Dearborn Public Schools
Effective Discipline and Due Process

Overview

All Dearborn Public School employees are expected to perform their job duties effectively and follow all rules, policies, guidelines and directives of the Dearborn Board of Education or appropriate supervisory staff. Effective job performance of all staff is necessary to meet the mission of the Dearborn Public Schools - to educate all students to high academic standards within a safe, stimulating environment and ensure they are prepared to become productive citizens.

Whenever an employee fails to perform effectively or to follow rules, policies, guidelines or directives, it is incumbent on the employee's immediate or higher level supervisor to take appropriate corrective action. All corrective action should be appropriate based on the facts and circumstances involved in the matter.

The goal of effective discipline is to correct inappropriate behavior and prevent it from reoccurring. In many situations supervisors simply need to call the issue to the attention of the employee and no formal disciplinary actions are necessary. This "informal" discipline typically takes the form of a verbal discussion or a written instruction addressing the matter and stressing that further occurrences may result in "formal" disciplinary action.

Often times it is important to demonstrate that an incident has occurred, was investigated and corrective actions have been taken. If an investigation results in formal disciplinary action, documentation of the discipline must be placed in the employee's personnel file. Employees have the right to grieve discipline in accordance with their collective bargaining agreement. Any informal discipline of a union employee and any discipline issued to a non-union employee may also be contested by the employee under the Bullard-Plawecki Employee Right to Know Act (Act 397 of 1978 – MCL 423.500-512). A copy on the Bullard-Plawecki act is attached in appendix A.

In situations where formal discipline is being considered, it is imperative that due process is followed. Employees belonging to a collective bargaining unit are afforded Weingarten Rights allowing the presence of a union representative during investigatory interviews which will likely lead to discipline. It is the employee's responsibility to contact their union to request representation. Information on Weingarten rights are attached in appendix B.

Supervisors considering formal discipline may wish to consult with Human Resources prior to conducting an investigation or issuing discipline. As the central repository for all formal discipline, Human Resources staff can give guidance on what discipline is appropriate for the situation. Prior discipline of the employee is maintained in the personnel file and should be considered. Human Resources staff may also assist in or conduct the investigation process.

In accordance with district policy the Human Resources Office is responsible for coordinating investigations of harassment complaints. Human Resources may also be asked to investigate other high profile cases.

In situations where discipline may result in suspension or termination, all non-probationary employees are to be provided a pre-disciplinary hearing in accordance with the Cleveland Board of Education v. Loudermill Supreme Court case. Human Resources **shall** be involved in any pre-disciplinary hearing that could lead to suspension or termination. Information on Loudermill rights are attached in Appendix C.

Basic Concepts

Discipline is prompt – Employee problems should be addressed quickly. Supervisors should avoid unnecessary delay and should not stack multiple infractions into one disciplinary action unless multiple infractions happen in close proximity. The sooner the issues are addressed the more opportunity the employee will have to avoid future occurrences. Supervisors should balance the need to afford prompt discipline with the need to conduct a thorough investigation.

Discipline is proportionate – First discipline should be progressive unless the occurrence giving rise to the discipline is serious enough to warrant stronger action right away. In many cases the employee will receive informal corrective action such as coaching or instructional memos. Employees who fail to conform after notice should receive progressively stronger discipline moving from non-punitive written reprimands through to punitive measures. Punitive measures include various levels of suspension and potentially termination. In considering the level of discipline the supervisor should take into consideration the seriousness of the infraction, prior discipline for similar or related rule violations and other factors. Other factors to consider are direct harm to students or others, a willful disregard for rules or gross negligence.

Progressive Disciplinary Levels:

- Coaching/Counseling – Informal - No record in personnel file
- Meeting Confirmation Memo – A record of a meeting where an incident was discussed but did not result in formal discipline – written documentation placed in personnel file
- Verbal warning (with written documentation) – Copy to personnel file
- Written reprimand - Copy to personnel file
- Disciplinary time off of 1-3 Days - Copy to personnel file
- Disciplinary time off of 5-14 days - Copy to personnel file
- Disciplinary time off of up to 30 days – Copy to personnel file
- Demotion or involuntary transfer
- Termination - Copy to personnel file

NOTE - There is no requirement that each level of discipline must move one step at a time.

Discipline is consistent – The punishment should fit the offense and be assessed based on factors including nature of the offense, the employee's past record, length of service, knowledge of the standards or rules and any extenuating circumstances leading up to the infraction. If lesser or greater levels of discipline are issued the record should indicate the basis for the difference.

A thorough investigation and gathering of the facts – In issuing discipline the employer has the burden of proof. While the standard of proof for criminal conviction is "beyond a reasonable doubt" the burden of proof for employee discipline is generally a lesser standard. Depending on the issue at hand the burden may be: a "preponderance of the evidence"; "just cause standard"; or simply "not arbitrary or capricious". It is advisable to contact Human Resources for guidance as to what the standard of proof would be applied should the discipline be challenged by the employee. A more detailed explanation of the Standards of Proof is provided further in this document.

On occasion it may be necessary to suspend or remove an employee from their duties pending an investigation. In order to protect students and coworkers from potential harm, it is better to remove an employee from duty than to keep the employee in their normal work environment. In nearly all situations the employee is placed on paid administrative leave. The employee should be told to remain available for contact during their paid administrative leave.

Allow the Employee and Union an opportunity to be heard – Both Weingarten and Loudermill rights give the employee and their union an opportunity for participation and input in the investigation and disciplinary process. If an employee requests to have a union representative during an investigatory interview the interview shall be delayed until arrangements can be made to have a union representative present. Supervisors should provide an employee with written documentation and notice of any charges being made against the employee and scheduled hearing dates. A minimum of 24 hours shall be allowed between the issuing of charges and a pre-disciplinary hearing.

Consider allowing other supervisors to provide input into the decision – in some situations employees report to other supervisors or have had others who have in the past supervised the employee. For discipline to be effective it is advisable to consult with others as to the proper level of discipline necessary to affect positive change.

Documentation

All formal discipline must be maintained in the employee's personnel folder in the Human Resources office. All records maintained in the employee's personnel folder shall be maintained in accordance with the Bullard-Plawecki Employee Right to Know Act (Act 397 of 1978 – MCL 423.500-512).

Supervisors may maintain a record of "informal" discipline as referenced above. These records are kept in the sole possession of the maker of the record and are not accessible or shared with other persons. Records kept by supervisors may be added to the employee's personnel file provided it is done so within 6 months of the occurrence. The employee shall be notified if a supervisor adds a record to the employee's personnel file.

Employees have the right to add a written statement to any disciplinary statement contained in their personnel folder. In accordance with the Bullard-Plawecki right to know act (Act 397 of 1978, MCL 423.505) the employee's written statement is limited to five sheets of 8.5" x 11" paper.

When documenting a performance problem it may be helpful to give instructions on proper behavior or develop, along with the employee, a performance improvement plan. Most effective performance improvement plans include expectations of the supervisor and additional training or resources to be provided to assure improvement. If a performance improvement plan is developed it is essential that the supervisor provide follow up to the employee on their progress.

Types of Meetings/Hearings

During the investigation and disciplinary process there are several types of meetings in which an employee may be requested or compelled to attend. Some of these meetings are part of the due process procedures and afford the employee rights to representation others are optional for the employee.

Investigatory meetings – A supervisor or assigned investigator may question a union employee at any time for any valid reason. Should the purpose of the investigation be to obtain information which could be used as the basis for discipline or asks an employee to defend his or her conduct, an employee has a right to a union representative. This is known as a Weingarten right and is covered in more detail in appendix A. It is the employee's responsibility to ask for representation. Managers should advise the employee of the purpose of any investigatory meeting.

An employee who is called as a witness who is not the subject of the investigation is not entitled to representation. Should a witness request representation, investigators may want to allow a representative to protect the investigation should information be obtained that may, unknowingly, lead to discipline of the witness.

Pre-Disciplinary Hearing – Once an investigation has reached the level where charges are being made, an employee facing potential unpaid suspension or discharge is entitled to a pre-disciplinary hearing. The purpose of the hearing is to afford the employee an opportunity to review the charges and provide a response. This hearing is afforded all non-probationary public employees under the 5th amendment of the US constitution. This hearing is referred by many as a Loudermill hearing and is covered in more detail in Appendix B.

Some supervisors may want to afford an employee not facing discharge or unpaid time off with a pre-disciplinary hearing prior to issuing discipline. With the goal of issuing effective corrective discipline, it is important to afford an employee and opportunity to he heard and respond to charges prior to the issuance of discipline. Although not required, allowing an employee an opportunity to give a statement prior to a final decision can make the corrective discipline more effective. The allowance of a pre-disciplinary statement by the employee can also open up constructive communication and reduce the likelihood of a grievance or other challenge to the discipline.

Post Disciplinary Procedures

After an employee is issued discipline they may exercise their rights under their collective bargaining agreement to grieve the discipline. The employee's collective bargaining agreement will dictate the procedure in each grievance step. In the event a grievance reaches the arbitration phase the burden of proof is placed on the employer.

Regardless of the outcome of any grievance procedure an employee has the right to add a written statement to any disciplinary statement contained in their personnel folder.

Under the Michigan Teacher Tenure Act (Recently revised) tenured school teachers are allowed to appeal time off discipline of 15 or more consecutive days or 30 or more total days in a school year.

Standards of Proof

When issuing and defending disciplinary actions against an employee the burden of proof is on the employer. Those standards may be somewhat subjective and may vary based on the seriousness of the infraction and the level of discipline. The standard of proof is sometimes established by union contract or state law. The hearing officer may also determine the standard of proof. The following are the most common standards of proof:

Beyond a reasonable doubt. Part of jury instructions in all criminal trials, in which the jurors are told that they can only find the defendant guilty if they are convinced "beyond a reasonable doubt" of his or her guilt. Sometimes referred to as "to a moral certainty," the phrase is fraught with uncertainty as to meaning, but try: "you better be damned sure." By comparison it is meant to be a tougher standard than "preponderance of the evidence" used as a test to give judgment to a plaintiff in a civil (non-criminal) case

Preponderance of the evidence The greater weight of the evidence required in a civil (non-criminal) lawsuit for the Trier of fact (jury or judge without a jury) to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence. Thus, one clearly knowledgeable witness may provide a preponderance of evidence over a dozen witnesses with hazy testimony, or a signed agreement with definite terms may outweigh opinions or speculation about what the parties intended. Preponderance of the evidence is required in a civil case and is contrasted with "beyond a reasonable doubt," which is the more severe test of evidence required to convict in a criminal trial. No matter what the definition stated in various legal opinions, the meaning is somewhat subjective.

Just Cause Standard - A reasonable and lawful ground for action.

Appearing in statutes, contracts, and court decisions, the term *just cause* refers to a standard of reasonableness used to evaluate a person's actions in a given set of circumstances. If a person acts with just cause, her or his actions are based on reasonable grounds and committed in Good Faith. Whether just cause exists must be determined by the courts through an evaluation of the facts in

each case. For example, in *Dubois v. Gentry*, 182 Tenn. 103, 184 S.W. 2d 369 (1945), the Supreme Court of Tennessee faced the question of whether a plaintiff who leased a filling station had acted with just cause in terminating a lease contract. The defendant station owner argued that the plaintiff had no right under the terms of the lease to terminate it. The court found that the plaintiff had just cause to terminate the lease because the effort supporting World War II had created an employee shortage and wartime rationing had placed restrictions on gasoline and automobile parts, making it unprofitable to operate the station.

The term *just cause* frequently appears in Employment Law. Employment disputes often involve the issue of whether an employee's actions constituted just cause for discipline or termination. If the employer was required to have just cause for its action and punished the worker without just cause, a court may order the employer to compensate the worker. LABOR UNIONS typically negotiate for a contract provision stating that an employee cannot be fired absent just cause.

Seven Tests for Just Cause

1. Was the employee adequately forewarned of the consequences of his conduct? The warning may be given orally or in printed form. An exception may be made for certain conduct such as insubordination, drinking on the job or coming to work drunk or on drugs.

2. Was the employer's rule reasonably related to efficient and safe operations?

3. Did management investigate before administering discipline and did the employee violate a rule or order?

4. Was the investigation fair, thorough and objective?

5. Did the investigation produce substantial evidence of guilt?

6. Were the rules orders and penalties applied evenhandedly?

7. Was the penalty reasonably related to the seriousness of the offense and the employee's past record?

Arbitrary and Capricious means doing something according to one's will or caprice and therefore conveying a notion of a tendency to abuse the possession of power.

In U.S this is one of the basic standards for review of appeals. Under the "arbitrary and capricious" standard, the finding of a lower court will not be disturbed unless it has no reasonable basis. When a judge makes a decision without reasonable grounds or adequate consideration of the circumstances, it is said to be arbitrary and capricious and can be invalidated by an appellate court on that ground. In other words there should be absence of a rational connection between the facts found and the choice made. There should be a clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of discretion or otherwise

not in accordance with law or if it was taken without observance of procedure required by law. [Natural Resources Defense Council, Inc. v. United States EPA, 966 F.2d 1292, 1297 (9th Cir. 1992)] There is, however, no set standard for what constitutes an arbitrary and capricious decision.

Recent Change in the Michigan Tenure Act (2011) sets the burden of proof for disciplinary action taken against a teacher as "**Not** Arbitrary and Capricious". This requires the employer to show that their actions have a reasonable and rational basis. This is considered a lesser standard of proof than Just Cause.

At Will Employment means that an employee can be terminated at any time without any reason. It also means that an employee can quit without reason. Employers are not required to provide notice when terminating an at-will employee. At will terminations cannot be based on an employees protected status under state or federal civil rights laws.

Probationary employees and other district employees who are not under contract or policy granting a standard of proof required for discharge are considered at will employees.

Human Resources Contact Numbers:

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Appendix A

BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT

Act 397 of 1978

AN ACT to permit employees to review personnel records; to provide criteria for the review; to prescribe the information which may be contained in personnel records; and to provide penalties.
The People of the State of Michigan enact:

423.501 Short title; definitions.

Sec. 1.

(1) This act shall be known and may be cited as the "Bullard-Plawecki employee right to know act".

(2) As used in this act:

(a) "Employee" means a person currently employed or formerly employed by an employer.

(b) "Employer" means an individual, corporation, partnership, labor organization, unincorporated association, the state, or an agency or a political subdivision of the state, or any other legal, business, or commercial entity which has 4 or more employees and includes an agent of the employer.

(c) "Personnel record" means a record kept by the employer that identifies the employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action. A personnel record shall include a record in the possession of a person, corporation, partnership, or other association who has a contractual agreement with the employer to keep or supply a personnel record as provided in this subdivision. A personnel record shall not include:

(i) Employee references supplied to an employer if the identity of the person making the reference would be disclosed.

(ii) Materials relating to the employer's staff planning with respect to more than 1 employee, including salary increases, management bonus plans, promotions, and job assignments.

(iii) Medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility involved.

(iv) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(v) Information that is kept separately from other records and that relates to an investigation by the employer pursuant to section 9.

(vi) Records limited to grievance investigations which are kept separately and are not used for the purposes provided in this subdivision.

(vii) Records maintained by an educational institution which are directly related to a student and are considered to be education records under section 513(a) of title 5 of the family educational rights and privacy act of 1974, 20 U.S.C. 1232g.

(viii) Records kept by an executive, administrative, or professional employee that are kept in the sole possession of the maker of the record, and are not accessible or shared with other persons. However, a record concerning an occurrence or fact about an employee kept pursuant to this subparagraph may be entered into a personnel record if entered not more than 6 months after the date of the occurrence or the date the fact becomes known.

423.502 Personnel record information excluded from personnel record; use in judicial or quasi-judicial proceeding.

Sec. 2. Personnel record information which was not included in the personnel record but should have been as required by this act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion of the judge in a judicial proceeding or in the opinion of the hearing officer in a quasi-judicial proceeding, was not intentionally excluded in the personnel record, may be used by the employer in the judicial or quasi-judicial proceeding, if the employee agrees or if the employee has been given a reasonable time to review the information. Material which should have been included in the personnel record shall be used at the request of the employee.

423.503 Review of personnel record by employee.

Sec. 3. An employer, upon written request which describes the personnel record, shall provide the employee with an opportunity to periodically review at reasonable intervals, generally not more than 2 times in a calendar year or as otherwise provided by law or a collective bargaining agreement, the employee's personnel record if the employer has a personnel record for that employee. The review shall take place at a location reasonably near the employee's place of employment and during normal office hours. If a review during normal office hours would require an employee to take time off from work with that employer, then the employer shall provide some other reasonable time for the review. The employer may allow the review to take place at another time or location that would be more convenient to the employee.

423.504 Copy of information in personnel record; fee; mailing.

Sec. 4. After the review provided in section 3, an employee may obtain a copy of the information or part of the information contained in the employee's personnel record. An employer may charge a fee for providing a copy of information contained in the personnel record. The fee shall be limited to the actual incremental cost of duplicating the information. If an employee demonstrates

that he or she is unable to review his or her personnel record at the employing unit, then the employer, upon that employee's written request, shall mail a copy of the requested record to the employee.

423.505 Disagreement with information contained in personnel record; agreement to remove or correct information; statement; legal action to have information expunged.

Sec. 5. If there is a disagreement with information contained in a personnel record, removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee's position. The statement shall not exceed 5 sheets of 8-1/2-inch by 11-inch paper and shall be included when the information is divulged to a third party and as long as the original information is a part of the file. If either the employer or employee knowingly places in the personnel record information which is false, then the employer or employee, whichever is appropriate, shall have remedy through legal action to have that information expunged.

423.506 Divulging disciplinary report, letter of reprimand, or other disciplinary action; notice; exceptions.

Sec. 6.

(1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this section.

(2) The written notice to the employee shall be by first-class mail to the employee's last known address, and shall be mailed on or before the day the information is divulged from the personnel record.

(3) This section shall not apply if any of the following occur:

(a) The employee has specifically waived written notice as part of a written, signed employment application with another employer.

(b) The disclosure is ordered in a legal action or arbitration to a party in that legal action or arbitration.

(c) Information is requested by a government agency as a result of a claim or complaint

423.507 Review of personnel record before releasing information; deletion of disciplinary reports, letters of reprimand, or other records; exception.

Sec. 7. An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered in a legal action or arbitration to a party in that legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.

423.508 Gathering or keeping certain information prohibited; exceptions; information as part of personnel record.

Sec. 8.

(1) An employer shall not gather or keep a record of an employee's associations, political activities, publications, or communications of non-employment activities, except if the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer. This prohibition on records shall not apply to the activities that occur on the employer's premises or during the employee's working hours with that employer that interfere with the performance of the employee's duties or duties of other employees.

(2) A record which is kept by the employer as permitted under this section shall be part of the personnel record.

423.509 Investigation of criminal activity by employer; separate file of information; notice to employee; destruction or notation of final disposition of file and copies; prohibited use of information.

Sec. 9.

(1) If an employer has reasonable cause to believe that an employee is engaged in criminal activity which may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, then the employer may keep a separate file of information relating to the investigation. Upon completion of the investigation or after 2 years, whichever comes first, the employee shall be notified that an investigation was or is being conducted of the suspected criminal activity described in this section. Upon completion of the investigation, if disciplinary action is not taken, the investigative file and all copies of the material in it shall be destroyed.

(2) If the employer is a criminal justice agency which is involved in the investigation of an alleged criminal activity or the violation of an agency rule by the employee, the employer shall maintain a separate confidential file of information relating to the investigation. Upon completion of the investigation, if disciplinary action is not taken, the employee shall be notified that an investigation was conducted. If the investigation reveals that the allegations are unfounded, unsubstantiated, or disciplinary action is not taken, the separate file shall contain a notation of the final disposition of the investigation and information in the file shall not be used in any future consideration for promotion,

423.510 Right of access to records not diminished.

Sec. 10. This act shall not be construed to diminish a right of access to records as provided in Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, or as otherwise provided by law.

423.511 Violation; action to compel compliance; jurisdiction; contempt; damages.

Sec. 11. If an employer violates this act, an employee may commence an action in the circuit court to compel compliance with this act. The circuit court for the county in which the complainant resides, the circuit court for the county in which the complainant is employed, or the circuit court for the county in which the personnel record is maintained shall have jurisdiction to issue the order. Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee prevailing in an action pursuant to this act the following damages:

(a) For a violation of this act, actual damages plus costs.

(b) For a willful and knowing violation of this act, $200.00 plus costs, reasonable attorney's fees, and actual damages.

423.512 Effective date.

Sec. 12. This act shall take effect January 1, 1979.

Appendix B

Weingarten Rights. An Employees Right To Union Representation

Despite Justice Brennan delivering the Weingarten opinion over a quarter century ago, it still remains a pivotal case today. Weingarten established that a worker is entitled to have a union representative present at an investigatory interview. An investigatory interview occurs anytime a supervisor questions an employee to obtain information which could be used as the basis for discipline or asks an employee to defend his or her conduct.

Weingarten has its roots in section 7 of the National Labor Relations Act, which guarantees the right of employees to act in concert for mutual aid and protection. The denial of this right has a reasonable tendency to interfere with, restrain and coerce employees in violation of Section 8(a)(1) of the Act. Therefore, it is a serious violation of the employee's individual right to engage in concerted activity by seeking the assistance of his or her statutory representative if the employer denies the employee's request and compels the employee to appear unassisted at an interview which may put his job security in jeopardy.

It should be noted that an employee's Weingarten Rights are limited to situations where the employee reasonably believes that the investigation will result in disciplinary action. This condition eliminates application of the rule to run-of-the-mill conversations such as the giving of instructions or needed corrections of work technique.

For Weingarten to apply, employees must request a union representative before or during an interview. It is the employee's responsibility to know his rights and to make the request. There is no requirement that management inform an employee of this right. The Supreme Court also said that an employer may go so far as to advise the employee that it will not proceed with the interview unless the employee is willing to enter the interview unaccompanied by his representative, thus leaving the employee with the choice between being interviewed without his representative, or having no interview and forgoing any benefits that might be derived from one.

Management basically has three options when an employee requests the presence of a union representative:

(1) Call off the interview,
(2) Stop questioning until the representative arrives, or,
(3) Tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative.

Management should also be aware of the following: union reps are allowed to assist and counsel during an interview and are not limited to observation; management must inform the union representative of the subject of the investigatory interview; and union reps may advise employees on how to answer a question but may not tell them what to answer.

MASB June 2000

Appendix C

LOUDERMILL RIGHTS

Loudermill rights are due process rights afforded a non-probationary public employee facing discharge or suspension. Because these rights fit neatly into the standards of review often applied by labor arbitrators, following Loudermill procedures is likely to help in shaping a procedurally sound case before an arbitrator. Unlike just cause and not arbitrary or capricious, which are standards of review created by the labor agreement and state law, Loudermill rights are afforded public employees because of the Fifth Amendment to the Constitution of the United States and similar provisions in state constitutions. The Fifth Amendment says:

Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

In a decision announcing a Constitutional right for public employees not possessed by private employees, the Supreme Court in Cleveland Board of Education v. Loudermill held that most public employees are entitled to a hearing before they are discharged. However, the "hearing" is not a full evidentiary hearing and need not include the opportunity to cross-examine your accusers. All that is required is:

1. Oral or written notice of the charges and time for hearing

2. An explanation of the employee's evidence: and

3. An opportunity for the employee to present "their side of the story."

The Loudermill hearing process is conducted prior to the issuing of discipline. Should discipline occur, all non-probationary union employees will also have their contractual due process rights to grieve the discipline or, if tenure rights apply, to request a tenure hearing.

Whenever a supervisor is considering issuing time off or discharge discipline they must consult with Human Resources and involve Human Resources in the Loudermill Hearing. A final decision on time off or discharge discipline shall not be made until a Loudermill hearing has been completed.