

# Stark County Board of Developmental Disabilities

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## DISABILITY SEPARATION

### POLICY

It is the policy of the Stark County Board of Developmental Disabilities to review all cases of individuals on disability, Worker's Compensation, Occupational Injury Leave (OIL), or other leaves of absence. These reviews are undertaken to establish whether the employee is now able, or expected within the foreseeable future to be able to perform the essential functions of his/her position.

Employees determined to be unable to perform the essential functions of their positions, and for whom there exists no expectation that they will be able to perform those essential functions within the foreseeable future, shall be provided the opportunity for disability retirement, or shall be disability separated. A disability separation may be voluntary or involuntary.

The purpose of this policy is to establish a standardized disability review and separation policy for all employees, which complies with Chapter 123:1-30 of the Ohio Administrative Code (OAC).

The Superintendent will develop procedures for this policy.

#### Reference:

Ohio Administrative Code 123:1-30-01;  
Ohio Administrative Code 123:1-30-02;  
Ohio Administrative Code 123:1-30-03;  
Ohio Administrative Code 123:1-30-04;  
Americans with Disabilities Act as amended

Historical Resolution Information		Reviewer(s):
Date	Resolution Number	Superintendent Director of Human Resources
6/16/12	06-53-12	
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## DISABILITY SEPARATION

### PROCEDURES

- I. Factors that will be considered for a Disability Separation
  - A. When an employee becomes physically unable to perform the essential duties of his/her position, but is still able to perform the essential duties of a vacant, lower level position for which the employee has the necessary credentials, he/she may voluntarily request reduction to the lower level position and the subsequent salary adjustment. The request shall be made in writing to the Superintendent and is subject to approval.
  - B. A voluntary or involuntary disability separation may occur at any time that the Superintendent or designee determines that the employee cannot perform the essential functions of the position. This action may be taken if an employee is receiving approved leave benefits.
  - C. The Superintendent/designee should continuously review Workers' Compensation, OIL, and medical leaves of absence to determine if a separation is appropriate. All cases shall be aggressively reviewed where actual incapacitation is not well documented, or where an anticipated date of return to work has not been established, or where an employee is off work for longer than six months. Issues to be evaluated include, but are not limited to:
    1. The medical evidence provided by the employee's physician, or from an independent medical examination;
    2. The prognosis and recovery period indicated by the physician's report; and
    3. Any description of limitations impacting the employee's ability to perform the essential duties of his or her position. Clarification should be requested in any case where a medical report is unclear regarding specific limitations on an employee's capacity to work, or fails to identify a prognosis with expected date of return to work.
  - D. The Superintendent may require that an employee submit to medical or psychological examinations for purposes of disability separation or reinstatement from disability separation. The physician(s) may be selected by the Superintendent and notified as to the facts relating to the perceived disabling illness, injury or condition.

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- E. An employee may be disciplined, including removal, for failure to appear for the scheduled exam or failure to release the results of the examination. An employee will be responsible for the costs associated with an unexcused failure to appear at a scheduled examination.

## II. Voluntary Disability Separations

- A. A voluntary disability separation may be granted when requested by an employee who does not dispute their inability to perform the essential job duties of his/her position due to a disabling illness, injury, or condition. Such request shall be made in writing, stating the reason for the request, and shall be subject to the approval of the Superintendent.
- B. Where there is credible medical documentation finding the employee unable to perform his/her essential job functions, the Superintendent/designee shall grant a request for voluntary separation from employment.
- C. An employee who is granted a voluntary disability separation waives the right to a pre-separation hearing and to an appeal of the decision to approve the employee's request.
- D. A non-represented employee retains the right to submit a written request for reinstatement of employment for two (2) years from the date that he/she last worked. A union employee retains the right for three (3) years.

## III. Involuntary Disability Separations

- A. An involuntary disability separation occurs when the Superintendent has received substantial credible medical evidence of the employee's disability and determines that the employee is incapable of performing the essential job duties of the employee's assigned position due to the disabling illness, injury or condition. Union employees will refer to their collective bargaining agreements for language regarding the exhaustion of paid leave prior to a Disability Separation.
- B. Prior to a separation, the Superintendent shall institute a hearing. This process is not discipline. The employee shall be provided written notice at least seventy-two hours in advance of the hearing. If the employee does not waive the right to the hearing, then at the hearing the employee has the right to examine the evidence of disability, to rebut that evidence, and to present testimony and evidence on the employee's own behalf. If the Superintendent determines, after weighing the testimony presented and evidence admitted at the pre-separation hearing that the employee is capable of performing

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his/her essential job duties, then the involuntary disability process shall cease and the employee shall be considered fit for duty. If the Superintendent determines that the employee is unable to perform his/her essential job duties, then an involuntary disability separation order shall be issued.

- C. An employee so separated shall have the right to appeal in writing to the State Personnel Board of Review (SPBR) within ten days following the date the order is served.
- D. A non-represented employee retains the right to submit a written request for reinstatement of employment for two (2) years from the date that he/she last worked. A union employee retains the right for three (3) years from the date the employee began the leave of absence without pay.

## IV. Right to Reinstatement

- A. An employee may make a written request to the Superintendent/designee for reinstatement from a disability separation. The request shall be accompanied by substantial, credible medical evidence that the employee is once again capable of performing the essential functions of the position.
- B. When the request is accompanied by medical documentation supporting the request, the Superintendent/designee shall either reinstate the employee, or require the employee to submit to a medical or psychological examination in accordance with OAC 123:1-30-03.
- C. After reviewing the medical evidence and/or examination results, if the Superintendent/designee determines that the evidence appears to indicate the employee remains incapable of performing his/her essential job duties, the Superintendent/designee shall hold a pre-reinstatement meeting.
- D. The employee shall receive 72 hour notice of the meeting. The employee may waive the meeting. At the meeting, the employee may examine the Superintendent/designee's evidence and rebut the evidence with other medical information.
- E. If the Superintendent/designee reinstates the employee, the employee shall be assigned to a position in the classification held at the time of the disability separation. If that classification no longer exists, the employee will be placed in a similar classification.

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- F. If the employee is granted disability retirement benefits through a state retirement system, the reinstatement rules apply for five (5) years.
  - G. An employee who is not reinstated shall be notified in writing of the denial and can appeal that denial to the State Personnel Board of Review (SPBR) within ten (10) days of receiving the notice.
  - H. A non-represented employee who fails to apply for reinstatement within two (2) years from the last date of active work status, or a represented employee who fails to apply for reinstatement within three (3) years from the date the employee began their leave of absence without pay shall be deemed permanently separated from Board service.
- V. Temporary Appointment of Replacement
- A. An appointment made to a position vacant by voluntary or involuntary disability separation will be on a temporary basis, and such employee must be made fully aware of its temporary nature with written documentation of same. A replacement in the position, while an employee is on leave, will be removed from the position upon the reinstatement of the employee from leave.