

# According to PEA



## Employee Discipline

Good and innocent employees are accused of wrong doing almost daily. Innocent employees often feel compelled to defend themselves or be judged guilty. Sometimes an allegation so offends us, we are in shock and speak out vehemently or we become emotional and do not observe how our statements are being interpreted. The PEA President and Staff have covered hundreds of these meetings and can assure all members that you will not be judged guilty because you have representation. Investigators often misinterpret what employees say and employees sometimes state things that are left open to misinterpretation. **IT IS IMPORTANT TO HAVE THE PRESIDENT OR STAFF TO WITNESS TO WHAT AN EMPLOYEE SAID AND MEANT AND IT IS IMPORTANT TO NOT SIGN ANYTHING UNTIL IT HAS BEEN REVIEWED BY THE PRESIDENT OR STAFF!**

One of the cornerstones of our country is our legal system. Everyone has seen on television, in movies, or in print media about your "*right to remain silent, because everything you say can and will be used against you.*" While allegations against employees may not involve criminal charges, every employee, regardless of their innocence, should follow the same rules to protect their job! While the investigator is not required to read an employee their rights, union members have much the same standard guaranteed through your **Weingarten Right**. Under Weingarten, union employees can choose to have representation in any meeting they believe could lead to discipline. Employees simply need to be vigilant and ask for representation. Unfortunately, many employees fail to take advantage of this simple safeguard for their job.

Sometimes things start out innocently. A parent has called your Principal and the Principal wants information about what happened with that student. Sometimes things are not so innocent. An investigator from the District or DCF or the police show up and the principal calls an employee down to meet with them. Most often employees are invited to a meeting and find either two administrators or an administrator and a witness waiting. **STOP THE MEETING BEFORE IT STARTS!** Any information that is shared, in any of these settings, can and will be used against an employee. Just because you don't think you did anything wrong or you believe you have a good relationship with your administrator, does not make it safe to speak.

All employees are guaranteed to be disciplined only for "just cause." Just cause is a standard that generally requires seven tests:

- 1) The employee must know he/she is doing something wrong.
- 2) The rule making it wrong must be reasonable.
- 3) There must be an investigation.
- 4) The investigation must be fair and objective.
- 5) There must be substantial evidence of wrong doing. (This is a lower standard than "beyond a reasonable doubt.")
- 6) Everything must be done evenhandedly and without discrimination.
- 7) The punishment must be related to the seriousness of the offense and the employee's past work record.

**Giving statements or discussing incidents without fully understanding your rights can seriously damage our ability to achieve a fair and objective investigation.**

No PEA member should provide any information or a written statement regarding an incident without first talking with the President or PEA office staff. Remember your Weingarten Rights and say, "**If this discussion could in any way lead to my being disciplined or could affect my personal working conditions, I am asserting my Weingarten Right and**

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**request that a PEA Representative be present at this meeting.**" Then call PEA as soon as possible!

### **ESP Collective Bargaining Agreement:**

**6.5 Personnel File:** Personnel files shall be maintained in accordance with Florida Statute 1012.31. Each employee shall receive a copy of all evaluative, reprimanding, disciplinary, complimentary, and derogatory reports to be placed in his/her personnel files at the school/department or District office. The employee and/or the Association, upon written authorization from the employee, may review and reproduce the contents, at his/her expense, of any of same. The review shall be made in the presence of the principal/administrator, or his/her designee, responsible for the safekeeping of such file. The employee may challenge, through the established grievance procedure, the maintenance of any document therein.

**6.5-1** Any record of disciplinary action or derogatory report which has been in the file longer than three years, or any reference to an incident that occurred more than three years ago may not be used as evidence or testimony against an employee, except in cases where current allegations involve criminal charges or activities.

**6.5-2** Materials relating to work performance, discipline, suspension, or dismissal must be reduced to writing and signed by a person competent to know the facts or make the judgment. No such materials may be placed in a personnel file unless they have been reduced to writing within 45 days, exclusive of the summer vacation period, of the school system administration becoming aware of the facts reflected in the materials. Additional information related to such written materials previously placed in the file may be appended to such materials to clarify or amplify them as needed. A copy of such materials to be added to an employee's personnel file shall be provided to the employee. The employee's signature on a copy of the materials to be filed shall be proof that such materials were given to the employee, with the understanding that such signature merely signifies receipt and does not necessarily indicate agreement with its contents. No anonymous letter or anonymous materials shall be placed in the personnel file. An employee has the right to answer in writing any such materials and the answer shall be attached to the file copy.

**6.5-3** Except for items that are by law exempt, all material placed in the employee's personnel file shall be available to the employee at his/her request for inspection.

**6.5-4** There shall be a single point of contact in the Human Resource Services Division for an employee or the Association to review the personnel file as defined in FL Statute. Furthermore, it is agreed that the school/worksite shall send those materials noted in **6.5-2** to the Human Resource Services Division for placement in said personnel file.

**6.5-5** When statements are made against an employee no written copies or related materials will be placed in the employee's individual file, nor any disciplinary action taken against an employee until the employee is made aware of the person who is making the accusation, the matter is discussed with the employee, and the employee has received a copy. If the principal/administrator finds that the statements or accusations are false, no record shall be maintained.

**6.5-6** A memorandum will be distributed annually from the Human Resource Services Division to all administrators reviewing the expectations for personnel records set forth in Article 6.5.

**6.6 Discipline:** When statements are made against an employee by a student, parents, or persons outside the school system, no written copies or related materials will be placed in the employee's individual file, nor any disciplinary action taken against an employee until the matter is discussed with the employee. If the preliminary investigation is concluded with the finding that there is no probable cause to proceed further and with no disciplinary action taken or charges filed, a statement to that effect signed by the responsible investigating official shall be attached to the complaint, and the complaint and all such materials shall be open thereafter to inspection pursuant to s.119.07(1). Before disciplinary action is taken, the employee shall be made aware of the person who is making the accusation and that employee, at the discretion of the principal/immediate supervisor shall be given opportunity to confront this accuser.

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Progressive discipline shall be followed except in cases requiring immediate action. Progressive discipline shall mean verbal warning; written letter following a conference; suspension without pay for up to five (5) days; termination. "Letters of Concern" are not a form of discipline.

**6.6-1** An employee may file a written response to a reprimand or suspension without pay and such response shall be placed in the employee's personnel file.

**6.6-2** Any record of disciplinary action or derogatory report which has been in the file longer than three years, or any reference to an incident that occurred more than three years ago may not be used as evidence or testimony against an employee, except in cases where current allegations involve criminal charges or activities.

### **Paraeducator Collective Bargaining Agreement:**

#### **8.8 PROGRESSIVE DISCIPLINE:**

Progressive discipline by the administrator/superintendent shall be followed except in cases requiring immediate action. Progressive discipline shall mean:

1. Verbal warning.
2. Written letter following conference.
3. Suspension without pay for up to five (5) days.
4. Termination

Progressive discipline steps two through four should be copied to the Director of Employee Relations, Senior Director, and Polk Education Association. "Letters of Concern" are not a form of discipline.

#### **8.5 PERSONNEL FILE:**

**8.5-1** Personnel files shall be maintained in accordance with Florida Statute 1012.31. Each paraeducator shall receive a copy of all evaluative, reprimanding, disciplinary, complimentary, and derogatory reports to be placed in his/her personnel files at the school/department or District office. The paraeducator and/or the Association, upon written authorization from the paraeducator, may review and reproduce the contents, at his/her expense, of any of same. The review shall be made in the presence of the principal/administrator, or his/her designee, responsible for the safekeeping of such file. The paraeducator may challenge, through the established grievance procedure, the maintenance of any document therein.

**8.5-2** When statements are made against a paraeducator, no written copies or related materials will be placed in the paraeducator's individual file, nor any disciplinary action taken against a paraeducator until the paraeducator is made aware of the person who is making the accusation, the matter is discussed with the paraeducator, and the paraeducator has received a copy. Before disciplinary action is taken, the paraeducator, at the discretion of the principal/administrator, shall be given opportunity to confront the accuser. If the principal/administrator finds that the statements or accusations are false, no record shall be maintained.

**8.5-3** At the written request of a paraeducator, any report in a paraeducator's personnel file (school/department, district) excluding assessments or observations, that may be considered or construed by the paraeducator and/or Association to be reprimanding, disciplinary or derogatory will be placed in an envelope and labeled "confidential and not relevant for disciplinary purposes" and returned to the personnel file. This would be done only after three consecutive years of no serious reprimands or problems on record. This provision does not apply to criminal charges or convictions.

**8.5-4** Materials relating to work performance, discipline, suspension, or dismissal must be reduced to writing and signed by a person competent to know the facts or make the judgment. No such materials may be placed in a personnel file unless they have been reduced to writing within 45 days, exclusive of the summer vacation period, of the school system administration becoming aware of the facts reflected in the materials. Additional information related to such written materials previously placed in the file may be appended to such materials to clarify or amplify them as needed. A copy of such materials to be added to an employee's personnel file shall be provided to the employee. The employee's

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signature on a copy of the materials to be filed shall be proof that such materials were given to the employee, with the understanding that such signature merely signifies receipt and does not necessarily indicate agreement with its contents. No anonymous letter or anonymous materials shall be placed in the personnel file. An employee has the right to answer in writing any such materials and the answer shall be attached to the file copy.

**8.5-5** Except for items that are by law exempt, all material placed in the paraeducator's personnel file shall be available to the paraeducator at his/her request for inspection.

**8.5-6** There shall be a single point of contact in the Human Resource Services Division for an employee or the Association to review the personnel file as defined in FL Statute. Furthermore, it is agreed that the school/worksite shall send those materials noted in 4.5-3 to the Human Resource Services Division for placement in said personnel file.

**8.5-7** A memorandum will be distributed annually from the Human Resource Services Division to all administrators reviewing the expectations for personnel records set forth in Article 8.5.

## **Teacher Collective Bargaining Agreement:**

**4.4 Just Cause:** No teacher will be disciplined, reprimanded, suspended, terminated or otherwise deprived of fringe benefits or contractual rights during the term of his/her contract without just cause. No teacher shall be demoted from continuing contract/professional service contract to annual contract nor be deprived of his/her contractual salary for the remainder of the contract year without just cause. No teacher will be relieved from a supplemental position during the term of that supplemental contract without just cause. Refer to 14.4-1 for discipline concerning supplemental positions. Any teacher terminated during the term of his/her contract shall be entitled to a fair hearing based on due process.

**4.4-1 Progressive discipline** shall be followed, except in cases where the course of conduct or the severity of the offense justifies otherwise. Unusual circumstances may justify suspension with pay. Progressive discipline shall be administered in the following steps: (1) verbal warning in a conference with the teacher. (A written confirmation of a verbal warning is not a written reprimand); (2) dated written reprimand following a conference; (3) suspension without pay for up to five days by the Superintendent and (4) termination. "Letters of Concern" are not a form of discipline.

**4.4-2** This section shall not apply during a probationary period when the may be terminated without cause, or the employee may resign without breach of contract in accordance with Florida Statutes.

**4.4-3** A teacher shall have the right to have present a member representative of the Association and/or the Association staff during any disciplinary or investigatory conference with said teacher conducted by the principal or other designated County school official regarding the teacher's infraction of rules or delinquency in the performance of his/her professional duties. Teachers shall be notified twenty-four (24) hours in advance of such conferences when possible. When the teacher requests such representation, no disciplinary action shall be taken until representation is present. If a teacher is called upon to assist in an investigation of a principal/immediate supervisor, which was initiated by administration, that teacher shall have the right to Association representation including staff.

**4.5 Reports in Personnel File:** Personnel files shall be maintained in accordance with Florida Statute 1012.31. Each teacher shall receive a copy of all evaluative, reprimanding, disciplinary, complimentary, and derogatory reports to be placed in his/her personnel files at the school/department or District office. These reports shall be delivered in person, and the teacher shall sign to acknowledge receipt of them. Each teacher shall have the right to answer in writing to all evaluative, reprimanding, disciplinary, complimentary and derogatory reports. These answers shall be delivered in person and the immediate supervisor shall sign to acknowledge receipt of them. The responses then will be placed in the teacher's personnel file. The teacher and/or the Association, upon written authorization from the teacher, may review and reproduce the contents, at his/her expense, or any of same. The review shall be made in the presence of the administrator or his/her designee, responsible for the safekeeping of such file. The teacher may challenge, through the established grievance procedure, the maintenance of any document therein. At the written request of a teacher, any report in a teacher's personnel file (school/department or

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District office) excluding assessments or observations, that may be considered or construed by the teacher and/or Association to be reprimanding, disciplinary or derogatory will be placed in an envelope and labeled "not relevant for disciplinary purposes" and returned to the personnel file. This would be done only after three consecutive years of no serious reprimands or problems on record.

**4.5-1** Any record of disciplinary action or derogatory report which has been in the file longer than three years, or any reference in the file to an incident that occurred more than three years ago, may not be used as evidence or testimony against a teacher. Cases of disciplinary action which was the result of moral turpitude or a pattern of allegations of child endangerment that results in disciplinary action by the District or professional practice services are exempted from the three year moratorium.

**4.5-2** In the event of a current, on-going criminal investigation, a public criminal history may be obtained and used in determining possible disciplinary action.

**4.5-3** Materials relating to work performance, discipline, suspension, or dismissal must be reduced to writing and signed by a person competent to know the facts or make the judgment. No such materials may be placed in a personnel file unless they have been reduced to writing within 45 days, exclusive of the summer vacation period, of the school system administration becoming aware of the facts reflected in the materials. Additional information related to such written materials previously placed in the file may be appended to such materials to clarify or amplify them as needed. A copy of such materials to be added to an employee's personnel file shall be provided to the employee. The employee's signature on a copy of the materials to be filed shall be proof that such materials were given to the employee, with the understanding that such signature merely signifies receipt and does not necessarily indicate agreement with its contents. No anonymous letter or anonymous materials shall be placed in the personnel file. An employee has the right to answer in writing any such materials and the answer shall be attached to the file copy.

**4.5-4** Except for items that are by law exempt, all material placed in the teacher's personnel file shall be available to the teacher at his/her request for inspection.

**4.5-5** There shall be a single point of contact in the Human Resource Services Division for an employee or the Association to review the personnel file as defined in FL Statute. Furthermore, it is agreed that the school/worksites shall send those materials noted in 4.5-3 to the Human Resource Services Division for placement in said personnel file.

**4.5-6** When statements are made against a teacher no written copies or related materials will be placed in the teacher's individual file nor any disciplinary action taken against a teacher until the teacher is made aware of the person who is making the accusation, the matter is discussed with the teacher, and the teacher has received a copy. If the principal/administrator finds that the statements or accusations are false, no record shall be maintained. Before disciplinary action is taken, the teacher shall be made aware of the person who is making the accusation and that teacher, at the discretion of the principal, shall be given opportunity to confront the accuser.

**4.5-7** A memorandum will be distributed annually from the Human Resource Services Division to all administrators reviewing the expectations for personnel records set forth in Article 4.5.