



Preliminary Considerations

- Verify employment status (permanent, probationary, temporary, substitute, etc.).
- Determine whether the employee should be placed on paid administrative leave (usually for safety reasons or where the employee's presence at work would interfere with an ongoing investigation). Leave notices should be narrowly tailored to allow employee appropriate access to union representation and the right to defend themselves.
- Review applicable district policies and procedures, laws, and employment contract to determine the applicable process, including if progressive discipline is required.
- Review personnel file for past evaluations and documentation of prior disciplinary actions.
- Review available evidence, including witness statements, complaints, photographs/videos, emails, etc.
- Assess the pros/cons of available disciplinary actions, including the likelihood of success and estimated costs as well as impact to site if employee returns.
- Assess whether any of the misconduct is tied to a known or suspected disability (may trigger duty to explore accommodation options)
- Consider liability risks, including potential claims of retaliation, discrimination or whistleblowing.
- Consider whether mandated report is required

Keys for Effective Investigation and Documentation

- Investigate reports of misconduct per district policy or as an internal HR matter.
- An effective investigation typically includes interviewing witnesses, reviewing relevant documents, maintaining notes, and preparing a written report.
- Summaries and notes should be as detailed and precise as possible
- Based on the evidence obtained during the investigation, issue appropriate documentation based on the severity of the misconduct and applicable disciplinary procedures.
- An effective disciplinary document should state the relevant facts and rules, explain why the rules were violated and the impacts of the violation, and specify directives and assistance to improve.
- Facts should be specific and directed at the employee ("You did this" rather than "It was reported that X happened")
- Directives should be clear (include in both the affirmative and negative)
- ALL relevant evidence supporting the discipline should be attached as an exhibit
- Documentation should be properly archived for future access.

Termination Process

If determined that termination is the appropriate disciplinary action, ensure all procedures are precisely followed. These will differ based on the type of employee (certificated vs. classified, permanent vs. probationary, etc.) and may be influenced by board policies and regulations or a collective bargaining agreement. A typical process is as follows:

- **Notice:** Notify the union (if applicable) and employee of intent to move forward with termination. If appropriate, discuss potential for voluntary resignation in lieu of moving forward with formal charges. Resignation agreements are subject to Board approval.
- **Charges:** If the action will proceed, issue termination charges per the applicable procedure. These will typically include the grounds and facts supporting the dismissal.
- **Right to Pre-Disciplinary Meeting and Appeal:** If applicable, provide the employee with an opportunity to contest the proposed termination before it proceeds; this is sometimes referred to as the "Skelly" process. If the termination will proceed, specify the process to appeal.
- **Evidentiary Hearing:** If the employee appeals, the district will have the burden of proving the charges at a hearing. The employee will have a right to present evidence in their defense. Hearings are typically before a third-party neutral, but some districts also allow for the governing board to hear a dismissal or suspension charge. There may be strategic considerations to both.
- **Final Action:** If the termination is sustained at a hearing, or if the employee fails to appeal, steps are taken to finalize the termination, including (if applicable) Board action in closed session.
- **CTC Report:** For certificated employees, report the resignation or termination to the Commission on Teacher Credentialing, as required by law.

When to Consult Legal Counsel

- If proceeding with discipline carries a risk of liability.
- If an outside investigation is needed, including on the risk of liability.
- To review and strategize about an investigation blueprint or the preliminary findings of an investigation.
- To assist in preparing termination charges and representing the district in an evidentiary hearing.
- To negotiate employee resignations with opposing counsel and/or unions.

To attend board and personnel commission meetings to guide and advise them through the termination process, as needed.

To ensure all legal requirements are met before, during, and after discipline is issued, including compliance with the Education Code, collective bargaining agreements, and personnel commission rules.