




Anchorage School District

Education Center

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MEMORANDUM

TO: Principals / Supervisors

FROM: Matthew Teaford, Chief Human Resources Officer 

DATE: November 12, 2019

SUBJECT: Addressing Employee Misconduct: Just Cause, Counseling, and Discipline

This memo describes the process for addressing employee misconduct and the fair enforcement of workplace rules pursuant to the *just cause* standard. The just cause standard helps employers determine whether a particular disciplinary action is appropriate to address a policy violation or performance concern. Failure to observe the just cause standard when disciplining an employee can result in the discipline being unenforceable, grievances, and/or discrimination claims and other types of litigation. See page 3 for details on the *Just Cause* principles.

Counseling meetings are opportunities to provide notice to employees about performance concerns and the consequences for violating workplace rules. You can counsel employees without the formalities of the call to conference process if the discussion will not result in any discipline.

Discipline- If you are meeting with an employee to discuss their job performance/misconduct and considering discipline of any type, you must observe the "Call to Conference" process (See Attachment A). The employee must be allowed a reasonable amount of time to consult a union representative (at least 2 days), and is entitled to have a union representative present at the meeting before they can be required to answer any questions at the meeting. The "Call to Conference" letter should be emailed with a "Read Receipt" request (to verify receipt), and/or hand delivered.

Unit Level Discipline- The counseling process and the beginning of the discipline process usually starts at the unit (building/department) level. However, some policy violations are so severe that they require immediate District level involvement, such as incidents involving: criminal activity, physical altercations between staff members or a staff member and a student, or substance abuse (this list is not exhaustive). You are encouraged to use your best judgment and to contact your Director or the Labor Relations office to help guide you in this process.

Progressive Discipline- Progressive discipline is the concept of addressing recurring misconduct with increasing penalties. Depending on the severity of the misconduct, discipline does not always start at the initial step. The *Just Cause* standard requires that the level of discipline be appropriate to the seriousness of the offense. The following pages describe how to apply the just cause principles through the progressive discipline process.

Investigating and Documenting Misconduct and Ongoing Performance Deficiencies

A critical step in addressing workplace misconduct is determining whether there is sufficient evidence to substantiate the allegations. Although most investigations will be relatively straightforward, more serious concerns might require a more comprehensive approach. Investigations must be conducted thoroughly and impartially to avoid any appearance of a predetermined outcome or bias.

Things to consider as you prepare for an investigation:

- 1) Does the employee have a history of similar misconduct?
- 2) Were there any witnesses to the incident?
- 3) Is a witness's account credible and can it be verified by any other information/source?
- 4) Is there surveillance footage evidencing the misconduct? (Every effort should be taken to preserve relevant recordings- ASD recordings are only available for ten (10) days.)
- 5) Are there other available sources of evidence? (Email, text message, notes, etc., property damage, visible injuries-take photographs!)

Documenting each step of your investigation and the sources of information will make any outcome more credible and less prone to challenge.

If you have any questions or concerns about conducting investigations or employee conduct, please contact the Labor Relations office at (907) 742-4007.

ATTACHMENTS

Page 3- The Seven Principles of Just Cause

Page 4- Progressive Discipline Steps and Recommended Documentation

Page 5- Attachment A: Supervisor Template – Call to Conference

Page 6- Attachment B: Supervisor Template – Oral Reprimand

Page 7- Attachment C: Supervisor Template – Letter of Reprimand

The Seven Principles of JUST CAUSE

Applying the Just Cause Standard to Determine and Implement Appropriate Discipline

1. **The employee should have notice of the consequences of the employee's conduct.**
 - *The employee was aware of department rules and expectations.*
2. **The rule, directive, or expectation imposed by the District was reasonable.**
 - *Most supervisors would view the expectation or rule as reasonable.*
3. **The application of the rule was fair, reasonable, and applied even-handedly.**
 - *Supervisors apply the rule fairly and equitably. In other words if you want to discipline an employee for arriving late to work 6 times you should be addressing this issue in the same way with all employees who are late to work 6 times.*
4. **A fair and objective investigation was conducted prior to the imposition of discipline.**
 - *Expectations were provided to employee, issues were discussed and employee was given an opportunity to provide their perspective relative to the concern being discussed.*
5. **The evidence of wrongdoing on which the District relied was credible.**
 - *The information and/or witness statements received by the supervisor are believable.*
6. **Before the appropriate discipline was determined, the employee was given reasonable opportunity to respond to the allegations of misconduct.**
 - *Supervisor has provided for a discipline conference in which the employee had a right to union representation and was able to respond to the allegations.*
7. **The level or degree of discipline was reasonably related to the seriousness of the offense and considerate of the employee's past record.**
 - *A twenty-year employee with a good work record, fired for being late 5 times may be unreasonable.*
 - *A three-month employee terminated for being late 5 times may be reasonable.*
 - *A one-year employee, with no issues, receiving a written reprimand for speaking harshly to a student may be unreasonable.*
 - *A one-year employee, reminded/warned multiple times about speaking harshly to students, receiving a written reprimand for speaking harshly to a student may be reasonable.*

Progressive Discipline Steps

A. General Information for Employees

Not discipline, explains rules and policies

B. Unit Level Discipline

In most instances, steps #1 and #2 (below) are sufficient for the Unit File.

1. Letter of Expectations
(Copies should be retained in unit file)
2. Unit File Oral Reprimand
(Copies should be retained in unit file)
3. Personnel File Written Reprimand
(Copies must be kept in unit file AND forwarded to Labor Relations for inclusion in the Personnel File)

C. Labor Relations Level Discipline

Letter of Expectations
Written Reprimand
Suspension Without Pay
Termination

Recommended Documentation

A. General Information Documentation

i.e. Staff Handbook, general staff memos

B. Unit Level Documentation

The unit file should contain all evidence supporting the infraction and:

1. A memo that summarizes the discussion with employee, notes expectations, and warns of consequences for future offenses.
2. A memo that summarizes the discussion with employee and reason for reprimand. **"Subject: Oral Reprimand- Unit level"**
(See Template, Attachment B)
3. A memo that summarizes the discussion with the employee, the outcome, and warns of consequences for future offenses. The employee signs and dates the letter acknowledging receipt as shown below.
(See Template, Attachment C)

Acknowledgement of Receipt:

Employee Date

*cc: Unit File
Personnel File*

C. Labor Relations Documentation

The supervisor may be asked to gather statements or other evidence, and will be included in the disciplinary decision and copied on the letter describing the outcome.

COPY THIS FORMAT ONTO UNIT LETTERHEAD
(The date and time of the meeting can be filled in by hand)

Date

Name of Employee
Position Title
Name of School/Work Site

Dear **Name**,

You are directed to attend a meeting in my office on _____ at _____
_____. The purpose of this meeting is to discuss your _____
(example: extensive absenteeism this school year and its effect on students and program), and to
provide you with an opportunity to respond.

You are entitled to have a Union representative present with you for the meeting.

Sincerely,

Signature
Building Principal/Supervisor

COPY THIS FORMAT ONTO UNIT LETTERHEAD
(The date and time of the meeting can be filled in by hand)

Date

Name of Employee
Position Title
Name of School/Work Site

Subject: Oral Reprimand – Unit Level

Dear Name,

We met on _____. Present with you at the meeting was _____. The purpose of the meeting was to discuss your (i.e. conduct; attendance; tardiness; an incident) that occurred on _____.

During the meeting we discussed the following:

- Briefly list concern #1
- List concern #2
- List concern #3 etc

Conclude your memo with a statement indicating that the employee was given an oral reprimand for the concern that prompted the meeting.

Sincerely,

Signature
Building Principal/Supervisor

cc: Unit file

Preparing a Letter of Reprimand Anchorage School District

First of all, **no** Letter of Reprimand should be issued to any employee without 1) completion of a reasonable investigation to establish that the misconduct occurred and 2) a discipline conference called to provide an opportunity to respond to the allegations of misconduct. Following the conference, a letter may be written, using the following format:

Paragraph 1: Indicate that a discipline conference was held with you. Say when and where. Also indicate who was present and what role they played. Involve as few people as possible. *Example:* “A discipline conference was held with me in my office on September 14, 2018, at 2:00 p.m. You were present, along with your union representative, _____. The purpose of the conference was to provide you an opportunity to respond to allegations of misconduct.”

Paragraph 2: Summarize the concern or allegation to which the employee was invited to respond. If you can’t summarize the charge, you can’t reprimand for misconduct! *Example:* “It was reported to me by the safety/security person, and by two other adult witnesses, that you physically manhandled an eighth grade student in the lunchroom on September 13 because he refused to clean up a mess at his table. In the course of the altercation, you wrestled briefly with the student, yelled at him loudly enough to be heard by other students and adults, and called him “an entitled brat.”

Paragraph 3: Summarize the employee’s response to the charge. *Example:* “I didn’t touch him” or “You got the wrong guy” or “The student attacked me.”

Paragraph 4: Indicate what investigation and what evidence you have relied upon in concluding that a reprimand for misconduct is appropriate. *Example:* “I have reviewed the written statements prepared by you, two adult witnesses, and several students. I have also interviewed each person who was in a position to see what happened. Based upon this investigation, I am persuaded that the accusation of misconduct is substantiated.”

Paragraph 5: State your reprimand and warn the employee that more serious disciplinary action will be taken if the unwanted behavior (or similar behavior) recurs. In other words, describe the conclusion you reached regarding the misconduct. *Example:* “Your conduct in this situation was unprofessional and unacceptable, in two respects. First of all, you may not place hands on a student for the purpose of either correcting behavior or encouraging compliance with a directive. To do so is a violation of School Board Policy. Second, you were uncooperative and untruthful during the investigation, implying strongly that others were lying about what happened because they “don’t like” you. Should you again be unable to control your anger and have inappropriate physical contact with a student (or adult), or otherwise behave unprofessionally in the presence of students and members of the school staff, the matter will be referred to the Labor Relations office, for more serious disciplinary action, up to and including the termination of your employment.”

Copies: Once the letter is complete, deliver it to the employee. Sometimes it works best to have a witness present when the letter is given but it is not required.

You are free to hold the letter in a “unit file,” in the case of teachers. However, send a copy of the reprimand to the Labor Relations office with a cover letter asking that the letter be placed into the employee’s personnel file. ***Remember: The Labor Relations office will not place a Letter of Reprimand into a personnel file without the acknowledgment of receipt signature.*** If the employee has refused to sign an acknowledgement of receipt, note on the copy to be sent to Labor Relations that the memo was “hand delivered on (list the date)” and indicate that the employee refused to sign. Sign and date your notation and forward the memo to Labor Relations.

If the problem that gave rise to the reprimand recurs, contact the Labor Relations office for assistance and direction.