



# Interviewing for Investigations: Applying the Concepts of Due Process, Progressive Discipline, and Just Cause with a Little A.I. Zhuzh

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*Wednesday Webinar  
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# Best Practices for Conducting Investigations

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# Best Practices- Prior to an Incident

- Training and retraining
  - Create a training plan
    - Shared google drive of documents
  - Understand how to ask investigation questions
    - Drafting the questions
  - Good planning maintains culture
- Who needs to be in the know
  - Always HR!
- **BIG I** or little i
  - Administrative leave (PAID)?
    - Ensure that the employee remains whole during investigation
- Contractual guidelines
  - Notice prior to meeting
  - Union Notice (Weingarten Rights)



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# Best Practices- In the Moment

- Who needs to be interviewed
  - Before the accused
  - After the accused
- Who is in the room
  - Room setup
  - Are you in the right headspace
  - Ride the emotional wave
  - Delicate ecosystem
- Consistent notetaking feature (**SAMPLE TO FOLLOW**)
  - Timestamping (date and time)
  - Designated notetaker
- Neutrality during the questioning process
  - You do not know everything about the situation



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**Investigation**

Date Alleged Misconduct Occurred:	Time Alleged Misconduct Occurred:	Location Alleged Misconduct Occurred:	To whom reported:
Name of person reporting the accusation:		Date & Time reported:	Affected Student:
Summary statement regarding the accusation:			
Information from Interviews:	NAME - DATE - CONTACT FORMAT - TIME  ○		



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**Investigation Documentation Form**

<b>Date Alleged Misconduct Occurred:</b> October 2019	<b>Time Alleged Misconduct Occurred:</b> Multiple	<b>Location Alleged Misconduct Occurred:</b> Multiple	<b>To whom reported:</b> BOE Policy 2:260 Coordinator - Dale Fisher BOE Policy 2:260 Complaint Manager - John Filippi
<b>Name of person reporting the accusation:</b> Princess Fiona Shrek		<b>Date &amp; Time reported:</b> via email 10/31/2019 – 8:36 PM	<b>Affected Student:</b> Fergus Shrek
<b>Summary statement regarding the accusation:</b> Princess Fiona Shrek contacted Dr. Dale Fisher and Dr. John Filippi via email to report a concern that a teacher, Mr. Donkey, called her son, Fergus, an "idiot" during the Halloween parade at school.			
<b>Information Gathered:</b>	<p><b>Princess Fiona – 10/31/2019 – (Initial Email) – 8:36 PM</b></p> <p>On Thurs, Oct 31, 2019 at 8:36 PM Princess Fiona &lt;fionafromtheswamp@swampmail.com&gt; wrote:</p> <p><b>Good Evening:</b></p> <p>I am extremely upset! My son, Fergus, was upset this evening and refused to go out with his friends to trick or treat. When I asked him why he was so upset, he reported that he was embarrassed by his teacher, Mr. Donkey, at school today. Mr. Donkey shouted at him and called him an idiot during the school Halloween parade. Fergus said that all of the other kids were laughing at him. Fergus began crying, and when Mr. Donkey asked him why he was crying, Fergus told him it was because his friends were laughing at him. Mr. Donkey told Fergus that he deserved to be embarrassed for acting like such an idiot, and told him that had he not acted that way, none of this ever would have happened.</p> <p>To say I am upset at this teacher's inappropriate conduct is an understatement. I am filing a formal complaint, and would like to know what the procedure is for this process.</p> <p>Sincerely, Princess Fiona</p> <p><b>Princess Fiona - 11/1/2019 - (By Phone) - 10:09 AM</b></p> <p>John contacted Princess Fiona by phone to inquire about her concern with Mr. Donkey. Princess Fiona indicated her concerns; she shared her assessment numerous times that Mr. Donkey was not a student focused teacher, and shared that in addition to the alleged incident on Halloween, Mr. Donkey used inappropriate language with students on multiple occasions.</p> <p><b>Complaint Area #1:</b></p> <ul style="list-style-type: none"> <li>Princess Fiona reiterated her complaint detailed in her email from October 31, 2019. She alleged that Mr. Donkey called her son an "idiot," shared students laughed at her son as a result of Mr. Donkey's comment, and alleged that Mr. Donkey dismissed her son's feeling of embarrassment as Fergus's fault.</li> </ul>		



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### Investigation Documentation Form

**Complaint Area #2:**

- Princess Fiona indicated that Mr. Donkey frequently uses inappropriate language with students in class. She indicated that she has heard from other parents, and also from her son, that Mr. Donkey calls students "stupid," frequently yells at students, and publicly shames students who do poorly or do not follow the rules. When asked for specifics regarding "public shaming," Princess Fiona could not provide specific details. However, she indicated that Administration may want to contact parents Mr. Gingerbread Man, and Mrs. Dragon.

John advised Princess Fiona of Board Policy 2:260, and shared that the policy directed the Complaint Manager to "first attempt to resolve complaints without resorting to this procedure." Princess Fiona indicated she felt the Administration could likely address concerns she raised without the Uniform Grievance Procedure. John thanked her for the information, and indicated the District would begin work to address the issues she raised. He also indicated he would email her a link to Board Policy 2:260 for her review. If she felt her complaint was best addressed by the Uniform Grievance Procedure, he shared that she should clearly state that she felt the procedure applied.

**Mr. Donkey – 11/3/2019 - 8am - In Person**

- In attendance:
  - John Filippi, Complaint Manager
  - Robin Hood, Principal
  - Mr. Donkey
  - King Harold, Union Representative
- Mr. Donkey indicated he told Fergus to "stop acting like an idiot" in a joking manner to redirect his inappropriate behavior during the Halloween parade.
- Mr. Donkey disputed that students were laughing at Fergus, and indicated he did not tell Fergus being embarrassed was his fault.
- Mr. Donkey indicated he frequently uses sarcastic language as a means to "be lighthearted" when addressing student misbehavior, but would never call students "stupid" or shame students in any way.

**Student One - 11/3/2019 - Approximately 1:00 PM - In Person**

- Indicated he heard Mr. Donkey call Fergus an "idiot" at the Halloween parade, and said that he and several other students laughed at Fergus because they thought it was funny.

**Student Two - 11/3/2019 - Approximately 1:15 PM - In Person**

- Indicated she did not hear Mr. Donkey call Fergus an "idiot," but shared that Mr. Donkey frequently uses language she believes he means to be funny, but that some students believe is a put down. She could not recall any specific comments Mr. Donkey used in class.

**Student Three - 11/4/2019 - Approximately 8:00 AM - In Person**

- Shared that he heard Mr. Donkey call Fergus an "idiot." Indicated that he was unaware of students laughing or any other comments by Mr. Donkey.



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**Student Four - 11/4/2019 - Approximately 8:15 AM - In Person**

- Did not hear Mr. Donkey call Fergus an “idiot,” but shared that Mr. Donkey says a lot of funny things to students in class when students do poorly or misbehave.

**The Gingerbread Man - 11/4/2019 - Approximately 8:45 AM - By Phone**

- Stated that his children have never heard Mr. Donkey make any comments of concern in class.

**Mrs. Dragon – 11/4/2019 – 10:00 AM – By Phone**

- Shared that her child has frequently shared that Mr. Donkey uses language in the classroom that “crosses the line.” She indicated that she has contacted Mr. Donkey to discuss her concern, and he indicated he was just trying to be “funny” and “lighthearted” in his approach to redirecting students. She could not recall any specific comments Mr. Donkey has made—just that her child told her about language that seemed like “something a teacher shouldn’t say.”

**Student Five - 11/4/2019 – 10:30 AM - In Person**

- Indicated Mr. Donkey frequently calls out students and uses words like “stop being such a goof,” or “quit being an idiot.” She shared that some students think it is funny, but she feels it is hurtful.

**Mr. Donkey – 11/6/2019 - 8 AM - In Person**

- In attendance:
  - John Filippi, Complaint Manager
  - Robin Hood, Principal
  - Mr. Donkey
  - King Harold, Union Representative
- Indicated he stands by his initial statement
- Indicated he does not believe anything he has said to students could be construed in an negative way.



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# Best Practices- Review Findings

- Any follow up necessary?
- Honor contractual obligations
  - Copies of notes
  - Timeframes
- Review Notes
- Do we have “Just Cause”
- If so, what is the level of “Progressive Discipline”
- Final rulings
  - Board involvement
- The personnel file
  - Removal of Discipline?
  - Effectiveness of write ups long term
- When the dust settles
  - EAP



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**History of  
Due Process, Just Cause, &  
Progressive Discipline**

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# ***Due Process***



# History of Due Process

The phrase due process of law first appeared in a statutory rendition of Magna Carta in 1354 during the reign of Edward III of England, as follows: "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."

In the United States, due process is outlined in both the 5th and 14th amendments to the Constitution. Each amendment contains a due process clause, which prohibits the government from taking any action that would deprive a person of "life, liberty, or property without due process of law."

FYI - The Fifth Amendment breaks down into five rights or protections: the right to a jury trial when you're charged with a crime, protection against double jeopardy, protection against self-incrimination, the right to a fair trial, and **protection against the taking of property by the government without compensation.**



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# History of Due Process

**Substantive due process** is a principle allowing courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the U.S. Constitution.

Courts have taken an assertive approach to upholding due process, which has resulted in the executive and legislative branches of government adjusting how laws and statutes are written. Laws that are explicitly written not to violate due process are those that are least likely to be struck down by the courts.

**Procedural due process** requires that when the federal government acts in a way that denies a citizen of a life, liberty, or property interest, **the person must be given notice, the opportunity to be heard, and a decision by a neutral decision-maker.**



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# Due Process in K-12 Setting

State **tenure laws** reflect deliberate legislative judgments that new teachers need time and support to develop.

As a consequence, tenure laws provide employers with broad authority to dismiss teachers during their first years of employment in a particular school district. Once teachers earn tenure, state tenure laws protect the investment that both the teacher and the school district have made in professional development by ensuring **that tenured teachers cannot be fired for poor or arbitrary reasons.**

**To that end, state tenure laws provide tenured teachers with “due process,” meaning the right to know why they are being dismissed and the opportunity to challenge a dismissal that a teacher believes is unfounded.**



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# *Just Cause*



# History of Just Cause

Prior to 1966, professional arbitrators struggled to reach consistent decisions in discipline cases. They recognized that inconsistent results produced chaos in both the arbitration process and the workplace.

Noted arbitrator Carroll R. Daugherty decided to take the bull by the horns by combining the many concepts employed by arbitrators in discipline cases into a single theory which he called “a sort of ‘common law’ definition” of just cause.

It set out specific guidelines to be applied to the facts of any one case which we now refer to as the seven tests of just cause.

The award by Arbitrator Daugherty, which is generally recognized as the first decision to formally set out all of the seven tests of just cause, was in the matter of Enterprise Wire Co. and Enterprise Independent Union and was issued March 28, 1966 (46 LA 359).



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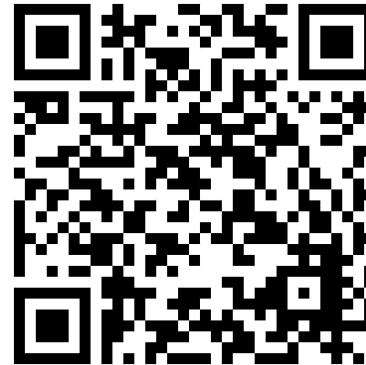
# History of Just Cause

You can read Daugherty's full Arbitration Decision at <http://clear.uhwo.hawaii.edu/EnterpriseWire.html>.

This was a discharge case involving absenteeism and unsatisfactory work.

In this case, Arbitrator Daugherty ruled in favor of the employer; the union lost the case and the employee was fired.

This historic case set the rules for Just Cause and is still being used today by employers, labor unions, and arbitrators.



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# Just Cause in the K-12 Sphere

The U.S. labor movement has secured a number of important rights for unionized workers; particularly educators. Among such rights, JUST CAUSE provides important protections against arbitrary or unfair termination and other forms of inappropriate workplace discipline.

Just cause has become a common standard in labor arbitration, and is included in labor union contracts as a form of job security. Typically, an employer must prove just cause before an arbitrator to sustain an employee's termination, suspension, or other discipline. **Usually, the employer has the burden of proof in discharge cases or if the employee is in the wrong.**



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# Just Cause in the K-12 Sphere

Employees are expected to meet performance standards and behave appropriately in the workplace. Disciplinary or corrective action taken by the employer is supposed to be a process of communicating with the employee to improve unacceptable behavior or performance. There is a set of guidelines, called the “Seven Tests of Just Cause” that employers are expected to follow when imposing discipline; that Unions need to assure have been applied to their members; and that arbitrators use as a basis to form their decisions.



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# Just Cause in the K-12 Sphere

The main contractual weapon is often times summed up in one short sentence, "Employees shall be disciplined or discharged only for just cause." In some contracts the words used are "proper cause" or "fair cause." The importance of a sentence like this is that it binds the employer to imposing discipline not just for any reason (cause) but the reason has to be a "just" reason. Many arbitrators have gone so far as to hold all employers to a "just cause" standard, whether the contract uses the words or not.



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# *Progressive Discipline*

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# History of Progressive Discipline

Progressive discipline evolved out of labor disputes and collective bargaining practices. Prior to the widespread implementation of 'Just Cause' clauses in union contracts, it was not uncommon to see onerous hidden requirements of employment for workers.

Among the most famous is Henry Ford's insistence on **investigating the personal lives** of his employees and issuing terminations for those whose personal life he deemed unseemly.



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# History of Progressive Discipline

The traditional paradigm of progressive discipline is used to prove, via documentation, that you **made a good-faith effort** to lead the employee down the right path. Your affirmative efforts to improve your teacher's performance must have been willfully rebuffed despite repeated warnings so that you, as a reasonable school district administrator, were left with no choice **OTHER** than termination.

Keep in mind that you may be required to demonstrate that the discipline was meted out in a fair manner that was consistent with both your contract and district policies so that any teacher could reasonably expect to be terminated under similar circumstances.



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# History of Progressive Discipline

It is by no means uncommon to have an employee on separate paths of discipline. A office administrative assistant who is already on final written warning for insubordination shouldn't necessarily be terminated if a tardiness problem begins. Tardiness, an event unrelated to insubordination, would not typically be used as the proverbial "straw that breaks the camel's back" to justify termination. That's because there is no nexus or interrelationship between the events: Tardiness interferes with work flow, whereas insubordination relates to individual behavior and conduct—a separate operational issue altogether.



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# Principle 1 of Progressive Discipline

## *Your Goal Is Retention, Not Termination*

Some administrators mistakenly believe that the purpose of discipline is to build a case to fire teachers down the road. Of course, handling disciplinary issues properly will help you preserve management rights to end the employment relationship **legally**, if a teacher can't improve.

**But that's just one of the benefits of the system, not its purpose.**

As an administrator, your goal when dealing with teachers who've gotten off track **isn't to fire them**, but to help them improve their performance and renew their dedication to the profession. **Termination is seldom a viable option for a school district**, when you consider how much it costs to hire and train a new teacher, the decline in morale and productivity that can occur when a teacher is fired, the real losses to your district of having a position vacant while you search for a replacement (which is also costly), and the potential for union issues and legal claims that accompany an employment termination.



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# Principle 2 of Progressive Discipline

## *Discipline Should Be Proportionate*

**Progressive discipline requires you to respond to an teacher's behavior by choosing a disciplinary measure of corresponding seriousness.** Responding to a relatively minor issue with an informal coaching session lets a teacher know that you've identified a problem and you want to give the teacher every chance to improve. Similarly, giving a written warning to a teacher who has engaged in serious misconduct indicates that the behavior is unacceptable and must stop immediately. In either case the teacher you discipline is not the only audience for your action: **Other teachers will also see (or hear about) how you handle these issues and will get a better understanding of what both administrators and the district expects.**



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# Principle 3 of Progressive Discipline

## *Have the Facts at Your Fingertips*

Before you meet with a teacher to discuss a problem, you'll need to be ready to **explain why correction is necessary**. Teachers need to understand the scope of the problem and to be included in the decision-making process. For example, this means you can't just hand over a written warning; instead, you have to be prepared to explain the problem clearly, with pertinent examples and potential solutions.



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# Principle 4 of Progressive Discipline

## *Listen to Your Employees*

Your ability to listen as you discuss performance or conduct issues will make or break the discipline process. If you monopolize the conversation or ignore the teacher's effort to explain, your relationship with the teacher might be jeopardized beyond repair – and you may not solve an otherwise solvable problem.

Listening carefully will help you understand the root of the problem and collaborate with the teacher to come up with a solution. It will help you make sure that you've chosen the right disciplinary response. And, **the teacher will feel heard and understood, and will therefore be more willing to engage in the process and move forward with a positive attitude.**



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# Principle 5 of Progressive Discipline

## *Collaboration is the Key to Success*

After you have explained how the teacher's behavior is affecting the district and listened to the teacher's side of the story, it's time to work together to develop an action plan for improvement. **Collaboration allows the teacher to feel some ownership of the resolution and take responsibility for making it happen.** If you come into a disciplinary meeting with all the answers, your teacher won't have to actively participate – and is more likely to disengage emotionally.



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# Principle 6 of Progressive Discipline

## *Be Flexible Within a Consistent Framework*

Progressive discipline systems are fair because they require consistency. **They require administrators to treat similar problems alike and to differentiate between less serious and more serious issues.** This framework provides a solid basis for making disciplinary decisions and deciding how to handle all of the particular and unique issues that might come up on your team

However, because progressive discipline is rooted in collaboration, it allows also for some flexibility in handling disciplinary discussions, coming up with potential solutions, and working with teachers to help them improve. Although the particular disciplinary measure you use will typically be dictated by the teacher's behavior, the way you and the teacher work together will depend on the facts.



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# Principle 7 of Progressive Discipline

## *Some Employment Relationships Don't Work Out*

Although the goal of progressive discipline is to help teachers improve, some employment relationships were just not meant to be. If a teacher really can't or won't take the necessary steps to solve a problem, progressive discipline **lays the proper foundation for a fair and legal termination process.**



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# Key Tips and Tricks to Progressive Discipline

- Union is your bestie
  - SUPPORTS that the district wraps around the employee
  - Admin team trainings
    - Scenario based
  - Emotionally process!
    - Stick to your script
    - Question branching
    - Predicting the responses
  - Understand **Willful and Wanton Misconduct**
- 
- Thoughts from the group



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**Just Cause - Test 1:** Was the employer rule or order reasonably related to efficient or safe operations?

# Test 1: Historical Background

- This rule or order **MUST NOT** be arbitrary, capricious or discriminatory and must be related to the employer's stated goals and objectives.
- Even if this order is unreasonable, the member **MUST** obey, except in cases when doing so would jeopardize health or safety.
  - **ARBITRARY**: based on random choice or personal whim, rather than any reason or system.
  - **CAPRICIOUS**: given to sudden and unaccountable changes of mood or behavior.



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# Test 1: General K-12 Scenario

- Lincoln Elementary School is situated at a busy intersection. Near misses have occurred in the past between staff entering the building and vehicles in the parking lot.
- A principal makes a rule that all crossing guards must wear high visibility vests WITH the building logo on the vest so they don't get hit by vehicles entering the school.
- A crossing guard, who is part of the bargaining unit, is terminated by the principal for wearing a high visibility vest that meets ANSI standards but DOES NOT contain the district logo.
- Making a rule that high visibility vests are required so the employees don't get hit by a vehicle may be reasonable and related to safety, but demanding the vest have the District logo isn't related to safety or efficiency.



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# AI Generated Sample Questions to Satisfy Test 1

## *Themes:*

**A. Purpose and Reasonableness of the Rule**

**B. Communication and Implementation of the Rule**

**C. Consistency and Fairness**

D. Managerial Intent and Judgment

E. Discriminatory or Arbitrary Elements

F. Safety and Legitimacy of the Order



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# AI Generated Sample Questions to Satisfy Test 1

## *Questions:*

**THEME A** - What safety concerns or incidents prompted the principal to require high-visibility vests for crossing guards?

**THEME B** - Were employees given a clear explanation distinguishing the safety purpose from the branding/logo requirement?

**THEME C** - Have all crossing guards — and any other staff required to wear safety vests — been held to the same logo requirement?



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# AI Generated Sample Questions to Satisfy Test 1

## ***Themes:***

- A. Purpose and Reasonableness of the Rule
- B. Communication and Implementation of the Rule
- C. Consistency and Fairness
- D. Managerial Intent and Judgment**
- E. Discriminatory or Arbitrary Elements**
- F. Safety and Legitimacy of the Order**



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# AI Generated Sample Questions to Satisfy Test 1

## *Questions:*

**THEME D** - What was the principal's reasoning for terminating the employee instead of issuing a warning or lesser discipline?

**THEME E** - Was this rule applied equally to all crossing guards regardless of seniority, gender, or union status?

**THEME F** - Is there a clear, evidence-based link between having the logo and preventing harm to staff or students?



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**Just Cause - Test 2:** Did the employer give any warning as to any possible discipline or consequence that could result from that employee's action or behavior?

## Test 2: Historical Background

- While maintaining the contractual right to manage its workforce by establishing the rules and orders necessary, the employer is responsible for informing the employees as to their meaning and application.
- The employer must advise the employee that any act of misconduct or disobedience would result in discipline.
- This statement should be unambiguous and inclusive of any possible penalties.
- The warning may be given orally but it is highly advised that it be given in printed form.
- An exception to either format may be made for certain conduct, such as insubordination, coming to work intoxicated, drinking on the job, stealing employer property or hurting children, that is so serious the employee is expected to know it will be punishable.



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## Test 2: General K-12 Scenario

- A paraprofessional at Lincoln Elementary School has been observed using vulgar language in the presence of students by the teacher. The teacher does not report it.
- The principal overhears the paraprofessional drop an F-Bomb while students are in the hallway on three separate occasions but does not act on what was observed until the third instance.
- On the 3rd instance, the principal says, “I’m tired of your swearing, cut it out,” and the next day fires the employee.
- If the paraprofessional is told to stop using vulgar language around students and that if she continues she will be disciplined, then that may be an adequate warning.



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# AI Generated Sample Questions to Satisfy Test 2

## *Themes:*

- A. Purpose of the Rule and Employer's Responsibility**
- B. Communication and Clarity of the Rule**
- C. Warning and Forewarning of Consequences**
- D. Consistency and Documentation of Warnings
- E. Severity and Known Standards
- F. Timing and Management Response



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## AI Generated Sample Questions to Satisfy Test 2

### *Questions:*

**THEME A** - What specific standard of conduct or rule prohibits the use of vulgar or profane language in the presence of students?

**THEME B** - Was the paraprofessional ever explicitly told that using vulgar or profane language around students violates school policy?

**THEME C** - Did the principal or any supervisor previously warn the paraprofessional about using inappropriate language before the termination?



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# AI Generated Sample Questions to Satisfy Test 2

## *Themes:*

A. Purpose of the Rule and Employer's Responsibility

B. Communication and Clarity of the Rule

C. Warning and Forewarning of Consequences

**D. Consistency and Documentation of Warnings**

**E. Severity and Known Standards**

**F. Timing and Management Response**



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## AI Generated Sample Questions to Satisfy Test 2

### *Questions:*

**THEME D** - Are there written records, memos, or witness statements documenting any warnings, coaching sessions, or counseling conversations?

**THEME E** - Were there any aggravating factors (e.g., repeated offenses, presence of young children, disruption caused)?

**THEME F** - Did the delay in addressing earlier incidents contribute to the employee's lack of awareness that the behavior could lead to termination?



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**Just Cause - Test 3:** Prior to administering discipline, did the employer conduct an investigation to determine whether the employee did in fact violate or disobey a rule or order?

## Test 3: Historical Background

- The employer's investigation must be made **BEFORE** any disciplinary action is invoked.
- However, where immediate action is required, the best course is to suspend the employee pending investigation with the understanding that the employee will be restored to their job and paid for time lost if found not guilty (place on paid administrative leave).
- The employer is prosecutor, judge and jury in discipline cases, and must bear the full responsibility for collecting any and all facts that are relevant to the final decision.



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## Test 3: General K-12 Scenario

- Weekly inventory of the school supply closet reveals supplies have gone missing 4 out of the last 6 weeks. There is no data to support that the supplies were taken for classroom usage.
- The principal receives an anonymous tip that a 4th grade teacher is selling the school supplies on OfferUp to the highest bidder.
- The principal fires that teacher for stealing school supplies and puts the onus on the union to prove that the teacher isn't guilty.
- At the termination meeting, the principal admits that he never investigated the incident, the principal just took another teacher's word for it.
- If the union has facts to prove the employee's innocence, they most assuredly WILL present it to the principal even though he failed to properly investigate the case to support the just cause claim.



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# AI Generated Sample Questions to Satisfy Test 3

## *Themes:*

- A. Timing and Sequence of Actions
- B. Thoroughness and Fairness of the Investigation
- C. Source Credibility and Reliability
- D. Due Process and Employee Rights
- E. Use of Suspension Pending Investigation
- F. Objectivity and Burden of Proof



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## AI Generated Sample Questions to Satisfy Test 3

### *Questions:*

**THEME A** - When did the principal first learn about the missing school supplies?

**THEME B** - Did the principal attempt to confirm whether an account linked to the teacher actually existed or listed school property for sale?

**THEME C** - Who provided the anonymous tip, and what steps were taken to evaluate its credibility?



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# AI Generated Sample Questions to Satisfy Test 3

## *Themes:*

- A. Timing and Sequence of Actions
- B. Thoroughness and Fairness of the Investigation
- C. Source Credibility and Reliability
- D. Due Process and Employee Rights
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## AI Generated Sample Questions to Satisfy Test 3

### *Questions:*

**THEME D** - Was the accused teacher notified of the allegations and allowed to present their side before termination?

**THEME E** - If the principal felt immediate action was necessary, why wasn't the teacher placed on paid administrative leave pending investigation?

**THEME F** - Did the principal assume guilt and require the union to prove innocence, rather than collecting evidence objectively?



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**Just Cause - Test 4: Was this investigation fair and objective?**

## Test 4: Historical Background

- The employer has the obligation to conduct a fair, timely and thorough investigation that respects the employee's right to union representation and due process.
- Once gathered, all facts must be evaluated with objectivity, and without a rush to judgment.
- Did the investigator thoroughly investigate?
- Did the investigator interview all parties who witnessed the incident, including the person who was named to be at fault.
- Ensure you are thorough in the investigatory process.



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## Test 4: General K-12 Scenario

- A parent of a 6th grade student accused a teacher of hitting their child in the classroom.
- The principal promptly spoke with the child and documented the situation.
- The principal met with the teacher who had a very different account of what occurred.
- The principal made a conscious decision to NOT meet with the paraprofessional who was assigned to the classroom and the other 10 students who were in the classroom.
- The principal closed the investigation and enacted discipline against the teacher accordingly.
- If the principal refuses to interview others who may have observed the situation then the investigation may not be fair.



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# AI Generated Sample Questions to Satisfy Test 4

## *Themes:*

**A. Process Integrity & Impartiality**

**B. Timeliness & Sequence**

**C. Completeness of Fact-Finding**

D. Due Process & Representation

E. Interview Quality & Consistency

F. Evidence Evaluation & Documentation



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## AI Generated Sample Questions to Satisfy Test 4

### *Questions for Themes A, B, and C:*

**THEME A** - What steps were taken to avoid pre-judging the teacher or student (e.g., withholding conclusions until all interviews were complete)?

**THEME B** - When did the principal first learn of the allegation, and what immediate actions were taken?

**THEME C** - Why was the paraprofessional and other students not interviewed? Was any written rationale documented?



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# AI Generated Sample Questions to Satisfy Test 4

## *Themes:*

A. Process Integrity & Impartiality

B. Timeliness & Sequence

C. Completeness of Fact-Finding

**D. Due Process & Representation**

**E. Interview Quality & Consistency**

**F. Evidence Evaluation & Documentation**



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## AI Generated Sample Questions to Satisfy Test 4

### *Questions for Themes D, E, and F:*

**THEME D** - Was the teacher offered union representation for any investigatory interview? If declined, was that documented?

**THEME E** - Were interview questions neutral, non-leading, and consistent across witnesses?

**THEME F** - How were conflicting accounts weighed (student vs. teacher)? What objective anchors (time stamps, video, physical layout) were used?



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**Just Cause - Test 5: Did the investigation produce substantial evidence or proof of guilt?**

# Test 5: Historical Background

- Although there is no requirement of being preponderant, conclusive, or "beyond a reasonable doubt," any proof or evidence must be truly substantial.
- While conducting the investigation, the employer must actively seek out witnesses and search for evidence.
- If an offense cannot be proven, then no penalty could ever be considered JUST.
- It should be obvious that employees have less rights inside the workplace than they would have in civil court, but still the principal must have real evidence, not guesses.
- Also, the principal cannot just try to make an employee prove his or her innocence without presenting proof of guilt.



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# Test 5: General K-12 Scenario

- The Jefferson High School Basketball Team has had a winning record for years.
- Parent rumor has it that the coach has a Dr. Jekyll/Mr. Hyde persona.
- On the court, and with the team as a whole, he exemplifies a caring and compassionate demeanor. The belief is that one-on-one he can get aggressive and demanding with performance. Teammates warn each other to never approach him one-on-one.
- The coach is totally unaware that parents perceive him this way.
- On the parents facebook group, they share many rumors regarding the coach. Finally, they print the pages and demand the school do something.
- The investigation yields zero evidence from the players that any current player or former player has been treated the way the rumors claim. They have always followed their own rule about not engaging one-on-one to avoid being yelled at. Interestingly, no one can recall who began this rule.
- The District provides him with a letter of reprimand regarding his unprofessional interactions with players.



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# AI Generated Sample Questions to Satisfy Test 5

## *Themes:*

**A. Standard of Proof and Burden of Evidence**

**B. Witness Credibility and Corroboration**

**C. Objectivity and Evaluation of the Facts**

D. Burden of Proof and Presumption of Innocence

E. Adequacy and Strength of Evidence Collected

F. Decision-Making and Documentation



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# AI Generated Sample Questions to Satisfy Test 5

## *Questions for Themes A, B, and C:*

**THEME A** - What specific misconduct is the coach accused of?

**THEME B** - Were any current or former players interviewed about direct experiences with the coach?

**THEME C** - Did the investigator summarize findings objectively, stating what was and was not substantiated?



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# AI Generated Sample Questions to Satisfy Test 5

## ***Themes:***

A. Standard of Proof and Burden of Evidence

B. Witness Credibility and Corroboration

C. Objectivity and Evaluation of the Facts

**D. Burden of Proof and Presumption of Innocence**

**E. Adequacy and Strength of Evidence Collected**

**F. Decision-Making and Documentation**



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## AI Generated Sample Questions to Satisfy Test 5

### *Questions for Themes D, E, and F:*

**THEME D** - Was the coach given a clear statement of the allegations and a fair chance to respond?

**THEME E** - Did any witness provide specific evidence of yelling, threats, or unprofessional behavior in one-on-one situations?

**THEME F** - How did the district justify a letter of reprimand when no direct or corroborating evidence supported the allegations?



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**Just Cause - Test 6:** Were the rules, orders, and penalties applied evenhandedly and without discrimination?

# Test 6: Historical Background

- If other employees who commit the same offense are treated differently, there may be discrimination or disparate treatment, both of which would automatically violate this test.
- If enforcement has been lax in the past, management cannot suddenly reverse its course of action and begin to crack down without first warning employees of its intent to do so.



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# Test 6: General K-12 Scenario

- It is a contractual obligation in Washington School District that weekly lesson plans be created and that substitute teacher plans are always available for guest teachers.
- A veteran biology teacher routinely questions the authority of the principal. There is no love lost between the two employees.
- The biology teacher has a situation which requires intermittent and unexpected leave.
- 50% of the time. No sub plans are in place.
- The biology teacher's departmental colleagues often step in to create the plans.
- The principal has held multiple meetings with the biology teacher and is moving to suspend the teacher without pay for not following the contractual obligations.
- Upon a meeting held by the other teachers in the union, it is discovered that many other teachers have failed to produce sub plans in the past and none have ever been held accountable for this expectations.



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# AI Generated Sample Questions to Satisfy Test 6

## *Themes:*

**A. Consistency and Equal Treatment**

**B. Fair Notice and Past Practice**

**C. Disparate Treatment and Possible Bias**

D. Comparative Evidence Collection

E. Proportionality and Progressive Discipline

F. Investigation and Documentation Review



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# AI Generated Sample Questions to Satisfy Test 6

## *Questions for Themes A, B, and C:*

**THEME A** - Has the requirement for weekly lesson plans and substitute (“sub”) plans been enforced consistently across all staff?

**THEME B** - How long has the “lesson-plan and sub-plan” requirement been in place, and how was it communicated?

**THEME C** - as the biology teacher been disciplined more harshly than peers who committed the same offense?



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# AI Generated Sample Questions to Satisfy Test 6

## ***Themes:***

A. Consistency and Equal Treatment

B. Fair Notice and Past Practice

C. Disparate Treatment and Possible Bias

**D. Comparative Evidence Collection**

**E. Proportionality and Progressive Discipline**

**F. Investigation and Documentation Review**



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# AI Generated Sample Questions to Satisfy Test 6

## *Questions for Themes D, E, and F:*

**THEME D** - Review attendance and sub-plan compliance records for all teachers over the same timeframe – what percentage missed the requirement?

**THEME E** - Did the principal consider lesser steps (verbal/written warning, improvement plan) before moving to suspension?

**THEME F** - Did the investigator or HR review past cases to establish consistent application of the policy?



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**Just Cause - Test 7:** Was the penalty reasonably related to the seriousness of the offense and the past record?

# Test 7: Historical Background

- A proven offense does not merit a harsh discipline unless the employee has been proven guilty of the same (or other) offenses several times in the past.
- Though an employee's past record cannot be used to prove guilt in a current case, it can be used in determining the severity of discipline if guilt is established in the current case.



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# Test 7: General K-12 Scenario

- At Adams Elementary School, a tenured teacher of 30 years, with an absolutely clean discipline record, gets into a shoving match over politics with a second year teacher.
- The second year teacher is an underperformer with two write-ups in their file for other inappropriate encounters with other staff members.
- Upon the close of the investigation, the veteran teacher receives a written reprimand.
- The teacher with two years of experience in the District is terminated.



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# AI Generated Sample Questions to Satisfy Test 7

## *Themes:*

- A. Proportionality and Fairness of the Penalty**
- B. Consideration of Past Record**
- C. Consistency and Comparability of Discipline**
- D. Aggravating and Mitigating Factors
- E. Due Process and Decision-Making
- F. Documentation and Rationale



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## AI Generated Sample Questions to Satisfy Test 7

### *Questions for Themes A, B, and C:*

**THEME A** - What specific conduct occurred between the two teachers — verbal argument, physical shove, both?

**THEME B** - What is the disciplinary and performance history of each employee involved?

**THEME C** - Have other staff who engaged in physical or verbal altercations received similar levels of discipline?



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# AI Generated Sample Questions to Satisfy Test 7

## ***Themes:***

- A. Proportionality and Fairness of the Penalty
- B. Consideration of Past Record
- C. Consistency and Comparability of Discipline
- D. Aggravating and Mitigating Factors**
- E. Due Process and Decision-Making**
- F. Documentation and Rationale**



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## AI Generated Sample Questions to Satisfy Test 7

### *Questions for Themes D, E, and F:*

**THEME D** - Did either employee attempt to de-escalate before the physical contact occurred?

**THEME E** - Did the decision-makers clearly articulate why the penalties differed?

**THEME F** - Does the written reprimand for the veteran teacher cite the specific rule violated and rationale for the lesser penalty?



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Thank you! If you like this, then sign up for our December 11th Admin Academy! Tell your building leaders to sign-up as well!

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