8:45–10 a.m.
I. Hiring Process: From Recruitment through Orientation

10:15–11:30 a.m.
II. Performance Process: From Evaluation through Letter of Direction

11:30 a.m.–12 p.m. - Lunch

12:00–2:00 p.m.
III. Misconduct Process: From Notice through Arbitration

2:15–3:15 p.m.
IV. Leave Process: From Absence through Return to Work

3:15–3:30 p.m.
V. Labor Management Relations

3:30– 4:00
VI. Reduction In Force
Lens will be more Schoolhouse than Courthouse

Lay of the land the general state or condition of affairs under consideration; the facts of a situation
(1) Trained Ear and Trained Eye

(2) Help Decode

(3) Blind spots
I. Hiring Process

A. Identify Need and Position Control
B. Plan (timeline, criteria for initial candidate screening, selection committee, interview questions, and instructions for taking notes)
C. Create/modify job description
D. Post and or promote job opening
E. Recruit
F. Applicant screening
G. Interviews
H. Background Check
I. Reference Check
J. Job Offer
K. Hiring by the Board
L. Onboarding
REPORTS TO: Building Principal or designee

POSITION SUMMARY: The High School Teacher provides learning opportunities and instruction to students.

ESSENTIAL FUNCTIONS:
- Kindle excitement about learning, encouraging flexible and critical thinking and development of communication skills.
- Assess the needs of the students and provide a suitable learning environment to meet their needs.
- Follow the adopted curricula, attending staff meetings and other professional meetings as may be assigned by the principal.
- Maintain order in the classroom and ensure a caring, safe learning environment, with clear routines and procedures designed to minimize disruption and maximize student on task time.
- Maintain safe and healthful conditions in the classroom and report promptly to the principal any serious accident or illness affecting students in the classroom.
- Evaluate each pupil’s educational growth and development and make periodic reports to parents or guardians as well as to the designated school administrator.
- Plan, prepare and provide an instructional program, including the preparation of lesson plans as necessary so that the instructional program is uninterrupted in the event of the teacher’s absence.
- Continue to improve classroom methods and techniques by attending workshops, summer school, professional meetings or conferences, and keep abreast of current educational innovations through professional literature.
- Work cooperatively with a building team in planning, supporting and providing instruction, and share with other staff the responsibility for supervision of activities and student behavior outside the regular classroom.
- Demonstrate positive relationship skills with students, parents and district staff, maintaining ongoing and open communication.
- Encourage and provide the structure for ongoing, meaningful involvement of parents and community members in the classroom and school.
- Use technology to provide challenging instruction to students of all learning levels.
- Possess knowledge of and adhere to Governing Policies and District Regulations and Procedures.
- Participate in special projects as assigned and perform related duties and key responsibilities consistent with the scope and intent of the position.
Employers may require a pre-employment physical examination to determine the suitability of an individual for a physically demanding or potentially dangerous job. Pre-employment physicals are used to determine whether an applicant has the physical ability and stamina required to do the job.

- Drug Tests
- English Proficiency Tests
- Sample Job Task Tests
- Emotional Intelligence Testing
- Physical Exams
- Personality tests
- Talent Assessment Tests
- Cognitive Tests
Testing Candidates with Disabilities

• The Americans with Disabilities Act (ADA) makes it unlawful to discriminate against qualified applicants with disabilities. This means that Districts must take care that any pre-employment testing analyzes skills and does not screen out disabled candidates simply because they are disabled.

• The ADA requires that employers administer skills tests in a manner or format that doesn't require the use of the impaired skill unless the test is designed to test that skill because it is necessary to carry out the job description. Additionally, the ADA requires employers to make reasonable accommodations for people with disabilities when giving tests. Employers are not required to make accommodations which would unduly burden the employer, however.

• In order to best comply with the requirements of ADA, employers should, whenever possible, avoid giving pre-employment tests that may pose problems for persons with impaired sensory, speaking, or manual skills (and certain learning disabilities, such as dyslexia), unless they are skills required to perform the job.
Applicant management - Screening

• Preliminary assessment to screen out those who lack the desired level of skills and competencies for the job.

• Verifying candidates stated employment record and qualifications.
The purpose of an interview is to continue to gather information from candidates to determine if she or he is the right person for the job.

The right person is identified through a series of steps of which the interview is just one.
Traditional interview can focus on building rapport with candidates and moving to discerning candidate potential.

Consider more complex interviewing techniques like combating biases, behavioral questions and don’t always come with hiring experience.

Structured interviews are more objective and legally defensible than unstructured interviews. Interviewers who use this interview format should learn how to prepare behavioral questions, understand rating scales and score candidates consistently.

Start with what did you do to prepare as opposed to an experience question
The Interview

Appropriate note-taking
• Only note what candidate says
• All notes submitted at end of interviews
• Never erase notes. Strike through comments you wish to eliminate
• Consider what it means to note nothing
  • Ex 1: If candidate didn’t answer question, note section should be blank
  • Ex 2: If you ask question # 2, questions #2 will be blank on all of your raters as you’ll be maintaining eye contact
• Maintaining eye contact with candidates
Interview Note Taking Considerations

- Note taking in the interview can help interviewers:
  - Reduce the impact of memory decay
  - Aid in recall of important information from Candidate
  - Increase consistency in ratings and increase reliability
  - Reduce rating disagreement or variance (Don’t capture your impression/perspective but instead record applicant response)

- Increase accurate recording of what is being said
  - Focus on responses
  - Avoid primacy and recency effects and other potential bias*
  - Reduce the influence of impression management by focusing on what is being said
  - Make and justify a candidate’s rating
  - Provide documentation for legal defensibility
  - Provide documentation to support future feedback and potential training needs
The question is - Can the employer demonstrate a job-related necessity for asking the question?

The Equal Employment Opportunity Commission (EEOC) examines the intent behind the question, as well as how the information is used, to determine whether any discrimination has occurred. Therefore, employers should ask applicants only job-related questions. Before asking the question, the interviewer should determine whether this information is necessary to (1) judge the applicant’s qualifications, (2) level of skills and (3) overall competence for the position.
V. LANGUAGE ISSUES

As the U.S. labor force has grown more ethnically diverse, the number of workers who are not native English speakers has increased. Between 2010 and 2014, an average of 20.9 percent of the population spoke a language other than English at home.\textsuperscript{[90]} This represents an increase from 17.9 percent in 2000 and 13.8 percent in 1990.\textsuperscript{[91]}

Employers may have legitimate business reasons for basing employment decisions on linguistic characteristics. However, because linguistic characteristics are closely associated with national origin, it is important to carefully scrutinize employment decisions that are based on language to ensure that they do not violate Title VII.\textsuperscript{[92]} The subsections below provide guidance on how Title VII applies to employment decisions that are based on accent, English fluency, and restrictive workplace language policies.

\begin{itemize}
\item \url{https://www.eeoc.gov/laws/guidance/national-origin-guidance.cfm}
\end{itemize}
Accent Materially Interferes with Job Performance

- **Discount Airline needs to hire a customer service agent at a major metropolitan airport to provide in-person assistance for passengers who have missed their connections or whose flights have been cancelled or delayed.**

- **This position requires short but effective spoken communication in a noisy environment with a disgruntled public.**

- **Romel, who speaks English with a pronounced Filipino accent, applies for the position and is invited for an interview. The interviewing process includes a job simulation during which the applicant responds to customers in an atmosphere that mimics that of a busy airport.**

- **Two experienced interviewers who understand the demands of this job are impressed by Romel's calm demeanor and commitment to problem-solving, but they have difficulty understanding Romel's spoken English during the interview process.**

- **The interviewers conclude that Romel's pronounced Filipino accent will materially interfere with effective spoken communication in this environment. As a result, Romel is not hired.**

- **Romel challenges his rejection as national origin discrimination involving his accent. The EEOC does not find reasonable cause to believe that Romel was subjected to national origin discrimination because effective oral communication is required for this position, and Romel's accent materially interferes with his ability to communicate effectively in the circumstances of this job.**
• **Accent Does Not Materially Interfere with Job Performance.**

• **Mariam, who speaks with a discernible Lebanese accent, is an experienced English-language teacher who earned an American graduate degree in education after moving to the United States with her American husband. Mariam’s graduate school professors commended her demonstrated ability to engage high school students. High School hired Mariam as a permanent substitute teacher for humanities courses. Teachers at High School specifically requested her as a substitute teacher because it is clear to them that the students learn the assigned material when she teaches.**

• **Mariam subsequently applies and is rejected for three permanent teaching jobs at High School. The School District’s hiring official explains that effective communication in English is required for classroom teachers, and Mariam is not qualified because she speaks with a Lebanese accent. Although effective communication in English is required to teach at High School, Mariam’s accent does not materially interfere with her ability to do so, as demonstrated by the statements of other High School teachers and her graduate school professors. Mariam states a claim for national origin discrimination involving her accent.**
RCW 28A.400.301
Information on past sexual misconduct—Requirement for applicants—Limitation on contracts and agreements—Employee right to review personnel file.

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Applicant" means an applicant for employment in a certificated or classified position who is currently or was previously employed by a school district.

(3) Before hiring an applicant.....

(6) A school district shall not hire an applicant who does not sign the statement described in subsection (2) of this section.

(7) School districts may employ applicants on a conditional basis pending the district's review of information obtained under this section. When requests are sent to out-of-state employers under subsection (3) of this section, an applicant who has signed the statement described in subsection (2) of this section, shall not be prevented from gaining employment in Washington public schools if the laws or policies of that other state prevent documents from being made available to Washington state school districts or if the out-of-state school district fails or refuses to cooperate with the request.
### WAC 181-87-080

**Sexual misconduct with students.**

**Unprofessional conduct** includes the commission by an education practitioner of any sexually exploitive act with or to a student including, but not limited to, the following:

1. Any sexual advance, verbal or physical;
   - Sexual intercourse as defined in RCW 9A.44.010;
2. Indecent exposure as defined in RCW 9A.88.010;
3. Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student;
4. Provided, that the provisions of this section shall not apply if at the time of the sexual conduct the participants are married to each other.
Record checks for employees and certain volunteers and contractors—Cost.

(1) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children or developmentally disabled persons shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity may provide a copy of the record report to the applicant at the applicant's request. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor may waive the requirement. Except as provided in subsection (2) of this section, the district, pursuant to chapter 41.59 or 41.56 RCW, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor hiring the employee shall determine who shall pay costs associated with the record check.
• **Look later in the process.** Check social media profiles after an applicant has been interviewed, when his or her membership in protected groups is likely already known.

• **Be consistent.** Don’t look at only one applicant’s social media profiles.

• **Document decisions.** Print out the page containing social media content on which you base any hiring decision and record any reason for rejection, such as bad judgment. This protects you if damaging content has been deleted by the time a decision is challenged.

• **Consider the source.** Focus on the candidate’s own posts or tweets, not on what others have said about him or her. You may want to give the candidate a chance to respond to findings of worrisome social media content. There are impostor social media accounts out there.

• **Be aware that other laws may apply.** For example, if you use a third party to do social media screening, you are probably subject to the federal Fair Credit Reporting Act (and similar state laws). Also, some state laws prohibit adverse action based on off-duty conduct, except under narrow circumstances.
• **Social Media typically results in a reason NOT hire a candidate.**

• **When a piece of information is learned from social media and that information is used to make a decision about that candidate, you have now used social media as a step or hurdle in the hiring process and it is subject to the same scrutiny as other decision-making tools.**

• **With all that said, social media does not provide reliable and consistent information on all of your candidates. If you are going to use a tool to make a hiring decision, EEOC guidelines say that it must be reliable and valid. Collecting inconsistent information on your candidates, that might differ across protected classes, and applying inconsistent standards to that information violates best selection practices and not only decreases the accuracy of the selection process, but opens your process up to legal scrutiny.**
• Lastly, Not everyone updates their social media to their current situation and not everyone even has social media. When job recruiters have a list of resumes for potential employees, they may end up turning away a perfect fit due to their lack of social media presence. There is likely an inconsistent supply of information available between candidates and that some classes are more likely to use social media than others.
Employment contracts entered into between an employer and a superintendent, or administrator as defined in RCW 28A.405.230, under RCW 28A.400.010, 28A.400.300, or 28A.405.210:

(1) Shall end no later than June 30th of the calendar year that the contract expires except that, a contract entered into after June 30th of a given year may expire during that same calendar year; and

(2) Shall not be revised or entered into retroactively.
(1) A certificated or classified school employee who has knowledge or reasonable cause to believe that a student has been a victim of physical abuse or sexual misconduct by another school employee, shall report such abuse or misconduct to the appropriate school administrator.

(2) Certificated and classified school employees shall receive training regarding their reporting obligations under state law in their orientation training when hired and then every three years thereafter. The training required under this subsection may be incorporated within existing training programs and related resources.

(3) ........
RCW 28A.405.130

Training in evaluation procedures required.

(1) No administrator, principal, or other supervisory personnel may evaluate a teacher without having received training in evaluation procedures.

(2) Before evaluating classroom teachers using the evaluation systems required under RCW 28A.405.100, principals and administrators must engage in professional development designed to implement the revised systems and maximize rater agreement.
RCW 28A.415.410
Training to support discipline policies under chapter 28A.600 RCW.

(1) The office of the superintendent of public instruction, subject to the availability of amounts appropriated for this specific purpose, shall develop a training program to support the implementation of discipline policies and procedures under chapter 28A.600 RCW.

(2) School districts are strongly encouraged to provide the trainings to all school and district staff interacting with students, including instructional staff and non-instructional staff, as well as within a reasonable time following any substantive change to school discipline policies or procedures.

(3) To the maximum extent feasible, the trainings must incorporate or adapt existing online training or curriculum, including securing materials or curriculum under contract or purchase agreements within available funds.

(4) The trainings must be developed in modules that allow:
   (a) Access to material over a reasonable number of training sessions;
   (b) Delivery in person or online; and
   (c) Use in a self-directed manner.
RCW 28A.415.420
Cultural competence professional development and training.
(1) Subject to funds........
II. Performance Process
Performance

Counseling

Coaching

Mentoring

Directing

Mgmt. Right

Due Process –Certs

Just Cause - Classified

Just Cause

Y

Counseling

Coaching

Mentoring

Mgmt. Right

Due Process –Certs

Just Cause - Classified

Just Cause

Y
### Spring Timelines for Principals

<table>
<thead>
<tr>
<th>Period</th>
<th>Certificated Staff</th>
<th>Secretaries</th>
<th>Educational Assistants</th>
<th>Unrepresented</th>
<th>Custodians</th>
<th>Food Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept.</td>
<td>First 6 wks REVIEW evaluative criteria &amp; procedures</td>
<td>Evaluations completed prior to May 31st</td>
<td>Evaluations completed prior to June 1st</td>
<td>Evaluations completed prior to June 30th</td>
<td>Jointly between Principal/Director of Custodial Services prior to Aug 31st</td>
<td>Director of Food Services responsible - may ask for input, completed no later than June 1st</td>
</tr>
<tr>
<td>Oct.</td>
<td>90 Day New Teacher Assessment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nov.</td>
<td>Mandatory BUILDING FILE REVIEW Every 2 years - Verified by electronic signature &amp; date at bottom of SER on Eval System</td>
<td>初步确认，核实，评估</td>
<td>Preliminary Staffing #s for 16-17</td>
<td>Web Presence Verified</td>
<td>Recruiting 3/15-4/20</td>
<td></td>
</tr>
<tr>
<td>Due Nov 30th</td>
<td>Web Presence Verified</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dec.</td>
<td>16-17 Staffing, P2 Conversn, Eval concerns</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan.</td>
<td>Notify of Non-Renewal by 5/15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Feb.</td>
<td>Preliminary Staffing #s for 16-17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mar.</td>
<td>Web Presence Verified</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apr.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- HS Communicate any staffing adjustment for 7th period or 2nd semester
- Retain records as appropriate
• Typically, there is a sequence of events in the performance management process that should occur and that may lead up to Progressive Discipline if performance does not improve:

  • Define behavior and performance standards and expectations and communicate them to employees.
  • Provide employees with the training, resources, coaching and opportunity to achieve the expected level of performance.
  • Be sure that the standards of behavior and performance have been applied equitably.
  • Monitor the employee’s performance and behavior.
  • Provide on-going coaching and feedback.
  • Deliver a Letter of Direction to employee if appropriate.
  • Implement a Performance Improvement Plan (PIP) as appropriate.

• When these measures have not resulted in the expected level of performance and/or behavior in accordance with the established expectations or when adherence to established expectations is chronically unacceptable and expected performance and behavior is not sustained, Progressive Discipline should be applied.
Body Of Work

Cherry Pick

Mountain Out Of Molehill
STEMS
**Stems**

- **For Contrast**
  - However
  - Contrary to __________
  - Despite__________
  - Although
  - But
  - Even though

- **For Examples**
  - For example
  - For instance
  - Namely
  - Specifically

- **For Addition**
  - Also
  - Further
  - Too

- **For Emphasis**
  - In fact
  - Above all
  - Certainly
  - Clearly
English Fluency

Generally, an English fluency or English proficiency requirement is permissible only if required for the effective performance of the position for which it is imposed. An individual's lack of fluency in English may interfere with job performance in some circumstances, but not in others. For example, an individual may be sufficiently proficient in English to qualify as a research assistant but, at that point in time, may lack the fluency to qualify as a senior scientific writer who must communicate complex scientific information in English.

Because the degree of fluency that may be lawfully required varies from one position to the next, employers are advised to assess the level of fluency required for a job on a case-by-case basis. Applying uniform fluency requirements to a broad range of dissimilar positions or requiring a greater degree of fluency than is necessary for a position may result in a violation of Title VII.
APPLICATION OF ADA LEGAL REQUIREMENTS TO PERFORMANCE AND CONDUCT STANDARDS

Employers typically establish job-related requirements, the specific tasks or assignments that an employee must perform, and methods to evaluate performance.

Evaluation criteria might take into account how well an employee is performing both essential and marginal functions and whether the employee is meeting basic job requirements (e.g., working well with others or serving customers in a professional manner).

https://www.eeoc.gov/facts/performance-conduct.html
May an employer apply the same quantitative and qualitative requirements for performance of essential functions to an employee with a disability that it applies to employees without disabilities?

Yes. An employee with a disability must meet the same production standards, whether quantitative or qualitative, as a non-disabled employee in the same job. Lowering or changing a production standard because an employee cannot meet it due to a disability is not considered a reasonable accommodation. However, a reasonable accommodation may be required to assist an employee in meeting a specific production standard.

Practical Guidance: It is advisable for employers to give clear guidance to an employee with a disability (as well as all other employees) regarding the quantity and quality of work that must be produced and the timetables for producing it.

Example 1: A federal agency requires all of its investigators to complete 30 investigations per year in addition to other responsibilities. Jody’s disability is worsening, causing her increased difficulty in completing 30 investigations while also conducting training and writing articles for a newsletter. Jody tells her supervisor about her disability and requests that she be allowed to eliminate the marginal functions of her job so that she can focus on performing investigations. After determining that conducting trainings and writing articles are marginal functions for Jody and that no undue hardship exists, the agency reassigns Jody’s marginal functions as a reasonable accommodation.

Example 2: Robert is a sales associate for a pharmaceutical company. His territory covers a 3-state region and he must travel to each state three times a year. Due to staff cutbacks, the company is increasing the number of states for each salesperson from three to five. Robert explains to his manager that due to his disability he cannot handle the extra two states and the increased traveling, and he asks that he be allowed to have responsibility only for his original three states. The company may refuse this request for accommodation because it conflicts with the new production standard. However, the company should explore with Robert whether there is any reasonable accommodation that could enable him to service five states, and if not, whether reassignment is possible.

Example 3: A computer programmer with a known disability has missed deadlines for projects, necessitating that other employees finish his work. Further, the employee has not kept abreast of changes in the database package, causing him to misinterpret as system problems changes that he should have known about. The employee is placed on a Performance Improvement Plan, but his performance does not improve and he is terminated. At no time does the employee request a reasonable accommodation (i.e., inform the employer that he requires an adjustment or change as a result of a medical condition). The termination is justified as long as the employer holds the employee to the same performance standards as other programmers.
When an employee does not give notice of the need for accommodation until after a performance problem has occurred, reasonable accommodation does not require that the employer:

• TOLERATE OR EXCUSE THE POOR PERFORMANCE;

• WITHHOLD DISCIPLINARY ACTION (INCLUDING TERMINATION) WARRANTED BY THE POOR PERFORMANCE;

• RAISE A PERFORMANCE RATING; OR

• GIVE AN EVALUATION THAT DOES NOT REFLECT THE EMPLOYEE’S ACTUAL PERFORMANCE.
Chronic unproductive/inefficient performance

**How does it become chronic with proper oversight?**

*Cant address and turn away.*

*Part of the monitoring is also evidence of undue supervision.*

*Check job description for work independently, work with reasonable or limited supervision.*
Certificated Pathway to Non-renewal

- Pathway to non-renewal under TPEP
  - Evaluation
  - Probation
  - Nonrenewal
**Evaluations**

**How many observations are required**
- All teachers: Minimum of two
- Third-Year Provisionals: Minimum of three
- New Employees: One for minimum of 30 minutes within first 90 calendar days

**Total minimum observation time**
- All teachers: 60 minutes
- Third-Year Provisionals: 90 minutes
Common Attacks – Evaluation

- Inconsistency between evaluations
- General statements without any support
- Mixed messages
- Hearsay
Probable Cause to Non-renew

Legal framework – RCW 28A.405.210

Probable cause determination is made by superintendent

Issue written notice

Specify the causes for non-renewal

Notify of appeal rights
Proband — Length

Minimum of 60 school days

Days may be added, but end by May 15

For teachers with five+ years experience and rating of Level 1, probation may be extended into following school year

Beware of additional CBA language
If additional evaluator is not assigned by District, teacher may request one.

Assigned by ESD from list of evaluation specialists compiled by ESD.

CBA – might have additional items related to additional evaluator.
• Must be removed if shows satisfactory improvement

• Level 2 or above for provisional, or for continuing teacher at or below five years’ experience

• Level 3 or above for continuing teacher over five years’ experience
Probation – Lack of Improvement

- **Grounds for issuing notice of probable cause for nonrenewal**

- **Allows for removal and reassignment**

- **When any continuing teacher with five+ years of experience receives a rating of Level 1 for two consecutive years, District must initiate discharge proceedings**
Plan of Improvement

For each area of deficiency:
- Paraphrase the problem
- Copy from the standard for proficient performance
- List assistance to be offered

For each area of deficiency:
- Address each area of deficiency
  Those that are marked as unsatisfactory; possibly those marked basic.
### Examples of Assistance

<table>
<thead>
<tr>
<th>Examples of Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular observation and feedback</td>
</tr>
<tr>
<td>Lesson plan template</td>
</tr>
<tr>
<td>Lesson plan example</td>
</tr>
<tr>
<td><strong>Lesson plan review and feedback</strong></td>
</tr>
<tr>
<td>Data review and feedback</td>
</tr>
<tr>
<td><strong>Videotaping of instruction and feedback</strong></td>
</tr>
<tr>
<td>Peer mentoring</td>
</tr>
<tr>
<td>Written resources</td>
</tr>
<tr>
<td>Classes/continuing education</td>
</tr>
<tr>
<td>Other?</td>
</tr>
</tbody>
</table>
Hearing

- Employee remains on paid administrative leave through the hearing
- District pays the cost of the hearing
- No appeal rights for the district
- If employee wins, district must restore to position and pay attorney fees
Performance Improvement Plans are intended to deliver a stronger message to the employee than might be given in day-to-day coaching. PIP’s clearly indicate that change is needed, communicate the performance expectations, and set a timeframe for improvement.

Think of a PIP as an interim performance evaluation that focuses on specific performance issues rather than overall performance. As such, it should be signed by you and the employee and placed in both their departmental and HR files. If the employee improves as needed and no further action is necessary, the employee can request that the PIP be removed from his or her files at the time of the next scheduled performance evaluation. However, failure on the part of an employee to adhere to PIP and sustain the desired results or change may result in the next Performance Evaluation.
Untrained – Unable - Unwilling
III. Misconduct Process
The interference (Weingarten rights) allegations of the complaint were timely filed under RCW 41.56.160(1).

**Section 2: Right of Due Process**

**Right to Representation:** An employee has the right, upon request, to have Association representation during any disciplinary proceeding.

The District issued a letter of probable cause for discharge pursuant to RCW 28A.405.300 and the CBA.
On Notice

Report
Allegation
Concern

Investigation

Notice
of
Investigation

Investigative Interview
With subject
(Weingarten)

Remedy

Proposed Discipline
(Loudermill)
• **Step 1 of Grievance** is to try and problem solve with supervisor based upon violation, misinterpretation, or misapplication of CBA.

• **Step 2 is independent review** by Supt. Designee

• **Step 3 is arbitration**, which is quasi-judicial where both sides present evidence and legal arguments per governing authority, almost always the CBA.
Performance

Misconduct

Letter of Direction

- Verbal Reprimand
- Written Reprimand
- Paid Suspension
- Unpaid Suspension
- Termination

Reasonable Suspicion
Violation of CBA Because District Committed to not undertaking Progressive Discipline without Just Cause

The Seven Tests of Just Cause

1. Notice - The Employee Wasn’t On Any
2. Reasonable Rules & Orders – Unreasonable Rule
3. Investigation* - Not Done
4. Fair Investigation * - Bias
5. Proof* - Insufficient (Quantity and Quality)
6. Equal Treatment/Consistent Application (Similar not Identical) – Other in District Don’t Do It That
7. Penalty – Not Commensurate
• In standard arbitral practice there are three possible standards that might apply to the quantum of proof in matters of discipline and discharge.

• They are proof by a
  (1) preponderance of the evidence”

  (2) clear and convincing evidence

  (3) beyond a reasonable doubt
5. **Proof** - Insufficient (Quantity and Quality)

- I Have No Evidence
- One Person Says One Thing, The Other Person Says Another
Resolving Factual Disputes or Inconsistencies
Credibility Determinations

Resolving factual disputes or inconsistencies is one of the most challenging elements of any investigation and is accomplished in party by assessing witness credibility. Credibility is not merely a determination of whether a witness is being truthful. Credibility determinations include a consideration of a number of factors, which include without limitation:

- **Ability to observe (goes to one’s physical ability to see or hear an event);**

- **Ability to recall and consistency of recollection especially out of order;**

- **Truthfulness (known propensity to be truthful or to engage in deceit or manipulation);**

- **Statements by other witnesses that test the credibility of the declaring witness;**

- **Incidents of self-contradiction, a witness makes a statement and then later contradicts that statement within the same conversation;**

- **Existence of bias, which is not synonymous with prejudice. Bias relates to an unusual interest in the outcome of the case;**

- **The existence of contemporaneous documentation prepared in good faith at or near the time of the event or incident; and**

- **An individual’s conduct during the investigation, particularly conduct that appears to be aimed at obstructing or influencing the outcome of the process.**

Contemporaneous Notes or Witnesses
**Types of Evidence For Violation**

Evidence in arbitration takes three forms:

1. **Testimonial**: Live testimony by a witness on the stand, by affidavit, or by deposition.

2. **Direct Demonstrative Evidence**: This type of evidence is in the form of photographs, videos, maps, diagrams, models, etc.,

3. **Documentary**: Written summaries, records and evaluations, all constitute forms of documentary evidence. Documentary evidence also is used to support testimony.

4. **Circumstantial Evidence**: relies on an inference to connect it to a conclusion of fact
Governing Authority

Federal Law and Regulations
State Law and Regulations
Case Law (Stare Decisis)
Federal Agency Guidance (DOE, OCR, DOL)
State Agency Guidance (OSPI, SOS, SAO)
Collective Bargaining Agreements
Contracts/Materials (Vendor, Facility Use)
Board Governing Policies
District Regulations/Procedures
Job Description
Progressive Discipline
Letters of Direction
Widely Known Workplace Rules
Past Practice
Professional Service Organization principles
Ascertain the FACTS

Just the facts, mam. Just the facts.

What Factors Would Undermine Credibility

- Saw
- Read
- Heard
- Overheard
- Heard About
- Smelled
- Tasted
- Sensed
Ascertain the Facts

Investigative Steps

- Complaint intake via complaint, report, rumor
- Review Law and Board Regulation and identify issues and procedures, timelines
  - Who Else to Contact
  - Witness List
  - Notice Communication w/ subject
- Environmental Scan if Necessary
- Interview w/ witness 1
- Interview w/ witness 2
- Interview w/ witness 3
- Interview with Subject

Continue to modify
Ascertain the Facts
Subject Interview

☐ Inform Mr. Dale you are conducting an investigation only as it specifically relates to a report into the District’s concerns that he allegedly provided a student with his Skyward password in violation of the Electronic System User Agreement.

☐ Inform Mr. Dale you cannot assure confidentiality because any and all documents and/or interview notes may be subject to disclosure under the PRA or provided to Union under its obligations as your representative.

☐ Direct Mr. Dale to cooperate and to be truthful with her responses. Notify Mr. Dale that should the Issaquah School District now or in the future find that Mr. Dale was less than truthful about any information related to his responses; each separate incidence could be subject to discipline up to and including termination.

☐ Caution Mr. Dale that the District respects his free speech rights but not to undertake actions that could be characterized as tampering with/undermining an ongoing investigation, including but not limited to speaking with any current or former employee or student of the District about the specific questions asked or answers provided and to do so could invite further investigation.

☐ Direct Mr. Dale to not engage in any behavior that could be characterized as retaliation, including but not limited to threats of or actual harm to a person, threats of or actual harm to a person’s property, threats of or actual harm to a person’s reputation, or communications which could result in future chilling of reporting. Also, be sure to report any action that you believe is retaliatory such as an unwarranted change in working conditions.

These instructions represent those that were supplied to me verbally

__________________________________________ Date ___________________________
Ascertain the Facts—
**Question Hierarchy**

- Pauses/silence for interviewee to fill
  - Write longer—passive/comfortable
  - Stop and look at them—aggressive/tense

[Diagram showing a funnel with categories: Open Ended, Forced Choice, Retrieval Clues, Yes/No]
Seeking further information

Offer a choice between writing down what happened, and talking about it. Writing is less confrontational, especially for young people who might regard any one-to-one interaction with a teacher as adversarial. Let’s have a look at the incident now. I need to understand your involvement.

- Can you help me fill in the details from your point of view?
- What happened?
- When and where did it take place?
- Who was involved?
- What part did you play?
- Was there more than one person involved on either side?
- Were there any witnesses?
- Did this take place more than once?
- Have you been involved in anything like this before?
- Why did it happen?
Seeking further information

Don’t accept standard techniques for saving face such as “I was only messing”, or “We were all doing it”. Bypass these comments and ask the young person to talk about their specific role at the time. For example ask:

- **What did you actually say or do?**
- **How would someone else who witnessed the incident describe your actions?**
- **Would you do the same thing again, or act differently?**
- **Do you see anything wrong about it?**
- **How do you feel about the situation?**
- **Are you worried about what is going to happen?**
- **What do you think is fair in the situation?**
1. **An employee’s length of service and disciplinary record.** When an arbitrator places a relatively isolated incident in the context of a long and unblemished work history, s/he may well conclude that the employee will respond positively to a reduced disciplinary sanction and correct the behavior or problem that contributed to the misconduct.

2. **Intentional, planned and premeditated misconduct is generally viewed more seriously than a momentary lapse in judgment, a spur of the moment reaction, a response to provocation or when an employee acts on an emotional impulse.**

3. **Arbitrators rarely have modified disciplinary sanctions when presented with evidence relating to the employee’s state of mind at the time of the infraction.** These have included domestic and emotional problems, alcohol and gambling addictions, BUT have modified when presented with evidence of physical pain or physical conditions, or a supervisor’s wrongful instructions or treatment.
4. Is the misconduct the result of an honest mistake or misunderstanding?

5. The employer’s own conduct may be a pertinent factor. For example, was there a lax atmosphere at the workplace where similar misconduct was condoned by the employer? Have the employer’s policies and work rules been consistently communicated, applied and enforced?

6. The employee’s attitude and actions during an employer’s investigation into alleged wrongdoing will invariably influence the disciplinary measure. Has the employee been honest and forthright? Did s/he advise the employer of the wrongdoing or was there an attempted cover up or unwarranted shifting of blame to another person?

7. What is the “rehabilitative potential” of the employee? In other words, what are the employee’s future prospects in conforming to acceptable and expected standards of behavior?

8. Lax enforcement - Inconsistent Enforcement – Retaliation - Discrimination
• LAX ENFORCEMENT OF
• INCONSISTENT ENFORCEMENT OF
• MISINTERPRETATION
• MISAPPLICATION
• BREACH
IV.
Leave Process
Need to take off tonight.
Hope that's okay.
PS- This counts as FMLA leave, right?

You got tickets to see who??
Count me in, I will just claim FMLA again.

I DON'T ALWAYS CALL IN SICK
BUT WHEN I DO, I PREFER TO NOT REALLY BE SICK

3 Day Inquiry
5 Day Requirement
• 12 days of sick leave  
  +  
 30 days of accrued sick leave  
  +  
  “18” days of unpaid FMLA  
  +  
  X (any qualifying disability under ADAAA)  
  +  
  Y (negotiated personal days, bereavement leave)  

=  

--------------------------

The Law of A.W.O.L.
PROTECTED LEAVE

VS.

UNPROTECTED LEAVE
FMLA

IF
- Eligible
- Verified Serious Health Condition
- Consistent w/ Medical Certification

Intermittent

Medical
IF
- Medical Verification

Jury

By Law
- Can always investigate reasonable suspicion of abuse.

By Contract
- Foster consistent application
- Undertake ongoing enforcement
Please Communicate to Supervisor

**Leave Misuse**
- “Misuse of Sick Leave” is defined as the use of sick leave for purposes other than those set forth in the Sick Leave, Personal Leave and or Bereavement Leave CBA or Policy.
- Extending Vacation
- Black Out Use

**Leave Abuse**
- Pattern Absenteeism
- Excessive absenteeism
- Substituting Leave
Determine

• Is there a pattern of absenteeism? Resulting in unpaid leave or not? Fridays? Every other Monday?

• Determine if referring employee to Employee Assistance Program is in order.

• Has employee demonstrated and maintained satisfactory attendance?
Address

• The first meeting should take place as close to having exhausted unprotected leave as possible.

• The first meeting, if possible, should occur without threatening disciplinary action.

• Point out to employee the negative impact on their own quality of work, morale of coworkers, and economic efficiency and productivity of district.

• At the meeting point out district attendance policy and/or collective bargaining agreement language that provides authority for the meeting.
Address

• Ask why they are absent so frequently or in pattern previously determined.

• Try and get employee to acknowledge the absences are creating a problem in the workplace.

• Be sure to record when your meetings took place and what was discussed during the meeting, and what was agreed upon to resolve the problem in the future.
Follow-Up

• If absenteeism continues you should continue with progressive discipline and include the dates and times of the absences and the dates of previous meetings with the employee.

• Remind employee that excessive absenteeism can be tantamount to quitting or resignation.

• Excessive absenteeism against directives to the contrary or in the face of warnings has been interpreted by courts as insubordination, misconduct, and breach of contract.
1. Determine Employee's FML eligibility

2. Confirm FML entitlement has not been used up

3. Provide Notice of Eligibility and Rights & Responsibilities

4. Receive the Physician's Certification from employee
   - Follow up when incomplete or not received in 15 days
   - Within 5 days of receipt of certification

5. Provide the Designation Notice
   - Within 5 days of employee's request

6. If exempt, sign the Workweek Agreement
   - Within 5 days of receipt of certification

7. Track FML time used

8. Get a Return to Work Certification before Employee returns to work
“Did you see a doctor”
Certification at a Glance

**STEP 1**
Your employer must notify you if a certification is required

**STEP 2**
You must provide a completed certification to your employer within 15 days

**STEP 3**
Your employer must designate your leave if it is FMLA-protected

YOUR EMPLOYER MAY REQUIRE YOU TO:

- Correct any deficiencies in your certification identified by your employer within seven days
- Obtain a 2nd medical opinion if your employer doubts the validity of your certification
- Obtain a 3rd medical opinion if the 1st and 2nd opinions differ

YOUR EMPLOYER MAY DENY FMLA LEAVE IF YOU FAIL TO PROVIDE A REQUESTED CERTIFICATION

YOUR RESPONSIBILITY

YOUR EMPLOYER'S RESPONSIBILITY

The Employer's Guide to the Family and Medical Leave Act
What Are The Interactions Regarding Pregnancy Disability Benefits Among: The Washington State Family Leave Act (FLA); And The WA State Human Rights Commission (WSHRC) Regulation?

Example 1: You work until the birth of your child (no disability during pregnancy), have no serious complications during birth, and take six weeks of leave for recovery from childbirth under the WSHRC regulation (WPDL). Your state FLA leave does not begin to run until after your WPDL ends.
Example 2: You take six weeks of WPDL before your child is born because of pregnancy-related complications, followed by six weeks for recovery from childbirth. These 12 weeks of leave count as leave both under the WPDL and under the federal FMLA. Your 12 weeks of state FLA leave do not begin to run until after the 12-week period of pregnancy disability leave ends, providing you with a total of 24 weeks of leave.
V. Labor Relations
VI. Reduction In Force
<table>
<thead>
<tr>
<th>Key Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>May 15</strong></td>
</tr>
<tr>
<td>The critical legal deadline</td>
</tr>
<tr>
<td><strong>Retention categories?</strong></td>
</tr>
<tr>
<td><strong>Reduced educational program: board action? If so, by When? Necessity?</strong></td>
</tr>
<tr>
<td><strong>Seniority:</strong></td>
</tr>
<tr>
<td>Hire Date?</td>
</tr>
<tr>
<td>Orientation Date?</td>
</tr>
<tr>
<td>Start Date?</td>
</tr>
<tr>
<td><strong>Cost savings may also be available through elimination or reduction of programs staffed by teachers or non-teachers on supplemental contracts, such as coaching and co-curricular contracts.</strong></td>
</tr>
<tr>
<td><strong>No alternative ways exist to address the district’s economic problems.</strong></td>
</tr>
<tr>
<td><strong>Consider attrition savings due to retirements, resignation.</strong></td>
</tr>
<tr>
<td><strong>All factors need to be considered in deciding the extent of the RIF?</strong></td>
</tr>
<tr>
<td><strong>Under RCW 28A.405.900 need not be nonrenewed (or rehired) because their contracts expire.</strong></td>
</tr>
<tr>
<td><strong>Teachers who have the right to return from leave for the following year.</strong></td>
</tr>
<tr>
<td><strong>Some contracts or policies may reference or even limit a RIF to specific causes of reduced finances, like levy loss, or declining En.</strong></td>
</tr>
<tr>
<td><strong>Legal Counsel</strong></td>
</tr>
</tbody>
</table>