

**SAMPLE
PERSONNEL POLICIES**

**PLEASE NOTE THAT THIS HANDBOOK WILL BE REVIEWED
BY SCHOOL LEADERSHIP AND LEGAL COUNSEL
PRIOR TO APPROVAL BY THE GOVERNING BOARD**

**THE DOCUMENT WILL BE REVISED FROM TIME TO TIME TO ADDRESS THE
NEEDS OF THE ORGANIZATION. HOWEVER THE DUE PROCESS RIGHTS OF
THE TEACHERS WILL ALWAYS BE ADDRESSED IN THIS DOCUMENT**

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SAMPLE EMPLOYEE HANDBOOK

EMPLOYMENT

I. EMPLOYEE PROFESSIONAL CONDUCT.

The mission of School for the Arts requires that all staff are involved in the school work, are dedicated to its mission and vision, and that staff work together well. It is reasonable to insist on a high degree of mutual, professional and personal respect and a high level of mutual support.

We value teachers, staff and volunteers actively participating in discussions of decisions affecting them. The school values diversity in perspectives leading to a deeper understanding of organizational reality and an enriched knowledge base for decision making. The school values employees resolving conflict in a healthy way that leads to stronger solutions for complex issues. We value employees reflecting on their own and others' thinking in order to achieve better organizational decisions.

Genuine community requires respect for individual privacy. Among other things, this means a high degree of attention to confidentiality. As individuals within the community, we should share information about one another and our students on a judiciously defined need to know basis. If one needs to know something in order to carry out school responsibilities, one should know it; otherwise, the information should not be shared. To that end, all personnel matters, including those affecting you personally, should be treated with utmost confidentiality and professionalism.

School for the Arts emphasizes the extraordinary degree of care that employees (including volunteers) must take in maintaining the confidentiality of all school matters, including information about children and families as well as employees.

The School for the Arts and its partner organization, the New Mexico Art Institute ("Art Institute"), will maintain an open classroom policy and will actively cultivate community involvement in the school. This means that there will be frequent visitors in the classrooms and rehearsals. Parents, other teachers, School for the Arts staff, Art Institute staff, guest artists, Governing Board members, and other members of the community may watch classes and rehearsals under terms and conditions that do not disrupt the activities of the school or the work the teachers and students.

II. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

School for the Arts is an equal opportunity employer and will recruit, hire, train, and promote in all job titles without regard to race, color, religion, sex, national origin, age, physical or mental handicap, sexual orientation, or status as a disabled veteran or veteran of the Vietnam era.

School for the Arts will base employment decisions on principles of equal employment opportunity with the intent of furthering School for the Arts' general goals expressed in its Mission. This policy governs all aspects of employment at School for the Arts including hiring, assignments, training, promotion, upgrading, demotion,

downgrading, transfer, lay-off, termination, compensation, employee benefits, discipline and other terms and conditions of employment.

If you believe that you have been denied an employment opportunity based on your race, religion, sex, national origin, age, physical or mental handicap, sexual orientation or status as a veteran, notify the Head of School (or designee) immediately.

A. No Tolerance Harassment Policy.

School for the Arts is committed to creating a workplace free of discrimination and harassment for any reason, but in particular for reasons based on race, color, religion, age, sex, national origin, sexual orientation, physical or mental disability, status as a veteran, or any other basis protected by federal, state or local law. This prohibition applies in your relationships with all other employees, students, parents and guardians, visitors and guests. All employees of School for the Arts are responsible for taking appropriate action to prevent and eliminate harassment and discrimination at School for the Arts pursuant to the procedures set forth in this handbook. Likewise, School for the Arts will not tolerate retaliation or reprisals of any type against any employee who complains of harassment or provides information in connection with any such complaint. Harassment is considered to be misconduct and grounds for disciplinary action, up to and including discharge.

Students at the school are minors and in a student / teacher relationship to the staff at the school. Any type of sexual advances, whether welcome or not; any sexual relationship, whether consensual or not, from staff to a student; or any activity that encourages, facilitates or allows students to participate in illegal behavior (such as buying cigarettes or alcohol for students) will be considered harassment and a violation of this policy and can be grounds for termination. The safety of our students is our first responsibility and we must take that responsibility very seriously.

B. Sexual Harassment.

As sexual harassment raises issues about human interaction that are to some extent unique, the subject of sexual harassment is treated separately here. School for the Arts prohibits sexual harassment at any time of any employee, student, parent or guardian, visitor, guest, candidate for employment or other person visiting the School's premises. Sexual harassment is a form of sex discrimination in violation of federal and state law. It includes:

- requests for sexual favors,
- sexually motivated physical contact,
- other verbal or physical conduct when submission to such conduct is either explicitly or implicitly made a term or condition of employment, or submission to or rejection of such conduct is used as the basis for employment decisions,
- conduct that has the purpose or effect of unreasonably interfering with an individual's work environment,
- intimidation and hostility directed to an individual because of sex or sexual orientation,

- explicit or degrading verbal, written or electronic comments of a sexual nature, or
- persistent or unwelcome flirtation or requests for dates, especially if the behavior continues after a clear objection has been made.

This list is not exhaustive and applies to conduct by co-workers, supervisors, volunteers and others invited to the school premises. Sexual harassment can apply to conduct in any work-related setting **outside** the work place as well. It is not permissible for any School for the Arts employee to engage in any form of sexual harassment. School for the Arts will do its best to keep its workplace free of any conduct which creates an intimidating, hostile, or offensive work environment.

Consensual sexual behavior between adults, outside the workplace and welcome by both parties is not considered sexual harassment; however, those who engage in such relationships should be aware that questions regarding the actual freedom of choice of one of the parties may be raised later, especially when a superior/subordinate relationship exists between them.

If you have asked the alleged harasser to stop to no avail, then you should report the incident to your supervisor. You may initiate the process outlined in paragraph F. below.

C. Other Harassment.

Other prohibited harassment includes verbal or physical conduct which degrades or shows hostility or aversion toward an individual even partly because of race, color, religion/creed, gender, national origin, age, disability, citizenship, marital status, sexual orientation or other prohibited basis. Any such behavior that interferes with the individual's work performance, or creates an intimidating, hostile or offensive work environment, does not belong in our workplace or in any work-related setting outside the workplace. The same prohibition applies in relationships to students, parents or guardians, visitors and guests. School for the Arts will not tolerate such behavior. If you believe that you are the subject of harassment, please follow the process outlined in section F. below.

D. Employees with Disabilities and Reasonable Accommodations.

In 1990, Congress passed the Americans with Disabilities Act (ADA), a civil rights law prohibiting discrimination on the basis of disability in private and public organizations employing 15 or more employees. ADA gives protections to individuals similar to those provided by law on the basis of race, color, sex, national origin, age and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services and telecommunication.

1. Who qualifies:

A person has a "disability" if he/she has a physical or mental impairment that substantially limits a major life activity. One may also be protected if he/she has a

record of having a substantial (as opposed to a minor) impairment, or is *perceived* to have a substantial impairment. A substantial impairment is one that significantly limits or restricts a major life activity including: hearing, seeing, speaking, breathing, performing manual tasks, walking, learning, working, or caring for oneself. An employer may not discriminate against an applicant or employee, whether disabled or not, because of an individual's relationship or association with an individual with a disability.

2. Reasonable accommodations:

School for the Arts, whenever possible, will provide a reasonable accommodation to persons with a disability. Disabled employees should make a written request for an accommodation where their physical or mental disability would prevent them from performing an essential function of their job. Written requests must be accompanied by documentation of the claimed disability and must be submitted to the Head of School (or designee). School for the Arts may request additional documentation to evaluate a claimed disability, including medical and psychological and/or psychiatric records. Every accommodations request will be documented by the Head of School. A copy of a request will be filed as a confidential record and will be kept separate from the employee personnel file. No disability records will be kept in personnel files. The Head of School and Governing Board will make a timely formal response to a complete accommodations request. The employee making the request will, on one or more occasions, be asked to meet with the Head of School to discuss what accommodations may or should be considered. Medical certification of the disability may be also be requested. Whatever is decided during this interactive process will be documented.

3. Retaliation:

School for the Arts cannot and will not retaliate against a job applicant or employee for asserting his/her rights under the Americans with Disabilities Act or other applicable laws protecting individuals with disabilities.

E. Employees with Serious Diseases.

School for the Arts will not discriminate in employment decisions against individuals with infectious, long-term, life-threatening or other serious diseases as long as they are physically and mentally able to perform the duties of their job without undue risk to their own health or that of other employees or students.

1. "Serious disease" defined.

Serious diseases for the purposes of this policy include, but are not limited to, cancer, heart disease, multiple sclerosis, hepatitis, tuberculosis, human immunodeficiency virus ("HIV") and acquired immune deficiency syndrome ("AIDS").

2. Non-discrimination policy.

Employees afflicted with a serious disease are to be treated no differently than any other employee. If the serious disease affects their ability to perform assigned duties, such employees are to be treated like other employees who have disabilities that limit their job performance. Reasonable accommodations will be considered as described above in paragraph D. 2. To the extent required by law, School for the Arts will maintain the confidentiality of the diagnosis and medical records of employees with serious diseases.

F. Complaint Procedure, Investigation and Response.

The following procedure is applicable to any employee complaint of discrimination and/or harassment.

1. Complaint.

Any person who sees or hears about conduct that may constitute harassment or discrimination under this policy should immediately contact the Head of School. If the Head of School is involved in the reported conduct, or for some reason the employee feels uncomfortable about making a report to the Head of School, the employee should report directly to the President of the School for the Arts Governing Board. Complaints may initially be made verbally. However, School for the Arts requires that the "Harassment Complaint Form" be completed by complainant as a first step in the investigation process. (See Appendix A for a copy of this form).

2. Investigation.

School for the Arts will investigate any report of harassment or discrimination. All employees have a duty to cooperate in School for the Arts' investigation of alleged harassment or discrimination. Failure to cooperate or deliberately providing false information during an investigation will be grounds for disciplinary action, including termination. In conducting an investigation, School for the Arts will respect the privacy of all concerned, however, complete confidentiality may not always be possible because of the need to conduct an investigation and take the steps necessary to eliminate harassment.

3. Response.

School for the Arts will take whatever corrective action deemed necessary. Disciplinary action, up to and including termination, may be taken. School for the Arts will discuss with the complainant the outcome of the investigation and where appropriate may ask for feedback regarding the complainant's preferred resolution. School for the Arts will also discuss the outcome of the investigation and any disciplinary actions with the alleged offender. The date of the discussion shall constitute the "determination date." Bad faith complaints will be grounds for disciplinary action,

including termination. The Head of School will notify the Governing Board of the outcome of the complaint and an official opinion as to whether there is sufficient evidence to support that there was a violation of School for the Arts policies. In cases involving allegations against the Head of School, the President of the Governing Board will advise the Council of the outcome and an issue an official opinion.

G. Retaliation.

Retaliation against any employee raising a complaint or providing information concerning an alleged violation of this policy is strictly prohibited. Any employee who violates this policy by engaging in conduct defined throughout this policy that directly or indirectly causes intimidation, harassment or physical harm to another employee will be subject to disciplinary action.

H. Appeal.

If the complainant or alleged offender is not satisfied with the outcome of a discrimination complaint, either employee may appeal that decision to the Governing Board. The employee appealing the Head of School's decision must submit a written appeal to the Governing Board with copies to the other party and the Head of School within ten (10) working days of the employee's notification of the Head of School's determination. The non-appealing party and the Head of School have the option of submitting written materials in support of their respective positions within five (5) working days from the date they receive the appealing parties' appeal.

I. Final Decision.

The Governing Board will inform the complainant/respondent of the appeal decision in writing within twenty (20) working days from the date the appeal was submitted. After the Governing Board's review, the internal complaint process has concluded. The time lines set forth in this policy may be waived or extended by the Governing Board.

III.DRUG-FREE WORKPLACE.

Employees who work while under the influence of alcohol or drugs present a safety hazard to themselves, their co-workers and students. In addition, employees who work under the influence of alcohol or drugs threaten School for the Arts' reputation and integrity. School for the Arts policy is to create a drug-free workplace in accordance with the Drug Free Workplace Act of 1988. The unlawful manufacture, distribution, dispensation, possession, sale or use of a controlled substance in the workplace or while engaged in business off premises, such as at a parent's home or in residential housing for the school, are strictly prohibited.

A. General Prohibition.

No employee or student will unlawfully possess, use, distribute, dispense, manufacture or be under the influence of alcohol or drugs while on School for the Arts school grounds; at School for the Arts sponsored or supervised activities (e.g., field trips); in any School for the Arts owned, leased or used vehicle; while engaged in or going to or from School for the Arts activities; or, while attending a school-related activity (e.g., workshop).

B. Definition of Drug.

For purposes of this policy, the term “drug” will include any “illicit drug,” “controlled substance,” “intoxicating substance,” “inhalant,” “counterfeit substance,” “look-alike substance,” “marihuana,” “cannabis,” “opiate,” “hallucinogen,” “narcotic,” or other unlawful drug for purposes of federal or state law including, but not necessarily limited to the Drug-Free Workplace Act, the Drug-Free Schools and Communities Act Amendments, the U.S. Controlled Substances Act and the New Mexico Controlled Substances Act. NMSA 1978 §§30-31-1 et seq.

C. Exceptions:

This policy is not intended to prevent possession of a controlled substance if it was obtained directly pursuant to a valid prescription or order, from a physician, dentist or other person duly licensed, registered, or otherwise permitted under federal and state law to distribute or dispense the substance in the course of professional practice. If an employee is taking prescribed or over-the-counter medication that may affect work performance, this information should be immediately reported to the direct supervisor.

D. Conditions of employment.

As a condition of employment, each employee will abide by the terms of this drug-free workplace policy. Every employee is required to notify the Head of School of any criminal drug conviction or plea of no contest for a violation occurring in the workplace no later than five (5) days after such conviction.

E. Sanctions.

Where an employee violates the terms of this policy or is convicted of violating a criminal drug statute for an offense occurring in the workplace, the employee will be subject to sanctions, consistent with law and policy, which may include either appropriate personnel action against the employee, up to and including termination; or, a requirement that such employee satisfactorily participate in a drug-abuse assistance or rehabilitation program approved for such purpose by a federal, state or local health agency, law enforcement or another appropriate agency. The employee will be responsible for all uninsured costs associated with any such program.

IV. CRIMINAL RECORDS/BACKGROUND CHECKS.

It is School for the Arts’ policy to conduct appropriate, legally permissible and mandated state and federal criminal records inquiries into the background of all School

for the Arts personnel, all Art Institute personnel and volunteers who have unsupervised access to School for the Arts students.

A. Date for submission.

All requests for background checks must be submitted within one (1) week after commencement of employment of those persons who, following receipt of a background check clearance, will have direct, unsupervised contact with children.

B. Disqualification from employment.

An individual will not be eligible for continued employment if a required background check reveals disqualifying information.

C. Supervision pending clearance.

In situations where requests for State and Federal Criminal Records Checks have been submitted, but reports have not yet been received by School for the Arts, employees who are providing service to or for the benefit of children must be under the direct, physical supervision of an School for the Arts employee who has received the mandated Federal Criminal Records Check Clearance. The only exception to this requirement of direct supervision is where a new employee has been a resident of the State of New Mexico for no less than five (5) contiguous years immediately preceding the commencement of employment and has received a background clearance (meaning a “negative” criminal records check) from State and local law enforcement agencies pursuant to a request from School for the Arts.

D. Prior employment.

An applicant for employment who has been initially licensed within twenty-four (24) months of applying for employment with a local school board, regional education cooperative or another charter school will not be required to submit to another background check if the New Mexico Public Education Department or previous employer School for the Arts copies of his/her federal bureau of investigation records on file and the employee provides a copy of the background clearance prior to beginning work. Alternatively, if advised by the applicant that such records exist, may request the NMPED, upon authorization of the applicant, to release copies of federal bureau of investigation records that are on file with the NMPED as long as the records are not more than twenty-four (24) months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record will be used in accordance with the Criminal Offender Employment Act provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may be grounds for employment decisions based on just cause. Records and related information will be privileged and will not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment,

E. Payment.

Employees are required to pay for all costs associated with providing School for the Arts the required background check.

F. Record retention.

A copy of each employee's criminal records check clearance letter will be maintained in the employee's personnel file.

V. IMMIGRATION INFORMATION.

School for the Arts will not hire or continue to employ an individual who is not legally authorized to work in the United States. However, School for the Arts does not discriminate on the basis of citizenship status or national origin in recruiting, hiring, discharging or in any other employment action. New employees must complete the employee section of INS Form I-9. All offers of employment are conditional upon the receipt of satisfactory evidence of an applicant's authorization to work in the United States. This evidence of the right to work must be provided within three (3) days of the employee's hire date. Failure to provide the appropriate documentation will be grounds for termination. School for the Arts will keep a copy of the I-9 in a file separate from the personnel file.

VI. WORKERS' COMPENSATION.

School for the Arts provides workers' compensation coverage to all employees.

A. Eligibility.

All School for the Arts employees are eligible for the workers' compensation program if they comply with the reporting requirements as set forth in the school's insurance policy.

B. Reporting On-the-Job Injuries.

Employees injured at work must complete a written report of the incident within twenty-four (24) hours from the time of the injury. All reports must be made to the Head of School (or designee) who will have the appropriate forms for making necessary reports. If the injured employee has specific questions concerning workers' compensation benefits, the Head of School (or designee) will provide this information.

VII. UNEMPLOYMENT COMPENSATION

Employees of School for the Arts are entitled to unemployment benefits to the extent provided for by law.

VIII. CONFIDENTIALITY

A. Personal Information.

School for the Arts employees will not, in any way, release any information about School for the Arts, its activities, or the activities of personnel except or its students: (1) as normally required by their duties at the school and in partnership with the Art Institute, (2) expressly permitted by the Head of School, and (3) in conformity with the requirements of applicable freedom of information laws, the Family Educational Records and Privacy Act, the Health Insurance Portability and Accountability Act, and any other applicable federal, state, or local law or regulation.

No employee will publish, disclose, use, or authorize anyone else to publish, disclose, use, or in any way cause to be published, disclosed, or used, any private or proprietary information. Proprietary information means any information that the employee has, in any way, acquired, learned, developed, or created by reason of employment with School for the Arts. Only the Head of School may authorize disclosures. Such authorization will be explicit and documented.

This policy reiterates the need for confidentiality in all aspects of employment at School for the Arts. During employment at School for the Arts, employees may learn or work with and be entrusted with confidential and/or privileged information about fellow employees, administrators, parents, students or applicants. All employees must exercise the highest degree of care not to disclose any such information, even inadvertently, to any unauthorized person in or outside of School for the Arts. Employees may not disclose any confidential or privileged information except to persons specifically designated in advance and in writing by the Head of School. Confidential information includes but is not limited to:

- Student records
- Financial information
- Personnel records
- Payroll records
- Computer programs, codes, processes and passwords
- Personnel information regarding school parents and students

Any employee who believes confidential information must be disclosed to a third party should consult with the Head of School prior to the disclosure. **There is no excuse for the unauthorized disclosure of confidential information. Failure to follow this policy will result in disciplinary action. Your obligations under this policy continue after your termination of employment.**

B. Employee References.

All written or telephone requests for business references, whether addressed to an individual or School for the Arts, will be referred to the Head of School (or designee) for reply. All information released on employees must be in writing, with a copy retained in the employee's personnel record. Without an employee's prior written authorization or release, the Head of School (or designee) will only confirm that the employee works or has worked at School for the Arts.

C. Employee Requested Credit Checks.

All requests for business credit checks (salary confirmation) will be referred to the Head of School (or designee) for reply when written authorization from the employee has been obtained. Replies to telephone requests for salary confirmation will be limited to confirming title, salary, dates of employment and employment status.

D. Government Inquiries.

School for the Arts will respond to all requests for information ordered by a court or administrative agency including information sought by subpoena.

IX. COMPLIANCE WITH LAWS AFFECTING CHILD WELFARE

Any employee, volunteer, or contractor who knows or has a “reasonable suspicion” that a child has been the victim of child abuse is required by law to report the instance immediately to one of the following child protective agencies: local law enforcement; the New Mexico Department of Children, Youth and Families, or a tribal law enforcement or social services agency for any Indian child residing in Indian country. NMSA 1978 §32A-4-3. Persons who violate reporting requirements are guilty of a misdemeanor. “Reasonable suspicion” arises when the facts surrounding the incident or situation could cause another person in the same situation to suspect child abuse.

A. Reporting responsibility.

As noted, child abuse should be reported immediately by telephone to a child protective agency. The telephone call is to be followed by a written report within thirty-six (36) hours. There is no duty for the reporter to contact the child’s parents. In fact, if a child is released to a peace officer or a child protective agency agent, the reporter will not notify the parent as required in other instances of removal. Child protective agencies responding to incident reports are prohibited from disclosing a reporter’s identity to a reporter’s employer.

In addition, in order to maintain the safety and health of the children at the school, particularly the residential students at the school, faculty shall report health concerns or unusual behavior in students to the Dean of Curriculum, the Dean of Students or the Head of School. The leadership team shall then take action they deem to be appropriate.

B. “Abuse” defined.

Child abuse is broadly defined as “a physical injury which is inflicted by other than accidental means on a child by another person.” Child abuse can take the following forms:

- Sexual abuse: Sexual abuse means, in general, sexual assault or sexual exploitation. Sexual abuse does not include children who voluntarily engage in sexual activity with children of a similar age. However, such situations raise the issue of possible neglectful adult supervision.

Pregnancy of a minor does not, in and of itself, constitute suspicion of child abuse;

- Neglect: Neglect occurs when a child's custodian has failed to provide adequate "food, clothing, shelter, medical care, or supervision" that may or may not have resulted in any physical injury;
- Unlawful corporal punishment: Unlawful corporal punishment occurs when any person willfully harms or injures a child to such a degree that a traumatic condition results; and
- Willful cruelty or unjustifiable punishment: Child abuse also includes the situation where any "person willfully causes or permits any child to suffer... unjustifiable pain or mental suffering," or when any person endangers a child's health.

X. PROPERTY PRIVACY POLICY.

School for the Arts equipment, desks, computers, computer software, e-mail, voicemail and other property and electric items are for business use only. Employees may, however, receive necessary and appropriate personal messages by computer e-mail or office voice mail. School for the Arts reserves the right to inspect all property such as listed here for reasons it deems sufficient to protect the interest of School for the Arts employees and students. Inspections may be without notice. Consequently, employees should not store or keep any property at School for the Arts that they consider private or of a personal nature.

XI. E-MAIL AND COMPUTER USAGE.

A. General Policy.

School for the Arts provides technology resources to its staff for educational and administrative purposes. The goal in providing these resources is to promote educational excellence at School for the Arts by facilitating resource sharing, innovation, and communication among our employees. This policy governs the use of Internet, Intranet, and e-mail resources by our staff.

The use of School for the Arts technology resources is a privilege granted to employees primarily for the enhancement of job-related functions. Employees also may have limited access to these resources for personal use as long as they comply with the provisions of this policy. Violations of this policy may result in the revocation of this privilege. Depending upon the severity of the infraction, employees may also face disciplinary action, up to and including dismissal, civil litigation, and/or criminal prosecution for misuse of an School for the Arts resource(s).

B. Prohibited Uses.

School for the Arts does not attempt to articulate all possible violations of this policy. In general, employees are expected to use School for the Arts computers and computer networks in a responsible, polite and professional manner. Users are not allowed to:

1. Knowingly send, receive, or display sexually oriented images, messages, or cartoons.
2. Knowingly send, receive, or display communications that ridicule, disparage, or criticize a person, a group of people, or an organization based upon race, national origin, sex, sexual orientation, age, disability, religion, or political beliefs.
3. Knowingly send, receive, or display communications that demean, threaten, insult, harass or defame others.
4. Knowingly send, receive or display communications that (a) disparage or berate Governing Board members or employees, (b) diminish employee productivity and/or professionalism.
5. Violate any local, State, or Federal statute or regulation including, but not limited to copyright laws.
6. Solicit, endorse, or proselytize others for commercial ventures, outside organizations, or religious, social, or political causes.
7. Disrupt, disable, damage, or interfere with services, equipment, or other users.
8. Access, assist, or allow others to access equipment, files, passwords, user codes, or information without authorization.
9. Make changes to computer configurations without permission from the Technology office. Such changes are strictly prohibited violations of School for the Arts policy. Prohibited changes to computer configurations include, but are not limited to, installing software, modifying the operating system or installed applications, adding additional hardware or moving computer systems from their assigned locations.

C. Supervision of Computer Use.

School for the Arts reserves the right to review, audit, intercept, access, and disclose all matters on School for the Arts computers, including information accessed via Internet and e-mail systems, as business conditions and/or security considerations warrant, with or without employee notice, during or after employee working hours. The use of an School for the Arts-provided password by an employee does not restrict School for the Arts' right to access electronic communications. While School for the Arts may or may not regularly monitor electronic communications, employees using this resource should have no expectation of privacy in their e-mail or Internet use. Accordingly, employees must ensure at all times that their electronic communications are appropriate, lawful, and in compliance with the provisions of this Policy. As a condition of use of these resources, employees agree to School for the Arts review and disclosure of e-mail and Internet records.

D. Consent to Terms of Use.

By using School for the Arts computers and other technology-related resources, employees acknowledge and accept the rules and conditions for e-mail, Internet and computer usage set forth above and any other policy or directive as given by the Head of School or Governing Board.

XII. CONTRACTS.

All licensed and certified employees will be employed pursuant to written contracts signed by the Head of School and the President of the Governing Board prior to the first day of employment. The Head of School will make all employment decisions regarding staff at the school, including the hiring and firing of employees.

A. Form.

All contracts will be in writing and will contain and specify the length of service, the salary to be paid, the method of payment, the general causes for termination of the contract and other provisions that are required by state law. The contract will be in a form substantially similar to a form approved by the New Mexico Public Education Department.

B. Length.

All employment contracts between School for the Arts and certified/licensed school personnel will not be for a period of greater than one (1) year except:

1. Contracts for less than one (1) school year permitted to fill personnel vacancies occurring during the school year;
2. Contracts for the remainder of a school year permitted to staff program(s) when the availability of funds for the program(s) is not known until after the beginning of the school year;
3. Contracts for less than one (1) school year permitted to staff summer school programs and federally funded programs in which the federally approved programs are specified to be conducted for less than one (1) year;
4. Contracts not to exceed three (3) years permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time; and,
5. Contracts not to exceed three (3) years permitted at the discretion of the Head of School for certified school instructors in public schools who have completed at least three (3) full contract years at the charter school.

In sum, School for the Arts employees have no right to re-employment at the end of their contract terms and no contract entered into between an employee and School for the Arts will be construed as an implied promise of continued employment. NMSA 1978 §22-10A-21 (2003).

C. Contract Renewal.

On or before thirty (30) calendar days prior to the last day of the school year of the existing employment contract, the School for the Arts will serve written notice of reemployment or termination on each licensed teacher or other certified employee.

1. Notice of reemployment will be an offer of employment for the next school year, conditioned on the available funding for the particular program.
2. Notice of termination will be notice of the School for the Arts' intent not to reemploy the individual for the next school year.

3. Failure of the Head of School to serve written notice will be construed to mean that a notice of reemployment School for the Arts been served upon the person for the ensuing school year according to the terms of the existing employment contract, but subject to any additional compensation allowed other licensed or certified staff of like qualifications and experience employed by School for the Arts. However, in no event will the failure to provide written notice extend the period of the next contract to more than one (1) year.

D. Service of Notice of Reemployment.

Notice of reemployment may be made by hand delivering a copy and obtaining a signed and dated receipt that such notice was provided; or, service may be accomplished by mailing a copy to the individual's last available address certified mail return receipt requested.

E. Service of notice of termination.

Notice of termination will be served by mailing a copy to the individual's last provided address certified mail return receipt requested.

F. Reemployment.

Each licensed staff member must provide a written acceptance or rejection of employment within fifteen (15) days of the date the written Notice of Reemployment is served. Failure to accept within the time provided will constitute a withdrawal of the original offer unless otherwise agreed to in writing by the parties.

G. Binding Effect.

Delivery of the written acceptance will constitute a binding contract between the individual and School for the Arts. A written contract will be signed by no later than ten (10) days before the beginning of the next school year.

XIII. PAYROLL, BENEFITS AND LEAVE POLICIES.

A. Salary.

1. Licensed Employees.

School for the Arts licensed employees will be paid in accordance with New Mexico law as may be amended by the New Mexico Legislature from time to time. Nothing in this section will preclude the School for the Arts from paying licensed employees a higher than minimum salary based on merit and/or experience.

2. Other Employees.

School for the Arts employees will be paid in accordance with approved salary schedules or as otherwise determined by the School for the Arts Governing Board.

B. Medical Benefits.

School for the Arts offers benefits as described in the insurance benefits package offered through the New Mexico Public Insurance Authority. Employees should consult the documents relating to the benefits packages for information on eligibility, premium payments, dependent coverage and other pertinent requirements of the plan provided by School for the Arts.

C. Pay Periods And Pay Checks.

1. Pay Days.

Payroll checks are issued every 5th and 20th of the month. Pay periods are Monday through Sunday. Employees may pick up their paycheck after 12:00 noon on payday from the Head of School or his/her designee.

2. Authorization of agent.

If an employee chooses to have another individual pick up his/her paycheck, that individual must have a signed note from the employee giving them authorization to receive the check.

3. Error.

If an employee believes that his/her paycheck contains an error, the employee should notify Payroll on a staff concern form. Any request for adjustment in pay will be made in writing and must be approved by the business manager before being processed by payroll. Failure to notify payroll of an error in pay within ninety (90) days may constitute a waiver of any such discrepancy.

4. Direct Deposit.

Direct deposit is available to all employees.

5. Final paychecks.

Final paychecks will be distributed by Head of School (or designee) in accordance with applicable state and federal laws.

D. Deductions.

1. State/Federal Payroll deductions.

By law, School for the Arts will be required to deduct, where applicable, federal and state withholding taxes, Social Security taxes and court-ordered garnishments from an employee's pay. Public school employees are required to participate in the Educators Retirement system and such deductions are made automatically from the employee's paycheck.

2. Authorized employee deductions.

Any other deduction the employee desires to have made from his/her pay check must be requested in writing. The request must be submitted to the payroll office in sufficient time for processing. Written authorization for automatic deposit is required.

3. Court-ordered deductions.

The Head of School (or designee) will give an employee written notification of a garnishment received by School for the Arts and will send a copy to payroll for implementation. Employees must obtain an appropriate court-order and present same to the School for the Arts payroll office to avoid having court-ordered deductions made from their pay checks. Employees are responsible for all associated costs and fees.

E. Status.

1. Full-Time Employees.

Full-time **non-licensed** employees are normally scheduled to work forty (40) hours per work-week (5:00 p.m. Friday through the following Friday at 4:59 p.m.)

2. Part-time Employees.

Part-time employees work up to twenty (20) hours per week on a regularly scheduled basis and are not entitled to paid leave or benefits.

3. Temporary employees or independent contractors.

A temporary employee is hired for a specific period of time, or for a project, not to exceed three (3) months. Substitute teachers are considered temporary employees. Employees in this category will not be eligible for vacation, holiday, sick pay or other school benefits. Independent contractors are only entitled to paid leave or benefits in accordance with their respective contracts.

F. Personal/Sick Leave.

Full-time teaching staff will accrue one (1) day per month for August 1 through May 30, per contract year leave; i.e. a total of ten (10) days, which may be used for personal leave or sick leave. Year around employees, including administrators and office staff, will accrue one (1) day per month per annum for use as personal or sick leave; i.e., a total of twelve (12) days, which may be used for personal leave or sick leave. Personal/sick leave may be carried over from year to year up to a total of thirty (30) days. Part time employees, temporary employees and independent contractors, do not accrue personal leave.

G. Bereavement (Funeral) Leave.

School for the Arts employees are permitted two (2) days of paid leave due to a death in the employee's immediate family. Immediate family is defined as a spouse, child (step child), mother, father, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, step-parent, grandchild, grandparent, other relatives who live in the employee's home, or persons with a close relationship similar to that of persons who

are related by blood or marriage. Additional leave for bereavement may be granted at the discretion of the Head of School. Bereavement leave does not accrue. Verification of death may be required as well as information concerning the employee's relationship to the deceased. The request form should then be given to the Head of School (or designee) and maintained in the employee's personnel file.

H. Holidays.

School for the Arts holidays will be determined pursuant to the approved school calendar submitted to NMPED annually. All employees will be allowed holidays as scheduled by the calendar. School for the Arts recognizes that some employees may wish to observe certain days that are not included in School for the Arts' school calendar as periods of worship or commemoration. Employees who would like to take a day off for such reasons may be permitted to do so if the employee's absence will not disrupt the school's orderly operations and if the employee's supervisor approves the request for leave in advance. Employees will use a personal leave day for such an absence.

I. Jury Duty.

Full-time and part-time employees will receive their normal pay, less all amounts paid by the courts, for days or partial days for which an employee is required to report to jury duty. The employee must disclose to School for the Arts' payroll department all amounts paid so that an appropriate offset from their regular pay can be made. Failure to timely provide this information may result in a delay in payment. Employees must provide a copy of the court order for jury duty to the Head of School (or designee) as soon as made aware of the order. If an employee is excused from jury duty or the subpoena assignment for any full day, they must report to work on that day. In order to receive compensation for jury duty leave, the employee must provide documentation from the respective court as to the amounts paid for jury service.

J. Leave Without Pay.

Employees may be granted leave without pay under extenuating circumstances that must be approved in advance by the Head of School (or designee).

K. Military Leave.

Military leave will be granted for Active Military Service and Reserve or National Guard Service as required by law. An employee requesting military leave must present appropriate orders. An employee on military leave will receive no pay. An employee on a military leave of absence may keep the group benefit program for six (6) months of leave, provided the employee pays the full amount of the premium(s) during this period. Payment for all premiums will be made prior to the beginning of the month for which coverage is being provided. Payment is to be made within thirty (30) days of the due date or coverage will be cancelled. Upon reinstatement to employment, benefits prior to leave will be reinstated. An employee on a military leave of absence may elect benefits under the COBRA regulations if the leave of absence extends beyond six (6) months.

Upon return from military leave, an employee will be reinstated to the employee's former position or a similar position at School for the Arts with no loss in benefit status provided the employee:

1. Applies for reinstatement within ninety (90) days of release from service or training, or from hospitalization following discharge but continuing for no longer than one (1) year;
2. Provides a certificate of satisfactory release from military service that is "honorable", "general", or "under honorable conditions;"
3. Remains qualified to perform the essential job functions of the former position.

L. Leave Use.

Employees shall initiate a request for leave through the Head of School at least two (2) weeks in advance of planned leave. A Leave of Absence Request form should be completed by the employee and submitted to the Head of School (or designee). The Head of School's use of personal/sick leave shall be approved by the President of the Governing Board. All employees are required to notify the Head of School (or designee) by telephone no later than two (2) hours prior to the beginning of the work day if they are sick or in cases of emergency. Employees, or their representative, must confirm that the Head of School (or designee) has received the message of the employee's absence. Consequently, sending last minute e-mails will not constitute sufficient notice of an employee's absence and may be grounds for disciplinary action. Employees who are absent due to illness for more than three (3) consecutive days will be required to provide a doctor's return to work certificate.

Administrators and year-round employees should schedule their non-contract days-off during times that school is not in session or School for the Arts is closed. The Head of School and the senior vice-administrator should not take leave at the same time, unless it is during the time School for the Arts is closed. Administrator's extended leave should be approved by the Governing Board. **Teachers must have contingent lesson plans prepared in case of unexpected absences.**

M. Family Medical Leave.

The Family and Medical Leave Act of 1993 (FMLA) provides that a qualifying employer provide eligible employees up to twelve (12) weeks of job-protected and benefits-protected unpaid leave within a twelve (12) month period. It is the policy of School for the Arts to encourage employees to balance their work and family life by taking reasonable unpaid leave for certain circumstances that affect the family. These matters are covered by regulations issued by the United States Department of Labor regarding the Family Medical Leave Act (FMLA) of 1993. The regulations are complex. All employees should review this section carefully.

1. Employee Eligibility. Employees who have worked at School for the Arts a total of at least twelve (12) months (including teaching staff paid on twelve (12)-month contracts) and have also worked at least one thousand two hundred and fifty (1250) hours over the immediately-preceding twelve (12) months, may be eligible for FMLA leave. School for the Arts will grant an eligible employee up to a total of twelve (12) workweeks of leave during any twelve (12)-month period (measured backward from

the date an FMLA leave begins) for one or more qualifying reasons. Eligible employees who meet FMLA notice and certification requirements (and who have not exhausted their FMLA leave entitlement for the year) have qualified reasons to take FMLA for:

- inability to work because of a serious health condition;
- care of an immediate family member (spouse, parent, son or daughter) with a serious health condition;
- and/or care of a child born to or placed with the employee during the past year.

2. Eligibility Definitions.

(a) "Serious health condition," in general, means an illness, injury, impairment, or physical or medical condition that involves inpatient care or continuing treatment by a health care provider. School for the Arts will require an employee to supply a health care provider's certification that the employee or family member has a serious health condition as defined by the law. For more detailed definition of "serious health conditions" that qualify, please contact the Human Resource Administrator.

(b) "Spouse" means a husband or wife as defined or recognized under New Mexico law for purposes of marriage.

(c) "Parent" means a biological parent or an individual who stood *in loco parentis* to the employee (not an in-law).

(d) "Son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age eighteen (18), or who is age eighteen (18) or older and "incapable of self-care because of a mental or physical disability.

(e) "Health care provider" includes clinical social workers and any other practitioner considered by the Head of School to be capable of determining the existence of a serious health condition.

3. Accumulated Leave Applied/Leave without pay. School for the Arts will require, where applicable, that accrued paid leave be applied towards the FMLA twelve (12)-week limit. Paid leave includes personal and sick leave and Workers' Compensation leave. Any paid leave used for an FMLA qualifying reason will be charged against an employee's entitlement to FMLA leave. This includes leave for disability or worker's compensation injury/illness, provided that the leave is for an FMLA qualifying purpose. The substitution of paid leave for unpaid leave will not extend the twelve (12)-workweek leave period provided by the FMLA. To the extent that an employee does not have available paid leave, the FMLA leave will be unpaid.

4. Limitations on the Leave Period. Leave to care for a newborn or newly placed child must conclude within twelve (12) months after the birth or placement. Spouses employed by the same employer may be limited to a combined total of twelve (12) workweeks of family leave for the following reasons: birth and care of a child; care of a newly placed child; and, care for an employee's parent who has a serious health condition.

5. Intermittent or Reduced Schedule FMLA Leave. Employees may take FMLA leave on an intermittent or reduced schedule basis for an employee's serious health condition or to care for an immediate family member with a serious health condition. Subject to School for the Arts' approval, and at its sole discretion, an employee may take intermittent or reduced schedule FMLA leave to care for a newborn

or newly placed child. Employees who need intermittent or reduced work schedule leave for foreseeable medical treatment must work with School for the Arts to schedule the leave to avoid undue disruption of the operations of School for the Arts. Any such arrangements will be subject to the approval of the employee's health care provider.

6. **Benefits Continuation While On FMLA Leave.** An employee's current group insurance plan benefits will continue during the FMLA leave on the same basis as if the employee had been continuously employed during that time. In addition, the employee will continue to make their usual employee contribution, if any, to the cost of those benefits. To the extent that the FMLA leave is paid, a portion of health insurance premiums, if any, will be deducted from the employee's salary. While on unpaid FMLA leave, if an employee falls more than thirty (30) days in arrears for required employee contributions (i.e. those contributions which would otherwise be deducted from pay), if any, coverage will be canceled retroactive to the beginning of the month in which the delinquency occurred. School for the Arts will give notice prior to discontinuation of health insurance coverage. Employees will not accrue personal or sick leave during FMLA leave, however, FMLA leave will not be considered an interruption in service to School for the Arts. Whether your FMLA is counted toward years in service for purposes of New Mexico Educators Retirement will be governed by the Educator Retirement Board rules.

7. **Requests for FMLA Leave.** To request FMLA leave, employees must complete the Employer's Request for Leave form and submit it to the Human Resources Administrator. When leave is foreseeable for childbirth, placement of a child or planned medical treatment for an employee's own or a family member's serious health condition, the employee must give School for the Arts at least thirty (30) days advance notice. If it is not practical to give thirty (30) days advance notice, the employee should give notice as soon as practical (i.e., the minimum notice is usually within one (1) or two (2) business days of learning of the need for the leave). Requests for FMLA leave should include specific requests to take the leave intermittently or on a reduced leave schedule basis. School for the Arts will make a timely response to all FMLA leave requests by providing official notice on the U.S. Department of Labor "Employer Response to Employee Request for Family or Medical Leave" form. See Appendix B.

8. **Required Documentation.** Employees will be required to submit medical certification (Paragraph 10 below) from a health care provider to support a request for FMLA leave for their own or a family member's serious health condition. Medical certification forms are available from the Human Resources Administrator. In addition, when leave is taken to care for a family member, School for the Arts may require documentation or statement of family relationship (e.g., birth certificate or court document). All employees who take FMLA leave for a serious health condition will be required to provide a fitness for duty certification from the employee's health care provider before the employee will be permitted to return to work. During FMLA leave, School for the Arts may request that you provide recertification of a serious health condition at certain specified intervals. A failure to provide requested documentation of the reason for an absence from work may lead to termination of employment.

9. **Designation of Leave as FMLA Leave.** School for the Arts may designate leave taken as FMLA leave on a retroactive basis. However, once an employee has returned to work, School for the Arts will only retroactively designate the

leave taken as FMLA leave if: (1) School for the Arts did not learn the employee was absent for an FMLA qualified reason until the return, and (a) School for the Arts promptly (within two (2) days) designated the leave as FMLA leave; or (b) Employee notifies School for the Arts within two (2) days of their return to work that the leave taken was FMLA leave; or, (2) School for the Arts could not confirm the leave qualified as FMLA before it was taken (e.g., missing medical certification) and had to issue preliminary designation that the leave was FMLA pending confirmation with appropriate documentation (if the leave's FMLA status cannot be confirmed, the preliminary designation will be withdrawn and the leave will not qualify as FMLA leave).

10. Medical Certification. School for the Arts requires that leave for a serious health condition of employee or employee's immediate family member be supported by a certification issued by a health care provider. School for the Arts will allow the employee fifteen (15) calendar days to obtain the medical certification. At its own expense, School for the Arts may require an employee to obtain a second medical certification from a health care provider of School for the Arts' choice. The second opinion will come from an independent provider, not a provider that School for the Arts regularly contracts with or uses. If the initial and second opinions differ, School for the Arts, again at its own expense, may require a third medical opinion. The health care provider for the third opinion must be selected with approval from both the employee and School for the Arts. The third opinion will be final and binding. See Appendix C for the U.S. Department of Labor "Certification of Health Care Provider" form that School for the Arts will use to request medical certifications.

11. Notice of status. During FMLA leave, employees must provide School for the Arts with periodic (at least once per month) reports regarding their status and intent to return to work. If an employee's anticipated return to work date changes and it becomes necessary to take more or less leave than originally anticipated, the employee must provide School for the Arts with written reasonable notice (i.e., within two (2) business days) of the changed circumstances and the new return to work date. If during a periodic check in, an employee equivocates about the intent to return to work, this will be considered notice that the employee has voluntarily resigned.

12. Return from FMLA Leave. Subject to limitations specified below, upon an employee's return from FMLA leave, School for the Arts will reinstate the employee in the same position held before the leave or an equivalent position with equivalent pay, benefits and other employment terms. If an employee is not able to return to work at the end of the twelve (12) week period and School for the Arts agrees to extend leave without pay beyond the twelve (12) weeks, the employee's FMLA status will have expired.

13. Limitations on Reinstatement. An employee is entitled to reinstatement following return from FMLA leave only if the employee would have continued to be employed had FMLA leave not been taken. Thus, the employee is not entitled to reinstatement if, because of a layoff, reduction in force or other reason, the employee would not be employed at the time job restoration is sought. School for the Arts may delay FMLA or deny reinstatement in certain cases where employees experiencing a serious health condition have failed to provide a required medical certificate or a certificate of fitness for duty to return to work.

14. Key Employees. School for the Arts reserves the right to deny reinstatement to salaried, eligible employees who are among the highest paid ten (10) percent of School for the Arts employees ("key employees") if such denial is necessary to prevent substantial and grievous economic injury to School for the Arts operations.

15. Failure To Return To Work Following FMLA Leave. If an employee does not return to work following the conclusion of FMLA leave, the employee will be considered to have voluntarily resigned. School for the Arts may recover health insurance premiums that School for the Arts paid on the employee's . However, School for the Arts may not recover its share of premiums paid on the employee's if the employee failed to return to work because of their own or a family member's serious health condition, or because of other circumstances beyond the employee's control. In such cases, School for the Arts may require you to provide medical certification of the serious health condition.

16. Verification of leave. If the School for the Arts has reason to doubt an employee's initial certification, School for the Arts may, with the employee's permission, have a designated health care provider contact employee's health care provider in an effort to clarify or authenticate the initial certification. School for the Arts may also require a second opinion (paid for by School for the Arts) by an independent School for the Arts-designated provider. If the initial and second certifications differ, School for the Arts may, at its expense, require you to obtain a third certification from a jointly selected health care provider. The third opinion is final and binding.

17. FMLA Information. School for the Arts employees may seek further information concerning his/her rights under FMLA by contacting the School for the Arts' Human Resource Administrator or the nearest office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor:

Albuquerque District Office Phone:
US Dept. of Labor
ESA Wage & Hour Division
500 Fourth Street, Suite 403
Albuquerque, NM 87102

1-866-4-USWAGE (1-866-487-9243)
Patricia Davidson, District Director

N. COBRA.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) amended both the Internal Revenue Code and Employee Retirement Income Security Act (ERISA) to require that group medical insurance plans must provide continuation coverage at group rates to terminated employees, including in cases of: voluntary or involuntary termination other than for gross misconduct; and, reduction in the number of hours of employment. Spouses, dependent children and retirees may also receive COBRA coverage. Employees will receive additional COBRA information at termination, if applicable.

XIV. OPERATIONAL POLICIES.

The School for the Arts may add additional operational policies to this document when necessary.

A. Attendance.

All employees are expected to report to work on time and be prepared to work as scheduled. Chronic or excessive absence and tardiness is disruptive to the school. For this reason, whether the absence is due to illness or other reasons, an employee is subject to discipline, up to and including discharge for excessive absences.

B. Duty Day.

The normal work day will be eight (8) hours and includes a thirty (30) minute lunch break ("Duty Day"). Teaching staff are expected to be at school thirty (30) minutes before and after the school day, or on such alternative schedule as the Head of School and that staff agree upon in writing. The Head of School will announce annually the school day time schedule.

C. Abandonment.

An employee who fails to report to work without notice to the Head of School or the employee's immediate supervisor for any period of time greater than one (1) regularly scheduled work day, will be deemed to have abandoned his/her position and to have voluntarily resigned. Reinstatement will be at the sole discretion of the Head of School.

D. Dress Code and Personal Appearance of Employees.

School for the Arts employees will serve as positive role models for students and set good examples of conduct, manners, dress and grooming. All personnel are expected to be neat, clean and appropriately dressed while representing School for the Arts. Professional personnel are expected to dress in a manner that projects a professional image for the employees and School for the Arts. Extremes in personal appearance or dress are not considered to be in good taste. In no case will the standard for employees be less than that prescribed for students as published in the School for the Arts Student Handbook. The Head of School is expected to counsel staff on appearance and conduct, if necessary. Failure to comply with the obligations set forth in this Section may result in disciplinary action.

E. Conferences and Seminars.

School for the Arts will provide, within the parameters of the school's annual budget, either full or partial payment for approved professional development for instructional staff and non-licensed staff; e.g., business manager. Staff should make their requests in writing and each request will be considered on an individual basis. Unless approved by the Head of School (or designee), all expenses will be the responsibility of the requesting employee and are not subject to reimbursement.

F. New Mexico Art Institute Work and Tutoring or Advising for Pay.

Faculty at the School for the Arts may be hired for Art Institute work of any nature which does not interfere with the faculty member's obligations at the School for the Arts. Except for stipends for extra or co-curricular activities and adjunct faculty, School for the

Arts employees are not permitted to receive pay for tutoring or advising any students assigned to them for classroom teaching or other School for the Arts functions unless expressly authorized by the Head of School under special circumstances or in association with the Art Institute.

G. Solicitation.

In the interest of efficiency and security, School for the Arts' general policy is to restrict solicitations or distributions by employees to non-work areas during non-work time. Employees are prohibited from soliciting or distributing literature in work areas during work time. Solicitation or distribution of any kind by non employees is not permitted on School for the Arts premises at any time.

H. Maintenance of Work Areas.

All work areas must be kept clean and orderly at all times. Because orderly equipment and classroom maintenance is necessary for implementing the School for the Arts curriculum, all staff, including teachers, are expected to keep their work areas clean and organized.

I. Personnel Records.

School for the Arts strives to balance its need to obtain, use, and retain employment information with each individual's right to privacy. To this end, it attempts to restrict the personnel information maintained to that which is necessary for the conduct of its business or which is required by federal, state, or local law. The Head of School (or designee) is responsible for overseeing the record keeping for all personnel information. Employees have a responsibility to ensure their personnel records are up to date and should notify the Head of School (or designee) in writing of any changes in name; address; contact phone numbers; marital status (for benefits and tax withholding purposes only); number of dependents (for benefits and tax withholding purposes only); addresses and telephone numbers of dependents and spouse or former spouse (for insurance purposes only); beneficiary designations if applicable; and emergency contact information.

1. Contents of File.

In addition, an employee's personnel file may contain the following information:

- a. Complete application for employment along with verification of qualifications for the position as outlined in job description;
- b. Professional license;
- c. Official transcript;
- d. Employee's contract;
- e. Signed Job description;
- f. Pre-employment references;
- g. Signed acknowledgment that the employee has received the Employee Policies Handbook, which includes separate acknowledgements that employee has received and understands policies on child abuse and neglect, confidentiality, equal employment opportunity; drug free workplace, conflicts of interest, employee complaints and problem solving, termination and discharge, employee

discipline, email and computer usage, the employee code of conduct and confidentiality. (See Appendix D);

- h. Performance appraisals;
- i. Documented attendance at educational and training programs, including in-service courses and orientation;
- j. Any complaints, allegations, inquiries or findings of student abuse or neglect; warnings or disciplinary actions;
- k. Documentation of equipment issued to employee: keys, pagers, cell phones, etc.

2. Separate File.

The following records will be maintained in a separate file, apart from the personnel file, for each employee:

- a. Employment medical records;
- b. Workers' compensation records;
- c. Health records;
- d. Drug testing records
- e. INS (Immigration and Naturalization) I-9 Form;

3. Inspection of Personnel File.

Employees may inspect their own personnel records in the presence of the Head of School (or designee). Such an inspection must be requested in writing to the Head of School (or designee) and will be scheduled at a mutually convenient time. Employees who feel that any file material is incomplete, inaccurate, or irrelevant may submit a written request to the Head of School (or designee) that documentation to correct such materials be added to personnel files. Only supervisors and others in management who have an employment related need-to-know about another employee may inspect the personnel files of a particular employee.

J. Smoking, Tobacco, Non Tobacco Products.

School for the Arts complies with all applicable federal, state, and local laws and regulations regarding smoking, tobacco, and non-tobacco use in the work place in order to provide a work environment that promotes productivity and the well-being of its employees. Therefore, School for the Arts is a smoke free environment and smoking is prohibited within the campus boundaries, at School for the Arts or Art Institute events, and within 200 yards of any residential housing for students at the school.

K. Use of School Property.

School for the Arts will maintain all forms to document an employee's use of school property away from school premises. School property will be returned upon demand, but in no event will this be later than the employee's last day of employment. Failure of an employee to return school property on demand may be turned over to the proper authority for investigation and appropriate action. Employees will be financially responsible for school property they have signed out, but have not returned to the school or that was damaged while in the employee's possession or control away from school premises.

L. OSHA/Safety and Security.

Consistent with federal OSHA requirements and to protect the well-being of employees, School for the Arts recognizes a need to limit the potential harmful effects of occupational exposure to blood and other potentially infectious bodily fluids where exposure to these materials (primarily hepatitis B and human immunodeficiency virus (HIV/AIDS)) could result in infection, illness or death of employees. The Health Safety policy covers all School for the Arts employees but particularly those who may reasonably anticipate coming into contact with these materials as a result of their job duties. If your job duties may put you into this category, School for the Arts will provide you with appropriate information.

M. Family on premises and personal business.

Faculty should keep personal business to a minimum during the Duty Day. In extraordinary and unusual circumstances, teachers may have children on the premises for short periods of time during the Duty Day.

Family members are encouraged to be active members of the school community, may participate in the events at the school in the same manner as all other members of the community, and participate in all events in which families and friends of the school community are invited. Families may be on the premises during extended work time for faculty members, such as during rehearsals or when faculty is involved in New Mexico Art Institute activities as long as the family members do not interfere with the work that is being conducted. The Head of School and the Dean of Curriculum may set appropriate protocols for family attending post-Duty-Day activities.

XV. GENERAL JOB DESCRIPTIONS AND RESPONSIBILITIES.

A. Head of School.

1. In General.

The School for the Arts Head of School will be hired and evaluated by the Governing Board and will report to the Governing Board on a regular basis concerning the operations of the school. The Head of School will be responsible for the development of the learning environment at the school, accountability (fiscal and educational performance), oversight of school operations, and recommending personnel for hiring.

2. Professional Development for the Head of School.

All professional development completed by the Head of School will reflect the mission, goals and objectives of School for the Arts. The Head of School will have a professional development plan that includes, but is not limited to, the following components:

- a. A development plan based on evaluations and his/her individual career goals;
- b. An allowance based on budget and grant receipts;

- c. A partnership between the Head of School and an advisor and/or professional coach approved by the Governing Board;
- d. A time frame built into the schedule that allows for adequate staff collaboration;
- e. A full evaluation of how any professional development impacts school performance.

3. Head of School Evaluation Procedures.

The Governing Board will be responsible for evaluating the Head of School on a semi-annual basis the first year of employment and annually thereafter. A written self-assessment will be submitted to the Governing Board for annual review. The Governing Board may initiate a special performance evaluation for the Head of School if prescribed in his/her contract to assess performance of job duties. The Head of School will be evaluated based on the “Competencies and Indicators for School for the Arts Head of Schools” in compliance with NMSA §22-10A-19 (2003) and NMAC 6.69.3.1. and 6.62.2, et seq., or otherwise, as required by New Mexico law and the School for the Arts Charter.

B. Licensed Personnel.

1. General.

All licensed personnel are hired by the Head of School. Staff is expected to follow the directives of the Head of School consistent with the School for the Arts charter and school policies.

2. Evaluation of Licensed Personnel.

The Head of School and the direct supervisor of that employee will be responsible for evaluating licensed personnel in accordance with the New Mexico School Personnel Act. The Head of School or the direct supervisor of that employee may initiate a special evaluation if deemed appropriate to assess improvement or progress towards implementing the school’s curriculum or classroom management skills. All licensed staff will be evaluated based on the “Competencies and Indicators for Licensed Personnel” in compliance with NMSA §22-10A-19 (2003) and NMAC 6.69.4.1., and 6.62.4.1, et seq., or otherwise, as required by New Mexico law and the School for the Arts Charter.

3. Professional Development Plan for Licensed Personnel.

All professional development completed by licensed personnel will reflect the mission, goals and objectives of School for the Arts. Licensed Personnel will devise a professional development plan that includes, but is not limited to, the following components:

- a. A development plan based on evaluations and his/her individual career goals;
- b. Achievement of required competencies;
- c. Continuous learning and growth in relation to the School for the Arts community and school program;
- d. Team work and collaboration with the administration and staff.

Accomplishment of the goals in the professional development plan will be considered when completing the licensed professional's evaluation.

4. Professional Development for the Staff.

All professional development courses completed by licensed personnel will reflect the mission, goals and objectives of School for the Arts.

C. Ancillary and Support Staff.

1. General.

All Ancillary and Support Staff are hired by the Head of School. Staff is expected to follow the directives of the Head of School consistent with the School for the Arts charter and school policies.

2. Evaluation.

The Head of School (or designee) will be responsible for evaluating the ancillary and support staff in accordance with the policies and procedures developed by the Head of School and approved by the Governing Board. The Head of School or the direct supervisor for an employee may initiate a special evaluation if deemed appropriate to assess improvement or progress towards implementing the school's curriculum or skills.

3. Professional Development for Ancillary and Support Staff.

All professional development courses completed by the ancillary and support personnel will reflect the mission, goals and objectives of School for the Arts.

D. Conflicts of Interest.

Employees are prohibited from using confidential information acquired by virtue of their associations with School for the Arts for their individual or another's private gain. Participation in, or work for, the Art Institute shall not be considered a conflict of interest.

Employees are prohibited from requesting or receiving and accepting a gift or loan for themselves or another that tends to influence them or appears to influence them in the discharge of their duties as employees. Business with suppliers to School for the Arts will not be influenced or appear to be influenced by an employee's financial interest. Employees must not engage in activities which violate federal, state, or local laws or which, in any way, diminish the integrity, efficiency, or discipline of School for the Arts.

The New Mexico Public School Code provides:

"...a certified school instructor or a certified school administrator shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional materials, furniture, equipment, insurance, school supplies or work under contract to the Department of Education, school district or public schools with which he/she is associated or employed. Nor shall any

such person receive any commission or profit from the sale or any transaction to sell..." (22-21-1.A NMSA 1978)

"...The provisions of this section shall not apply... in cases in which certified school instructors or certified school administrators contract to perform special services...during time periods wherein service is not required under a contract for instruction or administration." (This paragraph covers hiring athletic officials.) (NMSA 1978 §22-21-1.B)

1. Spouses.

It will not be considered a violation of this section if the contract is truly with a spouse only, in the regular course of his/her business, and the employee has no personal interest, pecuniary or otherwise, in the contract.

2. Resolving conflicts.

No "presumption of guilt" is created by the mere existence of a relationship with an outside firm or vendor. However, if an employee has any influence on transactions involving purchases, contracts, or supplies, it is imperative that the employee disclose that relationship to the Head of School immediately so that safeguards can be established to protect all parties. An administrative measure for any School for the Arts employee who is found to be in a position of Conflict of Interest as defined above may include a transfer to a position so he/she cannot conduct business with the outside agency in question. Alternatively, the employee may be prohibited from exercising decision-making authority in the particular circumstance, or such other measure deemed appropriate by the Head of School or the Governing Board.

3. Investigation.

At the request of any staff member, the Head of School may conduct an investigation and report the findings to the Governing Board. New hires will be notified of the policy prior to assuming job duties. If employees become aware of a conflict of interest subsequent to employment, they must notify the Head of School.

4. Misuse of Information.

No School for the Arts employee will for personal gain or for the gain of others use any information not available to the public that was obtained as a result of service to School for the Arts. No employee will personally exploit any business opportunity in which the employee knows or reasonably should know School for the Arts is or would be interested, unless School for the Arts first consents in writing. Also see Section VII regarding employee obligations to maintain confidentiality.

5. Work With Professional Organizations and/or Associations.

Participation in, or work for, the Art Institute shall not be considered a conflict of interest. An employee's work with or for an outside professional organization or association does not create a conflict of interest if such work:

- of the employee;
- a. Is related to the legitimate professional interest and development of the employee;
 - b. Does not interfere with the employee's regular duties;
 - c. Does not use School for the Arts materials, facilities, or resources except as provided by School for the Arts;
 - d. Does not compete with the work of School for the Arts and is not otherwise contrary to the best interests of School for the Arts; and,
 - e. Does not violate federal, state or local law.

E. Nepotism/Supervising Relatives.

Definitions.

1. Definitions.

a. "**Relative**" - is defined to include the spouse, child, grandchild, parent, sister, brother, aunt, uncle, niece, nephew, grandparent, son-in-law, daughter-in-law, sister-in-law, brother-in-law, mother-in-law, father-in-law, or a person *in loco parentis*.

b. "**Administrator**" or "**supervisor**" is defined to include all staff members who direct, supervise and/or evaluate the work of any subordinate employee.

2. Prohibited employment relationship. The relative of an School for the Arts administrator or supervisor may not be assigned to any position in which the administrator may be able to directly or indirectly supervise, evaluate, or control the work of the relative except with the specific written authorization from the Head of School upon approval by the Governing Board.

F. Staff Conduct with Students.

Staff members will maintain appropriate professional behavior while working with students and refrain from harassment, malicious or prejudicial treatment and abridgement of student rights. Failure to comply with the obligations specified in this section may result in disciplinary action.

Students at the school are minors and in a student / teacher relationship to the staff at the school. Any type of sexual advances, whether welcome or not; any sexual relationship, whether consensual or not, from staff to a student; or any activity that encourages, facilitates or allows students to participate in illegal behavior (such as buying cigarettes or alcohol for students) will be considered harassment and a violation of this policy and can be grounds for termination. The safety of our students is our first responsibility and we must take that responsibility very seriously.

G. Staff Participation in Political Activities.

School for the Arts employees may hold public office regardless of the relationship between the public office and the interests of School for the Arts. School for the Arts seeks to assist employees/public officials in avoiding conflicts between the interests of the School for the Arts and the interests of the public official's constituents. An School for the Arts employee who serves as a public official, acting in his or her capacity as a public official, may speak, act, debate and vote according to their convictions without undue influence by the Governing Board or by the Head of School.

XVI. VIOLENCE IN THE WORKPLACE.

School for the Arts is committed to preventing workplace violence. Given the increasing violence in society in general, School for the Arts has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours on its premises.

All employees, including supervisors and temporary employees, should be treated with courtesy and respect at all times. You are expected to refrain from fighting, rowdy behavior, or other conduct that may be dangerous to others. You may not bring firearms, weapons or other dangerous or hazardous devices or substances onto the School for the Arts premises.

School for the Arts will not tolerate conduct that threatens, intimidates, or coerces another employee, an School for the Arts student, visitor, guest, or candidate for employment. This prohibition includes all acts of harassment, including harassment that is based on an individual's gender, race, age, or any characteristic protected by federal, state, or local law. (See the No Tolerance Harassment Policy described in IIA).

Employees must immediately report violence or threats of violence, both direct and indirect, to a supervisor. If the supervisor is involved, employees make the report to the President of the Governing Board. This includes threats by employees, students, or visitors. Reports should be as specific and detailed as possible.

School for the Arts will promptly and thoroughly investigate all reports of violence or threats of violence as well as reports of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of the investigation, School for the Arts may suspend employees with or without pay, pending investigation.

Anyone determined to be responsible for acts or threats of violence or other conduct in violation of these guidelines will be subject to disciplinary action, up to and including dismissal.

School for the Arts encourages employees to bring their disputes or differences with other employees to the attention of their supervisors, the Head of School or the Human Resources Administrator, before the situation escalates into potential violence. School for the Arts is eager to assist in the resolution of employee disputes, and will not discipline you for raising such concerns.

XVII. MEDIA RELATIONS.

Unless specifically authorized by the Governing Board, School for the Arts employees are not authorized to speak to media as a representative of School for the Arts. Only designated members of the Governing Board, or employees designated by the Council with express authorization, may make statements to the media. If an employee deems it necessary or important to express his/her opinions to the media, he/she must clarify that he/she is providing a personal opinion and that his/her statements are not intended to reflect the opinions, policies or practices of School for the Arts. With respect to school matters that are appropriate for public knowledge, it is School for the Arts policy to cooperate with news media inquiries and communicate truthfully with the media.

XVIII. EMPLOYEE COMPLAINTS AND PROBLEM SOLVING

The following grievance procedure is established for resolution of problems and disputes not described under other provisions in this handbook. This process does not apply to termination or discharge from employment. See Section XIX for procedures to follow when protesting termination actions.

Careful documentation is important to successful resolution of a conflict pursued under this policy. All documentation is to be included in the personnel file:

1. Good Faith Effort. The employee will make a good faith effort to work with the immediate supervisor to resolve the conflict. This effort will consist of problem identification, possible solutions, selection of resolution, process for implementation of resolution and scheduling follow-up. In the event that the complaint involves the immediate supervisor, the employee will work with that individual's supervisor.

2. Written Grievance. If the issue is not resolved after a good faith attempt as outlined above, the employee may submit the grievance in writing to the Head of School (see #4 below for the procedure to follow when the Head of School is the subject of the unresolved complaint and the Governing Board is the next level at which to seek problem resolution). The written grievance may include documentation and other evidence. See Appendix E for the "Employee Grievance Report" form.

3. Mediation. Upon receipt of a written grievance, the Head of School may interview witnesses and other parties in interest, meet with the complainant and/or the parties in interest and conduct an internal mediation of the dispute. If any party in interest, including the appointed mediator, can demonstrate a conflict of interest, another mediator will be appointed. Any party may request that an outside professional mediator be hired. The Governing Board has final authority to determine if a professional mediator will be hired.

4. Hearing. If the problem remains unresolved, the complainant has the option to seek a hearing before the Governing Board by submitting a written complaint, this time to the Governing Board President, with documentation of the problem and all steps taken to resolve the problem. Legal council will not be admitted to participate in such a hearing. The hearing process will proceed as follows:

- a. Each party presents an oral statement and documentation.
- b. A designee of the Council will ask questions and examine witnesses if deemed appropriate and necessary.
- c. No recordings or transcripts of the meeting will be produced.
- d. Within two (2) weeks of the hearing, a Council designee will render the Council's decision with recommendations in writing.
- e. Procedures will remain confidential unless the complainant pursues remedies outside this internal grievance procedure.

5. Final Decision. Within five (5) business days of the hearing, the Governing Board President will submit a written decision concerning the complaint. The Governing Board's decision is final.

XIX. TERMINATION AND DISCHARGE.

A. Definitions.

1. **Termination.** In the case of a licensed employee, “termination” means non-renewal of a contract at the end of its term. For all other employees, “termination” means severing or ending the employment relationship.

2. **Discharge.** Discharge means to sever the employment relationship of licensed personnel or employees under contract before the end of the existing contract.

3. **Just cause.** Just cause refers to a reason for termination or discharge that is rationally related to an employee’s competence or moral turpitude or the proper performance of his/her duties and that is not in violation of the employee’s civil or constitutional rights.

B. Termination/Discharge Policy for Employees with Less than Three (3) Consecutive Years of Service.

1. **General.** School for the Arts may terminate an employee (licensed or non-licensed) with fewer than three (3) years of consecutive service for any reason it deems sufficient.

a. Non-contract employees. Employees with three (3) years or less of consecutive service and who are not employed pursuant to a contract are considered at-will employees. A written notice of termination will be provided to the employee.

b. Contract employees. Contract employees with three (3) years or less of consecutive service; i.e., who have not been reemployed under a third consecutive contract, may be terminated by non-renewal of their contracts without cause.

2. **Protest Procedure for Employees with Less than Three (3) Consecutive Years of Service.** For an employee of less than three (3) consecutive years who was terminated or whose contract was not renewed, there is no protest procedure because such an employee may be terminated or not renewed without just cause. However, an employee of less than three (3) years may request a written explanation from the Head of School that details the rationale for his/her termination or non-renewal. Requests for an explanation will be made in writing and delivered to the Head of School no later than five (5) working days after receipt of the notice of termination or notice of non-renewal. Reasons for the determination will be provided to the employee within ten (10) days of receiving his/her request. The decision of the Head of School to terminate, as approved by the Governing Board, is final and not subject to appeal.

C. Termination/Discharge Policy for Employees with Three (3) Years or More Years of Consecutive Service.

1. Non-Contract and Contract: No employee who has been employed by School for the Arts for three (3) years or more of consecutive service may be discharged except for just cause.

2. Protest Procedure. School for the Arts provides the following procedures for challenges to termination or discharge decisions for employees with three (3) or more years of consecutive service:

a. Request for Statement of Rationale. An employee who has been employed by School for the Arts for three (3) consecutive years and who receives a notice of termination or notice of non-renewal may request a written statement of the reasons for non-renewal. The Head of School will provide a written statement of the rationale within five (5) working days from the date she receives the request.

b. Hearing Before the Governing Board. If after receiving the Head of School's written reasons for termination, the employee contends that the reasons do not constitute just cause, the employee will be granted permission to address his/her objections to termination to the Governing Board by following these steps:

i. The employee must submit a written request for a hearing before the Governing Board within ten (10) days after receiving the written rationale for termination from the Head of School. The request for hearing must include a statement explaining why the employee believes that he/she was terminated for reasons that do not constitute just cause. In addition, the statement must include facts, supporting documentation and potential witnesses who will support the employee's position.

ii. The Governing Board will meet to hear the employee present the statement in no less than five (5) and no more than fifteen (15) working days after receipt of the employee's written statement of contentions.

iii. At the hearing, both the employee and the Governing Board may have representation of their choice, but at their own expense.

iv. Rules for Hearing:

(A) The hearing will be conducted in accordance with the provisions of the Open Meetings Act.

(B) A designee of the Governing Board will first state the reasons for termination and present the factual support for those reasons. The reasons will be limited to those first provided to the employee after his/her request for an opportunity to address the Governing Board.

(C) The employee will next state his/her reasons and factual support for contending that the termination was not for just cause. Those reasons and factual support must be the same as those provided in the employee's written response to the statement provided by the Head of School.

(D) The Head of School may offer such rebuttal testimony that she deems appropriate.

(E) Each party may question all witnesses.

(F) Only evidence presented at the hearing will be considered and the Governing Board is only required to consider that testimony it considers reliable.

(G) No record will be kept of the hearing.

(H) The Governing Board will notify the employee and the Head of School of its decision in writing within five (5) working days from the conclusion of the meeting.

[Reference, NMSA 1978 §22-10A-24.]

D. Appeals from Determinations by Governing Board: Arbitration.

Either the terminated employee or other representatives of School for the Arts may appeal the decision of the Council. The matter will be appealed to an independent arbitrator who will hear all evidence as if presented for the first time. The arbitration process takes place as follows:

1. Timely Request. The employee must submit a request for appeal in writing that states his/her reasons for the appeal to the President of the Governing Board within five (5) working days from the receipt of the Governing Board's written decision. The request for appeal must include a statement of facts supporting the basis for appeal. Failure to submit a timely appeal will bar the employee's objection to the decision of the Governing Board and will render the Governing Board's decision final.

2. Selection of Arbitrator. The Governing Board and the employee will meet within ten (10) working days from the receipt of the employee's request for appeal to select an independent arbitrator. If they cannot make a choice, they will ask the presiding judge of the Second Judicial District Court for the State of New Mexico to select an individual to hear the matter. The judge will make the selection within five (5) days of the request. The arbitrator selected must be experienced in school employment matters and must have no financial, personal or other direct interest in the outcome of the proceeding.

3. Scope of Arbitration. The arbitrator will hear all of the evidence presented and not be limited to a review of the Governing Board's decision. The issue before the arbitrator will be limited to whether the evidence presented demonstrates just cause for termination.

4. Date of Arbitration. The arbitration will be held within thirty (30) working days from the date the arbitrator is selected. Notice of the hearing will be provided by the arbitrator, which will include the date, time and location of the hearing.

5. Rules of Arbitration:
a. School for the Arts and the employee may have representation of their choosing, but at their own expense;

- b. Discovery will be limited to depositions and requests for production of documents on a time schedule to be determined by the arbitrator;
- c. The arbitrator has the power to issue subpoenas for witnesses and documents and to administer oaths;
- d. The New Mexico Rules of Civil procedure will not be strictly enforced, however, the rules will apply to the extent that both contentions and responses are amply and fairly presented;
- e. The Rules of Evidence will not strictly apply, but the arbitrator will permit either party to call and examine witnesses, to cross-examine witnesses and to introduce evidence. The arbitrator will require reasonable substantiation of statements and authentication of records where the accuracy or truth is in reasonable doubt;
- f. The Governing Board will have the burden to show by a preponderance of evidence that the employee was terminated for reasons that constitute just cause.
- g. If the Governing Board cannot show just cause, or the employee sufficiently rebuts the Governing Board's reasons, then the arbitrator will reverse the decision to terminate and order reinstatement of the employee;
- h. Either the employee or School for the Arts may record the proceeding at their own expense, but it will not constitute an official record for purposes of further appeal.
- i. Departures from these procedures are considered harmless unless the party can demonstrate prejudice.

6. Decision. The arbitrator will issue a written decision within thirty (30) working days of the hearing, which will contain findings of fact and conclusions of law.

7. Remedies. The only remedies available to an employee who has been reinstated by the decision of an arbitrator are: reinstatement; back pay, but subject to any scheduled salary increase to which the employee may be entitled; or, both, less an offset for any compensation received by the employee during the period the compensation was terminated; e.g., unemployment benefits.

8. Binding Decision. Decisions by the arbitrator are final and binding on both School for the Arts and the employee. The decision may not be appealed unless the decision was procured by corruption, fraud, deception or collusion, in which case it will be appealed to the Second Judicial District Court for the State of New Mexico.

9. Costs/Fees. The employee and School for the Arts will pay their own fees, expenses and costs. The arbitrator can assign to either party or both parties the fees and costs of the independent arbitrator.

E. Report to PED.

School for the Arts will report to the Public Education Department (PED) all terminations and all actions arising from terminations annually. PED is required to report the terminations to the NMPED. [Reference NMSA 1978 §22-10A-25 (2003)]

F. Termination/Discharge Policy for Other Personnel Exempt From Protest Procedures:

In addition to employees who have less than three (3) consecutive years of employment, the rights to due process protests upon termination do not apply to the following School for the Arts personnel:

1. Certified school instructors employed to fill the position of certified school instructor entering military service;
2. Persons employed as licensed school administrators;
3. Non-certified school employees employed to perform primarily school-wide management functions. [Reference, NMSA 1978 §22-10A-26 (2003)]

G. Termination/Discharge Policy for Contract Employees Discharged Prior to Contract Term.

A contract employee may be discharged prior to the end of his/her contract term for just cause according to the following procedures:

1. Notification and Immediate Removal.

a. Notice of discharge. The Head of School will serve written notice (certified mail return receipt requested) or will arrange personal delivery retaining a receipt signed and dated by the employee, of intent to recommend to the Governing Board that the employee be discharged. Service otherwise consistent with the rule of civil procedure will be sufficient to complete service as meant by these provisions.

b. Stated reasons. The notice will include the reasons for the Head of School's recommendation that the employee be discharged along with a written description of the employee's right to a hearing before the Governing Board.

c. Immediate Removal. In the event that the Head of School determines that it is necessary to immediately remove the employee from the school premises, the employee will be placed on paid administrative leave pending the outcome of a hearing on the recommended discharge. The hearing will take place prior to discharge unless the employee presents a risk of harm to self, students, employees or the continued operations of School for the Arts.

2. Protest Procedure/Hearing. A contract employee who receives a notice of intent to recommend discharge may request a hearing before the Governing Board by giving the Head of School a written notice of his/her decision to request a hearing within five (5) working days of receipt of the notice to recommend discharge.

a. Date of hearing. If the employee timely notifies the Head of School that he/she is requesting a hearing on the recommendation for discharge, a hearing will be scheduled by for no less than twenty (20) and no more than forty (40)

working days after the Head of School receives the written election from the employee. The employee will have at least ten (10) working days prior notice of the hearing date.

b. Hearing Procedures.

i. School for the Arts and the employee may have representation of their choosing and at their own expense.

ii. Discovery will be limited to depositions and request for production of documents, which will be completed prior to the hearing.

iii. The Governing Board will have the authority to issue subpoenas for the attendance of witnesses and to produce documents and other evidence at the request of either party and will have the power to administer oaths.

iv. School for the Arts will have the burden of proving the just cause for discharge by a preponderance of the evidence. The evidence at hearing will be limited to the reasons as stated in the notice to the employee recommending the discharge.

v. School for the Arts will present its evidence first; the employee will present second; either party may present witnesses and introduce documents to prove their respective case.

vi. An official record must be kept of the preceding and the employee is entitled to one copy at the expense of School for the Arts.

vii. The Governing Board will render its written decision within twenty (20) calendar days of the conclusion of the hearing and deliver its decision to the employee by certified mail return receipt requested or by personal delivery.

3. Appeal from Decision on Discharge: Arbitration. Either the discharged contract employee or a representative(s) of School for the Arts may appeal the decision of the Governing Board. The matter will be appealed to an independent arbitrator who will hear all evidence as if presented for the first time.

a. Request Appeal/Arbitration. To request an appeal the employee must state his reasons for the appeal in writing (“request for appeal”) and submit it to the President of the Governing Board within five (5) working days from the receipt of the Governing Board’s written decision. The appeal must contain a statement of the particular reasons the employee believes the Governing Board’s decision was incorrect and include a statement of facts supporting his/her decision.

b. Timely Appeal. Failure to submit a timely appeal will bar the employee's right to object to the decision of the Governing Board and will render the Governing Board’s decision final.

c. Selection of Arbitrator. The Governing Board and the employee will meet within ten (10) working days from the receipt of the employee’s request for appeal to select an independent arbitrator. If they cannot decide they will request the presiding judge of the Second Judicial District Court for the State of New Mexico to select an individual to hear the matter. The judge will make the selection within five (5) days of the request. The arbitrator selected will be experienced in school employment matters. He/she will have no financial, personal or other direct interest in the outcome of the proceeding.

d. Scope of Review. The arbitrator will hear all of the evidence presented and not be limited to a review of the Governing Board’s decision. The issue

before the arbitrator will be limited to whether the evidence presented demonstrates just cause for discharge.

e. Date of Arbitration. The arbitration will be held within thirty (30) working days from the date the arbitrator is selected. Notice of the hearing will be provided by the arbitrator, which will include the date, time and location of the hearing.

f. Arbitration Rules:

i. School for the Arts and the employee may have representation of their choosing, but at their own expense;

ii. Discovery is limited to depositions and requests for production of documents on a time schedule to be determined by the arbitrator;

iii. The arbitrator has the power to issue subpoenas for witnesses and documents and to administer oaths;

iv. The New Mexico Rules of Civil procedure will not be strictly enforced, however, the rules will apply to the extent that both contentions and responses are amply and fairly presented;

v. The Rules of Evidence will not strictly apply, but the arbitrator will permit either party to call and examine witnesses, to cross-examine witnesses, and to introduce evidence. The arbitrator will require reasonable substantiation of statements and authentication of records where the accuracy or truth is in reasonable doubt;

vi. The Governing Board will have the burden to show by a preponderance of the evidence that the reasons provided for recommended the employee's discharge constitute just cause;

vii. If the Governing Board cannot show just cause, or the employee sufficiently rebuts the Governing Boards reasons, then the arbitrator will find in favor of the employee;

viii. Either the employee or School for the Arts may record the proceeding at their own expense, but it will not constitute an official record for purposes of appeal; only the official record prepared by a certified court reporter will constitute the official record;

ix. Departures from these procedures are considered harmless unless the party can demonstrate prejudice;

x. Decision. The arbitrator will issue a written decision within thirty (30) working days of the hearing, which will contain findings of fact and conclusions of law;

xi. Final Decision. Decisions by the arbitrator are final and binding on both School for the Arts and the employee; the decision may not be appealed unless the decision was procured by corruption, fraud, deception or collusion, in which case it will be appealed to the Second Judicial District Court for the State of New Mexico.

xii. Costs/Fees. The employee and School for the Arts will pay their own fees, expenses and costs; the arbitrator may assign to either party, or both of them, the fees and costs of the independent arbitrator.

xiii. Compensation after discharge. Payment of compensation to any certified school instructor or certified administrator will terminate as of the date a final decision, provided by the Governing Board, if not appealed, or by

the arbitrator. If the contract is to be paid monthly during a twelve (12) month period for services to be performed during a period less than twelve (12) months, the person will be entitled to a pro rata share of the compensation payments due for the period during the twelve (12) months in which no serves were to be performed.

H. Phasing Out and Elimination of Positions/Reduction-in-Force.

From time-to-time, it may be necessary to phase-out or eliminate certain job classifications or reduce the number of positions in a particular employment category. An orderly process will be established by the School for the Arts Reduction in Force Policy to guide such phase-out or reduction in force. A reduction in force carried out pursuant to School for the Arts' policy is just cause for termination or discharge.

XX. Employee Discipline.

School for the Arts employees are expected to comply with School for the Arts standards of behavior and performance and any noncompliance with these standards must be remedied.

A. Procedure for Progressive Discipline.

Under normal circumstances, School for the Arts endorses a policy of progressive discipline in which it attempts to provide employees with notice of deficiencies and an opportunity to improve. However, the Head of School has the discretion to administer any level of discipline at any time at his or her sole discretion without first administering any prior warning or following these steps of progressive discipline. These steps are general guidelines and not intended to create any contractual right in the process outlined below.

1. Verbal Warning. If an employee is not meeting School for the Arts standards of behavior or performance, the employee's supervisor or the Head of School should meet with the employee to discuss the matter; inform the employee of the nature of the problem and the action necessary to correct it; and prepare a memorandum for the supervisor's own records indicating that the meeting took place and a verbal warning was communicated.

2. Written Warning. If there is a second occurrence, the supervisor or the Head of School should hold another meeting with the employee and issue a written reprimand to the employee; warn the employee that a third incident will result in more severe disciplinary action, including suspension without pay or termination or discharge; and prepare and forward a written report describing the first and second incidents and summarizing the action taken during the meeting with the employee.

3. Suspension without pay. School for the Arts reserves the right to implement suspension without pay as a disciplinary measure. Prior to implementing suspension without pay, School for the Arts will develop appropriate policies and

procedures. Generally, an employee will not be suspended for more than nine (9) days and will be provided rudimentary due process prior to implementing suspension.

4. Discharge/Termination. The supervisor or Head of School should prepare a written report describing the occurrences, indicating the timing between the occurrences and summarizing the justification for recommending discharge to the Governing Board. The progressive disciplinary procedures described above may also be applied to an employee who is experiencing a series of unrelated problems involving job performance and/or behavior.

5. Investigation. When a disciplinary action is proposed, the Head of School (or designee) may conduct an appropriate investigation to obtain relevant facts involved. The Head of School or designee will determine the accuracy of the charge(s) against the employee. The investigation may include, but is not limited to eyewitness accounts, documented records, work samples and employee's view of the incident and/or charges. Prior to interviewing the alleged offending employee, he/she will be advised of the purpose of the meeting. The supervisor in conjunction with Head of School (or designee) will compile all documents and take accurate notes of the investigation. Documentation citing the disciplinary action will be prepared by the supervisor in conjunction with Head of School or her designee. The supervisor and Head of School (or designee) will meet with the employee and review the disciplinary action.

6. Grievance Process. Employees who believe that they have been disciplined too severely or without good cause may utilize the procedure outlined in Section XVIII.

B. Documentation of action.

The supervisor and Head of School or her designee will meet with the employee and review the disciplinary action and ask the employee to sign the report of disciplinary action. Once the employee has signed the report, he/she should be given a copy of the document with all signatures affixed. If the employee refuses to sign the document, this is to be noted on the form. The original becomes a part of the employee's permanent personnel record, which is considered school confidential material. If an employee disagrees with the action, he/she may draft a rebuttal to be attached to the report, which will be kept in the employee's personnel file.

C. Remediation.

If no disciplinary action is required within twelve (12) months of any written warning, all disciplinary action forms are removed from the employee's personnel file. These forms are not destroyed -- only removed to a separate file apart from the employee's record.