

**TITLE 60: BOARD OF EDUCATION**

**SUBCHAPTER 60-30.3**

**EMPLOYMENT OF NON-CERTIFIED PERSONNEL REGULATIONS**

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Subchapter Authority: CNMI Const., art. XV; 1 CMC §§ 2251-2273; 3 CMC §§ 1101-1192.

Subchapter History: Amdts Adopted 36 Com. Reg. 35895 (Dec. 28, 2014); Amdts Proposed 36 Com. Reg. 35648 (Oct. 28, 2014); Amdts Adopted 33 Com. Reg. 31841 (Aug. 23, 2011); Amdts Proposed 33 Com. Reg. 31702 (June 27, 2011); Amdts Adopted 33 Com. Reg. 31837 (Aug. 23, 2011); Amdts Proposed 33 Com. Reg. 31686 (June 27, 2011); Amdts Proposed 32 Com. Reg. 30354 (May 21, 2010);+ Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 23026\*\* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Amdts Adopted 26 Com. Reg. 22580 (May 24, 2004); Amdts Adopted 26 Com. Reg. 22194 (Mar. 23, 2004); Amdts Proposed 26 Com. Reg. 21670 (Jan. 22, 2004);

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Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Amdts Proposed 20 Com. Reg. 16120 (Sept. 15, 1998);\* Amdts Adopted 20 Com. Reg. 15965 (June 15, 1998); Amdts Proposed 19 Com. Reg. 15423 (Aug. 15, 1997); Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

+ As of August 31, 2011, an adoption notice had not been published.

\*A notice of adoption for the September 1998 amendments was never published.

\*\*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: Title 3, division 1 of the Commonwealth Code contains the education laws of the Commonwealth. PL 6-10, the “Education Act of 1988,” codified as amended at 1 CMC §§ 2251-2273 and 3 CMC §§ 1101-1192, took effect on October 25, 1988. PL 6-10 § 1 created the Public School System as a nonprofit corporation within the Commonwealth government, headed by the Board of Education. See 1 CMC §§ 2251 and 2261. The Board of Education is empowered to formulate policy and exercise control over the Public School System and to establish rules, regulations and policies for the operation of the Public School System. See 1 CMC § 2268(b).

PL 6-10 repealed and reenacted PL 3-43 (effective Jan. 19, 1983), a comprehensive revision of the Commonwealth’s education laws. See the commission comment to 3 CMC § 1101.

Prior to October 25, 1988, the Commonwealth government included a Department of Education and Board of Education, which are the predecessors of the current Public School System and Board of Education. See PL 1-8 (effective August 10, 1978) and PL 3-43. Throughout the development of education law in the Commonwealth, the Board of Education has been the entity with the authority to promulgate rules and regulations.

### **Part 001 - General Provisions**

[Reserved.]

### **Part 100 - The Hiring Process**

#### **Subpart A - Non-certified Personnel**

##### **§ 60-30.3-101 Definition**

(a) Those persons hired to work as either a teacher or a librarian are required to be certified by the Board of Education under 3 CMC § 1181. The terms “teacher” and “librarian” do not include volunteer assistants, teaching interns, teacher aides, guest lecturers and student teachers. All other employees of the Public School System are considered non-certified personnel.

(b) Employees directly hired by the Board of Education, such as the Commissioner, legal counsel and Board staff, are not considered to be employees of the Public School System for the purpose of the employment regulations in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The first paragraph was not designated. The Commission designated it subsection (a) and redesignated subsection (b) accordingly.

**Subpart B - Recruiting and Interviewing**

**§ 60-30.3-102 Determination of Vacancy**

(a) The Human Resources Officer shall determine the existence of vacancies and shall be in charge of the process of recruiting, interviewing and hiring a new employee.

(b) A vacancy may exist through resignation, non-renewal, promotion, termination, the opening of new positions or by other means in the Public School System. An employee wishing to resign or not renew his or her contract shall inform the Human Resources Officer in writing of that intent. If a supervisor or manager determines that an employee will not seek a renewal or should not have his or her contract renewed, then this information must be provided to the Human Resources Officer. If the Human Resources Officer is informed by a supervisor or manager that an employee will not be seeking a renewal, then this shall, if possible, be confirmed by direct contact with the employee.

History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-104 Initiation of Recruitment Process**

Upon determination that there is a position vacancy, the Human Resources Officer shall prepare a vacancy announcement in consultation with the supervisor or manager.

History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-106 Vacancy Announcement**

The vacancy announcement shall contain the following information, at the minimum:

- (a) Job title and position description,
- (b) Class title, pay level and pay range,
- (c) Geographic location and organizational location of position,
- (d) Minimum qualifications for the position, including education, general experience, specialized experience and such qualitative evaluation elements as may deemed appropriate and necessary, and
- (e) Instructions, including how to apply for the position, including place to apply, form of application required, and documentary support required, when appropriate.

Modified, 1 CMC § 3806(f).

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History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-108 Funds Certification and Approval**

- (a) The vacancy announcement form shall have a signature place on it for approval by the Fiscal Officer and a signature space on it for approval by the Commissioner.
- (b) The Human Resources Officer shall obtain the certification by the Fiscal Officer that there are sufficient funds to hire to fill the vacancy.
- (c) The Human Resources Officer shall obtain the certification by the Commissioner that there is a need to fill the vacancy on the terms described.

History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-110 Announcement of Vacancy**

- (a) There shall be two types of announcements:
  - (1) A promotional/transfer opportunity that shall be open only to PSS employees for promotion or transfer consideration.
  - (2) An open competitive announcement that shall be open to all qualified applicants.
- (b) Once the proper approval has been obtained, the Human Resources Officer shall post the promotional transfer opportunity for a period of at least fifteen days. Qualified PSS employees may apply and will be placed on a PSS employee eligibility list. If there is more than one employee applicant, interviews shall be conducted in accordance with § 60-30.3-120. If an appropriate candidate for the position, as determined by the Human Resources Officer or the PSS interviewer, is not found within PSS, then the open competitive announcement process shall be initiated.
- (c) An open competitive vacancy announcement shall be posted for a period of at least fifteen days. At a minimum, the vacancy announcement shall be posted on a vacancy announcement board at PSS, on the CNMI Personnel Office board where vacancy announcements are normally posted, at a similar board at the Northern Marianas College and at the principal's office at each of the public schools.
- (d) In the event that the position is one which offers the possibility of greater than \$40,000 in salary, then the open competitive vacancy announcement shall be published at least once during the fifteen day period in a newspaper published in the Commonwealth and circulated generally throughout the Commonwealth.

Modified, 1 CMC § 3806(c), (e), (f).

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History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The 1997 amendments amended subsection (a). The 2004 amendments added new subsections (a) and (b) and redesignated and amended the existing subsections.

### **§ 60-30.3-112 Announcement Period Extension**

(a) Persons who seek to be interviewed for the job vacancy shall file an application on the PSS form reprinted at the end of this subchapter as exhibit "A." In handing out application forms, a copy of the regulations in this subchapter shall be attached to the form for the applicant to keep. The Human Resources Officer or its designee may assist applicants in filing their forms. In particular, they shall witness the signing of the waivers in the form before accepting it for filing.

(b) If there are not at least three qualified applicants after the open competitive announcement period, or if the Human Resources Officer determines that insufficient interest has been shown in the announcement, then the announcement period shall be extended for another fifteen days. A new announcement shall be circulated indicating the extension of the application period.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The 1997 amendments amended subsection (a). The 2004 amendments amended subsections (a) and (b).

### **§ 60-30.3-114 Eligibility List**

(a) Every person who applies for a vacancy during the open competitive announcement period and who meets the minimum qualifications shall be listed on an eligibility list for that position. The Human Resources Officer shall list qualified applicants in no particular order.

(b) The eligibility list shall be maintained for one year. Names may be removed by the Human Resources Officer only if the applicant voluntarily withdraws, is found to not be qualified, is disqualified due to false statements or fraud in the application, or the applicant fails to respond within ten calendar days to an offer for employment.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 32 Com. Reg. 30354 (May 21, 2010);\* Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).



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\* As of August 31, 2011, an adoption notice had not been published.

Commission Comment: The 2004 amendments amended subsection (a).

### **§ 60-30.3-116 PSS Interviewers**

(a) Only those persons designated as a “PSS interviewer” shall be authorized to interview applicants for non-certified personnel employment.

(b) The Commissioner shall designate in writing those persons authorized to serve as PSS interviewers. The original of this designation shall be kept by the Commissioner and copies shall be provided to the DSS interviewer, Human Resources Officer and legal counsel.

(c) The Commissioner shall only designate those persons to be PSS interviewers who have been trained by the Equal Employment Officer or the legal counsel on the legal restrictions and requirements of the interview process. Any person who has been designated as a “PSS recruiter” for certified personnel automatically meets this requirement.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-118 Appointment of PSS Interviewer for Specific Vacancy**

(a) The Human Resources Officer shall select from the list of approved PSS interviewers an interviewer who, if possible, is within the direct line of supervision over the vacancy being announced. For example, applicants for employment at a particular school should be interviewed by the school’s principal; and, applicants for positions as bus drivers should be interviewed by the head of transportation services.

(b) If the vacancy is for the position of principal, vice principal, program manager or other management officials of similar or higher rank, then the Human Resources Officer must first obtain the concurrence of the Commissioner as to the appointment of a PSS interviewer.

(c) Upon appointment, the Human Resources Officer shall provide the PSS interviewer with the eligibility list, the vacancy announcement, the applications received and any supporting documents.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-120 The Interview**

The PSS interviewer shall interview at least the first five applicants listed on the eligibility list and any other applicants of his or her own choosing on the eligibility list. The PSS interviewer shall take charge of representing PSS during the interview. The PSS interviewer may have other persons sit in on the interview, but the interview shall be controlled by the PSS interviewer.

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Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### § 60-30.3-122 Background Investigation

(a) References: The PSS interviewer shall contact one or more of the applicant's present or former supervisors and co-workers in order to obtain an opinion of the applicant's suitability for employment. The PSS interviewer shall make these contacts only after receiving a signed waiver on the application form permitting such contact. In the event that the applicant claims work experience that would affect his or her classification, then the applicant shall provide written verification from past employers for the claimed work experience.

(b) Transcript: Where the completion of a certain level of education or a certain course of instruction is a requirement of the job vacancy or if the classification or salary of the job depends upon educational achievement, then the applicant shall cause an official copy of his or her transcript of courses, grades, and degrees awarded in post-secondary institutions to be sent by the educational institution to the Human Resources Officer, CNMI Public School System, P.O. Box 1370, Saipan, MP 96950.

(c) Criminal Record Clearance:

(1) The Human Resources Officer shall make an inquiry through the Department of Public Safety and/or the Clerk of Court into past criminal convictions in order to determine the applicant's suitability for the position offered. This inquiry shall be made only after receiving a signed waiver on the application form.

(2) FBI Record Clearance: The Human Resources Officer shall determine those cases in which a DPS record clearance is not sufficient to protect the health, safety and welfare of students. Those situations include, but are not limited to, when an applicant has not resided very long in the CNMI, when an applicant can be expected to have significant contact with students, and when an applicant is given a great degree of trust to serve in loco parentis to children. In such cases, the most reliable means of obtaining criminal records is by obtaining an FBI clearance through submitting two fingerprint cards. When the Human Resources Officer deems it advisable, then the Human Resources Officer or the PSS interviewer should present the applicant with four sets of fingerprint cards, request the applicant to have two of them filled out completely by a local law enforcement agency, return them to PSS and submit them to the FBI.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The first paragraph of subsection (c) was not designated. The Commission designated subsection (c)(1) and redesignated subsection (c)(2) accordingly.

### § 60-30.3-124 Provisional Appointments

A provisional appointment shall be limited to ninety calendar days, and is used to fill what is otherwise a permanent appointment while waiting for the hiring process to create an appropriate eligibility list. The provisions of §§ 60-30.3-104 through 60-30.3-120 of this part need not be

complied with before a position can be filled on a provisional basis. The commissioner may authorize extension of a provisional appointment beyond ninety days for a maximum of ISO\* days when the examination fails to make available an adequate number of qualified candidates. Any person given a provisional appointment must meet the minimum qualifications for the class of position to which they are to be appointed.

\*So in original; see the commission comment to this section.

Modified, 1 CMC § 3806(c), (d), (g).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997).

Commission Comment: The Commission deleted the repeated word “with,” and corrected the spelling of “extension” to correct manifest errors.

The starred letters “ISO” should probably be the number “150.” The error is in the original and the intent is unclear. See 19 Com. Reg. at 15484 (Aug. 15, 1997).

### **§ 60-30.3-126 Acting Appointments**

An acting appointment is the designation, in writing, by the Commissioner, that an employee will act for a period of up to thirty days in the place of a supervisor while that supervisor is absent. When the supervisor’s absence exceeds the initial thirty day period, a new designation shall be made for up to an additional thirty days. This process is to be repeated until the supervisory position is filled permanently. Whenever an acting assignment exceeds ninety consecutive calendar days, the employee shall be temporarily promoted, and compensated accordingly, if (s)he meets the minimum qualification requirements of the position.

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997).

### **§ 60-30.3-127 Interim Appointments**

(a) An interim appointment is a designation, in writing, issued by the Commissioner of Education, of a current employee to perform the duties of a vacant key staff position or critical position while recruitment of a fully qualified person to fill such a position is conducted.

(b) The interim appointment shall be for a limited period of time, not to exceed one year. Successive interim appointments for an additional year may be approved by the Commissioner, as necessary, with concurrence of the Board of Education. The Commissioner of Education must identify key staff positions and critical positions that will be subject to interim appointments.

(c) The employee appointed on an interim appointment shall receive compensation effective on the date of the appointment at the rate of the vacant position. Upon successful recruitment of an applicant to fill the position, the employee shall revert back to his/her original position at the same rate of pay as he/she was receiving when he/she accepted the initial interim appointment.

Modified, 1 CMC § 3806(a), (f), (g).

## TITLE 60: BOARD OF EDUCATION

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History: Adopted 33 Com. Reg. 31837 (Aug. 23, 2011); Proposed 33 Com. Reg. 31686 (June 27, 2011).

Commission Comment: The Commission added subsection designations to the paragraphs in this section. The Commission deleted a comma found at the end of the first sentence of subsection (b) and changed two occurrences of “they” to “he/she” in subsection (c) to correct manifest errors.

### **Subpart C - The Employment Decision**

#### **§ 60-30.3-128 Recommendation**

(a) The PSS interviewer shall recommend in writing to the Human Resources Officer which person should be hired for the vacancy assigned specifying the reasons supporting the recommendation. This recommendation shall remain confidential.

(b)(1) The PSS interviewer should not make such a recommendation until he or she has reviewed the results of the background investigation received by the Human Resources Officer.

(2) In the event that a FBI clearance has been sought, a recommendation may be made and a contract executed prior to receipt of a clearance. If, however, the records search indicates a prior conviction which violates the standards of conduct for employees or which is contrary to statements in the application for employment, then the contract shall be terminated.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The first paragraph of subsection (b) was not designated. The Commission designated subsection (b)(1) and redesignated subsection (b)(2) accordingly.

#### **§ 60-30.3-130 Review and Approval**

The Human Resources Officer may accept or reject the recommendation. If the Human Resources Officer rejects the recommendation, then he or she must specify in writing the reasons for the rejection and supply this to the PSS interviewer and the Commissioner. This writing shall be kept confidential. If the Human Resources Officer accepts the recommendation, then he or she must forward it to the Commissioner for final approval in the event that the vacancy is one involving upper level management such as principals, vice principals or program managers. The Commissioner may either accept, or reject the recommendation, or order that further investigation be conducted regarding the applicant or applicants.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-132 Equal Opportunity Employer**

PSS shall provide equal employment opportunity to all persons. This policy of equal opportunity applies to every aspect of personnel policy and practice and to all terms and conditions of employment. Every employee shall ensure that this policy is adhered to and furthered by their conduct under the regulations in this subchapter.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-134 Intent to Offer Employment Letter**

(a) In the event that the Human Resources Officer determines that an offer of employment should be made, and any necessary approval is received from the Commissioner, an intent to offer employment letter, filled out completely, shall be provided to the applicant. The form of this letter is shown as exhibit “B” at the end of this subchapter.

(b) Any other communication to the applicant should emphasize that there will be no authorized offer of employment until a contract form signed by the Commissioner is presented to the applicant for his or her signature.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-136 There Is No Offer until There Is a Contract**

The decision to hire an applicant, when initially made by the Human Resources Officer, is always contingent. In itself, it never constitutes a binding promise to hire an applicant. Whether the Human Resources Officer’s decision will ultimately be accepted depends upon a determination that adequate funding exists, that legal procedures have been followed and that the Commissioner will approve the decision. Thus, it is important to inform the applicant that the Human Resources Officer’s decision is tentative and will not be definite until the applicant receives the signed contract. The signed contract is the official offer of employment which the applicant may accept by executing it.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-138 The Applicant File**

(a) The Human Resources Officer shall create an applicant file for each job recommendation letter it receives from a PSS interviewer. The file shall contain, at the minimum, the recommendation letter, job application, transcript (if applicable), criminal conviction clearance and any correspondence with the applicant.

(b) In the event that an applicant is not hired, the applicant’s file shall be retained by the Human Resources Officer for a minimum period of two years before it is destroyed. In the event that an applicant is hired, the applicant’s file shall be retained by the Human Resources Officer for a minimum period of two years after the final date of employment.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 32 Com. Reg. 30354 (May 21, 2010);\* Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

\* As of June 30, 2013, an adoption notice had not been published.

## **Subpart D - The Employment Contract**

### **§ 60-30.3-140 Purpose**

The hiring process reaches the conclusion with the offer of employment in the form of a contract signed by the Commissioner and an acceptance of employment by the applicant accomplished by the applicant's signing of the contract. Prior to extending the offer, all verification must be completed, all documentation received, and all approvals obtained, with the exception of medical examination results and FBI criminal clearance, when applicable. The role of the Human Resources Officer is to ensure that this has been done, and the role of the legal counsel is to ensure that the contract form has been filled out correctly prior to its presentation to the Commissioner.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-142 The Contract Form**

(a)(1) The Human Resources Officer shall completely fill out the employment contract for non-certified personnel. The form for this contract is exhibit "C" found at the end of this subchapter.

(2) In the case of an off-island initial hire, the off-island hire terms and conditions, exhibit "D" [reprinted] at the end of this subchapter, shall be incorporated into the employment contract, physically attached to it, and completely filled out (with the exception of the names of the dependents of the applicant who will reside with the applicant in the CNMI).

(i) The exact off-island benefits and conditions for each employee are to be determined by reviewing the employee's initial contract with the PSS. The off-island benefits and conditions as set forth in the original cannot be changed by subsequent contracts unless the employee expressly agrees in writing to waive them.

(ii) For purposes of the regulations in this part "initial contract" means the first contract entered into between the employee and the PSS. If an employee resigns from employment with the PSS and subsequently returns to work for the PSS, initial contract shall be defined as the first contract entered into upon the employee's return to work.

(b) The job application, resume, and a job description shall be attached to the contract of all employees. These documents do not need to be attached to contracts for renewal.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The first paragraph of subsection (a) was not designated. The Commission designated it subsection (a)(1) and redesignated subsection (a)(2) accordingly. The second paragraph of subsection (a)(2) was not designated. The Commission designated it subsection (a)(2)(i) and redesignated subsection (a)(2)(ii) accordingly.

The 1997 amendments added subsections (a)(2)(i) and (a)(2)(ii) and amended subsection (b).

**§ 60-30.3-144 Routing of the Contract**

(a) Human Resources Officer: The signature of the Human Resources Officer shall certify the correct determination of the salary offered, the receipt of a local criminal conviction clearance, and the verification of education and work experience relevant to the position. The Human Resources Officer shall also indicate whether or not he or she has sent the prospective employee's fingerprint cards to the FBI for a more thorough records check.

(b) PSS Finance and Budget: The signature of the Fiscal and Budget Officer shall certify the availability of the position as an FTE and the funds necessary to fund the position offered.

(c) PSS Legal Counsel: The signature of the legal counsel shall certify that the proper contract form has been used, that it has been filled out completely, that the job vacancy announcement and application are attached and that the Commissioner has the legal capacity to offer employment on behalf of PSS. In addition, the legal counsel shall determine whether the position is covered by or exempt from application of the Fair Labor Standards Act (FLSA).

(d) Commissioner: The Commissioner shall be the final government officer to sign the contract form. The Commissioner shall sign as the chief executive officer of PSS.

(e) Applicant:

(1) The applicant shall be presented with the contract form only after it has been signed by all of the government officers. The document at that point constitutes an offer of employment upon the terms and conditions expressed in that writing only. The signature of the applicant constitutes an acceptance of the offer.

(2) In the event that the applicant seeks to make, or actually makes, any modification to the contract form, this act shall constitute a rejection and a counter-offer, even though it is signed. Upon receipt, the Human Resources Officer shall review the modifications with the legal counsel and Commissioner to determine if they are acceptable. If so, then a new contract shall be prepared, re-routed for all the necessary signatures, and presented to the applicant for signing. No counter-offer shall be deemed to be accepted without following this procedure.

(f) Records: The applicant shall keep a copy of the employment contract and the original shall be retained by the Human Resources Officer.

(1) The application file shall be closed with a copy of the first page of the employment contract placed on top of its contents.

(2) An employee file shall be opened with the completed employment contract placed in it.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The first paragraph of subsection (e) was not designated. The Commission designated it subsection (e)(1) and redesignated subsection (e)(2) accordingly.

**§ 60-30.3-146 No Action Without Fully Executed Contract**

The Human Resources Officer shall be responsible for ensuring that employment contracts are routed through the Public School System and transmitted to the applicant without delay. In no event shall any applicant be requested to travel from the point of recruitment to the CNMI to begin employment without the Human Resources Officer first having in its possession a fully-executed employment contract. Nor shall any applicant be requested to commence working without the Human Resources Officer first having a fully-executed employment contract with that individual.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart E - The Contract Period**

#### **§ 60-30.3-148 Effect of Multi-track System**

The growth in the number of students attending public schools has exceeded the expansion of school facilities. This has led to the use of multi-track systems in the senior high school, the junior high school and one elementary school on Saipan. This method of scheduling may be extended to other schools in the future. The multi-track system divides a school's student body into two to four groups, each with its own teachers. Each group starts and ends its school year on different dates than the other groups. Thus, the school system and these particular schools are in operation throughout the calendar year.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-150 Term of Employment**

- (a) Certified employees will be contracted for two 190 day sessions over a two year period so that they may be assigned to two tracks during their contract.
- (b) Non-certified employees will be contracted for on the basis of 5 days per week, 52 weeks per year. Employment contracts shall be for a two year term; however, in special circumstances the Commissioner may approve a contract for a lesser term.
- (c) In the case of any CNMI government retiree who has received retirement benefits, the period of employment per fiscal year must be limited to a maximum of sixty calendar days in order to avoid forfeiting retirement benefits.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-152 Overtime Pay**

- (a) The federal Fair Labor Standards Act (FLSA) prohibits an employer from having an employee work more than forty hours in a workweek without paying the employee one and one-half times the employee's regular rate for each hour of overtime. Exempt from the application of this rule are employees who work in an executive, administrative or professional capacity. In



general, teachers, guidance counselors, accountants, attorneys, psychologists and registered nurses are considered to be professionals. Program directors, superintendents and principals are considered to be executives. Positions requiring overtime compensation include, but are not limited to, custodial workers, bus drivers, food handlers, secretaries, security officers, warehouse workers and maintenance workers.

(b) School systems are permitted to use compensatory time off instead of paying overtime compensation if the employee knowingly agrees to it as a condition of employment and the employee is informed that the “comp time” may be limited, preserved, used, or cashed out. This plan is adopted for the Public School System non-certified employees who are not exempt from the application of the FLSA.

(1) If the PSS legal counsel determines that a position is subject to the FLSA in reviewing an employment contract, he or she shall attach to the contract a compensatory time off agreement which must be signed by the employee in executing the contract. A copy of that agreement is reprinted at the end of this subchapter as exhibit “E.”

(2) The compensatory time off agreement shall provide that for every hour of overtime, the employee shall be granted one and one-half hours of “comp time” that may be used similar to annual leave. Compensatory time, however, shall be accounted for separately from annual leave. The maximum accumulation of compensatory time off hours at any one point in time shall be 240 hours. Any additional hours shall be paid as overtime.

(c) Each non-exempt employee shall be assigned a 40 hour work schedule per week. If more time is needed to complete the tasks assigned, the employee shall inform his or her supervisor of the fact so that additional hours of work may be assigned as overtime.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: In subsection (c), the Commission corrected a typographical error in the word “the.”

### **§ 60-30.3-154 Assignment Flexibility**

The Human Resources Officer has the discretion to move employees in and out of various schools or administrative offices and in and out of multi-track systems as the Human Resources Officer deems to be in the best interests of the Public School System.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-156 Reductions in Force**

(a) Financial Exigency. Termination of an employee before the end of the specified term of their contract may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., an imminent financial crisis which threatens the survival of the PSS as a whole or a particular PSS program or school as a whole and which cannot be alleviated by less drastic means.

## TITLE 60: BOARD OF EDUCATION

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(1) As a first step, the Commissioner of Education shall assemble a committee (RIF Committee) with an odd number of members comprised of at least one certified teacher, one school principal, one PTA president, one central office employee, and one Board of Education member which determine whether a condition of financial exigency exists or is imminent, and that all feasible alternatives to termination of appointments have been pursued. PSS's legal counsel shall advise the committee.

(2) Judgments determining where within the overall PSS or PSS program termination of appointments may occur involve considerations of educational policy, as well as of employee status, and should therefore be the primary responsibility of the RIF Committee. The RIF Committee should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of length of service.

(3) The responsibility for identifying individuals whose contracts are to be terminated should be committed to a person or group designated or approved by the RIF Committee. The allocation of this responsibility may vary according to the size and character of the program in question, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of an employee member given notice of proposed termination of appointment will be governed by the following procedure.

(b) **Due Process.** If the administration issued notice to a particular employee of an intention to terminate their employment contract because, of financial exigency, the employee will have the right to a full pre-discipline hearing in front of an impartial hearing officer pursuant to §§ 60-30.3-322 through 60-30.3-330 of this subchapter. The hearing need not conform in all respects with a proceeding conducted pursuant to §§ 60-30.3-332 through 60-30.3-344, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

(1) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of the RIF Committee in a previous proceeding involving the same or a similar issue may be introduced.

(2) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of the RIF Committee on these matters will be considered presumptively valid.

(3) Whether the criteria are being properly applied in the individual case.

(c) **New Appointments Prohibited.** If the PSS, because of financial exigency, terminates contracts, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result.

(d) **Lateral Placements Preferred.** Before terminating an appointment because of financial exigency, the PSS, with RIF Committee participation, will make every effort to place the employee concerned in another suitable position within the institution.

(e) **Sixty Days Severance Pay.** In all cases of termination of employment contract because of financial exigency, the employee concerned will be paid for sixty days beyond the final day of work or until the final date of their contract, whichever is less.

(f) Reinstatement Offers. In all cases of termination of a contract because of financial exigency, the place of the employment concerned will not be filled with a replacement within a period of three years, unless the released employee has been offered reinstatement and a reasonable time in which to accept or decline it.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Amdts Adopted 20 Com. Reg. 15965 (June 15, 1998); Amdts Proposed 19 Com. Reg. 15423 (Aug. 15, 1997).

Commission Comment: In subsection (a)(3), the Commission changed “a” to “an” to correct a manifest error.

In subsection (b), the original cross-reference to sections 4501 to 4505 did not make sense and sections 4504 and 4505 do not exist. The Commission changed the citation so that it references the formal hearing procedures of part 300, subpart F.

## **Subpart F - Renewal**

### **§ 60-30.3-158 Purpose**

No employee has a right to the renewal of his or her contract of employment regardless of whether or not job performance during the contract period is satisfactory. The decision whether to extend an offer for further employment is wholly within the discretion of the Public School System. No tenure of any nature, express or implied, is granted to any employee.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-160 Renewal**

No employee or officer of the Public School System is authorized to indicate, expressly or impliedly, that any employee has a right to be renewed based upon their contract or job performance.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-162 Request for Renewal**

If an employee wishes to be considered for an additional contract period, then notice should be given to the Human Resources Officer six months in advance of the termination date in order to be considered for renewal.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-164 Notification of Non-renewal**

The PSS will notify employee in writing at least ninety calendar days in advance if it intends to not renew employee’s contract with the PSS.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997).

## **Subpart G - Transfer Requests**

### **§ 60-30.3-166 Transfer to Another Department/School**

Employees may request for a transfer to another department/ school. PSS employment contracts are for a two year term; therefore, employees who are assigned to a department/school may not transfer out of that department/school until the end of the two-year term. However, in special circumstances the Commissioner of Education or designee may approve a transfer to another department/school in the middle of a contract term if such transfer does not interfere with the educational process. Transfer requests of school personnel to transfer in the middle of a school year will not be considered.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section titles in this subpart.

### **§ 60-30.3-168 Transfer Request Form**

An employee may make a transfer request by filling out the transfer request form and circulating it to the appropriate personnel. The transfer request form must be completed and signed by the releasing Department Head/ School Principal, receiving Department Head/School Principal, the Human Resources Officer, and the Finance Director. When the form is completed, signed by the employee and approved by the appropriate personnel, the transfer may then be granted by the Commissioner of Education or designee.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

### **§ 60-30.3-170 Transfer after Notification of Non-renewal**

In the event that an employee has been given a 90-day notification of non-renewal, the employee may request for a transfer to another school or department by following the procedure in this subpart. However, a transfer request does not entitle the employee to the requested transfer or another contract with PSS.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

**Subpart H - Core Knowledge Testing Requirement**

**§ 60-30.3-172 PRAXIS**

All applicants for counselor or school administrator, or program manager, coordinator, education specialist, or assistant or component coordinator under the Curriculum, Instruction and Assessment (CIA) Department and all current employees in these positions, upon contract renewal, shall submit proof to PSS that he or she has received a passing grade on the PRAXIS core knowledge examinations. Passing scores will be determined by the Commissioner of Education and announced. Once a passing score is set by the Commissioner of Education, it may only be altered with Board of Education approval.

History: Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Proposed 28 Com. Reg. 25606 (Apr. 17, 2006).

**§ 60-30.3-174 Procedure**

(a) All current PSS counselors, school administrators, and program managers, coordinators, education specialists, or assistant or component coordinators under the CIA Department and applicants for these positions shall be required to pass PRAXIS I and PRAXIS II prior to July 31, 2007.

(b) The results of the PRAXIS I and PRAXIS II examinations will determine a current employee's eligibility for contract renewal and an applicant's eligibility for employment.

(c) A current employee's failure to take the test or to obtain a passing score shall result in his or her employment contract not being renewed.

(d) An applicant's failure to take the test or to obtain a passing score shall result in ineligibility for employment.

History: Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Proposed 28 Com. Reg. 25606 (Apr. 17, 2006).

**§ 60-30.3-176 Timeline**

(a) All newly recruited counselors, school administrators, and program managers, coordinators, education specialists, and assistant or component coordinators under the CIA Department shall be required to have taken and passed the PRAXIS I and PRAXIS II examinations in order to qualify for employment with PSS for school year 2007-08.

(b) Beginning July 31, 2007, all counselors, school administrators, and program managers, coordinators, education specialists, and assistant or component coordinators under the CIA Department employed by PSS will have taken and passed the PRAXIS I and PRAXIS II exams.

History: Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Proposed 28 Com. Reg. 25606 (Apr. 17, 2006).

**Part 200 - Standards of Conduct for Employees**

**Subpart A - Health Standards**

**§ 60-30.3-201 Purpose**

The regulations in this subpart seek to ensure that an employee not be permitted to continue to work when such service would endanger the health of the students or co-workers or when a disability is such that it would interfere with the effective performance with the employee's duties despite reasonable accommodations.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-202 Limitation**

Nothing stated herein is intended to reduce the rights of disabled employees under the Americans with Disabilities Act (ADA). The regulations in this subpart are to be construed, to the maximum extent possible, so that they are consistent with the ADA. To the extent it is not possible, the inconsistent portion shall be severed and the remainder of the regulations shall be given effect.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-204 Medical Examination at Start of Contract**

Upon the execution of an employment contract, the employee shall be required to undergo a physical examination at a health care provider acceptable to the Human Resources Officer prior to the commencement of the contract term. The results of the examination shall be provided to the Human Resources Officer prior to the commencement of the contract term.

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-206 Qualifications**

An employee must not have a physical or mental impairment that:

- (a) Prevents the employee from being able to safely and effectively perform all essential job-related functions once reasonable accommodations are provided by the employer, or
- (b) Poses a significant risk of substantial harm to the health or safety of the employee or other people in the workplace that cannot be eliminated or reduced by reasonable accommodation.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-208 Scope of Medical Examination**

The initial employment medical examination shall be limited to a physical examination necessary to develop an opinion as to whether the employee is physically qualified under § 60-30.3-206.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-210 Effect on Contract**

If it is determined by qualified medical personnel that a physical disability exists that causes the employee to be unable to meet the qualifications set out in § 60-30.3-206, then the Commissioner shall declare the contract void and terminate employment.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-212 Medical Examination During Contract Term**

(a) If the Commissioner determines, after consultation with the employee and the employee's supervisor, that there is reasonable doubt about the employee's continued ability to physically or mentally qualify under § 60-30.3-206, then the employee may be required to undergo a medical examination at the Division of Public Health.

(b) If it is determined by qualified medical personnel that a physical or mental disability exists that causes the employee to be unable to meet the qualifications set out in § 60-30.3-206, then the Commissioner shall institute proceedings to suspend or terminate employment, as appropriate.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-214 Restriction on Employment Action**

No action shall be taken under §§ 60-30.3-210 or 60-30.3-212 without first consulting the PSS legal counsel to ensure that the requirements of the ADA will be met by the proposed action.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-216 Confidentiality of Medical Reports**

The records of any medical examination shall be strictly confidential. The records shall be maintained sealed by the Human Resources Officer and shall be disclosed only to managers and supervisors who need to know of any work restrictions or accommodations, first aid and safety personnel who need to know in order to render emergency services, government officials who are investigating compliance with the ADA, the workers' compensation board pursuant to the Commonwealth's workers' compensation laws, and those persons who must review the records in order to determine whether to take action and to be able to take action under §§ 60-30.3-210 or 60-30.3-212 herein.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Subpart B - Alcohol Use and Alcoholism**

### **§ 60-30.3-218 Purpose**

There is a distinction between alcohol use in the workplace or being intoxicated while at work and an employee having the medical condition of alcoholism. The regulations in this subpart are intended to set forth clear rules on the use of alcohol that affects job performance while recognizing the protection accorded to those suffering from alcoholism under the ADA.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-220 Use of Alcohol**

No employee shall use alcohol in a manner that poses a direct threat to the health and safety of other persons in the workplace.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-222 Intoxication**

No employee shall be intoxicated while discharging the duties of employment.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-224 Possession of Alcohol**

No employee shall bring any alcoholic beverage to the workplace.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-226 Alcoholism**



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An employee shall not be disciplined or dismissed because he or she is an alcoholic. Reasonable accommodations shall be made in order for the employee to receive medical treatment to the same extent permitted for other diseases or health problems.

(a) An alcoholic may be disciplined or discharged to the same extent as any other employee for violating §§ 60-30.3-220, 60-30.3-222, and 60-30.3-224 herein.

(b) An alcoholic may be disciplined or discharged if he or she can no longer safely and effectively perform job-related functions or if he or she poses a significant risk of substantial harm to the health and safety of employees or others that cannot be eliminated or reduced by reasonable accommodations.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-228 Action by Supervisor**

If a supervisor forms the opinion after continued observation of an employee's job performance that the employee may suffer from alcoholism, he or she should discuss the matter with the employee in order to determine what reasonable accommodations (e.g. medical intervention or leave for treatment) can be provided.

(a) If the employee refuses reasonable accommodations and the supervisor still holds the opinion that the employee is an alcoholic, the matter shall be referred to the Human Resources Officer. The Human Resources Officer shall counsel the employee and seek to establish a program of reasonable accommodations. If the accommodations offered are refused, the employee shall be warned that he or she may be disciplined or dismissed if his or her conduct rises to the level of violating § 60-30.3-230(b) hereof.

(b) If the employee indicates an interest in accepting reasonable accommodations, then the supervisor and the employee shall meet with the Human Resources Officer to design a program of reasonable accommodations to meet both the needs of PSS and the employee.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart C - Illegal Drugs**

#### **§ 60-30.3-230 Purpose**

Unlike alcoholics, illegal drug users are not protected by the ADA. Only former users of illegal drugs are protected from discrimination. Therefore, the regulations in this subpart are intended to clearly set forth that no illegal drug usage will be tolerated by PSS.

Modified, 1 CMC § 3806(d).

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History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-232 Drug-free Workplace**

The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance by any employee is prohibited in the workplace. Violation of this rule will result in the dismissal of an employee.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-234 Intoxication**

No employee shall be under the influence of drugs while in the workplace.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Subpart D - Job Performance**

### **§ 60-30.3-236 Duty of Competent Work**

An employee must possess the knowledge and skills required by the job description and apply them to the tasks assigned.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-238 Duty of Care**

An employee must use that degree of care in performing his or her duties which under the circumstances would ordinarily or usually be exercised by or might reasonably be expected from an ordinary prudent person holding the position for which the employee has been hired.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-240 Absence from Work and Tardiness**

An employee must attend work during the hours assigned by his or her supervisor. Generally, these hours will be from 7:30 a.m. to 11:30 a.m. and 12:30 p.m. to 4:30 p.m. on Monday through Friday; however, these hours may be changed in order to meet job demands. Furthermore, FLSA exempt personnel are required to work those hours necessary to complete the task assigned. An intentional disregard of repeated directives to attend or continuous tardiness despite repeated directives to be prompt may result in dismissal from employment.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-242 Insubordination**

(a) An employee is expected to carry out the announced policies and programs of PSS. While policies which relate to the employee's duties are under consideration, the employee may,

and is expected to, express his or her opinions concerning its merits. Once, however, a decision has been rendered by a person with authority, the employee will be required to unreservedly assume the success of the program or policy which he or she is responsible to effectuate.

(b) If an employee willfully or intentionally disobeys a reasonable order of a superior or the lawful regulation or policy of PSS, he or she may be subject to appropriate disciplinary action, including dismissal.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-244 Cruelty to Students**

In addition to teachers, principals, guidance counselors and certain other personnel have the right to exercise *in loco parentis* authority over students and may control, restrain and correct them to further educational purposes; however, such actions are subject to, but not limited to, the following limitations:

(a) Corporal Punishment: All employees are forbidden to use corporal punishment on any student.

(b) Psychological Harm: All employees are forbidden to engage in any act of psychological cruelty which inflicts emotional trauma on a student.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-246 Religious Instruction**

(a) The First Amendment of the U.S. Constitution and article I, § 2 of the CNMI Constitution prohibit government action that establishes religion. The required separation between church and state prohibits school activities that aid one religion, aid all religions, or prefer one religion over another. Therefore, no employee may engage in religious instruction while performing his or her duties.

(b) Teaching about religion is permissible if it is objective, historical, non-devotional and its primary effect is not to promote religious beliefs.

(c) Employees may not require, sanction, consent to or concur in the recitation of prayer in school.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Subpart E - Personal Conduct**

### **§ 60-30.3-248 Private Employment**

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- (a) Private employment is not permitted if it interferes with the performance of duties by diverting time, interests, talents or energies from employment with PSS, or if it creates a possible conflict of interest with one's job at PSS.
- (b) Private employment is prohibited when:
- (1) It may reasonably be construed by the public that the work done is an act performed for PSS,
  - (2) The employee requires the use of information obtained by the employee in the course of his or her PSS duties,
  - (3) The work required is the same task or tasks closely related to those performed for PSS,
  - (4) The work in any way involves the facilities, equipment or supplies of PSS, or
  - (5) The work would tend to influence the impartial judgment of the employee on matters arising in the course of his or her employment with PSS.
- (c) Before engaging in any private employment of any kind, an employee must first provide to his or her principal, or immediate supervisor if there is no principal to which one reports, and to the Human Resources Officer a written description of the nature of the employment activities, the location of the work site, the estimated work schedule and the expected duration of the employment.
- (d) The term "private employment" includes self-employment and the operation of a business as well as work performed for others.
- (e) Employees may tutor students privately subject to the restrictions set out in this section.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-250 Conflict of Interest**

No employee shall engage in any activity or have a direct or indirect financial interest in any activity that creates an interest or constitutes an interest that conflicts with the employee's duties under his or her contract of employment or the regulations in this subchapter. Nor shall any activity or financial interest be permitted if it could reasonably raise a question whether there would be a conflict of interest with the employee's contract duties or duties established by regulation.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-252 Gifts and Gratuities**

- (a) General Rule: No employee may receive, directly or indirectly, any gift, gratuity or item of economic value under circumstances where receipt might reasonably be interpreted by others

as affecting the employee's performance, or impartiality in the performance, of his or her duties to PSS.

(b) The receipt of promotional items, ordinary commercial loans, gifts from immediate family members and ordinary meals on an infrequent basis will be rebuttably presumed to not be reasonably interpreted as affecting job performance or impartiality.

(c) No employee shall present a gift to a superior where the superior's receipt of such a gift might reasonably be interpreted by others as affecting the superior's impartiality in the performance of his or her duties.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-254 Endorsements**

No employee shall recommend specific products or individuals for purchase or hire by virtue of their relationship with PSS or past employment with PSS.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-256 Nepotism**

It is the policy of PSS to secure and maintain staff on the basis of ability, not on the basis of marriage or family relation. Thus, no employee shall supervise a member of his or her immediate family, except in an emergency. "Immediate family" shall mean any person or that person's spouse who is within the second degree of relationship of the supervising employee or that employee's spouse. The following is a list of second degree relationships: parents, grandparents, uncles, aunts, siblings, children and grandchildren.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-258 Dishonesty**

No employee shall engage in any dishonest act while performing the duties of his or her employment. Examples of such conduct include, but are not limited to, misreporting sick leave, sign-in times or facts related in the application for employment or certification.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-260 Criminal Conduct**

(a) The commission of a crime of moral turpitude will result in dismissal.

(b) Proof of the commission of a crime requires only substantial evidence, not proof beyond a reasonable doubt. An acquittal on criminal charges is not a bar to dismissal. A certified copy of a conviction shall constitute *prima facie* evidence of the commission of the crime which may be rebutted by a substantial showing of circumstances tending to disprove its commission.

(c) Crimes of moral turpitude which will result in dismissal include, but are not limited to, illegal drug use, sexual misconduct, bribery and theft.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-262 Immoral Conduct**

(a) Any employee who engages in immoral conduct which creates a significant danger of harm to students or co-workers, or which is known among students over which the employee has a responsibility for guidance and which will impair the employee's ability to guide, direct or lead those students is a ground for dismissal.

(b) Principals, vice-principals, counselors, auxiliary services staff and other staff which is in direct contact with students should serve as good examples to students. Conduct which offends the moral standards of the community and impedes an employee's effectiveness at school is "immoral conduct." For example, immoral conduct may involve sexual misconduct or the unjustified use of profanity or offensive language.

(c) It shall be considered immoral conduct for any employee to make sexual advances towards any students or engage in sexual conduct with any student, regardless of the age of the student involved.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-264 Discrimination**

Employees shall not participate in, or permit others to engage in, any act of discrimination against students or coworkers as a consequence of that person's sex, sexual orientation, race, color, religion, national origin, age, disability, or in retaliation for the exercise of any of these listed rights. Discrimination includes not only the creation of a hostile environment, but also favoritism based on any of these factors. Simply put, employees are required to treat all persons equally.

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-266 Political Activities**

(a) Employees may speak out on political issues as citizens, but they may not be involved in political activities which disrupt the education process.

(b) No employee may use his or her position at PSS to promote a particular political outcome.

(c) No employee may use the classroom for political purposes.

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- (d) No employee may be involved in any political activity that will detract from job performance.
- (e) No employee may solicit or receive political contributions from another while performing the duties of employment or while present at the workplace.
- (f) No employee may campaign for any candidate, party or issue while engaged in work or while at the workplace.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### § 60-30.3-268 Internet Usage

The Public School System (PSS) offers internet access for employee and student use. The Board of Education recognizes that it is important for students to have access to electronics- based research tools for their application to learning, problem solving, production of work, and presentation of information. The Board also recognizes that while these resources represent extraordinary learning opportunities and enriching educational materials, they also offer persons with illegal or unethical motives avenues for reaching students, teachers, parents/guardians and members of the community. Additionally, these resources present tempting opportunities for users to explore areas that are either confidential, have restricted access or are inappropriate to the classroom or workplace. The regulation in this section outlines acceptable student and employee behavior with respect to use of PSS technology and electronic resources. It may be referred to as the “Acceptable Use Regulations” for the employee’s use of Public School System Educational Systems Network (PSS-ESN).

#### (a) Purpose

- (1) The term “educational purpose” in the policy and regulations in this section includes use of the system for classroom activities, professional or career development, and limited high-quality self-discovery activities. Students will limit their use of the system for self-discovery purposes to no more than 10 hours per week.
- (2) The PSS-ESN has a limited educational purpose. The purpose of the PSS-ESN is to assist in preparing students for success in life and work in the 21st century by providing them with electronic access to a wide range of information and the ability to communicate with people from throughout the world.
- (3) The system will be used to increase PSS intra- communication, enhance productivity, and assist PSS employees in upgrading their skills through greater exchange of information with their peers. The PSS-ESN will also assist the PSS employees in sharing information with the local community, including parents, social service agencies, government agencies, and businesses.
- (4) Users may not use the PSS-ESN for commercial purposes, defined as offering or providing goods or services or purchasing goods or services for personal use. PSS procurement rules will be followed for purchase of goods or services for PSS through the PSS-ESN.
- (5) Users may not use the system for political lobbying.
- (6) PSS employees and students for school related purposes may use the system to communicate with their elected representatives.
- (7) The provisions set forth in the “Children’s Internet Protection Act” (U.S. Pub. L. 106-554), apply to all users of the PSS-ESN.

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### (b) PSS Responsibilities

- (1) The Commissioner of Education will serve as the coordinator to oversee the PSS-ESN and will work with the CNMI local government as necessary.
- (2) The school principal will serve as the school-level coordinator for the PSS-ESN, will approve school-level activities, ensure teachers receive proper training in the use of the system and the requirements of the policy and regulations in this section, establish a system to ensure adequate supervision of students using the system, maintain executed user agreements, and be responsible for interpreting the PSS acceptable use policy and regulations at the school level.
- (3) The PSS technology coordinator will establish a process for setting-up individual and class accounts, set quotas for disk usage on the system, establish a retention schedule, establish a virus protection process, and other related activities.

### (c) Technical Services Provided through PSS-ESN

- (1) E-mail. E-mail will allow employees and students to communicate with people from throughout the world. Users will also be able to subscribe to mail lists (listserv) to engage in-group discussions related to educational subjects.
- (2) World Wide Web. The web provides access to a wide range of information in the form of text, graphics, photographs, video, and sound, from throughout the world. The web is a valuable research tool for students and employees.
- (3) Telnet. Telnet allows the user to log in to remote computers.
- (4) File Transfer Protocol (FTP). FTP allows users to download large files and computer software.
- (5) Newsgroups. Newsgroups are discussion groups that are similar to mail lists (listserv). The PSS will provide access to selected newsgroups that relate to subjects that are appropriate to the educational purpose of the system.
- (6) Internet Relay Chat (IRC). IRC provides the capability of engaging in “real-time” discussions. The PSS will provide access to IRC only for specifically defined educational activities.
- (7) Blocking Software. The CNMI Public School System will acquire software designed to block access to certain sites.

### (d) Access to the System

- (1) Employee & Student Use. The PSS acceptable use policy & regulations, set forth in this section and PSS Rules and Regulations § 60-20-540 (student use), will govern all use of the PSS-ESN. Board, PSS and school policies and regulations regarding student and employee conduct will also govern the use of the system.
- (2) World Wide Web. All PSS employees and students will have access to the web through the PSS’s networked computers. Parents may specifically request that their child(ren) not be provided such access by notifying the school principal in writing. For information regarding parent notification and student accounts, refer to PSS Rules and Regulations § 60-20-540(c) and subsection (e) of this section.
- (3) Classroom Accounts. Elementary age students will be granted e-mail access only through a classroom account. Elementary students may be provided with an individual account under special circumstances at the request of their teacher and with the approval of their parent and the school principal. An agreement will only be required for an individual account, which must be signed by the student and his or her parent. Parents may specifically request that their child(ren)



not be provided access through the classroom account by notifying the school principal in writing.

(4) Individual E-mail Accounts for Students. Secondary students may be provided with individual e-mail accounts. Secondary students may have dial-up access to the system at the recommendation of the teacher and school principal. An agreement will be required for an individual e-mail account. The student and his or her parent must sign this agreement before the account may be used.

(5) Individual E-mail Accounts for PSS Employees. PSS employees will be provided with an individual account and will have dial-up access to the system. Employees must sign the employee account agreement before the account may be used.

(6) Guest Accounts. Guests may receive an individual account with the approval of a school administrator or program manager if there is a specific, PSS-related purpose requiring such access. Use of the system by a guest must be specifically limited to the PSS-related purpose. An agreement will be required and parental signature will required if the guest is a minor (e.g. PSS may allow home school students to obtain access through the PSS-ESN). Guest accounts are only temporary and will only be active for only the period of time that is approved.

(e) Parental Notification and Responsibility

(1) The PSS will notify the parents about the PSS network and the policies and regulations governing its use. Parents must sign an agreement to allow their student to have an individual account. Parents may request alternative activities for their child(ren) that do not involve internet access.

(2) Parents have the right at any time to review the contents of their child(ren)'s e-mail files. Parents have the right to request the termination of their child(ren)'s individual account at any time.

(3) The PSS acceptable use policy and regulations in this section contain restrictions on accessing inappropriate material. There is a wide range of material available on the internet, some of which may not be fitting with the particular values of the families of the students. It is not practically possible for the PSS to monitor and enforce a wide range of social values in student use of the internet. Further, the PSS recognizes that parents bear primary responsibility for transmitting their particular set of family values to their children. The PSS will encourage parents to specify to their child(ren) what material is and is not acceptable for their child(ren) to access through the PSS-ESN.

(4) The PSS will provide students and parents with guidelines for student safety while using the internet.

(5) If dial-up access is provided parents are responsible for monitoring their student's use of the internet when they are accessing the system from home.

(f) PSS Limitation of Liability

The PSS makes no warranties of any kind, either express or implied, that the functions or the services provided by or through the PSS-ESN will be error-free or without defect. The PSS will not be responsible for any damage users may suffer, including but not limited to, loss of data or interruptions of service. The PSS is not responsible for the accuracy or quality of the information obtained through or stored on the system. The PSS will not be responsible for financial obligations arising through the unauthorized use of the system.

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### (g) Due Process

- (1) PSS will cooperate fully with local, state, or federal officials in any investigation related to any illegal activities conducted through PSS-ESN.
- (2) In the event there is a claim that a student violated PSS Rules and Regulations § 60-20-540 or other PSS, Board or school policy or regulation in his or her use of the PSS-ESN, he or she will be provided the due process and hearing rights set forth in such regulations. Additional restrictions may be placed on the student's use of the internet account.
- (3) Student disciplinary actions will be tailored to meet specific concerns related to the violation and to assist the student in gaining the self-discipline necessary to behave appropriately on an electronic network. If the alleged violation also involves a violation of other provisions of the student code of conduct, the violation will be handled in accord with the applicable provision of the student disciplinary regulations.
- (4) Employee violations of the PSS acceptable use policy will be handled in accord with Board, PSS and school policies and regulations.
- (5) Any PSS administrator or program manager may terminate the account privileges of a guest user by providing notice to the user. Guest accounts not active for more than 30 days may be removed, along with the user's files without notice to the user.

### (h) Search and Seizure

- (1) System users have a limited privacy expectation in the contents of their personal files on the PSS-ESN.
- (2) Routine maintenance and monitoring of the system may lead to discovery that the user has or is violating the PSS acceptable use policy and regulations, the student disciplinary regulations, PSS personnel regulations, or the law.
- (3) An individual search of an employee or student account will be conducted if there is reasonable suspicion that a user has violated the law or PSS, Board or student policies and regulations. The nature of the investigation will be reasonable and in the context of the nature of the alleged violation.
- (4) PSS employees should be aware that their personal electronic files may be discoverable in legal actions.

### (i) Copyright and Plagiarism

- (1) PSS policies and regulations and federal law on copyright will govern the use of material accessed through the PSS-ESN. Copyright infringement occurs when an individual inappropriately reproduces a work that is protected by a copyright. Because the extent of copyright protection of certain works found on the internet is unclear, employees will make a standard practice of requesting permission from the holder of the work if their use of the material has the potential of being considered an infringement. Teachers will instruct students to respect copyright and to request permission when appropriate.
- (2) PSS policies, regulations and procedures regarding plagiarism will govern use of material accessed through the PSS-ESN. Teachers will instruct students in appropriate research and citation practices.

### (j) Academic Freedom, Selection of Material, Student Rights to Free Speech

- (1) Board, PSS and school policies and regulations on academic freedom and free speech will govern the use of the internet.

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(2) When using the internet for class activities, teachers will select material that is appropriate in light of the age of the students and that is the relevant to the course objectives. Teachers will preview the materials and sites they require or recommend students access to determine the appropriateness of the material contained on or accessed through the site. Teachers will provide guidelines and lists of resources to assist their students in channeling their research activities effectively and properly. Teachers will assist their students in developing the skills to ascertain the truthfulness of information, distinguish fact from opinion, and engage in discussions about controversial issues while demonstrating tolerance and respect for those who hold divergent views.

(k) PSS Web Site

(1) PSS Web Site. The PSS will establish a web site and will develop web pages that will present information about the PSS. The PSS technology coordinator or his/her appointee, will be designated the webmaster, responsible for maintaining the PSS web site.

(2) School or Class Web Pages. Schools and classes, upon approval from the principal, may establish web pages that present information about the school or class activities. The school principal will designate an individual to be responsible for managing the school web site. Teachers will be responsible for maintaining any class sites.

(3) Student Web Pages. With the approval of the school principal, students may establish personal web pages. The principal will establish a process and criteria for the establishment and posting of material, including pointers to other sites, on these pages. Material presented in the student's web site must be related to the student's educational and career preparation activities. Student web pages must include the following notice: "This is a student web page. Opinions expressed on this page shall not be attributed to the PSS."

(4) School or Extracurricular Organization Web Pages. With the approval of the school principal, extracurricular organizations may establish web pages. The principal will establish a process and criteria for the establishment and posting of material, including pointers to other sites, on these pages. Material presented on the organization web page must relate specifically to organization activities and will include only student-produced material. Organization web pages must include the following notice: "This is a student extracurricular organization web page. Opinions expressed on this page shall not be attributed to the school or PSS."

(l) Unacceptable Use

The following uses of the PSS-ESN are considered unacceptable:

(1) Personal Safety

(Restrictions are for students only. Teachers should ensure that students follow these restrictions.)

(i) Users will not post personal contact information about themselves or other people. Personal contact information includes address, telephone, school address, work address, etc.

(ii) Users will not agree to meet with someone they have met online without their parent's approval and participation.

(iii) Users will promptly disclose to their teacher or other school employee any message they receive that is inappropriate or makes them feel uncomfortable in any way.

(2) Illegal Activities

(i) Users will not attempt to gain unauthorized access to the PSS-ESN or to any other computer system through the PSS-ESN, or go beyond their authorized access. This includes

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attempting to log in through another person's account or access another person's files. These actions are illegal, even if only for the purposes of "browsing."

(ii) Users will not make deliberate attempts to disrupt the computer system's performance or destroy data by spreading computer viruses or by any other means. These actions are illegal.

(iii) Users will not use the PSS-ESN to engage in any other illegal act, such as arranging for a drug sale or the purchase of alcohol, engaging in criminal gang activity, threatening the safety of person, etc.

### (3) System Security

(i) Users are responsible for the use of their individual account and should take all reasonable precautions to prevent others from being able to use their account. Under no conditions should a user provide their password to another person.

(ii) Users will immediately notify the school system administrator if they have identified a possible security problem. Users will not go looking for security problems, because this may be construed as an illegal attempt to gain access.

(iii) Users will avoid the inadvertent spread of computer viruses by following the PSS virus protection procedures if they download software.

### (4) Inappropriate Language

(i) Restrictions against inappropriate language apply to public messages, private messages, and material posted on web pages.

(ii) Users will not use obscene, profane, lewd, vulgar, rude, inflammatory, threatening, or disrespectful language.

(iii) Users will not post information that, if acted upon, could cause damage or a danger of disruption.

(iv) Users will not engage in personal attacks, including prejudicial or discriminatory attacks.

(v) Users will not harass another person. Harassment is persistently acting in a manner that distresses or annoys another person. If a user is told by a person to stop sending them messages, they must stop.

(vi) Users will not knowingly or recklessly post false or defamatory information about a person or organization.

### (5) Respect for Privacy

(i) Users will not repost a message that was sent to them privately without permission of the person who sent them the message.

(ii) Users will not post private information about another person.

### (6) Respecting Resource Limits

(i) Users will use the system only for educational and professional or career development activities (no time limit), and limited, high-quality, self-discovery activities. For students, the limit on self-discovery activities is no more than three hours per week.

(ii) Users will not download large files unless absolutely necessary. If necessary, users will download the file at a time when the system is not being heavily used and immediately remove the file from the system computer to their personal computer.

(iii) Users will not post chain letters or engage in "spamming." Spamming is sending an annoying or unnecessary message to a large number of people.

(iv) Users will check their e-mail frequently, delete unwanted messages promptly, and stay within their e-mail quota.

(v) Users will be subscribed only to high quality discussion group mail lists that are relevant to their education or professional/career development.

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(7) Plagiarism and Copyright Infringement

(i) Users will not plagiarize works that they find on the internet. Plagiarism is taking the ideas or writings of others and presenting them as if they were original to the user.

(ii) Users will respect the rights of copyright owners. Copyright infringement occurs when an individual inappropriately reproduces a work that is protected by a copyright. If a work contains language that specifies acceptable use of that work, the user should follow the expressed requirements. If the user is unsure whether or not they can use a work, they should request permission from the copyright owner.

(8) Inappropriate Access to Material

(i) Users will not use the PSS-ESN to access material that is profane or obscene (pornography), that advocates illegal acts, or that advocates violence or discrimination towards other people (hate literature). For students, a special exception may be made for hate literature if both the teacher and the parent approve the purpose of such access to conduct research and access. PSS employees may access the above material only in the context of legitimate research.

(ii) If a user inadvertently accesses such information, they should immediately disclose the inadvertent access in a manner specified by their school or department. This will protect users against an allegation that they have intentionally violated the acceptable use policy & regulations.

(9) Consequences for Unacceptable Uses

(i) Your supervisor, the technology coordinator or the COE may revoke your privilege under the acceptable use policy & regulations for any unacceptable uses, including uses not specifically listed herein.

(ii) Unacceptable use by an employee or an employee's failure to respond to the unacceptable use of a student may result in disciplinary action or even termination.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Adopted 26 Com. Reg. 22194 (Mar. 23, 2004); Amdts Proposed 26 Com. Reg. 21670 (Jan. 22, 2004).

Commission Comment: The Commission moved the close quotation mark in subsection (a)(7) from after the close parenthesis to after the word "Act" pursuant to 1 CMC § 3806(g). In subsection (l), the Commission corrected the spelling of "unacceptable." In subsection (l)(2)(i), the Commission inserted the final period. In subsection (l)(6)(iii), the Commission moved the period after "spamming" inside of the closing quotation mark. In subsection (l)(6)(v), the Commission changed "subscribe" to "subscribed" to correct a manifest error.

The following form appears after this section in the original regulations:

Employee Account Agreement

Name \_\_\_\_\_  
Position \_\_\_\_\_  
School or Department \_\_\_\_\_

I have read the PSS Acceptable Use Regulation. I agree to follow the rules contained in this Regulation. I understand that if I violate the rules, I may face disciplinary action, including termination, in accord with the CNMI, the Board of Education, the Public School System (PSS) Personnel Regulations and the Acceptable Uses Policy and Regulations.

I hereby release and agree to indemnify the Board, PSS and the CNMI, their personnel, and any institutions with which they are affiliated, from all claims and damages of any nature arising from my use of, inability to use, or

improper or illegal use of the PSS system, including, but not limited to claims that may arise from the unauthorized use of the system to purchase products or services.

Signature \_\_\_\_\_ Date \_\_\_\_\_

See 26 Com. Reg. at 21708 (Jan. 22, 2004).

## **Part 300 - Employee Discipline**

### **Subpart A - Forms of Discipline**

#### **§ 60-30.3-301 Formal Reprimand**

A formal reprimand is delivered by a written letter that instructs the employee that there has been one or more deficiencies in performance, describes the misconduct and warns that a failure to improve may result in more serious discipline. A copy of the letter is provided to the Human Resources Officer for posting in the employee's file. Reprimands are to be used only for minor misconduct.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-302 Reduction in Rank or Pay**

A reduction in rank or a reduction in pay may be accomplished only by an official personnel action. A reduction in rank occurs when one's relative standing in the organizational structure has been lowered.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-304 Suspension**

A suspension occurs when an employee is placed in a non-duty and non-pay status for a portion of the contract term that counts as part of the days assigned for work. There is no distinction any longer between suspensions for five days and those for more than five days in the procedure followed for implementation.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-306 Dismissal**

An employee is dismissed when his or her contract of employment is terminated. Dismissal is referred to herein by various terms, such as discharge and termination.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart B - Who May Initiate Discipline?**

#### **§ 60-30.3-308 Supervisor**

The authority to initiate the discipline of an employee is granted to the direct supervisor to whom they are assigned.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-310 Concurrence of DCA or DCI**

If the direct supervisor is not an upper management official, such as a principal, program manager or the equivalent, then the authority to initiate the discipline of any employee requires the concurrence of the Deputy Commissioner for Administration or Deputy Commissioner for Instruction, as applicable, for any action other than a reprimand.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-312 Management Official**

The person with the authority to initiate discipline shall be referred to herein as the “management official.”

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**Subpart C - When Discipline Is Warranted**

**§ 60-30.3-314 Standard**

Discipline may be imposed for the violation of any standards of conduct set forth in the regulations in this subchapter. The statement in some sections that a violation may lead to dismissal is not intended to suggest that dismissal may not be warranted for the violation of any other section.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-316 Factors to be Considered in Initiating Discipline**

- (a) Discipline is warranted only when the conduct is such that it has or will have an adverse effect on the employee’s ability to perform his or her duties and responsibilities.
  
- (b) In this regard, the management official, in determining whether to initiate discipline and what level of discipline is warranted, should consider the following factors:
  - (1) Whether students may be affected by a violation, and, if so, their age and maturity,
  - (2) The size and population of the school and its community,
  - (3) The likelihood that the employee’s conduct has had, or will have, an adverse effect on students, other employees, or the school community,
  - (4) The effect on work relationships,
  - (5) Any disruption of the educational process,

- (6) The severity of any adverse effect,
- (7) The proximity or remoteness in time of the conduct,
- (8) Any extenuating or aggravating circumstances surrounding the conduct,
- (9) The likelihood the conduct would recur,
- (10) The impact of publicity,
- (11) The motive for the conduct, and
- (12) The extent to which disciplinary action may have an adverse or chilling effect upon the exercise of constitutional rights by other employees.

(c) The management official shall not file any notice of charges without those charges being reviewed and approved first by the Equal Employment Officer (EEO).

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart D - When Disciplinary Measures Must Be Followed**

#### **§ 60-30.3-318 Not for Reprimands**

Before any employee is dismissed, suspended, reduced in rank or reduced in pay the disciplinary procedure set forth in this subpart must be followed. A formal reprimand does not require that these procedures be followed.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-320 Not for Non-renewal**

The non-renewal of an employment contract does not require compliance with the disciplinary procedures.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart E - Initiating Discipline**

#### **§ 60-30.3-322 Notice of the Charges**

The management official must provide written notice to the employee of the charges by citing the regulation violated, explaining the evidence against the employee and stating the proposed disciplinary action. The employee must also be informed, in writing, of the opportunity to be heard in a pre-discipline hearing. A copy of the notice shall be provided to the Commissioner and the EEO.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-324 Pre-discipline Hearing**



A hearing shall be held within ten days of delivering notice to the employee. The date set shall take into consideration how much time may be needed by the employee to prepare for the pre-discipline hearing. The hearing shall be before the Commissioner or his or her designee. The designee may not be a Deputy Commissioner whose concurrence was sought for the initiation of the adverse action. At the hearing, the employee shall have the opportunity to present his or her side of the story, to convince the Commissioner that the proposed discipline is a mistake, or that the reasons for the discipline are either not supported by the facts or are less compelling than they appear. The employee may waive this hearing or decide only to present his or her position in writing rather than in person.

Modified, 1 CMC § 3806(g).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The Commission deleted the repeated word “who” before “whose.”

### **§ 60-30.3-326 Commissioner’s Decision**

The Commissioner, or his or her designee, who conducted the pre-discipline hearing shall decide in writing within ten days of the hearing whether any regulation has been violated, the facts that support the finding of a violation, whether discipline is warranted and, if so, what discipline is appropriate. The decision shall state when the discipline takes effect. Only the charges contained in the notice can be the basis for any disciplinary action.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-328 Suspension Pending Decision**

The employee cannot be suspended without pay before the pre-discipline decision. The management official should permit the employee to continue to work during this period, utilizing a temporary reassignment, if necessary. In the event that continued employment will pose a risk of harm to students or co-employees, or a risk of disrupting the educational process, then the management official may suspend the employee with pay.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-330 Discipline After Decision**

Once the pre-discipline decision has been rendered, the disciplinary action can take place even though a formal due process hearing is requested. The Commissioner has the discretion whether to postpone the discipline, whether suspension is appropriate (with or without pay) or whether to effectuate the decision prior to the formal hearing.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Subpart F - Formal Due Process Hearing**

**§ 60-30.3-332 Opportunity for Formal Hearing**

- (a) The employee shall be provided with an opportunity to have a formal hearing before a hearing officer to review the pre-discipline decision.
- (b) The employee shall have ten days from receipt of the decision to make a request for a hearing in writing and to deliver the request to the Commissioner.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-334 Scheduling the Hearing**

- (a) The Chairman of the Board of Education, or its designee, shall appoint an impartial hearing officer without unreasonable delay. The hearing officer shall be a CNMI licensed attorney or a former judge of the CNMI.
- (b) The hearing officer shall schedule a hearing date, after consultation with the parties, within forty-five days of the employee's request for a hearing. The date shall be set with due regard for the need of PSS to take action on suspension or revocation and for the need of the employee to have sufficient time to adequately prepare a defense.
- (c) The PSS legal counsel shall represent the Commissioner, as the employer, during the formal hearing process. The employee is entitled to retain counsel of his or her choosing, at his or her own expense, or to represent himself or herself.
- (d) The pre-discipline decision shall serve as the notice of grounds for discipline. While the grounds may not be changed, the employer is not limited in the presentation of its evidence to matters that were presented at the pre-discipline hearing.
- (e) The hearing officer shall provide a date for the exchange of witness lists and documents intended to be introduced at the hearing. The hearing officer may also hold a pre-hearing conference to accomplish one or more of the following tasks:
  - (1) Identify the issues for the hearing,
  - (2) Stipulate as to uncontested facts,
  - (3) Estimate the length of the hearing,
  - (4) Mark exhibits, and
  - (5) Determine the admissibility of contested evidence.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-336 Burden of Proof**

The employer shall have the burden of proving its charge by a preponderance of the evidence.  
History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-338 Conduct of Hearing**

- (a) The hearing shall commence with a reading of the charges and the employee shall either admit or deny them.
- (b) Each side shall be permitted to make an opening statement.
- (c) The employer shall present evidence to support its charges, subject to cross-examination.
- (d) The employee may present evidence to rebut the charges or mitigate their gravity, subject to cross-examination.
- (e) Each side may present rebuttal and surrebuttal evidence.
- (f) After all the evidence has been presented, the employer may offer a closing argument. The employee may then present a closing argument, followed by the final summation of the employer.
- (g) Proceedings hereunder shall be conducted consistent with the requirements of 1 CMC § 9109.
- (h) A recording shall be made of the proceeding to serve as the official record of all of its events.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-340 Evidence**

- (a) The formal rules of evidence do not apply. Any relevant evidence of probative value is admissible with only the weight assigned to it affected by its nature.
- (b) The hearing officer shall administer oaths to witnesses.
- (c) Affidavits under penalty of perjury may be admitted.
- (d) Hearsay shall be admissible and may constitute sufficient evidence if relevant and probative, of a kind that responsible persons are accustomed to relying upon in serious affairs, or such that a reasonable mind would accept the evidence as adequate to support a conclusion of ultimate fact.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-342 Decision**

- (a) The decision-making process must comply with 1 CMC § 9110.

(b) The attorney for the employer shall not participate in the private deliberations of the hearing officer.

(c) The hearing officer shall issue a written decision with findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law and discretion presented on the record and the appropriate order affirming or rejecting the discipline.

(d) The written decision and order shall be served on the employee and Commissioner.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-344 Appeal**

The employee may appeal the agency decision pursuant to the procedures and time restrictions set forth in 1 CMC § 9112.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Part 400 - Employee Grievances**

### **Subpart A - Scope of this Part**

#### **§ 60-30.3-401 Included Matters**

All complaints regarding an employee's contract, violations of regulations by other than the employee, formal reprimands, performance evaluations, classification, within-grade increases and any form of discriminatory treatment in employment on the basis of sex, race, religion, national origin, age, sexual orientation or disability shall be brought as grievances pursuant to the procedures set forth in this part.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-402 Excluded Matters**

Specifically excluded from these procedures are appeals from employee discipline, comments on PSS regulations and discretionary decisions of assignment, transfer, promotion and non-renewal.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart B - Employee Protection**

#### **§ 60-30.3-404 Restraint or Retaliation**

Employees will be free from restraint, interference, coercion, discrimination, reprisal and retaliation in the filing and prosecution of their grievances.

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History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-406 Representation**

Employees have the right to be represented by counsel or other representative of their choosing and at their own expense in prosecuting a grievance.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart C - First Step; Consultation with Supervisor**

#### **§ 60-30.3-408 Prerequisite**

- (a) All grievances shall be initiated by the employee discussing the grievance first with his or her supervisor.
- (b) If the employee believes that his or her relationship with the supervisor is such that the matter cannot reasonably be discussed with the supervisor, then he or she may discuss it with a person at the next level of supervision.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-410 Duty of Supervisor**

- (a) The supervisor shall have the duty to:
  - (1) Listen carefully to the employee's grievance and take careful notes of what is said,
  - (2) Obtain sufficient information from the employee or others to determine the merits of the grievance,
  - (3) Inform the employee of the supervisor's decision of the merits, and
  - (4) If action is warranted, take or recommend, according to one's ability depending upon the supervisor's authority and position, whatever action is appropriate without unnecessary delay.
- (b) The supervisor shall inform the employee of the estimated time needed to take action and shall inform the employee of the results of his or her action immediately after it is taken.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **Subpart D - Filing of the Complaint and Mediation**

#### **§ 60-30.3-412 When Filing is Permitted**

If the employee is unable to settle the grievance by consulting his or her supervisor, a grievance action may be commenced by filing a written complaint.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-414 Contents of Complaint**

The complaint must specify:

- (a) The identity of the aggrieved employee and the employee's work assignment,
- (b) The details of the grievance,
- (c) The corrective action desired, and
- (d) The outcome of the employee's discussion with his or her supervisor.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-416 Filing of the Complaint**

The complaint must be filed with the Equal Employment Officer (EEO). There is no time limit for the filing of complaints; however, unreasonable delay in filing may reflect poorly on its merits or its importance to the employee.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-418 Equal Employment Officer**

- (a) The EEO shall be responsible for the coordination and management of the grievance system.
- (b) The Commissioner shall designate no fewer than five program specialists from PSS to serve as counselors. The EEO shall establish a training program on mediation, discrimination, the PSS regulations, the standard employment contract and other topics likely to arise within the scope of grievances for the counselors. Each of the designees shall complete the course of training to qualify as a counselor.
- (c) Upon receipt of a complaint, the EEO shall immediately assign a qualified counselor to the matter.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-420 Mediation**

- (a) The counselor shall review the complaint, meet individually with the employee and supervisor, review the employee's personnel file and contract, interview co-workers and administrators, if appropriate, and do all acts necessary and proper to understand the grievance

and its circumstances prior to any mediation. When he or she deems it to be more productive, the counselor may decide to conduct the mediation without the presence of the supervisor.

(b) The counselor may seek advice at any time from the EEO. Prior to any mediation meeting, a counselor shall confer with the EEO regarding the goals and objectives of the meeting and obtain prior approval for any proposed resolution.

(c) The counselor shall set a mediation meeting for a date within fourteen days of the receipt of the complaint by the EEO and shall notify the employee, the supervisor, and any involved PSS administrator or employee of the time and place of the meeting. A person shall be considered “involved” if it is that person’s action or inaction that is the subject of the complaint.

(d) The counselor shall meet with the employee, supervisor and involved person, together, and, through mediation, attempt to bring about a speedy and just resolution to the grievance through facilitating the formation of an agreement among the affected individuals.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-422 Report**

The counselor shall prepare a written report to the EEO on whether or not an agreed disposition of the matter was reached, the nature of the disposition, the reasons for any failure to resolve the problem and if it was not resolved, the issues raised by the grievance and how the counselor believes they should be resolved. This report shall be confidential and shall not be provided to the parties or be made a part of any employee’s personnel file.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Subpart E - Commissioner’s Review**

### **§ 60-30.3-424 Request for Review**

In the event that mediation fails to result in an agreed disposition, an employee may request that his or her grievance be reviewed by the Commissioner. Such a request must be made in writing by the employee to the EEO within thirty days of the mediation meeting.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-426 EEO Report**

The EEO shall, based upon the report of the counselor, conduct any necessary follow-up investigation in order to prepare a report and a recommendation of an appropriate resolution to the Commissioner. The report shall be submitted to the Commissioner within thirty days of

receiving the request for a review. This report shall be confidential and shall not be provided to the parties or be made a part of any employee's personnel file.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-428 Commissioner's Decision**

Based on the EEO report and a meeting with the employee in which the employee may present his or her grievance, the Commissioner shall review the grievance and determine an appropriate resolution. The decision of the Commissioner shall be in writing and shall be issued within fourteen days of receiving the EEO report.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Subpart F - Employee Appeal**

### **§ 60-30.3-430 Notice of Appeal**

If the employee is not satisfied with the resolution provided for in the Commissioner's decision, then he or she may file a notice of appeal with the Chairperson of the Board of Education within thirty days of receiving the decision. Failure to appeal will result in the decision of the Commissioner becoming the final resolution of the problem.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-432 Hearing Panel**

Upon receipt of the notice of appeal, the Chairperson shall without unreasonable delay appoint three Board members to sit as the hearing panel. The three members shall appoint one of their number to sit as the hearing officer.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-434 Scheduling the Hearing**

The hearing officer shall schedule a hearing, after consultation with the parties, to be held within forty-five days of the employee's request for a hearing.

Modified, 1 CMC § 3806(e).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-436 Legal Counsel**



- (a) The employer shall be represented by PSS legal counsel.
- (b) The employee is entitled to retain counsel of his or her choosing at his or her own expense.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-438 Pre-hearing Conference**

The hearing officer shall provide a date for the exchange of witness lists and documents intended to be introduced at the hearing. The hearing officer may also hold a pre-hearing conference to accomplish one or more of the following tasks:

- (a) Decide the issues for the hearing,
- (b) Stipulate as to uncontested facts,
- (c) Estimate the length of the hearing,
- (d) Mark exhibits, and
- (e) Determine the admissibility of contested evidence.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-440 Burden of Proof**

The employee shall have the burden of proving its grievance by a preponderance of the evidence.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-442 Conduct of Hearing**

- (a) The hearing shall be presided over by the hearing officer, but any decision on the merits of the grievance shall be made by a majority vote of the hearing panel. All three panel members must attend the hearing.
- (b) The hearing shall commence with a reading of the grievance.
- (c) Each side shall be permitted to make an opening statement with the employee proceeding first.
- (d) The employee shall present evidence to support his or her grievance, subject to cross-examination.

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- (e) The employer may present evidence to rebut the grievance, subject to cross-examination.
- (f) Each side may present rebuttal and surrebuttal evidence.
- (g) After all the evidence has been presented, the employee may offer a closing argument. The employer may then present a closing argument, followed by the final summation of the employee.
- (h) Proceedings hereunder shall be conducted consistent with the requirements of 1 CMC § 9109.
- (i) A recording shall be made of the proceeding to serve as the official record of all of its events.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-444 Evidence**

- (a) The formal rules of evidence do not apply. Any relevant evidence of probative value is admissible with only the weight assigned to it affected by its nature.
- (b) The hearing officer shall administer oaths to witnesses.
- (c) Affidavits under penalty of perjury may be admitted.
- (d) Hearsay shall be admissible and may constitute sufficient evidence if relevant and probative, of a kind that responsible persons are accustomed to relying upon in serious affairs, or such that a reasonable mind would accept the evidence as adequate to support a conclusion of ultimate fact.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-446 Submission on Stipulated Facts**

- (a) If the parties agree or stipulate to the basic facts of the grievance, they are encouraged to set the stipulation out in writing and submit it to the hearing panel rather than conduct a hearing to develop the facts. The hearing panel may, however, after reviewing the stipulation, determine that a hearing is necessary, but shall limit the scope of the hearing to the issues that require evidence.
- (b) If the case is submitted on stipulated facts, both parties shall be given the opportunity to argue the law and the facts, both orally and in writing, before the hearing panel.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-448 Decision**

- (a) The decision-making process must comply with 1 CMC § 9110.
- (b) The attorney for the employer shall not participate in the private deliberations of the hearing panel.
- (c) The hearing panel shall issue a written decision with findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law and discretion presented on the record and the appropriate order affirming or rejecting the discipline.
- (d) The written decision and order shall be served on the employee and Commissioner.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-450 Appeal**

The employee may appeal the agency decision pursuant to the procedures and time restrictions set forth in 1 CMC § 9112.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

## **Part 500 - Equal Employment Opportunity**

### **Subpart A - Equal Employment Opportunity**

#### **§ 60-30.3-501 Policy**

The PSS shall provide equal employment opportunity to all people. This policy of equal opportunity applies to every aspect of personnel policy and practice and to all terms and conditions of employment. It is each and every employee's responsibility to understand and comply the PSS's equal employment opportunity policy.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-505 Discrimination and Harassment Prohibited**

No employee may discriminate or harass another person on account of that person's sex, sexual orientation, race, color, religion, national origin, age, disability or in retaliation for the exercise of any of the rights protected by this part.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

#### **§ 60-30.3-510 Discrimination Defined**

Discrimination is the singling out of a person or persons for different treatment, regardless whether good or bad, based on the factors listed in § 60-30.3-505.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-515 Harassment Defined**

(a) Verbal or physical conduct towards a person based on any of the factors listed in § 60-30.3-505 which has the purpose or effect of creating an intimidating, hostile or offensive work environment constitutes harassment. Examples of this form of harassment include, but are not limited to, jokes, comments, slurs, epithets and disparaging remarks.

(b) Sexual harassment means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when either:

(1) Submission to such conduct is made explicitly or implicitly a term or condition of employment,

(2) Submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual, or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

(c) Sexual harassment can include, but is not limited to, jokes, comments, touching, and pressure for dates or sexual activity.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**Subpart B - Violations and Employee Discipline**

**§ 60-30.3-520 Reporting Violations**

Any employee who believes that he or she is a victim of discrimination or harassment in connection with employment at the PSS should report the matter immediately as a grievance under part 400 of these regulations. A grievance under this section shall be investigated promptly and with an effort to protect the privacy of those involved.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-525 Employee Discipline**

An employee who is determined to have violated the provisions of this part shall be subject to appropriate disciplinary action, up to and including termination of employment. Although not necessarily rising to the level of discrimination or harassment, other inappropriate or offensive actions will not be tolerated and may form the basis for appropriate discipline.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**Part 600 - Employment Benefits**

**Subpart A - Insurance**

**§ 60-30.3-601 Medical and Life Insurance**

Medical and life insurance is made available to PSS employees by the Commonwealth government. Such insurance is made available in the form of group policies in which the employee, at his/her discretion, may wish to participate. Participation is on a shared basis where the PSS pays a portion of the insurance premium and the employee pays the remainder. If the employee chooses to participate, then PSS will contribute to premiums on the same basis as the Commonwealth government contributes for its employees.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**Subpart B - Retirement**

**§ 60-30.3-605 Retirement Fund**

PSS employees are required by law to be contributing members of the CNMI's Retirement Fund. Thus, it is mandatory that PSS employees have a certain portion of every paycheck withheld by the PSS and deposited with the Retirement Fund. The PSS is also required to contribute additional funds on the employee's behalf. The Retirement Fund is responsible for administration of all aspects of PSS employee participation in the fund and any questions regarding PSS employee participation or benefits should be brought directly to the Fund. The PSS bears no responsibility for money deposited in the fund.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**Subpart C - Leave**

**§ 60-30.3-610 Purposes of Leave**

The purpose of providing leave to PSS employees is to allow them personal time to take care of non-PSS related business, to relax, and to recuperate from illness or injury. The importance of an employee being allowed time to take care of personal business, to relax, and to recuperate from illness or injury is recognized by the PSS. Employees whose personal lives are in balance are better able to handle the requirements of their job at the PSS.

Modified, 1 CMC § 3806(g).

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History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The Commission changed “employee’s” to “employees” to correct a manifest error.

### § 60-30.3-615 Annual Leave

(a) Non-certified employees who have been contracted with by the PSS for a period of three months or more are eligible for annual leave with pay. Non-certified employees with less than three years of creditable PSS service shall accrue annual leave at the rate of four hours per pay period. Non-certified employees with less than six, but three or more than three years of creditable PSS service shall accrue annual leave at the rate of six hours per pay period. Non-certified employees with six or more years of creditable PSS service shall accrue annual leave at the rate of eight hours per pay period. Annual leave shall accrue in each pay period only so long as the employee works or is in paid leave status for all ten week days of the pay period; otherwise there shall be no accrual for that pay period. Employees working a 190-day per year schedule, such as teacher aides, will follow the leave regulations for certified personnel [NMIAC, title 60, chapter 30.2].

(b) Employee requests to use annual leave must be made in advance of the period of time it is to be used and should be made in writing and as early as possible. Annual leave may only be used if it is approved in advance by the employee’s direct supervisor.

(c) The maximum accumulation of annual leave shall be three hundred sixty hours. Annual leave may be cashed out upon separation from the PSS. Separation shall mean that the employee will not work for the PSS for at least six consecutive months unless waived by the Commissioner of Education subject to approval of the Board of Education. The cash value of one hour of annual leave shall equal 1/2,080th of the employee’s annual salary at the time of separation. Annual leave accrued in excess of three hundred sixty hours shall be converted to sick leave at the end of each calendar year.

Modified, 1 CMC § 3806(a), (e), (f), (g).

History: Amdts Adopted 36 Com. Reg. 35895 (Dec. 28, 2014); Amdts Proposed 36 Com. Reg. 35648 (Oct. 28, 2014); Amdts Adopted 26 Com. Reg. 22580 (May 24, 2004); Amdts Proposed 26 Com. Reg. 21670 (Jan. 22, 2004); Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The 1997 amendments added new subsection (d). The 2004 amendments deleted subsection (d) and amended subsections (a) and (c).

Public Law 15-57 (effective April 25, 2007), codified at 1 CMC §§ 82601-82605, addresses maximum annual leave accumulation (360 hours) for excepted service employees and lump sum payments for unused annual leave to all government employees. PL 15-57 prohibits reemployment with the CNMI government “until a period equal to the period of annual leave paid in lump sum has elapsed” or the employee elects to pay the equivalent amount “consistent with CNMI regulations.” 1 CMC § 82604. PL 15-57 also prohibits the conversion of sick leave to annual leave and any compensation for unused sick leave hours upon separation from employment for all government employees. 1 CMC § 82603. The provisions of PL 15-57 supersede subsection (c) to the extent that they conflict.

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In December 2014, the Commission amended subsection (c) although the actual text of the proposed regulations showed that § 60-30.3-6159(c) was to be amended, as it was clear from the notice and the existing regulations that § 60-30.3-615(c) was amended.

### § 60-30.3-620 Sick Leave

(a) Non-certified employees who have been contracted with by the PSS for a period of time of three months or more are eligible for sick leave with pay. Sick leave shall accrue for non-certified employees at the rate of four hours per pay period. Employees working a 190-day per year schedule, such as teachers aides, will follow the leave regulations for certified personnel [NMIAC, title 60, chapter 30.2]. Sick leave shall accrue in each pay period only so long as the employee works or is in paid leave status for all ten week days of the pay period; otherwise there shall be no accrual for that pay period. Sick leave shall have no cash value at any time and unused portions shall carry over from year to year.

(b) The use of sick leave shall allow the employee to be paid at his/her usual rate while ill, injured, receiving a medical, dental, or optometry examination, or if he/she and/or his/her immediate family are under a doctor ordered quarantine. Sick leave will be allowed if the employee is able to provide satisfactory verification of the illness, injury, quarantine, or medical appointment. Doctor's notes may be required by the employee's direct supervisor in his/her discretion prior to approving payment for the use of sick leave.

(c) Whenever possible, sick leave shall be requested in advance of when it is needed, and medical appointments shall be scheduled on an employee's own time.

(d) The Commissioner of Education is granted the authority to create a universal sick leave pool to which employees may donate their sick leave if a colleague is in need of long-term sick leave and has used all of his/her sick and annual leave already. The Commissioner is hereby vested with the power to create the policies needed to regulate the universal sick leave pool.

(e) Sick leave records shall be retained for a period of three years after the employee separates from the PSS. If the employee becomes re-employed during that three year time period, the sick leave balance shall be re-credited to the employee. If the employee does not again begin employment with the PSS within three years of separation, the sick leave shall be lost.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 26 Com. Reg. 22580 (May 24, 2004); Amdts Proposed 26 Com. Reg. 21670 (Jan. 22, 2004); Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The 1997 amendments amended subsections (a) and (b) and readopted and republished this section in its entirety.

The 2004 amendments amended subsections (a) through (d). In subsection (a), the 2004 amendments left off the end of the last sentence. See 26 Com. Reg. at 21696 (Jan. 22, 2004). The Commission has retained the original language.

Public Law 15-69 (effective June 5, 2007), codified at 1 CMC § 8276, authorized government employees to apply for sick leave to attend to an immediate family member who is sick. Public Law 15-116 (effective Nov. 29, 2007),

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codified at 1 CMC §§ 8265-8267, which repealed and reenacted PL 15-69, requires that sick leave requests to attend to immediate family members in excess of two days must be supported by a certified medical statement. The provisions of PL 15-116 supersede subsection (b) to the extent that they conflict.

### **§ 60-30.3-625 Compassionate Leave**

In the case of a death of an immediate family member, the Commissioner of Education may grant a non-certified employee compassionate leave with pay for up to forty hours. Immediate family member shall be defined as the employee's father, mother, spouse, child, brother, sister, grandmother, grandfather, mother in law, or father in law. Compassionate leave must be requested in writing in advance and may not be granted more than two times in a year.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-630 Military Training Leave**

Military training leave with pay may be granted to non-certified employees who are members of the National Guard or any reserve components of the United States Armed Forces and are directed to training or other military activities by proper military authority. Military training leave may not exceed 120 hours in a year and administrative leave may not be used in its place or in conjunction with it.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-635 Administrative Leave**

Administrative leave with pay may be granted under emergency conditions beyond the control of management, such as typhoons, or for civic observations of interest to the PSS, or for government related examinations, or for travel related to PSS business, or during disciplinary investigations, or for other such reasonable events as the Commissioner of Education determines. Copies of the documentation granting administrative leave must be provided by the Commissioner to the Board of Education immediately.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-640 National Holidays**

Non-certified employees shall receive holidays off with pay for the following CNMI National Holidays as scheduled by the PSS: New Year's Day, Commonwealth Day, President's Day, Covenant Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Citizenship Day, Veterans Day, Thanksgiving, Constitution Day, and Christmas.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).



**§ 60-30.3-645 Court Leave**

Non-certified employees who are required to serve as jurors may receive court leave with pay for the period of time that they do so. A request to receive court leave with pay must be approved in advance by the Commissioner of Education and will be subject to the condition that all fees paid to the employee by the court for serving as a juror must be provided to the PSS. Court leave may also be approved by the Commissioner for instances when an employee is subpoenaed to testify in a court or administrative hearing on behalf of the PSS or the CNMI government.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-650 Maternity/Paternity Leave**

Maternity/paternity leave may be granted by the Commission of Education to an employee who is the father or mother of a newborn child or is the father or mother of a newly adopted child. A maximum of SO\* hours of paid maternity/paternity leave may be granted to an employee in any calendar year. Maternity/paternity leave may only be used within one month of the birth or adoption of a child. Please also see § 60-30.3-660, Family and Medical Leave.

\*So in original; see the commission comment to this section.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The starred word “SO” probably should be the number “50.” The error is in the original and the intent is unclear. See 19 Com. Reg. at 15486 (Aug. 15, 1997).

**§ 60-30.3-655 Training & Education Leave**

Leave with pay for the purpose of job-related training and education may be granted to non-certified employees for a period not to exceed one year. The Commissioner of Education is charged with the responsibility of approving or disapproving such leave requests. The Commissioner is granted the authority to create guidelines regarding the use and approval of training and education leave and also to establish a committee to review the applications according to those guidelines.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-660 Family and Medical Leave**

(a) Non-certified employees who have been employed with the PSS for at least one year, and have worked for at least 1,250 hours during the preceding twelve month period are eligible for family and medical leave. All employees, except for those who are defined by the Family and

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Medical Leave Act as “highly compensated employees” who take family and medical leave will be returned to the same or an equivalent position upon their return from family and medical leave. Family and medical leave will be unpaid leave. If family and medical leave is requested for a serious health condition,<sup>1</sup> the employee must first use all of his or her accrued annual leave and sick leave. If family and medical leave is requested for any of the other purposes listed below, an employee must first use all of his or her annual leave.

<sup>1</sup>Serious Health Condition: The term “serious health condition,” for purposes of family and medical leave, means an illness, injury, impairment, or physical or mental condition that involves either: (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider.

(b)(1) All employees who meet the applicable time of service requirements may be granted a total of twelve weeks of unpaid family and medical leave and paid sick and annual leave combined, during any twelve month period for the following reasons:

- (i) The birth of the employee’s child and in order to care for the child;
- (ii) The placement of a child with the employee for adoption or foster care;
- (iii) To care for a spouse, child, or parent who has a serious health condition; or
- (iv) The employee suffers from a serious health condition that renders the employee incapable of performing the functions of his or her job.

(2) The entitlement to leave for the birth or placement of a child for adoption or foster care will expire twelve months from the date of the birth or placement.

(c)(1) To request family and medical leave for the care of a child, parent, or spouse with a serious health condition, a statement and additional documentation containing the following information must be provided to the Commissioner of Education. Certification from a health care provider which includes:

- (i) The date on which the condition commenced,
- (ii) The probable duration of the condition,
- (iii) The appropriate medical facts within the knowledge of the health care provider regarding the condition,
- (iv) An estimate of time needed to care for the individual involved (including and recurring medical treatment), and
- (v) A statement that the condition warrants the employee’s participation to provide care.

(2) To request family and medical leave for the care of any employee’s personal serious health condition, a statement and additional documentation containing the following information must be provided to the Commissioner of Education. Certification from a health care provider which includes:

- (i) The date on which the condition commenced,
- (ii) The probable duration of the condition,
- (iii) The appropriate medical facts within the knowledge of the health care provider regarding the condition, and
- (iv) A statement that the employee is unable to perform the functions of their position due to the condition.

(3) Additional certification in the form of the following is required for intermittent leave or for leave on a reduced leave schedule. Certification from a health care provider:

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(i) The necessity for the intermittent leave or reduced schedule and the expected duration of such necessity, and

(ii) A listing of the dates of the planned medical treatment and the duration of the treatment(s).

(d)(1) Employees who serve principally in an instructional capacity, who request family and medical leave that is foreseeable based on planned medical treatment for more than twenty percent of the total number of working days in the period during which the leave would extend for care of a child, parent, or spouse who has a serious health condition or because the employee has a serious health condition may be required to elect either:

(i) To take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment, or

(ii) To transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that has equivalent pay and benefits, and better accommodates recurring periods of leave than the regular employment position of the employee.

(2) Under certain conditions defined by the Family and Medical Leave Act the PSS may require an instructional employee who requests family and medical leave during the last five weeks of an academic term to continue the leave through the end of the term.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The original paragraphs of subsections (b), (c), and (d) were not designated. The Commission designated subsections (b)(1) and (b)(2), (c)(1) through (c)(3), and (d)(1) and (d)(2).

In footnote 1, the Commission moved the comma after “condition” inside of the closing quotation mark. In subsection (d)(1)(ii), the Commission inserted the final period.

### **§ 60-30.3-665 Unpaid Training and Education Leave**

PSS employees who are either ineligible for paid training and educational leave or who wish to pursue their education on a full-time basis without financial assistance from the PSS, may be granted a leave of absence for a period of time not to exceed one year. Such employees shall have the right to return to a similar position as the one they previously held, upon the satisfactory completion of their leave. The employee will receive no service credit for the period of time spent on unpaid training and educational leave. The employee must receive prior, written approval from the Commissioner of Education before taking such leave.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

### **§ 60-30.3-670 Leave Without Pay (LWOP)**

The Commissioner of Education, if it is in the best interests of the PSS, may grant limited periods of leave without pay to employees who have used up all of their annual and any other leave and need more time away from work. The employee will receive no service credit for the period of time spent on leave without pay. Leave without pay must be approved in writing by the

Commissioner of Education before it is taken, otherwise it will be considered absent without leave.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-675 Absent Without Leave (AWOL)**

Absent without leave is absence from work without prior, appropriate authorization. Employees who are absent from work without prior approval, except in instances of serious bona fide emergencies, shall be not be paid for that time and may be subject to discipline, up to and including possible employment termination. Tardiness shall be charged as AWOL.

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**§ 60-30.3-680 Advance Annual Leave**

The Commissioner of Education may, for good reason, grant an employee who has been employed by the PSS for over three years, advance annual leave of up to a maximum of one-half of the total earnable leave credits for one year from the date the application is made. Subsequent earnings shall serve to replace the amount of advance leave granted and taken. An employee shall not be granted advance annual leave unless they have already exhausted all of their annual leave.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997).

Commission Comment: The Commission changed the comma after “taken” to a period to correct a manifest error.

**§ 60-30.3-685 Advance Sick Leave**

The Commissioner of Education may, for good reason, grant an employee advance sick leave up to a maximum of one-half of the total earnable leave credits for one year from the date the application is made. Subsequent earnings shall serve to replace the amount of advance leave granted and taken. An employee shall not be granted advance sick leave unless they have already exhausted all of their sick and annual leave.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997).

**§ 60-30.3-690 Extended Day Credit**

If a non-certified, FLSA exempt employee works over forty hours in a week, records of those excess hours are to be maintained and added to the employee’s extended day credits. The

employee accrues extended day credits on a one to one basis. For instance, if an employee works fifty hours in a week, ten hours will be recorded for their extended day credits. The maximum number of extended day credits that may be accrued by any employee is 120 hours. Any amounts accrued over 120 hours are lost. Extended day credits may be taken by the employee in lieu of their taking annual leave or sick leave. The employee's direct supervisor must approve the use of any such credits and may deny the use of such credits with or without cause. Extended day credits have no cash value at any time, including upon an employee's separation from employment with the PSS. Employees have not right to use these credits and the Commissioner may discontinue this program at any time without reason, warning or compensation to the employee. The PSS has no legal responsibility to create the extended day credit program, but instead believes that it is an appropriate way to allow our extremely hardworking FLSA exempt, non-certified employees to take an occasional, much needed rest.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 20 Com. Reg. 15965 (June 15, 1998); Amdts Proposed 19 Com. Reg. 15423 (Aug. 15, 1997).

Commission Comment: The Commission corrected the spelling of "exempt."

## **Subpart D - Other Compensation**

### **§ 60-30.3-695 Pay Differentials**

(a) After-school differential, coaching differential, summer school differential and Saturday school differential may be paid to PSS personnel who meet all BOE teacher certification requirements, and have previously consulted and obtained approval from the COE. This differential shall be paid based on rates approved by the BOE, provided funds are available. Persons receiving an after-school differential, coaching differential, summer school differential and/or a Saturday school differential shall not be eligible to receive overtime compensation. Coaches may receive a waiver of the certification requirement from the Commissioner for up to four years.

(b) Proposed differentials:

- |                    |   |
|--------------------|---|
| (1) Coaches:       | \$300/sports season   |
| (2) After-school:  | \$30/daily (not to exceed 2 hrs)                              |
| (3) Saturday:      | \$60/half day session   |
| (4) Before school: | \$15/daily session (not to exceed 1 hr)                       |
| (5) Summer school: | \$100/full day (6 periods)<br>\$60/half day (up to 4 periods) |

(c) Professional development differential may be paid to PSS personnel exempt from the Fair Labors Standards Act who coordinate, facilitate or present at professional development seminars, workshops or trainings held on weekends or in the evening (after working hours) provided that the PSS staff coordinating, facilitating or presenting at the seminar, workshop or training have consulted and obtained the prior approval of the COE. This differential shall be paid based on rates approved by the BOE, provided funds are available. The PSS staff receiving this

differential shall not be eligible to receive overtime compensation or extended day credits. This professional development differential shall be \$100/day for Saturdays (four hours or longer seminar, workshop or training) and \$30/evening (two hour or longer workshop or training after working hours).

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23026\*\* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004).

\*\*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

## **Part 700 - Administrator's Certification and Compensation**

### **Subpart A - Certification Requirements**

#### **§ 60-30.3-701 Education**

Graduation from accredited colleges or universities with master's degree in school administration/supervision or related fields. Graduate course work shall include the following courses or their equivalent as determined by PSS:

- (a) Introduction to school administration;
- (b) Instructional supervision and evaluation (clinical supervision);
- (c) Education law;
- (d) School personnel;
- (e) School finance;
- (f) Instructional leadership & supervision;+
- (g) Facilitative leadership.+

+Note: courses may be substituted with seminars, institutes, or CEU courses sanctioned by PSS.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: In the opening paragraph, the Commission deleted the word "an" before "colleges and universities" and "a" before "related fields." The Commission inserted the semi-colons in this section and the final period. The Commission made "institute" plural in the note to this section.

In 2006, this section was repromulgated in its entirety without modification except for the addition of a new subsection, which the Commission designated as a separate section (§ 60-30.3-702).

**§ 60-30.3-702 Core Knowledge Examination**

All school administrators (principals and vice-principals) must take and pass PRAXIS I and the appropriate PRAXIS II exam starting July 31, 2007.

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006).

Commission Comment: In the original, this section was a subsection of § 60-30.3-701. The Commission designated § 60-30.3-702.

**§ 60-30.3-705 Term**

The term of school administrator's certification shall be for a period of four years. The certification may be subsequently renewed for another 4 years. However, an incumbent administrator requesting a renewal of his/her certification is required to complete at least 120 hours of professional development hours, annually, sanctioned by PSS. Failure to complete the required 120 professional development hours may be a cause for suspension, revocation or non-renewal of certification and/or employment contract.

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

**§ 60-30.3-710 Revocation / Suspension**

PSS shall have the authority to suspend or revoke any administrator's certificate after complying with the notice and hearing process set forth in the teacher and librarian certification requirements (Chapter 2, Part E of the PSS Regulations for Certified Personnel, NMIAC subchapter 60-30.2, part 200, subpart E).

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

**Subpart B - Qualification Requirements**

**§ 60-30.3-715 Accredited College or University**

Degrees must be awarded from colleges or universities recognized by US accreditation commissions approved by PSS or the demonstrated equivalent. Adequacy of degrees and

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equivalency shall be determined in the same manner as PSS Regulations for Certified Personnel § 60-30.2-206(a) and (b).

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section title. In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### § 60-30.3-720 Principal I

- (a) Master's degree with a major in educational administration or related field;
- (b) Must possess a valid administration certification; and
- (c) At least 6 years of experience: three years of full time appropriate teaching experience and the other three years of experience must be in school administration or a related leadership management field.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: In subsection (c), the Commission changed "fields" to "field" to correct a manifest error. In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### § 60-30.3-725 Principal II

- (a) Master's degree with a major in educational administration or related field;
- (b) Must possess a valid administration certification; and
- (c) At least 7 years of service: three years of full time appropriate teaching experience and the other four years of experience must be in school administration or a related leadership management field.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: In subsection (c), the Commission changed "fields" to "field" to correct a manifest error. In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.



**§ 60-30.3-730 Principal III**

- (a) Master's degree with a major in educational administration or related field;
- (b) Must possess a valid administration certification; and
- (c) At least 9 years of experience: three years of full time appropriate teaching experience and six years of work experience in school administration or a related leadership field.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission changed the colon to a semi-colon and added "field" after "related" in subsection (a) to correct manifest errors. In subsection (c), the Commission changed "fields" to "field" to correct a manifest error.

In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

**§ 60-30.3-735 Vice Principal I**

- (a) Graduation from an accredited college or university with a bachelor's degree in education, related field or equivalent; and
- (b) At least three years appropriate teaching experience.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission made "colleges" singular to correct a manifest error in subsection (a). In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

**§ 60-30.3-740 Vice Principal II**

- (a) Master's degree in education administration or a related field;
- (b) At least three years appropriate teaching experience; and
- (c) Must possess a valid administrator certification.

Modified, 1 CMC § 3806(e), (f).

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History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### **Subpart C - Appointment Procedure**

#### **§ 60-30.3-745 Qualification for Promotion**

Persons appointed to vice principal level I have three years to qualify for level II vice principal position, commencing from the date of their appointment. Failure to qualify for level II will result in forfeiture of administrative position.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section titles in subpart C. In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

#### **§ 60-30.3-750 Pay Level Rate for Vice Principal II**

Persons moving from level I vice principal to level II assistant principal shall be placed on the next higher pay level rate.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section title. In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

#### **§ 60-30.3-755 Teacher to Vice Principal; Pay Level Rate**

Persons appointed to a vice principal position from a teaching position shall be placed at an appropriate pay rate but not lower than their former teaching pay rates.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission changed “an vice” to “a vice” to correct a manifest error. The Commission created the section title.

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In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### **§ 60-30.3-760 Promotion to Principal; Pay Level Rate**

Persons appointed to a principal position from a vice principal II or a teacher position shall be placed at the initial pay rate of the principal's pay scale; however, in cases where the salary of the former position is higher than the initial pay rate of the principal's pay scale, a new salary shall be set at the subsequent higher pay rate.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section title. The Commission inserted "the" before "salary" and "former" in the phrase "however, in cases where salary of former position..." to correct manifest errors.

In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### **§ 60-30.3-765 Principals with Advanced Degrees**

A person appointed to a principal position with a doctorate degree in education or related area, but has less than 3 years teaching and 3 years administration experience shall be assigned an initial classification and compensation at level I.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section title and inserted "a" before principal. In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### **§ 60-30.3-770 Positive Assessment and Evaluation**

An administrator shall receive a pay rate increase to the next higher salary level if he/she receives a positive assessment and evaluation from his/her supervisor for two consecutive terms.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section title. The Commission changed "their" to "his/her" to correct a manifest error.

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In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### **Subpart D - Special Conditions**

#### **§ 60-30.3-775 Current School Administrators**

Any current school administrator who is found not meeting these qualification requirements, upon approval of BOE and implementation of this regulation, shall be given two years to complete and meet such requirements. Failure to do so may be cause for non-renewal or termination of employment contract as an administrator.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: The Commission created the section title. In 2006, this section was repromulgated in its entirety without modification when the Board of Education adopted § 60-30.3-702.

### **Subpart E - Compensation Plan**

#### **§ 60-30.3-780 Compensation Plan**

Position	I (Initial Pay)	II (4 years)	Requirement
Vice Principal I	\$40,000.00	\$45,000.00	BA Education or related 3 yrs. appropriate teaching experience
Vice Principal II	\$48,000.00	\$50,000.00	MA Education or related 3 yrs. appropriate teaching experience; valid administrator certification
School Principal I	\$50,000.00		MA Education or related 6 yrs. experience (3 yrs. admin & 3 yrs. approp.

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teaching); valid  
admin.  
certificate

School \$55,000.00  
Principal II

MA Education  
or related 7 yrs.  
experience (4  
yrs. admin. & 3  
yrs. appropriate  
teaching); valid  
admin.  
certification

School \$60,000.00  
Principal III

MA Education  
or related 9 yrs.  
experience (6  
yrs. admin. & 3  
yrs. appropriate  
teaching); valid  
admin.  
certification  
OR  
PHD Education  
or related 6 yrs.  
experience (3  
yrs admin. & 3  
yrs. appropriate  
teaching); valid  
admin.  
certification

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26130 (Aug. 24, 2006); Amdts Proposed 28 Com. Reg. 25606 (Apr. 17, 2006); Amdts Adopted 26 Com. Reg. 21759 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21065 (Sept. 18, 2003) (effective for 120 days from Sept. 2, 2003).

Commission Comment: In 2006, this section was repromulgated in its entirety without modification.

### **Part 800 - Alcohol and Drug Free Workplace Policy and Regulations**

#### **§ 60-30.3-801 Policy Statement**

(a) The Public School System of the Commonwealth of the Northern Mariana Islands (PSS) recognizes its commitment to our employees and the public we serve to take reasonable steps to assure safety in the workplace and in the community. PSS is concerned about the adverse affect alcohol and substance abuse may have on safe and productive job performance. We also recognize that any employee affected in his or her ability to perform safely and productively, due

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to physical and emotional problems or use or abuse of alcohol and other drug substances; jeopardizes the integrity of the workplace and the achievement of PSS's mission.

(b) Accordingly, the Public School System shall implement a drug screening for all employees occupying safety sensitive positions and all prospective employees for such positions. All employees may be tested pursuant to the reasonable suspicion or post-accident requirements set forth in the accompanying regulations. PSS realizes that alcoholism, problem drinking and drug addiction are treatable illnesses. Therefore, we encourage employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.

(c) For information regarding this policy statement and the accompanying regulations in this part and for information regarding drug and alcohol abuse treatment in the Commonwealth, please contact the PSS Human Resources Officer.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

### § 60-30.3-805 Definitions

For the purposes of this part, the following definitions apply:

- (a) Accident. An event which causes
  - (1) A fatality,
  - (2) An injury to a person requiring professional medical treatment beyond simple at-scene first aid, or
  - (3) An economic loss, including property damage, greater than \$2,500.00.
- (b) Assessment. A determination of the severity of an individual's alcohol or drug use problem and an analysis of the possible courses of treatment, made by an expert in the field of substance abuse.
- (c) Breath Alcohol Concentration (B.A.C.). The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath testing device (E.B.T.).
- (d) Breath Alcohol Technician (B.A.T.). An individual authorized to collect breath specimens under § 60-30.3-830(b) and who operates an E.B.T.
- (e) Consulting Physician. A licensed physician retained or employed by the government to advise on drug testing.
- (f) Drug. A substance

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- (1) Recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; or
  - (2) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; or
  - (3) Other than food, minerals, or vitamins, intended to affect the structure or any function of the body of a human or other animal; or
  - (4) Intended for use as a component of any article specified in subsections (f)(1), (2), or (3) above. Devices or their components, parts, or accessories are not considered drugs under this definition.
- (g) Evidential Breath Testing Device (E.B.T.). A device which is
- (1) Approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath; and
  - (2) Is on the NHTSA's Conforming Products List of E.B.T.s; and
  - (3) Conforms with the model specifications available from the NHTSA, Office of Alcohol and State Programs.
- (h) Illegal Drug. A drug that
- (1) Is not obtained legally, or
  - (2) Is knowingly used for other than the prescribed purpose or in other than the prescribed manner, or
  - (3) Is a "designer drug" or drug substance not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
- (i) Invalid Test. A breath or urine test that has been declared invalid by a Medical Review Officer (M.R.O.), including a specimen that is rejected for testing by a laboratory for any reason. An invalid test shall not be considered either a positive or a negative test result.
- (j) Medical File. The file containing an employee's medical examination form, mental health referrals, alcohol and drug test results and other health related documents, maintained by the PSS Human Resources Office separate from an employee's official PSS personnel folder.
- (k) Medical Review Officer (M.R.O.). A licensed physician, appointed by the PSS, with specialized training in substance abuse disorders and in the use and evaluation of drug test results. The M.R.O. shall be the only person authorized to receive laboratory drug test results and shall be the primary contact for technical inquiries to the drug testing laboratory.
- (l) Reasonable Suspicion. A perception based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an individual or on specific facts, circumstances, physical evidence, physical signs and symptoms, or on a pattern of performance or behavior that would cause a trained supervisor to reasonably conclude that the individual may be under the influence of alcohol or illegal drugs while on duty.
- (m) Safety Sensitive. A word describing activities which directly affect the safety of one or more persons, including the operation or maintenance of motor vehicles or heavy machinery or

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the carrying of firearms. The Commissioner of Education shall identify all positions to be considered safety-sensitive positions due to the amount of time that the employee spends performing safety sensitive functions.

(n) **Statement of Fitness for Duty.** A written statement from a substance abuse professional (S.A.P.), certifying that the named employee is not dependent on alcohol or any drug to the extent such dependence will affect safe and productive work.

(o) **Substance Abuse Professional (S.A.P.).** A physician, psychologist, psychiatrist, or social worker with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders; or a counselor certified by the National Association of Alcoholism and Drug Abuse Counselors.

(p) **Under the Influence.** A condition where a person's behavior, attention, or ability to perform work in the usual careful fashion has been adversely affected by the use of alcohol or drugs; intoxicated.

(q) **Vehicle.** A device in, upon or by which any person or property is or may be propelled or moved on a highway, on a waterway, or through the air.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

Commission Comment: In subsection (m), the Commission corrected the spelling of "maintenance."

### **§ 60-30.3-810 Prohibited Conduct**

(a) **Sale, Purchase, Possession with Intent to Deliver, or Transfer of Illegal Drugs.** No employee shall

(1) Sell, purchase, or transfer;

(2) Attempt to sell, purchase, or transfer; or

(3) Possess with the intent to deliver, any illegal drug while on government property, in any government vehicle or on any government business.

(b) **Possession of Illegal Drugs.** No employee shall possess any illegal drug on government property, in any government vehicle, or while on government business.

(c) **Possession of Open Containers of Alcohol.** No employee shall possess an open container of alcohol in any vehicle while on duty or in any government vehicle at any time. No employee shall possess an open container of alcohol while at his or her workplace.

(d) **Under the Influence of Alcohol or Illegal Drugs.** No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this section, alcohol includes any alcohol found in any prescription or



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nonprescription drug such as cough syrup. An employee is presumed to be under the influence of alcohol or an illegal drug if

- (1) The employee has a B.A.C. of 0.02 or more;
- (2) The employee has a detectable amount of any illegal drug in his or her urine;
- (3) The employee uses alcohol or any illegal drug while on call when the employee knows he or she may be called upon to perform safety sensitive functions; or
- (4) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and expects to perform a safety sensitive duty.

(e) **Refusal to Be Tested.** No employee required to be tested for drugs or, alcohol under any provision of this part shall refuse to be tested. The following conduct shall be considered a refusal to be tested:

- (1) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (2) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (3) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);
- (4) Engaging in conduct that clearly obstructs the specimen collection process;
- (5) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;
- (6) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;
- (7) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; or
- (8) Failing to timely report to the specimen collection site after being informed of the requirement to be tested.

(f) **Giving False Information.** No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.

(g) **Refusal to Comply with Treatment Recommendations.** No employee shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or S.A.P. as a consequence of a prior positive drug or alcohol test result.

(h) **Failure to Notify PSS of Conviction.** No employee shall fail to notify the PSS Human Resources Officer of any criminal drug statute conviction, within five days of such conviction, if the violation of the criminal drug statute occurred while the employee was conducting government business, or while on or using government property.

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(i) Supervisor's Responsibility for Confidentiality. The Commissioner, the Human Resources Officer and all supervisors shall not knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this part.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

### § 60-30.3-815 Penalties and Consequences

(a) Disciplinary Action. An employee committing any act prohibited by § 60-30.3-810 shall be subject to an appropriate form of discipline, depending on the circumstances.

(1) Generally. Where an employee commits any act prohibited by § 60-30.3-810, without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to an S.A.P. for assessment and treatment.

(2) First offense, under the influence. An employee found to be under the influence of alcohol or illegal drugs in violation of § 60-30.3-810(d), for a first offense, shall not be subject to removal solely for being under the influence of alcohol or illegal drugs. However, if the person is also involved in an accident, depending on the circumstances, PSS may decide to initiate an adverse action for removal, even on a first offense.

(3) Serious offenses. The following acts, even for a first offense, will result in an immediate adverse action for removal in accordance with PSS disciplinary regulations:

(i) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase or transfer illegal drugs in violation of § 60-30.3-810(a);

(ii) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs, in violation of § 60-30.3-810(d);

(iii) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs, in violation of § 60-30.3-810(d);

(iv) An unexcused refusal to be tested, in violation of § 60-30.3-810(e);

(v) Giving false information, contaminating or attempting to contaminate a urine sample, in violation of § 60-30.3-810(f);

(vi) Failing to notify the proper authority of conviction for a drug offense in violation of § 60-30.3-810(h);

(vii) Testing positive for alcohol or illegal drugs within five years of a prior positive test; and

(viii) Breaching any term of a return to duty contract executed under the provisions of § 60-30.3-820(b).

(b) Information Concerning Treatment Options. Those employees not removed from PSS service after committing any act prohibited by § 60-30.3-810 shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the PSS Human Resources Officer shall give the names, addresses, and telephone numbers of local S.A.P.s and substance abuse counseling or treatment programs. The

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employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.

(c) Report to Department of Public Safety. An employee committing any act prohibited by § 60-30.3-810(a) or § 60-30.3-810(b) shall be reported by PSS to the Department of Public Safety for the purpose of possible criminal prosecution.

(d) Duty/Pay Status Pending Adverse Action. Unless the employee was involved in an accident resulting in a fatality, an employee subject to an adverse action for committing any act prohibited by § 60-30.3-810, except for § 60-30.3-810(g), shall be allowed to remain on the job pending resolution of any proposed adverse action but shall not be allowed to perform a safety-sensitive function, even if that means assigning to the employee duties the employee would not otherwise be performing. An employee subject to, an adverse action for committing any act prohibited by § 60-30.3-810 who was involved in a fatal accident shall be placed on leave without pay pending resolution of the adverse action for removal.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

### **§ 60-30.3-820 Return to Work Procedures**

(a) Prerequisites to Returning to Duty. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:

- (1) Complied with treatment recommendations of an M.R.O. or S.A.P. and been released for work by an S.A.P. in consultation, when appropriate, with the M.R.O. or a consulting physician;
- (2) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, marijuana, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and
- (3) Agreed to execute a return to duty contract.

(b) Return to Duty Contract. The return to duty contract shall include the following provisions:

- (1) Aftercare. An agreement to comply with aftercare and follow-up treatment recommendations for one to five years, as determined appropriate by the employee's S.A.P.;
- (2) Follow-up testing. An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one to five years, as determined appropriate by the employee's S.A.P., but there shall be no fewer than six tests in the first year after the employee returns to work;
- (3) Compliance with rules. An agreement to comply with PSS regulations, rules, policies, and procedures relating to employment;
- (4) Term. An agreement that the terms of the contract are effective for five years after the employee's return to duty; and
- (5) Breach of contract. An agreement that violation of the return to duty contract is grounds for termination.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

**§ 60-30.3-825 Testing Occasions**

(a) Pre-employment Tests. At the time of application, persons applying for any safety sensitive position within PSS will be notified that any offer of employment is contingent upon a negative urine test. After receiving an offer of employment, the candidate shall be tested for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine in the urine. The test shall be paid for by the candidate. Testing shall be in compliance with § 60-30.3-835, below. Applicants who were previously employed by the government and applicants who have had an offer for government employment withdrawn due to a previous positive urine test result, must also provide a written release of drug testing history for the two years immediately preceding the application date.

(1) No candidate for a safety sensitive position within PSS may be assigned to work in any position until he or she presents the results of a urine test, taken after the offer for employment has been made, that shows negative for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine.

(2) If the candidate's test result is positive for the presence of a tested drug, without a legitimate explanation, the offer of employment will be withdrawn.

(3) If the candidate presents a drug testing history showing a positive drug test within two years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a statement of fitness for duty and agrees to execute an agreement similar to a return to duty contract described in § 60-30.3-820(b).

(b) Reasonable Suspicion Testing. Where there is a reasonable suspicion that any employee is under the influence of alcohol or drugs while at work or about to begin work, he or she shall, submit to a breath or urine test for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, and phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the PSS shall pay for the testing.

(1) Properly trained supervisor. Only a supervisor with PSS approved training in the physical, behavioral and performance indicators of probable drug and alcohol use is permitted to make reasonable suspicion testing decisions.

(2) Objective inquiry. The properly trained supervisor will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Prior to making the decision to require testing, the supervisor will question the employee in a private area to ascertain whether there are any reasons other than alcohol or drug use for any behavior observed.

(3) Verification. No employee shall be required to submit to a drug or alcohol test based on reasonable suspicion unless the need for the test is verified by a second properly trained PSS employee. The required verification shall be done in person.

(4) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the

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individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.

(5) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform a safety sensitive duty.

(6) Report. The supervisor ordering reasonable suspicion testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for disciplinary action. Only at that time will the report be filed in the employee's official PSS personnel folder.

(c) Post-accident Testing. As soon as practical after an accident any employee whose action or inaction may have contributed to the accident must submit to breath and urine tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the PSS shall pay for the testing.

(1) Supervisor training. Only a supervisor with PSS approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make post-accident testing decisions.

(2) Objective inquiry. A supervisor's decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. The properly trained supervisor shall require the driver of any government vehicle or the operator of any government equipment involved in the accident to be tested.

(3) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.

(4) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.

(5) Report. The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for disciplinary action. Only at that time will the report be filed in the employee's official PSS personnel folder.

(d) Random Testing. During each calendar year randomly selected employees performing safety sensitive functions will be required to submit to breath tests for alcohol and urine tests for cocaine, marijuana, opiates, amphetamines, and phencyclidine. The testing will be done during on-duty time. Except as otherwise provided, the PSS shall pay for the testing.

(1) Method of selection. Employees will be selected by a statistically valid method such as a random number table or computer-based random number generator that is matched with employee social security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Number to be tested. No more than twenty five percent of all employees performing safety sensitive functions in PSS each year shall be required to submit to breath alcohol testing and no more than fifty percent shall be required to submit to urine testing. The actual percentage

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will be determined at the beginning of each fiscal year for each department or agency by the PSS Human Resources Officer, in consultation with the Commissioner of Education or designee and the M.R.O. after reviewing PSS's prior positive testing rates, reasonable suspicion and post accident events, and referrals for service.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

### **§ 60-30.3-830 Collecting and Testing Breath Specimens**

(a) **Collection Site.** Breath specimens shall be collected only at a site approved by the Commissioner of Education or at the scene of an accident if proper equipment and personnel can be made immediately available.

(b) **Collection Protocol.** Breath specimens shall be collected only by a B.A.T. trained in the collection of breath specimens at a course approved by the United States Department of Transportation in accordance with standard collection protocols as specified in 49 CFR, part 40(C) "Procedures for Transportation Workplace Drug Testing Programs - Alcohol Testing," except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(c) **Confirming Test.** Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration of 0.02 or greater, a second test, confirming the first and providing quantitative data of alcohol concentration, shall be performed. An alcohol test shall be considered positive when both the screening test and the confirming test show a B.A.C. of 0.02 or greater.

(d) **Results.** The breath test results shall be transmitted by the B.A.T., in a manner to assure confidentiality, to the employee, to the Commissioner of Education and the PSS Human Resources Officer.

(e) **Confidentiality.** Other than as specified above, no person involved in the testing process shall release the results of breath tests to any other individual without a written release from the tested employee.

(f) **Invalid Test.** If the Commissioner of Education determines that the test is invalid, using the factors found at 49 CFR, part 40.79, the test result shall be reported as negative.

(g) **Statistical Reporting.** The B.A.T. shall compile statistical data that is not name-specific, related to testing results. The B.A.T. shall release the statistical data to the Commissioner of Education upon request.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

**§ 60-30.3-835 Collecting and Testing Urine Specimens**

(a) **Collection Site.** Urine specimens shall be collected only at a site approved by the Commissioner of Education.

(b) **Collection Protocol.** Urine specimens shall be collected by persons trained in the collection process developed by the Substance Abuse and Mental Health Service Administration, United States Department of Health and Human Services, in accordance with standard collection protocols as specified in 49 CFR, part 40(B), “Procedures for Transportation Workplace Drug Testing Programs Drug Testing” except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(c) **Splitting Sample.**

(1) After collecting a sample of the employee’s urine, the sample will be split into two specimens. Both specimens will be shipped to the laboratory selected for performing tests for PSS.

(2) One specimen, called the primary specimen, shall be tested for the PSS. The other specimen, called the secondary specimen, shall be the property of the employee, to be tested only upon request of the employee.

(d) **Confirming Test.** Primary urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of prohibited drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) test. No drug test shall be considered positive unless both the screening test and the confirming test show the presence of one or more of the drugs tested.

(e) **Results.** The laboratory conducting the urine test shall give the results only to the M.R.O. The M.R.O. shall discuss the test result with the tested individual.

(f) **Invalid Test.** If the M.R.O. decides that the test is invalid, the candidate or employee shall immediately submit another urine specimen for testing.

(g) **Employee Test.** If the PSS’s test shows positive for the presence of a specific drug or drugs, the employee may request that the M.R.O. have the secondary specimen tested at another laboratory certified by the United States Department of Health and Human Services, for the presence of the drug or drugs found in the primary specimen.

(1) The employee must make the request, in writing, within 72 hours of receiving notice of the result of the PSS’s test.

(2) The results of the second test shall be given to the M.R.O. who shall discuss the results with the employee.

(3) The employee shall pay for the cost of the second test.

(h) **Alternative Explanations for Positive Test Results.**

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- (1) Upon receiving a report of a positive test result, the M.R.O. shall determine if there is any alternative medical explanation for the result, including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If the M.R.O. determines it to be necessary, he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.
- (2) The M.R.O. shall report the urine test result as negative and shall take no further action if he or she determines:
- (i) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or
  - (ii) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.
- (i) **Illegal Use of Opium.** If the GC/MS does not confirm the presence of 6 monoacetylmorphine, the M.R.O. shall determine whether there is clinical evidence, in addition to the urine test result, of illegal use of any opium, opiate or opium derivative.
- (j) **Report to PSS.** The M.R.O. shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to the PSS Human Resources Officer and the Commissioner of Education.
- (k) **M.R.O. and Confidentiality.** Other than as specified above, the M.R.O. shall not release the results of drug tests to any other individual without a written release from the tested employee.
- (l) **Statistical Reporting.** The M.R.O. shall compile statistical data, that is not name-specific, related to testing and rehabilitation. The M.R.O. shall release the statistical data to the Commissioner of Education upon request.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

### **§ 60-30.3-840 Employee Awareness and Rehabilitation**

- (a) **Employee Awareness Training.** All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol use; and the resources available to the employee in evaluating and resolving problems associated with the use of illegal and legal drugs and alcohol.
- (b) **Employees Seeking Voluntary Assistance.** All employees shall be allowed to voluntarily seek assistance for alcohol or drug use at any time prior to being required to be tested under the reasonable suspicion, post-accident or random testing procedures.



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(1) Referrals. Employees may request referral to an S.A.P. for treatment, may refer themselves, or may be referred by a supervisor as part of a performance counseling. Such referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's official PSS personnel folder. Referrals shall be kept confidential.

(2) Voluntary referrals. Employees who voluntarily seek assistance in dealing with drug and alcohol problems or accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.

(3) Accountability for job performance. Regardless of participation in or requests for referrals, employees shall be held accountable for acceptable job performance. In no case where job performance has been compromised will disciplinary action be waived for employees asking for assistance and referral. However, such requests may be considered a mitigating factor in determining the appropriate form of discipline.

(c) Job Security Maintained. Employees shall not have job security or promotional opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.

(d) Required Documentation. Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's official PSS personnel folder.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

### **§ 60-30.3-845 Disseminating Information on Regulation**

(a) Distribution to Employees. All current employees shall receive a copy of the regulations in this part at least thirty days before the implementation date. New employees hired after the effective date of these regulations will be given a copy of this policy at the time of hire. Each employee shall sign a form prescribed by the PSS Human Resources Officer which acknowledges the receipt of these regulations and the employee's understanding that he or she is bound by the regulations. This acknowledgment shall be kept in the employee's official PSS personnel folder.

(b) Posting. These regulations will be posted in all workplaces for at least sixty days following their implementation.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

### **§ 60-30.3-850 Record Retention and Reporting Requirements**

(a) Administrative Records. Records relating to the administration of the regulations in this part, including policy and program development, employee awareness training, supervisory

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training, collection site training, program administration, and calibration documentation, shall be kept by the PSS Human Resources Office and the M.R.O. for five years.

(b) **Records Relating to Collection Process.** Records relating to the breath and urine collection process shall be kept by PSS, the M.R.O., and the specimen collector at the collection site for two years.

(c) **Refusals, Referrals and Test Results.** PSS shall keep a copy of all records of refusals to be tested, breath and urine test results, and referrals to an S.A.P. in the employee's medical file, not the employee's official PSS personnel folder, at least until such time as disciplinary action is taken. The M.R.O. shall keep a copy of all urine test results and the B.A.T. shall keep a copy of all breath test results in a manner to assure confidentiality. No test results shall be available for use in a criminal prosecution of the employee unless the employee consents or the court orders the release of the results.

(1) Positive test result records, records of refusals to be tested and referrals to an S.A.P. shall be kept for five years.

(2) Negative test result records shall be kept for a period of one year.

(d) **Report to Federal Contract Agency.** To comply with the Drug Free Workplace Act of 1988, 41 U.S.C. § 702(a)(1)(E), the Commissioner of Education shall notify the federal contracting agency of the conviction of any employee for selling, manufacturing or dispensing any illegal drug on government business property or government time, within 10 days of the conviction.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 26 Com. Reg. 23010 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23035 (Aug. 26, 2004).

Commission Comment: The following form appeared at the end of this part:

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
STATE BOARD OF EDUCATION  
PUBLIC SCHOOL SYSTEM

P.O. Box 501370, Saipan, MP 96950  
Tel. Nos.: (670) 664-3727/3700  
Fax No.: (670) 664-3711/3798

**ACKNOWLEDGEMENT FORM FOR THE  
ALCOHOL AND DRUG FREE WORKPLACE POLICY**

I \_\_\_\_\_ do hereby acknowledge the (Applicant or Employee) receipt of the Public School System's Alcohol and Drug Free Workplace Regulations. I understand that I am required to comply with the requirements of these regulations.

\_\_\_\_\_  
Print Name & Sign

\_\_\_\_\_  
Date

Social Security Number: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Date

Original to be filed in Employee's Personnel File. Copy to Employee.

See 26 Com. Reg. at 23025 (Oct. 26, 2004).

**Part 900 - Performance Evaluation Rubric and Process for School Administrators Evaluation**

**§ 60-30.3-901 Purpose**

(a) To assess school administrators in relation to the CNMI Public School System “professional teaching standards and school administrator leadership standards” and to design a plan for professional growth. The performance evaluation shall be conducted on a yearly basis, on the respective school administrator's anniversary date.

(b) The Commissioner of Education or designee will conduct the performance evaluation process in which the principal will actively participate through the use of self-study assessment, reflection, presentation of artifacts, and supervisory and administrative performance requirements.

Modified, 1 CMC § 3806(a), (f), (g).

History: Adopted 33 Com. Reg. 31841 (Aug. 23, 2011); Proposed 33 Com. Reg. 31702 (June 27, 2011).

Commission Comment: The Commission designated subsections (a)-(b), which were not so designated in the original.

**§ 60-30.3-905 Process**

The CNMI Public School System School Administrator Leadership process shall include the following steps:

(a) Training – before participating in the evaluation process, all principals and peer evaluators must complete training on the evaluation process.

(b) Orientation – within 6 weeks of the principal's first day of work in any school year, the Commissioner of Education or designee will provide the school administrator with a copy of or directions for obtaining access to a copy of

- (1) The rubric for evaluating CNMI Public School System school administrators;
- (2) This policy; and
- (3) A schedule for completing all the components of the evaluation process
- (4) Copies may be provided by electronic means.

(c) School Administrator Self-Assessment – using the rubric for evaluating CNMI PSS school administrators, the respective administrator shall rate his or her own performance at the beginning of the year and reflect on his or her performance throughout the year.

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(d) Pre-observation Conference

The first observation shall be a formal and announced observation; before the first observation, the Commissioner shall meet with the principal to discuss the principal's self assessment based on the rubric for evaluating CNMI PSS school administrators; the school principal's most recent professional growth plan, and the supervisory and administrative performance observed. The school principal will provide the Commissioner of Education with a written description of the supervisory and administrative performance activities. The goal of this conference is to prepare the COE for the observation. Pre-observation conferences are not required for subsequent observations.

(e) Observations

(1) A formal observation shall last at least 2 hours

(2) New school administrators (0-4) – 3 formal observations and one peer to peer observation to be performed annually

(3) Seasoned school administrators (5 and up) – an evaluation cycle for this group of school administrators. The schedule may be adjusted for the summative evaluation of a seasoned school administrator whenever it is deemed necessary; at least 3 observations are required during 2 year employment contract.

(f) Post Observation Conference – The post conference with the principal shall be conducted no later than ten days after the observation. During the post observation conference, the principal and the COE shall discuss the document on the rubric, the strengths and weaknesses of the principal's performance during the observed principal performance.

(g) Summary Evaluation Conference and Scoring the Principal Summary Rating Form – prior to the end of the school year and in accordance with the timelines, the Commissioner shall conduct a summary evaluation conference with the principal. During the summary evaluation conference, the Commissioner and the principal shall discuss the principal's self-assessment, the principal's most recent professional growth plan, the components of the CNMI PSS school principal's evaluation process completed during the year, supervisory and administrative activities observations, artifacts submitted or collected during the evaluation process and other evidence of the principal's performance on the rubric.

(h) At the conclusion of the CNMI PSS school administrator's performance evaluation process, the Commissioner shall:

(1) Give a rating for each element in the rubric

(2) Make a written comment on any element marked "not demonstrated"

(3) Give an overall rating of each standard in the rubric

(4) Provide the administrator with the opportunity to add comments to the summary rating form

(5) Review the completed administrator's summary rating form with the administrator;  
and

(6) Secure the administrator's signature on the record of school administrator's evaluation activities and administrator's summary rating form

(7) Discuss and set new goals for the administrator next review cycle.

(8) Submit the completed evaluation form to Human Resource Office.

(9) The completed school administrator evaluation rating forms and justification for renewal are to be attached to employment contract renewals for all teachers.\*

\* So stated in the original.

Modified, 1 CMC § 3806(a), (f), (g).

History: Adopted 33 Com. Reg. 31841 (Aug. 23, 2011); Proposed 33 Com. Reg. 31702 (June 27, 2011).

Commission Comment: The Commission added periods at the end of each subsection where missing in original but left punctuation as stated in the original for subparts of each subsection ((1), (2) etc.). The Commission designated subsections (a)(4) and (h), which were not so designated in the original. The Commission also made the following corrections of manifest errors: removed “Classroom” from subsection (a)(1); changed “seasoned school administration” to “seasoned school administrator” in (e)(3); changed “principals’ most recent” to “principal’s most recent” in (g); changed “rubrics” to “rubric” in (h)(1); and changed “non demonstrated” to “not demonstrated” in (h)(2).

### **§ 60-30.3-910 Individual Growth Plans**

School administrators who are rated “proficient” on all the standards on the school administrator summary rating form shall develop an individual growth plan designed to improve performance on specifically identified standards and elements with the goal of achieving a “distinguished” rating on all standards.

History: Adopted 33 Com. Reg. 31841 (Aug. 23, 2011); Proposed 33 Com. Reg. 31702 (June 27, 2011).

### **§ 60-30.3-915 Monitored Growth Plans**

- (a) A school administrator shall be placed on a monitored growth plan whenever he or she:
- (1) Is rated “developing” on one or more standards on the school administrator summary rating form and he or she;
  - (2) Is not recommended for dismissal or nonrenewal.

(b) A monitored growth plan shall, at a minimum, identify the standards and elements to be improved, the goals to be accomplished and the activities the school administrator should undertake to achieve proficiency, and a timeline which allows the school administrator one school year to achieve proficiency. A monitored growth plan that meets those criteria shall be deemed to satisfy the requirements of the School Administrator Evaluation System.

Modified, 1 CMC § 3806(a), (f), (g).

History: Adopted 33 Com. Reg. 31841 (Aug. 23, 2011); Proposed 33 Com. Reg. 31702 (June 27, 2011).

Commission Comment: The Commission added periods at the end of each subsection, added the comma after “minimum” and changed “a monitored growth plans” to its singular form in subsection (b) to correct manifest errors. The Commission designated subsections (a) and (b), which were not so designated in the original.

### **§ 60-30.3-920 Directed Growth Plans**

A school administrator shall be placed on a directed growth plan whenever he or she:

- (a) Is rated
  - (1) “not demonstrated” on any standard on the school administrator summary rating form; or
  - (2) “developing” on one or more standards on the School Administrator Summary Rating form for two consecutive years; and
  - (3) Is not recommended for dismissal or non-renewal.
  
- (b) The directed growth plan, shall at a minimum, identify the standards and elements to be improved, the goals to be accomplished, the activities that school administrator shall complete to achieve proficiency, a timeline for achieving proficiency within one school year. A directed growth plan that meets those criteria shall be deemed to satisfy the requirements of the School Administrator Evaluation System.

Modified, 1 CMC § 3806(a), (f), (g).

History: Adopted 33 Com. Reg. 31841 (Aug. 23, 2011); Proposed 33 Com. Reg. 31702 (June 27, 2011).

Commission Comment: The Commission added periods at the end of each subsection and changed “one of more” to “one or more” in (a)(2) to correct manifest errors. The Commission designated subsections (a) and (b), which were not so designated in the original.

**§ 60-30.3-925 Effective Dates**

- (a) Effective School Year 2010-2011, the PSS shall provide orientation, training seminars and establish a teacher/administrator focus group to identify artifacts and a list of evidence to be used with the School Administrator Evaluation System.
  
- (b) Effective School Year 2011 -2012, all school administrators in the CNMI Public School System will be evaluated using the PSS School Administrator Evaluation System and this policy.

Modified, 1 CMC § 3806(a), (f), (g).

History: Adopted 33 Com. Reg. 31841 (Aug. 23, 2011); Proposed 33 Com. Reg. 31702 (June 27, 2011).

Commission Comment: The Commission added periods at the end of each subsection and changed “established” to “establish” in (a) to correct manifest errors. The Commission designated subsections (a) and (b), which were not so designated in the original.

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**Exhibit A**

PUBLIC SCHOOL SYSTEM  
P.O. BOX 1370, SAIPAN, MP 96950

**POLICY OF NONDISCRIMINATION**

Public School System (“PSS”) is an equal opportunity employer dedicated to a policy of nondiscrimination in employment upon any basis, including sex, sexual orientation, race, color, religion, national origin, age, disability, or retaliation for the exercise of any of these rights. In reading and answering the following inquiries, please keep in mind that none of the questions are intended to imply any limitations, illegal preferences, or discrimination based upon any information that is not job-related.

This application will be given complete consideration, but its receipt does not imply that you will be employed. Please fill it out completely.

**APPLICATION FOR NON-CERTIFIED EMPLOYMENT**

**PERSONAL DATA**

Name \_\_\_\_\_ Social Security No. \_\_\_\_\_

Current \_\_\_\_\_ Address: \_\_\_\_\_

Street Address/Box Number                      City                      State                      Zip

Permanent \_\_\_\_\_ Address: \_\_\_\_\_

(Leave blank if the same as your current address)

Daytime Phone at Which You Can Be Reached: (\_\_\_\_) \_\_\_\_\_

Evening Phone at Which You Can Be Reached: (\_\_\_\_) \_\_\_\_\_

Are you a CNMI Government retiree?                      \_\_\_ Yes    \_\_\_ No

POSITION(S)    APPLIED    FOR:

\_\_\_\_\_

Type of Work Desired:                      \_\_\_ Full Time                      \_\_\_ Part Time                      \_\_\_ Temporary  
(check one)

Salary Desired: \$ \_\_\_\_\_ per \_\_\_\_\_ (monthly/year/hour)

**GENERAL INFORMATION**

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1. Have you ever applied for a job with PSS in the past? If yes, please give the date of application and the position for which you applied. State your name at the time, if different from your present name.  Yes  No
  
2. Have you ever been employed by PSS in the past? If yes, please give dates of employment, and position(s) held. State your name while employed, if different from your present name.  Yes  No
  
3. If hired, will you able to work during the usual hours and days required for the position(s) for which you are applying? If no, explain on a separate sheet of paper and attach it.  Yes  No
  
4. Do you have any commitments to another employer that might affect your employment with PSS? If yes, explain on a separate sheet of paper and attach it.  Yes  No
  
5. If hired, can you furnish proof that you are 18 years of age or older? If no, explain on a separate sheet of paper and attach it.  Yes  No
  
6. If hired, can you furnish proof that you are eligible to work in the Commonwealth of the Northern Mariana Islands as a resident worker (U.S. citizen, national, spouse of a U.S. citizen or national, or Compact of Free Assn. citizen)? If no, please indicate your citizenship:  Yes  No
  
7. Have you ever had any adverse action or any disciplinary action with regard to your teaching certificate or employment in any teaching capacity taken or proposed against you? If yes, explain on a separate sheet of paper and attach it.  Yes  No
  
8. Do you have any language abilities (such as reading or speaking a language other than English) that might help you perform the job(s) for which you are applying? If yes, explain on a separate sheet of paper and attach it.  Yes  No
  
9. Have you received a copy of the Regulations for the Public School System Employment of Non-Certified Personnel?  Yes  No
  
10. Have you ever been convicted, pled guilty, or pled “no contest” to any felony or misdemeanor? Note: a “yes” answer does not automatically disqualify you from employment since the nature of the offense, the date it was committed, and the type of job for which you are applying will be considered. If yes, explain on a separate sheet of paper and attach it.  Yes  No
  
11. Have you been charged with a crime that has not yet resulted in a plea of guilty or no contest by you, a trial, or a dropping of the charge? Note: a “yes” answer will not automatically disqualify you from employment. If yes,  Yes  No



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explain on a separate sheet of paper and attach it.

**12. EMPLOYMENT HISTORY**

<b>PRESENT &amp; FORMER EMPLOYERS</b>	
(List Most Recent First) ___ YES ___ NO	<b>MAY WE CONTACT YOUR PRESENT EMPLOYER?</b>
Company Name	Job Title & Duties
Address	Dates of Employment      From    To
City, State, Zip	Reason for Leaving
Supervisor (and phone number, if known)	Your Name When Employed, If Different From Present Name
Company Name	Job Title & Duties
Address	Dates of Employment      From    To
City, State, Zip	Reason for Leaving
Supervisor (and phone number, if known)	Your Name When Employed, If Different From Present Name
Company Name	Job Title & Duties
Address	Dates of Employment      From    To
City, State, Zip	Reason for Leaving
Supervisor (and phone number, if known)	Your Name When Employed, If Different From

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	Present Name
Company Name	Job Title & Duties
Address	Dates of Employment      From    To
City, State, Zip	Reason for Leaving
Supervisor (and phone number, if known)	Your Name When Employed, If Different From Present Name
Company Name	Job Title & Duties
Address	Dates of Employment      From    To
City, State, Zip	Reason for Leaving
Supervisor (and phone number, if known)	Your Name When Employed, If Different From Present Name
Company Name	Job Title & Duties
Address	Dates of Employment      From    To
City, State, Zip	Reason for Leaving
Supervisor (and phone number, if known)	Your Name When Employed, If Different From Present Name
<p>Please Account for Any Time You Were Not Employed After Leaving School in the Past Ten Years.          (You need not list any unemployment periods of one month or less.)</p>	
Time Period(s)	Reason(s) for Unemployment

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IF YOU WERE UNABLE TO LIST ALL PAST JOBS OR PERIODS OF UNEMPLOYMENT ON THIS FORM, PLEASE ATTACH ADDITIONAL INFORMATION ON A BLANK SHEET OF PAPER.

**13. EDUCATIONAL DATA**

SCHOOLS ATTENDED	NAME OF SCHOOL AND LOCATION (HIGHEST GRADE COMPLETED)	DID YOU GRADUATE? YES NO	DEGREE/ DIPLOMA/ CERTIFICATE	GRADE POINT AVERAGE	MAJOR COURSES OF STUDY
HIGH SCHOOL(S)			DO NOT ANSWER		DO NOT ANSWER
TECHNICAL, BUSINESS OR MILITARY TRAINING					
COLLEGE OR UNIVERSITY					
GRADUATE SCHOOL					

ADDITIONAL JOB RELATED SEMINARS, SHORT COURSES, WORKSHOPS, OR OTHER EDUCATIONAL EXPERIENCES:

**14. MILITARY EXPERIENCE**

- A. Have you served in the U.S. military?  Yes  No
- B. If so, list the branch and highest rank obtained:  
\_\_\_\_\_
- C. Dates: From \_\_\_\_\_ to \_\_\_\_\_
- D. Discharge:  Honorable  Other (explain on a separate sheet of paper)

**15. REFERENCES: LIST THREE INDIVIDUALS WHO ARE NOT FORMER EMPLOYEES OR RELATIVES**

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NAME OCCUPATION	ADDRESS	PHONE NUMBER

16. Please add any additional information (except that which identifies your race, sex, age, religion, national origin, disability or other non-related personal information) that you think may be relevant to a decision to hire you.

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**IMPORTANT**

Please Read Each Paragraph Carefully Before You Turn In This Form. You Will Be Asked To Sign Each One To Show Your Consent At The Time You Turn In This Application.

**Representation That Application Is Filled Out Truthfully:**

By my signature placed below, I promise that the information provided in this employment application and accompanying resume is true and complete, and I understand that any false information or significant omissions may disqualify me from further consideration for employment, and may be justification for my dismissal from employment if discovered at a later date.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Consent to Investigate Criminal Records/Agreement to Notify PSS of Crime Info.:**

I authorize the CNMI Public School System’s investigation of all statements contained in this application and accompanying resume. I understand that this investigation may include obtaining a police clearance from the CNMI Department of Public Safety and a record of arrests and dispositions from the Federal Bureau of Investigation. I also agree to notify the PSS within fifteen days if I should be charged or convicted of any crime, while my job application is pending or, if hired, during my period of employment.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Consent to Review License/Credential Records & NASDTEC Records:**

I authorize the CNMI Public School System’s investigation of all statements contained in this application and accompanying resume by reviewing the records of any state licensing authority

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under which I currently am, or formerly was, licensed and any record of employment history available from the National Association of State Directors of Teacher Education and Certification Clearing House, if applicable.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Consent to Physical Examination and Review of Medical Records:**

I give permission for a complete physical examination by the CNMI Public School System (PSS), including a drug screening exam and x-rays, and I consent to the release to PSS of any and all medical information, as may be deemed necessary by PSS in judging my capability to do the work for which I am applying.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Consent to Review Employment Records:**

I authorize the CNMI Public School System (PSS) to contact my present employer (unless otherwise noted in this application form), past employers, past and present co-workers, listed references and review any records of my past or present employment (unless this form indicates that the present employer is not to be contacted) that PSS finds relevant in determining my suitability for the employment position applied for.

I also authorize any person, school, current employer (except as previously noted), past employers, and organizations named in this application form and accompanying resume to provide PSS with relevant information and opinions that may be useful to PSS in making a hiring decision, and I release such persons and organizations from any legal liability in making such statements.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Consent to Drug Testing:**

I give permission for the CNMI Public School System (PSS) and its authorized representatives to collect blood, urine, saliva, or hair samples from me and to conduct any necessary tests to determine the presence or use of drugs or controlled substances. Furthermore, I give my consent for the release of the results of such test and related medical opinion to PSS or its authorized representatives. I understand that if I refuse to consent, I may be refused employment, or if already employed, subject to disciplinary action, including discharge from employment.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Agreement that C.N.M.I. Law and Courts Govern the Application Process:**

I agree that the laws of the Commonwealth of the Northern Mariana Islands shall govern all aspects of my applying for a job with the PSS and that any legal or equitable action I may bring

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regarding my applying for a job and/or any matters related to this process shall be brought in the Commonwealth of the Northern Mariana Islands Courts of Law only,

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

THIS IS AN APPLICATION -- NOT A CONTRACT.

I UNDERSTAND THAT THIS APPLICATION DOES NOT, BY ITSELF, CREATE A CONTRACT OF EMPLOYMENT. I UNDERSTAND AND AGREE THAT, IF HIRED, MY EMPLOYMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE EMPLOYMENT CONTRACT FOR NON-CERTIFIED PERSONNEL AND THE RULES AND REGULATIONS OF THE PUBLIC SCHOOL SYSTEM.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

A MEDICAL EXAMINATION IS REQUIRED FOR THIS JOB.

IF YOU ARE HIRED, A MEDICAL EXAMINATION WILL BE REQUIRED BEFORE YOU START WORK. IF THE EXAMINATION DISCLOSES MEDICAL CONDITIONS THAT PREVENT YOU FROM SUCCESSFULLY PERFORMING THE ESSENTIAL FUNCTIONS OF THE JOB, PSS WILL ATTEMPT TO MAKE ACCOMMODATIONS TO ALLOW YOU TO WORK. IF NO REASONABLE ACCOMMODATIONS CAN BE FOUND, OR THEY CAUSE AN UNDUE HARDSHIP ON PSS, THE TENTATIVE OFFER OF EMPLOYMENT WILL BE WITHDRAWN.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**CERTIFICATION OF HUMAN RESOURCES OFFICIAL OR PSS INTERVIEWER**

I hereby certify that \_\_\_\_\_ has voluntarily executed the following waivers and notices:

1. Representation That Application Is Filled Out Truthfully.
2. Consent to Investigate Criminal Records.
3. Consent to Review License/Credential Records & NASDTEC Records.
4. Consent to Physical Examination and Review of Medical Records.
5. Consent to Review Employment Records.
6. Consent to Drug Testing.
7. Agreement that C.N.M.I. Law and Courts Govern.
8. This Is An Application -- Not A Contract.
9. A Medical Examination Is Required For This Job.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 199\_, at \_\_\_\_\_ (city),  
\_\_\_\_\_ (state, territory or commonwealth).

Dated: \_\_\_\_\_

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PSS Interviewer or HRO Official  
(Print and Sign Name)

(end of 8 pages of application form)

### FOR YOUR INFORMATION (NON-CERTIFIED)

Read the rules and regulations for employment:

Many of the questions you may have about employment by the Public School System will be answered in its employment regulations. These regulations, which you have received, explain the hiring process in chronological order from recruitment and interviewing, the employment decision, the employment contract, and the contract period to renewal. The regulations also set the standards of conduct for employees, discipline of employees and employee grievances. Please take the time to read them before submitting your application. They will tell you a lot about our attitude towards the job for which you are applying.

Will you be interviewed?

Applicants are screened to determine whether they meet the eligibility requirements for the vacancy announced. This results in the formation of an eligibility list. Applicants are placed on the list by order of experience and education. At the minimum, the top five applicants are interviewed, but the PSS Interviewer has the option of including other persons from the eligibility list. If you are selected, you will be notified of the time and place of the interview.

What if your interview goes well:

The PSS Interviewer will conduct a background investigation by contacting listed supervisors and co-workers and by contacting the Department of Public Safety. In some cases, you may be asked to fill out two fingerprint cards so that the FBI may check to determine if you have a criminal record. You may be asked, depending on the vacancy, to arrange to have your post-secondary institution(s) send an official copy of your transcript of courses, grades, and degrees awarded to the Human Resources Officer at the CNMI Public School System, P.O. Box 1370, Saipan, MP 96950.

Your first notice -- the Intent to Offer Employment Letter:

If the decision is made to offer you employment, you will be notified by receiving an Intent to Offer Employment Letter. This letter is not a contract of employment or an offer of employment; it is notice that PSS intends to make you an offer of employment in the near future. This offer may not be made despite these intentions for various reasons, such as budgetary restraints.

When am I employed exactly?

If your application process continues to proceed favorably you will next receive an executed contract of employment. You are to sign it, keep a copy and return the original. At this point, you

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have been hired. However, the contract is subject to a medical examination that discloses no conditions that will prevent you from performing the essential functions of the job or that will pose a significant risk of substantial harm to your health or safety or that of other people in the workplace that cannot be reasonably accommodated or that will cause an undue hardship on PSS. Before you commence your contract, you must undergo the physical examination at the Commonwealth Division of Public Health.

What benefits are given to persons who have to move to accept employment?

Persons with a point of hire that is different than the island assigned for work are referred to as “off-island hires.” These persons will be provided a contract addendum entitled “Off- Island Hire Terms and Conditions” to execute at the same time as the contract. You may ask to see the addendum during your interview. As the benefits frequently change, the addendum in use during your interview will provide the most accurate information.

In general, two benefits are provided: one-way transportation and housing. Airfare from the point of hire to the island assigned for work and three days of hotel accommodations and meal allowances are provided for employees and up to three of their dependants who do not already have a place to stay on island. A housing stipend is provided which ranges from \$400 per month to \$600 per month depending upon the number of an employee’s dependents. There are a number of conditions attached to these benefits which are explained in the contract addendum.

How do I find out more about the CNMI?

A commercial Internet service provider maintains a home page for the CNMI on the World Wide Web at <http://www.saipan.com>.

What if I still have questions?

The Human Resources Office welcomes questions about the hiring process or employment terms and conditions. If you are on-island, you can visit them or call them at (670) 664-3700 or fax them at (670) 664-3707. If you are off-island, you can call or fax or write to the Human Resources Officer for the Public School System at P.O. Box 1370, Saipan, MP 96950.

You may tear off these last two pages and keep them for your information. No handwritten or oral changes to the matters herein are authorized. The information provided is for your convenience. The Public School System expressly reserves the right to change the regulations, procedures and contract at any time.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The Commission corrected the spelling of the words “related” and “medical.”

### **Exhibit B** **Letter of Intent to Offer Non-certified Employment**



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(Date)

Applicant's Name  
Street Address  
City, State, Zip Code

Re: Intent to Offer Non-Certified Employment

Dear (Applicant):

This letter is to inform you that the CNMI Public School System intends to make an offer of employment to you. This letter is not, however, the offer of employment. The actual offer of employment will be made when you receive a contract of employment with only your signature block left blank. You can accept that offer by signing the contract without making any alterations to it.

The purpose of this letter is to notify you that your contract is being prepared and routed through the Public School System. Before you make any major decisions, you should know that there is always a possibility that your contract may not be approved due to budget restraints or other unforeseen problems. It is best to wait until you have a signed contract in hand.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

\_\_\_\_\_  
PSS Human Resources Officer

Modified, 1 CMC § 3806(g).

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: The Commission corrected the spelling of "unforeseen."

**Exhibit C**  
**EMPLOYMENT CONTRACT FOR NON-CERTIFIED PERSONNEL**

THIS CONTRACT FOR SERVICES is made and entered into upon the execution of the last of all the required signatures to this contract, by and between the PUBLIC SCHOOL SYSTEM OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, P.O. Box 1370, Saipan, MP 96950, a non-profit corporation responsible as the state education agency for pre-school, elementary and secondary education at 1 CMC § 2251, hereinafter referred to as "PSS," and \_\_\_\_\_, Address: \_\_\_\_\_, hereinafter referred to as "Employee."

Terms and Conditions of Employment

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1. **EMPLOYMENT:** PSS hereby employs the Employee to fulfill the duties of the following job classification: \_\_\_\_\_. The requirements of this position are described in the attached Vacancy Announcement, which has been read and is understood by both parties.

a. **Location:** These services are to be performed primarily on the island of \_\_\_\_\_.

b. **Compensation Level:** The Employee shall receive an annual salary of \$ \_\_\_\_\_ and shall be initially classified at Grade \_\_\_\_\_, Level \_\_\_\_\_.

c. **Term:** Employment shall commence on the \_\_\_ day of \_\_\_\_\_, 199\_\_ and shall continue to the \_\_\_ day of \_\_\_\_\_, 199\_\_.

d. **Retiree Limitation:** The Employee \_\_\_\_\_ is \_\_\_\_\_ is not a CNMI Government retiree who has received retirement benefits from the government. If the Employee is such a retiree, then the maximum number of calendar days of employment per fiscal year must be indicated here for this Contract to be valid: \_\_\_\_\_.

2. **OBLIGATIONS:** Employee hereby agrees to be responsible for and perform all the acts and duties pertaining to the Employee's employment and to conform to all rules and regulations of the Board of Education.

3. **EMPLOYEE'S APPLICATION:** Employee hereby represents that all the statements made in the Job Application and any other employee submissions are truthful and accurate. PSS has relied on these statements in making the decision to offer employment. Any material omissions or misstatements will be a ground for termination. The Job Application is hereby attached and incorporated by this reference into this Contract. In the event that this Contract is for renewal, the Job Application attached to the Employee's first Employment Contract for Non-Certified Personnel is herein incorporated by reference as though attached hereto unless the Employee chooses to submit and attach a new Job Application.

4. **WORK SCHEDULE:** The Employee shall work 40 hours per week, 52 weeks per year on weekdays, excepting holidays and vacations, and, on occasion, when asked to work overtime. Professional, administrative, or executive employees who are paid a salary are expected to work beyond a regular schedule when necessary to complete the tasks assigned. PSS may, in its sole discretion, assign the Employee to a multi-track school year, a conventional school year, or to two school years in immediate succession, of either or both types, during the contract term.

5. **COMPENSATION:** As compensation for the services to be provided hereunder, Employee shall be paid the total sum stated in § 1(b) per annum, which total sum shall be payable in 26 equal bi-weekly installments per annum. If this contract is for less than two years the employee shall be paid a prorated portion of that amount. In the event that the Employee is suspended or discharged for sufficient and just cause in accordance with the PSS regulations, the Employee shall not be entitled to any compensation from and after such dismissal or during the period of such suspension.

a. **Within-Grade Increase:** PSS may, in its sole discretion, grant an approximately five percent (5%) within-grade increase in salary during the second year of this contract if the Employee receives a satisfactory job evaluation for services performed during the first year.

b. **Overtime:** Non-certified employees, except those who act in a professional, executive, or administrative capacity, are included within the coverage of the Fair Labor Standards Act for

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purposes of overtime compensation. This contract notes whether you are a covered employee or exempt from the FLSA on the last page. An employee covered by the FLSA must sign a Compensatory Time Off Agreement along with this contract which permits the PSS, in its discretion and within limits, to provide its employees with one and one half hours of time off for every hour worked overtime rather than pay for overtime.

**6. RESTRICTION ON HIRING OF CNMI GOVERNMENT RETIREES:** Pursuant to 1 CMC § 8392(c), any person who has retired and received retirement benefits from the Government of the Northern Mariana Islands who is hired by PSS cannot be employed for more than sixty (60) calendar days in any fiscal year without forfeiting any retirement benefits. The Employee understands that this Contract does not change that law.

a. The following Contract modifications apply to CNMI Government Retirees:

(1) Section 1(b): Compensation shall be paid on a daily basis for each calendar day, or portion of a calendar day in which the Employee is assigned to work. The compensation for one day's work shall be 1/260 of the annual salary listed in § 1(b).

(2) Section 4: The number of days to be worked shall be determined by the Human Resources Officer up to a maximum number of days per fiscal year as written in § 1(d). Work shall be assigned on a daily basis.

(3) Section 5: Compensation shall be paid bi-weekly for any week in which work has been assigned and performed. No within grade increases shall be awarded because of the limited nature of this Contract. The Employee shall not be eligible to receive overtime pay or compensatory time leave.

(4) Section 9: No insurance benefits are granted under this Contract, nor are any existing rights to insurance coverage or benefits affected hereby.

(5) Section 10: No right to receive leave is granted under this Contract.

(6) Section 11: There shall be no liquidated damages awarded to PSS in the event of a resignation.

**7. WORK ASSIGNMENT:** Employee may be assigned by PSS to work at any school, any office or any facility on the island assigned in § 1(a).

**8. RENEWAL:** There are no tenured employment positions offered by PSS. This contract is only for the term stated in § 1(c) and no right to renewal is granted, expressly or impliedly, by PSS to the Employee regardless of whether job performance during the contract term is satisfactory. An offer for continued employment is completely within the discretion of PSS. If the Employee wishes to be considered for an additional contract period, then notice should be given to PSS six (6) months in advance of the termination date for consideration.

**9. INSURANCE BENEFITS:** The Commonwealth government, not the PSS, makes available health insurance and life insurance coverage for its employees. These are group policies in which the Employee, at its discretion, may wish to participate. Participation is on a shared basis where the employer pays a portion of the insurance premium and the employee pays the remainder. The Commonwealth government permits PSS employees to participate in these group plans. If the Employee chooses to participate, then PSS will contribute to premiums on the same basis as the Commonwealth government contributes for its employees.

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### 10. ANNUAL LEAVE AND SICK LEAVE:

a. Non-certified employees with less than three years of creditable PSS service shall accrue annual leave at the rate of four (4) hours per pay period. Non-certified employees with less than six, but more than three, years of creditable PSS service shall accrue annual leave at the rate of six (6) hours per pay period. Non-certified employees with more than six or more years of creditable PSS service shall accrue annual leave at the rate of eight hours per pay period. The maximum accumulation of annual leave for non-certified employees shall be three hundred sixty (360) hours. Annual leave accrued in excess of 360 hours shall be converted to sick leave. The use of annual leave is subject to the conditions set forth in the PSS Regulations.

b. Non-certified employees shall accrue sick leave at the rate of four (4) hours per pay period. The use of sick leave is subject to the conditions set forth in the PSS Regulations.

11. RESIGNATION: The Employee may resign during the term of this contract only if accepted or agreed to by PSS. It is the practice of PSS not to accept any resignation unless or until a satisfactory replacement assumes the Employee's duties.

a. If the Employee abandons or leaves employment during the contract term within the first two years of employment with PSS without the concurrence of PSS, the Employee shall pay Ten percent (10%) of the Employee's annual salary, as set forth by section 1(b) of this contract, as liquidated damages together with any attorneys' fees or costs incurred by PSS to collect the same. This amount may be withheld from any payments due to the Employee from PSS, including, but not limited to, paycheck, lump sum annual leave payments, or housing stipends. The parties stipulate and agree that the amount so fixed is a reasonable forecast of just compensation for the harm caused by such breach and the harm caused by the breach is one that is incapable or very difficult of accurate estimation. This liquidated damages provision shall not be construed to grant the Employee the right to resign. The PSS shall concur with an employee's request to abandon or leave employment with the PSS if the reason the employee is leaving employment with the PSS is because of the death of a spouse, child, sibling, or parent or because the employee or a spouse, child, sibling, or parent is domiciled with them and suffers from a "serious health condition" as defined by § 6311 of the Non-Certified Regulations which cannot be properly treated in the Commonwealth. By concurring, the PSS agrees not to seek compensation for the ten percent liquidated damages or expatriation expenses owed pursuant to the Off-Island Hire Terms and Conditions.

12. OTHER LAWS AND RULES: This Contract is not intended to set forth all of the various duties and obligations of the parties hereto, but rather is made subject to the PSS rules and regulations, as amended from time to time. The Employee has been presented with a copy of the PSS's non-certified rules and regulations.

13. SEVERABILITY: The clauses, sentences and parts of this Contract are severable to the extent found to be unlawful or ineffective, by a court of competent jurisdiction, but the illegality or ineffectiveness of any such clause, sentence or part shall not affect any other clause, sentence or part of this Contract. Rather, the remaining provisions hereof shall remain in full force and effect.

14. ENTIRE AGREEMENT: This Contract, together with any exhibits or documents identified or referred to herein, such as the job description and the off-island hire terms and conditions (if

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applicable), contains the entire agreement of the parties with respect to the matters covered herein as of the date of execution hereof, and no other agreement, statement, or promise made by any party, or to any agent of any party, prior to the date of this Contract shall be binding or valid.

15. **MODIFICATION:** This Contract is not subject to modification except in writing, duly signed by the parties to be charged thereunder.

16. **GOVERNING LAW:** The laws of the Commonwealth of the Northern Mariana Islands shall govern the validity, construction, and effect of this Contract. Any action brought for the enforcement of this Contract shall be brought in the courts of the Commonwealth of the Northern Mariana Islands only.

17. **GRIEVANCE PRIOR TO LAWSUIT:** The Employee hereby agrees that prior to filing any legal or equitable claim in court, he or she will first file a grievance with PSS and prosecute it to a conclusion pursuant to Chapter 4 of the non-Certified Regulations. Furthermore, the Employee agrees to act in good faith in pursuing the grievance remedy. If upon conclusion of the grievance proceedings, the Employee is not satisfied with the determination, then an action at law or equity may be filed in court to remedy the grievance. The Employee understands that this is a limitation on its right to sue and that a lawsuit cannot be filed until complying with this section of the Contract. These requirements do not preclude Employee from filing a complaint with a government agency charged with enforcing provisions of law (such as the EEOC), prior to completing the prosecution of a grievance through the PSS's grievance process.

18. **OFF-ISLAND HIRE:** If the Employee's point of hire was outside of the island which is the place of work assignment in § 1(a), and this is the first contract the employee is entering into with the PSS, then the Off-Island Hire Terms and Conditions of Employment, which must be attached hereto, apply to this Contract. Off-island terms and conditions carry over from contract to contract, regardless of whether they are attached to renewal contracts.

19. **FORMATION OF CONTRACT:** This contract form is not valid unless signed by all the parties indicated by the signature blanks. All government signatures must be executed first. At that time, the Contract form constitutes an offer of employment to the Employee. When the Employee signs the Contract without alteration, a contract of employment is established. Any alteration or modification of this Contract form by the Employee will constitute a rejection of the Contract, regardless of whether or not it is signed by the Employee.

20. **MEDICAL EXAMINATION:** This offer of employment is tentative. A medical examination will be required before the Employee starts work. If the examination discloses medical conditions that prevent the Employee from successfully performing the essential functions of the job, PSS will attempt to make accommodations to allow the Employee to work. If the examination discloses a medical condition that poses a significant risk of substantial harm to the health or safety of the employee or other people in the workplace, PSS will attempt to make accommodations to allow the Employee to work. In either case, if no reasonable accommodations can be found, or if they cause an undue hardship on PSS, the parties agree that this contract will be void.

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IN WITNESS WHEREOF, the parties hereto have executed this Employment Contract on the dates noted by their respective signatures.

**HUMAN RESOURCES OFFICER**

I hereby certify that this person is eligible for the vacancy, that I have correctly classified the Employee and correctly determined the appropriate salary level, that I have obtained a local criminal conviction clearance for this person, and that the claimed education and work experience necessary for this position has been verified.

1. I have sent fingerprint cards for this person to the FBI.  Yes  No

a. If so, I have received a response from the FBI.  Yes  No

2. This Employee is an Off-Island Hire entitled to benefits under § 18.  Yes  No

Date: \_\_\_\_\_  
PSS Human Resources Officer

**FISCAL AND BUDGET OFFICER**

I hereby certify that this position is within the FTE requirement of PSS under the appropriation act of P.L. No. \_\_\_\_\_ and that there are sufficient funds available in Account No. \_\_\_\_\_ for the a total obligation of \$ \_\_\_\_\_ required for this contract.

Date: \_\_\_\_\_  
PSS Fiscal and Budget Officer

**LEGAL COUNSEL**

I hereby certify that this is the proper contract form for this employment position, that the Commissioner has the legal capacity to execute contracts to employ PSS personnel, that this form has been filled out completely, and that the job vacancy announcement and application are attached.

**Fair Labor Standards Act**

I certify that this position is:  Non-exempt  Executive

In order for this contract to be valid, the employee must sign a Compensatory Time Off Agreement form, which has been attached and is hereby incorporated into this contract.  
 Yes  No

Date: \_\_\_\_\_  
PSS Legal Counsel

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CONTRACTING PARTIES

FOR PSS:

Date: \_\_\_\_\_  
COMMISSIONER

FOR THE EMPLOYEE:

Date: \_\_\_\_\_  
EMPLOYEE

Print Name: \_\_\_\_\_

Modified, 1 CMC § 3806(g)

History: Amdts Adopted 19 Com. Reg. 15452 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15228 (Apr. 15, 1997); Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

Commission Comment: In § 6(a)(3), the Commission corrected the spelling of the word “bi-weekly.” In § 14, the Commission corrected the spelling of the word “contract.”

On September 15, 1998, the Board of Education proposed a new contract form for non-certified, part-time special hourly employees. See 20 Com. Reg. 16120 (Sept. 15, 1998). A notice of adoption was never published for the proposed new contract form and, therefore, the Commission has not incorporated it as an exhibit to the Non-certified Personnel Regulations.

**Exhibit D**  
**OFF-ISLAND HIRE TERMS AND CONDITIONS**

for \_\_\_\_\_  
(Employee’s Name)

This is an addendum to the Employment Contract for Non-Certified Personnel. It provides additional benefits to those Employees whose point of hire is different than the island assigned for work. In order for this to be applicable to an Employee, the Human Resources Officer must certify in the contract that the Employee is an Off-Island Hire.

This additional portion of the Contract shall be referred to herein as the “Addendum.”

1. Definitions:

a. “Off-Island Hire” shall mean an Employee whose point of hire is certified by the Human Resources Officer in this Addendum to be other than the island assigned for work.

b. “Dependent” shall mean the lawfully married spouse or children (natural children, legally adopted children and step-children) under 18 years of age or under guardianship who shall primarily reside with the Off-Island Hire Employee while in the CNMI:

(1) Determination of Dependents: The identity of dependents shall be determined upon the execution of this Addendum. Their names shall be filled in by the Employee on the last page.

(2) No Addition of Dependent During Contract Term: The identity and number of persons considered as dependents under this Contract shall not change during the

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contract term regardless of any change of family status through marriage, birth, adoption or guardianship.

(3) Subtraction of Dependents During Contract Term: The loss of dependent status for a spouse through divorce, for a child by reaching the age of 18 or changing primary residence to another household, or for a ward by the termination of a guardianship shall disqualify the person for expatriation benefits if they have not traveled yet to the CNMI.

c. "Early Termination" shall mean the termination of the contract prior to the end of its term due to resignation, repeated failure to report to work or dismissal.

d. "Expatriation" shall mean the initial travel at the commencement of the contract term from the point of hire to the island assigned for employment. Expatriation shall occur only once per person during a contract term.

2. Expatriation: An Off-Island Hire Employee and a maximum of three (3) of his or her dependents shall be expatriated to the island of the work assignment from the point of hire at the expense of PSS subject to the following restrictions:

a. Transportation shall be by coach or tourist class air transportation by the least expensive carrier and shall be arranged by PSS.

b. Any dependent whose transportation costs are to be reimbursed by PSS under this section shall travel to or from the CNMI within six months of the expatriation, respectively, of the Employee; provided however, that the amount of the reimbursement shall be no greater than the cost of travel would have been had the dependent traveled with the Employee.

c. The Employee shall be responsible for the costs of ground transportation, food and lodging during travel for expatriation.

d. The Employee shall be responsible for the costs of shipping any items between the point of hire and the place of work assignment, including but not limited to, household effects.

3. Housing Stipend:

a. PSS does not provide actual housing for its employees; instead, it provides a stipend to cover the cost of obtaining housing. An employee is entitled to the actual amount of rent paid by the employee or the applicable stipend, whichever is less:

<u>Size of Family</u>	<u>Maximum Allowable Stipend</u>
Employee alone	\$400/month
Employee with spouse	\$400/month
Employee with child	\$500/month
Employee with spouse and one child	\$500/month
Employee with two or more children as dependents	\$600/month

b. Determination of the stipend amount: The PSS Housing Officer shall determine the amount of stipend based on a certification by the Employee under penalty of perjury of the number of dependents living within the household. This certification shall be on a form provided by PSS which shall be submitted to the Housing Officer when the lease agreement is provided pursuant to § 2(e). Any change in the identity or number of dependents thereafter shall be certified to the Housing Officer by the Employee within fifteen days on the same form.



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c. Spouse with housing benefits: if the Employee's spouse or a dependent receives housing benefits at any time and shares the housing with the Employee, then for such period of time the amount of rent paid by the Employee shall be deemed to be \$0.

d. Housing benefits shall be provided for a maximum of two years, unless the Commissioner makes a determination that the job position is hard to fill.

e. Procedure for qualifying for stipend: the Employee has the responsibility of locating housing. He or she must enter into a written lease agreement for housing and submit a copy of it to the PSS Housing Office within fifteen (15) days of arriving on the island of assignment. Thereafter all modifications, renewals, terminations or new leases shall be submitted to the PSS Housing Office within fifteen (15) days of taking effect in order to qualify for a stipend. A housing stipend check will be issued separately once each month to qualified employees.

f. Disqualification: No Employee is entitled to a housing stipend who has, or whose spouse has:

(1) fee simple or other permanent title to land in the CNMI, or is making payments towards obtaining such title, in property with housing sufficient for the Employee and his or her dependents on it located on the island of the work assignment, and/or

(2) leasehold title greater than ten (10) years in real property, regardless of the length of the remaining term, with housing sufficient for the Employee and his or her dependents on it located on the island of the work assignment.

**4. Early Termination of Contract:**

a. First Year of Employment: In the event of an early termination within the first year of the contract, the Employee will not be entitled to housing benefits after the date of termination, and the Employee will be required to repay all expatriation costs for the Employee and his or her dependents. This is in addition to the consequences provided by contract and other law and those remedies specifically provided for in the Employment Contract for Non-Certified Personnel, such as liquidated damages for resignation.

These additional terms and conditions shall apply to the above-named Employee under the Employment Contract for Certified Personnel and are agreed to by both the Employee and the Employer. This document consists of five pages.

For the Employer:

\_\_\_\_\_ Date: \_\_\_\_\_  
Commissioner of Education

This Data Must Be Filled Out Before The Employee Signs The Addendum

Point of Hire: \_\_\_\_\_ (To be filled out by Human Resources Officer.)

Dependents:

	Name	Age	Relationship
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

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- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

I hereby agree to the terms and conditions of this Addendum and certify that the above information is true and correct. I understand that a misstatement of fact in the Contract or Addendum may affect the validity of the agreement and be a basis for dismissal.

\_\_\_\_\_  
Employee

Date: \_\_\_\_\_

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).

**Exhibit E**  
**COMPENSATORY TIME OFF AGREEMENT**

In accordance with the Fair Labor Standards Act, the CNMI Public School System has a policy of granting employees compensatory time off in lieu of compensation for hours worked in excess of 40 hours a week. I understand that the compensatory time will be granted at time and one-half for all hours worked in excess of 40 hours per week or other permissible work schedules. I understand that I may use compensatory time similar to annual leave, but that the maximum accumulation of compensatory time off is 240 hours (which is 160 hours of work done overtime). I further understand that the compensatory time may be limited, preserved, used or cashed out consistent with the provisions of that policy and applicable law and regulations of the U.S. Department of Labor.

I knowingly agree to the provision of time off as compensation for overtime work as a condition of my employment and consent to the use of compensatory time in accordance with the policy. I further understand that in the event any portion of the policy is interpreted to conflict with the FLSA or its regulations, that the conflicting portion shall be struck and the remainder of the policy shall continue in force and effect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee Signature

History: Adopted 19 Com. Reg. 14943 (Jan. 15, 1997); Proposed 18 Com. Reg. 14484 (Nov. 15, 1996).