

EMPLOYEE DISCIPLINE PROCEDURES

Background

Principals and other Administrative Heads are responsible for maintaining standards and discipline among their employees. This document was developed in response to numerous inquiries received regarding the procedures that should be followed in dealing with infractions of work rules, unprofessional conduct (*i.e.*, tardiness, absence without permission, failure to perform assigned tasks, insubordination, or violation of BPS policy, etc.) by employees. This Circular has been revised to conform to the Education Reform Act of 1993.

Principals and other Administrative Heads are responsible for maintaining standards and discipline among the employees assigned to their schools or offices. The primary objective of disciplinary action is to provide a structured opportunity for employees to improve performance and remedy misconduct before poor performance or misconduct jeopardizes employment.

The Superintendent has the right to dismiss, demote or suspend any employee of the school district. The Superintendent also has the right to assign, reassign, layoff, remove, appoint, promote, and supervise employees of the school district. The Superintendent, in his/her discretion, may delegate a designee to conduct any hearing that may be required. Consequently, the procedures described herein may not necessarily occur at the school or office level, if the Superintendent exercises his statutory authority.

Finally, the attached procedures are compatible with current collective bargaining agreements and meet "due process" requirements. The essential elements of due process are notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. Due process also requires the right to representation and prompt resolution. However, *nothing in these procedures is intended to create any rights or property interests of employees in addition to those provided by federal or state law or by applicable collective bargaining agreements.*

Levels of Progressive Discipline

There are several levels of discipline that may result from employee misconduct. The sequence of progressive discipline of employees includes the following five (5) levels:

- Oral warning
- Written warning
- Written reprimand
- Suspension
- Dismissal

These progressive levels, or steps, generally should be followed in sequence, unless the seriousness of the offense warrants otherwise.

Organization of Disciplinary Procedures

The disciplinary procedures are organized into three sections. The first section sets forth the general principles of due process and progressive discipline. The second section sets forth the several categories of positions within the Boston Public Schools' workforce and provides guidance as to how to identify the position held by the employee subject to discipline. The type of position held is relevant because different positions within the Boston Public Schools may require different disciplinary procedures. In other words, although the general principles of due process and progressive discipline apply across the board, the specific procedural steps required in disciplining an employee may depend, for example, on whether or not the employee holds a civil service position, and whether any such civil service employee is permanent or provisional. The third section sets forth the specific procedural steps that generally must be followed in disciplining an employee. It includes subsections that set forth the required procedural steps by category of position held by the employee subject to discipline. For the convenience of the user, the procedures begin with a table of contents.

How to Use the Disciplinary Procedures

Prior to initiating the disciplinary process outlined in this document, contact the Office of Labor Relations at 635-1576. In using these disciplinary procedures, an administrator should review the general principles of due process and progressive discipline in the event that s/he is not already familiar with these principles. The administrator then should determine the nature of the position held by the employee subject to discipline, using section II ("Identification of Category of Position Held") as guidance, if necessary. Once the administrator has determined the category of the position held by the employee, the administrator then should refer to the particular subsection of section III ("Steps in the Disciplinary Process"), that relates to that category of position and proceed to follow the procedural steps contained therein.

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I. GENERAL PRINCIPLES OF DUE PROCESS AND PROGRESSIVE DISCIPLINE

In order to improve performance and safeguard employee rights, the general principles of due process and progressive discipline require that the degree of discipline reflects: i) the seriousness of the offense; ii) be based on known rules and expectations of conduct; iii) be consistently and impartially applied; iv) be administered fairly, including investigation, notice, and an opportunity to be heard; and v) progressively increase in severity unless the offense is so egregious as to warrant more severe measures in the first instance. These principles are set forth more fully below.

A. Degree of Discipline Reflects Seriousness of Offense

A fundamental principle of discipline is that the degree of discipline should reflect the seriousness of the offense. Thus, once an administrator has determined that there is a sufficient cause for discipline, s/he must determine the degree of discipline to be imposed. For example, signing in a few minutes late might warrant a verbal warning, but does not warrant discharge. Similarly, an employee's unexplained failure to show up for work may warrant a suspension, depending on the circumstances. Generally, where a mild corrective action is used and the employee commits subsequent offenses of the same nature, then progressively stronger measures may be taken.

B. Based on Known Rules and Expectations of Conduct

An employee should have knowledge of the conduct expected of him or her and of all rules and regulations that he or she is expected to follow. Knowledge can be actual or inferred. Actual knowledge can come from a written or stated rule, policy or code of conduct. Inferred knowledge arises from awareness of a basic standard of behavior. For example, stealing City property is obviously prohibited. Accordingly, a specific rule stating that stealing is prohibited is unnecessary.

Current collective bargaining agreements specify work rules and working conditions. The supervisor should make clear to his or her employees other rules of the district or individual schools or offices in regard to work rules, duties, and expectations of employee conduct. Such rules and orders should be reasonably related to the orderly, efficient or safe operation of the schools or services, or to the performance that may be expected of an employee. The fact that a majority of employees are performing their duties within the rules is evidence that rules are generally known. New rules that have an impact on the working conditions of employees who are members of a bargaining unit are subject to collective bargaining prior to implementation.

C. Consistently Applied

Administrators must be consistent in their enforcement of rules and regulations. Rules and regulations should be uniformly applied to all employees such that similar conduct should be disciplined to the same degree regardless of who commits the act. For example, if there is a grace period for tardiness, it should apply to all employees. However, where there are sound and legitimate mitigating circumstances an administrator is not prohibited from using independent discretion in assessing discipline on a case-by-case basis. Different degrees of fault or responsibility for the wrong doing, repeat offenses, or other circumstances affecting some but not all employees are examples of reasonable bases for variation. Also, it is important to keep in mind that employees often argue that an employer has condoned certain types of inappropriate behavior in the past. Therefore, if the administrator intends to start enforcing a rule that was previously ignored, the employer must make employees under his/her supervision aware that he or she intends to start enforcing the rule.

D. Investigation

A fair investigation is required prior to any disciplinary action. The scope of the investigation and its degree of formality will depend on the nature of the alleged misconduct. A fair investigation requires that an adequate effort is made to determine whether the employee did, in fact, violate or disobey a rule or order or commit the action with which s/he is charged. The investigation must be conducted objectively and may include interviews of witnesses, requests for written reports from witnesses, review of relevant records, and an interview with the accused, among other things. In general, where discipline may issue, the accused must be informed of his or her rights to representation. In each instance, a decision to proceed with disciplinary action against an employee must have a sufficient evidentiary basis supporting the charges against the employee.

E. Fairly Administered Process

In general, due process requires that an employee subject to discipline be given notice, an opportunity to be heard, and prompt resolution irrespective of the level of discipline. The degree of formality, however, will vary in relation to the seriousness of the offense or the potential severity of the sanction. In each instance, however, an employee should be given notice of the particular allegations or charges against him/her and an opportunity to be heard prior to any disciplinary action being taken. An employee also must be reminded of his or her right to union or other representation if discipline could result from an investigatory meeting relating to the alleged misconduct. The decision to involve the representative, however, is the employee's. If it appears that criminal misconduct may be involved or that the employee's suspension may result from the investigation, no questioning of the employee may take place unless the employee has been advised of his or her right to legal counsel.

F. Progressively Severe

In general, discipline is intended to be corrective, not punitive. Progressive discipline is discipline that is imposed in incremental steps of increasing severity in an effort to encourage an employee to correct his or her behavior. For example, in administering progressive discipline, the administrator may begin with counseling or a warning to the employee, and work up to suspension and/or termination should the misconduct continue. However, as noted above, the degree of discipline should always reflect the seriousness of the offense. Thus, notwithstanding the School Department's adherence to the principles of progressive discipline, where misconduct in the first instance constitutes a serious offense, such as conduct that constitutes a violation of the law or is so egregious that by its very nature it constitutes a serious offense, the lesser degrees of discipline should be by-passed and a more severe disciplinary measure should be applied, *i.e.*, written reprimand, suspension or dismissal, depending on the nature and severity of the offense. A few examples of those types of offenses may include theft or destruction of school department property or threatening or violent behavior or harassment of a supervisor, student, or co-worker.

The administrator may consider the past record in determining the degree and severity of the discipline to be imposed on an employee found guilty of the immediate offense. In such instances, an employee may merit a harsher discipline for a seemingly minor infraction where the employee has been given warnings numerous times in the past for similar offenses. For example, if the employee has been warned about tardiness in the past, and continues to be late, a warning may no longer suffice. It is important to note, however, that an employee's past record may not be used to determine whether he or she is guilty of the immediate offense.

II. IDENTIFICATION OF CATEGORY OF POSITION HELD BY EMPLOYEE

A. Introduction

It is important that the administrator properly identify the specific category of position held by the employee subject to discipline because different disciplinary procedures and provisions of state law may apply, depending on the type of position. This section briefly discusses relevant provisions of state law and sets forth the several categories of positions within the Boston Public Schools' workforce. It also provides guidance as to how to identify the position held by the employee subject to discipline.

Public Employer Law:

Chapter 150E of the Massachusetts General Laws governs the collective representation of identified groups of public employees by employee organizations, known as bargaining units or unions. The term public employee has been interpreted broadly to cover all individuals employed by a public employer, except those specifically excluded by statute, such as certain management positions. Many BPS employees thus are covered by M.G.L.ch. 150E and are members of one of the School Department's several collective bargaining units. The terms and conditions of employment for these employees are set forth in the applicable collective bargaining agreement between the union and the School Department. Many such collective bargaining agreements provide that an employee may not be disciplined or discharged for arbitrary or unsubstantiated reasons and requires that the employer have provable, justifiable reasons for its disciplinary action. Thus, it is advisable to follow the principles of due process and progressive discipline set forth above.

Civil Service Law:

Aside from, and in addition to, the rights that employees have pursuant to their collective bargaining agreements, many School Department employees also have protections under the civil service law, Massachusetts General Laws, Chapter 31. The Massachusetts civil service system was established in the early part of the 20th Century to provide some measure of job protection to state and municipal employees in response to the excesses of political patronage. The civil service system regulates the appointment, promotion, discipline, demotion, transfer, and layoff of civil service employees. Frequently, civil service law will afford parallel rights to those employees who are covered by a collective bargaining agreement.

Massachusetts Education Reform Law:

In addition, the discipline and dismissal of school department employees also may be governed by the provisions of Chapter 71 of the Massachusetts General Laws, as amended by the Massachusetts Education Reform Law. This state statute sets forth certain procedural requirements relating to the suspension of school department employees. It also sets forth specific provisions relating to the discipline and dismissal of certain categories of school department employees, including, but not limited to, teachers, school librarians, school adjustment counselors, school social workers and school psychologists, assistant principals and assistant headmasters and other department heads and district supervisors.

B. General Categories of BPS Positions

In general, it is common to think of positions in Boston Public Schools as broken down into three non-exclusive categories¹ as follows:

- Civil service positions
- Positions covered by a collective bargaining agreement
- Positions classified as "management" within the BPS classification scheme

However, for *purposes of disciplining* employees the more relevant break-down of positions is as follows:

- Civil service positions
- Non-civil service positions

This break-down reflects the fact that the civil service statute, which has many specific provisions relating to the discipline and discharge of employees, applies only to those Boston Public Schools employees who hold civil service positions. It does not apply to other employees of the Boston Public Schools, who may be either employees covered by a collective bargaining agreement or management employees.

In general, the particular rules and/or procedures relating to the discipline of employees not holding civil service positions are the same regardless of whether the employee holds a management position or a position covered by a collective bargaining agreement.

For *purposes of disciplining employees*, the civil service statute distinguishes between different sub-categories of civil service employees. Similarly, some of the provisions of M.G.L. c. 71, sections 41 and 42, as amended by the Ed Reform Act, make distinctions between types of non-civil service employees for purposes of discipline and discharge. The relevant types, or sub-categories, of civil service employees and non-civil service employees is as follows:

Civil service positions:

- Permanent (tenured) appointment;
- Permanent position within a six-month probationary period;
- Provisional appointment;
- Provisional appointment held for less than nine (9) months; and
- Temporary appointment.

Non civil service positions:

BTU members:

- Probationary teachers (teachers without professional status who have taught for less than ninety (90) calendar days);
- Teachers without professional teacher status (sometimes referred to as "Provisional"); and,
- Teachers with professional teacher status

¹ It is important to note that these categories are not exclusive. For instance, a position that is a civil service position also may be covered by a collective bargaining agreement.

Note here that a teacher, school librarian, school adjustment counselor, school social worker or school psychologist are considered "teachers" for purposes of these sub-categories.

BASAS members:

- Assistant principals, assistant headmasters, or department heads serving in the District in that position for at least three (3) consecutive years;
- Assistant principals, assistant headmasters, or department heads serving in the District in that position for less than three (3) consecutive years;
- Other supervisors serving in the District in that position for at least three (3) consecutive years;
- Other supervisors serving in the District in that position for less than three (3) consecutive years

Management positions:

- Principals, headmasters serving in the District in that position for at least three (3) consecutive years;
- Principals, headmasters serving in the District in that position for less than three (3) consecutive years.

C. Determining the Category of Position Held by the Employee

Prior to initiating any disciplinary action, the administrator should determine the category of the position held by the employee subject to discipline to ensure that the appropriate steps are followed as provided by state statute and these procedures. The following series of questions might be helpful:

1. Does the employee hold a civil service position? A simple review of the employee's personnel file should reveal his/her civil service status. In general, clerical, technical, administrative, public safety, and labor positions are subject to civil service and professional titles are not.

A list of titles of civil service positions within the District is attached as Attachment A to assist the administrator in determining whether the employee holds a civil service position. If the employee is civil service, determine the applicable sub-category of position. In the event that the administrator is not certain about whether a particular employee is governed by civil service or the particular sub-category of the position held by the employee, s/he is advised to contact the Office of Human Resources as follows:

For civil service status of a BPS employee, contact: Records Management Department at 635-9670 or 635-9623.

2. If the employee is not civil service, does the employee hold a BTU or BASAS position for which specific provisions of M.G.L. c. 71, sections 41 and 42 apply? In the event the administrator is not certain about whether the employee holds a position within the applicable sub-category of positions within the jurisdiction of the Boston Teachers Union or the BASAS, the administrator is advised to contact the Office of Human Resources as follows:

Staffing Unit at 635-9645 or Records Management Department at 635-9670 or 635-9623.

III. STEPS IN THE DISCIPLINARY PROCESS

This section sets forth the particular steps that should be followed in the event that cause for disciplinary action appears to exist. It is important to note that the specific procedural steps required in disciplining (or investigating the possibility of disciplining) an employee may vary depending on the category of position held by the employee subject to discipline. For this reason, an administrator should determine the category of position held by the employee prior to commencing a disciplinary action. For guidance on determining the applicable category of position, see Section II above.

A. CIVIL SERVICE EMPLOYEES

There are several categories of civil service employees: permanent positions following probationary period ("tenured"); permanent positions within the six (6) month probationary period ("non-tenured"); positions held provisionally; positions held provisionally for less than nine (9) months of service; and temporary appointments.

The following steps relating to oral warnings, written warnings, and written reprimands apply in general to all civil service employees. The standards and/or procedures required for suspending, dismissing or demoting a civil service employee, however, vary depending on the type of position. For example, as discussed below, the dismissal of a tenured civil service employee requires "just cause," while the standard for dismissal of a probationary employee is "unsatisfactory conduct or capacity, or unsatisfactory character or quality of his/her work."

Although discipline generally should be imposed progressively, if as a result of a preliminary investigation it appears that disciplinary sanctions greater than originally contemplated by the administrator are warranted, the administrator may consider more severe discipline and should refer immediately to the procedures for the level of discipline that is contemplated. The administrator should consider the most severe level of discipline that may be warranted in light of the circumstances and ensure that the procedures for that level is provided to the employee, even if the final decision may be to impose a less severe discipline. This will ensure that the employee's due process rights are protected in all instances.

1. ORAL OR WRITTEN WARNING (Applies to all civil service positions)

- a. Preliminary investigation: Allegations of misconduct or infraction of rules not personally observed by the responsible administrator must be investigated by the administrator. Such investigation might involve interviewing witnesses and reviewing relevant documents, among other things.
- b. Informal investigatory meeting (Informal Conference/Employee): If an administrator has information, as a result of a preliminary investigation, that suggests that an employee has been involved in misconduct or an infraction of the rules, the employee should be given an opportunity to respond to the allegations and/or explain himself or herself in an informal meeting. Where an administrator will interrogate or question an employee, and discipline may result based on the employee's responses, the employee must be given prior notice of his/her right to union or other representation and that discipline might result from the meeting.
- c. Imposing an oral or written warning: If, after meeting with the employee, the administrator determines that a warning is appropriate, the warning should be promptly given, following as soon as possible after the alleged misconduct. The date and nature of the warning should be recorded by the administrator as part of his/her daily log or diary. The administrator should have a copy of any written warning issued. Oral or written warnings should clearly communicate the nature of the offense (rule broken or duty failed) and the possible consequences if misconduct persists. The administrator should make performance and conduct expectations clear to the employee. Where appropriate, a time

period for improvement, as well as assistance and resources available to help bring about the desired improvement, should be provided to the employee.

The administrator should retain a copy of the written reprimand and ensure that the employee has signed the document acknowledging receipt. If the employee refuses to sign the written warning, the issuing administrator should have his/her delivery of the warning witnessed by a fellow administrator. Prior to issuing an oral or written warning, contact the Office of Labor Relations at 635-1576.

2. WRITTEN REPRIMAND (Applies to all civil service positions)

A written reprimand may be appropriate where employee conduct has not improved within the stated period of time following an oral or written warning, where misconduct is repeated or aggravated, or where conduct is a more serious first offense. In this case the administrator should:

- a. Preliminary Investigation: Allegations of misconduct or infraction of rules not personally observed by the responsible administrator must be thoroughly investigated by the administrator. Such investigation might involve interviewing witnesses and reviewing relevant documents, among other things.
- b. Investigatory meeting (Informal Conference/Employee): If the preliminary investigation supports the allegations of misconduct or infraction of rules, the employee subject to discipline should be given an opportunity to respond to the allegations and/or explain himself or herself in a meeting. If discipline (at the level of written reprimand or greater severity) could result from this meeting, the employee also must be informed that s/he has a right to union or other representation at the meeting. The following steps should be followed:

Notify the employee of the alleged misconduct promptly.

Schedule a meeting with the employee as soon as possible to determine if Written reprimand is warranted. The administrator should schedule the meeting in writing, informing the employee of the nature of the allegations, the possibility that discipline could result, and his or her right to have the union or other representative present at the meeting. The administrator and/or employee may include other persons who have knowledge of the facts if their presence will help in resolving the situation. The employee should be advised of this opportunity.

Conduct the meeting, the purpose of which is to:

- allow the administrator to make reasonable inquiry in order to determine if an infraction has occurred and if any written reprimand is warranted;
 - allow the employee to be heard and to ask questions and discuss specific ways to improve the situation and agree on work expectations.
- c. Issuing a written decision regarding a reprimand: The administrator should prepare a written statement as soon as possible following the meeting to inform the employee in writing of the administrator's decision regarding whether discipline will be imposed. If disciplinary action is warranted, the administrator may prepare a written reprimand. Prior to issuing a written reprimand, contact the Office of Labor Relations at 635-1576.

Form of a written reprimand: Written reprimands should include the following:

- the work rule violated or inappropriate behavior of the employee;
- a clear statement of appropriate conduct expected and a summary of any agreement on further behavior reached at the meeting;
- a reminder of the date and nature of previous oral and/or written warning(s);
- an indication of the consequences of further misconduct;
- names of witnesses, if any, to the infraction, and of others attending the meeting;
- a place for the employee's signature and a reminder that the signature indicates only that the employee has read the statement and understands that it will be placed in his or her file; and
- a statement advising the employee of his or her right to respond in writing to both facts and conclusions contained in the reprimand.

Obtain the employee's signature. If the employee is unwilling to sign the material, have a neutral individual observe and witness the individual reading the statement. The witness should sign the material indicating he or she has witnessed the employee receiving the material.

Give the employee a copy of the document.

Send copies of the signed reprimand and the employee's statement, if any, to the Academic Superintendent or the concerned/ Administrator (if the employee is not assigned to a school level) and the Director of Human Resources.

If the employee wishes to appeal the administrator's disciplinary action, contractual grievance procedures are applicable.

3. SUSPENSION (Applies to all civil service positions)²

Principals and certain other administrators so designated by the superintendent are authorized to suspend civil service employees for five days or less without pay for just cause, such as in the event that misconduct or poor performance persists following one or more written reprimands and the opportunity to improve, or a single incident of misconduct is so severe that suspension is warranted. As indicated below, the procedures for suspension depends on the length of the suspension.

- a. Suspension of five (5) days or less: An administrator issuing a suspension of five (5) days or less must follow the procedures listed below. The procedures for preliminary investigation and investigatory meeting on page 13-14 should be followed.

If, following the investigatory meeting, the administrator determines that suspension is warranted a civil service employee may be suspended for five days or less without a prior hearing. The written notice of intent to suspend, including the specific grounds for suspension, should be given seven (7) calendar days prior to the actual date of suspension.

The written notice must include the following:

- a copy of M.G.L. c. 31, Sections 41 to 45;

² In addition to civil service law, another statute, M.G.L.268A, provides that any employee, including civil service employees, who is under indictment for misconduct that would adversely affect his/her job performance may be suspended without pay during the period of his/her indictment. Any such situation should be reported to the Office of Labor Relations for appropriate action.

- the specific reason or reasons for the suspension;
- notice that the suspended employee may file a written request for a hearing within 48 hours of receipt of the notice of the reason for the suspension;

If the employee requests such a hearing, it must be provided within five (5) days of receipt of the request for such a hearing. The administrator conducting the hearing must give a written notice of his/her decision within seven (7) days of such hearing.

The employee's right to appeal the administrator's disciplinary action to the Civil Service Commission or arbitration is governed by statute. Appeal also may be governed by contractual grievance procedures.

- b. Suspension for more than five (5) days: The procedure to be followed when issuing a suspension for more than five (5) days depends on whether the employee is tenured or non-tenured. The first section below sets forth the procedures for tenured employees. It is followed by a section applicable to non-tenured employee. Note that no employee may be suspended for a period of more than one (1) month without his/her consent. The procedures for conducting a preliminary investigation and investigatory meeting on pages 13-14 should be followed. If, after an investigatory meeting, an administrator determines that a disciplinary sanction more severe than a written reprimand may result, then the disciplinary matter proceeds to formal hearing.³ If the administrator conducting the investigation will not conduct the formal hearing as the Superintendent's designated hearing officer, then the administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a recommendation for proposed discipline, supporting documents, if any, and prior discipline if any. Then proceed as follows:

Tenured Employee: For tenured civil service employees, prior written notice and a formal hearing as set forth below is required for suspensions of more than five days. Such suspensions may only be for just cause.

Notice:

- The employee must be given three (3) work days' written notice of the suspension hearing, the date, time and place of the hearing. Such notice shall include a reminder of the right to union representation and/or legal counsel at the hearing.
- The notice also must include an explanation of the disciplinary action contemplated and the specific reason or reasons for the action;
- Further, the employee must be given a copy of Sections 41 through 45 of Chapter 31 of the Massachusetts General Laws; and,

Formal Hearing: The hearing officer shall:

- Schedule the hearing through notice described above.
- Compile documentation of previous discipline, such as oral and written warnings and/or written reprimands, for consideration of progressive discipline, as well as any statements by witnesses and other relevant statements or documents;

³ Except Civil Service employees suspension of five days or less.

- The suspension hearing may be attended by the employee, his or her legal or union representative and such witnesses as the employee may choose, and other individuals who may be knowledgeable about the causes for the action or about the suspension procedure. At the hearing, the employee should have full opportunity to call and cross-examine witnesses and to produce other evidence. The rules of evidence do not apply to such a hearing. Therefore, the hearing officer may rely on hearsay evidence in lieu of, or in addition to live, first-hand testimony. The hearing officer shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription. The formal suspension hearing should be public if either the employee or the administrator recommending suspension submits a written request that the hearing be public.

Recommended Decision: Within five (5) business days following the hearing, the hearing officer should submit to the superintendent a written recommendation regarding the issuance of discipline. The written recommendation should include:

- a summary of the evidence;
- an evaluation of the evidence; and,
- a recommendation to suspend or not to suspend. If suspension is recommended, the recommendation also should include the recommended length of suspension (not to exceed one a month).

In determining the severity of discipline to be recommended, the administrator should consider the employee's prior disciplinary history and the seriousness of the offense(s), which resulted in the hearing. If the administrator determines that discipline is not warranted, the employee shall be timely notified of the same. If the administrator determines that less severe disciplinary action is warranted, any such discipline should issue promptly and the employee should be notified of the same. For instance, if the administrator determines that an oral or written warning, a written reprimand or a suspension for five (5) days or less is warranted, s/he should follow the directions for imposition of these measures. Another hearing is not required.

Decision: If, based on the evidence presented at the hearing, the superintendent concurs with the recommendation of the hearing officer, the superintendent will give the employee a written notice of his/her decision.⁴ The written notice of this decision shall state fully and specifically the reasons for the decision.

The superintendent must give the employee notice of his/her decision within seven (7) business days after the filing of the recommended decision of the hearing officer. If the superintendent conducts the formal suspension hearing himself/herself, he/she must render his/her decision within two (2) business days of completion of the hearing. A copy of the decision should be sent to the Assistant Superintendent of Human Resources and the State Personnel Administrator.

Appeal to Civil Service Commission: Civil Service employees must be notified of their right to appeal their suspension to the Civil Service Commission. Suspensions of tenured civil service employees may be appealed to the Civil Service Commission in accordance with Section 43 of Chapter 31 of the Massachusetts General Laws.

Non-tenured Employee: For non-tenured civil service employees, the following procedures apply to suspensions of more than five (5) days.

⁴ The written notice of intent to suspend, including the grounds for suspension, must be given at least seven (7) days prior to the actual date of suspension.

Preliminary Investigation and Investigatory Meeting: Follow the procedures on page 13 and 14.

Formal Hearing: If the administrator determines that a suspension may be warranted, a formal hearing is required. If the administrator conducting the investigation will not conduct the formal hearing as the Superintendent's designated hearing officer, then the administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a recommendation for proposed discipline, supporting documents, if any, and prior discipline, if any. To prepare for a formal hearing, the administrator who will conduct the hearing should take the following steps:

- (a) Notice: Send the employee a written notice, stating briefly but with specificity: the reasons for the hearing (*i.e.*, the charges against the employee); the intent to suspend for the specific time period contemplated (not to exceed one (1) month); that more severe discipline could result including a longer term suspension or dismissal; the date, time, and place of the hearing; a reminder of the employee's right to have union and/or legal representation. The written notice must be at least seven (7) calendar days in advance of actual suspension. Therefore, if suspension is the outcome of the hearing, ensure that at least seven (7) days elapse between actual notice (notice received) and the actual date of suspension.
- (b) Hearing: Compile documentation on previous discipline, such as oral and written warnings and written reprimands, for consideration of progressive disciplinary measures; request any statements by witnesses, and any other relevant statements or documents. The hearing may be attended by the employee, his or her legal and/or union representative, any such witnesses as the employee may choose, and other individuals who may be knowledgeable about the causes for the action or about the suspension procedure. At the hearing the employee should have full opportunity to call and cross-examine witnesses and to produce other evidence. The rules of evidence are not applicable to such a hearing. Therefore, the hearing officer may rely on hearsay evidence in lieu of, or in addition to live, first-hand testimony. The hearing office shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription.

Recommended Decision: Within approximately one week following the hearing, the administrator hearing the matter should submit to the Superintendent a written recommendation regarding the discipline decision. The recommendation should include:

- a summary of the evidence;
- an evaluation of the evidence; and,
- the recommendation to suspend or not to suspend. If suspension is recommended, the recommendation also should include the recommended length of the suspension (not to exceed one (1) month.)

In determining the severity of discipline to be recommended, the administrator should consider the employee's prior disciplinary history and the seriousness of the offense(s) that resulted in the hearing. If the administrator determines that suspension is not warranted, the employee should be timely notified of the same. If the administrator determines that less severe disciplinary action is warranted, any such discipline should issue promptly and the employee should be notified of the same. For instance, if an administrator determines that an oral/written warning, reprimand or suspension of five (5) days or less is warranted, she/he should follow the procedures for imposition of these measures. Another hearing is not required.

Superintendent's Review of Administrator's Recommended Decision: If, based on his/her review of the evidence presented at the hearing, the superintendent concurs with the recommendation, the superintendent will communicate his decision by approving the administrator's recommended decision. The administrator then must give the employee written notice of the decision, which should include the reasons for the discipline and the superintendent's decision to approve (or disapprove) the suspension.

Copies of the recommendation for discipline, the superintendent's approval or disapproval, and the notice signed by the employee shall be sent to the Office of Labor Relations.

The employee's right to appeal the administrator's disciplinary action to the Civil Service Commission or arbitration is governed by statute. Alternatively, an employee may seek review of the discipline through collective bargaining agreement or arbitration.

4. DISMISSAL (Applicable to all civil service employees) ⁵

If misconduct or poor performance persists, and no circumstance suggests that further corrective discipline would produce satisfactory performance or conduct, the employee may be dismissed. In dismissing a civil service employee, the standard for dismissal depends on the category of the civil service position held by the employee. For example, the dismissal of a tenured civil service employee requires that the administrator have "just cause," for the dismissal, while the standard for dismissal of a probationary civil service employee is "unsatisfactory conduct or capacity, or unsatisfactory character or quality of his/her work." The procedure for dismissing a civil service employee is set forth below by category of position: a) tenured, b) probationary (permanent non-tenured), c) provisional, and d) temporary.

- a. Dismissal of Tenured Civil Service Employee: The procedures relating to the dismissal of a tenured employee, including those relating to notice, conducting a formal hearing, and the dismissal decision, are the same as those stated above in the section relating to the suspension of more than five (5) days of a tenured civil service employee. See Section III, A, 3.
- b. Dismissal of Probationary (Permanent Non-Tenured) Civil Service Employee: A probationary employee may be dismissed if his/her conduct or capacity, or the character or quality of the work performed by him/her is unsatisfactory. The procedures for dismissal of probationary (permanent non-tenured) civil service employee are as follows.
 - A probationary employee may be dismissed at any time after such person has served thirty (30) days and prior to the end of such probationary period if his/her conduct, capacity, or job performance is not satisfactory to the appointing authority;
 - The employee should be given a written notice regarding the unsatisfactory nature of his/her conduct or capacity or work;
 - Such notice should state in detail the particulars of the unsatisfactory nature of his/her conduct or capacity or work. A copy of such notice must be sent to the State Personnel Administrator;
 - Upon giving the employee such notice, his/her services shall terminate pursuant to civil service law.

⁵ The procedure for demotion is the same as the procedure for dismissal.

- c. Dismissal of Provisional Civil Service Employees: A provisional civil service employee may be dismissed without a hearing prior to the dismissal. The employee should be provided with a written notice of the dismissal. However, where a provisional employee has served under a provisional appointment for more than nine (9) months, s/he is entitled to a post-termination informal hearing as follows:

Provisional employees serving more than nine (9) months:

- If such an employee is discharged as a result of allegations relative to his/her personal character or work performance and if such reasons are to become a part of the employee's employment record, s/he may request an informal hearing with the superintendent or his/her designee. Such request for an informal hearing must be in writing.
- The informal hearing must be provided by the superintendent or his/her designee within ten (10) days of the request.
- The hearing should be public if either the employee or the administrator recommending dismissal files a written request that it be public.
- The hearing officer shall notify the employee in writing of his/her decision within ten (10) days of the hearing.
- If the hearing officer finds that the discharge was justified, the decision is final.

Provisional employees serving less than nine (9) months:

A provisional civil service employee serving under a provisional appointment for less than nine (9) months may be dismissed without a hearing prior to the dismissal. The employee should be provided with a written notice of the dismissal, which also states the grounds for the dismissal. No post-termination hearing is required.

- d. Dismissal of Temporary Civil Service Employees: A temporary civil service employee may be dismissed without a hearing prior to the dismissal. The employee should be provided with a written notice of the dismissal, which also states the grounds for the dismissal. No post-termination hearing is required.

B. ALL OTHER SCHOOL DEPARTMENT EMPLOYEES (Non-Civil Service Employees)

The following rules and procedures, which are consistent with those provisions of the Education Reform Act that govern suspension and dismissal of school district employees, generally apply to the discipline of all non-civil service employees. It is important to note, however, that the rules and procedures regarding dismissal may depend on the sub-category of employees. The subsection on dismissals below, subsection (4), thus is broken down by sub-category of employee: dismissal of all non-civil service employees except teachers and certain administrators, dismissal of teachers, and dismissal of certain administrators.

Although discipline generally should be imposed progressively, if as a result of a preliminary investigation it appears that disciplinary sanctions greater than originally contemplated by the administrator are warranted, the administrator may consider more severe discipline and should refer immediately to the procedures for the level of discipline that is contemplated. The administrator should consider the most severe level of discipline that may be imposed and ensure that the procedures for that level is provided to the employee, even if the final decision is to impose a less

severe discipline. This will ensure that the employee's rights are protected in all instances, irrespective of the final decision.

1. ORAL OR WRITTEN WARNING

- a. Preliminary Investigation: Allegations of misconduct or infraction of rules not personally observed by the responsible administrator must be investigated by the administrator. Such investigation might involve interviewing witnesses and reviewing relevant documents, among other things.
- b. Investigatory Meeting: If, as a result of a preliminary investigation, an administrator has information that suggests an employee has been involved in misconduct or an infraction of the rules, the employee should be given an opportunity to respond to the allegations and/or explain himself or herself in an investigatory meeting. This meeting should be scheduled in writing and the employee should be given prior notice of his/her right to union or other representation and that discipline may result. It is important to have a note taker at this meeting who is not in the same bargaining unit as the employee accused of misconduct.
- c. Imposing an oral or written warning: If, after meeting with the employee, the administrator determines that a warning is appropriate, the warning should be promptly given, following as soon as possible after the alleged misconduct. The date and nature of the warning should be recorded by the administrator as part of his/her daily log or diary. Oral or written warnings should clearly communicate the nature of the offense (rule broken or duty failed) and the possible consequences if misconduct persists. The administrator should make performance expectations clear to the employee. Where appropriate, a time period for improvement, as well as assistance and resources available to help bring about the desired improvement, should be provided to the employee. Contact the Office of Labor Relations prior to issuing any discipline.

2. WRITTEN REPRIMAND

A written reprimand may be appropriate where employee conduct has not improved within the stated period of time following an oral or written warning or when misconduct is repeated or aggravated, or is a more serious first offense. In this case the administrator should:

- a. Preliminary Investigation: Allegations of misconduct or infraction of rules not personally observed by the responsible administrator must be thoroughly investigated by the administrator. Such investigation might involve interviewing witnesses and reviewing relevant documents, among other things.
- b. Investigatory meeting: If the preliminary investigation supports the allegations of misconduct or infraction of rules, the employee subject to discipline should be given an opportunity to respond to the allegations and/or explain himself or herself in a meeting. If discipline (at the level of written reprimand or greater severity) could result from this meeting, the employee also must be informed that s/he has a right to union or other representation at the meeting. The following steps should be followed.
 - Notify the employee of the alleged misconduct promptly.
 - Schedule a meeting with the employee as soon as possible to determine if a written reprimand is warranted. The administrator should notify the employee and schedule the meeting in writing, informing the employee of the nature of the allegations and his or her right to have a union or other representative present at the meeting. The administrator and/or employee may include other persons who have knowledge of the facts if their

presence will help in resolving the situation. The employee should be advised of this opportunity.

- Conduct the meeting, the purpose of which is to:
 - allow the administrator to make reasonable inquiry in order to determine if an infraction has occurred and if any written reprimand is warranted;
 - allow the employee to be heard and to ask questions and, discuss specific ways to improve the situation and agree on work expectations.
- c. Issuing a written decision regarding a reprimand: The administrator should prepare a written statement as soon as possible following the meeting to inform the employee in writing of the administrator's decision regarding whether discipline will be imposed. If disciplinary action is warranted, the administrator may prepare a written reprimand. Contact the Office of Labor Relations prior to making the decision to issue any discipline.

Imposing a written reprimand: A written reprimand should include:

- the work rule violated or inappropriate behavior of the employee;
- a clear statement of appropriate conduct expected and a summary of any agreement on further behavior reached at the meeting;
- a reminder of the date and nature of previous oral and/or written warning(s);
- an indication of the consequences of further misconduct;
- names of witnesses, if any, to the infraction, and of others attending the meeting;
- a place for the employee's signature and a reminder that the signature indicates only that the employee has read the statement and understands that it will be placed in his or her file; and,
- a statement advising the employee of his or her right to respond in writing to both facts and conclusions contained in the reprimand.

Obtain the employee's signature. If the employee is unwilling to sign the material, have a neutral individual observe and witness the employee reading the statement. The witness should sign the material indicating he or she has witnessed the employee receiving the statement.

Give the employee a copy of the document.

Send copies of the signed reprimand and the employee's statement, if any, to the Cluster Leader or the concerned Administrator (if the employee is not assigned to a Cluster Office) and the Office of Labor Relations.

If the employee wishes to appeal the administrator's disciplinary action, the contractual grievance procedures, if any, that apply to the particular employee subject to discipline govern the appeal process.

3. SUSPENSION⁶

In the event that misconduct persists following one or more written reprimands and the opportunity to improve, or a single incident of misconduct is so severe that suspension is warranted, the employee may be suspended without pay. Note, however, that a school

⁶ By statute, any employee, who is under indictment for misconduct that would adversely affect his/her job performance, may be suspended without pay during the period of his/her indictment. Any such situation should be reported to the Office of Legal Advisor for appropriate action.

department employee may not be suspended for a period exceeding one (1) month, except with the consent of the employee. The procedures for suspending an employee follows.

- a. Preliminary Investigation and Investigatory meeting: The procedures for preliminary investigation and investigatory meetings are the same as apply to written reprimands, as stated on page 23-24. If the administrator conducting the investigation will not conduct the formal hearing as the Superintendent's designated hearing officer, then the administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a recommendation for proposed discipline, supporting documents, if any, and prior discipline, if any.
- b. Formal Hearing: If the administrator determines that a suspension may be warranted, a formal hearing is required. To prepare for a formal hearing, the administrator who will participate in the hearing should take the following steps:
 - Notice -- The hearing office will send the employee a written notice, stating briefly but with specificity the reasons for the hearing (i.e., the charges against the employee); the intent to suspend for the specific time period contemplated (not to exceed one (1) month); that more severe discipline could result including a longer term suspension or dismissal; the date, time, and place of the hearing; and a reminder of the employee's right to have union or legal representation. The written notice must be at least seven (7) days in advance of actual suspension. Therefore, if suspension is the outcome of the hearing, ensure that at least seven (7) days elapse between actual notice (notice received) and the actual date of suspension. The hearing officer will rely upon the principal to determine which allegations to include in the notice.
 - Hearing -- Compile documentation on previous oral and written warnings, written reprimands and/or other discipline for consideration of progressive disciplinary measures, request any statements by witnesses, and any other relevant statements or documents. The hearing may be attended by the employee, his or her legal or union representative, any such witnesses as the employee may choose, and other individuals who may be knowledgeable about the causes for the action or about the suspension procedure. At the hearing the employee should have full opportunity to call and cross-examine witnesses and to produce other evidence. The rules of evidence are not applicable to such a hearing. Therefore, the hearing officer may rely on hearsay evidence in lieu of, or in addition to live, first-hand testimony. The hearing officer shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription.
- c. Recommended Decision: Within approximately two weeks following the hearing, the hearing officer should submit to the superintendent a written recommendation regarding the discipline decision. The recommendation must include:
 - a summary of the evidence;
 - an evaluation of the evidence; and,
 - the recommended decision to suspend or not to suspend. If suspension is recommended, the recommendation also should include the recommended length of the suspension (not to exceed one (1) month.)

In determining the severity of the discipline to be recommended, the administrator should consider the employee's prior disciplinary history and the seriousness of the offense that resulted in the hearing. If the hearing officer determines that less severe disciplinary action is warranted, any such discipline should issue promptly and the employee should be notified of the same. For instance, if an administrator determines that an oral/written warning or is

warranted, she/he should follow the procedures for imposition of these measures. Another hearing is not required.

- d. Superintendent's Review of Hearing Officer's Recommended Decision: If, based on his/her review of the evidence presented at the hearing, the superintendent concurs with the recommendation, the superintendent will communicate his/her decision by approving the administrator's recommended decision. The administrator then must give the employee written notice of the decision, which should include the reasons for the discipline and the superintendent's decision to approve the suspension.

The recommendation for discipline go to the superintendent's office for approval or disapproval, and a copy will go to the Office of Labor Relations.

- e. Any rights of the employee to appeal the disciplinary action to arbitration are governed by statute or collective bargaining agreement.

4. DISMISSAL

Dismissal is the final level of discipline of the employee. Although levels of discipline are generally progressive, there are instances where the nature of the misconduct or infraction of work rule is so severe that even a single incident would warrant dismissal of the employee.

The following procedures generally apply to employees whose positions are not covered by civil service. Dismissal procedures for teachers and supervisors whose positions fall within the jurisdiction of M.G.L. c. 71, §§ 41 and 42 are covered in sub-section (b) below. It is recommended that administrators who have a potential dismissal situation consult with the Office of Labor Relations before proceeding.⁷

a. Dismissal of all non-civil service employees except teachers and supervisors

- Preliminary Investigation and Investigatory meeting: Allegations of misconduct or infraction of rules not personally observed by the administrator must be thoroughly investigated by the administrator. The employee should be given an opportunity to explain himself or herself in an informal conference. However, an employee may not be interrogated unless s/he has been informed of the right to have counsel present during any investigatory interview, from which suspension may result. Further, the employee has a right to have legal or union representation present at any such investigatory meeting. If, as a result of the administrator's preliminary investigation, it appears that dismissal is appropriate, the procedures set forth below should be followed.

Note, however, that if the alleged misconduct is being investigated by another agency, such as the Department of Social Services in the event of the filing of a 51A, or law enforcement officials, the above paragraph may not apply. In this situation please consult with the Office of Labor Relations.

- Procedure for formal dismissal hearing: If the administrator determines that dismissal might be warranted, a formal hearing is required. The administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a

⁷ For most categories of employees covered by collective bargaining agreements, failure to satisfactorily perform the duties of the position as grounds for dismissal is addressed through the disciplinary process (as it is for civil service employees). However, dismissal procedures for teachers and supervisors who have unsatisfactory performance evaluations are set out in a separate document

recommendation for proposed discipline, supporting documents, if any, and prior discipline, if any. To prepare for a formal hearing, the School Department should take the following steps:

- Notice -- Send the employee a written notice, stating briefly but with specificity: the reasons for the hearing (*i.e.*, the charges against the employee); a statement that discipline, including dismissal, could result; the date, time, and place of the hearing; and a reminder of the employee's right to have union or other representation;
 - Formal Hearing -- Collect documentation on previous oral and written warnings, written reprimands, and/or suspensions for consideration of progressive disciplinary measures, request any statements by witnesses, any other relevant statements or documents, and any previous poor performance evaluations. Collection of documentation, witness statements and other evidence is the responsibility of the administrator who conducts the initial investigation.
 - Hearings may be attended by the employee, his or her legal or union representative and such witnesses as the employee may choose, and other individuals who may be knowledgeable about the causes for the action or about the dismissal procedure. At the hearing the employee should have full opportunity to call and cross-examine witnesses and to produce other evidence. The rules of evidence are not applicable to such a hearing. Therefore, the hearing officer may rely on hearsay evidence in lieu of, or in addition to, live, first-hand testimony. The hearing office shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription.
- Recommended Decision: Following the hearing, the hearing officer should submit a recommendation in writing within approximately one week to the superintendent. The recommendation must include a summary of the evidence; an evaluation of the evidence; and the recommendation to dismiss.

In determining the severity of discipline to be recommended, the administrator should consider the employee's prior disciplinary history and the seriousness of the offense that resulted in the hearing. If the administrator determines that dismissal or suspension is not warranted the employee should be timely notified of the same. If the administrator determines that less severe disciplinary action is warranted, any such discipline should issue promptly and the employee should be notified of the same. For instance, if an administrator determines that an oral/written warning or reprimand is warranted, she/he should follow the procedures for imposition of these measures. Another hearing is not required.

- Decision: If the superintendent reviews the recommendation and approves the imposition of the dismissal, based on the evidence presented at the hearing, the superintendent will communicate his/her decision to the administrator, who shall proceed to dismiss. The superintendent may also disagree with the recommendation and disapprove the imposition of disciplinary action or approve a different level of discipline.

The employee shall be provided with a copy of the administrator's recommendation, the superintendent's determination, and the notice of dismissal. The employee should receive the original and should sign a copy of the notice of dismissal. Send copies of these dismissal papers, including the superintendent's determination and signed, dated notice to the employee, to the Department of Human Resources.

- b. Dismissal of Teachers: The following rules and procedures relate to dismissal of teachers for all causes except failure to satisfy teacher performance standards (performance evaluation).

- Probationary Teachers: Probationary teachers are teachers (including teachers, school librarians, school adjustment counselors, school social workers, and school psychologists), who have been teaching in the system for less than ninety (90) calendar days. Probationary teachers are employees-at-will. No hearing is required prior to terminating their services. An administrator who intends to dismiss a probationary teacher should contact the Office of Labor Relations, which will process the transaction.
- Teachers Without Professional Teacher Status: Teachers (including teachers, school librarians, school adjustment counselors, school social workers, and school psychologists), without professional teacher status and who have taught for at least ninety (90) calendar days, are employees-at-will. However, the following procedure shall be followed for dismissals based upon disciplinary infractions:
 - Preliminary Investigation and Investigatory Meeting: Allegations of misconduct or infraction of rules not personally observed by the administrator must be thoroughly investigated by the administrator. The employee should be given an opportunity to explain himself or herself in an informal conference. However, no teacher or other employee may be interrogated unless s/he has been informed of the right to have counsel present during any investigatory interview if suspension may result. Further, the employee has a right to have legal representation present at any such investigatory meeting.

Note, however, that if the alleged misconduct is being investigated by another agency, such as the Department of Social Services or law enforcement, the above paragraph might not apply. In this situation, please consult with the Office of Labor Relations.

- Formal Hearing: If, as a result of the administrator's investigation, it appears that a dismissal might be warranted, a formal hearing is required. If the administrator conducting the investigation will not conduct the formal hearing as the Superintendent's designated hearing officer, then the administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a recommendation for proposed discipline, supporting documents, if any, and prior discipline, if any.
- Procedures to be followed by the hearing officer for formal hearing:
 - Notice. Send the teacher a written notice, stating briefly but with specificity the reasons for the hearing (*i.e.*, the charges against the employee); a statement that discipline, including dismissal, could result; the date, time, and place of the hearing; and a reminder of the employee's right to have union or legal representation.

- The hearing may be attended by the teacher, his/her legal or union representative, such witnesses as the teacher may choose, and other individuals who may be knowledgeable about the causes for the action or about the dismissal procedure. At the hearing the teacher should have full opportunity to call and cross-examine witnesses and to produce other evidence. The rules of evidence are not applicable to such a hearing. Therefore, hearsay evidence may be relied upon by the hearing officer in lieu of, or in addition to, live, first-hand testimony. The hearing officer shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription.
- o Recommended Decision: The decision should issue promptly following the hearing. The hearing officer should submit a recommendation, in writing, within approximately one-three weeks, to the superintendent. The recommendation should include a summary of the evidence; an evaluation of the evidence; and the recommendation to dismiss.

The hearing officer should give consideration to the prior service and disciplinary history of the teacher and the seriousness of the offense(s). If it is determined that dismissal is not warranted, the employee should be so notified, and any less severe disciplinary action should be imposed according to proper procedure. For instance, if an administrator determines that a warning, reprimand or suspension is warranted, she/he should follow the procedures for imposition of these measures. Another hearing is not required.

- o Decision: If the superintendent reviews and approves the recommendation to dismiss, based on the evidence presented at the hearing, the superintendent will communicate his/her decision to the administrator, who shall proceed to dismiss the teacher. (The superintendent also may disagree with the recommendation and disapprove the imposition of dismissal or approve a different level of discipline.)
- o Notice of Dismissal: The teacher shall be provided with written notice of the intention to dismiss, which shall include the reasons for the dismissal stated in sufficient detail so that the teacher may respond, and with documents attached that provide the grounds for dismissal. If, in addition to the disciplinary determination from the hearing, the principal is relying upon poor performance evaluations and prior disciplinary actions, all these documents must be referenced and provided to the employee.

The notice also should inform the teacher that s/he may request a meeting with the principal within ten (10) school days of receipt of the notice to review the decision with the principal and to present information relative to the dismissal and the teacher's status. The notice shall inform the teacher of the right to be represented by counsel or any other representative at such a meeting.

The teacher should receive an original of the notice and a copy to be dated and signed by the teacher to indicate receipt.

- Post notice meeting: If requested, the principal must have a meeting consistent with the requirements set out in the preceding paragraph.
- Final dismissal determination: The principal must make a final decision whether to dismiss after the meeting, and so notify the teacher in writing.
- Send copies of the dismissal papers, the superintendent's approval, signed notices and the principal's final determination signed by the teacher to the Office of Labor Relations.

3. Teachers With Professional Teacher Status

For teachers or other staff with professional teacher status covered by Chapter 71 (including teachers, school librarians, school adjustment counselors, school social workers, and school psychologists), the following procedure shall be followed for dismissals based upon disciplinary infractions:

- Preliminary Investigation and Investigatory Meeting: Allegations of misconduct or infraction of rules not personally observed by the administrator must be thoroughly investigated by the administrator. The employee should be given an opportunity to explain himself or herself in an informal meeting. However, no teacher or other employee may be interrogated unless s/he has been informed of the right to have counsel present during any investigatory interview if suspension may result. Further, the employee has a right to have legal or union representation present at any such investigatory meeting.

Note, however, that if the alleged misconduct is being investigated by another agency, such as the Department of Social Services or law enforcement, the above paragraph might not apply. In this situation, please consult with the Office of Labor Relations.

- Proceeding to Hearing: If, as a result of the administrator's preliminary investigation, it appears that a dismissal might be warranted, a formal hearing is required. The Superintendent shall designate a hearing officer, then the administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a recommendation for proposed discipline, supporting documents, if any, and prior discipline, if any.

Procedures to be followed by the hearing officer for formal hearing:

- Notice. Send the teacher a written notice, stating briefly but with specificity, the reasons for the hearing (*i.e.*, the charges against the employee); a statement that

discipline could result, up to and including dismissal; the date, time, and place of the hearing; and a reminder of the employee's right to have union or legal representation.

- Formal Hearing -- Collect documentation on previous oral and written warnings, written reprimands, and/or suspensions for consideration of progressive disciplinary measures; request any statements by witnesses, and any other relevant statements or documents; the hearing may be attended by the teacher, his/her legal or union representative, such witnesses as the teacher may choose, and other individuals who may be knowledgeable about the causes for the action or about the dismissal procedure. At the hearing the teacher should have full opportunity to call and cross-examine witnesses and to produce other evidence. The rules of evidence are not applicable to such a hearing. Therefore, hearsay evidence may be relied upon by the hearing officer in lieu of, or in addition to, live, first-hand testimony. The hearing officer shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription.
- Recommended Decision: The decision should issue promptly following the hearing. The hearing officer should submit a recommendation, in writing, within approximately one-three weeks, to the superintendent. The recommendation must include a summary of the evidence; an evaluation of the evidence; and the recommendation to dismiss.

The hearing officer should give consideration to the prior service and disciplinary history of the teacher and the seriousness of the offense(s). If it is determined that dismissal is not warranted, the employee should be so notified, and any less severe disciplinary action should be imposed according to proper procedure. For instance, if an administrator determines that a warning, reprimand or suspension is warranted, she/he should follow the procedures for imposition of these measures. Another hearing is not required.

- Decision: Based on the evidence presented at the hearing, if the superintendent reviews and approves the recommendation to dismiss, the superintendent will communicate his/her decision to the administrator, who shall proceed to dismiss the teacher. (The superintendent may also disagree with the recommendation and disapprove the imposition of dismissal or approve a different level of discipline.)
- Grounds for Dismissal: Teachers with professional teacher status may only be dismissed for:
 - (a) inefficiency
 - (b) incompetence
 - (c) incapacity
 - (d) conduct unbecoming a teacher
 - (e) insubordination
 - (f) failure to satisfy teacher performance standards
 - (g) any other just cause
- Notice of Dismissal: The teacher shall be provided with written notice of the intention to dismiss, which shall include the reasons for the dismissal stated in sufficient detail so that the teacher may respond, and with documents attached that provide the grounds for dismissal. If, in addition to the disciplinary determination from the hearing, the principal is relying upon poor performance evaluations and prior disciplinary actions, all these documents must be referenced and provided to the employee.

The notice also should inform the teacher that s/he may request a meeting with the principal within ten (10) school days of receipt of the notice to review the decision with the principal and to present information relative to the dismissal and the teacher's status.

The notice shall inform the teacher of the right to be represented by counsel or any other representative at such a meeting. The notice shall inform the teacher of his/her right to appeal the decision to arbitration through the Commissioner of Education.

The teacher should receive an original of the notice and a copy to be dated and signed by the teacher to indicate receipt.

- Post notice meeting: If requested, the principal must have a meeting consistent with the requirements set out in the preceding paragraph.
- Final Dismissal Determination: The principal must make a final decision whether to dismiss after the meeting, and so notify the teacher in writing.
- Send copies of the dismissal papers, the superintendent's approval, signed notices and the principal's final determination signed by the teacher to the Office of Labor Relations.

c. Assistant Principals, Department Heads and Other Supervisors

This section applies to the dismissal of assistant principals, department heads, and other BASAS supervisors. (Only the superintendent may dismiss a principal. Therefore, these procedures do not apply to principal dismissal).

- Preliminary Investigation and Investigatory Meeting: Allegations of misconduct or infraction of rules not personally observed by the administrator must be thoroughly investigated by the administrator. The employee should be given an opportunity to explain himself or herself in an informal meeting. However, no employee may be interrogated unless s/he has been informed of the right to have counsel present during any investigatory interview if suspension may result. Further, the employee has a right to have legal or union representation present at any such investigatory meeting.

Note, however, that if the alleged misconduct is being investigated by another agency, such as the Department of Social Services or law enforcement, the above paragraph might not apply. In this situation, please consult with the Office of Labor Relations before taking any action.

- Proceeding to Hearing: If, as a result of the administrator's preliminary investigation, it appears that a dismissal might be warranted, a formal hearing is required. If the administrator conducting the investigation will not conduct the formal hearing as the Superintendent's designated hearing officer, then the administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a recommendation for proposed discipline, supporting documents, if any, and prior discipline, if any.

Procedures to be followed by the hearing officer for formal hearing:

- Notice. Send the assistant principal, department head, or other supervisor, a written notice, stating briefly but with specificity, the reasons for the hearing (*i.e.*, the charges against the employee); a statement that discipline could result, up to and including dismissal; the date, time, and place of the hearing; and a reminder of the employee's right to have union or legal representation;
- Formal Hearing -- Collect documentation on previous oral and written warnings, written reprimands, and/or suspensions for consideration of progressive disciplinary measures; request any statements by witnesses, and any other relevant statements or documents;

The hearing may be attended by the assistant principal, department head, or other supervisor, union representative, such witnesses as the assistant principal, department head, or other supervisor may choose, and other individuals who may be knowledgeable about the causes for the action or about the dismissal procedure. At the hearing the administrator should have full opportunity to call and cross-examine witnesses and to produce other evidence. The rules of evidence are not applicable to such a hearing. Therefore, hearsay evidence may be relied upon by the hearing officer in lieu of, or in addition to, live, first-hand testimony. The hearing officer shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription.

- Recommended Decision: The decision should issue promptly following the hearing. The administrator who heard the matter should submit a recommendation in writing within approximately one week, to the superintendent. The recommendation must include a summary of the evidence; an evaluation of the evidence; and the recommendation to dismiss.

The hearing officer should give consideration to the prior service and disciplinary history of the assistant principal, department head, or other supervisor and the seriousness of the offense(s). If it is determined that dismissal is not warranted, the employee should be so notified, and any less severe disciplinary action should be imposed according to proper procedure. For instance, if an administrator determines that a warning, reprimand or suspension is warranted, she/he should follow the procedures for imposition of these measures. Another hearing is not required.

- Decision: If the superintendent reviews and approves the recommendation of dismissal, based on the evidence presented at the hearing, the superintendent will communicate his/her decision to the administrator, who shall proceed to dismiss the assistant principal, department head, or other supervisor. (The superintendent may also disagree with the recommendation and disapprove the imposition of disciplinary action or approve a different level of discipline.)
- Grounds for Dismissal: An assistant principal, department head, or other supervisor who has served in that position for three (3) consecutive years [with appropriate certification] cannot be dismissed except for good cause.
- Notice of Dismissal: The assistant principal, department head, or other supervisor shall be provided with written notice of the intention to dismiss, which shall include the reasons for the dismissal stated in sufficient detail so that the assistant principal, department head, or other supervisor may respond, and documents that provide the grounds for dismissal. If, in addition to the disciplinary determination from the hearing, the principal is relying upon poor performance evaluations and prior

disciplinary actions, all these documents must be referenced and provided to the employee.

The notice also should inform the assistant principal, department head, or other supervisor that s/he may request a meeting with the principal within fifteen (15) days of receipt of the notice to review the decision with the superintendent and to present information relative to the dismissal and the employee's status. The notice shall inform the assistant principal, department head, or other supervisor of the right to be represented by counsel or any other representative at such a meeting.

- Post notice meeting: If requested, the principal must have a meeting consistent with the requirements set out in the preceding paragraph.
- Final dismissal determination: The superintendent must review and approve or disapprove the dismissal decision after the meeting, if a meeting was requested, and the assistant principal, department head, or other supervisor must be notified in writing.
- Send copies of the dismissal papers, the superintendent's approval, signed notices and the principal's final determination signed by the assistant principal, department head or other supervisor, to indicate receipt, to the Office of Labor Relations.
- Assistant principals, department heads, or other supervisors may seek a review of the dismissal through arbitration.