

Guidelines for Progressive Discipline & Grievance Procedures

**Department of Human Resources
Office of Labor and Employee Relations**



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Important Contact Information

Equity Compliance – Frances E. Coe Administrative Building, Room 107 – 416-6670

Human Resources – Frances E. Coe Administrative Building, Room 164 – 416-5304

Labor and Employee Relations – Frances E. Coe Administrative Building, Room 138 – 416-5323

Risk Management – Fairview Annex – 416-5651

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Memphis City Schools Website: www.mcsk12.net

Memphis City Schools does not discriminate in its programs or employment on the basis of race, color, religion, national origin, handicap/disability, sex, or age. For more information, please contact the office of Equity Compliance at (901) 416-6670.

Introduction to Progressive Discipline

Memphis City Schools' employees are expected to maintain the highest standards of personal conduct, integrity, and performance. It is the responsibility of all administrators to ensure that all their subordinates understand and live up to these high standards. This guide provides guidance to administrators and those with supervisory responsibilities on how to assure high standards are attained by employees under their supervision. Maintenance of these standards will promote the efficiency and effectiveness of work operations and assure compliance with laws and regulations so the district is able to provide a quality education to MCS children.

We recognize that most employees only need to be properly trained and to be informed of the rules in order to be positive productive employees. However, there are times when administrators must use the disciplinary process in order to get the employee's attention and to attain the desired result. It is the responsibility of the supervisor to ensure his/her employees have been properly trained and informed prior to issuing disciplinary action.

Discipline can be both positive and negative. Positive discipline is achieved when individuals hold themselves to high standards of conduct and responsibility because they accept and value those standards. Maintaining discipline in organizations where all employees have this high degree of commitment is easy. However, supervisors need to take positive actions to establish such a positive environment. Setting the example and effective communications can help the supervisor to establish a work environment where employees internalize these high standards.

The second side of discipline is correction and punishment of misconduct. In correcting individual instances of misconduct, it is important that the penalty be the minimum necessary to bring about the desired change. All penalties must be consistent with the facts and circumstances surrounding the misconduct. Addressing issues of misconduct are the most challenging and difficult aspects of supervision. Dealing effectively with disciplinary problems requires a good understanding of the discipline process and skill in handling a variety of human relations problems.

This guide serves as a resource for administrators and those with supervisory responsibilities. It will take you through the disciplinary process and addresses some of the problems administrators will encounter and be expected to resolve. While you will be provided with information concerning formal disciplinary actions, the focus will be on informal actions, which corrects inappropriate behavior before it becomes a big problem.

The Office of Labor and Employee Relations will assist supervisors, administrators, and principals in administering the disciplinary process in conformity with collective bargaining agreements and board policies. The procedures of any collective bargaining agreement will take precedence over the procedures in this guide. When considering any disciplinary action, the Office of Labor and Employee Relations can provide the administrator with assistance. You may contact the Office of Labor and Employee Relations at 416-5323. When the decision is made to refer employees to Human Resources involving the more advanced disciplinary steps of suspension and termination of employment, the administrator will need to contact the Office of Labor and Employee Relations.

Progressive Discipline Steps

- 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. **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 Department of Human Resources.
- 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 Department of Human Resources.
- d. **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.
 - Suspensions may be with or without pay.

- The Office of Labor and Employee Relations must handle disciplinary issues that may warrant suspension.
 - **Suspension Pending Investigation**
 - Examples of situations where the employee may need to be removed from the work place 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 Labor and Employee Relations prior to sending the employee home, unless there is an immediate need to remove the employee from the work place.*
 - A suspension, pending an investigation, 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. This concept is based on the premise that management has the right to promote and grant merit increases to employees. Therefore, if the employee's performance does not continue at the same level as when he/she was placed in the position, they also have the right to take away such benefits.
 - *The Office of Labor and Employee Relations 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 Labor and Employee Relations 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 favorable 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 Labor and Employee Relations must insure that the employee has received procedural due process. This procedure requires the Office of Labor and Employee Relations to have a pre-termination 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 pre-termination meeting, 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 Labor and Employee Relations.
- The employee is informed of the reasons for the dismissal with each incident or offense identified. Names, times and dates, are given when possible.

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

Key People – Specific Responsibilities

- a. Employee – be aware of and abide by district standards and expectations regarding behavior, conduct, and performance.
- b. Supervisor, Administrator, and/or Principal should:
 - Be aware of employee misconduct and employee performance deficiencies within your department or school.
 - Make sure that all employees in your department or school understand the rules of conduct that govern their behavior and expectations of performance.
 - Know the standards and rules.
 - Implement reasonable work standards.
 - Counsel employees.
 - Apply appropriate corrective discipline.
 - Conduct follow-up counseling sessions.
 - Demonstrate positive leadership characteristics.
 - **IMMEDIATELY** notify the Office of Labor and Employee Relations and your Division Director if any of the following violations occur:
 - Allegations of abuse of students, or any other inappropriate conduct with students, staff, or parents.
 - Assault or any other type of workplace violence.
 - Possession or under the influence of alcohol or illegal narcotics while at work.
 - If any violations other than those listed above occur, the supervisor, administrator, or principal must address the offense immediately through counseling, oral reprimand, or a written reprimand, depending on the severity of the violation.

- If the same violation occurs *after* the written reprimand, the Office of Labor and Employee Relations should be notified.
- c. The Office of Labor and Employee Relations 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.
 - Submit recommendations for termination to the Chief Operations Officer.
- c. Chief Operations Officer
- Must approve all recommendations for termination.

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?

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? Administrators 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?

Sleeping on Duty

This charge is generally difficult to prove for several reasons. The employee will usually claim to have been (1) in deep thought, (2) resting the eyes, (3) under medication, or (4) up all night with a sick relative. A supervisor faced with an employee who appears to be sleeping should, if possible, first call a witness before approaching the employee. Without a witness it will be the employee's word against that of the supervisor. The supervisor and witness should approach the employee within earshot and speak the employee's name clearly and in a normal conversational tone. The immediacy of the employee's response (or lack of) should be the factor that determines whether discipline is appropriate. The supervisor should not touch or shake the employee awake except as a last resort.

Questions relative to establishing cause:

1. Did the circumstances indicate the employee deliberately prepared to sleep, or inadvertently dozed off? Intent can usually be determined from such obvious facts as whether the employee made a bed or stretched out on a bench or the floor. Where intent is established, the supervisor may impose more severe discipline than against the employee who accidentally falls asleep. An employee, who falls asleep during a rest or lunch break and doesn't make arrangements to be awakened, is not considered to have a valid excuse for sleeping on duty.

2. Was the employee taking a prescription drug that would normally make a person drowsy? If the doctor has warned the employee of the potential effect of the drug, or if the sleeping would endanger life and/or property, this would have a substantial effect on the excuse.
3. Was the employee under personal stress or suffering from excessive fatigue? In certain cases when an employee has been under excessive strain (death or critical illness in family), or has had personal illness immediately preceding the sleeping incident, such factors might serve to mitigate the employee's misconduct. In contrast, excessive fatigue resulting from circumstances over which the employee has control is not mitigating.
4. Can it be clearly established by a witness that the employee was in fact sleeping, rather than "resting his eyes?" Could the witness observe the employee's eyes?
5. Did the employee violate a published policy, local work rule, or law? Have there been exceptions to the rule in the past? Was the employee aware of the consequences of a violation?

Excessive or Habitual Absenteeism

Excessive absenteeism is one of the most difficult employee problems for administrators 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 administrator 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 of Board Policy, and the collective bargaining agreements.

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.

The attendance policy states that after 3 workdays of absence in any 30 calendar day period, the administrator may require a medical certification of the employee's absences due to illness or injury before authorizing any additional use of leave credits by the employee. If there is a pattern of absences by an employee, such as consistent absences on the day preceding or following the employee's regular days off or absence on the same day of each week or each month, the administrator may develop a policy for controlling such patterns of absence, subject to approval by the division director.

The supervisor should not be heavy-handed or arbitrary in the use of the above policy. The temptation to set an example with a particular employee must be avoided. The policy itself should not be the department's method of controlling excessive absenteeism. Instead it is one of several tools available to management. A uniform policy of controlling absenteeism is based on the establishment of realistic guidelines for attendance, communicating those guidelines to the employees, a system for close monitoring of absences and excuses, and the full knowledge by the employees that excessive absences (including excused) cannot be tolerated.

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.

In developing any effective program for handling absentee problems, a school district or company should make available to all employees clearly defined standards for attendance. Certain elements as listed below must be considered and reviewed when an employee is disciplined for excessive absenteeism.

A supervisor may be justified in discharging an employee who has a consistently bad attendance record over an extended period, even though all or practically all of the absences were necessary and excusable. Prior to termination, the employer should determine whether or not any of the absences were covered under the Family Medical Leave Act. 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, or 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 Memphis City 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 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 a collective bargaining agreement 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 a collective bargaining agreement. 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, belligerency] 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 develop. 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 Labor and Employee Relations.

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 Labor and Employee Relations.

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 Labor and Employee Relations and the office of Equity Compliance 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. Was the employee provoked by the supervisor or a fellow 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 Memphis City Schools Policy or Procedure 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 Labor and Employee Relations.

Board Policy References

Please use the following Board Policy references when establishing disciplinary letters or actions:

Attendance/Tardiness – MCS Policy Number 4301 - The Board of Education of the Memphis City Schools requires all employees to report to work as scheduled and to work their scheduled hours each work day, unless otherwise authorized. An employee (or a member of the immediate family) must notify the employee's supervisor prior to any absence, except in the event of extenuating circumstances, in which case the supervisor should be notified as soon as possible but in no instance later than the end of the workday. It is the employee's responsibility to report absences as far in advance as possible. Employees who are absent for any reason must complete the Employee Absence Approval Form and submit it to their immediate supervisor for approval. The form will be used to complete the time sheet sent to the payroll office.

Lunch/Break Periods – MCS Policy Number 4107 - It is the policy of the Memphis City Schools to allow employees who work six (6) hours or more per day a minimum of thirty (30) minutes and a maximum of forty-five (45) minutes for lunch. Lunch periods are unpaid except in the case of school clerical employees and special education aides.

Employees who work more than two (2) hours but less than six (6) hours per day will not have a lunch break but will be entitled to one (1) ten (10) minute break period. Employees who work less than two (2) hours will not be entitled to a break period.

Break times will be scheduled by the employee's supervisor in keeping with work schedules and workload demands. Upon initial employment, employees will be informed by their immediate supervisor of the scheduled lunch and break periods.

Working Hours – MCS Policy Number 4106 - The employee's regular work day will be established by the appropriate senior management based on the needs of the system and the employee will be informed of the number of working hours at the time of employment. Any change in work hours will be made by the appropriate department senior management, and the employee will be so notified.

The employee must have approval from the supervisor prior to working overtime.

It is the employee's responsibility to be present when and where the employee is assigned and to work the assigned duties until the designated departure time.

Employee to Employee Sexual Harassment – MCS Policy Number 4510 - All employees have the right to work in an environment free of discrimination, which encompasses freedom from sexual harassment. Memphis City Schools prohibits sexual harassment in any form.

Sexual Harassment of Students by Adults – MCS Policy Number 4510.1 & 5147 - All students have the right to learn in an environment free of discrimination, which encompasses freedom from sexual harassment. Therefore, Memphis City Schools will not tolerate sexual harassment of its students in any form.

Sale of Goods and Services by Employees – MCS Policy Number 4302 - Employees are prohibited from selling instructional supplies, materials and/or other goods and services to the children or the parents of the children in the school in which the employee is assigned.

Gifts to Employees – MCS Policy Number 4305 – Employees shall refrain from giving gifts to personnel who exercise any administrative or supervisory jurisdiction over them, either directly or indirectly. Employees may not accept gifts from vendors, suppliers, or anyone who interacts with the Board in the course of business.

Conflict of Interest – MCS Policy Number 4504 – Employees of Memphis City Schools and school board members shall avoid any conflict or appearance of conflict between their personal interests and the interests of the system in dealing with suppliers, customers, and all organizations or individuals doing or seeking to do business with Memphis City Schools and/or in dealing with other employees of the Board.

Employees and school board members shall avoid any situation that would result in their having direct or indirect financial or material interest in firms, corporations or organizations doing business with the system.

Employees shall not use confidential school information for financial or personal benefit or share such information with an individual not affiliated with the school district for that individual's financial or material benefit.

Drug Free Workplace – MCS Policy Number 4505 – The Board of Education expects and requires employees to report for work and remain at work in a condition that allows them to perform assigned duties free from the effects of alcohol and/or drugs.

The manufacturing, distribution, dispensing, possession, and/or use of controlled substances or alcohol, or being under the influence of alcohol and/or drugs on Board premises or while conducting Board business off Board premises, is absolutely prohibited.

Moonlighting/Outside Employment – MCS Policy Number 4508 – When a person is hired by the Memphis City Schools, it is understood that the Board considers that it has given him/her full-time employment. Therefore, it will expect all employees to give the responsibilities of their assigned positions with the Memphis City Schools precedence over any outside work.

Retaliation Against Employees – MCS Policy Number 4509 – It is the policy of the Memphis City Schools to avoid any retaliatory personnel actions which are prohibited by state or federal law.

Smoke-Free Environment – MCS Policy Number 4512 – Smoking and/or the use of all tobacco products are prohibited in all Board of Education buildings (schools and other facilities) and in Board-owned vehicles at all times. Smoking and/or the use of tobacco products are prohibited on the grounds during school hours (including evening school programs).

Acceptable Internet Usage – MCS Policy Number 1115 – The use of the Internet and other telecommunications networks is a privilege, not a right, and inappropriate use may result in cancellation of those privileges. Appropriate executive staff members or school principals will deem what is

inappropriate use, and that decision is final. Employees who are granted access must remember that they represent Memphis City Schools and, as such, must respect the rights of others, protect the integrity of the information technology and observe all relevant laws, regulations, and contracts including software licensing agreements and copyright laws. A detailed list of Internet rules can be reviewed in the Memphis City Schools policy book under the above policy number.

Note: Violation of any of the Rules of Conduct/MCS policies shall result in disciplinary action. The normal steps of discipline are counseling with the employee, oral reprimand, written reprimand, and a referral to the Office of Labor and Employee Relations.

Sample Disciplinary and Suspension Letters

Sample Absenteeism Letter



Date

To: Teacher'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 (if written reprimand)

School File (if documented counseling or documented oral reprimand)

Sample Teacher Referral to the Office of Labor and Employee Relations



Date

Teacher's Name

Address or School Location

Dear Teachers Name:

This letter is to advise you that you are scheduled to attend a disciplinary conference in the Office of Labor and Employee Relations with (Ms. Chantay Branch, Ms. Virgie Chaffen Jr., or Ms. Kimkea' Harris) on (day), (date), at (time), at the Administration Building, Room 120.

The purpose of this conference is (state the reason).

Since this conference may lead to disciplinary action, you have the option of having a representative from the Memphis Education Association present.

Sincerely

Principal's Name and Signature

c: Chantay Branch, Virgie Chaffen Jr., or Kimkea' Harris
Academic Superintendent

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 Memphis City Schools may lead to more stringent disciplinary action.

c: Personnel File (if written reprimand)
School File (if documented counseling or documented oral reprimand)

Sample Teacher Observation Conference Record

Teacher: _____ **Date:** _____

Observed Performance

- _____ Teacher absent from classroom (safety risk to students).
- _____ Lacks classroom management or poor classroom climate.
- _____ Room not arranged for teams or no cooperative learning.
- _____ Teacher lacks interaction with students/groups.
- _____ Late picking up students from the cafeteria, support classes, and etc.
Total _____ **Since** _____
- _____ Classroom noise level is inappropriate.
- _____ Teacher in unauthorized area.
- _____ Lacking appropriate supervision of students.
- _____ Students are not being addressed in a positive manner.
- _____ Unsatisfactory performance towards maintaining accurate and up-to-date instructional plans, records, reports, and etc.
- _____ Minimal effort is made to involve parents in the resolution of student problems.
- _____ Unsatisfactory performance towards completion/compliance with submitting instructional plans, records, and/or reports in an active and/or timely manner (i.e. report cards, IEP's attendance scanners, and etc.).
- _____ Leaving campus without permission.
- _____ Excessive absenteeism (sick, illness in immediate family, or personal days without pay).
Total _____ **Since** _____
- _____ Violated the Corporal Punishment Policy on (date). This also maybe considered as a major infraction, therefore the Office of Labor and Employee Relations will be contacted for possible further disciplinary action.
- _____ Inappropriate relationship with a student. This also maybe considered as a major infraction, therefore the Office of Labor and Employee Relations will be contacted for possible further disciplinary action.
- _____ Other: _____.

Action Taken by the Principal

_____ Conference on (date).

_____ Issued a documented oral reprimand on (date).

Attach a copy – maintain in school files, but do not send to the Office of Labor and Employee Relations.

_____ Issued a written reprimand on (date).

Attach a copy – maintain in school files and send a copy to the Office of Labor and Employee Relations.

_____ Referred to the Office of Labor and Employee Relations on (date). *Prior to the referral, please send the referral notice given to the employee and all supporting documentation to the Office of Labor and Employee Relations.*

Please Note: In any type of disciplinary conference the teacher may have a MEA Representative present.

Sample Documents for AFSCME Employees

Please Note: All discipline of AFSCME bargaining unit employees is progressive in nature, except for violations of major infractions.

Oral reprimands are not to be placed in writing, but should be noted in the school file.

These forms may be modified for use with non-union employees.

The Custodial Conference/Discipline Form is available through the Warehouse, Item No. 14998.

The Cafeteria Conference/Discipline Form must be obtained from the Division of Nutrition Services.

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 written reprimand for your attendance. Until you are advised otherwise, you are required to produce a physician's statement for all future absences (this statement would only be included in a written reprimand).

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

c: Personnel File
School File

Sample Referral to the Office of Labor and Employee Relations



Date

Employee's Name

Address or School Location

Dear Employee's Name:

This letter is to advise you that you are scheduled to attend a disciplinary conference in the Office of Labor and Employee Relations with (Ms. Chantay Branch, Ms. Virgie Chaffen Jr., or Ms. Kimkea' Harris) on (day), (date), at (time), at the Administration Building, Room 120.

The purpose of this conference is (state the reason).

Since this conference may lead to disciplinary action, you have the option of having a representative from AFSCME present. (Please Note: This statement only applies to AFSCME bargaining unit employees. This statement is not needed for non-union employees, i.e. clerical, substitutes, supervising building engineers, building engineers, and special education assistants, and etc).

Sincerely

Principal's Name and Signature

c: Chantay Branch, Virgie Chaffen Jr., or Kimkea' Harris
Academic Superintendent

Sample Reprimand



Date

To: Employee's Name

From: Principal

Subject: (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; insubordination, not performing assigned duties, theft of school property, and etc.).

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

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

This shall be considered as a 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 Memphis City Schools may lead to more stringent disciplinary action.

c: Personnel File
School File

MEMPHIS CITY SCHOOLS Conference/Discipline Form Custodial Workers

Employee _____ SS# _____

School _____ Date _____

Type of Conference:

- Counseling
- Formal Oral Reprimand
- Written Reprimand (*A COPY WILL BE PLACED IN YOUR PERSONNEL FILE*)

Nature of Conference:

If additional space is needed, please attach any further documentation

Suggestions and/or Recommendations:

If additional space is needed, please attach any further documentation

SBE Signature

*Employee Signature

Principal Signature

Date

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

WHITE COPY - Principal

CANARY COPY - SBE

PINK COPY - Employee

**Memphis City Schools
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 Labor and Employee Relations

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.

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WHITE COPY - Principal

CANARY COPY - SBE

PINK COPY - Employee

Teacher Transfers, Surplusing, and Association Representative Release Time

Evaluations

Tenured teachers who are scheduled for evaluations must be evaluated by April 15 of each year.

Voluntary Transfers

1. There will be two postings for teachers to apply for a voluntary transfer.
2. Principals must interview and choose from the five most senior teachers who apply and meet the posting criteria.
3. In the event there are multiple vacancies at a location with the same posting criteria, the five most senior teachers who meet the posting criteria plus the next senior teacher are to be interviewed. For example, if there are two vacancies, four teachers would be interviewed; for three vacancies, five teachers would be interviewed, etc.
4. Selection of teachers will be based on the teacher who most closely meets the criteria of the position as stated on the posting, with race being a factor. If all factors are equal, system-wide seniority shall control.

Surplusing

1. Advise all teachers that in the event there is a need to reduce the teaching staff, either now or this summer, you will consider any teacher who wishes to volunteer. I would suggest you make this announcement in a faculty meeting and post it on the bulletin board. Teachers who wish to volunteer to be surplusd should put their request in writing.
2. Teachers are to be surplusd by assignment, which is defined as primary grade levels K-6 or subjects taught. Teachers who are surplusd must be advised in writing at least one day in advance.
3. Teacher surplusd at level K-6 will be based on seniority unless the least senior teacher(s) is the only teacher(s) that meets the certification requirements. In that event, the least senior teacher who does not meet the certification requirements will be surplusd.
4. To the extent feasible, teachers will be advised of surplusd by April 1.
5. Teachers must be advised of any surplus or reassignments in writing as soon as feasible.
6. The Agreement prohibits the reassigning or surplusd of teachers without a justifiable reason. Surplusd shall be done primarily as a result of reduction in student population.

Association Representatives

Association Representatives have been approved for one-hour release time each month to attend the Memphis Education Association's monthly meeting.

Sample Teacher Surplus Announcement



Date

To: All Faculty

From: Principal

Subject: Possible Surplus

In the event there is a need to surplus teachers during this school year, volunteers will be considered.

Anyone who wishes to volunteer to be declared surplus, should put his/her request in writing.

Please Note: This should be posted and announced in a faculty meeting and given to every teacher.

Sample Teacher Surplus Notice



Date

To: Teacher's Name

From: Principal

Subject: Surplus

As a result of (state the reason is due to drop in enrollment, major coaching needs, or change in grade structure), this is to advise you that you are being surplus from (school name). This action is taken in accordance with the Agreement between the Memphis City Schools and the Memphis Education Association.

The Department of Human Resources will be in contact with you to advise you of your assignment for next school year.

I want to thank you for your dedication and hard work as a member of the (school name) faculty.

c: School File

Union Positions and Grievance Procedures

Grievance — A grievance is defined as an alleged violation of a specific provision of the collective bargaining Memorandum of Understanding or Agreement.

Memphis Education Association (MEA)

Positions covered by this collective bargaining Agreement are Attendance Teacher, Classroom Teacher, Consumer Home Economics Teacher, Contract Teacher (less than full-time on contract to teach with prorated salary), Education Resource Specialist, Instructional Facilitator, Librarian, Professional School Counselor, Special Education Resource Specialist, Special Education Teacher, Vocational Teacher, Adult Basic Education Consultant, Adult Education Supervisor, Art Specialist, Business/Office Technology Supervisor, Coordinator of Alternative Instruction Strategies, Driver Education Supervisor, Elementary Supervisor, ESL Supervisor, Family and Consumer Science Supervisor, Foreign Language Specialist, Guidance Supervisor - Elementary and Secondary, Health Science Education/Cosmetology Supervisor, Individualized Math Supervisor, Industrial Education Supervisor, Language Arts Supervisor, Marketing Education Supervisor, Math Supervisor, Micro Computer Supervisor, Music Specialist, P.E./Wellness Specialist, Reading Improvement Supervisor, Science Supervisor, Social Studies Supervisor, Special Education Supervisor, Technology Education Supervisor Trade, Principal, Middle College Principal, Principal of Career and Technology Center, Program Manager, Specialty Principal, Assistant Principal, Assistant Principal of Career and Technology Center, Residential Training Center Manager, Alcohol/Drug Counselor, Alcohol/Drug Prevention Coordinator, Community Resource Liaison, Homemaker - Social Worker, Library Services Supervisor, Prevention/Intervention Supervisor and Specialist, Psychologist, Science Specialist, Social Worker, Social Worker Supervisor, Special Education Social Worker, Supervising Psychologist.

All terms and conditions of employment including but not limited to leaves, benefits and wages, for these job classifications are provided in the negotiated agreement between the Board and the MEA.

All grievance processing shall be handled exclusively in the following manner:

Step 1 — Within fifteen (15) working days after the occurrence, the grievance will be presented in writing (on the standard grievance form that can be found in Appendix B of the Agreement) by the grievant to the immediate supervisor. Said supervisor shall within six (6) working days of the receipt of the grievance, meet with the grievant and/or an Association Representative, if the grievant so desires, in an effort to resolve the grievance. If an adjustment is not made at this meeting, the supervisor will respond to the grievance in writing within six (6) working days after the date of said grievance meeting. (Step 1 supervisors are defined as the Principal or Division Director, as appropriate.)

By mutual agreement between the Association and the Superintendent's designated representative, a grievance may be presented to the grievant immediate past supervisor and processed in accordance with Step 1 of the grievance procedure.

Step 2 — If a satisfactory agreement is not reached at Step 1, the grievance may be presented by the grievant to the appropriate supervisor within six (6) working days from the date of response of the Step 1 supervisor. Said supervisor shall within six (6) working days of the receipt of the grievance at Step 2 meet with the grievant and/or a professional Association staff representative, if the employee so desires,

in an effort to resolve the grievance. If an adjustment is not made at this meeting, the Step 2 supervisor shall respond to the grievant in writing within six (6) working days after the date of the Step 2 meeting. (Step 2 supervisors are defined as the Chief Operations Officer, or designated representative, as appropriate.)

Step 3 – If a satisfactory settlement is not reached at Step 2, the grievance may be presented by the grievant to Superintendent’s designated representative within six (6) working days from the date of response of the Step 2 supervisor. The Superintendent’s designated representative, within six (6) days of the receipt of the grievance in Step 3, shall meet with the grievant and/or a professional Association staff representative, if the employee so desires, in an effort to resolve the grievance. If an adjustment is not made at this meeting, the Superintendent’s designated representative shall respond to the grievance in writing within six (6) working days after the Step 3 grievance meeting.

Step 4 – If a satisfactory settlement is not reached in Step 3, the Association may, within ten (10) working days after the response at Step 3, submit the grievance to arbitration by submitting to the Superintendent’s designated representative a joint request form for a list of seven (7) arbitrators to be supplied by the Federal Mediation and Conciliation Service. Within ten (10) working days of receipt of said form, the Superintendent’s designated representative shall direct the request as a joint request to the Federal Mediation and Conciliation Service. Within ten (10) working days of receipt of the list of arbitrators, the Association shall advise the Superintendent’s designated representative that a representative of the Association is available to select an arbitrator to hear the grievance. The Parties shall select an arbitrator from the list by alternately crossing out names until only one (1) remains. Either Party may elect to reject the first panel.

CRAFT Employees Association

Positions covered by this collective bargaining Memorandum of Understanding are Carpenter, Electrician, Painter, Glazier, Plumber, Sheet Metal Worker, Roofer, Bricklayer, Plasterer, HVAC (Technician, Mechanic I & II) and Maintenance Mechanic A, B, and C.

All terms and conditions of employment including but not limited to leaves, benefits and wages, for these job classifications are provided in the Memorandum of Understanding between the Board and the Craft Association.

A grievance shall be handled exclusively in the following manner:

Step 1 – Any employee who has a grievance shall present orally to his/her immediate supervisor or coordinator with or without his/her union steward within three (3) working days after the employee has knowledge or reasonably should have had knowledge of such incident. The employee must advise his/her immediate supervisor or coordinator that this constitutes an oral grievance. The supervisor shall give his/her oral answer within three (3) working days thereafter.

If the grievance is not resolved, the employee within three (3) working days shall sign and present to this immediate supervisor or coordinator a written statement of the grievance which shall include the date the alleged violation took place, the date filed, name of grievant, statement of the nature of the grievance, specific provisions of the Memorandum of Understanding alleged to have been violated, and the specific relief sought. The standard grievance form shall be the only approved and acceptable grievance form (this form can be located in Appendix B of the Memorandum of Understanding) shall be the only

approved and acceptable grievance form. If the grievance has not been presented as an oral grievance, it shall be treated as an oral grievance and handled as above.

Step 2 – If the grievance has been presented as an oral grievance, the immediate supervisor or coordinator will forward the grievance to the zone manager, or facilities support manager and zone manager, facilities support manager or his/her designated representative will discuss the grievance with the employee and the union steward, and other personnel as the Board may determine necessary, within five (5) working days from the date the written grievance is filed. The zone manager, facilities support manager or his/her designated representative shall give an answer to the grievance within five (5) working days of this meeting.

Step 3 – If the grievance is not resolved at step 2, the employee shall be allowed to file a written appeal to the Director of Maintenance or his/her designated representative within three (3) working days after the receipt of the Step 2 answer. The Director of Maintenance or his/her designated representative will discuss the grievance with the employee and the union steward and other personnel as the Board may determine necessary, within five (5) working days from the date the appeal is received. The Director of Maintenance or his/her designated representative shall give an answer to the grievance within five (5) working days of this meeting.

Step 4 – If the grievance is not resolved at Step 3, the grievant may file a written appeal addressed to the Superintendent's designated representative within five (5) working days from the Step 3 answer. A meeting shall then be scheduled for the earliest date of mutual convenience of the parties but no later than fifteen (15) working days after the date of the appeal. The Superintendent's designated representative will meet with the Association's Representative, the Union steward, the grievant and other personnel as the Board may determine necessary. The Board's written answer to the appeal shall be given to the Union within ten (10) working days following such meeting. If the grievance is not resolved at Step 4, the Union may request that the question be submitted to arbitration by written notice to the Board within fourteen (14) days from the Board's answer to the Union.

Arbitration – If a grievance is not settled in Step 4, the Union may submit the grievance to arbitration by submitting to the superintendent's designated representative a joint request form for a list of seven (7) arbitrators to be supplied by the Federal Mediation and Conciliation Service from the State of Tennessee and adjacent states. This request by the Union to the Superintendent's designated representative must be submitted and received within ten (10) working days after the date of the answer in Step 4. Upon receipt of the joint request form from the Union, the superintendent's designated representative shall forward it to the Federal Mediation and Conciliation Service within ten (10) working days of receipt. Within ten (10) working days of receipt of the list of arbitrators, the Association Representative shall advise the Superintendent's designated representative that a representative of the Union is available to select an arbitrator to hear the grievance. Selection from the list shall be made by each party alternately crossing out a name until only one (1) remains. The union shall strike the first name. Each party shall be entitled to decline one (1) list.

United Auto Workers Local 6519 (UAW)

The positions covered by this collective bargaining Memorandum of Understanding are Crewman, Time Collector, Sod Cutter, Forklift Operator, Certified Mechanic I & II, Heavy Equipment Operator, Maintenance Helper, Auto Mechanic Helper, Semi-Truck & Trailer Driver, Small Engine Mechanic, Bob

Cat/Truck & Tractor Driver, Mechanic (A & B), Truck & Tractor Drivers, Tire Repair/Lubrication Person, and Gas Truck Driver.

All terms and conditions of employment including but not limited to leaves, benefits and wages, for these job classifications are provided in the Memorandum of Understanding between the Board and the UAW Local 6519.

Employees have the right to be accompanied, represented, and advised by a Union representative in presenting grievances, which shall be handled formally in the following manner:

Step 1 – If not settled on an informal basis between the employee or employees and the immediate supervisor, the grievance may be presented within five (5) working days after the occurrence, in writing, by the aggrieved employee/employees to the General Labor Foreman or Auto Fleet Manager, who shall endeavor to settle the grievance.

Step 2 – If no satisfactory agreement is reached within five (5) working days between the parties referred to in Step 1, the aggrieved employee/employees and/or shop chairperson shall be allowed five (5) working days to present the same in writing to the Director of Grounds, the Maintenance Director, or the designated representative, who shall endeavor to settle the grievance.

Step 3 – If no satisfactory agreement is reached within five (5) working days between the parties referred to in Step 2, the grievance may be taken up within five (5) working days between representatives of the Union, not necessarily employees of the Board, the shop chairperson, initiating committee person, aggrieved employee/employees, and the Office of Labor and Employee Relations or the designated representative.

Step 4 – If the grievance is not settled at Step 3, it may be submitted to arbitration by notice given within ten (10) working days after the receipt of the response by the Office of Labor and Employee Relations or the designated representative. The arbitrator shall be selected from a list of seven (7) individuals supplied at the request of the parties by the Federal Mediation and Conciliation Service. Within ten (10) working days from the receipt of the list of arbitrators, a representative of the Union will advise the Office of Labor and Employee Relations that the Union is available to select an arbitrator to hear the grievance. Selection from this list shall be made by each party alternately crossing out a name until one (1) remains. Either party may elect to reject an arbitration panel. The decision of the arbitrator shall be advisory to the Board but will be adopted unless specifically rejected by the Board.

Grievances involving suspensions or discharge of a regular employee shall start at Step 3 of the grievance procedure when presented in writing to the Office of Labor and Employee Relations within three (3) working days after the occurrence.

Local 1733 of the American Federation of State, County, and Municipal Employees (AFSCME)

The positions covered by this collective bargaining Memorandum of Understanding are Custodial Lead Helper, Custodial, Custodial Stadium Workers, and Nutrition Services (cafeteria and Central Nutrition Center) employees, Truck Drivers, Fork Lift Operators, Mail Clerks, Warehousemen, and Warehouse Clerks. All terms and conditions of employment including but not limited to leaves, benefits and wages,

for these job classifications are provided in the Memorandum of Understanding between the Board and the AFSCME Local 1733.

Employees have the right to be accompanied, represented, and advised by a Union representative in presenting grievances, which shall be handled exclusively in the following manner:

Step 1 – Within five (5) working days after the occurrence, the grievance shall be taken up, in writing, on the approved grievance form (attached to the Memorandum of Understanding) by the employee, or employees and/or the Union steward with the immediate supervisor, who shall attempt to adjust the grievance. Such adjustment must be made in writing within five (5) working days after the grievance is taken up with the immediate supervisor.

Step 2 – If a satisfactory agreement is not reached in Step 1 above, the employee and/or the Union steward and the chapter chairperson or in the absence of the chairperson the chapter secretary, with advance notice to the Office of Labor and Employee Relations, shall be allowed five (5) working days to present the same in writing to the next level supervisor or his/her designated representative, who shall endeavor to settle the grievance and who shall respond in writing within five (5) working days.

Step 3 – If no satisfactory settlement is reached in Step 2, the grievance may be taken up in writing by the employee, Union steward and/or the Union Grievance Committee, and the staff representative with the Superintendent or his/her designated representative within five (5) working days after the response of the supervisor at Step 2. The Superintendent or his/her designated representative shall respond, in writing, within ten (10) working days.

Failure of the Superintendent or his/her designated representative to respond within the time limits of Step 3 will result in the Board granting the grievance, provided that the requested disposition of the grievance falls within the definition of grievable matters. This does not apply to a grievance when discipline is an issue.

Step 4 – If the grievance is not settled at Step 3, the Union may submit the grievance to Arbitration by submitting to the Superintendent or his/her designated representative a joint request form for a list of seven (7) arbitrators to be supplied by the Federal Mediation and Conciliation Service. This request by the Union to the Superintendent or his/her designated representative for arbitration must be submitted within ten (10) working days after the response at Step 3 by the Superintendent or his/her designated representative. Upon receipt of the joint request form from the Union, the Superintendent or his/her designated representative, within seven (7) working days, shall sign such request and forward it to the Federal Mediation and Conciliation Service. Within ten (10) working days of receipt of the list of arbitrators, a representative of the Union shall advise the Superintendent or his/her designated representative that a representative of the Union is available to select an arbitrator to hear the grievance. Selection from the list shall be made by each party alternately crossing out a name until only one (1) remains. It is understood that time is of the essence in regard to the selection of an arbitrator and the failure of the Union to initiate any action required by this paragraph in a timely fashion will result in the grievance being considered to have been withdrawn.

It is further agreed that the parties shall abide by such arbitrator's decision unless the Board shall determine that the decision and/or award usurps the authority and responsibility solely vested in the Board as elected officials under the Charter of the Board of Education and the laws of the State of Tennessee.

Any regular employee who feels he has been unjustly dealt with in disciplinary matters shall have the right to grieve such matter. Grievances involving suspensions or discharges shall start with Step 3 of the grievance procedure when filed in writing within five (5) days of the occurrence.

Any employee found to be unjustly suspended or discharged shall be reinstated and/or made whole for any losses as voluntarily agreed upon by the parties or as directed by an arbitrator.

Non-Union Grievance Procedures

Personnel Problem Procedure & Complaint Investigation – MCS Policy Number 4309 – Memphis City Schools has an established procedure whereby employee problems and complaints can be resolved. In order that problems and complaints are resolved in a timely manner, employees should proceed logically through the organizational chain of command. When an employee's complaints are justified, immediate action should be taken. In the event appropriate action cannot be taken, an explanation should be given to the employee.

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