

Progressive Intervention for Classified Employees Series

The Steps of Progressive Intervention

Santa Monica College
Management Academy

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June 2, 2020



Available Steps in Progressive Intervention

- **Oral counseling**
- **Written counseling**
- **Conference memos**
- **Letters of Reprimand**
- **Suspension**
- **Demotion**
- **Dismissal**
- **Reassignment**

Weingarten Rule

*NLRB VS Weingarten

-U.S. Supreme Court Decision gives employees the right to union representation at an investigatory interview with the employer which the employee reasonably believes may result in discipline...

The employee must request a representative; the employer does not have to offer or remind the employee of their right to representation.

Denial of union representation once an employee has requested it could result in an unfair practice charge.

The practice at SMC is to allow representation even in meetings that will not result in discipline.

Progressive Intervention

Oral Counseling

- **Oral Counseling (Informal Discussion, Warning, or Expectations Meeting)** – Oral communication of a performance or conduct issue to an employee either informally or in a formal counseling session.



The Meeting

- *The Employee has the right to know what the meeting is about!*
- Be positive about the meeting – this is another attempt to improve performance, conduct, and relationships.
- Be a good listener and keep good, clear notes.
- You may follow up with an informal summary by email or note that will not be placed in the employees personnel file.

The Meeting

- **Manager:** “Hello Kelly, the reason I brought you in was that I wanted to go over the procedures for absences. I noticed you did not call in to let us know you were going to be absent last week and I wanted to make sure you were aware of the District’s expectations of you regarding reporting your absences.”
- **Manager:** “I wanted to share with you a copy of Article 7 of the CSEA Contract. You can follow along with me. First...”
- **Manager:** Kelly, did you have any questions?
- **Kelly:** (Responds)
- **Manager:** “Thank you for meeting with me. I appreciate how you are keeping up with your deadlines and how you seem to do well in interacting with students. I’ll follow up with (a note) (an email) to remind you what we discussed.

The Meeting: Follow Up

- From: Manuel Ager
- To: Kelly Pico
- Date: Today

Hello Kelly,

Thank you for meeting with me to discuss the procedure for reporting absences. As we discussed, all of the procedures are detailed in the SMC-CSEA Agreement. You'll need to notify Logan at (310) 777-9311 when you're going to be absent. Thank you for your commitment to the students of SMC.

Best,
Manuel

Causes of Action (*Classified*)

Discipline Performance-Related

CSEA Chapter 36 (PC Rule XIV) sets out the following *just causes* for discipline of classified employees:

- Incompetence, below standard work performance, a pattern of inefficiency or continued negligence in the performance of the duties of her/his position.
- Repeated or unexcused tardiness or absence after warning.
- Persistent discourteous conduct toward other employees, students, or the public.
- Repeated or unexcused absences, after warning.
- Persistent violation or refusal to obey District safety rules or other procedures made applicable to the District by the Board or any appropriate state or federal agency.
- Willful or persistent violation of these rules or adopted and implemented procedures of a department when such procedures are made known to the employee in writing.

Causes of Action (*Classified*)

Discipline (cont.)

Misconduct-Related Causes

- Insubordination, including, but not limited to refusal to do reasonably assigned work or any other serious breach of discipline. (The refusal to follow an unlawful order or directive does not constitute insubordination.)
- Dishonesty when it undermines the trust and confidence required in an employment relationship.
- Offensive or abusive conduct toward other employees, students, or the public.
- Misuse, theft, destruction or mishandling of District property, or property of employees or students of the District.
- Offering anything of value, or offering any service in exchange for special treatment in connection with the employee's job or employment, or accepting of anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
- Unauthorized possession of opened alcoholic beverage containers or drinking alcoholic beverages or being intoxicated while on the job.
- Unauthorized possession of unlawful drugs, or being under the influence of drugs not prescribed by a physician, while on the job.
- Engaging in political activities during assigned hours of employment.
- Immoral conduct.
- Conviction of a crime of violence or moral turpitude or a serious crime where the nature of the crime is such that it will indicate that the employee is a poor employment risk for the particular job which he/she holds in the District.
- Conviction of a sex offense as defined in the Education Code Section 87010. Note: an employee convicted of a sex offense as defined in the Education Code shall be dismissed.

Causes of Action (*Classified*)

Discipline (cont.)

Misconduct-Related Causes

- Conviction of a narcotics offense as defined in the Education Code Section 87011. Note: an employee convicted of a narcotics offense as defined in the Education Code shall be dismissed.
- Knowingly falsifying any information supplied to the District including but not limited to information supplied on application forms, employment records, and other records.
- Any willful failure of good conduct tending to injure the public service or its reputation with particular regards to students.
- Abandonment of position, which shall be interpreted to mean an absence without continued notification in excess of five (5) working days except in case of dire emergency.
- Advocacy of the overthrow of federal, state, or local government by force, violence, or other unlawful means.
- Failure to report for review of criminal records or for a health examination after due notice.
- Sexual harassment of any student, employee, member of the Board of Trustees, or any member of the public while on any of the District campuses or facilities as prohibited in Board Policy 4112.2.

Progressive Intervention Conference Memorandum

- **Conference Memorandum** – Issued to an employee who has failed to demonstrate substantial improvement in his or her less than satisfactory performance or inappropriate behavior after having received one or more oral warnings. Its issuance is preceded by a Conference detailing the supervisor's concerns. **It must be used first before moving to stronger intervention methods for performance issues.**



The Conference Memo

- Concern
- Response
- Assistance and Guidance
- Directive

The Meeting

- Be positive!
- Prepare a draft of the Conference Memo before the meeting.
- Use your draft to generate talking points for the meeting.
- Follow the CRAD_(SM) method format to guide your meeting.
- Give the employee an opportunity to respond.
- Do not read your notes word for word.
- Remember that it's your meeting

The Memorandum

- The Conference Memorandum should be finalized and a copy provided to the employee within 10 workdays of the conference (Required by SMC/CSEA Agreement).
- The employee will have 10 workdays from receipt of the Conference Memorandum to submit a written response to the Conference Memorandum.
- The Conference Memorandum is not placed in the personnel file unless there is a subsequent written Letter of Reprimand issued within 12 months relating to the subject matter of the Conference Memorandum.

Concern

1. During the conference meeting, we discussed the following concern/s:

In your performance evaluation for period 1/1/202X thru 12/31/202X, signed 1/5/202X, you were rated as below standards in the area of Attendance. This conference meeting was held to discuss the continued excessive absenteeism reported during the 90-days following your performance evaluation.

During this 90-day period (1/1/202X-3/31/202X), you reported the following unexcused absences, assigned to Illness leave:

1/3/202X – 8 hours	2/5/202X – 8 hours	3/8/202X – 8 hours
1/5/202X – 8 hours	2/9-2/10/202X – 16 hours	3/13/202X – 8 hours
1/13/202X -8 hours	2/18/202X – 8 hours	3/20-3/21/202X – 16 hours
1/17/202X – 8 hours	2/23/202X – 8 hours	3/28/202X – 8 hours
1/31/202X – 8 hours	3/2/202X – 8 hours	

This level of absenteeism is unacceptable in that it poses an undue hardship on your co-workers and the Department. These excessive absences hinder a supervisor's ability to adequately assign work and meet departmental goals and deadlines. This excessive absenteeism has a direct negative impact on student success.

Response

2. Your response in this conference meeting was:

You stated that you understood how excessive absenteeism will place added stress on your co-workers and the Department of Admissions & Records. In addition, you shared your goal of reducing your absences to an acceptable level as to improve your performance. You acknowledged it being your responsibility to discuss with your healthcare provider if there is any issue that would constitute a protected leave and submit the appropriate documentation to the Office of Human Resources, if necessary.

Assistance and Guidance

3. I offered you the following assistance and guidance:

I reminded you about the importance of your consistent and reliable attendance. We discussed that your excessive absences impede the ability of the Department of Admissions & Records to service our campus community and negatively impacts our students' success.

I also reminded you that excessive absences, after warning, are a basis for discipline under Article 13.2.1 of the District-CSEA Collective Bargaining Agreement.

I advised you to consult with your healthcare provider to obtain certification for absences you feel should be protected by FMLA or CFRA. The District will assist you by designating FMLA related absences as protected absences once the proper documentation is submitted to the Office of Human Resources.

I informed you that the District provides assistance to employees through the Employee Assistance Service for Education (EASE) program. This program provides professional counseling services that can help District employees with a variety of personal issues on a confidential basis. If you feel you can benefit from the services of this program, you are encouraged to contact them at 1-800-882-1341.

I confirmed your understanding of the expectations of you as a Student Services Clerk and asked if you were aware of any reason that you would not be able to meet the standards and expectations discussed in the meeting. You indicated that you understood these expectations and would be able and willing to meet these standards and expectations.

Directives

4. I issued you the following directives:

- Take the necessary steps to eliminate your unexcused absences;
- You must immediately attain and maintain an acceptable level of attendance;
- You are directed to submit a Report of Absence form and verification immediately upon your return from each absence as required by District policy and the District-CSEA Collective Bargaining Agreement;
- When you arrive late to work, you are directed to submit a Report of Absence form documenting the amount of time by which you are late;
- In instances where you become aware that you will be absent, you are directed to notify your supervisor as soon as you are aware of the future absence so that the Department of Admissions & Records may prepare for your absence;
- Comply with all directives and instructions issued to you by your supervisors; and
- Comply with all District regulations and established procedures when performing your duties as a Student Services Clerk.

Progressive Intervention

Letter of Reprimand

Letter of Reprimand– Issued to an employee:

- who has failed to demonstrate substantial improvement in his or her less than satisfactory performance after the issuance of a Conference Memorandum,
- or for inappropriate conduct after appropriate previous progressive intervention methods have been used.



The Letter

- The issuance of a Letter of Reprimand will become a permanent record in the employee's personnel file.
- In order to issue a Letter of Reprimand related to performance, the employee must have had a Conference Memorandum issued within the previous 12 months that addressed the same subject matter.
- There is no requirement to hold a meeting before issuing a Letter of Reprimand; however, it is normally recommended to do so.

The Letter

- Within 10 working days after receipt of a Letter of Reprimand, an employee has the right to submit a written response which will be attached to the Letter.
- The Letter, along with the employee's timely response, if any, and attachments (including past conference memos), will be placed in the employee's Personnel File.

The Letter: Basis

Why are you issuing the Letter?

I. BASIS FOR REPRIMAND

Despite verbal and written counseling, your excessive absenteeism has continued as follows:

4/17/202X – 8 hours

4/31/202X – 8 hours

5/5/202X – 8 hours

5/9-5/10/202X – 16 hours

5/18/202X – 8 hours

5/23/202X – 8 hours

6/2/202X – 8 hours

6/8/202X – 8 hours

6/13/202X – 8 hours

6/20-6/21/202X – 16 hours

6/28/202X – 8 hours

7/6/202X – 8 hours

7/11/202X – 8 hours

The Letter: History

Past Unresolved Related Concerns

II. HISTORY

In your performance evaluation for period 1/1/202X thru 12/31/202X, signed 1/5/202X, you were rated 'below standards' in the area of Attendance. A conference was held on April 12, 202X to discuss your continued and excessive absenteeism. You were provided with a conference memorandum dated April 15, 202X that documented the directives given at that conference to immediately attain and maintain an acceptable level of attendance. Despite verbal and written counseling, your excessive unexcused absences have continued.

The Letter: Causes for Discipline

III. REPRIMAND

The following causes for discipline are set forth in the District & CSEA – Chapter 36 Collective Bargaining Agreement – Article 13.2.1.b. and District Merit Rule 14.1.4.B.2. “Repeated or unexcused tardiness after warning.”

The Letter: Guidance

IV. DIRECTION AND GUIDANCE

The following directions outlined below are intended as guidance to meet the expectations of the Department of Admissions & Records related to repeated or unexcused absence:

Take the necessary steps to eliminate your unexcused absences.

Consult with your healthcare provider to obtain certification for absences you feel should be protected by FMLA or CFRA. The District will assist you by designating FMLA related absences as protected absences once the proper documentation is submitted to the Office of Human Resources.

The Letter: Directives

V. DIRECTIVES

Effective immediately, I am issuing you the following directives:

- You must immediately attain and maintain an acceptable level of attendance;
- Report to work on time each day that you are scheduled to work;
- Comply with all directives and instructions issued to you by your supervisors; and
- Comply with all District regulations and established procedures when performing your duties as a Student Services Representative.

Progressive Intervention Performance Improvement Plan

Performance Improvement Plan (PIP)— Used as a tool by supervisors to address performance issues. Its issuance is preceded by a meeting between the supervisor and employee to set goals for measured improvement.



Performance Improvement Plan

- The PIP should clearly outline a specific area and function where there is an expectation for improved performance.
- The expectation provided should be specific and measurable.
- The PIP should provide a tangible review period where the employee can achieve a performance improvement.
- You will meet with the employee to discuss the progress made during the improvement timeframe.

Performance Improvement Plan

- The PIP should incorporate input from the employee.
- The PIP is required per SMC/CSEA Agreement after issuing a written reprimand for performance as a step in the progressive intervention (discipline) process.
- It is recommended that the PIP be discussed and issued at the meeting to issue Letters of Reprimand.
- The PIP may be used for non-performance issues as appropriate.
- A PIP is also a useful tool to assist an employee to meet District expectations after receiving an evaluation with an overall rating of “below standards”.
- More information is available at the Manager’s Corner webpage.



OFFICE OF HUMAN RESOURCES
PERFORMANCE IMPROVEMENT PLAN

Copies to:
 Employee
 Supervisor

EMPLOYEE NAME: John Doe	EMPLOYEE CLASSIFICATION: Student Services Clerk	SUPERVISOR NAME Jane Smith
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This Performance Improvement Plan (PIP) is being created in an effort to assist you in improving your performance to the standards expected for your position. You will have the opportunity to provide input into this PIP prior to its issuance to you. This PIP identifies the areas needing improvement and provides a clear outline for the level of performance that meets the Districts expectations of you as an employee. Your performance will be monitored during the *improvement timeframe* and your supervisor will meet with you in order to evaluate your progress in meeting these performance expectations. Specifically, the following areas are requiring immediate improvement:

Job Element	Related Task	Measurement	Performance Standard	Improvement Timeframe	Follow-up Date
<i>Example:</i> Time & Attendance	<i>Example:</i> Observe Assigned Work Schedule	<i>Example:</i> 8am-5pm	<i>Example:</i> Arrive to your workstation promptly at 8am daily	<i>Example:</i> 90 days	<i>Example:</i> 2/28/2020 3/31/2020 4/30/2020
Attendance	Observe Assigned Work Schedule	Monday - Friday	Perfect Attendance	90 Days	1/31/202X 2/28/202X 3/31/202X
Meets Deadlines	Respond to Emails and Voicemails	Customer Contacted	Within 1-2 Workdays of Receipt	30 Days	1/31/202X

Progressive Discipline

Unpaid Suspension

- After one or more Notices of Unsatisfactory Service have been issued, and insufficient improvement obtained
- College President or a District Office division head may recommend to the Board of Trustees that an employee be suspended without pay for a specific period of time up to 30 days.

Demotion

- This disciplinary step is used *only* for classified employees holding permanent status in the District.
- **Demotion** means the involuntary return of an employee serving in a higher classification to a lower (lower maximum salary range) classification; most often the lower classification is one in which the employee had previously served.
- Should be rarely used as discipline.

Reassignment

- This is a change from one assignment to another for disciplinary reasons (rarely used).

Progressive Discipline (cont.)

- ***Dismissal***
 - After all appropriate steps of progressive discipline have been imposed on an employee, and
 - the deficiencies cited have not substantially improved for a sustained period of time, and
 - in the judgment of the college President or District Office division head, further attempts at remediation would be futile,
 - he or she may recommend to the Board of Trustees that the employee be dismissed from service for cause.

The Discipline Process

- HR issues the Statement of Charges
- For Classified employees:
 - HR issues a “Skelly Letter”
 - “Skelly Hearing”
- HR will prepare the matter for Closed Session
- Vice President presents the recommendation to the Board
- The Board of Trustees approves or denies the recommendation
- Employee may have appeal rights

What is “Skelly” (Classified)?

In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the California Supreme Court ruled that as a part of due process, public employees are entitled to certain procedural safeguards *before* discipline is imposed against them.

Skelly Continued...

Skelly minimum Process should, in most cases, involve following:

- A written notice of the proposed action;
- The reasons for the proposed action; SPECIFIC REASONS (names, places, dates, times, etc.)
- A copy of the charges and the material upon which it is based; and
- The right to respond, either orally or in writing, to the Skelly reviewer.

Skelly Continued...

Skelly minimum Process should, in most cases, involve following:

The Skelly reviewer must be an “Uninvolved” party, hearing the recommended discipline (Coleman v. Department of Personnel Administration (1991)). Typically, the reviewer is the college president, division head or designee. The reviewer must have the authority to recommend a final disposition.

Skelly Continued...

After the Skelly process is conducted, the decision of the Skelly reviewer goes to the Board of Trustees, who makes a decision on the recommended disciplinary action. Please note that the employee has the right to address the Board of Trustees regarding the action.

Classified Employee Appeal Rights

- Appeal with the Personnel Commission
- Evidentiary hearing
- Commission may:
 - Accept
 - Reject
 - Modify
- Commission may order:
 - Back pay
 - Restoration of seniority status
 - Payment of expenses