

PROGRESSIVE DISCIPLINE GUIDELINES

PURPOSE

California State University, East Bay (CSUEB) as part of the California State University (CSU) system, and in conformance with the California Education Code, Title 5, and collective bargaining agreements negotiated with unions representing CSU employees, provides for a process of progressive discipline when an employee fails to meet the required standards of performance. The progressive discipline process establishes a series of clear, timely, consistent, and documented communications with an employee designed to ensure an understanding of job expectations, provide an opportunity to correct behavior, improve performance, and ensure "due process". Even before the progressive discipline process begins, an employee should be provided with a current job description, appropriate training, a description of applicable work rules and performance expectations, and regular performance evaluations. For information concerning the preparation of job descriptions and performance evaluations, [HR Forms & Procedures](#).

The goal of progressive discipline is to alert an employee of the need to correct specific behavior and/or to improve performance. The goal is not to punish the employee. It is of the utmost importance that this distinction be respected at all times.

Effective performance is acknowledged through verbal reinforcement, written performance evaluations outlining specific examples of accomplishments and contributions, and recommendations for salary increases. Poor performance should be addressed through a progressive pattern of pre-disciplinary interventions and formal disciplinary steps. Actions considered pre-discipline include Performance Improvement Plans (PIP), counseling, verbal and written warnings, and letters of reprimand. Formal discipline includes only three actions: suspensions without pay, demotion and dismissal. The purpose of progressive discipline is to ensure proper communication between supervisor/manager and employee, to provide an opportunity to reinforce appropriate behavior, and to correct unsatisfactory employee performance.

Typically, progressive discipline is implemented for an employee's failure or refusal to perform the normal and reasonable duties of the position, which includes, but is not limited to unsatisfactory performance, excessive absenteeism, tardiness, work rule violations, insubordination, or unprofessional conduct that may include verbal abuse toward another employee. Care should be exercised with regard to work rule violations, as many policies and work rules are subject to the collective bargaining process, and the specific work rule judged to have been violated may not have been negotiated with the applicable union.

***Important note:** failure to meet standards of performance is evaluated on a case by case basis. While a progressive pattern of interventions is generally recommended to*

facilitate opportunities for correcting behavior and performance, the severity of the incident will dictate the severity of the consequence. Human Resources managers will assist campus administrators in determining the most appropriate course of action in each case.

Employees should be advised of their right to consult with a union or personal representative prior to any discussion that could reasonably be construed as potentially adversely affecting working conditions or employment status and to have such a representative present at the discussion. Attention to this point is extremely helpful in avoiding process-related complaints and grievances.

SCOPE

These guidelines apply to all staff employees covered by collective bargaining agreements and to employees in certain designated confidential positions. These guidelines do not apply to individuals hired as faculty, managers in the Management Personnel Plan (MPP) or in excluded classifications (e.g., student assistants, work-study, special consultants, etc.). Where the provisions of this policy and procedure are in conflict with the collective bargaining agreements reached pursuant to Chapter 12, (commencing with Section 3560) of Division 4 of Title I of the Government Code, the collective bargaining agreements shall take precedence. Additionally, the Public Safety Officers' Procedural Bill of Rights shall pertain in cases where applicable. It therefore is strongly recommended that the applicable collective bargaining agreement be reviewed, and that Human Resources be consulted, prior to the implementation of any disciplinary action.

AUTHORITY

At CSUEB, the president has delegated authority to impose formal disciplinary action in the form of suspensions, demotions and dismissal to the vice presidents/cabinet level officers.

Pre-disciplinary action, which includes counseling, creation and implementation of a Performance Improvement Plan (PIP), oral and written warning(s), and letter(s) of reprimand, may be taken with or without consulting a Human Resources Manager, although such review of a PIP or letter of reprimand by Human Resources is recommended to ensure adherence to collective bargaining provisions. Formal disciplinary action, which includes suspension or demotion and dismissal, requires consultation with a Human Resources Manager and the concurrence of the vice president/cabinet level officer.

Requests for formal disciplinary actions are submitted by the "appropriate administrator" (manager within the Management Personnel Plan) to the appropriate Human Resources Manager who will review the documentation and prepare the recommendation and

employee notification for review and concurrence by University counsel and subsequent cabinet officer signature.

Immediate formal disciplinary action that is action taken without having followed the progressive discipline process, including suspension without pay, demotion or dismissal may be implemented in instances of serious misconduct where there is a clear and present danger to the University and/or any members of the University community. Such misconduct may include, but not be limited to, dishonesty, fraud in securing employment, theft, misappropriation of University property or funds, acts endangering the health and safety of others, immoral conduct, and conviction of a felony or misdemeanor involving moral turpitude. In such instances, an employee may be temporarily suspended with pay for reasons related to: a) the safety of persons or property, or b) the prevention or the disruption of University programs and/or operations while an investigation is being conducted. To implement an immediate suspension with pay, a Human Resources Manager must be contacted for authorization.

PROCEDURES

Dismissal of employees with temporary or probationary status

For employees with temporary or probationary status, if dismissal is deemed appropriate prior to the established end date for the temporary or probationary appointment, the progressive discipline process is abbreviated or eliminated. The appropriate administrator shall prepare and submit a memo to the Human Resources Manager requesting dismissal and outlining the deficient performance as well as the steps that have been taken to communicate with the employee regarding the improvements needed.

The Human Resources Manager shall prepare a notice to the employee either ending the temporary appointment or rejecting him/her during probation and shall secure the appropriate cabinet level signature. Normally, the employee shall be provided with two weeks' notice or pay in lieu of notice. If the employee has permanent status in another classification, the employee normally has the right to return to the classification in which he/she has permanent status. In rare instances, a temporary or probationary appointment may be ended immediately without engaging in the process described above. Consultation with Human Resources is required as soon as the dismissal of an employee with temporary or probationary status is considered.

PRE-DISCIPLINE or INFORMAL DISCIPLINE

There are several issues to consider prior to initiating progressive discipline for employees with permanent status:

- a. Have an accurate, comprehensive position description, clearly written performance expectations, and adequate training been provided to the employee?

- b. Are the standards of employee performance and rules of employee conduct being applied fairly and equitably?
- c. Has a Performance Improvement Plan (PIP) been created and implemented? Has information regarding performance expectations and deficient behavior been communicated regularly? Have written records been maintained of counseling meetings? Has the employee been provided the opportunity to respond? Has the progressive disciplinary action been initiated in a timely, consistent, and confidential manner?

Counseling is normally the initial step in the progressive discipline process. Problems should be identified and discussed with the employee in a confidential manner. The appropriate administrator should seek input from the employee about the perceived cause(s) of the problem, and possible solutions should be identified, considered together and agreed upon. Follow up should be provided, and the employee should be advised of the manager's perception of progress being made in addressing the problem. The purpose of counseling is to bring the problem to the employee's attention before it becomes so serious that it must become part of a written reprimand placed in the employee's file. Counseling and warnings may be repeated prior to the initiation of a written reprimand.

Verbal and written warnings and reprimands are intended to constitute informal notice to the employee of a specific behavior that needs to be corrected. Oral and written warnings are not submitted to the Human Resources Department nor are they placed in the employee's official personnel file, but they should be maintained by the manager as the potential basis for subsequent actions. A warning should describe the problem, indicate expected behavior, and outline the consequence for failure to correct the behavior. The appropriate administrator should maintain a record of the date and content of all conversations with an employee where a warning has been given and should retain copies of any written warnings. Managers should prepare a memo to file documenting verbal warnings and conversations when improvements to performance have been addressed. Note: CSU collective bargaining agreements vary regarding the definitions of warnings and reprimands, thus, it is important for managers to review the agreement(s) applicable to the employees for whose supervision they are responsible.

PERFORMANCE IMPROVEMENT PLAN (PIP)

When oral and written warnings fail to produce the necessary performance improvement, a Performance Improvement Plan (PIP) is often implemented as a means to set forth specific objectives that an employee must accomplish in order to bring his/her performance up to minimal acceptable standards. Since, presumably, discussions have already occurred about performance issues and documentation already exists, the PIP should first, reiterate the position description and position requirements. The PIP should then illustrate or describe the performance issue, improvement or expectation required, action steps required and date to be resolved. Space should be provided for status reports, comments, follow-up and established meeting dates.

Human Resources managers are available to assist with preparation. For examples of PIP documents [Performance Improvement Plan \(PIP\)](#).

Prior to the implementation of formal disciplinary action (demotion, suspension without pay, or dismissal), alternative employment actions may be considered such as a reassignment within the unit or division. If a reassignment is deemed appropriate, clear statements should be made to the employee that the reassignment is being made as part of a PIP and progressive disciplinary action will continue if performance is not satisfactory.

LETTER OF REPRIMAND

Normally, a written reprimand is given to an employee with a copy placed in the employee's official personnel file when counseling and the PIP process fail to produce the desired outcome. The written reprimand must be clearly identified as a written reprimand (e.g., "Letter of Reprimand – Performance" or "Letter of Reprimand – Attendance"). Since all personnel decisions regarding formal disciplinary action must be based on material contained in the employee's official personnel file, all deficient behavior should be carefully documented and all written reprimands explicitly identified as such. The reprimand should include a clear statement of the problem, the steps necessary to address the problem, and a statement that failure to correct the deficient behavior may lead to further disciplinary action. An indication (i.e., "cc: personnel file") that the reprimand will be placed in the personnel file should appear at the bottom of the reprimand. A meeting should be held with the employee to discuss the reprimand.

The written reprimand should contain, but is not limited to, the following:

a. What did the employee do? Clearly identify the specific conduct deemed deficient and describe the conduct. Include dates, names, places, events, witnesses, etc. Supplement general statements with specific examples to provide a proper factual foundation. The document should be a self-contained record; it should be able to be fully understood by an individual unfamiliar with the employee's unsatisfactory conduct.

b. How did the behavior violate a performance expectation/rule?

Include the rule(s) and/or expectation(s) relating to the deficient behavior, such as CSU policies or campus procedures, collective bargaining provisions, job descriptions, written work rules or written administrative memos/instructions/directives. Performance expectations/rules may include job efficiency, accuracy, adequate job skills, tardiness and poor attendance. Often, the unsatisfactory behavior is not directly tied to a clearly defined written standard or expectation but pertains rather to a problem with style or approach to work. This type of behavior may involve attitude and cooperation, discourteous conduct, poor professional judgment, job carelessness, and disruptive behavior. Where the inappropriate behavior has previously occurred, a notation should be made of the prior violation and resulting action, if any.

c. What is the impact of the employee's conduct? Cite the adverse effect of the employee's conduct on university operations and other persons especially where negative public notoriety occurs. Examples include: lack of dependability; unnecessary shift of duties to other employees; lack of continuity and consistency; unnecessary expenditure of supervisory time; interference in normal procedures causing delay in the completion of work; exposure to personal injury and university liability; destruction or damage to property and repair costs; and lack of compliance with required timelines.

d. What does the employee need to do to improve? Provide specific suggestions and/or directives for the employee to meet job requirements. Outline directions regarding the proper behavior or level of performance expected in the future. It is important to be clear and unequivocal and to include the effective timelines and the consequence(s) if the employee fails to comply (e.g., further disciplinary action will occur that may result in dismissal, etc.). In other words, the employee must know what must be done to correct deficient performance or behavior and when and what will happen if the performance is not corrected. Identify any assistance that the employee may require to meet job requirements such as additional training, equipment, etc.

For reference, click here [Attendance Written Reprimand and Unacceptable Job Performance Written Reprimand](#) for samples of Letters of Reprimand

e. What rights does the employee have in connection with the disciplinary action? The employee has a right to receive a copy of any document(s) including a letter of reprimand that could lead to an adverse personnel action prior to their placement in the employee's official personnel file. Refer to collective bargaining agreements for required timelines. The employee may in turn submit a response to these documents that must be included in the employee's official personnel file according to the provisions of the collective bargaining agreement in effect at the time. The employee also has the right to review his/her personnel file and obtain copies of all materials contained within it. When preparing a letter of reprimand, state at the bottom of the letter that a copy will be placed in the official personnel file and that the employee may submit a response. The employee may request a conference with the appropriate administrator to discuss the reprimand and may be represented at the conference by another employee or union representative. If such a conference is requested by the employee, it should be held in a timely manner.

When not otherwise specified by collective bargaining provisions, a letter of reprimand shall be removed from the official personnel file upon the employee's request after three (3) years from its effective date. If formal disciplinary action has been initiated and the reprimand is related to the action, the letter will not be removed. Nothing in this provision shall prohibit earlier removal of a reprimand upon mutual agreement of the manager and employee.

FORMAL DISCIPLINE

Consultation with a Human Resources Manager is required prior to the submission of requests for formal disciplinary action (suspension without pay, demotion, or dismissal). The request shall document prior counseling, warnings, written reprimands and prior discipline, and shall include all supporting documentation, (e.g., attendance records, copies of written reprimands). The documentation must describe the deficient behavior, identify the impact on the department, outline what actions have been taken prior to the request to communicate with the employee about the deficient behavior and efforts made concerning the correction of behavior such as a PIP process, additional training provided, reassignment, etc. and include the names of witnesses if appropriate to the deficient behavior. The request for formal discipline should contain the variables outlined above although each additional disciplinary action must be based on new or reoccurring unsatisfactory behavior/performance since the previous sanction. In situations in which the deficient behavior is believed to be illegal or is considered serious misconduct (e.g., presenting immediate danger to individuals and/or property), the appropriate manager shall immediately notify both the University Police Department and a Human Resources Manager.

The Human Resources Manager shall review the request for formal disciplinary action, and shall prepare a written recommendation and employee notification which shall be submitted to the designated University counsel to confirm legal sufficiency. The materials and all supporting documentation shall then be forwarded to the appropriate Vice President/Cabinet Level Officer for signature. Upon signature, the Human Resources Manager shall arrange for service of the notice in compliance with the applicable collective bargaining agreement. This normally means either forwarding the notice to the appropriate manager to be served on the employee in person, arranging for personal service, or sending the notice of formal disciplinary action to the employee by certified mail at the employee's last known address. The notice shall contain information regarding employee rights, including the right to consult the employee's union and/or personal representative.

Within five (5) days of receiving the notice of formal disciplinary action, the employee may provide a written statement and/or, by appointment, an oral statement, requesting a review by a Review Officer appointed by the President or designee, a process known as a Skelly Review. The Review Officer shall review all pertinent documentation and is empowered to affirm, modify or withdraw the notice.

THE SKELLY REVIEW

The role of the Review Officer is to conduct an objective review of the proposed discipline, the evidence and rationale given for it, and any response to the foregoing by the employee, and then to recommend whether the proposed disciplinary action should be sustained, modified in some specified way, or revoked. The fundamental matter to be determined by the Review Officer is the following: Did the alleged misconduct occur

and does the misconduct support the proposed sanction? The Review Officer should review all materials upon which the proposed sanction is based and then meet with the employee upon the employee's request. Information reviewed may require corroboration, but the Review Officer should be careful not to go beyond the initial information presented. It is not the function of the Review Officer to conduct a full trial-type hearing or investigation nor should the Review Officer substitute his/her judgment with respect to the discipline to be imposed. The Review Officer's authority and responsibility are limited to reviewing the materials presented, confirming that the misconduct occurred and assessing the response presented by the employee. Finally, although the employee may be accompanied by a representative (usually a union steward), the Review Officer has the right to decide that only the employee may speak and/or present information during the meeting.

The Review Officer must be impartial; as a result, normally, the individual selected to serve as the Review Officer should work outside the department/division bringing the action, should be removed from circumstances giving rise to the case and should not have a personal or professional interest in the outcome.

After completing the review, the Review Officer must submit a written report to the appropriate Cabinet Officer/Vice President and, at the same time, provide a copy to the employee. The report should describe the charges, outline the review process, include a summary of any oral and or written information presented by the employee, and state clearly both the recommended action and specific supporting reasons for that conclusion. If the employee submitted any written material during the review process, it should be attached. The Cabinet Officer/Vice President will make the final decision regarding the imposition of formal disciplinary action. Note: more detailed information regarding the role of Skelly Review Officers may be found in the CSU's Office of General Counsel publication "[Instructions for Skelly Review Officers](#)".

Within thirty (30) days of receiving the notice of formal disciplinary action, the employee may submit an appeal of the disciplinary action to the State Personnel Board. If an employee requests a State Personnel Board hearing, the Human Resources Manager shall notify the appropriate manager regarding the hearing, and shall assist the University counsel with necessary case preparation and presentation.

SUMMARY

In summary, due process requires that employees have: (1) the right to union or personal representation; (2) the right to be given all the facts giving rise to the disciplinary action; (3) the right to a hearing on the matter; (4) the right to receive a copy of all materials upon which the action is based; (5) the right to appeal the disciplinary action to a reviewing officer; and (6) the right to appeal the disciplinary action to the State Personnel Board.