

ARTICLE XXI -- EMPLOYEE RIGHTS AND DUE PROCESS

Section 1. Due Process

A. Conferences-for-the-Record -- Disciplinary Action and Reprimand

1. The Board and Union recognize the principle of progressive discipline. The parties agree that disciplinary action may be consistent with the concept of progressive discipline when the Board deems it appropriate, and that the degree of discipline shall be reasonably related to the seriousness of the offense.
2. Any employee summoned to the office of a principal or immediate supervisor, where there exists no principal, Regional Superintendent, or the Office of Professional Standards, or their designees for a Conference-for-the-Record which may lead to disciplinary action or reprimand, shall have the right to request Union representation and shall be informed of this right. If Union representation is provided, the employee shall have the right to be accompanied at the Conference-for-the-Record by up to two representatives of the Union and shall be informed of this right.
3. Employees shall be given two days' notice and a statement of the reason for the conference, except in cases deemed to be an emergency. When Union representation is requested, and the employee is to be represented by the Union, the Conference-for-the-Record must be scheduled at a time when Union representation (building steward, where appropriate) can be present.
4. A Conference-for-the-Record, which may lead to disciplinary action or reprimand not held in accordance with these conditions, shall not be considered a part of the employee's personnel file or record, and neither the fact of the conference nor any statements made at the conference may be used in any subsequent proceedings or reprimand involving the employee.
5. Where Union representation is provided herein, the employee shall be represented by the bargaining agent. The bargaining agent shall have the right to refuse representation in accordance with its own internal, nondiscriminatory rules. An employee may not be represented by an attorney in a conference-for-the-record.
6. The use of tape recorders or other mechanical devices is expressly prohibited.

B. Suspension/Dismissal for Cause/Other Disciplinary Actions

1. General Provisions
 - a. Any member of the instructional staff may be suspended or dismissed at any time during the school year, provided that the charges against him/her are based upon Florida Statutes.

ARTICLE XXI (cont.)

- b. Any recommendation for suspension or dismissal based upon a below standards rating shall require that teaching deficiencies be documented on the observation/evaluation forms in compliance with the procedures of the M-DCPS evaluation process. Disciplinary action based on a below standards rating may not be taken against an employee in the absence of an official performance assessment conducted in accordance with procedures, guidelines, stipulations, and requirements as are included in any employee evaluation system in effect at the time.
- c. Any recommendation to return a continuing/professional service contract employee to annual contract at the end of the school year shall comply with Florida Statutes, Chapter 1012.33, including notification to the employee which shall contain the specific charges, the written recommendation to the Board, and information to the employee regarding the employee's right of appeal, pursuant to Florida Statutes. Such notice shall be given no less than 15 calendar days prior to the filing of the written recommendation with the Board.
- d. Any recommendation to suspend or dismiss a continuing/ professional service contract employee during the school year shall comply with Florida Statutes, including notification to the employee which shall contain the specific charges, the written recommendation to the Board, and information to the employee regarding the employee's right of appeal, pursuant to Florida Statutes.
- e. Any recommendation to suspend or dismiss an annual contract employee or an employee holding a professional service contract during the term of whatever contract is held by the employee shall comply with Florida Statutes, including the requirement that the specific charges against such employee must be based on just cause, and notification, in writing, of such specific charges must be made to the employee prior to any action being taken against the employee. Within 15 calendar days from receipt of the notice, the employee will either exercise or not exercise the right to request a hearing before a Department of Administrative Hearings (DOAH) Administrative Law Judge (ALJ). Notification to the employee shall also include information regarding the employee's right to appeal an adverse decision resulting from either hearing, as provided by Florida Statutes.
- f. All procedures regarding dismissal or suspension of employees shall be exhausted under this Contract before any administrative action may be taken before the Education Practices Commission.

2. Suspension of Employees

Dismissals and suspensions shall be effected in accordance with applicable Florida Statutes, including the Administrative Procedures Act (APA), and provisions stated below:

ARTICLE XXI (cont.)

- a. No employee shall be suspended until all of the detailed specific charges have been made known to the employee, in writing, provided, further, that said employee is entitled to be represented by one representative of the Union in conference with the Office of Professional Standards administrator or his/ her designee.
 - b. When the Board authorizes a suspension, a hearing, if requested by the employee, shall be initiated with the School Board Clerk no later than 20 days from the date of suspension.
 - c. The Board agrees to furnish the Union with a copy of the transcript in all suspension/dismissal hearings in accordance with the APA.
 - d. The Board recognizes that, pursuant to the Union's internal rules, the Union's legal department may be entitled to recover legal costs incidental to the defense of any suspended employee. If back pay has been awarded, upon being granted power of attorney by the employee, the Board's Payroll Department shall remit such legal costs to the Union prior to any monies being paid to the employee.
3. Continuing Contract Teachers
- a. The employee shall be notified of the decision to suspend or dismiss by certified letter sent to the last known address of record. The notice shall state the cause(s) for the suspension or dismissal, the effective date of the suspension or dismissal, and the employee's right of appeal and how to exercise such right.
 - b. The employee shall have 20 calendar days from receipt of the notice to notify the Superintendent or his/her designee of the employee's intent to appeal the suspension or dismissal. Such notice of intent to appeal shall be in writing.
 - c. Suspension by the Superintendent between Board meetings shall be with pay and shall be reported at the next regular Board meeting following the suspension. Suspension by the Board shall be without pay. The employee shall be suspended from active duty during the time of appeal of such suspension or dismissal. If the employee is fully reinstated by Board action, the employee shall receive payment for all days not worked and shall not lose any longevity or be charged with a break in service due to said dismissal.

In suspension cases, if the employee's suspension is overruled by Board action, the employee shall receive payment for all days not worked and shall not lose any longevity or be charged with a break in service due to said suspension.

ARTICLE XXI (cont.)

- d. A timely hearing shall be provided before an ALJ, pursuant to the provisions of the Rules and Regulations of the Division of Administrative Hearings (DOAH).
 - e. Subsequent to receipt of the ALJ's decision, the parties shall have 15 calendar days in which to file exceptions with the Board.
 - f. Any such decision, adverse to the employee, may be appealed by the employee, pursuant to Florida Statutes, provided such appeal is filed within 30 calendar days after the decision of the Board.
 - g. Due process hearings regarding disciplinary actions taken against continuing contract teachers or probationary teachers during the school year shall be conducted in accordance with the provisions of Florida Statutes.
4. For Teachers Who Hold a Professional Service Contract as of July 1, 1997:

The professional service contract shall be renewed the following year, unless the Superintendent charges the employee with a below standards rating, as determined under provisions of Florida Statutes and notifies the employee, in writing, no later than six weeks prior to the end of the post-school conference period, of performance deficiencies which may result in termination of employment, if not corrected during the subsequent year of employment (which shall be granted for an additional year in accordance with the provisions in Florida Statutes). Except as otherwise hereinafter provided, this action shall not be subject to the provisions of Chapter 120, but the following procedures shall apply:

- a. On receiving notice of a below standards rating, the employee, on request, shall be accorded an opportunity to meet with the Superintendent or his/her designee for an informal review of the determination of a below standards rating.
- b. An employee notified of a below standards rating may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, for the subsequent year of employment.
- c. During the subsequent year, the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically so that the employee will be kept apprised of progress achieved.
- d. Not later than six weeks prior to the close of the post-school conference period of the subsequent year, the Superintendent shall notify the employee, in writing, whether the performance deficiencies have been corrected. If so, a new professional service contract shall be issued to the

ARTICLE XXI (cont.)

employee. Upon such renewal, the provisions of paragraph 5 below shall apply, and this section shall no longer apply.

5. If the performance deficiencies have not been corrected, the Superintendent may notify the Board and the employee, in writing, that the employee shall not be issued a new professional service contract, provided that, if the recommendation of the Superintendent is not to issue a new professional service contract and the employee wishes to contest such recommendation, the employee will have 15 calendar days from receipt of the Superintendent's recommendation to demand, in writing, a hearing in which the employee may raise as an issue, among other things, the sufficiency of the Superintendent's charges of a below standards rating. Such hearing shall be conducted at the employee's election in accordance with one of the following procedures:
 - a. a direct hearing conducted by the Board within 45 calendar days of receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of Florida Statutes. A majority vote of the Board shall be required to sustain the Superintendent's recommendation. The determination of the Board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or,
 - b. a hearing conducted by an ALJ assigned by the DOAH. The hearing shall be conducted within 45 calendar days of receipt of the written appeal in accordance with Florida Statutes. The recommendation of the hearing officer shall be made to the Board. A majority vote of the membership of the Board shall be required to sustain or change the hearing officer's recommendation. The determination of the Board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.
 - c. In the event that the original noted deficiencies have been remediated, but new deficiencies have been identified, the Superintendent may recommend a second subsequent year of employment to remediate the newly-identified deficiencies.
6. For Teachers Who Obtain or Renew a Professional Service Contract after July 1, 1997:

A professional service contract shall be renewed each year, unless the Superintendent, after receiving the recommendations required by Florida Statutes, charges the employee with unsatisfactory performance, as determined under provisions of Florida Statutes, and notifies the employee, in writing, of performance deficiencies which may result in termination of employment, if not corrected during the subsequent ninety (90) calendar days of "Performance Probation".

 - a. An employee notified of unsatisfactory performance may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, during the term of the

ARTICLE XXI (cont.)

"Performance Probation"; however, if a transfer is granted, it shall not extend the term of the "Performance Probation."

- b. During the "Performance Probation", the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically and be kept apprised of progress achieved.
- c. Within fourteen (14) days of the close of the "Performance Probation", the employee's Principal must assess whether the performance deficiencies have been corrected and must forward a recommendation to the Superintendent. Within fourteen (14) days of receiving the Principal's recommendation, the Superintendent shall notify the employee, in writing, whether the performance deficiencies have been corrected and whether the Superintendent will recommend that the School Board continue or terminate the employment contract. If the Superintendent's recommendation is to continue the employment, a new professional service contract shall be issued to the employee. Upon such renewal, the provisions of paragraph 5 below shall apply, and this section shall no longer apply. If the recommendation of the Superintendent is not to continue the employment and the employee wishes to contest such recommendation, the employee will have 15 calendar days from receipt of the Superintendent's recommendation to demand, in writing, a hearing. Such hearing shall be conducted by an ALJ assigned by the DOAH. The hearing shall be conducted within 60 calendar days of receipt of the written appeal in accordance with Florida Statutes. The recommendation of the hearing officer shall be made to the Board. A majority vote of the membership of the Board shall be required to sustain or change the ALJ's recommendation. The determination of the Board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

7. Annual Contract Teachers

- a. For any instructional staff member newly employed after June 30, 1997, the first ninety-seven (97) days of employment is established as a probationary period. During the probationary period, the employee may be dismissed without cause or may resign without breach of contract.
- b. Any other annual contract teacher may be suspended or dismissed at any time during the school year, provided the charges against him/her are based upon just cause in accordance with Florida Statutes. Any recommendation for suspension or dismissal of an annual contract instructional employee, based upon unsatisfactory teaching performance, shall require that the teaching deficiencies be documented in compliance with the procedures of the M-DCPS evaluation process. Disciplinary action based on unsatisfactory teaching performance may not be taken against an employee in the absence of an official performance assessment conducted in accordance with procedures, guidelines,

ARTICLE XXI (cont.)

stipulations, and requirements, as are included in any employee assessment system in effect at the time.

Procedures are the same as those stipulated in Section 5 (a), (b), and (c) of this Article (Due Process - Professional Service Contract Teachers).

C. Harassment

1. Employees shall be free from unnecessary, spiteful, or negative criticism or complaints by administrators and/or other persons. Under no conditions shall management representatives express such complaints or criticisms concerning an employee in the presence of other employees, students, or parents, nor shall anonymous complaints be processed.
2. Employees should not be subjected to harassment, abusive language, upbraiding, insults, or interference by a parent or other person in the performance of the employee's duties.

D. Processing of Complaints

When a complaint about an employee is received from a parent, student, or any non-supervisory personnel, and further administrative action is warranted, the following procedure shall be followed:

1. The principal or immediate supervisor should acknowledge and accept the complaint and inform the complainant that the matter will be looked into.
2. The principal or immediate supervisor should confer with the employee, inform the employee of the complaint, receive the employee's explanation and, if necessary, request the complainant to come in for a conference with the employee at a time mutually agreed upon by all parties. Principals or immediate supervisors who are unable to establish proof as to the validity of the complaint shall be prohibited from noting any such complaint in the employee's personnel file.
3. Should the complainant contact Regional Center or district school authorities, and further administrative action is warranted, the employee shall be notified promptly.
4. The use of tape recorders or other mechanical devices is expressly forbidden.
5. Twenty-four hours' notice of any meeting with the principal or immediate supervisor to discuss a complaint from a non-supervisory person shall be given employees.
6. Disciplinary action initiated or executed against an employee as a result of conferences referred to in this Article shall be in accordance with Article XXI, Section 1(A) of this Contract.

ARTICLE XXI (cont.)

E. Personnel Investigations/Administrative Reviews

1. The Board shall take steps to ascertain the identity of the complainant, prior to authorization of an investigation. No investigation of an allegation against an employee shall be made on the basis of an anonymous complaint.
2. In the event of allegations and/or complaints being made against any employee, an investigation which may result in information being placed in the employee's personnel file shall not be concluded prior to the time that the employee receives identification of the complainant and the nature of the complaint.

The Personnel Investigative Model (PIM) approved and adopted by the School Board on November 17, 2004, and the PIM User's Guide as agreed upon by the parties, shall govern the investigative process and are hereby incorporated as part of the Agreement.

3. In all Board investigations which may lead to suspension or dismissal of an employee, only the Superintendent or his/her designee may authorize such an investigation. No investigation shall be authorized on anonymous information, uncorroborated by any other supporting data. When a formal investigation has been authorized, all personnel involved will be advised of their legal rights and the procedures available to them for representation in accordance with PIM. Information that is not substantiated will neither be used as a basis for the investigation, nor for any related disciplinary action.
4. In all Board investigations resulting in discipline, the employee shall be provided with a copy of the report. With the permission of the employee, the Union shall also receive a copy in accordance with PIM. When investigatory reports are to be provided, said reports shall be transmitted within a timeframe consistent and harmonious with basic due process.
5. In all cases in which the investigation is concluded with the finding that there is no probable cause to proceed further and with no disciplinary action taken or charges filed, a statement to that effect signed by the responsible investigating official shall be attached to the complaint, and the complaint and all such materials shall be open, thereafter, to inspection. Where allegations have not been proven against an employee, no reprisal or punitive action shall be taken against an employee.

F. Procedures for Termination of Annual/Probationary Contract Employees

1. The annual appointment of eligible employees is accomplished in accordance with the requirements of applicable State Statutes.
2. The parties agree to develop procedures for termination of employment.
3. From the beginning of the year, administrators and supervisors should make every reasonable effort to assist unit members to perform their duties

ARTICLE XXI (cont.)

successfully. In those instances where an employee's performance is unsatisfactory, the responsible administrator shall initiate, without delay, the appropriate steps which will provide, at the proper time, appropriate information on which to base employment recommendations. Employees should have been notified, in writing, of deficiencies and of the corrective action deemed appropriate; and conferences should have been scheduled with the employee and the employee apprised, in writing, of the results of the conferences, the nature of the discrepancies discussed, and the remedial action required. Follow-up conferences should then serve to indicate the degree to which success has been achieved in correcting deficiencies.

G. Employee Disclosure of Information ("Florida Whistleblowers Act")

It is agreed between the parties that the Board will not take retaliatory action against an employee who reports to an appropriate agency an alleged violation of law on the part of the Board which creates a substantial and specific danger to the public's health, safety, or welfare. It is further agreed that no retaliatory action will be taken against persons who disclose information to an appropriate agency alleging improper use of governmental offices, gross waste of government funds, or any other abuse or neglect of duty on the part of an agency, public officer, or employee.

The disclosure information shall be to an agency or federal government entity having authority to investigate, police, manage, or otherwise remedy the violations of the "Florida Whistleblowers Act of 1986". It is the intent of the parties to protect persons who disclose information on their own initiative in a sworn complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; or who refuse to participate in any action prohibited by the Act.

Any employee who is disciplined or subjected to other adverse personnel action by the Board due to the employee's exercise of his/her rights under the "Florida Whistleblowers Act of 1986" will have the right to present his/her concerns to the Superintendent or designee. If the employee is not satisfied with the decision/action of the Superintendent or designee, the employee has the right to pursue the remedies outlined in the Act. Under no circumstances will any alleged violation of this Section be subject to the grievance/arbitration procedure.

H. Student Case Management System (SCMS)

Neither the forms nor the data generated by the Student Case Management System (SCMS) shall be made a part of a teacher's personnel file; nor shall they be used to initiate disciplinary action against any teacher; nor shall this information be used as a basis for the assessment of a teacher in any portion of the observation/evaluation forms. Neither the name nor the employee number of the referring teacher shall be entered in the automated data retrieval system.

It is the intent of the Board to utilize the SCMS, exclusively, to refine and improve student personnel services. The SCMS is not to be used as a part of the personnel

ARTICLE XXI (cont.)

assessment system; nor is it intended to reduce the range of available student disciplinary actions, pursuant to the Code of Student Conduct nor the availability of student services provided to students.

I. Resignation

1. Employees shall be allowed to resign their position, without prejudice, upon at least 30 calendar days' notice.

Employees shall submit written resignation to their immediate supervisor and a copy to the Office of Human Resources.

2. Employees shall have the right to withdraw their resignation up to 10 calendar days prior to the effective date of the resignation, except in cases where an employee is not recommended for reemployment or has been suspended or dismissed. This exception may be waived by mutual agreement.
3. No employee shall be coerced, threatened, or intimidated to submit a resignation in lieu of disciplinary action or unacceptable evaluation.

Section 2. Employee Rights

A. Union Affiliation

The employee shall be free from interference to form, join, or assist employee organizations, or to refrain from such activities in accordance with Chapter 447 of the Florida Statutes.

B. Personal Life

1. The private and personal life of an employee, except for such incidents and occurrences which could lead to suspension or dismissal, as provided by statute, shall not be within the appropriate concern of the Board.
2. The Board places the question of out-of-school activities on the part of teachers purely on a professional and ethical basis. The teachers engaged in out-of-school activities shall examine them in a professional and ethical light and abandon any such activities as appear to them, after conscientious examination, to violate professional ethics. The question is placed entirely in the keeping of the conscience of the individual teacher.

ARTICLE XXI (cont.)

C. Family Relationships

Permanent employees of the school system shall not be prohibited from working at the same work location because they are members of the same family. In addition, the Board agrees the employees who wish to enroll their children at the same worksite where they are employed shall not be prohibited from doing so, subject to the approval of the Regional Center Superintendent. Approval will not be arbitrarily denied. Denials based on special entry requirements or excessive overcrowding at the location will not be considered arbitrary. Children of employees who are unable to enroll at the employee's worksite for any reason shall be eligible to enroll at an adjacent school, with the approval of the Regional Center Superintendent.

D. Non-M-DCPS Compensation

No M-DCPS employee may use his/her regular work hours to earn compensation from sources other than the Board, except for services construed to be desirable public service approved by the Superintendent.

E. Employee Access to Information

1. Pursuant to articles of this Contract, employees shall have full access to Board Rules and to all terms and conditions of employment.

2. Annual Statement of Information

Employees shall have access to at least the following information, and the employer will provide forms with which employees may request:

- a. sick leave accrual;
- b. salary step, level, advanced study credit, increment data, supplements, PIP, longevity;
- c. accrued vacation and compensatory time; and,
- d. certificate expiration date.

Such annual summary statements shall be received by employees no later than December 1 of each school year.

F. Health Services/Physical and Psychological Examinations Work Place Policies

1. The cost of all physical, psychological, or psychiatric tests or examinations taken by employees at the request or order of the Superintendent or his/her designee, except those examinations or tests which are prerequisites of initial employment, shall be borne by the Board.

ARTICLE XXI (cont.)

2. At all times, the choice from among state-licensed physicians, psychologists, or psychiatrists shall be made by the employee from a list provided by the employer. No employee shall be compelled to submit to any test or examination not required of all employees of that classification without a written statement of the need for such examination.
3. An employee shall have the right to seek an additional opinion or judgment from among state-licensed physicians, psychologists, or psychiatrists of the employee's choosing. The cost shall be borne by the employee. When the option is exercised, the additional opinion shall be attached to any other medical opinions under consideration with respect to disciplinary action against the employee.

G. Drug-Free Work Place General Policy Statement

M-DCPS and the UTD recognize that substance abuse in our nation and our community exacts staggering costs in both human and economic terms. Substance abuse can be reasonably expected to produce impaired job performance, lost productivity, absenteeism, accidents, wasted materials, lowered morale, rising health care costs, and diminished interpersonal relationship skills. M-DCPS and the UTD share a commitment to solve this problem and to create and maintain a drug-free work place.

M-DCPS is responsible for the instruction and well-being of the students entrusted to its care. A consistent message needs to be communicated to M-DCPS students: the use of illegal drugs, the abuse of alcohol, and the misuse of prescription drugs is unacceptable.

a. Policy Objectives

- (1) to promote a healthy, safe-working, and learning environment;
- (2) to seek the rehabilitation of employees with a self-admitted or detected substance abuse problem;
- (3) to eliminate substance abuse problems in the work place;
- (4) to provide a consistent model of substance-free behavior for students;
- (5) to provide a clear standard of conduct for M-DCPS employees; and
- (6) to hire drug-free employees.

b. Policy Statement - Illegal Drugs

Drug abuse by employees interferes with the educational and work process and compromises the safety and well-being of staff and students. Employees are expected to conduct themselves in a manner consistent with the following provisions:

ARTICLE XXI (cont.)

- (1) Employees on duty or on Board property will not manufacture, distribute, dispense, possess, or use illegal drugs, nor will they be under the influence of such drugs.
- (2) Employees on or off duty will not influence students to use or abuse illegal drugs.
- (3) An employee convicted of any criminal drug statute violation occurring in the work place shall notify M-DCPS no later than five days after such a conviction.

c. Policy Statement - Alcohol and Prescription Drugs

Alcohol, prescription, and over-the-counter drugs are legal and readily available. Generally safe and acceptable, these drugs, when abused over time or used in combination with one another, can result in chemical dependency or poly-drug addiction. Employees are expected to conduct themselves in a manner consistent with the following provisions:

- (1) Employees on duty or on Board property will be free of intoxication from alcohol. Further, employees will not manufacture or use alcoholic beverages while on Board property or on duty.
- (2) Employees on duty will not use or take prescription drugs above the level recommended by the prescribing physician and will not use prescribed drugs for purposes other than what the prescribed drugs were intended. In addition, the employee will not distribute or dispense such drugs, except as provided in Board Rule 6Gx13- 5D-1.021, School Health Services Program.

d. Policy Statement - Employee Physical Examinations/ Screening/Health Services

In order to establish and support a clear standard of conduct for employees, M-DCPS adheres to the following provisions:

- (1) Drug screening will be included in all physical examinations required under existing labor contracts, statutes, and Board Rules.
- (2) Circumstances under which testing may be considered include, but are not limited to, the following:
 - (a) observed use of illegal drugs and/or abuse of alcohol during work hours;
 - (b) apparent physical state of impairment of motor functions;
 - (c) marked changes in personal behavior on the job not attributable to other factors; and

ARTICLE XXI (cont.)

- (d) employee involvement in serious or repetitive accidents on the job, causing personal injury to self or others and/or significant property damage.
- (3) Drug and/or alcohol screening shall be conducted by Board-approved, independent, certified laboratories utilizing recognized techniques and procedures, as described in the Miami-Dade County Public Schools "Drug-Free Work Place Technical Guide", which is incorporated by reference into this Contract, and made a part thereof. The protocol for drug screening shall include a split sample and chemical immunoassay screening procedure. In the event initial test results are screened positive, such results will be confirmed and verified by the Gas Chromatography/Mass Spectrometry (GC/MS) test.
- (4) Medical records and information relating directly thereto will be maintained in strict confidentiality. Any laboratory contract shall provide that the contractor's records are to be kept confidential under provisions of Florida law. M-DCPS shall establish a system of maintaining records to include both the district's and the contractor's record of applicant and employee urinalysis and blood alcohol results.

The contract and the record maintenance system must have specific provisions that require that employee records are maintained and used with the highest regard for employee privacy, consistent with Florida's Public Records Act, and the purpose of achieving and maintaining a drug-free work place.

- (5) M-DCPS recognizes that chemical dependency is an illness that can be successfully treated. It is the policy of M-DCPS, where possible, to seek rehabilitation of employees with a self-admitted or detected drug problem. Disciplinary action may be instituted against employees who the Board believes will not be assisted by rehabilitation or who have negatively impacted students and/or staff. Employees who have previously been referred for assistance or employees unwilling or unable to rehabilitate may be subject to appropriate action, pursuant to Board Policy, applicable Florida Statutes, State Board Rules, and applicable provisions of collective bargaining agreements.

H. Tobacco-Free Work Places

The parties seek to foster the health and safety of all M-DCPS employees, students, and visitors.

Smoking poses a significant risk to the health of the smoker. It can damage sensitive technical equipment and can be a safety hazard. In sufficient concentrations, side-stream smoke can be hazardous to non-smokers in the work environment. It may be harmful to individuals with heart and respiratory diseases or allergies related to tobacco

ARTICLE XXI (cont.)

smoke. Use of other tobacco products also poses a significant risk to the health of the user.

Use of tobacco products is prohibited in areas where students are located or where there is sensitive or hazardous material. Use of tobacco products is prohibited on Board-owned/leased properties and vehicles. All M-DCPS employees and applicants shall be informed of the M-DCPS tobacco-free work place policy.

I. Employee Assistance Program (EAP)

The Board and the Union recognize that a wide range of problems not directly associated with an employee's job function can have an effect on an employee's job performance and/or attendance.

The Board and the Union agree that assistance will be provided to such employees through the Employee Assistance Program (EAP). The EAP is intended to help employees and their families who are experiencing persistent problems that may jeopardize the employee's health and continued employment. The program goal is to help individuals who develop such problems by providing for consultation, treatment, and rehabilitation to prevent their condition from progressing to a degree which will prevent them from working effectively.

Confidentiality of records will be insured for participants in the program, according to established personnel file provisions, State Statutes, and federal regulations.

The Guidelines for the Employee Assistance Program are, by reference, made a part of this Contract.

Employee Rights

Job security will not be jeopardized by referral to the EAP, whether the referral is considered a voluntary referral, in which an employee elects to participate in the program, or a supervisory referral, in which a supervisor uses adopted guidelines to refer an employee into the program.

An employee has the right to refuse referral into the program and may discontinue participation at any time. Failure by an employee to accept referral or continue with treatment will be considered in the same manner as any factor that continues to affect job performance adversely.

J. Safety

1. Employee Safety

Supervisors will take every reasonable precaution to protect the life, health, and safety of each employee at their work sites. Employees shall not be required to perform duties which would endanger their health, safety, or well-being, nor will

ARTICLE XXI (cont.)

employees be required to work under unsafe and/or hazardous conditions, as determined by the Department of Safety.

2. Chemicals and Diseases

In the event employees are exposed to childhood diseases or toxic chemicals, as part of their ordinary duties, they will be given prescribed examinations and tests at the time of such exposure, and thereafter, as determined by the examining physician. Employees will be examined or tested on the Board's time and at the Board's expense. Refusal by an employee to submit to such examinations and tests shall be grounds for appropriate disciplinary action, including dismissal.

3. Accident Reports

In the event an employee is involved in an accident or injury, an accident report will be completed and distributed, as prescribed by administrative directives. A copy of the accident report shall be provided to UTD.

4. Safety Devices

Employees shall be required to wear the safety devices, protective clothing, or equipment designated by management for employee protection. Safety devices and equipment, when required, will be provided by the Board. Refusal or failure of an employee to use or wear such devices or equipment shall be grounds for appropriate disciplinary action, including dismissal.

5. Facilities

The Board recognizes that teaching and learning are greatly enhanced by a facility that is well-maintained and supplied with materials that are basic and enriching. The Board reaffirms its philosophy of providing students and teachers with such an environment.

K. Freedom of Speech

The parties agree that since the Constitution of the United States guarantees every citizen the right to free speech, all UTD bargaining unit members may speak with the media without fear of reprisal. This right of Freedom of Speech shall extend to any forum in which the employee expresses his/her opinion. Any dispute arising under this provision will not be arbitrable.

Section 3. Procedures for Continued Employment of Educational Support Personnel

- A. Educational support personnel include office and clerical, school support, (as designated in Articles XVII and XVIII), and paraprofessional personnel. (See Appendix F)

ARTICLE XXI (cont.)

- B. The annual appointment of educational support personnel is accomplished in accordance with the requirements of Florida Statutes, Chapter 1012.40.
- C. For purposes of the probationary period, defined in Chapter 1012.40, Florida Statutes, all full-time educational support personnel shall be employed on a probationary basis by M-DCPS for three years, with the exception of office employees, who shall be employed on a probationary basis for one year. The three-year or one-year probationary period constitutes eligibility for continued employment, as defined herein; it does not alter or replace existing provisions defining probationary periods for newly-hired personnel or those changing to positions having different job classifications.

Part-time employees working 20 or more hours per week for 36 weeks, or a total of 687 hours per year, meet the eligibility requirements, as described herein.

For purposes of crediting experience, a "year" is defined as 99 days, exclusive of summer employment, for 10-month employees, and 116 days for 12-month employees. (See Appendix E)

Days include actual service, including sick leave and holidays, for which compensation was received in any fiscal year.

- D. Upon successful completion of the probationary period, the employees' employment status shall continue from year to year, unless the number of employees is reduced on a district-wide basis for financial reasons, or the employee is terminated for just cause. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, immorality, and/or conviction of a crime involving moral turpitude. Such charges are defined, as applicable, in State Board Rule 6B-4.009.
- E. The employee is entitled to be represented by up to two representatives of the Union at any conference dealing with disciplinary action(s).
- F. Where the Superintendent recommends termination of the employee, the Board may suspend the employee with or without pay.

The employee shall receive written notice and shall have the opportunity to formally appeal the termination by notifying the School Board Clerk of the employee's intent to appeal such action within 20 calendar days of receipt of the written notice.

Following receipt of an appeal, the Board shall appoint an impartial administrative law judge, who shall set the date and place mutually agreeable to the employee and the Board for the hearing of the appeal.

Prior to the hearing, the Board will file and serve the employee with a Specific Notice of Charges.

The Board shall set a timelimit, at which time the findings of the administrative law judge shall be presented.

ARTICLE XXI (cont.)

The findings of the administrative law judge shall not be binding on the Board, and the Board shall retain final authority on all dismissals.

The employee shall not be employed during the time of such dismissal, even if appealed. If reinstated by Board action, the employee shall receive payment for the days not worked and shall not lose any seniority or be charged with a break in service due to said dismissal.

Dismissals are not subject to the grievance/arbitration procedures.