

TIPS FOR DRAFTING VALUABLE EMPLOYEE-RELATED DOCUMENTS

*Presentation by Tenille E. Cooper
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- If it isn't in writing, it didn't happen! Always document issues, concerns, and conversations in writing!
- Timing is everything! Document employee issues as soon as possible and contemporaneous to the event! Do not delay.
- If it's in writing, the employee should see it and it should be placed in the personnel file! And never make deals to remove documents from an employee's personnel file!
- Always consult the applicable collective bargaining agreement before beginning employee discipline to make sure you know the "rules of the game."

Every successful and well-drafted employee-related document will contain these five key components:

G - R - A - D - E

G

"GROUNDWORK" - A recap of the applicable facts and circumstances related to the issue/incident. The more specific the facts the better! It is the detailed information of who, what, when, where, words, phrases used, witnesses, observations, time, place, etc.

R

"RULES AND REGULATIONS" - A discussion of the applicable rules and regulations applicable to and/or violated by the employee's behavior. This can include collective bargaining agreement provisions, board policies, professional standards, Education Code, etc.

A

"ANALYSIS" - An examination of how the employee's conduct and failure to adhere to the applicable rules and regulations negatively impacted the district, the school site, staff, students, parents, morale, trust, the employee's credibility/reputation, and the ramifications of the employee's conduct, etc.

D

"DIRECTIVES AND DIRECTION" - Clear guidance from the administration about expectations for the employee's future conduct and any applicable resources available to assist the employee in correcting their behavior.

E

"EMPLOYMENT FILE" - A statement that places the employee on notice that the document will be placed in their permanent employment file, and allows the employee to attach a rebuttal or responsive statement. Also include a signature line for the employee to sign to acknowledge receipt/review of the document. (If he or she refuses to sign, just write "employee refused to sign" on the document, with the date and your signature.)



DOCUMENTING EMPLOYEE ISSUES

- NEW SCHOOL YEAR
- NEW EMPLOYEES
- NEW PROBATIONARY PERIODS

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Properly documenting employee issues establishes the legitimate, non-discriminatory business purpose for non-reelection or probation period dismissal and helps protect against claims and liability

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**Key Tips for Drafting Strong
Employee Documentation**

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**IF IT ISN'T IN WRITING,
IT DIDN'T HAPPEN**

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**Document Issues in a
Timely Manner—**

The Sooner the Better!

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IMPLEMENT PROGRESSIVE DISCIPLINE

- Gives employee notice of issues and opportunity to remedy
- Lays foundation for the necessity for discipline and/or termination
- Provides cover and liability protection for district

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**Documentation Should Include
GRADE Components:**

- G** – Groundwork
- R** – Rules & Regulations
- A** – Analysis
- D** – Directives & Direction
- E** – Employee File

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Always Include:

Who What When
Where Why

The more factually specific, the better!

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GROUNDWORK

- What happened?
- Who was involved?
- When did it occur?
- Where?
- Happened before?
- Why did it happen?

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TIP: Specificity = Clarity & Impact!

“A student was injured in your class because you were not there.”

“On Monday, August 18, 2012, Student A – your fifth grade student – was injured in a fistfight between three students that occurred in your classroom at approximately 10:30 a.m. There was no adult supervising the students because you left the classroom unattended to use the restroom for approximately 8 minutes. Student A received a black eye, a laceration to her forehead, and a mild concussion and had to seek medical treatment.”

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RULE:

Discuss Applicable Rules & Regulations

- Laws (Education Code)
- District/Board Policies
- Standards of Professional Conduct
- Prior Directives Issued
- Collective Bargaining Agreement Provisions
- Basic Common Knowledge

(“. . . exhibited a lack of professional judgment . . .”)

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ANALYSIS:

Discuss Applicable Rules & Regulations

Explain how the employee's conduct violated the rules and regulations

- Discuss the negative impact on the teacher's own credibility/ reputation, students,
- Employees, parents, and/or school

Tip: Don't Forget to Mention Liability Or Media Exposure When Applicable!

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Directives & Direction

- Issue Specific Directives for Future Conduct
- Provide Positive Direction and Resources

Examples: Information To Help the Employee Succeed in Following Directives

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Tip About Directives & Direction:

Directives Should Be Clear & Reasonable

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Employee File

- Always put it in the file!
- Never make deals to remove documentation!
- Include a statement that the document will be placed in the employee's personnel file, signature lines, and the employee's right to submit a written response.

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Monitor & Follow Up

After issuing an incident document, monitor employee behavior and follow up with concerns or praise

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What If Things Continue To Go Downhill?

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45-Day Notice of Unprofessional Conduct

- Refusal to follow prior directives
- Intoxicated at work
- Discourteous treatment – profanity, gestures, sexual harassment, etc.
- Dishonesty – cheating on tests, issues with grades, etc.

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45-Day Notice of Unprofessional Conduct

- Education Code Section 44938 provides that the district must give 45 days advance notice to teachers before initiating dismissal proceedings
- Contact SLS before issuing a notice

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Your Documentation Will Make or Break a Subsequent Adverse Proceeding

- DFEH claim
- Appeal to Board of Trustees regarding suspension
- Termination
- Civil lawsuit

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Tip About Documentation:

**ALWAYS
Proofread Your Documents!**

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