

DUE PROCESS

Progressive Discipline

NEOLA Board Policy 1439

PROCEDURE

PURPOSE

The purpose of this administrative policy is to offer guidelines for implementation of disciplinary measures. When discipline, up to and including discharge, is implemented for "just cause", administration shall consider the employee's due process rights. It should be noted that it is not the intent of these rules and procedures to confer a "just cause" standard of employment security upon an individual who does not otherwise have such a standard reflected in the written terms of their individual contract, a collective bargaining agreement covering the position to which they are assigned, or otherwise as explicitly given by statute.

APPLICATION

This procedure shall apply to all administrators regardless of their location.

The application or implementation of this administrative policy must not be regarded as a precondition upon the right of the Intermediate School District to terminate or suspend an employee. The existence or application of the disciplinary procedures or standards outlined in this policy shall not constitute itself an employment contract or furnish any promise or representation of job security to any employee. It should also be noted that the District does not have to apply discipline in a progressive manner, but, rather, may impose discipline consistent with the seriousness of the staff member's conduct, as determined by the District. Disciplinary measures will be applied in conformance with the terms and procedures contained in any collective bargaining agreement covering an individual employee.

DEFINITION

Two issues must be considered with due process. First, is an examination of the employee's status, and second is an examination of the method used to implement progressive discipline. Employee status may be determined through an employment contract in the form of a collective bargaining agreement, or a written contract between the employee and the employer. The method used to implement progressive discipline apply "only" to those employees who have recognizable status through a bargaining agreement, or written contract. The method used to implement progressive discipline may be found in the district's policy manuals, government regulation, employee contracts, or employment handbooks.

Progressive discipline is the preferred method of discipline to be used by supervisors to provide notice to employees who are not meeting expected or communicated job performance standards, not behaving appropriately at work, or are not following policies and procedures. The intent of

progressive discipline is to help employees correct their issue(s) and become successful and productive. Progressive discipline provides supervisors with a consistent and fair process for handling disciplinary issues and protects the legal rights of the employee and employer. Supervisors should contact and work with the HR office when determining the level of discipline, if any, which may be required.

Although progressive discipline may be viewed as punitive and vengeful, it should be noted, that the key element of progressive discipline is to implement a method that attempts to address and correct an employee's violation of workplace rules and expected standards of employee behavior, misconduct, incompetency, misfeasance, neglect of duty, malfeasance, non-feasance, insubordination, adverse performance or other like reasons by providing clear and constructive feedback through a series of increasingly formal steps. The process typically includes one or more of the following steps: verbal counseling(s), written warning(s), an Individual Development Plan (IDP), successful completion of the IDP, and/or termination of employment.

Examples of Issues That May Be Subject to Progressive Discipline

The following is a non-comprehensive list of employee issues that may be subject to progressive discipline. Depending on the nature and severity of the issue(s), some of the following issues may subject an employee to immediate termination.

- Not meeting job requirements
- Inability to meet deadlines
- Poor quality of work
- Insufficient quantity of work
- Excessive absences
- Excessive tardiness
- Intentional abuse of company property
- Insubordination
- Stealing
- Arguing/fighting with co-workers
- Throwing objects
- Falling asleep on the job
- Harassment or violence
- Substance abuse

RESPONSIBILITIES

The Superintendent or his/her designee shall conduct an investigation of any alleged act or omission that could lead to disciplinary action, as appropriate to the situation. The investigation shall include, at a minimum, providing the employee with reasonable notice and the opportunity to respond to the complaint. If the investigation includes a meeting with the employee, prior notice of this meeting shall be provided to the employee for any discipline that may result in a

suspension or loss of pay. The meeting shall not proceed without the employee's designated representative; however, the meeting shall not be unduly delayed to secure the attendance of the preferred representative. The District may substitute another representative from the union to timely process the investigation

An administrator will investigate the nature of the violation, those involved, and relevant background information that may include mitigating as well as aggravating circumstances. The investigation will be both prompt and comprehensive. The investigation will extend to discussions with any witnesses to the event(s) upon which discipline of the employee is premised, including witnesses or other sources suggested by the employee suspected of misconduct. As the scale of disciplinary measures increases, the administrator performing the investigation should may be the same individual deciding upon a particular disciplinary measure.

The following procedures will be used for disciplinary actions up to and including unpaid suspension:

1. Oral or written notice will be given to the employee of the charges which may form the basis for disciplinary action.
2. Give the employee an explanation of the evidence discovered through investigation regarding the proposed disciplinary action.
3. Provide the employee with an opportunity to present reasons, either personally, and/or in writing, why the proposed disciplinary action should or should not be taken. This shall incorporate the right of the employee to dispute both the factual basis for a proposed disciplinary action as well as the degree of the particular disciplinary penalty to be imposed. Employees represented by exclusive bargaining agents under PERA shall be entitled to union representation in investigatory interviews in conformance with that statute.

DISCIPLINE

Types of discipline imposed by the administration may include:

Step 1: Verbal Counseling(s) and Documentation of Verbal Counseling

Verbal counseling should be timely and is designed to put the employee on notice that a specific behavior they are or are not engaging in is unacceptable. Verbal counseling is generally the first step of progressive discipline. Verbal counseling is intended to be used by a supervisor to notify an employee that an improvement is needed in the employee's work performance and/or behavior. This step is generally used for minor issues (e.g., not calling the supervisor as required if the employee is arriving late to work).

The supervisor should meet privately with the employee to discuss the issue. The employee has the right to have a representative present during any meeting that may result in disciplinary action. The supervisor should determine if the employee was aware of the issue, present the evidence available to support the claim and then allow the employee an adequate opportunity to rebut or explain the claim prior to the actual decision to assess discipline. As appropriate, the supervisor should be prepared to guide the employee to use available external resources that may assist him/her in resolving the issue.

The supervisor should follow up every verbal counseling session with written documentation regarding the issue, date on which the issue occurred, and the corrective action requested. At the supervisor's discretion and depending on the nature of the issue, a second verbal counseling may be given prior to giving a written warning. A supervisor may wish to consider putting an employee on an Individual Development Plan to be proactive in assisting the employee on correcting their behavior (see below).

The supervisor must notify the program director that an employee has participated in verbal counseling due to an unacceptable behavior(s). In such cases, the supervisor is not required to notify the Superintendent or the Director of Human Resources. The supervisor may have the program Director or the Director of Human Resources present during the meeting. There is no need at this time to place the written statement in the employee's personnel file.

Step 2: Written Warning(s)

A written warning is the second step of progressive discipline. A written warning provides notice to an employee regarding continued work performance issues and/or inappropriate workplace behavior(s) that have not been resolved after giving the employee one or more verbal counseling sessions (e.g., the supervisor has given an employee a verbal counseling about not calling when he/she will be arriving late to work and the employee has not taken corrective action to resolve the issue).

The written warning will include a chronology of the occurrences of misconduct, which include the date, type of misconduct, the intervention by the supervisor, the results of an investigation of the events, the conclusions drawn, and the consequences of the continued behavior. Additionally, the letter will include the desired performance and/or behavior expected from the employee moving forward that was not followed through with during verbal counseling. For assistance in developing a written warning, contact and work with the director of Human Resources.

The supervisor should meet privately with the employee to discuss the issue. The employee has the right to have a representative present during any meeting that may result in disciplinary action. As appropriate, the supervisor should be prepared to guide the employee to use available external resources that may assist him/her in resolving the issue.

Prior to the end of the meeting, the employee will be asked to sign the written warning indicating that he/she has read and understands the warning. If the employee refuses to sign the written warning, the supervisor should note this on the written warning. The original written warning should be placed in the employee's Personnel File and a copy provided to the employee.

At the supervisor's discretion and depending on the nature of the issue, a second written warning may be given prior to implementing a Performance Improvement Plan. A supervisor should plan on putting an employee on an IDP to be proactive in assisting the employee on correcting their behavior (see below). If the supervisor put the employee on an IDP after verbal counseling, the supervisor should update the most recent IDP to reflect conditions of the written warning.

In such cases as a written warning, the supervisor is not required to notify the Superintendent but must notify the program Director and the Director of Human Resources. The supervisor may have the program Director or the Director of Human Resources present during the meeting. The

written warning is given to the employee and placed in the employees file

Step 3: Individual Development Plans (IDP)

An Individual Development Plan (IDP) may accompany steps one and two but may also be the third step of progressive discipline. An IDP is a formal written plan used by the supervisor as another step to resolving a serious issue that has not been addressed by the employee after a verbal warning(s) and/or a written warning(s) have been given. The IDP is given for a specified time period and should be reviewed at a minimum of monthly. A supervisor should use reasonable judgment to decide the length of an IDP or contact and work with the HR Director for assistance.

An IDP should include key information about the issue, including a prior verbal counseling(s) or written warning(s), the work performance and/or behavior issue that must be addressed and corrected during the IDP period, and the dates on which the employee's work performance and/or behavior will be reviewed. For assistance in developing an IDP, contact and work with the HR Director.

The supervisor should meet privately with the employee and his/her representative to discuss the issue and to provide the IDP to the employee. The supervisor should develop the IDP in consultations with the employee. The employee should be given an opportunity to provide input regarding the IDP goals. An IDP must be developed in consultation with the employee and the administrator. Prior to the end of the meeting, the employee should be asked to sign the IDP indicating that he/she has read and understands the expectations. If the employee refuses to sign the IDP, the supervisor should note this on the IDP and should date the document. The original IDP should be placed in the employee's Personnel File and a copy provided to the employee. The supervisor may use the electronic evaluation system IDP document.

The intent of an IDP, as it is in all other progressive discipline steps, is successful resolution of the issue. Even if the employee successfully meets the terms of an IDP, that employee can be subject to additional disciplinary action if the same or other performance and/behavior issues arise in the future. If a serious incident occurs while an employee is in any phase of progressive discipline, the employee may be subject to suspension and/or termination of employment.

In such cases as an IDP, the supervisor is not required to notify the Superintendent but must notify the program Director and the Director of Human Resources. The supervisor may have the program Director or the Director of Human Resources present during the meeting. The written warning is given to the employee and placed in the employees file

Step 4: Suspension

Suspension with or without pay may occur after an employee has failed to meet the requirements of an IDP or a serious incident that has occurred during any part of progressive discipline

Suspension, with or without pay, can also occur when an employee, who has not participated in steps 1-3 of the progressive discipline process, is involved in a serious offense that warrants immediate suspension (for example, an employee is being investigated for unprofessional conduct).

Suspension, with or without pay, letters will come directly from the Human Resources office.

The supervisor, program director, and Director of Human Resources will meet with the employee to discuss the suspension and provide the suspension letter to the employee. The original suspension letter should be given to the employee and a copy maintained in the employee's Personnel File.

Suspension, with or without pay, will be used in cases where repeated, serious, and/or aggravated misconduct are evident. The length of suspension imposed will be determined by the Superintendent/Designee

Step 5: Termination of Employment

Any infractions of Board policy, government regulation, or unprofessional conduct will be dealt with as prescribed by Board policy or statute. The administration reserves the right to assess disciplinary actions it deems necessary based on the situation, and the number and type of offenses.

Termination of employment is generally the last step of progressive discipline after an employee has failed to meet the requirements of an IDP during a reasonably established timeline or a serious incident that has occurred during any part of progressive discipline

Termination of employment can also occur when an employee, who has not participated in steps 1-3 of the progressive discipline process, is involved in a serious offense that warrants immediate termination (for example, an employee is caught stealing in the workplace).

Termination letters will come directly from the Human Resources office. The supervisor, program director, Director of Human Resources and Superintendent will meet with the employee to discuss the termination and provide the termination letter to the employee. The original termination letter should be given to the employee and a copy maintained in the employee's Personnel File

DISTRIBUTION

This procedure is to be communicated to all administrators and bargaining unit representatives via the appropriate organizational chain of command.