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Effective Employee Discipline




North American Association of Educational Negotiators
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What We'll Cover Today


- Part I: Employee Discipline
- Part II: Effective Documentation
- Part III: Exercises

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Part I

Employee Discipline



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Identifying Difficult Employees

■ Some Common Problems:

- ❑ Excessive absenteeism
- ❑ Unsatisfactory performance
- ❑ Dereliction of duty or unsatisfactory performance
- ❑ Criminal misconduct
- ❑ Alcohol & drug abuse
- ❑ Abuse of leave rights



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Evaluation vs. Progressive Discipline

■ **Evaluations:**

- ❑ Acknowledge excellence
- ❑ Encourage professional growth
- ❑ Identify performance deficiencies
- ❑ Support those needing assistance
- ❑ Improve education in our schools



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Evaluation vs. Progressive Discipline

■ **Progressive discipline:**

- ❑ **notice** of deficiency
- ❑ **opportunity to correct** (conduct or performance)
- ❑ Expectations
- ❑ Support



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Progressive Discipline

- "Progressive discipline" includes increasingly severe steps or measures when an employee fails to correct a deficiency after being given a reasonable opportunity to do so




- Progressive discipline should utilize the **least severe action** necessary to correct the performance deficiency or misconduct


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Progressive Discipline

- Termination may be appropriate, even for a first offense
- All steps are typically used for:
 - attendance
 - general work performance
- Progressive discipline often described in the CBA


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Progressive Discipline

- **Goal:** give employee notice and an opportunity to remedy performance problems
- **Goal:** not to punish, but to strongly alert the employee of the performance problems
- **Corollary:** to justify further disciplinary action if remedial efforts unsuccessful


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Progressive Discipline

- Flexible – no requirement that all steps be followed before terminating an employee.
- Administrators must use judgment to determine which step to use based on the **circumstances** of each case.



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Progressive Discipline

- Early, less stringent, measures may be skipped for serious offenses.
- Termination may be appropriate, even for a first offense.
- All steps are typically used for attendance or general work performance problems.



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Examples of Progressive Discipline

- Oral or Written Warning
- Oral Reprimand
- Written Reprimand
- Suspension
- Demotion
- Dismissal




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Disciplinary Action: Threshold Questions


- Employee Status
 - Are you seeking to discipline a classified or certificated employee?
 - Is the employee probationary or permanent?
- Authority & Procedural requirements
 - Collective bargaining agreements
 - Board Policies
 - Employee handbook




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Just Cause – Seven Elements


1. Adequate warning
2. Reasonableness
3. Completeness of investigation
4. Objectivity of investigation
5. Proof of infraction
6. Uniformity of the rules of application
7. Reasonableness of discipline


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Part II

EFFECTIVE DOCUMENTATION





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Documentation

- To support personnel decision
- To evidence progressive discipline
 - Put employee on notice of concerns
 - Give directives and opportunity to correct behavior
 - Provides support to overcome deficiencies
- Ensure consistent and fair discipline

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Why Bother?

- “Documenting” a problem employee can be more time consuming and frustrating than just putting up with poor performance, right?
- So why bother?

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The cost of discipline is always less than the cost of lack of discipline.

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Why Bother?

- Enhance the performance of your school/department
- Provide a safe educational environment
- Protect the District from liability
- Protect yourself from liability
- Avoid "the dance of the lemons"



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Effective Documentation: BRADS

- Background
- Rules
- Analysis
- Directives
- Support



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Background/Facts

- The Ws
 - What happened?
 - When did it happen?
 - Where did it happen?
 - Who is involved?
 - Has this or similar conduct occurred before?




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**Background/Facts:
What Did Employee Do?**

- Describe **specific** conduct, in complete & explicit terms
- Include **observations** of employee's conduct & **demeanor** when appropriate
- **Always** supplement general statements and conclusions with **specific examples**

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**Background/Facts:
Discussion Point**

- Examples
 - You used an unprofessional tone
 - You failed to timely complete your assigned tasks
 - You failed to use time in an efficient and effective manner
 - You failed to perform your duties satisfactorily
 - You repeatedly failed to follow directives
 - You were unprepared for class

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**Background/Facts:
Example**

I am writing a letter of discipline for the following incidents in the last week 7-18-16 to 7-28-16 after numerous attempts of scheduling your daily schedule your attitude and bullying has started to cause an unsafe environment for yourself, director and co-workers. I am starting to feel like you are not happy working with the District as a team. You have made several comments to me and co-workers that you don't want to listen to me and tired of hearing me talk. Your attitude and behavior has been very upsetting and is causing your staff to be put down by you. Today, you left your co-workers and myself in unsafe working conditions due to your attitude and refusal to listen and follow safety precautions. I am very concerned about your behavior.

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Background/Facts: What Did the Employee Do?

- Any **attachments** here?
- Copies of witness statements (redact student names)?
- Physical evidence?
- Witness statements and other "evidence" usually not necessary for early progressive discipline.
 - Consult with the District Office
- Prior disciplinary documents?



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Background/Facts: Caution



- "Facts" should be factual and unbiased
 - Avoid opinions, assumptions, speculation, etc.
 - Never use argumentative tone or expressions of frustration
- Watch for disability related issues:
 - Consult District Office before referring to disability (or issues that may be related to disability)
 - Do not mix discipline with interactive process
 - Attendance issues



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Rules

- Federal and/or State laws and regulations
- Board Policies and Administrative Regulations
- Collective bargaining agreement
- District or school site rules
- Previous directives or instruction
- Common courtesy and/or decency




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**Rules:
District's Reasonable Expectations**


- Quote the rule, authority or expectation relating to the deficient performance/misconduct/etc.
- Refer to prior violations
 - Must "priors" be violation of same rule?
 - Why or why not?

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**Rules:
District's Reasonable Expectations**


- Any **attachments** here?
 - Copies of rules / excerpts?
 - Prior Disciplinary notices / letters




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Analysis

- Explain how employee's performance violated standards
- Explain the impact or effect of the employee's performance on the worksite, school, District, etc.
 - Students
 - Other employees
 - Reputation
 - Potential liability



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Directives

- Issue directives to correct the employee's misconduct/unsatisfactory performance
 - Explain the District's expectations
 - Explain, specifically, what the employee needs to do (or not do)
- Directives should be clear and understandable



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Support

- Identify training opportunities, availability of assistance, who to talk to if the employee has any questions, etc.
- Think outside the box
- Describe follow-up and consequences
 - How and when will you monitor, give feedback or follow up?
 - Set forth the anticipated action if the employee fails to improve his/her performance
 - "Your failure to comply will result in further disciplinary action up to and including termination."



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Additional Tips

- Advise employee of rights as required by applicable law, CBA or policy
- Make sure to **list attachments**
- Who are the "cc's"?
- Optional: Line for date & signature
 - "Acknowledgement of Receipt"
 - *What if they don't sign?*



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Common Pitfalls

- No Date
 - Include: Day, Month, and Year
- Consider Your Audience
- Avoid Expressions of Frustration
 - No: "I am tired of reminding you to empty the office garbage cans."
 - Yes: "On July 11, 18, 21, and 26, I directed you to empty the office trash cans every evening."



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Common Pitfalls

- Use Facts, Avoid Conclusions
 - No: "You acted in a unprofessional manner."
 - Yes: "On August 11, 2016, I asked you to post your language objectives and you refused to do so."
- Use Active Voice
 - No: "Your class is frequently yelled at."
 - Good: "You frequently yell at your class."



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Dealing With Negative Reactions

- Hold all employees to the same standards
- Use an appropriate, factual, even-handed tone in disciplinary documents
- Don't try to enforce unknown rules
- Speak with employee prior to issuing written reprimands or other corrective documents
(*don't blindsides him/her*)



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Part III

Exercises



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Exercise #1

On August 2, 2016, second grade teacher Carol Russo, aka "Crazy Carol," lost her temper at the beginning of her ELA lesson and yelled, "I don't care what Jeff says, this is no good for Common Core!"



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Exercise #1

- What, if anything, should you do?



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Exercise #2

In the last couple of months, an IT employee at your school has started calling in sick and missing a lot of work. She seems ill prepared for work. Further, she has lost a lot of weight and really does not look well.



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Exercise #2

- Identify the issues.
- What, if anything, should you do?



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Exercise #3

A campus supervisor is transferred to your site. During an informal orientation, the employee informs you that he is "done being abused" and that he is "going to war" against administration. From his first day, you hear rumors and complaints that the employee uses profanity and physically intimidates children. Among other things, he has used slang terms with students to refer to the female anatomy and gestured a "punch" to the head to a student who was acting out. He has refused to pass out playground balls during lunch time until his "union rep." confirms that it is part of his job description. The assistant principal at the last school has confided in you, "This guy's a time bomb waiting to blow. Just do whatever you can to make it until June and get him transferred off your campus next year."



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Exercise #3

- What, if anything, would you do right now?
- What would you say during a conference with the employee?
- Prepare a conference summary or written warning?



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Exercise #4

John Doe, a bus driver, has a long-standing reputation for both pushing the bounds of propriety in his interaction with young women and rough treatment of students. Most recently, another bus driver informs you that she overheard John teasing a student about her boyfriend, Pete, and telling her that "as soon as she experiences a real man, she'll be embarrassed she was ever with little Peetie." That same day, a campus supervisor informs you that John escorted a student from his bus by pulling him by the ear (before handing him over to be escorted to the office). Other students in the bus were laughing, so the campus supervisor is not sure whether it was a joke.



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Exercise #4

- What, if anything, would you do and why?
- Who would you talk to?
- What questions would you ask?
- What would you include in a disciplinary document?



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Exercise #5

A custodian assigned to your site has repeatedly failed to complete his assigned duties. The custodian claims that his route is impossible, given the number of daily interruptions he gets (including requests to change light bulbs, cleaning up spills and other hazards, etc.) However, during work hours, he can often be found in his custodial closet, in which he has installed a desk and chair. It is rumored that he keeps and views pornography in his "office." That worries you, because the custodian is very popular with the children, who can often be found around his closet.



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Exercise #5

- What issues raise concern?
- How would you approach this situation?
- Are you ready for discipline?
- What would you like to know?
- To whom would you talk?
- What resources are available to you to address these issues?



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Exercise #6

This is your first year at your current school site. John, your night custodian, arrived to work 55 minutes late today. He was 30 minutes late to work last Wednesday. Your school secretary informs you that John's attendance has been an issue.



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Exercise #6

- What do you do?



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Written Reprimand (Example)

TO: John Smith
FROM: Jacqueline L. Litra
DATE: December 7, 2016
RE: Written Reprimand



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Written Reprimand (Example)

- Background
 - I write this written reprimand regarding your attendance in accordance with Article ___ of the collective bargaining agreement between the Union and the District.
 - On August 3, 2016, you failed to report to work on time and arrived 30 minutes after the start of your shift. Today, you failed to report to work on time and arrived 55 minutes after the start of your shift.



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Written Reprimand (Example)

- Background (cont.)
 - You have a history of failing to report to work in a timely manner. For example, You arrived late to work on March 10, 11, and 12, 2014. On March 12, 2014, Richard Jones, former principal, directed to you report to work at your regularly scheduled time. [INCLUDE EMAIL?]



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Written Reprimand (Example)

- Background (cont.)
 - On August 16, 2014, you arrived to work 45 minutes late. On August 19, 2014, you arrived to work 50 minutes late. On August 20, 2014, you arrived to work 15 minutes late. On August 24, 2014, Mr. Rodriguez, your assistant principal at the time, met with you to discuss your attendance.



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Written Reprimand (Example)

- Background (cont.)
 - On September 1, 2014, you arrived to work 52 minutes late. On September 15, 2014, you arrived to work 1 hour late. On September 16, 2014, you arrived to work 10 minutes late. On September 18, 2014, Mr. Rodriguez met to discuss your attendance. During that meeting, Mr. Rodriguez informed you that you must report at your regularly scheduled time of 2:30 pm and issued an oral counseling to you. (See attachment A, Sept. 18, 2014 Oral Counseling.)



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Written Reprimand (Example)

- Background (cont.)
 - In and around July, 2015, you reported late to work on several occasions. Ms. Rodriguez, former principal, directed you to report to work on time. (See attachment B, Aug. 5, 2015 Welcome Back.) [INCLUDE MEMO?]



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Written Reprimand (Example)

- Rule
 - As our night custodian, you are required to be at the school site and ready to work at 2:30 pm each school day. As described above, Mr. Jones, Mr. Rodriguez, and Ms. Rodriguez directed you to report to work at your regularly assigned time.



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Written Reprimand

- Analysis
 - By arriving 30 minutes after the start of your shift on August 3, 2016 and 55 minutes after the start of your shift today, you failed to meet the District's expectation that you arrive to work in a timely fashion. In addition, you violated Mr. Jones', Mr. Rodriguez's, and Ms. Rodriguez's directives to work your assigned schedule.



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Written Reprimand

■ Analysis (cont.)

- Your late arrival affected your co-workers and the District. For example, Ron Taylor, our day custodian, was required to stay after the completion of his shift to remove vomit from a boy's bathroom. In addition to the inconvenience to Ron, you caused the District to incur overtime costs related to Ron's late departure.



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Written Reprimand

■ Directives

- You are required to report to work and be ready to work at 2:30 pm each school day unless you have taken an approved form of leave.



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Written Reprimand

■ Support

- I recommend you implement appropriate measures to ensure that you are able to report to work in a timely fashion, such as setting an alarm or using other reminders that may be helpful to you.



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Written Reprimand

■ Other terms

- We are committed to your success as an employee of the District. However, you are advised that future instances of your failure to work your assigned schedule will result in additional discipline up to and including termination.
- Pursuant to Education Code section 44031, this document and its attachments will be placed in your personnel file in ten (10) days or shortly thereafter. You have a right to submit a written response to be attached and included in your file.



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Written Reprimand

■ Any other issues?



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Thank you for attending!



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