

HR 101: Certificated Employee Discipline

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Agenda

- What we will cover:
 - General Concepts and Observations
 - Sources of Discipline
 - Concept of Progressive Discipline
 - Types of Disciplinary Documents
 - An Introduction to FRISK ®
 - Legal Requirements for High Level Disciplinary Documents
 - Common Mistakes
 - Hypotheticals

Certificated Employees

What is a certificated employee?

- Education Code section 44830 describes “certificated employees” as only those individuals who possess the qualifications to work in “positions requiring certification qualifications.”
- Generally, job requirement that the person must possess a credential issued by CTC
- This includes teachers, principals, substitutes, and certain district- level administrators.
- As a general rule, the hiring, release, and termination of certificated employees is governed exclusively by the Education Code.
- “Discipline” short of dismissal and other matters supplemented by CBA’s.



Certificated Employees

CERTIFICATED EMPLOYEE STATUS (AND CORRESPONDING RIGHTS)

- Only **four types** of teachers under the Education Code
- Education Code section 44915:
 - Permanent
 - Substitute
 - Probationary
- **Temporary Teachers**

Certificated Employees

- **PERMANENT STATUS**

- Ed. Code 44929.21(b): If reelected for the next succeeding school year after serving two **complete** consecutive school years in a position requiring certification qualifications.
- Complete = 75% of the days the schools are maintained (Ed. Code, § 44908.)
- **Exceptions:**
 - Certain breaks in service can delay
 - *Griego v. LAUSD* – leave of absence is NOT a break in service, but does NOT count as days of service toward permanent status
 - Resignation & rehire after 39 months



Certificated Employees

- **SUBSTITUTES**

- Education Code sections 44917 & 44918: Filling the position of a regularly employed teacher who is temporarily absent from service.
- **NOT subs:**
 - Vacancies, growth positions
 - “Resident” or roving subs (maybe)
 - Intervention teachers



Substitutes may be dismissed at any time (Ed. Code 44953)

Certificated Employees

- **PROBATIONARY TEACHERS**

- **Education Code section 44915: Everyone else (almost).**
 - Newly hired teachers in first 2 years
 - More than 2 years if less than 75%
 - Interns, PIPs
 - ROP teachers
 - Provisional credentials (STSP, 30-day sub permit)
- **Non-reelection**
 - Prob 0 and Prob 1 = any reasonable time prior to end of the instructional year
 - Prob 2 = not later than March 15 of the second year (Ed. Code 44929.21)

Certificated Employees

- **TEMPORARY TEACHER**

- Temporary Employees **must** be notified of temporary status before beginning in their assignment
- Typical **Temp** Assignments
 - Leave replacements, including positional leaves (Ed. Code, § 44920)
 - Categorically funded positions and backfills (Ed. Code, § 44909)
- Vacancies are NOT temp assignment
- May be released at any time prior to 75% of the number of school days
 - After, must be notified prior to end of school year (Ed. Code, § 44954)

Sources of Discipline

Certificated Employees

- Education Code (Causes and Procedure)
 - Dismissal and unpaid suspension (more than 3 days)
 - Sections 44932 and 44939
 - Sections 44934, 44934.1, 44936, 44944 (and others)
- Government Code (Procedure)
- Collective Bargaining Agreement



Progressive Discipline

Purpose

- Effective communication feedback
 - Verbal reprimand
 - Written reprimand
 - Other disciplinary notices
- Document (improvement/history of discipline)
- Proper evaluation techniques and maintenance of personnel files
- Legally sufficient evidence for discipline cases
- Identified in collective bargaining agreement



Progressive Discipline

Rationale

- Supports employee improvement
- Provides mechanism for success
- Ensures corrective action before punishment of suspension or separation
- A form of due process



Types of Disciplinary Documents

Oral Warnings / Conference Summary

Written Warning

Letter of Reprimand

Ed. Code § 44938: 45/90-Day Notices

Suspension Without Pay

Dismissal

Progressive Discipline

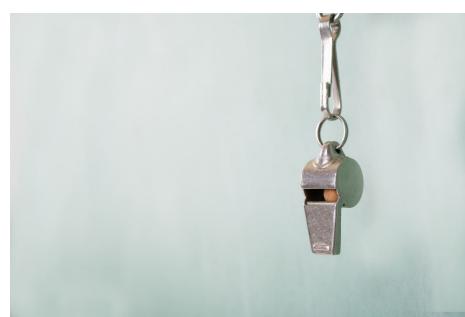
Where to Start

Factors to consider when determining the level of seriousness, and therefore, the level of intervention:

- Degree of harm
- Extent to which employee deviated from established rules
- Patterns of prior similar misconduct
- Mitigating or aggravating circumstances
- Prior ability to improve following notification of concerns
- Uniformity
- Limitations prescribed by law, contract or policy

Disciplinary Documents

- Used after informal or oral “coaching” is ineffective
- Precautionary warning of a performance problem and the need for correction
- Memorializes a conversation and provides directives
- Considered somewhat informal
- Personnel file?



Types of Disciplinary Documents

Written Warning

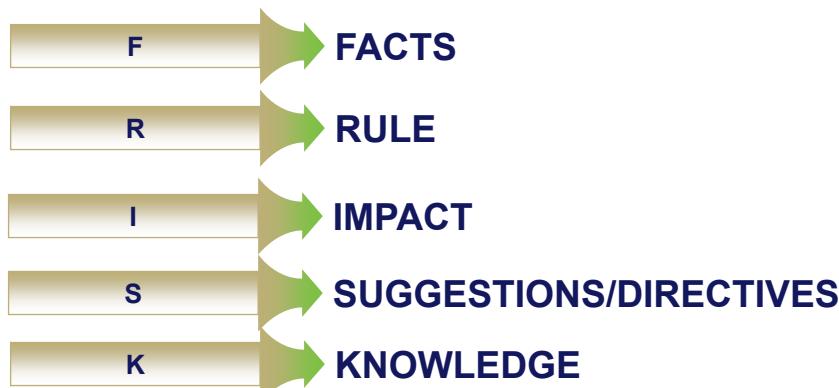
- Considered a formal admonition intervention
- Used in one of two scenarios:
 - Follow-up to prior conferencing
 - To document a “more serious” offense
- Acts as an official rebuke and notice that, without correction, will lead to more serious consequences
- Personnel file

Types of Disciplinary Documents

Written Reprimand

- Considered a formal reproval intervention
- Used in one of two scenarios:
 - Follow-up to prior conferencing and warning
 - To document a “more serious” offense
- Acts as an official reproach and notice that, without correction, will lead to more serious consequences
- Personnel file

FRISK® - Not Just a Catch Phrase



|| Facts

- The facts section should provide a narrative description that is **CREDIBLE** and **CLEARLY DESCRIBES** the specific conduct of concern
 - Provides context; passes the “stranger test”
 - Fairly accounts for any mitigating but insufficient justifications advanced
 - Establishes facts were gathered objectively to reach credible determinations



Just the FACTS

When?:
On _____ 2023, . . .

What? How?:
 . . . yelling at Amy Smith, a third grade student, making her cry. In front of other students you called her a dumb girl with irresponsible parents and
 You also disturbed Mr. Sing's music class. He heard your yells over the 20 member choir's rehearsal. He left his room (approximately 25 feet away) to see what was happening.



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Conclusions vs. Facts

General Conclusions

- John Jones was intoxicated.
- John Jones failed to follow instructions.

Supporting Facts

- After returning from lunch at 12:45 p.m. on June 19, 20XX, John Jones's speech was slurred. He staggered when he walked and fell against the file cabinets two times, and had a strong smell of alcohol on his breath.
- On December 12, 20XX, at 10:30 a.m. and again at 1:45 p.m., John Jones was directed by his supervisor to repair the lock on the door at Room G25. At 2:15 p.m., he still had not followed this directive.

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Communication “Tools” to Add Clarity

ADDING EXAMPLES:

- “The classrooms you were assigned to clean on October 12, 20XX were dirty. **For example**, there were gum wrappers and cookies on the floor in Room 25 and chalk and crayons on the floor in Room 26. See photo attached.”



ADDING VISUAL EVIDENCE:

- “The **attached lesson plan** you turned in on October 12, 20XX is not in compliance with my October 6, 20XX directive. The lesson plan is too brief and general for a substitute to follow because it does not delineate the instructional activities and objectives.”

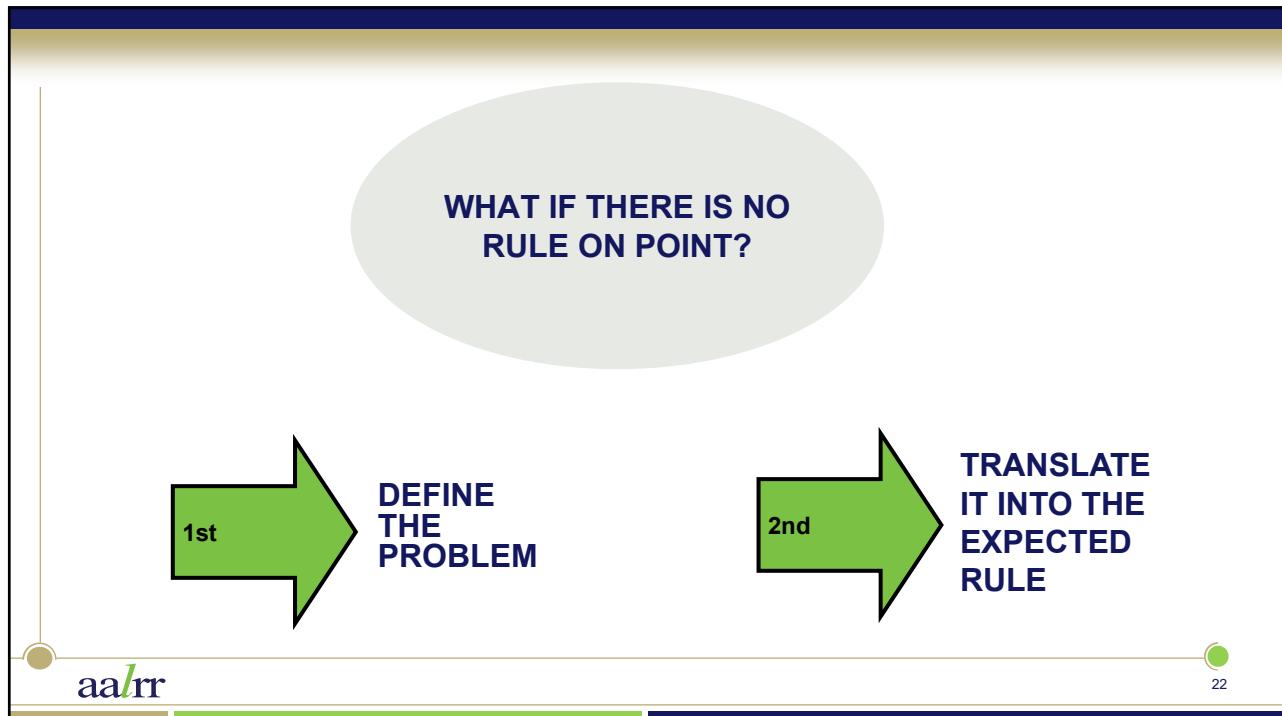


Rule

What Should the Employee Have Done?

- **Finding The Rule**
 - Federal/State/local laws
 - District policies/regulations
 - Collective Bargaining Agreements
 - Personnel Commission Rules
 - Job descriptions
 - Employee handbooks
 - Curriculum standards
 - Prior directives (In performance assessment or training documents; Staff meeting directives (oral or written))
 - If no rule, cite expectations





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What Should the Employee Have Done?

- Creating a Valid Rule Where One Might Not Exist
 - Reasonably clear and instructive
 - Reasonably related to efficient/orderly operations
 - Uniformly applied
 - Not in conflict with other rules / directives
 - Communicated

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Repeated Rule Violations

- Including prior similar repeated rule violations in the feedback message is important to:
 - Show evidence of pattern recurrence
 - Emphasize the **growing seriousness** of the employee's conduct to show behavior pattern
 - Highlight the evaluator's **awareness** of the problem to motivate change in behavior
 - Justify **harsher corrective action** under progressive discipline

Identifying Similar Rule Violations

Focus on similarity of rule violation, not the same facts.

MISCONDUCT

On April 6 the gardener broke three sprinkler heads with the lawnmower on the athletic field.

On May 3 the gardener broke a water line with a shovel while installing new sprinklers.

On May 27 the gardener left the lawn edger on the school lawn during a break and the edger was stolen.

RULE VIOLATION

Need to be attentive in avoiding the sprinkler heads while operating the lawnmower.

Need to be aware of existing water lines when excavating district property.

Need to secure district property to avoid possibility of theft.

COMMON RULE

Job carelessness

Impact

What Harm Was Done?

- To Whom? or What? and How?
 - Students | parents | coworkers
 - Vendors | community | others
 - District or other property
 - Efficient/orderly operations
 - Liability
 - Notoriety
 - Professional integrity | image
 - Standards of conduct



Why Describe the Harm that was Done?

- 1 Shows the **connection** between the unsatisfactory conduct or performance to the job.
- 2 Shows the seriousness of the employee's conduct by including the overall **context** of the deficient performance.
- 3 **Motivates** the employee to change by sharing the evaluator's perception of the effect of the employee's behavior on the workplace.
- 4 **Advocates** for those who are impacted to explain why the conduct must cease and/or why it must be changed.

Describing What Harm Was Done

- The adverse impact needs to be clearly communicated
 - Clear and complete impact facts
 - Avoid conclusions without supporting facts and concrete details



Suggestions/Directives

What Should the Employee do Now?

- Directives
 - Effective timeline
 - Clear command verb/unambiguous
 - Capture all anticipated related conduct
 - Consequences for noncompliance
- Suggestions
 - Specific techniques/resources
 - Personal assistance



Suggestions/Directives

The Difference

Suggestions and directions are equally important for employee improvement, but they are VERY DIFFERENT in EFFECT:

- Suggestions (recommendations) = IDEAS for change
 - Employee **NOT** Accountable
- Directions = MANDATES for change
 - Employee **IS** Accountable

Clear Description of Directed Conduct

BAD FEEDBACK EXAMPLES:

- Effective immediately, you are expected to be **courteous** when addressing student discipline.
- In the future, you are directed to treat co-workers with more **respect**.
- Effective immediately, you are required to use **appropriate** classroom materials.
- In the future, you must use **better judgment** in repairing district equipment.

Clear Description of Directed Conduct

GOOD FEEDBACK EXAMPLES:

- Effective immediately, you are directed to prepare lesson plans with more detail. You are to specify the subject matter, the instructional methodology and materials used to present the lesson, the objective, and time period for completion. **I have attached a sample lesson plan which contains the format I expect you to follow.**
- Effective immediately, you are to refrain from using anger and sarcasm as a method of criticizing negative behavior. **For example, you are to avoid yelling at your students as you did when you raised your voice during my classroom observation on September 15, 20XX, and asked your student John Sanders, "What are you, deaf?"**

Consequences for Noncompliance

• GOOD FEEDBACK EXAMPLES:

- Failure to comply with this directive **will** result in further corrective action.
- Failure to follow my instructions **will** result in disciplinary action, including the issuance of a letter of reprimand.

• BAD FEEDBACK EXAMPLES:

- Failure to follow my directive **may** result in further disciplinary action.
- Continued non-compliance with this directive **could** result in a recommendation of additional corrective action.

Knowledge

What Rights Does the Employee Have?



- Right to respond
 - Education Code section 44031
 - Collective bargaining agreements
 - District policies/regulations
 - Personnel Commission rules
 - *Miller v. Chico USD*
 - Effect on employment status

Sample – Letter of Reprimand

F On several occasions throughout the 20XX school year, you made culturally insensitive and offensive comments about and toward Latino students. Specifically, you singled out a group of Latino students and told them "You Mexican kids do not care about education," and told them, "none of my friends want to teach you." You also stated, "I don't have problems with my other students, it's you guys that are the problem." (Refer to *Witness Statement by students A, B & C, attached as Exhibit A.*)

R Your conduct violated District Board Policies 0410 and 5145.3, which mandate that District programs and activities be free from discrimination, and require employees to carefully guard against segregating or stereotyping students when providing instruction, guidance, supervision or other services. (Refer to *BPs 0410 and 5145.3, attached as Exhibit B.*)

I Your conduct negatively impacted the District and learning environment in your classroom. The District received multiple complaints from students and parents, and students no longer respect you and believe you are racist.

S To improve your conduct and meet District standards, you must immediately comply with the following directives:

- Conduct yourself in an appropriate and professional manner at all times. At a minimum you shall treat all students, parents, and coworkers with respect and dignity.
- Cease from making disrespectful, derogatory or discriminatory comments to or about District employees or students.
- Comply with District Board Policies 0410 and 5145.3.
- Refrain from any form of retaliation or intimidation against any students, parents or employees concerning any past, present, or future complaints regarding your conduct.
- Follow all previous and future directives given to you by site or District administrators.

If you have any questions about any of these directives, you are to consult your site administrator no later than _____. Failure to comply with these directives may result in further disciplinary action, up to and including dismissal.

K A copy of this letter will be placed in your file after 10 days. You may submit a written response, which will be placed in your file with this letter.

Other “Disciplinary” Documents

45 and/or 90 Day Notice

- Certificated employees only
- Education Code section 44938
 - 45 day notice to correct unprofessional conduct
 - 90 day notice to correct unsatisfactory performance
- Contains specific directives to improve behavior/performance
- Must attach most recent performance evaluation
- Must issue before dismissal for unprofessional conduct/unsatisfactory performance
- Personnel file

Other “Disciplinary” Documents

Certificated Evaluation (?)

- Education Code section 44660 et seq.: certificated employees must be evaluated
- Certificated Collective Bargaining Agreement Assistance Plans
 - PAR
- Get serious!
 - Especially probationary employees
- Personnel file

Other “Disciplinary” Documents

Last Chance Agreement

- Combine with voluntary unpaid suspension or other discipline (e.g., 45-day notice)
- Outlines misconduct and contains factual admissions
- Directives
- Consent to random testing/rehabilitation program
- Signature and informed consent
- Be careful: not a substitute for due process

Types of Disciplinary Documents

Suspension Without Pay Under CBA

- Looks similar to dismissal charges, but may not require the same amount of due process
- Check the Collective Bargaining Agreement
- Voluntary suspension in lieu of dismissal (see last chance agreement)

Suspension & Dismissal



Suspension & Termination

- Suspension and termination are the final levels of progressive discipline when other attempts to correct unsatisfactory behavior and performance have failed.
- Must be based on “cause” in accordance with Education Code.
- These forms of discipline trigger statutory and constitutional requirements.

The Employee's Right to Due Process

The Fifth and Fourteenth Amendments require that before property is taken from a person by the government, due process must be accorded to ensure fairness.

**Due Process
Must Be
Accorded to
Ensure Fairness**

Article I, Section 9 of the United States Constitution requires that before property is taken from a person by the government, due process must be accorded to ensure fairness.

The Employee's Right to Due Process

Sources of Rights and Procedures



- 5th and 14th Amendment Right to Due Process
- Education Code
- Government Code
- Collective Bargaining Agreements
- Board Policies/Administrative Regulations

The Employee's Right to Due Process

5th and 14th Amendment Right to Due Process

- Public employees have a property right in their employment, position and salary
- Before a public employee's property can be taken by the government, due process must be accorded to ensure fairness
- Once a public employee becomes permanent, the employee is entitled to due process, including:
 - Notice of the charges
 - An opportunity to be heard
 - Fair and impartial hearing
 - Right to be represented at own expense
 - Right to introduce evidence
 - Right to confront witnesses
 - Right to written notice of decision
 - Right to seek judicial review

Due Process

Divided into three parts:

1. Investigation Phase
2. Post-Investigation Phase
3. Disciplinary Phase

Investigation Phase

Investigation Do's

Investigator should be unbiased, neutral and unininvolved with the complaint incident

- District should be able to show investigator has relevant training
- Utilize the correct procedure
- Do ask open-ended questions to elicit facts rather than opinions

- Investigator should not be a party to complaint incident, biased or have a conflict of interest
- Do not reach conclusions until after speaking with the relevant individuals
- Do not rely on written statements only
- Don't be hesitant to follow up

Investigation Don'ts

Post Investigation Phase

Skelly Conference

- The California Supreme Court held, in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, that before a public employee is subject to a significant punitive action, he or she is entitled to a pre-deprivation meeting to ensure the government agency has reasonable grounds to believe the charges against the employee are true and can support the proposed action

Certificated Employees

Skelly Conference

- *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 - public employees are entitled to certain pre-deprivation rights including:
 - Written notice of proposed discipline (suspension, dismissal)
 - The reasons for the proposed discipline (charges setting forth specific acts/omissions)
 - A copy of the materials upon which the action is based (exhibits, statutes/policies violated, etc.)
 - The right to respond, either orally or in writing, to the authority initially imposing discipline before “a reasonably impartial, noninvolved reviewer” (provide notice of this right and give date and time of *Skelly* conference)

Disciplinary Phase

- Certificated Employees
 - Education Code sections 44934, 44936, 44941 provide that permanent employees are subject to disciplinary action for cause (probationary employees see Ed. Code § 44948.3)
 - Sections 44932, 44933 and 44939 provide causes for dismissal and suspension
 - Section 44938 prescribes additional notice requirements for charges of unprofessional conduct or unsatisfactory performance
 - Section 44944 provides procedures for hearings

Statutory Causes for Discipline

Education Code Section 44932

- Provides the allowable causes for suspension and dismissal
 - Immoral conduct/egregious misconduct
 - Unprofessional conduct
 - Dishonesty
 - Unsatisfactory performance
 - Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by state board/governing board
 - Alcoholism, etc.

Causes For Unpaid Suspension

Education Code 44939

A governing board may suspend the employee pending dismissal upon charges of:

- Immoral conduct
- Conviction of a felony or of any crime involving moral turpitude
- Incompetency due to mental disability
- Willful refusal to perform regular assignments without reasonable cause
- Knowing membership in the communist party
-

Certificated Employees

Education Code Section 44934

- Upon the filing of written charges, duly signed and verified, with the governing board, the governing board may give notice of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing.
- Written statement of charges shall specify instances of behavior and the acts or omissions constituting the charge so that the employee will be able to prepare his or her defense. It shall, where applicable, state the statutes and rules that the employee is alleged to have violated, and it shall also set forth the facts relevant to each charge.

Certificated Employees

Personnel File

- Education Code section 44031
 - Information of a derogatory nature (e.g. disciplinary letters) shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information
 - Must be given reasonable amount of time to review and submit response (10 days)
 - Failure to comply results in inability to use document against employee in disciplinary action

Dismissal Process

Overview of Procedural Steps

- Pre-*Skelly* Notice of Proposed Intent to Recommend Dismissal
 - May include suspension under 44939
- *Skelly* Meeting
- Post-*Skelly* Notice of Intent to Recommend Dismissal
 - May include suspension under 44939
- Board Action
- 30-Day Notice of Dismissal
 - Possible notice of suspension without pay under 44939
- Hearing date set
 - Triggers numerous additional procedural requirements prior to hearing
- Hearing before Commission on Professional Competence

Standard Dismissal Process

MOTION TO OVERTURN SUSPENSION

➤ Immediate suspension appeal procedures (aka “MIRS”)

When the board immediately suspends under Section 44939, employee may serve and file with OAH a motion for immediate reversal of suspension

- Determination by OAH is limited to whether the facts as alleged, if true, are sufficient to constitute basis for immediate suspension.
- Motion to be filed within 30 days of service of the notice of suspension
- Hearing on the motion to be held within 30 days of the motion being filed
- Decision must issue within 15 days of hearing (like a demurrer)
- If granted, effective within 5 days of service of the order, with make whole due within 14 days after service of the order

- Educ. Code, § 44939(c)

Standard Dismissal Process

Timelines for Hearing

- Hearing must commence within 6 months of employee's demand for hearing
- Continuance shall be only in cases of "extraordinary circumstances" as determined by ALJ
- Date established after consultation with employee, Board and employee's representative
 - If not able to agree, ALJ shall unilaterally set date
- Hearing must be completed within 7 months of demand for hearing, except for good cause
- Where substantial progress made in completing hearing within 7 months but cannot be completed, for good cause shown, presiding ALJ may extend hearing

Standard Dismissal Process

Four Year Rule

- No evidence or testimony of matters occurring more than four years before filing of the notice may be presented, except for allegations of an act described in Section 44010 or Penal Code sections 11652.2-1165.6 (designated sex offenses and child abuse);
- Evidence of records regularly kept by District may be introduced, but no decision shall be made based on charges or evidence older than four years, except designated sex offenses/child abuse.

- Educ. Code, § 44944(b)(2)

Standard Dismissal Process

Four Year Rule

➤ Four-Year Rule

- But see: *Atwater Elementary School District vs. Dept. of General Services* (Cal. 2007) which held under prior law that the four-year period in Section 44944(a) is not absolute, as “its bar may be evaluated in the context of equitable estoppel when the basis of equitable relief is established.”
- The Court did not delineate the specific equitable principles that could apply in any given case and indicated that the application of the principles will depend upon the particular facts of a given case. Some possible equitable principles include equitable tolling, equitable estoppel, fraudulent concealment, and delayed discovery

Standard Dismissal Process

Discovery

➤ Discovery Rules

- No written discovery – except for mutual disclosures
- Section 44944.05 requires that both parties provide to the other parties the following within 45 days of the demand for hearing:
 - The name and, if known, the address and telephone number of each individual likely to have discoverable information, along with the subjects of information relating to the allegations made in the charges and the parties' claims and defenses, unless the use would be solely for impeachment purposes.
 - A copy of all documents, electronically stored information, and tangible items that the disclosing party has in its possession, custody, or control relating to the allegations made in the charges and the parties' claims or defenses, unless the use would be solely for impeachment.

Standard Dismissal Process

Discovery

- A party's failure to make initial disclosures within the deadlines set forth in this section shall preclude the party from introducing witnesses or evidence not disclosed at the hearing, unless the party shows good cause for its failure to timely disclose.
- Limits on Oral Depositions
 - The school district may take the depositions of the employee and no more than four other witnesses, and the employee may take depositions of no more than five witnesses. Each witness deposition is limited to seven hours. An administrative law judge may allow the parties to conduct additional depositions only upon a showing of good cause.

- Educ. Code, § 44944.05

Standard Dismissal Process

Panel on Professional Competence

➤ Hearing Panel and Location

- Hearing to be held before a Commission on Professional Competence ("CPC"), except where parties stipulate/waive in writing to have matter heard by ALJ.
 - Educ. Code, § 44944(c)
- At a place selected by agreement among members of panel or as selected by ALJ
 - Educ. Code, § 44944(g)



Standard Dismissal Process

Panel on Professional Competence

- CPC Hearing Process/Panel Member Restrictions
 - One member chosen by employee, one by board
 - Selection no later than 45 days prior (previously 7 days) to date set for hearing
 - Failure to comply with deadline constitutes waiver to right of selection
 - Panel members shall not be employed by District or related to employee
 - Panel members must have three years' experience in the last 10 "in the discipline of the employee" (previously five years in the last ten)

- Educ. Code, § 44944

Standard Dismissal Process

Decision

- Decision of the CPC
 - Majority vote
 - CPC prepares a written decision containing findings of fact, determinations of issues, and a disposition limited to:
 - The employee should be dismissed
 - The employee should be suspended for a specific period of time without pay
 - The employee should not be dismissed or suspended
 - CPC cannot reduce dismissal to lesser penalty (e.g., probation or alternative sanctions)
 - Suspension pursuant to (1)(B) is available only in a "suspension proceeding authorized pursuant to EC 44932(b) (suspension for unprofessional conduct) or 44933 (unprofessional conduct)

- Educ. Code, § 44944

Morrison Factors

Decision

- Used to determine whether the employee's misconduct demonstrated unfitness to teach:
 - (1) the likelihood that the conduct may have adversely affected students or fellow teachers [and] the degree of such adversity anticipated;
 - (2) the proximity or remoteness in time of the conduct;
 - (3) the type of teaching certificate held by the party involved;
 - (4) the extenuating or aggravating circumstances, if any, surrounding the conduct;
 - (5) the praiseworthiness of blameworthiness of the motives resulting in the conduct;
 - (6) the likelihood of the recurrence of the questioned conduct, and
 - (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers

Top 13 Mistakes in Teacher Dismissal Cases

1. Not conducting evaluations that MATCH (meaningful, accurate, thorough, comprehensive and honest)! (And failing to release underperforming teachers during probationary period)
2. Not issuing a Notice of Unsatisfactory Performance after a teacher receives an unsatisfactory evaluation
3. Not imposing discipline on administrators who fail to conduct proper evaluations
4. Not training administrators in FRISK and failure to implement FRISK methodology

Top 13 Mistakes in Teacher Dismissal Cases

5. Not training administrators in how to investigations or otherwise failing to hire trained investigators to conduct a prompt, thorough and neutral investigation
6. Not formulating the charges as a piece of written advocacy – using proper tone and forceful language
7. Not accurately assessing your chances of prevailing at a hearing
8. Not hiring an experienced attorney for teacher termination cases.
9. Not accurately anticipating the costs associated with a hearing

Top 13 Mistakes in Teacher Dismissal Cases

10. Not issuing Notice of Unprofessional Conduct when clear opportunity to do so
11. Not issuing a NUC/NUP in conjunction with a suspension
12. Not fully understanding the principles of progressive discipline
13. Not reporting to CTC for ALL teacher dismissals and separations where allegations of misconduct pending (including sub releases) due to allegations of misconduct

Scenario #1

Kelly Kinder is a teacher recently assigned to fifth grade after 10 years teaching kindergarten. The first week of school, you notice students sitting in the corner of Ms. Kinder's classroom as a form of discipline. You meet with Ms. Kinder and direct her not to place students in the corner for discipline, and issue a written warning. Thereafter, while walking by Ms. Kinder's classroom, you see students writing sentences at their desk as a form of discipline, while Ms. Kinder is teaching the lesson. You meet with Ms. Kinder again and issue her a Letter of Reprimand, directing her to cease from having students write sentences for discipline. Two weeks later, you receive a parent complaint claiming Ms. Kinder sends her son to "time out" in the pod attached to Ms. Kinder's classroom. The parent informs you the student sits in the pod for the entire morning until lunch.

What level of discipline would you issue?

What rule(s) was violated?

What directives?

Scenario #2

High school teacher Franny Friendly sent a text message to a student asking him to meet for lunch over the weekend. Ms. Friendly has been issued 2 written warnings, and a letter of reprimand for similar misconduct (asking a student for his cell phone #, commenting on students' appearance, eating lunch alone with a student in her classroom), and was directed to act professionally at all times. The prior disciplinary documents span the past 5 years.

What level of discipline would you impose?

What rule(s) was violated?

What directives?

Disclaimer

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Question & Answer Session

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Thank You

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