KNOW YOUR RIGHTS!

Progressive Discipline

DISCIPLINING CERTIFICATED EMPLOYEES

Discipline procedures and the rights of certificated employees being disciplined are governed by a mix of state law (the Educational Employment Relations Act, the CA Education Code, "Ed Code" for short, and the CA Government Code) and our union contract (Article 33). Only management employees can discipline certificated employees.

Ed Code alone establishes the grounds for discipline (unprofessional conduct, unsatisfactory performance, evident unfitness for service, among others).

Our union contract establishes a progressive discipline procedure for lower levels of discipline only, short of suspension. Note that the contract does not give us rights to challenge the grounds for disicpline via a grievance; however, it does establish a limited right to grieve a violation of the progressive discipline procedure.

Higher levels of discipline (suspensions and terminations) are governed exclusively by Ed Code.

WHAT IS PROGRESSIVE DISCIPLINE?

In short, progressive discipline establishes a series of corrective actions that managers can take to address instances of misconduct by employees. The steps of progressive discipline are as follows:

1. Verbal Warning - Provided orally, not provided in writing of any form.

2. Written Warning - Provided in writing, and kept in the site/program personnel file.

3. Letter of Reprimand - Provided in writing, and kept in the HR personnel file.

4. Suspension and/or 5. Termination - Not covered by the contract and subject to Ed Code procedures.

These steps must be followed in a sequential order and only escalating in severity per each occurence of misconduct. Only in cases of "egregious conduct" may a supervisor skip the lower disciplinary steps, and issue a letter of reprimand.

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WHAT DOES "EGREGIOUS CONDUCT" MEAN?
Egregious conduct is not specifically defined within our union contract, but directly tied to a past training conducted by SDUSD. In this training they listed examples of actions that they considered either egregious or not ergegious.

Examples of egregious conduct included accessing adult websites on district hardware or networks and making copies of district keys for personal use. Examples of conduct that was not egregious included heated discussions with administrators, arriving late to work consistently, missing a required meeting, using district copiers and paper to make personal copies, failure to turn in report cards on time, using inappropriate language in the classroom, and dating an adult sibling of a student. Although this list of examples is not exhaustive, it serves to establish the severity of misconduct necessary to forego progressive discipline and issue a letter of reprimand.

RIGHT TO UNION REPRESENTATION
Under state law, all SDEA bargaining unit members have a right to the presence of a union representative (AR, or Association Representative) in any investigatory meeting that may result in discipline. In contrast, there is not a right to an AR being present in a meeting without questioning or investigative interaction. For example, a meeting where the employee receives discipline or is given a directive. Any member called into a meeting to investigate their conduct should always make a demand to have an AR present. Once the request is made, an AR must be made available, or the meeting must be postponed until one is available. A denial of such a request is a violation of state law.

WHAT CAN I DO IF I GET DISCIPLINED?
There is no way to challenge a verbal warning via the contractual grievance procedure, and the same applies if you get a subsequent written warning. If you get a written warning, without a prior verbal warning, you could file a grievance alleging a violation of the steps of progressive disicpline. If you receive a letter of reprimand, you may be able to grieve it. Contact your AR immediately if you receive discipline of any kind.

WHAT IF I GET A SUSPENSION OR A TERMINATION NOTICE?
Under state law, the district must give you a 45 or 90 day notice if they intend to suspend or terminate you. Our contract does not cover these procedures, and they are handled in accordance with the provisions of Ed Code. If you get such a notice, contact your AR immediately. Typically, an employee in this situation will need legal representation throughout the process. In these cases, free legal representation from the union is available exclusively to SDEA union members.

SOURCES: *SDEA Contract, Article 33; Ed Code Sections 44932-44938 and Sections 44943-44945*

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