



PROGRESSIVE DISCIPLINE

Responsibility:	<i>Superintendent, Human Resource Services Senior Manager, Human Resource Services</i>
Legal References:	<i>Education Act; Ontario College of Teachers Standards of Practice and Ethical Standards; Ontario College of Psychologists Code of Professional Conduct; Ontario College of Social Workers Code of Ethics and Professional Conduct; College of Audiologists and Speech Language Pathologists of Ontario Code of Ethics; Family and Children’s Services Act; Occupational Health and Safety Act; Human Rights Code; Criminal Code; Charter of Rights Education Act, Teacher Performance Appraisal, O. Reg. 99/02</i>
Related References:	<i>Board Policy 1002 Occupational Health and Safety; Board Policy 1004 Harassment; Board Policy 5008 Staff Dress Code; Board Policy 6000 Safe Schools; Board Policy 6001 Code of Conduct; Administrative Procedure 1370 - Responsibility for Maintaining Safety, Security and Order; Administrative Procedure 1490 - Child Abuse; Administrative Procedure 3720 - Racial, Religious and Ethnocultural Harassment; Administrative Procedure 3730 - Sexual Harassment Guidelines; Administrative Procedure 3740 – P Protocol for Reporting a Child in Need of Protection; Supervisor’s Checklist: Staff Discipline; Administrative Procedure 3550 Employee Records; HR-02-650 Letter of Discipline; HR-02-651 Suspension With/Without Pay</i>
Revisions:	
Reviewed:	<i>January 2016</i>

1.0 Preamble

The following procedures provide guidelines and expectations pertaining to the staff progressive discipline process.

2.0 General

- 2.1 In this procedure, the term “supervisor” refers to principals, vice-principals, supervisory officers, managers and supervisors with the authority to discipline.
- 2.2 The employees of the Waterloo Region District School Board have dedicated their careers to the well-being and safety of both employees and students within the Board. When a team is effective, it requires minimum supervision. The role of Supervisors is to help set goals and objectives for their staff and ensure that staff is properly equipped for their task.

- 2.3 On some occasions, there are employees who experience difficulties in either performance or behaviour and, consequently, do not function well as members of the team. It is then the role of the Supervisor to assist the employee to improve the performance or change the behaviour.
- 2.4 These procedures will give Supervisors guidance in proactively exercising their responsibilities to correct unacceptable employee behaviour and discourage its recurrence. Any questions that may arise from the application of these procedures should be addressed to the Superintendent of Human Resource Services or the Human Resources Manager responsible for the employee group.
- 2.5 Respect and trust in this working environment are achieved by fair, objective, firmly and consistently enforced disciplinary procedures, including fair investigative techniques.
- 2.6 The emphasis of the Supervisor should be identification and isolation of problem situations in a supportive and non-intrusive manner before formal corrective action should be undertaken.

3.0 Progressive Discipline

3.1 Guiding Principles

- 3.1.1 The Board strives to facilitate good working relationships between and among its staff as well as to foster work excellence and job satisfaction.
- 3.1.2 The Board believes that its employees are responsible, trustworthy, and capable of making decisions appropriate to their sphere of responsibility.
- 3.1.3 Respect and trust in a working environment is achieved by fair, objective and consistently implemented disciplinary procedures, including fair investigation techniques.
- 3.1.4 Disciplinary action taken must be consistent with the concept of "just cause".
- 3.1.5 It is the general approach of the Board to correct inappropriate behaviour, not punish it. The emphasis should be on identification and isolation of problem situations in a supportive and non-intrusive manner before formal corrective action is undertaken.
- 3.1.6 Employees must be aware of the expectations of the employer, the reasons for the corrective action, and possible future consequences if the behaviour is repeated. Efforts should be made to ensure that the employee understands that discipline is the result of his/her own actions.
- 3.1.7 Most incidents of culpable behaviour are unique; therefore, responses to such behaviour will have to be considered in light of all of the circumstances.
- 3.1.8 Inappropriate or unacceptable behaviour that is not addressed effectively by an administrator or supervisor lowers the standards in the workplace, acts as a disincentive for other employees and is potentially a poor model for students.
- 3.1.9 Failure to respond to inappropriate or unacceptable behaviour could serve as an excuse to other employees who act in a similar fashion.

3.2 Unacceptable (Culpable) Behaviour Distinguished From Substandard Performance

- 3.2.1 A Supervisor is required to intervene when an employee's performance is not meeting acceptable standards or when the behaviour of the employee is not appropriate.
- 3.2.2 Where performance standards are not being met, the Supervisor must appraise the performance, clarify or set standards, inform the Employee and provide resources to assist the employee. In addition, the employee must be given a reasonable time to improve. **Performance appraisal review and employer intervention, noting 'concerns', are not considered discipline.**
- 3.2.3 Culpable behaviour refers to behaviour that is blameworthy and does not conform to expectations.

Examples include, but are not limited to:

- Lateness
- Unsubstantiated absenteeism
- Dishonesty
- Inappropriate communication/interaction with others
- Inappropriate use of computer technology
- Insubordination
- Breach of Board policy or procedure
- Criminal offences such as theft, forgery, assault

3.2.4 Where behaviour does not conform to expectations, the Supervisor must advise the employee that the conduct is "unacceptable behaviour" and that repetition of such behaviour will have consequences for the employee. Sanctions can be imposed on the employee, up to and including dismissal. **Imposing consequences for unacceptable behaviour is discipline.** It is expected that, once an employee is put on notice, there will be an immediate correction of the behaviour and a timeline for improvement will be provided.

3.3 Progressive Discipline To Address Employee Behaviour

3.3.1 There is only one method of correcting employee behaviour that is recognized by arbitrators; PROGRESSIVE DISCIPLINE. This is usually a five-step process, except in a case of very serious misconduct, which may justify starting at a higher step.

3.3.2 Progressive Discipline is a series of increasingly serious steps, ranging from a recorded verbal warning to termination of employment, that a school administrator, supervisor, or member of senior management initiates in order to correct unacceptable behaviour or conduct. In general, there are five potential steps within the progressive discipline process. However, it is recognized that each situation is unique and that responses will have to be considered in the light of all of the circumstances. There are no rigid or arbitrary rules of application. Serious situations may result in immediate and significant disciplinary consequences.

- STEP 1. VERBAL WARNING ("NOTICE")
- STEP 2. WRITTEN WARNING ("NOTICE") WITH COPY TO HUMAN RESOURCE SERVICES FILE
- STEP 3. WRITTEN DISCIPLINE/REPRIMAND
- STEP 4. SUSPENSION WITHOUT PAY (customize to offence) (could be more than one suspension)
- STEP 5. DISMISSAL FROM EMPLOYMENT

3.3.3 It is recognized that there may be non-disciplinary steps taken before formal discipline occurs. These include:

- a) Verbal, written or email reminder, caution or clarification
- b) "Letter of Expectation" which clearly states what is expected of the individual (rule, policy, procedure, practice) in non-disciplinary language.

4.0 Progressive Discipline Process

4.1 Timelines

All discipline should be imposed as soon as possible after the unacceptable behaviour so that there is a clear connection between the employee's conduct and the consequences. *(Please refer to the respective Collective Agreement.)*

4.2 Meeting With Employee

No discipline can be imposed before a meeting is held with the employee (and the union,

where applicable). This allows an employee to provide a full answer and defense and permits an examination of any mitigating factors.

4.3 Double Jeopardy

Once an employee has been warned, reprimanded or suspended, there can be no further disciplinary action taken based on the same “fact situation”. The first warning or penalty counts and the severity of punishment cannot be increased unless there has been an intervening incident of unacceptable behaviour. It is essential that Supervisors be clear in all communications with employees about unacceptable behaviour as to when a warning is being given or discipline is being imposed and exactly what that discipline consists of.

4.4 Allegations Of Criminal Activities

4.4.1 In the case of an investigation into allegations of serious criminal activities for which the employee could be dismissed, if convicted, an employee shall be assigned to home duties immediately, with pay, by the appropriate Superintendent or Designate, pending a determination by the police that charges will or will not be laid.

4.4.2 If charges are laid, or the School Board investigation continues, the assignment to home duties may be continued, with pay, pending a court disposition. If the Board, through an independent investigation, has clear evidence of unacceptable behaviour, a suspension without pay or discipline up to termination may be imposed.

5.0 Receiving A Complaint/Allegation

5.1 Making a complaint about the behaviour of an employee is a very serious matter. It should be emphasized that with the right to complain comes the duty to act responsibly. Criminal matters should always be reported to the police.

5.2 The beginning point of any progressive discipline process is usually the receipt of a complaint. Based upon this, the matter to be inquired into must be defined, the sources of available information must be identified and the investigation must be initiated and continued through to some disposition.

5.3 Complaints about Board employees may come from parents, other employees, volunteers, visitors, the general public or trustees. In most cases, a Supervisor should receive the complaint.

6.0 Who Investigates the Complaint/Allegation?

6.1 After the complaint is received and an investigation appears warranted, it is important to act promptly. With the passage of time, facts become stale and memories fade.

6.2 In the case of relatively minor allegations, the immediate Supervisor of the accused employee should ordinarily be responsible for an investigation. In all other cases, the supervisor's Supervisor would be expected to do the investigation. In most cases, particularly if the allegations are serious in nature, the appropriate Superintendent or Designate shall also be informed of the allegation.

6.3 In cases of serious misconduct, the investigation may be led by the Superintendent, Human Resource Services, or designate, or by an external investigator. NOTE: If there are concerns with respect to conducting an investigation, you should seek immediate assistance from your Superintendent, Student Achievement & Well-Being and/or Superintendent, Human Resource Services.

7.0 Investigation of Complaints or Allegations Against an Employee

- 7.1 The accused employee must be presumed innocent until facts demonstrate the misconduct.
- 7.2 If the Supervisor receives verbal complaints about an employee, it is essential that complainants and witnesses be told that, in order for the employer to act, there must be a documentary record. It is useful to get written statements signed by witnesses. Such persons should be told that, if the investigation results in disciplinary action, they might be required to give their evidence under oath at arbitration or other proceeding. A witness has the right to read any statement and must be given an opportunity to do so. The witness may also keep a copy.
- 7.3 Interviewing The Employee
- 7.3.1 In most investigations of unacceptable behaviour, it is best to interview the employee last. When this occurs, the employee should be notified, in advance, that she/he is being interviewed in order to investigate a possible incident of unacceptable behaviour.
- 7.3.2 Depending upon collective agreement provisions and the employee's wishes, an employee may or may not have access to union representation during an investigator's interview. The right of representation generally starts with the imposition of discipline, which would normally occur after the investigation is complete. If, however, the investigator feels that the presence of a representative would be helpful, the appropriate union representative may be invited to attend. Representatives present at an investigation meeting are present to support the employee, but will not be permitted to argue, cross-examine the investigator, confront, interfere or respond for the accused.
- 7.3.3 It is essential that such meetings be clearly investigative and not inquisitory. No conclusions should be drawn nor criticisms made which would turn the meeting into a disciplinary meeting. An employee who is the subject of an investigation does not have the same right to remain silent as an accused criminal. The employer has the right to a full accounting by an employee of conduct while at work. The employer has the right to make decisions, which may be adverse, in the absence of the employee's input.
- 7.4 Admissible Evidence
- 7.4.1 Circumstantial evidence can be used to prove "just cause" for discipline if it points to the employee in question AND excludes any other person. Evidence must be first hand and provable by sensory facts. As a witness at arbitration, the witness will be asked what he or she personally 'saw, heard, tasted or smelled'. Only witnesses qualified as experts can testify as to their opinion. As an example, you can say that you smelled alcohol on a person's breath, but you cannot conclude that he/she was drunk.
- 7.4.2 Evidence that is comprised of statements by persons other than the witness is hearsay and is not generally admissible unless it is a routine report made in the course of business or is an admission by the disciplined employee.
- 7.5 Concluding The Investigation
- 7.5.1 All parties to the investigation should be apprised of the fact that the investigation is closed.
- 7.5.2 A complainant is entitled to know whether his/her complaint was substantiated. If the employee has physically mistreated a child, the parent is also entitled to know whether discipline was imposed, but should be cautioned that this personal information about the unacceptable employee conduct and the disposition should remain confidential. (see F&CS Children in Care protocol under Protocols/Guidelines under Board Procedures)

- 7.5.3 An accused employee is entitled to know if the case is not substantiated. In the event that unacceptable behaviour has been demonstrated, the employee will be informed of the results of the investigation as part of a disciplinary meeting.
- 7.5.4 Witnesses will not generally be privy to personal information about the accused or the complainant. However, should the discipline be grieved, they are entitled to be fully informed as to their role in any subsequent proceedings.