty, immorality, insubordination, unsatisfactory performance).

Usually, unsatisfactory performance of an initial contract teacher will be documented in the evaluation of the initial contract teacher. Initial contract teachers are required by law to be evaluated twice per year. Most often, the reason for termination of an initial contract teacher may simply be done by advising the teacher, "You are hereby advised that your

contract of employment for the following school year will not be renewed. The reasons for your nonrenewal are those areas of unsatisfactory performance documented in the evaluations previously provided to you.” It can, however, be for any other reason determined appropriate by the school district. There are cases that have held simply advising a teacher that the district believes it can employ a better teacher is sufficient. However, I would not recommend using this reason unless the evaluation of the teacher's performance clearly reflects a better teacher can be found. In that instance, it would probably be easier to simply point out the deficiencies in performance as set forth on the evaluation. Other reasons may include simply an inability to get along with other staff or administrators. Again, it would be advisable to consult your legal counsel as to the contents of the letter notifying the initial contract teacher of his/her termination and the reasons for the termination.

Generally a copy of the notice of termination will be retained in the initial contract teacher's personnel file and should be treated the same as other personal information. The law mandates that the notice not be disseminated to the public or to any other perspective employer absent the teacher's consent.

Assuming this written notice is provided to the initial contract teacher on or before April 15, this will conclude the termination trail for the initial contract teacher.

Because the initial contract teacher is not entitled to a hearing, there is nothing inappropriate about the superintendent discussing with the board of trustees his recommendation regarding the termination of the initial contract teacher. The board should determine prior to the notice of termination, whether they want to terminate the initial contract teacher or re-employ that teacher. Again, this should be done in executive session. Assuming the board goes along with the superintendent's recommendation, then the notice should be delivered to the teacher advising the teacher of the board's decision not to renew the contract and the reasons therefor. It is not necessary that the board formally pass a motion to not renew the contract of an initial contract teacher. Simply by leaving an initial contract teacher off the list of teachers to be re-employed, results in that initial contract teacher's contract not having been renewed. In other words, the board could pass a motion to rehire all the teachers on the list of teachers to be renewed and take no action on the initial contract teacher's contract that will not be renewed, which will result in nonrenewal of the contract.

If, however, the decision is controversial or a board member desires to oppose on record the nonrenewal of the contract of an initial contract teacher, a motion may be made to nonrenew the contract and a vote taken or, in the alternative, the board member who is in support of the initial contract teacher may make a separate motion to renew that contract. Such motion, if seconded, would then need to be voted on.

A question has arisen about whether a board can decide not to renew a contract or decide to take no action to renew a contract in executive session. Because the law prohibits a board from taking action in executive session, these conversations must be

conducted for discussion purposes only. Action is taken in open session when the board votes to renew the contracts of the teachers they decide to renew, and by not including in that list teachers they do not decide to renew, this is a negative action but one that is also done in open session.

TERMINATING THE CONTINUING CONTRACT TEACHER

As with the dismissal and suspension of a teacher, the termination, particularly of a continuing contract teacher, is never an easy decision or a pleasant one, but often must be made in the best interests of the school district and especially the students of the school district. Unfortunately, teachers are no different from any other employees. At times there are certain employees of any profession who, for whatever reason, discontinue being effective employees -- or, in this case, effective teachers. This may occur simply because they are burnt out and no longer have the desire and enthusiasm to be effective teachers; because they have refused to remain current in their education in the field that they are teaching; because there has been a change in the curriculum, school administration, etc., which they do not find acceptable; or for any other reason which causes them to no longer be effective teachers.

The termination trail for a continuing contract teacher is identical to the dismissal and suspension trail previously discussed, with the exception that the notice of termination is generally provided near the end of the school year but prior to April 15, and will allow the teacher to complete the school year under the contract then in effect and receive full payment therefor.

The notice of termination would be virtually identical to the notice of dismissal or suspension. The continuing contract teacher may be terminated for the reasons set forth in the Wyoming Education Code, which are the same reasons as for recommendation of dismissal or suspension. These six reasons are:

- | | |
|--------------------|---------------------------------|
| 1. incompetency | 4. insubordination |
| 2. neglect of duty | 5. unsatisfactory performance |
| 3. immorality | 6. any other good or just cause |

The notice of recommendation of termination may be provided by either the superintendent or any member of the board designated by the superintendent or designated by the board pursuant to a majority vote of the board.

RECOMMENDATION - Take care to notice the distinction between the notice given an initial contract teacher and the notice given a continuing contract teacher. The notice given to the initial contract teacher is notice of termination with reasons for the termination. Notice given to the continuing contract teacher is notice of a **recommendation** for termination and the reasons for the recommendation. A continuing contract teacher cannot be terminated until after the hearing is held and a final decision is made by the board

subsequent to the hearing. Prior to the hearing all that can be done is for the superintendent or board member to make a **recommendation** for the termination, which will provide the continuing contract teacher with an opportunity to request a hearing.

Again, because the Wyoming Legislature has adopted legislation that now requires that the hearing be held before an independent hearing officer rather than the board of trustees, and because state law further provides that the board of trustees themselves may appoint a member of the board to deliver the recommendation of termination, it is not inappropriate for the superintendent or for a board member to discuss with the board prior to delivering a notice of recommendation of termination to a continuing contract teacher, the issue of termination. Any such discussion, however, should be done with the strict understanding that it is only a discussion and a final decision **cannot** be made until after a hearing is completed and the hearing officer has made recommended findings of fact and recommendations and has delivered them to the board for their consideration and a final decision. The board must remain open-minded and make a decision based upon the evidence presented at the time of the hearing, and should not make a decision based upon information received prior to the hearing or outside the hearing. Only in rare circumstances would it be prudent for the board not to accept the hearing officer's findings of fact and recommendations. In those instances, the board must support its decision with reasons supported by the record and would be wise to work extremely closely with the board's attorney and follow his advice if the board intends to not accept the hearing officer's findings.

Once the decision is made to pursue the recommendation of termination and notice is delivered to the continuing contract teacher prior to April 15, the procedure for terminating a continuing contract teacher follows the same trail as that set forth for dismissal and suspension of teachers discussed in previous sections.

The suggestions set forth in previous sections relating to dismissal and suspension of teachers for incompetency, neglect of duty, immorality, insubordination, unsatisfactory performance, or any other good or just cause, apply equally to the termination for the same reasons.

As discussed above, the unsatisfactory performance reason recently added to the list by the Legislature opens a new area for termination discussion. Consideration should be given about whether the board wants to formally adopt a specific level of performance as satisfactory for your particular school district. What is satisfactory performance in one district may be unsatisfactory performance in another district. For example, your school board may, by formal motion, adopt a policy that any teacher who is marked (i.e., below average, fails to meet district expectations, unsatisfactory, etc.) in any area for three (3) consecutive evaluations fails to meet satisfactory performance requirements in the district. Thus, under the new law, a school district may have the option of establishing its own guidelines when a teacher is performing unsatisfactorily, which is a statutory reason for termination.

All of the time lines set forth in the termination trail are identical to those set forth in the dismissal and suspension procedures. The tips for success at the hearing are the same whether the hearing is for termination, dismissal, or suspension.

SPECIAL CIRCUMSTANCES

REDUCTION IN FORCE

W.S. §21-7-111, which is found in the same chapter as those sections relating to dismissal, suspension and termination, specifically provides:

- a) Nothing in this article shall prohibit:
 - (iv) the termination of the contract of a teacher at the end of the current school year because of a decrease in the size of faculty due to decreased enrollment or other event beyond the control of board if notice of termination is given pursuant to W.S. §21-7-105 and §21-7-106(a) **except the request for a hearing does not apply.**

W.S. §21-7-105 pertains to notice to be given to initial contract teachers and thus clearly any initial contract teacher may be terminated because of a need to reduce the size of the faculty provided notice is given before the April 15 deadline.

Similarly, the contract of a continuing contract teacher also may be terminated because of a need to decrease the size of faculty due to decreased enrollment or other event beyond the control of the board, provided notice is given also by the April 15 deadline. This provides an additional reason for termination of a continuing contract teacher. What is, however, unique about this procedure is that if the termination of a continuing contract teacher is caused by a need to reduce the size of the faculty, this statute specifically provides, “**except the request for a hearing does not apply.**” In at least one case in which a district initiated a RIF, the issue of whether the teacher was entitled to a hearing was presented to the District Judge. The District Judge ruled that according to the statute, the school district was not required to give the continuing contract teacher a hearing because of his termination due to a reduction in the size of the faculty (see *Limoges v. Platte Co. School Dist. No. 2*, Civil 20-395). **Caution:** It is very likely the teacher would argue that he has a property interest in his employment under federal law and state law and despite the state statute indicating that his right to request a hearing does not apply to RIF situations, he may claim a right under the federal due process provisions. The district's response to that would be that the property interest was granted under state statute and may be limited under state statute. This case was never taken on to the Supreme Court.

The district may elect to grant the continuing contract teacher a hearing but demand the hearing be before the board of trustees rather than an independent hearing officer. There are legitimate and reasonable grounds for this. The provisions relating to a request for hearing and the requirements for an independent hearing officer, at least according to the statute, do not apply to reduction in force terminations. Similarly, it would be reasonable that the decision of whether there were sufficient grounds for a reduction in force should be made by the board of trustees of the school district rather than an independent hearing officer. The board of trustees is in a much better position to decide what the necessary budget requirements of the district are, what the necessary curriculum needs of the district are, what proper student-to-teacher ratios are for the district, how important extra-curricular activities are as opposed to core curriculum classes, etc. These are integral components of RIF decisions which arguably should not be made by an independent hearing officer who is not elected by the patrons of the district to make those difficult decisions. Again, in making decisions whether to grant a hearing, or whether to grant a hearing before a board or an independent hearing officer, a close working relationship with the school's attorney is necessary. If a hearing is to be given to the teacher, then the same due process and hearing requirements for a RIF are required as for a dismissal or termination.

The State of Wyoming has not completely resolved the issue of whether a school district is required to terminate the contract of an initial contract teacher and retain a continuing contract teacher in situations where a reduction in staff is required. Most states that have looked at this have determined the contract of the initial contract teacher must be reduced first. There are, however, some states that have taken a different view point. Wyoming may be one of the states leaning in that direction. The only case on record where the Wyoming Supreme Court had before it the issue of the reduction in force of staff that involved a claim by a continuing contract teacher that she could teach classes currently being taught by an initial contract teacher, the Court held that there were valid reasons for the district to keep the initial contract teacher and the district could legally terminate the contract of the continuing contract teacher where there was a need to reduce staff. See *Palmer v. Crook Co. School Dist. No. 1*, 785 P.2d 1160.

ONE FINAL PRECAUTION TO BE AWARE OF IN REDUCTION IN FORCE SITUATIONS: The Wyoming Education Association, in several court cases, has taken the position that the school board should give a notice of recommendation for termination to all persons teaching in the subject area where a reduction in force is required rather than simply to the one person whom the superintendent has selected for reduction. It has argued in several cases, which have not been decided on the merits, that by giving the recommendation to only one person and allowing the April 15 deadline to go by prior to the hearing, all the other staff was automatically hired, which bound the board to accept the recommendation of the superintendent or be forced to not have a reduction in force. This allegedly resulted in a biased and prejudiced hearing body. To avoid this dispute, your district may want to consider giving the notice to more than one person and then have the first reduction in force hearing involving the person whom the superintendent believes should be terminated. Such recommendation, if upheld, would result in the withdrawal of

the recommendation for other staff. It also prevents the education association from arguing that another staff member should be RIF'd rather than the person whom the superintendent has recommended because if the teacher prevails, this would result in another staff member being RIF'd. If, however, that other staff member has already been hired, this position is still available to be argued by the education association.

ACCEPTANCE OF EMPLOYMENT

With continuing contract teachers, their renewal of a contract is automatic. The contract is continuing from year to year without the requirement of annual contract renewal. If a teacher does not intend to accept his contract, he is required to provide the district with notice by May 15. Absent receipt of the notice of resignation, the teacher is deemed to be under contract for the following year. Thus, as a rule, if the school district intends to provide any written contracts or documentation of the contents of the contract, such as job assignment or salary, such information should be provided to the teacher before May 15 so that he can make his decision whether to accept it by May 15.

On the other hand, initial contract teachers are required to be offered a contract for the following year, if this is to be offered, by April 15, and it must be accepted by May 15 of each year or the position will be declared open. The board should take affirmative action to offer a contract to an initial contract teacher. Similarly, the teacher must take affirmative action to accept the contract. If the initial contract teacher fails to do anything by May 15, his position will be declared open.

Personnel decisions are difficult, however, to fulfill your duties to the school and to the students of the school, difficult decisions sometimes need to be made. Often they are the right decisions for students and can be made without legal repercussions, if completed the right way.

SUSPENSION/EXPULSION OF STUDENTS

Suspension. The board of trustees of any school district may delegate authority to disciplinarians chosen from the administrative and supervisory staff to suspend any student from school for a period not to exceed ten (10) school days. The provision limiting the suspension to ten (10) school days is per incident. In other words, a student could be suspended for a combined total of more than ten (10) days for separate incidents. A student can never be suspended for more than ten (10) days for any one incident, no matter how many rules or regulations may be broken in that incident, unless formal action is taken by the board or superintendent pursuant to the authority given to them under the provisions relating to expulsion. In the event of an incident wherein an administrator is contemplating the suspension of a student, the student must be given the opportunity to be heard as soon as practicable after the misconduct, except in situations where the immediate removal of the student is justified, in which event the opportunity to be heard

must be given to the student not later than seventy-two (72) hours after removal, not counting Saturdays and Sundays. Written notice of suspension shall be sent to the student's parents/guardians within twenty-four (24) hours of the decision to conduct them.

Suspension for More Than Ten (10) Days/Expulsion. The board of trustees of any school district or the superintendent, if designated, may suspend a student for a period exceeding ten (10) school days or may expel a student for a period not to exceed one (1) calendar year, provided the student is afforded an opportunity for hearing in accordance with the procedures of the Wyoming Administrative Procedures Act and school rules relating to hearings. You are not required to hold a hearing for the expulsion of a student. You are required to afford the student an opportunity for a hearing. The distinction is, while you are required to notify the student of his right to a hearing, unless he requests the hearing within the time specified, you are not required to conduct a hearing. If the student does not request a hearing, the recommendation may merely be presented to the board in executive session, with the board subsequently making a motion in open session to uphold or deny the superintendent's recommendation for expulsion. Although the statute does not specify a time within which the student must request a hearing, the time should be not less than five (5) days, and generally it is ten (10) days. If a hearing is requested, it should be conducted in accordance with the Administrative Procedures Act and the rules of practice governing contested case hearings before the board. In those instances, the board may act as the hearing body. Your rules may provide for an informal hearing at the request of the student. The same requirements for preparation and proceedings of the hearing for dismissal and termination of teachers should apply to expulsion of students.

Suspension or expulsion of a student shall not be imposed as an additional punishment for offenses punishable under the laws of the State, except for expulsion by a District superintendent for a weapons violation or where the offense was committed at a school function, against the property of the school, or is of such nature that continuation of the child in school would clearly be detrimental to the education, welfare, safety or morals of other pupils. No suspension or expulsion shall be for longer than one (1) calendar year. The phrase "one year", while not specifically defined in the statutes, has generally been interpreted to mean one (1) calendar year.

Suspension for More Than Ten (10) Days/Expulsion of Special Education Students. Students for whom the district has received information indicating they may need special education services at the time of their misconduct and students who have been identified as special education students at the time of their misconduct cannot be expelled without the involvement of the IEP team. There are significantly different procedural requirements for the expulsion of a student who is or may be eligible for special education services. It is essential that you involve your special education director and attorney prior to initiating suspensions for more than ten (10) days or expulsion proceedings involving a student who may be or is entitled to special education services.

SAMPLE FORMS

RELATING TO:

RENEWAL AND NONRENEWAL OF INITIAL CONTRACT TEACHERS
CONTINUING CONTRACT TEACHERS - TERMINATION
DISMISSAL AND SUSPENSION OF TEACHERS
STUDENT SUSPENSION AND EXPULSION
BOARD MINUTES, NOTICES AND ORDERS
RELATING TO HEARINGS

Wyoming School Boards Association

These forms and the accompanying notes are provided by the Wyoming School Boards Association and are to be used for informational purposes only. The forms contained herein are suggestions only and should be adapted to meet your individual school district needs. School Board members, administrators, and other persons using these forms should consult with their local attorney for advice and assistance in the preparation and actual use of the forms. The materials contained herein are intended for use as a reference and modification will likely be needed in each separate case.

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RENEWAL NOTICE

(Initial Contract Teacher)

TO:

By action of the Board of Trustees of _____ County School District No. _____, State of Wyoming, you are offered a contract to teach in the schools of the District for the 20____-20____ school year. You must accept this offer by May 15 or the offer will expire and the position will be declared open.

Your employment will be subject to the rules, regulations and policies of the School District as are from time to time in force and to the provisions of the employment contract form.

As an initial contract teacher, you must also sign and return your contract of employment by May 15 or, if the actual contract is delivered after May 15, you must sign and return this notice by May 15.

DATED this _____ day of April, 20_____.

Superintendent

Accepted the _____ day of _____, 20_____.

Teacher

RENEWAL NOTICE

(Initial Contract Teacher)

General Comments:

If a contract is to be offered to an initial contract teacher for the next school year, the Board must make the offer by April 15 and it must be accepted by May 15 or the position will be declared open. W.S. §21-7-109.

Acceptance can be by execution of the written teacher contract form of the School District or by acknowledgment of one copy of the Renewal Notice - with the written contract to be signed later.

If the offer is not accepted by May 15 the school should confirm by written notice to the teacher, with a copy in the teacher's file, that the offer has expired. Such notice may be in substantially the following form:

“You have not accepted the offer of the School District to teach in the schools of the District for the 20____-20____ school year. The offer has therefore expired and the position is declared open.”

NOTICE OF NONRENEWAL

(Initial Contract Teacher)

TO:

Pursuant to the provisions of W.S. §21-7-105 of the Wyoming Teacher Employment Law, you are hereby notified that your contract with _____ County School District No. _____, State of Wyoming, will be terminated at the end of the current school year and will not be renewed.

The reason or reasons for the termination of your contract are as follows:

a. *(Example)* Please refer to your last evaluation and the areas marked *(needs improvement) (unsatisfactory, etc.)*, which areas and concerns have been discussed with you by your Principal.

DATED this _____ day of April, 20_____.

Superintendent

NOTICE OF NONRENEWAL

(Initial Contract Teachers)

General Comments:

Every teacher who has not achieved continuing contract status is an initial contract teacher. W.S. §21-7-102.

If an initial contract teacher will not be renewed for the next school year, the teacher must be notified in writing on or before April 15. W.S. §21-7-105.

The Board of Trustees does not need to vote to "nonrenew or terminate" an initial contract teacher. If the Board does not, by April 15, act to offer a contract for the next school year, notice of nonrenewal should be given. The Board, if it intends to offer a contract, should take an affirmative action to renew the contract prior to April 15. W.S. 21-7-109.

Notice must be given to each teacher - even a substitute - who has taught continuously for ninety (90) days or more during the current school year. W.S. §21-7105.

A principal may recommend (to the Superintendent) the termination or nonrenewal of a teacher only after periodic evaluation. W.S. §21-3-111(a)(vi)(B).

The performance of an initial contract teacher must be evaluated in writing at least twice annually. W.S. §21-3-110(a)(xvii).

The failure to evaluate does not necessarily prevent termination or nonrenewal of an initial contract teacher.

Reasons must be given for nonrenewal of an initial contract teacher. The reasons may be the same as those required for termination of a continuing contract teacher, but need not be. Generally, they may be any reason not prohibited by law (i.e., race, color, sex, age, national origin, exercise of First Amendment, etc.).

Ordinarily the reasons are apparent from the evaluations and evaluation conferences. You may, however, simply desire to find a teacher who is more suited to your educational program or who is, in your opinion, better qualified to perform the services that you need. There is no requirement that you retain an "average" teacher. You should, however, be consistent with the manner in which you treat teachers (i.e., do not keep one average teacher and then tell another that the reason you are terminating him/her is because you believe you can find a better-than-average teacher).

If there is a bona fide RIF, that is, of course, a reason to be disclosed. It is recommended, however, that formal RIF procedures not be made applicable to initial contract teachers since initial contract teachers can be nonrenewed without the formal RIF findings and requirements.

No hearing is required for a nonrenewal. The initial contract teacher is not ordinarily entitled to a hearing, however, if the teacher makes any credible claim for which there is any credible evidence that his nonrenewal results from (or even may have resulted from):

1. the exercise by the teacher of rights of free speech, freedom of religion, or similar Constitutional guarantees by reason of which there may be a violation of a Constitutional right of the teacher; or
2. charges (such as dishonesty or immorality) which might seriously damage the standing and association of the teacher in the community or when the teacher's good name, reputation, honor or integrity are at stake, by reason of which the "liberty" interest of the teacher is violated;

the Board of Trustees should grant to the teacher a hearing to determine if the nonrenewal is in fact a violation of any Constitutional right (or results from exercise of a Constitutional right) or is a violation of the "liberty" interest of the teacher.

If the nonrenewal does in fact result from allegations of dishonesty, immorality, or similar matters, the teacher must be afforded an opportunity to refute the charges before nonrenewal is final. If such charges are in fact shown to be true, there is, of course, no violation of the liberty interest.

Mere nonrenewal for reasons of performance does not violate a liberty interest.

A fact-finding hearing and determination presented by the administration and a contested hearing before the Board of Trustees would be preferred to such a hearing in court. Presumably, once this is completed the next step for the teacher would be to appeal the decision to the District Court if he/she disagreed with it. If, however, a hearing is not granted, the teacher would have the opportunity to initiate litigation in State or Federal court at a much greater expense and with far greater chance of success than if the administrative hearing had been held before the Board of Trustees.

NOTICE OF RECOMMENDATION OF TERMINATION

(Continuing Contract Teacher)

YOU ARE HEREBY NOTIFIED that a recommendation for the termination of your contract with _____ County School District No. _____, State of Wyoming, has been made.

The reason or reasons for the recommendation are:

- 1.
2. *(select one or more of statutory reasons: incompetency, neglect of duty, immorality, insubordination, unsatisfactory performance or any other good or just cause)*
- 3.

Some of the specific acts or omissions which support the conclusions are:

- a. *(In these subparagraphs, list with specifics the acts or basis for the nonrenewal)*
- b.
- c. *(Example: Your unsatisfactory performance is evidenced by the evaluations previously provided to you and your failure to satisfy the terms and conditions of the Plan of Improvement dated the _____ day of _____, 20____).*

The termination, if approved by the Board of Trustees, will be effective at the end of the current school year.

You are entitled to a hearing before an independent hearing officer provided you make a written request for such a hearing to the Superintendent within seven (7) days after receipt of this notice.

If you request a hearing, you must meet with the Superintendent within five (5) days after the request for hearing in order that an independent hearing officer may be selected. The independent hearing officer shall, insofar as possible, be impartial, experienced in

education, labor and employment matters, and in the conduct of hearings. If we cannot agree on who the hearing officer should be, the District Judge will select a hearing officer.

The hearing officer shall, within five (5) days after his selection, set the date for hearing. In no event is the hearing to commence later than forty-five (45) days after your receipt of his notice. If a hearing is requested, it will be conducted in accordance with the Wyoming Administrative Procedures Act and the rules or policies of the School District governing contested case hearings (Policy _____).

DATED this _____ day of _____, 20_____.

SUPERINTENDENT OR BOARD MEMBER

NOTICE OF RECOMMENDATION OF TERMINATION

(Continuing Contract Teachers)

Examples for specific reasons which support the statutory grounds for termination:

1. On or about _____, you became defensive and argumentative when counseled by Mr(s). _____ about _____.
2. On or about _____, and on frequent other occasions, you used classroom time to _____, not related to classroom assignments or duties.
3. When asked on or about _____ to stop (*or to do*) _____, you became angry.
4. On or about _____, you became angry when questioned by Mr(s). _____ about _____ and argued with Mr(s). _____ in front of students in the classroom.
5. On or about _____, you neglected to (*supervise a playground*) (*perform other duties*) in a proper manner.
6. On or about _____, you wrongfully accused other teachers of _____.
7. During *(time period)* you have showed a general lack of cooperation with the staff of the School District.
8. On or about _____, you failed and neglected to properly supervise students during _____.
9. You have failed and refused to follow specific directions given orally by Mr(s). _____ relating to _____.

10. On or about _____, you used inappropriate discipline methods on children.

11. During (time period) you have been late on a number of occasions in arriving at your assigned classroom or duties.

12. RIF. In circumstances of a RIF, you must still provide notice of the termination and reasons therefor. If RIF is due to financial exigency or decreased enrollment, the reason may simply be: due to financial shortfalls caused by increased expenses and by decreasing enrollment, the District has incurred financial shortfalls which have resulted in a need to reduce the teaching staff.

* * * *

All reasons which the School expects to prove and upon which evidence will be presented should be specified in the notice.

RECOMMENDATION OF TERMINATION

(Continuing Contract Teachers)

General Comments:

The first step to termination of a continuing contract teacher is a recommendation of termination.

No action to approve or accept the recommendation or to otherwise act upon the recommendation may be taken by the Board of Trustees until:

1. the hearing, if requested, has been held; or
2. the time within which a hearing may be requested has expired.

If the recommendation is presented at a meeting of the Board of Trustees, the Board should merely note that the recommendation was received and that notice will be given to the teacher.

The notice of the recommendation must be given by the Superintendent or a member of the Board. W.S. §21-7-106.

If a member of the Board of Trustees initiates the recommendation or participates in the investigative activities which result in the recommendation - or is otherwise involved in the decision to make the recommendation (other than general discussion with the Superintendent who has proposed the recommendation and who desires to proceed with a hearing before an independent hearing officer), such Board member would generally be disqualified to participate, advise, or otherwise engage in the review of the hearing officer's findings and the making of the final decision.

In such instance, the Board member may testify or otherwise present evidence at the hearing.

The notice of recommendation of termination should include reasons sufficiently identified to adequately inform the teacher of the basis for the recommendation and should include, insofar as reasonably possible, specific acts, dates, times and circumstances to support

support the reasons. The reasons must be sufficiently specific to afford the teacher an opportunity to refute or defend.

The Board may, and in most instances should, request that the hearing on the termination be held in an executive or closed session. W.S. §16-4-405. If the teacher requests a public hearing, however, the hearing must be public. The record should reflect that it was the teacher who desired the hearing to be public.

The final adoption of findings of fact and conclusions of law (recommendations) and the order must be done by motion made in an open meeting and reflected in the minutes.

**NOTICE OF SUSPENSION WITH PAY AND
RECOMMENDATION OF DISMISSAL/SUSPENSION WITHOUT PAY**

(Any Teacher During School Year)

YOU ARE HEREBY NOTIFIED that a recommendation for your dismissal/suspension without pay has been made to the Board of Trustees of _____ County School District No. _____.

The reason or reasons for the recommendation are:

- 1.
2. *(select one or more of statutory reasons:
incompetency, neglect of duty, immorality,
insubordination, unsatisfactory performance,*
3. *or any other good or just cause)*

Some of the specific acts or omissions which support the conclusions are:

- a. *(In these subparagraphs, list with specifics the acts or
basis for the nonrenewal)*
- b.
- c. *(Example: Your unsatisfactory performance is evidenced by the
evaluations previously provided to you and your failure to satisfy the
terms and conditions of the Plan of Improvement dated the _____
day of _____, 20____).*

You are hereby notified that your suspension with pay will take effect immediately and will remain in effect until the decision is made by the board of trustees subsequent to the entry of findings of fact and conclusions of law by an independent hearing officer.

Your dismissal/suspension without pay, if approved by the Board of Trustees, will be effective upon such approval unless otherwise ordered by the Board. (If the recommendation is for suspension without pay, you should state the length of the recommended suspension, i.e., one year or one semester, etc.)

You are entitled to a hearing before an independent hearing officer provided you make a written request for such a hearing to the Superintendent within seven (7) days after receipt of this notice.

If you request a hearing, you must meet with the Superintendent within five (5) days after the request for hearing in order that an independent hearing officer may be selected. The independent hearing officer shall, insofar as possible, be impartial, experienced in education, labor and employment matters, and in the conduct of hearings. If we cannot agree on who the hearing officer should be, the District Judge will select a hearing officer. The hearing officer shall, within five (5) days after his selection, set the date for hearing. In no event is the hearing to commence later than forty-five (45) days after your receipt of this notice. If a hearing is requested, it will be conducted in accordance with the Wyoming Administrative Procedures Act and the rules or policies of the School District governing contested case hearings (Policy _____).

DATED this _____ day of _____, 20_____.

SUPERINTENDENT OR BOARD MEMBER

[If this is a recommendation for dismissal, the reference to suspension without pay should be deleted. If it is a recommendation for suspension without pay, the recommendation for dismissal should be deleted. In most cases, regardless of whether it is a dismissal or suspension without pay, you will want the suspension with pay to be in effect immediately.]

RECOMMENDATION OF DISMISSAL/SUSPENSION WITHOUT PAY

(Any Teacher During School Year)

General Comments:

The suspension with pay may be immediate upon delivery of the Notice of Recommendation of Dismissal or Suspension Without Pay to the teacher. This suspension will go into effect pending the outcome of the dismissal or suspension without pay hearing.

No action to approve or accept the recommendation for dismissal or suspension without pay or to otherwise act upon the recommendation may be taken by the Board of Trustees until a hearing is held or is waived by the teacher. The Board may simply acknowledge receipt of the recommendation and direct the Superintendent or Board member making the recommendation to provide the appropriate notice to the teacher.

The general comments relating to termination proceedings are also applicable to dismissal/suspension proceedings.

The proceedings for dismissal are the same as the proceedings for suspension.

Suspension with pay is defined as the removal of a teacher from the classroom during the school year without termination of salary pending the outcome of a hearing in accordance with W.S. §21-7-110. Suspension without pay means the removal of a teacher from the classroom during the school year with the termination of salary for a period not to exceed one (1) calendar year commencing upon completion of a hearing held under W.S. §21-7-110.

A recommendation for suspension without pay requires the same hearing and procedural due process as a dismissal. It requires you to go through the same burden of proof as for a dismissal. In most cases, conduct which warrants a suspension without pay and a requirement to go through the exact same process and prove the same thing as for a dismissal would most generally result in a recommendation for dismissal.

SUSPENSION OR EXPULSION OF STUDENT

(For more than ten school days)

BEFORE THE BOARD OF TRUSTEES
OF
_____ COUNTY SCHOOL DISTRICT NO. _____,
STATE OF WYOMING

In the Matter of _____,)
)
Student.) Docket No. _____

PETITION

_____, the Superintendent (Principal) of
_____ County School District No. _____, states:

1. The name and address of the student are: _____

_____.

The name and address of the *(parents) (guardian) (surrogate parent)* of the student
are: _____

_____.

2. There are no additional parties whose rights are required to be heard and
determined in this matter.

3. The above named student has, after informal hearing, been suspended from school for _____ school days. Petitioner does recommend to the Board of Trustees of _____ County School District No. ____ that the student be *(expelled) (suspended)* from the schools of _____ County School District No. ____ for _____ *(remainder of the 20-__-20__ school year) (_____ school days)* for the reasons that:

- a. *(Statutory grounds for suspension or*
- b. *expulsion are setforth in W.S.*
- c. *§21-4-306 and the applicable ones*
- d. *should be listed)*

Certain of the specific acts or omissions which support the allegations as above setforth are:

- (1) *(Set forth the specific acts, dates,*
- (2) *places, and persons involved).*
- (3)

4. The particular sections of the statutes and rules involved are: W.S. §21-4-305 - 306, W.S. §16-3-101 - 115; Board Policy _____, Student Handbook Section _____; Rules of Practice Governing Contested Case Hearings (Board Policy _____).

5. Petitioner requests that the student be given an opportunity for hearing, if requested by him, and that notice of the filing of this Petition and notice that he is entitled to a hearing and notice of hearing be given to said student and his parents forthwith.

DATED this _____ day of _____, 20____.

SUPERINTENDENT (OR PRINCIPAL)

COUNTY SCHOOL DISTRICT
NO. _____, STATE OF WYOMING

provided the student is afforded an opportunity for a hearing in accordance with the procedures of the Wyoming Administrative Procedures Act.

3. You may request a hearing within _____ days from the date of this Order

by making a written or oral request to:

Clerk, Board of Trustees
School Administration Office
_____ County School District No. _____
Address: _____

Telephone No.: _____

If a hearing is requested the hearing will be held at the _____
_____ Building in Room _____, at _____
_____ (street address), in _____,
Wyoming, upon the _____ day of _____, 20__ at _____ o'clock
__m. If a hearing is not requested within the _____ (generally ten) days, the
Board will proceed to consider and determine the Petition for expulsion without a hearing.

4. The legal authority and jurisdiction under which the hearing is to be held are:
W.S. §21-4-305 - 306, W.S. §16-3-101 - 115; Board Policy _____, Student Handbook
Sections _____; Rules of Practice Governing Contested Case
Hearings for _____ County School District No. _____ (Board Policy
_____).

5. The matters asserted against the student are more fully set forth in the Petition, a copy of which is served herewith.

6. If you do not request a hearing or if you do not attend a hearing if requested and present evidence in the form of testimony and/or documentary evidence, you will be deemed to have waived your right to a hearing. You have the right to request that the hearing be held in an open public session. If you do not so request, the hearing will be held in a closed executive session. You may be represented at such hearing by legal counsel and either you or your counsel may cross-examine witnesses who may be called to testify, examine any documents which are part of the evidence, and you may produce your own witnesses and other evidence. If you do elect to have a hearing and do intend to be represented by legal counsel, you must provide the District with the name and address of the legal counsel who will be representing you, not less than three (3) days prior to the scheduled hearing.

7. At the conclusion of the hearing, if held, or if there is no hearing, after the Board of Trustees has considered and determined the charges and evidence, the Board will consider the allegations and evidence presented and will thereafter issue its decisions.

DATED this _____ day of _____, 20____.

_____, Clerk
Board of Trustees, _____ County
School District No. ____, State of Wyoming

STUDENT SUSPENSION OR EXPULSION

General Comments:

Suspensions not exceeding ten (10) school days may be made by the school administrative staff under the procedure set forth in W.S. §21-4-305 without a formal (contested) case hearing procedure but after opportunity to be heard.

School policies prepared in compliance with the provisions of W.S. §21-4-305 should provide for such administrative suspensions.

The Board of Trustees, after the student is afforded an opportunity for a hearing, may suspend for periods exceeding ten (10) school days or may expel for a period not to exceed one (1) year. W.S. §21-4-305(d).

The statutory grounds for suspension or expulsion are:

1. continued willful disobedience or open defiance of the authority of school personnel;
2. willful destruction or defacing of school property during the school year or any recess or vacation;
3. any behavior which in the judgment of the local board of trustees is clearly detrimental to the education, welfare, safety or morals of other pupils, including the use of foul, profane or abusive language or habitually disruptive behavior as defined by W.S. §21-4-306(b);

"habitually disruptive behavior" means overt behavior willfully initiated by a student causing disruption in the classroom, on school grounds, in school vehicles, or at school activities or events, which requires the attention of a teacher or other school personnel;

4. torturing, tormenting, or abusing a pupil or in any way maltreating a pupil or a teacher with physical violence;

5. possession, use, transfer, carrying, or selling a deadly weapon as defined under W.S. §6-1-104(a)(iv) within any school bus as defined by W.S. §31-7-102(a)(xl) or within the boundaries of real property used by the District primarily for the education of students in grades K-12.

W.S. §21-4-306.

The statutes require that a student must be afforded a hearing. Student must be advised that a hearing can be requested. However, a hearing is not required to be held unless requested. There is no statutory period set forth during which the student is specifically permitted the opportunity to decide whether or not to request a hearing. However, your rules governing contested hearings may mandate that a student be given ten (10) days within which to request the hearing. If specified by policy, you must comply with your policies or rules. If not specified, ten (10) days is preferable, and in no event should the period be less than five (5) days.

Generally it is desirable to provide a hearing either within, or as soon after, the ten (10) day administrative suspension begins as is possible; otherwise, the student must be admitted back into the classroom while the hearing is pending. The hearing should be scheduled as soon as possible in order to avoid having to readmit a student to school subsequent to the suspension and prior to the expulsion hearing. Your rules may also require a minimum of ten (10) days advance notice for hearing. In any event, notice of several days is required to assure due process is not denied.

For expulsions relating to possession of a deadly weapon, the board is required to expel the student for one (1) year. This again is generally interpreted to be a calendar year. The superintendent, however, with the approval of the board of trustees, may modify that expulsion on a case by case basis. Often times it is modified to coincide with the start of a semester. If the student is to be expelled for a weapons violation which involves a deadly weapon, following the notice and hearing requirements the superintendent is required to notify the District Attorney of the violation together with the specific act in violation of the law and the name of the student violating the weapons statute, W.S. 21-4-305(a).

NOTICE OF SPECIAL MEETING

(For Purposes of Conducting Student Hearings or
Considering Proposed Findings of Fact and Conclusions of Law)

NOTICE OF SPECIAL MEETING
OF THE BOARD OF TRUSTEES OF
_____ COUNTY SCHOOL DISTRICT NO. ____

NOTICE IS HEREBY GIVEN that a special meeting of the Board of Trustees of
_____ County School District No. ____ will be held on the _____ day of
_____, 20____, at _____ o'clock __.m., at _____

_____ *building, address, and room*

for the purpose of considering the proposed findings of fact and recommendations of a hearing officer pertaining to the recommendation of *(termination or dismissal or suspension)* of an employee for the purpose of considering a recommendation of *(suspension or expulsion)* of a student.

An executive session has been scheduled to take this matter under consideration.

The official minutes of the meeting will be available for inspection by any citizen at the office of the Clerk of the School District.

DATED this _____ day of _____, 20____.

Clerk, Board of Trustees
_____ County School District No. ____

This notice may be used both for the initiation of an expulsion hearing if it is to be handled in a special Board meeting, or for purposes of deliberating on the recommendation for termination, dismissal or suspension of an employee. Any other matters to be dealt with at the special meeting must be disclosed in the notice of special meeting.

The Board having reviewed the proposed findings of fact and recommendations from the hearing officer, does hereby adopt these findings and recommendations as the findings and recommendations of the _____ County School District No. ____ Board of Trustees. These findings and recommendations are attached hereto and by reference incorporated herein the same as if fully setforth herein.

ORDER

IT IS THEREFORE the Order of the Board of Trustees that the recommendation of _____ (*Superintendent or Board member*) of _____ County School District No. ____ is accepted (*denied*).

(*If accepted*) The employment of the teacher with the School District is therefore terminated effective _____ *date* (if a suspension you need to put in the time period).

DATED this _____ day of _____, 20____.

Chairman, Board of Trustees

County School District No.

CERTIFICATION

I, Clerk , the duly elected and qualified Clerk of the Board of Trustees of _____ County School District No. _____, do hereby certify that the attached is a true and correct copy of the Findings, Conclusion and Order of the Board of Trustees, the original of which is an official record of the School District, and that such decision has not been amended, modified or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the School District at _____, Wyoming, this _____ day of _____, 20____.

Clerk, Board of Trustees
_____ County School District
No. _____

FORM OF DECISION, FINDINGS AND CONCLUSIONS - FOLLOWING HEARING
(Student)

BEFORE THE BOARD OF TRUSTEES
OF
_____ COUNTY SCHOOL DISTRICT NO. _____,
STATE OF WYOMING

In the Matter of _____,)
Student.) Docket No. _____

FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Trustees of _____ County School District No. _____,
_____, Wyoming, after hearing duly held and now being fully advised in the
premises, makes the following findings, conclusions and decision:

FINDINGS

1. _____, the above named student, is a
student at _____ School in _____ County School
District No. _____.

2. _____, an administrator of this School
District, has recommended that the student be (*expelled*) (*suspended*) for
_____ (*length of time*) and

a copy of the recommendation and a notice of a right to hearing, has been issued and served upon the student and upon the parents (*or guardian or surrogate parent*) of the student; and thereafter (*at a hearing*) or (*neither the student or his parents having requested a hearing*) the Board of Trustees did proceed to consider the recommendation and evidence submitted in support thereof.

3. The student is subject to the rules, regulations and policies of the School District and laws of the State of Wyoming relating to the operation of the schools and was required to conform his conduct thereto.

4. That commencing on or about _____ date _____ the student did engage in conduct which included, but was not limited to, the following acts:

- a.
- b.
- c.

CONCLUSIONS

1. That the acts in which the student engaged did constitute a violation of rules, regulations, policies and laws, including, but not limited to, the following:

- a. W.S. § _____;
- b. Board policy _____;
- c. Student Handbook, Sections _____;
- d.

(insert all that apply)

2. That the conduct of the student constitutes:

a. continued willful disobedience or open defiance of the authority of school personnel;

b. willful destruction or defacing of school property;

c. any behavior which in the judgment of the local board of trustees is clearly detrimental to the education, welfare, safety or morals of other pupils, including the use of foul, profane, or abusive language or habitually disruptive behavior;

d. torturing, tormenting or abusing a pupil or maltreating a pupil or a teacher with physical violence;

e. possession, use, transfer, carrying, or selling a deadly weapon within any school bus or within the boundaries of the property used by the School District for education of students K-12. *(insert all that apply)*

3. The conduct of the student justifies and requires his *(expulsion) (suspension)* from school.

DECISION

1. The conduct of the student constitutes just and reasonable cause for *(expulsion) (suspension)* from the schools of this School District.

2. _____, student, be and he is hereby *(expelled) (suspended)* from the schools of _____ County School District No. _____ for *(the remainder of the 20__-20__ school year - or semester) (_____ school days)*, effective immediately.

DATED this _____ day of _____, 20_____.

CHAIRMAN, Board of Trustees
_____ County School District
No. _____

CERTIFICATION

I, _____, the duly elected and qualified Clerk of the Board of Trustees of _____ County School District No. _____, do hereby certify that the attached is a true and correct copy of the Findings, Conclusion and Decision of the Board of Trustees, the original of which is an official record of the School District, and that such decision has not been amended, modified or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the School District, at _____, Wyoming, this _____ day of _____, 20____.

CLERK, Board of Trustees
_____ County School District
No. _____

FORM OF MINUTES TO ADOPT FINDINGS, CONCLUSION AND DECISION
(Teacher)

The Chairman announced that the Board was now reconvened in open session.

Upon motion made by _____ and seconded by _____, the following resolution was presented:

RESOLUTION

BE IT RESOLVED, by the Board of Trustees of _____ County School District No. _____, State of Wyoming, as follows:

1. The Board of Trustees does hereby adopt the recommended Findings of Fact and Conclusions (recommendations) of the independent hearing officer (*accepting or denying*) the recommendation of the Superintendent for the (*termination, dismissal or suspension*) of _____.

2. Upon execution of the appropriate Order, the Clerk shall provide to the teacher a certified copy of the Order and a copy shall be entered into the School District personnel records of the teacher.

3. Thereupon, a vote was taken on the above and foregoing Resolution and was counted and found to be as follows:

<u>Name of Trustees</u>	<u>Yes</u>	<u>No</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Thereupon, the Chairman declared the Resolution adopted.

Clerk

FORM OF MINUTES TO ADOPT FINDINGS, CONCLUSIONS AND DECISION
(Student)

The Chairman announced that the Board was now reconvened in open session.

Upon motion made by _____ and seconded by _____, the following resolution was presented:

RESOLUTION

BE IT RESOLVED, by the Board of Trustees of _____ County School District No. _____, State of Wyoming, as follows:

1. The Board of Trustees does hereby *(accept)* *(deny)* the recommendation of _____, Administrator for the School District, for the *(expulsion)* *(suspension)* of a student for _____ *(period of suspension or expulsion)*. The reason for the *(expulsion)* *(suspension)* is: _____ *(this may be vague or more specific)*. The *(expulsion)* *(suspension)* is to begin immediately.

2. Upon execution of the Findings of Fact, Conclusion and Decision by the Chairman of the Board, the Clerk shall cause a certified copy to be delivered to _____ *(name of student)* and his parents *(or guardian)* and an additional copy shall be placed in the student personnel file of the School District. Such copy shall be delivered either personally or by mail.

3. Thereupon, a vote was taken on the above and foregoing Resolution and was counted and found to be as follows:

<u>Name of Trustees</u>	<u>Yes</u>	<u>No</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Thereupon, the Chairman declared the Resolution adopted.

Clerk

ORDER AND DECISION

General Comments:

The Findings of Fact and Conclusions of Law, as well as the final Decision based upon those Findings and Conclusions, must be based only upon the testimony and evidence presented at the time of the hearing. Hearsay evidence or rumor not admitted at the time of the hearing should not be the basis for any decisions. All formal decisions must be made in an open, public meeting and minutes retained.

In case of the expulsion or suspension of a student, normally disciplinary matters regarding students are confidential. However, because the Board must take action, it is necessary to pass a motion upon the Superintendent's recommendation. This may be done simply by accepting the Superintendent's recommendation with regard to the student without specifically stating the student's name. However, some districts prefer -- even though they do not state the student's name -- to state the reason for the expulsion, such as possession of a weapon, drugs, fighting, attendance, etc. By doing this, the public is generally informed through the media that there has been an expulsion and the reason for the expulsion, which puts other students and parents on notice that the school will not tolerate that type of conduct. The student's name, however, remains confidential.

In case of termination, dismissal or suspension of teachers, if the hearing is a closed hearing, generally the reasons for the Board's decision -- if it is to terminate, dismiss or suspend -- should not be made public. It is, however, permissible to utilize the employee's name in the motion to terminate, dismiss or suspend. If the hearing is conducted in a closed session, the Findings of Fact and Conclusions of Law would not be a public document and would be retained in the personnel file of the teacher subject to the restrictions on disclosure of personnel files.

In cases of termination where the hearing was conducted before an independent hearing officer, the Board must review Findings of Fact and recommendations submitted by the hearing officer within twenty (20) days after receipt, and issue its written Order to terminate, suspend or dismiss the teacher. State law mandates that a copy of the Order be provided to the teacher and a copy entered in the School District records.

There is included herein a proposed form of Order accepting the hearing officer's Findings of Fact and recommendations. It would be possible to accept some of the findings or conclusions, but not all, in which case the form would need to be modified to indicate that the Board accepts the proposed Findings of Fact and recommendations except (and then list those that are not accepted). However, if the Board intends to go so far as to terminate, suspend or dismiss a teacher's employment, contrary to the recommendation

of the hearing officer, the written Order would need to reflect the findings of fact that were not accepted and the conclusions that were not accepted. The Order would then need to reflect the other findings that the Board made and/or conclusions reached by the Board, which findings must be supported by the record. This would require either that the Board members have personally sat in on the hearing, heard testimony and reviewed exhibits in such fashion as to be prepared to support the findings by the record; or, in the alternative, to have reviewed a tape recording or transcript of the hearing and made findings and conclusions based upon the transcript. This should **not** be done without careful scrutiny and guidance from the Board's attorney. It should only be done if the Board truly believes such a determination can be supported by the record and be upheld on appeal.