

**SHELBY COUNTY SCHOOLS
PROGRESSIVE DISCIPLINE GUIDE**

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Important Contact Information

Equity Compliance – Barnes Building, Room 103 – 416-5323

Human Resources – Barnes Building – 416-5304

Office of Professional Standards – Barnes Building, Room 103 – 416-5323

Risk Management – Frances E. Coe Administrative Building, Room 152 – 416-5515

Security – Frances E. Coe Administrative Building, Room 145 – 416-5773

Shelby County Schools Website: www.scsk12.org

Board Policies: <http://www.scsk12.org/policy>

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Preface

This guide describes the basic elements of progressive discipline and serves as a resource for those with supervisory responsibilities. Use this guide as a reference and procedural guide in determining when disciplinary action is necessary, what level of discipline is appropriate, and how to administer discipline.

We recognize that most employees only need to be properly trained and be informed of the rules in order to be positive, productive employees. However, there are times when the supervisor must use the discipline process in order to get the employee's attention and attain the desired result. Supervisors are encouraged to make sure that the employee has been properly trained and informed prior to resorting to the discipline process. This guide details how to evaluate a situation prior to taking any disciplinary action, including the investigation process. A checklist of questions along with sample disciplinary letters is also provided to help guide the supervisor through the disciplinary process.

The Office of Professional Standards is responsible for assisting those with supervisory responsibilities in administering the disciplinary process in conformity with board policies and the Memorandums of Understanding. The procedures of any Memorandum of Understanding will take precedence over the procedures in this guide. When considering any disciplinary action, the Office of Professional Standards is available to provide supervisors with assistance. At the more advanced disciplinary steps (suspension/demotion/termination), SCS requires that the supervisor refer the employee to the Office of Professional Standards. Managers may utilize the electronic disciplinary referral system to refer an employee.

Introduction to Progressive Discipline

In order for discipline to be effective and correct employee behavior, it must have certain fundamental characteristics. Discipline must be progressive, consider past practice and equitable treatment, and meet the test of just cause. The principle of "progressive" discipline involves informing the employee of the problem and the need to correct it, and then using increasingly stronger disciplinary measures if the employee fails to correct the problem.

In most situations, the problem will first be brought to the employee's attention with a counseling session. During counseling, the supervisor should make sure the employee is aware of the problem and impress upon the employee the importance and necessity of correcting the problem. Most employees will correct the problem through such counseling. If the problem continues, disciplinary action may be initiated. Although counseling is not recognized as a formal disciplinary step, it is strongly recommended to retain a written record of counseling including dates. It is expected that in most cases, counseling will precede the formal disciplinary process.

The formal disciplinary process may include a documented oral reprimand, a written reprimand, suspension, and termination of employment. For most problems, each step in the complete process is necessary. For more serious problems the earlier steps may be eliminated. The degree of discipline taken must correlate to the seriousness of the offense and the employee's record. Discipline should be taken at the minimum level necessary to bring about correction of the problem. If the problem is not corrected, more severe action will be taken, up to and including termination of employment. Other factors to consider when determining the appropriate discipline are the level of the employee's position and the type of position. For example, managers and supervisors are held to higher standards of performance and behavior. Discipline can progress to the final step, which is termination of employment.

Steps in the Progressive Discipline Continuum

- Counseling – 1st Minor Offense
- Oral Reprimand – 2nd Minor Offense
- Written Reprimand – 3rd Minor Offense/1st Major Offense
- Suspension Without Pay – 4th Minor Offense/Serious Offense
- Termination of Employment – 5th Minor Offense/Serious Offense

There are no formulas or set rules that will apply to all situations and give the “answer” to the proper disciplinary step to take. Each disciplinary action will depend upon the nature of the offense and the related circumstance.

The Steps of Progressive Discipline

At each step of the progressive discipline process, the supervisor must ensure that certain things occur:

1. Conduct a thorough investigation and make sure the employee has done (or not done) whatever you are considering disciplining for.
2. Meet with the employee and provide an opportunity for representation for the employee during the investigative meeting as well as in any follow up meeting.
3. Clearly identify the problem and attempt to ensure the employee understands.
4. Allow the employee the opportunity to respond to the allegations.
5. Clearly explain to the employee the expected behavior.
6. Inform the employee of the consequences if the problem is not resolved.
7. **Document the disciplinary action.**
 - a. **Counseling** – An opportunity for the employee and the supervisor to informally discuss work-related problems and concerns. The counseling session is designed to help the employee:
 - Recognize the mistake or deficiency.
 - Accept the standard that is required.
 - Clarify expectations and standards.
 - Understand the consequences of failing to meet the standard.
 - The counseling session should be documented with a memo to the administrator’s employee desk file.
 - b. **Documented Oral Reprimand** – Used to get the attention of the employee while the situation is still correctable. The primary purpose of this step is to alleviate any misunderstandings and to clarify the direction for necessary and successful correction of the problem. An oral reprimand must:
 - Clearly indicate the nature of the problem, cite the work standard, rule or policy governing the situation, and explain precisely what corrective action is expected.
 - Point out that future behavior of a similar type may result in more serious disciplinary action.
 - Must be confirmed in writing, clearly defined as an “oral reprimand” with a copy placed in the employee’s file at the work site.
 - Advise the employee that a copy of the reprimand will be placed in his/her personnel file and forward a copy to the Office of Professional Standards.

c. **Written Reprimand** – Utilized when prior counseling sessions and/or the oral reprimand have not resulted in satisfactory changes of behavior. A written reprimand may or may not be preceded by an oral reprimand, depending on the type of violation. When issuing a written reprimand please:

- Include a review of prior disciplinary action taken.
- Notify the employee of the specific work rule or standard being violated.
- Place the employee on written notice that corrective action must be taken.
- Base the written reprimand on facts and information of record as opposed to hearsay and unfounded conclusions.
- Keep a copy in the employee's personnel file at the work site.
- Advise the employee that a copy of the reprimand will be placed in his/her personnel file and forward a copy to the Office of Professional Standards.

d. **Administrative Leave, Suspension, or Demotion**

- **Suspension**
 - May be used when the employee has not responded to counseling, oral or written reprimands or commits a more serious rule violation that warrants suspension for a first offense.
 - The Office of Professional Standards must handle disciplinary issues that may warrant suspension.
- **Administrative Leave**
 - Examples of situations where the employee may need to be removed from the workplace before an investigation can be conducted may include sexual harassment, disorderly conduct, or other situations where the employee presents a potential threat to other employees.
 - The supervisor should contact the Office of Professional Standards prior to sending the employee home unless there is an immediate need to remove the employee from the workplace.
 - Administrative Leave is imposed with the understanding that a final decision relative to the appropriate disciplinary action will be made after the investigation.
 - If there is no cause for disciplinary action, the employee will receive pay for the regular earnings lost during the suspension.
- **Demotion**
 - Disciplinary demotions may be in the form of reduction in rank, reduction in pay, or both.
 - Demotion in rank refers to the removal of an employee from his present position to one of less responsibility.
 - The Office of Professional Standards will handle disciplinary issues that may warrant demotion.

e. **Termination-** If all previous steps of the disciplinary process have been unsuccessful, the employee may be terminated from employment. Certain violations may warrant immediate termination. Because of the severity in the loss of one's job and the probability that taking such an action will result in a grievance, appeal, or possibly legal action, it is important that employee dismissals not be done in haste and only after a thorough investigation. At minimum, the investigation should provide assurances that:

- The employee did, in fact, commit the act.
- Substantial evidence of guilt is available.
- The employee was aware or should have been aware of the consequences of the act.
- The employee's entire work record, good and bad, has been considered.
- The same rules are applied uniformly to all employees.
- The credible witnesses provide essentially the same story.
- The penalty of dismissal is reasonably related to the seriousness of the offense.

Before terminating an employee for unsatisfactory job performance, the Office of Professional Standards will consider the following:

- Has the supervisor fully explained to the employee what he or she is supposed to do? Pointed out how the work is to be done? Is there no possibility of a misunderstanding on these two points between the supervisor and the employee?
- Are the requirements for this employee the same as for those for other workers in similar jobs? Do these requirements compare favorably with those established by other supervisors for similar tasks? Are your requirements reasonable?
- Can you clearly show that you have seriously attempted to train the employee in the skills and knowledge required by the job? Have you given the employee time to develop the necessary skills after training?
- Have you discussed the employee's performance with him/her? Does the employee actually know that his/her performance is below that required of the job? Have you told the employee exactly what improvements must be made in order to meet job requirements?
- Have you followed established procedures by notifying the employee in writing of his/her unsatisfactory performance, and what needs to be done to bring the work up to satisfactory levels? Was the employee advised of the length of time you are allowing to bring the work up to a satisfactory level? Have you explained what satisfactory work is? Are copies of all such notices in the employee's official personnel file? Was the employee required to sign each notice and given a copy?
- Will your action withstand scrutiny from others, such as the HR Associate Superintendent, a court of law, or a board hearing?

Prior to taking formal termination action, the Office of Professional Standards must ensure that the employee has received procedural due process. This procedure requires the Office of Professional Standards to have a conference meeting with the employee, which includes, but may not be limited to:

- Informing the employee of the charges.

- Providing the employee with an opportunity to respond to the charges.
- Having representation present, if requested.
- Having the employee's response given proper consideration.
- Providing a decision in a reasonable amount of time.

Following the disciplinary conference and after double-checking the facts and all alternatives, if it is still decided that the only course of action left is dismissal:

- A written notice will be provided to the employee at the time the action is taken. If the employee is not available and the notice must be mailed, it will be sent by certified mail to ensure delivery is made. If the notice is returned unclaimed by the Post Office, the letter will be placed in the employee's file in the Office of Professional Standards.
- The employee is informed of the reasons for the dismissal with each incident or offense identified. Names, times and dates, are given when possible.
- If the employee resigns in lieu of termination, the Office of Professional Standards team member will advise the employee that he/she is not eligible for rehire and check the appropriate box with their signature (See Resignation Form – Page 32).

Elements of Documentation





In most situations, these steps should be taken regarding all disciplinary actions unless the behavior or performance falls into the category of a major infraction.

Documentation Checklist

When documenting misconduct, each document describing employee performance deficiencies should contain most, if not all, of the elements identified below:

- Date the document was prepared.
- Printed name of the person preparing the document.
- A description of the location, date, and time of the event(s).
- Identification of alleged perpetrator, victim(s), and all witnesses to the event.
- A description of what occurred: *Provide an objective recording of sensory observations, not subjective conclusions or value judgments.*
- If applicable, include a description of the severity of the act.
- Include all relevant documents: *i.e. photographs, videos, recording, and send via EORS, board mail, or e-mail.*
- If adhering to progressive discipline, provide a copy of all previous discipline when referring an employee to the Office of Professional Standards.

Conduct a Thorough Investigation

- Who was responsible for the incident?
- Who witnessed the incident?
- What actually happened?
- When did it happen?
- Where did it happen?
- Why did it happen?
- How did the incident or situation occur?
- Cooperate with local authorities (i.e., SCS Security, Sherriff Dept., DCS).



At each step of the progressive discipline process, the supervisor must ensure that certain things occur:

1. Conduct a thorough investigation and make sure the employee has done (or not done) whatever you are considering disciplining for.
2. Meet with the employee and provide an opportunity for representation for the employee during the investigative meeting as well as in any follow up meeting.
3. Clearly identify the problem and attempt to ensure the employee understands.
4. Allow the employee the opportunity to respond to the allegations.
5. Clearly explain to the employee the expected behavior.
6. Inform the employee of the consequences if the problem is not resolved.
7. **Document the disciplinary action (dispositions should be referred to ER).**

Disciplinary Offenses (Behavioral and/or Job Performance Related)

a. Misconduct including but not limited to:

- Attendance problems
- Dishonesty and related problems
- Behavior problems

b. Performance Issues:

- Failure to complete work assignments
- Producing substandard products or services
- Failure to meet established performance standards

The Office of Professional Standards will handle all violations involving the following offenses:

- Abuse (or allegations of) of students, or any other inappropriate conduct with students, staff, or parents.
- Assault (or allegations of) or any other type of workplace violence.
- Possession or under the influence of alcohol or illegal narcotics while at work.
- Referrals from supervisors, administrators, and principals for violations occurring after the written reprimand step.

Systematic Process to Review and Evaluate Disciplinary Issues (What Process is used to determine the level of disciplinary action?)

- a. Review the rules
 - Review of Board policies and rules for reasonableness and appropriateness as applied to the incident or offense.
- b. Review the employee's record
 - Review of performance appraisals and personnel file documentation of prior offenses of a similar nature.
- c. Review the evidence
 - Review of work records, incidents reports, witness statements and performance appraisals.
- d. Review consequences
 - Review of the effect of the offense or incident on the employee's continuing ability to perform, and the department, school, or district's ability to meet its obligations to determine severity of discipline.
- e. Review past practice
 - Review of the history of rule enforcement pertaining to the offense or violation.
 - Review of prior record of disciplining employees for similar (mis)conduct.
- f. Review attitude
 - Review of the likelihood of a recurrence of the offense or violation.
 - Review of the employee's understanding and acceptance of the rule.
- g. Review excuses
 - Review of any mitigating factors or concurring causes to determine severity of discipline.

Questions relative to determining the severity of discipline:

1. Employee's record - Does the employee have a prior record of similar offenses, or is this a first offense? Does the employee otherwise have a good record of satisfactory performance?
2. Consequences of the act - Were the consequences such that there would be financial or other liability to the district or school? Would the act affect the district or employee's ability to carry out assigned responsibilities?
3. Mitigating factors - Were there intervening factors that either caused or had some effect on the employee's alleged act?
4. Attitude - Is the type of discipline contemplated necessary in order to convince the employee that the conduct cannot be tolerated?
5. Past practice - Is the discipline to be administered consistent with the discipline administered in prior similar cases?

Shelby County Schools Table of Disciplinary Offenses and Penalties

Category A -This category of infractions generally includes acts of misconduct of a most serious nature that severely impact students' safety and the operation of the district and are considered "major infractions". Major infractions are violations of Shelby County Schools Policies that are so egregious or damaging to the district or individuals that disciplinary steps may or may not be followed. These infractions require a mandatory referral to the Office of Professional Standards.

1. Conviction of a felony or misdemeanor that involves theft of property, alcohol/drug use, assault (including domestic violence against another district employee).
2. Any indication of child abuse or neglect of a child by the Department of Children Services.
3. Unlawful possession, sale, or evidence of use of drugs/narcotics on district property or at a district sponsored activity.
4. Unauthorized possession of a firearm on district property.
5. Being under the influence of and/or evidence of drinking or possession of alcoholic beverages during work hours.
6. Physical or verbal intimidation or threats to others.
7. Physical violence or threatening bodily harm to others including transmitting by an electronic device any communication containing a credible threat to cause bodily injury or death to others and the transmission of such threat creates actual disruption in the work environment.
8. Sexual, racial, ethnic, or religious harassment/discrimination.
9. Bullying, intimidation, and harassment.
10. Absences in excess of three consecutive workdays without authorization.
11. Falsification of records or any unauthorized use of district records.
12. Willfully or recklessly damaging of district property.
13. Engaging in inappropriate communication with a student via telephone, email, text messages, social networking websites or other electronic communications.
14. Engaging in inappropriate relationships with students.
15. Leaving students unattended which results in injury.
16. Misappropriation of funds.

Penalty for Category A Offenses: Suspension (5-10 days)/Termination of Employment

Category B- This category generally includes acts of misconduct or a more serious nature that significantly impacts the operation of the district.

1. Habitual and/or excessive tardiness.
2. Intentional disturbance of the work environment.
3. Leaving work without permission;
4. Violation of corporal punishment.
5. Altercation (verbal or physical) with a student/colleague.
6. Leaving Students unattended.
7. Unprofessional or disrespectful conduct; use of profanity, or making slanderous, defamatory, disparaging comments.
8. Sleeping on the job.
9. Unauthorized fundraisers.

Penalty for Category B Offenses: 1-3 Day Suspension: For repeated offenses, increasing progressive disciplinary measures are applicable.

Category C- This category of infractions have a relatively minor impact on the district's business operations but requires managerial intervention.

1. Poor attendance including tardiness and absences.
2. Use of profanity or obscene language.
3. Discourteous conduct with coworkers, students, and parents.
4. Failure to follow supervisor's directions or to comply with board policy/insubordination.
5. Violation of a board policy/work rules.
6. Poor job performance, failure to complete assignments

Penalty for Category C Offenses: Documented Counseling—Written Reprimand: For repeated offenses, increasing progressive disciplinary measures are applicable.

SCS Disciplinary Offenses and Penalties

(For assistance determining the appropriate category for an offense,
Supervisors should contact the Office of Professional Standards.)

Category A – Major Infractions (Automatic Referral to ER)	Counseling	Oral Reprimand	Written Reprimand	1-3 Day Suspension	5-10 Day Suspension	Termination
Conviction of a felony or misdemeanor that involves theft of property, alcohol/drug use, assault (including domestic violence against another district employee).						•
Unlawful possession, sale, or evidence of use of drugs/narcotics/alcohol on district property or at a school-sponsored activity						•
Unauthorized possession of a firearm on district property or at a school sponsored activity.						•
Any indication of child abuse or neglect of a child by the Department of Children Services.						•
Physical or verbal intimidation, Bullying, Cyber- Bullying, or threats to others.					•	•
Physical violence or threatening bodily harm to others including transmitting by an electronic device any communication containing a credible threat to cause bodily injury or death to others and the transmission of such threat creates actual disruption in the work environment.					•	•
Sexual, racial, ethnic, or religious harassment/discrimination.					•	•
Absences in excess of three workdays without authorization/Job Abandonment.						•
Falsification of records or any unauthorized use of district records.					•	•
Willfully or recklessly damaging of district property.					•	•
Engaging in inappropriate communication with a student via telephone, email, text messages, social networking websites or other electronic communication.					•	•
Leaving students unattended which results in injury.					•	•
Violation of corporal punishment.			•	•	•	•
Misappropriation of funds.					•	•

NOTE: For Category A Offenses: 5-10 Day Suspension – Termination

SCS Disciplinary Offenses and Penalties

(For assistance determining the appropriate category for an offense, Supervisors should contact the Office of Professional Standards.)

<i>Category B – This category generally includes acts of misconduct or a more serious nature that significantly impacts the operation of the district. For repeated offenses, increasing progressive disciplinary measures are applicable.</i>	<i>Counseling</i>	<i>Oral Reprimand</i>	<i>Written Reprimand</i>	<i>1-3 Day Suspension</i>	<i>5-10 Day Suspension</i>	<i>Termination</i>
Habitual and/or excessive tardiness/absenteeism			•	•		
Intentional disturbance of the work environment.			•	•		
Leaving work without permission.			•	•		
Altercation (verbal or physical) with a student/colleague.			•	•		
Leaving Students unattended.			•	•		
Disrespectful conduct; use of profanity, or making slanderous, defamatory, disparaging comments.			•	•		
Sleeping on the job.			•	•		
Unauthorized fundraiser.			•	•		
Unsatisfactory Job Performance			•	•		

NOTE: For Category B Offenses: 1-3 Day Suspension - Termination

This list of infractions is designed only as a guide and is evolving and not all encompassing. It is a description of typical infractions or violations of policy and/or state statutes. The infractions are grouped into categories according to the seriousness of the offense. For infractions not specifically listed below, supervisors shall assign discipline in accordance with the category that appears to be comparable to the offenses specifically listed in the category. (If you need assistance in determining the appropriate category for an offense, supervisors should contact the Office of Professional Standards.)

SCS Disciplinary Offenses and Penalties

(For assistance determining the appropriate category for an offense, Supervisors should contact the Office of Professional Standards.)

<i>Category C – This category of infractions has a relatively minor impact on the district’s business operations, but requires management intervention. Supervisors should follow the progressive discipline continuum. For repeated offenses, increasing progressive disciplinary measures are applicable.</i>	Counseling	Oral Reprimand	Written Reprimand	1-3 Day Suspension	5-10 Day Suspension	Termination
Poor attendance including tardiness and absences.	•	•	•			
Use of profanity or obscene language.	•	•	•			
Unprofessional or Discourteous conduct with coworkers, students, and parents.	•	•	•			
Failure to follow supervisor’s directions or to comply with board policy/insubordination.	•	•	•			
Violation of a board policy/work rules or standards.	•	•	•			
Poor job performance, failure to complete assignments.	•	•	•			

Note: For Category C Offenses: Documented Oral Reprimand to Written Reprimand

This list of infractions is designed only as a guide and is evolving and not all encompassing. It is a description of typical infractions or violations of policy and/or state statutes. The infractions are grouped into categories according to the seriousness of the offense. For infractions not specifically listed below, supervisors shall assign discipline in accordance with the category that appears to be comparable to the offenses specifically listed in the category. (If you need assistance in determining the appropriate category for an offense, supervisors should contact the Office of Professional Standards.)

Procedures for Some Common Violation and Offenses (Not Intended to List all Violations)

Negligence

Negligence or carelessness signifies lack of care, caution, attention, diligence, or discretion. Negligence is not synonymous with incompetence. Administrators sometimes will confuse negligence with incompetence, and even some arbitrators will inadvertently use the terms synonymously. The administrator should exercise caution in labeling an employee's actions as negligent.

Questions relative to establishing cause:

1. Was there clear and convincing evidence that the event was attributable to the employee? Supervisors must also consider whether there were intervening factors beyond the employee's control that were contributing factors to the offense.
2. Was the employee chargeable with simple or gross negligence? This could also have an influence on the degree of discipline imposed.
3. Was the employee chargeable with a willful or wanton act, or merely inattention to the job? This could influence the decision as to whether the offense was negligence or unsatisfactory work performance.
4. Did the employee fail to exercise due caution?
5. Did the employee fail to exercise reasonable judgment?
6. Did the employee fail to observe a published work rule, law, or assigned duty? Was the employee aware of the consequences of a violation?
7. In the past, have there been exceptions to the rule of care required of this employee?

Excessive or Habitual Absenteeism

Excessive absenteeism is one of the most difficult employee problems for supervisors to handle/monitor. Absences are generally sporadic and for short periods of time, but they keep recurring. Excuses include: personal sickness, family illness, transportation problems, baby-sitting problems, personal appointments or business, etc. The supervisor must determine whether the absences involve a legitimate use of approved leave, and whether the absences are adversely affecting the employee's work. Even legitimate absences can become excessive to the point that corrective action must be taken.

The Human Resources' policies outline the conditions under which the different types of leave can be approved. The supervisors and employees must be familiar with the leave provisions in Board Policy and the Memorandum of Understanding.

On occasion, any employee may need to miss a day from work due to legitimate personal or family illness. However, the supervisor has a right to expect employees to be available to perform work with a reasonable degree of regularity. The employee, who occasionally misses time from work, including the employee who has a serious illness requiring extensive use of sick leave, is not generally the problem. It is usually the employee who uses leave as quickly as it is earned, and the employee who establishes a pattern of absences that create the problem.

An excessive absentee record usually develops over a period of time. The supervisor, therefore, will have adequate opportunity to have consultation meetings with the employee, review the record of absences, compare the employee's record with the overall record of absenteeism for the work unit, and finally if improvement does not occur, warn the employee of possible disciplinary action. While discipline is the last resort when counseling has failed to make the employee aware of the seriousness of the problem, it should not be delayed to the point that the problem is uncorrectable.

While illness is a justifiable reason to excuse an absence under normal circumstances, there is a point where the employer should no longer be required to tolerate absences that have become excessive, even when necessitated by illness, and where the employee has been granted sufficient opportunity by the employer to obtain medical treatment and relief. This does not mean that the employer can forego having a firm, written and clear policy regarding absenteeism, nor avoid giving the employee sufficient warning. In the case of a chronic condition, the employee should seek adequate medical advice and treatment so as either to control or cure the condition.

Generally, arbitrators have held that excessive absences, regardless of the reason and in the absence of contractual obligations, are cause for discharge. However, management rules cannot be unreasonable, arbitrary, or capricious. The rules must also be consistently and uniformly enforced. Further, it must be shown that the employee was given appropriate warnings and that management complied with any required steps of progressive discipline.

Questions relative to determining cause:

1. How long has the employee had an absentee problem? Have counseling sessions and even prior discipline failed to correct the problem?
2. What is the pattern of absences? Are the days missed sporadic, or are they grouped together possibly reflecting a legitimate medical problem? Does the employee miss the same day(s) each week/month?
3. Is the employee being dismissed for missing too many days from work, or is the employee actually being charged with misuse of sick leave?
4. If the employee is charged with missing too much time from work, how do the absentee records of other employees in the work unit compare?
5. If the employee is being charged with misuse of sick leave, on what was that conclusion based? For example, is there medical or other evidence the employee was not sick or disabled?
6. Have you been consistent and uniform in the enforcement of the absentee/sick leave policy?
7. Is the employee a candidate for an employee assistance program, and has it been offered?
8. What affect has the absenteeism had on the employee's work performance?
9. Did the employee violate a Board policy, local work rule or law? In the past have there been exceptions? Was the employee aware of the consequences of a violation?

Currently the Shelby County Schools is using a standard of acceptable absenteeism of 5% or less of scheduled hours. Any employee whose attendance record indicates that he/she is consistently above a 5% absenteeism rate is eligible for disciplinary action.

Excessive or Habitual Tardiness

The employee who fails to follow established work schedules may have a problem with one or more of the following: reporting late at the beginning of the work schedule, leaving early or returning late from breaks or lunch or leaving work early at the end of the work schedule, all without approval. Although occurring at different times, the effect is the same. If these actions are allowed to continue, other employees will eventually conclude that they too are not required to follow the work schedules.

As in the case of excessive absenteeism, supervisors may tend to overlook an offense of this nature until it creates some other problem, e.g., loss of productivity, affecting other employees. Most supervisors do not like to be clock-watchers. Also, many employees who are not punctual will work a little harder and maintain the expected productivity. Employees may even willingly agree to charge the tardiness or overextended breaks and lunches to leave or compensatory time. So, for various reasons, supervisors will rationalize their acceptance of this type of offense. While this attitude of benevolence may survive in some work situations, there are many others where even minor departures from work schedules will result in significant problems.

The bottom line in all situations must be that employees are expected to (1) be at their work stations ready to begin work at the established times; (2) take only the allotted time for breaks and lunch; and (3) leave work at the scheduled time and not before. An employee cannot be expected to always rigidly follow the scheduled work times. However, as in the case of controlling absenteeism, the supervisor is entitled to be given advance notice when the employee needs to report late, leave early, or take additional time off. It is the repeated unapproved tardiness and extra break and lunchtimes that are unacceptable to management.

Corrective action, as in other types of similar offenses, must be preceded by notice and warnings. The main caution is that an offense of this nature, if allowed to continue and spread, can have very serious consequences. Not the least of the problems will be the supervisor's loss of control.

Questions relative to determining cause:

1. How long has the employee had the problem of tardiness or excessive break or lunch periods? Have counseling sessions and/or prior discipline failed to correct the problem?
2. What is the pattern of tardiness or excessive break or lunch time? Do the times vary, are the offenses sporadic, or do they occur with regularity?
3. What is the nature of the excuses? Does the tardiness result from childcare or transportation problems, or are the excuses related to oversleeping, personal illness, etc.?
4. Has management been consistent and uniform in the enforcement of its work schedule policy? Has the employee been informed as to the need for punctuality?
5. What effect is the tardiness or failure to follow break and lunch schedules having on the employee's work performance?

Leaving Work Without Permission (AWOL)

This particular offense may include failure to obtain permission in advance to be off or misrepresenting (falsifying) the need for sick leave.

In the first example, employees are expected to obtain approval to take leave, with or without pay, in advance of the taking of such leave. An exception may arise when an employee is taken ill suddenly while off work, and telephones the supervisor either prior to or during the normal working hours to report off. Management becomes upset if an employee makes a habit of taking time off in that manner, fails to call in within a reasonable time after the person normally would begin work, and/or such practice results in overtime or work not being performed.

The HR policies state in part that leave shall be used only with the approval of the proper authority within the department. Problems surface when the employee claims lack of knowledge of the proper report procedure, confusion exists as to the particular supervisor to call or the person with authority to approve the leave, or non-existent or inaccurate report-off records. All of these problems can be avoided. Discipline of employees for absences without proper authorization will generally be upheld where management acts within its authority and where its actions are not arbitrary or unreasonable, and especially if the employee acts in a defiant or contemptuous manner.

Questions relative to establishing cause:

1. Was the rule on obtaining approval for leave clearly spelled out?
2. Did the employee know who had authority to approve leave?
3. Did the employee make a request for leave, and was it made timely under the circumstances?

Insubordination

An acceptable definition of insubordination is a deliberate and inexcusable refusal to obey a reasonable order that relates to an employee's job function. Insubordination has also been more broadly defined as an unwillingness to submit to authority. This offense has been linked both to an expressed refusal to obey a proper order, as well as a deliberate failure to carry out an order.

An employee may base a refusal on a claim that the order violates the Memorandum of Understanding or is otherwise not part of the employee's job. However, an employee may not engage in this type of "self-help." Many arbitrators have taken the position that employees must not take matters into their own hands, but must obey orders and carry out assignments, even if they believe those orders violate the Memorandum of Understanding. Employees must instead turn to the grievance procedure for relief.

There are varying degrees and/or types of insubordination. There is the open and stated refusal to carry out orders, and there is also the silent refusal. A verbal refusal to obey a direct order is not an essential element of insubordination. The employee's silence accompanied by not obeying the order can also be considered insubordination. However, the obvious difficulty of proving insubordination in such case makes it important for the supervisor to avoid being placed in this position by insisting upon a response from the employee.

Work stoppages have in some cases been considered insubordination and cause for discipline. However, in those cases the employees were given direct orders to resume work and refused.

If an order is not obeyed, but the employee takes another course of action by accepting the alternative performance, the supervisor may have waived any right to discipline.

An employee may refuse to perform a task that he/she believes may place them in immediate danger of death or serious injury. This is a defense that must be addressed by management. In certain cases this may be a legitimate defense. However, these circumstances are strictly limited to situations where: (1) management orders an employee to work under conditions the employee reasonably believes pose an imminent threat of death or severe injury, and (2) the employee believes there is insufficient time or opportunity either to get management to correct the hazardous condition (or to alert OSHA, where applicable, to the danger).

The primary focus in an action for insubordination is directed toward the order itself, the reasonableness of the order, the employee's exact words or action, and the language of the rule or procedure violated. If the rule specified "gross" insubordination, an isolated outburst may not be sufficient for disciplinary action. Words or actions that are "contemptuous" may not necessarily be insubordinate, since the two words commonly used are not synonymous. Some courts also recognize a personality conflict or friction that develops between employee and supervisor. In such cases management may have to share responsibility.

Questions relative to establishing cause:

1. Was the order such as to create a safety or health hazard to the employee? An employee may refuse to obey an order that would create such a hazard. But even here, disciplinary action may be upheld where: (a) the dangerous aspects of the job could have been eliminated by the employee, (b) the employee's job necessarily involves hazardous work or the alleged hazardous conditions are not unusual, and (c) the employer has already determined that the work is not, in fact, dangerous.
2. Was the employee deliberately testing management's authority? An employee may not resort to insubordination to test the reasonableness of the employer's order, since (a) it is a settled principle that employees may not decide for themselves which instructions they will obey and which they will not, absent their being exposed to abnormal risk of personal harm and certain other limited kinds of situations, and (b) the employee might have pursued a remedy through a grievance procedure.
3. Was the order direct, clear and unambiguous?
4. Would obeying the order have violated a law or statute?
5. Did the supervisor provoke the insubordination?
6. Did the employee violate a published work rule? In practice have there been exceptions to the rule? Was the employee aware of the consequences of a violation?
7. Was the employee's conduct [use of profanity, belligerence linked with an order to perform a service?

Criminal or Disorderly Conduct

Although HR policies include such conduct within the definition of "just cause", a more precise definition of the specific conduct that is "unbecoming" is more difficult to determine. There is also the issue of whether

the conduct occurred during the course of the employee's work, or whether the questionable conduct took place off the job. In the former situation the relationship between the work and conduct is more easily established, along with the impact of the conduct on the employee's ability to continue to perform the job. In the latter situation, the connection between the conduct and impact on job performance may be more difficult to establish.

In some cases, the off-duty conduct was not, per se, illegal, was not provable, or was in no way job connected. Management must then prove the relationship between the conduct and the job. In other cases, management may discipline an employee based solely on the fact that an employee has been charged with off-duty misconduct by civil authorities. This type of discipline is discussed separately, but the relationship between the charge and the employee's job is still an important consideration. Generally, courts have construed the terms as requiring that the employee's conduct adversely affect the employee's relationship with the public.

Questions relative to determining cause:

1. What is the specific conduct that is the basis of the discipline?
2. What are the standards against which the employee's conduct is measured?
3. What is the relationship between the conduct and the employee's ability to perform the job? Has the alleged conduct and/or any publicity resulted in the employee not being able to carry out his/her normal duties?
4. Has the impact been documented with evidence, witnesses, complaints, etc?
5. Has the employee misused professional status or authority?
6. Has the employee violated a published work rule or law? In the past have there been exceptions? Was the employee aware of the consequences of a violation?
7. What is the attitude of co-worker, clients, and community toward the employee on the job? Has anyone refused to work with, associate with, or be served by the employee?
8. Has the employee previously engaged in similar conduct?

Inefficiency or Inability to Perform Assigned Duties

Unacceptable work performance is probably one of the two most difficult employee problems to handle/monitor, with absenteeism being the second. Both are conditions that usually develop over extended periods of time, are the cumulation of multiple incidents, and are often mixed in with periods of satisfactory attendance and performance.

In order to label an employee's work Below Performance Standards, the supervisor must measure that performance against an established standard. That standard must be a stated measure of the level of performance the employee is expected to achieve or the objectives the employee is expected to accomplish.

While the policies do not specifically establish standards or levels of performance, they do establish the framework within, which management should work with the employee. Acceptable standards (levels) of performance should be established, communicated to the employees, and then applied uniformly and in a nondiscriminatory manner to all employees. As mentioned earlier, a distinction may be made between the employee who cannot perform up to the required level and the employee who won't perform, and in fact

gives the impression of willfully disobeying instructions. In the former, the employee may be trying to perform satisfactorily, but is limited by physical or other skill deficiencies. That employee might be able to perform at acceptable levels in a different class if given the chance. The attitude of the employee becomes significant.

The supervisor should anticipate and prepare for the usual employee complaints of: "I wasn't told I wasn't doing it right", "I work as hard as anyone else", "I don't make any more mistakes than the other people", "I've always done the same amount of work", "my supervisor was new and never saw my work", and etc.

Questions relative to determining cause:

1. How long has the employee's performance been unacceptable? Have counseling and prior warnings failed to correct the problem?
2. Was the deterioration in performance gradual or did it happen all at once?
3. Were there any outside factors that contributed to the employee's less than satisfactory performance? Examples: health or personal problems, lack of education, etc.?
4. Was the employee properly trained? If so, when?
5. Are there other employees who are performing at the same level who are not being similarly evaluated?
6. Were the required performance standards known to the employee and were they uniformly and consistently applied?
7. Was the employee told specifically what the performance deficiencies were, and given a reasonable period to improve?
8. Has the supervisor been properly trained in appraisal techniques?
9. Did the supervisor review the employee's performance (especially important when the supervisor is relatively new)?
10. Were the tasks the employee was unable to perform part of his/her assigned duties?

Questions relative to determining the type of personnel action:

1. Employee's record - Does the employee have a prior record of similar performance and warnings? Does the record indicate improvement?

2. Consequences of the act - Were the consequences such that there would be financial or other liability to the school system? Would the act affect the employee's ability to carry out assigned responsibilities?
3. Mitigating factors - Were there intervening factors that either caused or had some effect on the employee's actions?
4. Attitude - Is the type of action contemplated necessary in order to convince the employee that the conduct cannot be tolerated?
5. Past practice - Is the personnel action contemplated consistent with the action in prior similar cases?
6. Is the supervisor precluded, due to the capabilities of the employee, from offering to reassign the employee to another job?
7. Would a demotion serve to salvage an otherwise valuable employee, or would it result simply in transferring a problem?

Falsification of Records

The term "falsify" is generally defined as: to prove or declare false; to make false; to represent falsely; to tell lies. A reading of this definition could lead to the conclusion that there is an element of intent present in at least some acts of falsification. In fact, there is some authority for the proposition that the term "falsify" can be used to convey two different meanings - either that of the term being intentionally or knowingly untrue, made with intent to defraud, or mistakenly and accidentally untrue.

Therefore, when attempting to determine whether an employee has incorrectly completed a record, a determination should also be made as to whether the act was intentional. The incorrect record may be the result of ignorance or lack of job knowledge, or the record may in fact be false as the result of an intentional act of the employee.

Questions relative to determining cause:

1. What has been the past record of insisting on accurate records, properly completed?
2. Is there a specific rule to cover the situation? Is there a distinction between negligence and falsification?
3. What are the consequences of the employee's act? Was the employee aware of the consequences?

Threatening, Abusive, Offensive, or Inappropriate Language or Conduct

This misconduct may be directed by an employee toward a supervisor or a fellow employee. In the former, the supervisor's authority may be challenged, which is a serious situation to have developed. In the latter, the consequences can be just as serious, since a significant part of the work force could choose sides or otherwise become involved.

This type of misconduct may start off as horseplay or just joking around. This does not excuse the misconduct. However, if management has allowed employees to engage in this type of conduct in the past, an immediate discharge probably would be overturned in favor of progressive discipline.

A review of arbitration decisions indicates that the arbitrator looks closely at the content of the employee's utterance, the manner in which it was delivered, and the circumstances under which the utterance was made. Listed below are the different types of threats:

Threats of death - these normally result in termination, unless there is a known mental aberration on the part of the employee, such as history of mental illness or alcoholism. In such instances another course of action other than discharge may be indicated. Refer immediately to the Office of Professional Standards.

Threats of bodily harm - normally result in suspension of the employee unless there has been prior discipline for the same offense. If the threat of bodily harm is made in the course of a highly heated exchange, discharge of the employee may be in order. In a few cases involving a long record of satisfactory service with no disciplinary actions previously having been taken against an employee, arbitrators have felt that suspension is not in order and that a written reprimand would be more appropriate. Refer immediately to the Office of Professional Standards.

General swearing, vulgarity, and obscenities - depending upon the content of these utterances, penalties normally applied range from written reprimand to suspension.

Racial, ethnic or religious insults - these normally are dealt with more harshly than general swearing, vulgarities and obscenities. Arbitrators apparently consider these to be more inflammatory and more potentially dangerous in terms of the response that could be generated.

Sexual Harassment

Sexual harassment is a pervasive problem in our school and work environments. It surfaces as inappropriate visual, verbal, and physical conduct directed by an adult to an adult, an adult to a student, a student to an adult or a student to a student. It has defining characteristics and there are generally two types. Type I is Quid pro Quo, which means "you do something for me and I'll do something for you." Type II is Hostile Environment; this usually involves a course of conduct rather than a single event. For practical purposes, any unwelcome sexually oriented conduct or atmosphere that is so severe or so pervasive that it is intimidating or offensive to a "reasonable person" of the same gender as the victim may be construed as sexual harassment. Sexual conduct may also be "unwelcome" and create a hostile environment for persons other than the "direct" victim who are present at the time the behavior occurs. If you have any indication that sexual harassment has taken place, *contact the Office of Professional Standards immediately.*

If there is supervisory provocation resulting in threats of bodily harm, swearing, vulgarity, obscenities or insults by the employee, the penalties meted out are generally reduced in relationship to the provocation.

Questions relative to determining cause:

1. Does the language or threat fall in the category of "shoptalk"? Has the supervisor or employee made a practice of joking around, or otherwise engaging in verbal or physical familiarity, or profanity?

2. Was the employee engaged in protected activity (grievance representative) at the time the offense occurred?
3. Was the employee physically capable of carrying out the threat? Example: A 5' 6", 120-pound employee threatening a 6' 3", 250 pound supervisor or fellow employee?
4. Did the alleged incident occur in the privacy of the supervisor's office or in front of other employees? The former does not negate the fact that the employee committed the act, but may go to the severity of discipline that should be administered.
5. Did the supervisor or a fellow employee provoke the employee? Example: Sexist remarks, racial/ethnic slurs, or language of an otherwise inflammatory nature.
6. Was one participant merely acting in self-defense when assaulted by another employee?
7. Did the threats and/or abusive language or assault, if made on the job, involve an off-duty problem? Occasionally employees and supervisors will become involved in a personal disagreement off the job that resurfaces at work. This will not excuse the misconduct.
8. Did an off-duty assault or threat by an employee on a supervisor, have its origin on the job? In this case an employee can still be disciplined provided the employment relationship brought about the assault.

Abuse or Misuse of District Property

The terms "abuse" and "misuse" are not always synonymous. The former is generally defined as: a corrupt practice or custom; improper use or treatment; physical maltreatment. The latter is defined as: to use incorrectly or improperly; misapplication. The former would include mistreatment while the latter would include using something in the wrong way. Consequently, care should be exercised in the use of the terms. Arbitrators will generally consider whether it is a first time offense of this nature for this employee and whether the act was deliberate or intentional. It is important to determine the exact language of the agency rule and whether it speaks to "willful" acts.

Charges should be specific as to the ownership of the property, the specific alleged acts, whether the charge arises from abuse, misuse, or both, and any monetary loss.

Questions relative to establishing cause:

1. Was there any question as to the status of the property involved? Is there any claim that it was "scrap" property or the property of someone other than the school system?
2. Is it a case of misuse or deliberate abuse?

Other Types of Workplace Behavior and Conduct Violations

- a. Workplace harassment
- b. Smoking in prohibited areas
- c. Inappropriate dress

- d. Gambling on premises
- e. Assault
- f. Possession of a firearm or weapon while at work
- g. Acts intending to harm persons or property
- h. Possession of alcohol or narcotics while at work
- i. Being under the influence of alcohol or narcotics while at work
- j. Violating clearly marked safety rules
- k. Stealing
- l. Threats to or intimidation of co-workers or administrators

Major Infractions

Major infractions are violations of Shelby County Schools Policy or Procedures so egregious or damaging to the district or individuals that disciplinary steps may or may not be followed. Examples of behaviors that may warrant invoking the use of major infraction language would be, but are not limited to, the following:

- a. Workplace intoxication/drug use
- b. Workplace violence
- c. Extreme insubordination
- d. Any inappropriate contact with children

If you have a situation where you are unsure if it is appropriate to apply this language, contact the Office of Professional Standards.

Sample Disciplinary and Referral Letters

Sample Absenteeism Letter



Date

To: Employee's Name

From: Principal

Subject: Absenteeism

This memo is the result of the conference we had on (date), to discuss the number of absences you have as of (date). Your responsibility as a (job title), includes your attendance. Emergencies do occur; however, your job as a (job title) cannot be accomplished if you are consistently tardy and/or fail to attend on a regular basis.

As of (date), you have been absent (total) days (and/or) tardy (total) days this school year. Improvement in this area is needed immediately. This shall be considered as a (documented counseling / documented oral reprimand / documented written reprimand) for your attendance.

If your attendance (and/or) tardiness does not improve, more stringent disciplinary action may occur.

c: Personnel File

Sample Teacher Reprimand



Date

To: Teacher's Name

From: Principal

Subject: (Documented Oral Reprimand or Documented Written Reprimand)

This is a result of the conference held with you on (date). The purpose of the conference was to discuss (state the reason; classroom management skills, insubordination, not maintaining records, and etc.).

During the conference, you were given the opportunity to respond and you stated (state the teacher's response).

However, you need to improve (give the areas that need improvement).

This shall be considered as a (documented counseling / documented oral reprimand / documented written reprimand) for (state the reason).

A copy of this reprimand will be placed in your personnel file.

Please be aware that any future infractions of rules, policies, or procedures of the Shelby County Schools may lead to more stringent disciplinary action.

c: Personnel File (if written reprimand)

School File (if documented counseling or documented oral reprimand)



Division of Nutrition Services Conference/Discipline Form

Employee _____ SS# _____

School _____ Date _____

- Conference, Counseling
- Conference, Formal, Oral Reprimand
- Conference, Written Reprimand (*A COPY WILL BE PLACED IN YOUR PERSONNEL FILE*)
- Conference, Referred to the Office of Professional Standards

1. Nature of Conference:

2. Suggestions and/or Recommendations:

Manager's Signature

Employee's Signature*

Principal's Signature

Date

*Employee signature acknowledges that conference has been held, not necessarily agreement with the above.

FORM NO. 55
REVISED 1997

WHITE COPY - Principal

CANARY COPY - Manager

PINK COPY – Employee



RESIGNATION NOTIFICATION

Name: _____ Race: _____

Sex: Male Female Social Security Number: ____-____-____ Phone () _____

Address: _____ City: _____ State: _____ Zip: _____

Work Location: _____ Loc Code: _____

Position: _____ Grade: _____ Subject: _____

Effective Date of Resignation: ____/____/____ Request Vacation Pay (If Applicable) Yes No

PLEASE NOTE: A teacher shall give a written notice of resignation of at least thirty (30) days before the effective date of resignation to remain in good standing.

Employee has been advised that he/she is ineligible for rehire? Yes No

Request return of Teaching Certificate (If applicable): Yes No

Reason for Separation:

Employee Signature

____/____/____
Date

Employee Signature

____/____/____
Date

Supervisor Signature

____/____/____
Date

NOTE: This form must be submitted to your supervisor for signature prior to submitting to the Department of Human Resources.

PLEASE SUBMIT RESIGNATION FORM TO:

Shelby County Schools
Department of Human Resources
Room 158, 160 S. Hollywood
Memphis, TN 38112-4892
OFFICE (901) 416-5304
FAX (901) 416-6459

Shelby County Schools offer educational and employment opportunities without regard to race, color, religion, sex, creed, age, disability, national origin, or genetic information.

