

THE TENETS OF PROGRESSIVE DISCIPLINE

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October 10, 2023



PART I: OVERVIEW



**DEFINITION & PURPOSE OF
PROGRESSIVE DISCIPLINE**



DUE PROCESS & CONTRACTS



DISCIPLINARY PATHWAY



SUPERVISOR VS. HR ROLES

DEFINITION & PURPOSE OF PROGRESSIVE DISCIPLINE

- Most employees, when fairly approached, want to improve their job performance. (Give employees the benefit of the doubt.)
- The purpose of progressive discipline is to improve performance; the process should focus on clearly identifying the infraction (either in terms of performance or behavioral) *and* prescribing ways to remediate it.
- Because the behavior has to be identifiable, there *must* be evidence (i.e., one incidence or a series of incidences) to support the disciplinary action. You should *not* pursue disciplinary action simply because an employee is disliked by students and/or peers, does not engage in *voluntary* school activities (i.e., a "clock watcher"), or is a "problem child".



DUE PROCESS & CONTRACTS

- A (public) school employee, by definition, is a government employee and therefore has certain *guaranteed* rights under the U.S. Constitution.
- One of those rights is **DUE PROCESS**. In order for the government (e.g., a public school district) to deprive an individual of private property (e.g., an employee of a position that generates income), the government must ensure **DUE PROCESS** of law (i.e., follow a methodical procedure that adheres to rules and regulations in which the action is commensurate to the infraction).
- A union **CONTRACT** adds *another* layer of employee protections (e.g., grievance procedure, work schedules) in addition to those already enshrined in state and federal law.
 - ✓ SLSD-SLEA Collective Bargaining Agreement (local law)
 - ✓ Pennsylvania Public School Code (state law)
 - ✓ Fair Labor Standards Act (federal law)

Fifth Amendment

“No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Fourteenth Amendment

“No state shall make or enforce any law which...deprive[s] any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

DISCIPLINARY PATHWAY

Requires the supervisor to develop and issue an **IMPROVEMENT PLAN**

Verbal Warning

- Lowest grade of disciplinary action; issued by the supervisor.
- Designed to alert the employee of the concern and assumes the employee will self-correct.

Letter of Reprimand #1

- Document included in the employee's file; issued by the Director of Human Resources.
- Designed to inform the employee that improvement (intervention) is required.

Letter of Reprimand #2

- Document included in the employee's file; issued by the Director of Human Resources
- Designed to inform the employee that improvement is either poor or nonexistent and immediate change is required.

Requires the Administration to issue a notice and schedule a **LOUDERMILL HEARING** (i.e., a due process hearing)

Suspension without Pay

- Penultimate disciplinary action; issued by the Superintendent.
- Designed to alert the employee of the gravity of the infraction(s) through the loss of property (i.e., wages) and further loss is a potential outcome.

Demotion or Termination

- Final disciplinary action; issued by the Superintendent.
- Determination was made that the employee is unable to satisfactorily perform in current role and/or infraction is beyond remediation; loss of property is inevitable.

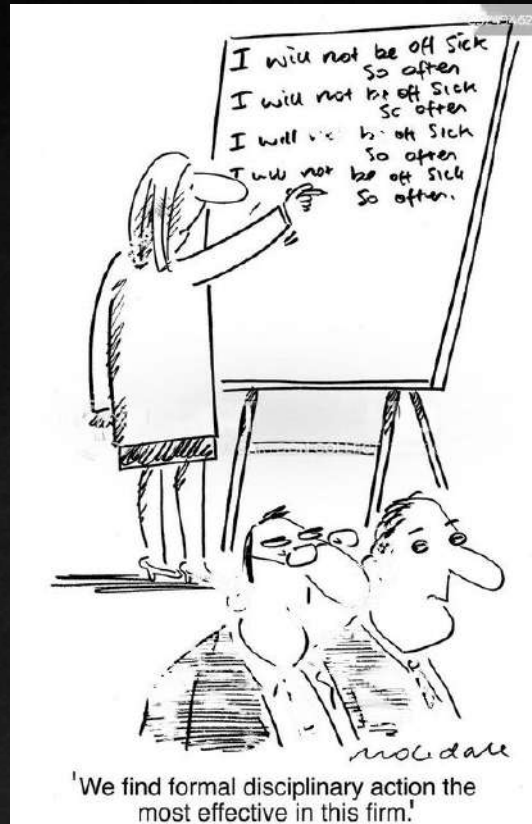
SUPERVISOR VS. HUMAN RESOURCES ROLES

SUPERVISOR ROLE

Has the ability to employ *informal* methods of remediation (e.g., mentoring, counseling, actionable steps for improvement).

EVALUATIONS and **IMPROVEMENT PLANS** are the domain of supervisors; you are responsible for documenting and monitoring the employee's performance.

Supervisors have personal relationships with employees; when employees engage with their supervisor(s), they tend to be receptive to criticism and may be motivated to improve.

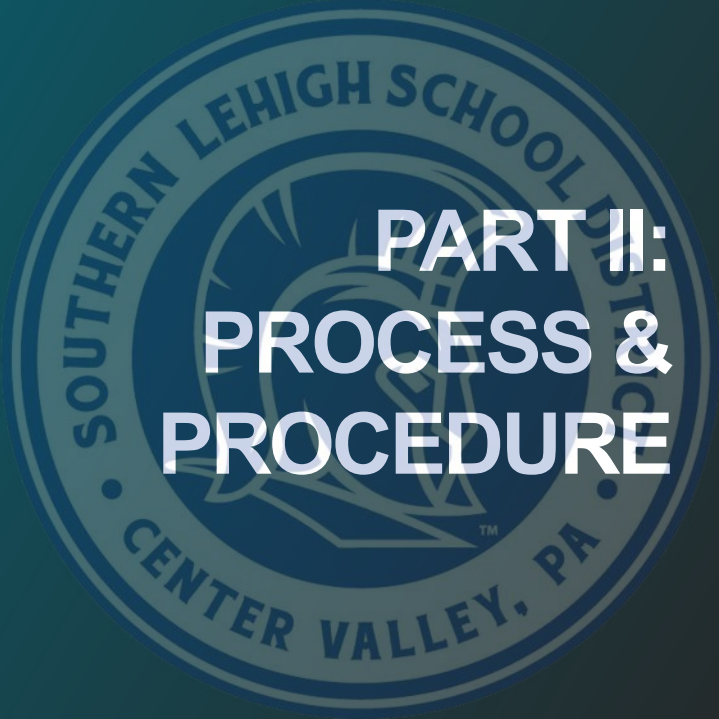


HR ROLE

Has the ability to employ *formal* methods of remediation (e.g., mandatory training, suspensions, demotions).

DISCIPLINARY ACTION is the domain of Human Resources; we must ensure that the disciplinary action is (a) commensurate to the infraction, (b) compliant with all relevant employment agreements as well as Board policies, and (c) has sufficient evidentiary support.

HR professionals have more formal relationships with employees; when employees engage with HR, they tend to be less receptive to criticism and motivated to defend.



PART II: PROCESS & PROCEDURE



**ADDRESSING
PERFORMANCE ISSUES**



**ADDRESSING
BEHAVIOR ISSUES**



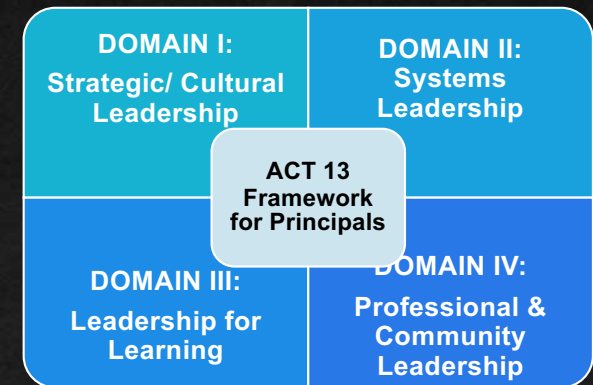
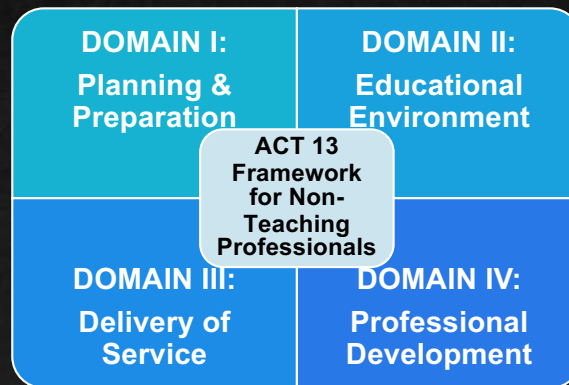
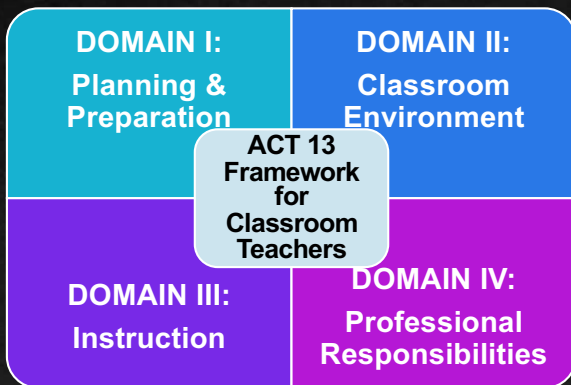
IMPROVEMENT PLANS



DISCIPLINARY LETTERS

ADDRESSING PERFORMANCE ISSUES

- Certificated employees are bound by the evaluation standards set forth in ACT 13 of 2020:
 - ✓ For certificated teaching staff, this is the **FRAMEWORK FOR CLASSROOM TEACHERS** and the **FRAMEWORK FOR NON-TEACHING PROFESSIONALS**.
 - ✓ For certificated administrative staff, this is the **FRAMEWORK FOR PRINCIPALS**.
- For certificated employees, a performance issue *should* be aligned to one or more sub/domain(s) in the relevant evaluation framework.
- For non-certificated employees, the performance issue *should* be aligned to one or more stipulated job duties/ responsibilities (in the vacancy announcement) and/or the pertinent evaluation instrument.



ADDRESSING BEHAVIOR ISSUES

- Behavior issues generally stem from personality conflicts or workplace dynamics as opposed to capacity or ability (performance issues).
 - ✓ Common behavioral issues are attendance/ tardiness, willful incomppliance/ defiance, inability to maintain confidentiality, etc.
 - ✓ A high-performing employee *can* exhibit poor behavior (and vice versa).
- The behavior issue *must* be one that has a direct bearing on a negative outcome. For instance, a churlish employee should *not* be identified for disciplinary action on the basis of personality alone. However, if said employee's behavior hinders the completion of a directive, peers' ability to perform their jobs, or even causes a hostile/ toxic working environment, the behavior *needs* be addressed.
- Because behavior is contextual, you have more latitude in determining *what* constitutes a behavioral issue *but* the behavior needs to be documented (e.g., situation, witnesses, effects) and, if persistent, needs to establish a pattern for more serious action.



IMPROVEMENT PLANS

- An **IMPROVEMENT PLAN** is a structured, written approach that clearly identifies the issue(s) that need improvement *and* steps needed to improve them; these steps must be empirical (qualitatively observable or quantitatively measurable) and timely (have specific deadlines).
- Improvement plans are a matter between the supervisor and the employee.
 - ✓ They are *not* inherently disciplinary. For instance, an employee who is rated proficient in Domain 1 (Planning & Preparation) and wants to be rated distinguished can request one.
 - ✓ Many employees (and their supervisors) see them as disciplinary actions because, in most cases, they are involuntarily imposed upon the employee because of some disciplinary infraction (performance or behavioral).
- Assuming it is tied to a disciplinary action, the improvement plan is usually introduced with Letter of Reprimand #1 or Letter of Reprimand #2.
 - ✓ The employee needs to be alerted about his/her progress at the time markers noted on the improvement plan.
 - ✓ If the supervisor does *not* monitor the steps and timely goals set forth in the improvement plan, the plan is considered null.

A Note About the Union

I am (generally) *not* in favor of union representation at improvement plan meetings; it can set an unnecessary precedence but am open to it on a case-by-case basis.

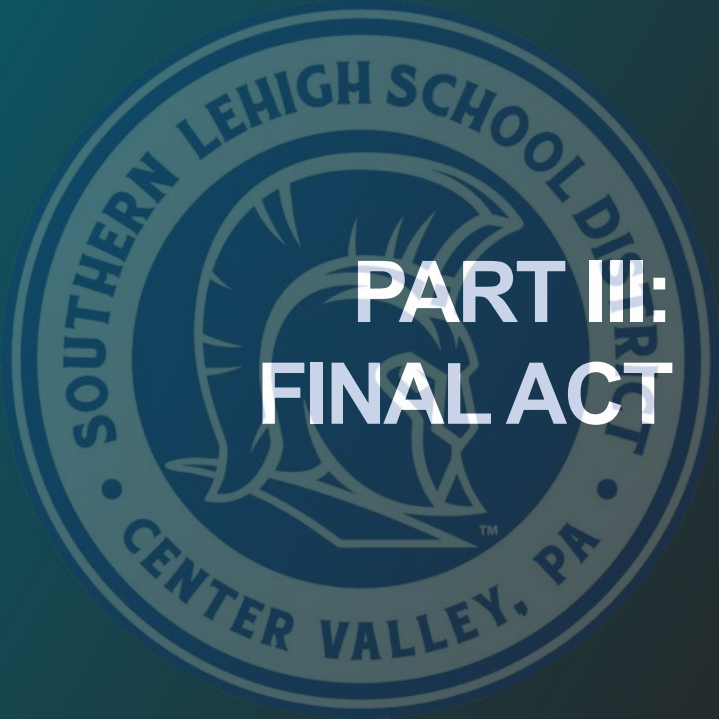
Disciplinary letters are grievable but improvement plans are *not*.

Under labor law, supervision is exclusively a management right; you are certificated by PDE and authorized by the Board of School Directors to supervise and evaluate employees – the union is *not*.

DISCIPLINARY LETTERS

- A **LETTER OF REPRIMAND** is formal document justifying a disciplinary action. The letter becomes part of the employee's personnel file.
 - The employee will be asked to sign the letter; signing the letter confirms acknowledgement and receipt *not* agreement.
 - Since a Letter of Reprimand is a serious disciplinary matter, an employee *can* choose to respond in writing; the response will also become part of the employee file. (A union can also choose to grieve the letter.)
- The Director of Human Resources issues Letter of Reprimand. Why?
 - ✓ **Uniformity:** All (my) Letters of Reprimand have three components – **context** (describes the incident), **disciplinary action** (explains the rationale for the action), and **remediation** (states what the employee will need to do next).
 - ✓ **Quality Control:** All letters are reviewed by the Superintendent and the Assistant Superintendent. This ensures that the letter accurately reflects the findings of any investigation and language/ style is appropriate.
 - ✓ **Strategy:** Senior administration may opt to have a given letter reviewed by legal counsel and/or SLEA leadership if there is a chance of escalation.
- You will have an opportunity to be a part of the discussion but do *not* issue your own Letters of Reprimand! Doing so, can place the Administration (of which you are part) in potentially contentious circumstances.





PART III: FINAL ACT



LOUDERMILL HEARINGS



**SUSPENSIONS &
DEMOTIONS**



TERMINATION



THE ROLE OF THE UNION

LOUDERMILL HEARINGS

- A **LOUDERMILL HEARING** is required if the Administration decides to pursue a disciplinary action in which the employee may lose compensation (property), either temporarily or permanently.
- The goal of the Loudermill Hearing is two-fold:
 - ✓ **THE EMPLOYER** presents the charges to the employee *and* the evidence used to formulate the charges.
 - ✓ **THE EMPLOYEE** has the opportunity to present counter evidence/ arguments that the employer must consider in determining the final disciplinary action.
- The employer is required by law to provide the employee with a notice outlining the charges *in advance* of the Hearing.

Loudermill v. Cleveland Board of Education

In 1985, the Supreme Court held that non-probationary civil servants had a property right to continued employment and such employment could not be denied to employees unless they were given an opportunity to hear and respond to the charges against them prior to being deprived of continued employment.

SUSPENSIONS & DEMOTIONS

- A **SUSPENSION** is a serious behavior-based disciplinary action in which the employee is temporarily removed from a position:
 - ✓ A **suspension with pay** is used when an employee is being investigated but a determination has *not yet been made*. (Since the employee is innocent until proven guilty, no compensation a/k/a property can be deprived.)
 - ✓ A **suspension without pay** occurs after a determination of guilt has been made and, thus, compensation can be deprived.
- A **DEMOTION** is a serious performance-based disciplinary action in which the employee is permanently removed from the current position but may be successful in a lower ranked one:
 - ✓ Demotions are not always a viable option because a vacancy must exist (or anticipated) at the time of the disciplinary action.
 - ✓ Additionally, the demotion often results in a loss of compensation (property) since the lower ranking position generally pays less than the higher ranking one.



TERMINATION

Of course, a **TERMINATION** is the most serious of all disciplinary actions and one that is not (or should not be) taken lightly. A termination generally occurs in one of following situations:

- ✓ A behavior-related infraction that is so egregious that it jeopardizes the safety or health of one or more individuals in the work environment.
- ✓ A performance-related infraction that is so egregious that it demonstrates obvious incompetence.
- ✓ A legal infraction in which the employee *is found guilty* of a criminal offense(s).

The decision to terminate to employee by the Administration is actually a recommendation to the school board:

- ✓ The employee is provided with a **Statement of Charges & Notice of Hearing** and placed on suspension without pay (i.e., all compensation stops).
- ✓ The employee (at SLSD) has 14 calendar days to decide whether to pursue a hearing in front of the Board of School Directors.
- ✓ If the employee decides to pursue a hearing, the Board of School Directors must decide the case; the Administration and the employee can hire an attorney(s) to represent them respectively.
- ✓ Once the Board of School Directors has voted upon the employee's termination at a public meeting, the employee is officially terminated.

IMPORTANT!

Your supervisor is *not* your employer. The employer is the **BOARD OF SCHOOL DIRECTORS OF THE SOUTHERN LEHIGH SCHOOL DISTRICT**, which is a governmental (public) entity.

The Board has hires a Superintendent of Schools to manage its educational system. In turn, the Superintendent of Schools recommends the hiring of supervisors (administrators), faculty (certificated professionals), and staff (all others).

THE ROLE OF THE UNION

(Virtually) all collective bargaining agreements contain a **JUST CAUSE** provision, which protects employees against unfair termination and forces employers to structure and deliberately consider their disciplinary approach:

- ✓ It protects employees against **capricious enforcement** (i.e., disciplinary action that is grounded in an emotional reaction rather than one that matches the infraction)
- ✓ It protects employees against **selective enforcement** (i.e., targeting an employee who may be “disliked” while letting another employee who is “liked” slide for the same infraction)
- ✓ It protects employees against **inconsistent enforcement** (i.e., a disorganized or novice administrator may choose to pursue one employee for an infraction whereas s/he may not have the time or energy to pursue another employee for the same or similar infraction)

When it comes to employee discipline, a union has two (2) avenues of redress on behalf of the employee:

- ✓ **Grievances:** A **GRIEVANCE** offers the employee an opportunity to challenge a disciplinary action in writing.
- ✓ **Arbitration:** If a grievance fails to remedy the issue, the employee can petition the union to pursue an **ARBITRATION**. Here the union and the employer seek a third-party (arbitrator) to settle the issue.





PARTING THOUGHTS

If there is one lesson to take away from this presentation, it is:

“The arbitrary is the enemy of the law...”

-Lord Mansfield
(Lord Chief Justice of England, 1756-1788)

Although progressive discipline can be time- and energy-intensive, it is a worthy endeavor since it forces us, as Administration, to adopt a structured and thoughtful approach to employee relations both in policy and practice.