

Progressive Discipline

1019.1 PURPOSE AND SCOPE

The progressive discipline policy is intended to give employees of the District notice of problems with their conduct or performance in order to provide them with an opportunity to correct any problems through the use of progressive discipline.

Unless the employee is subject to the Firefighter Bill of Rights (FBOR), the progressive discipline policy and the disciplinary process outlined herein do not apply to at-will, part-time, or contract employees, or full-time employees during their probationary period. Such employees, who are not subject to FBOR, are at-will and may be dismissed with or without cause at any time. Except as otherwise provided by law, Progressive Discipline is inapplicable to instances of alleged criminal actions.

1019.1.1 DEFINITIONS

Oral/Written Counseling/Warning - The use of an oral or written warning shall not be considered disciplinary action, and shall be used as a tool by supervisors to address performance problems or minor instances of misconduct and may be initiated at any time. The supervisor or manager will review with the employee both the specific deficiencies in question and the District's standards.

The cause(s) of the deficiency will be identified along with specific improvement needed. The employee should be advised of the action that will be taken should he or she fail to achieve the improvement outlined within the time period specified. Any written warnings will be kept in the supervisory file, not the official personnel file, and a copy given to the employee. The supervisory file is intended to be a temporary file to record performance, both positive and negative, throughout the performance year. Once the performance evaluation is completed for the year, all items in the file should be referenced in the performance evaluation if appropriate, and discarded at the end of the performance year.

Letter of Reprimand -A supervisor may issue a Letter of Reprimand to correct repeated instances of minor misconduct or identified performance problems. The purpose of a Letter of Reprimand is to put the employee on notice that the District will take other disciplinary action unless employee improves performance as detailed by his or her supervisor in the Letter of reprimand. Any decision to issue a Letter of Reprimand must be reviewed by the District Administrative Officer.

The supervisor issuing the Letter of Reprimand shall meet with the employee to discuss specific improvements required within a defined time period to avoid further disciplinary action. A copy of the Letter of Reprimand will be placed in the employee's official personnel file.

Suspension Without Pay – Suspension without pay is the temporary removal of an employee from his or her duties without pay for up to thirty (30) calendar days.

Reduction in Pay - A Reduction in Pay is a reduction in hourly salary for a limited and defined period of time, and does not result in any classification change. The employee continues to report to work for the duration of the Reduction in Pay.

Progressive Discipline

Demotion - Demotion is the movement of an employee from his current classification to a new classification having a lower salary range.

Dismissal - Ending the employment relationship.

1019.2 POLICY

1. Unless otherwise required by law, the District's use of progressive discipline is entirely at the District's discretion. Corrective actions are intended to obtain compliance with established rules of conduct and behavior. The District expects that most job-related problems will be resolved through routine disciplinary action.
2. The employees' supervisor will determine the appropriate level of discipline for each performance deficiency or misconduct as appropriate. The District retains the right, as permissible under the Iwa or any memorandum of understanding in place between the District and the employee's representative organization, to bypass progressive discipline altogether. Accordingly, circumstances may warrant immediate dismissal.
3. Disciplinary actions should be designed to fit the nature of the problem. The action imposed should depend on the severity of the misconduct, the particular factual circumstances involved, the employee's work history and previous formal disciplinary record and take into consideration other incidents with comparable circumstances. Except as otherwise provided in the sections above, all disciplinary action should be based on the principles of just cause.
4. Disciplinary actions should be handled at the lowest possible supervisory level, following the established chain-of-command.

1019.3 RESPONSIBILITIES

1. When a supervisor determines that the facts surrounding an infraction of the District's rules and regulations warrants disciplinary action, that action should be initiated as soon as possible to minimize the time between the offense and the prescribed corrective action.
2. The severity of the infraction shall determine the course of disciplinary action to be initiated.
3. The supervisor will notify the District Administrative Officer of all disciplinary actions being taken against a member.
4. Members will be notified in writing of action which has been initiated against them.

1019.4 PRE DISCIPLINE PROCESS

1. In the event that disciplinary action is proposed, the Fire Chief shall provide the member with written notice of the following information:
 - (a) Access to all the materials considered by the Fire Chief in recommending the proposed discipline.
 - (b) An opportunity to respond orally or in writing to the Fire Chief within five days of receiving the notice.

Fresno County Fire Protection District

Policy Manual

Progressive Discipline

2. Upon a showing of good cause by the member, the Fire Chief may grant a reasonable extension of time for the member to respond.
3. If the member elects to respond orally, the response shall be recorded by the District. Upon request, the member shall be provided with a copy of the recording.
4. Once the member has completed his/her response, or if the member has elected to waive any such response, the Fire Chief shall consider all information received regarding the recommended discipline.
5. The Fire Chief shall thereafter render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline.
6. Once the Fire Chief has issued a written decision, the discipline will be effective on the date noted as the Discipline Effective Date in the Fire Chief's written decision.

1019.4.1 PRE-DISCIPLINE MEMBER RESPONSE

The pre-discipline process is intended to provide the accused member with an opportunity to present a written or oral response to the Fire Chief after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline.

1019.5 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the file. The tender of a retirement or resignation by itself shall not serve as grounds for the dismissal of any pending investigation or discipline.

1019.6 POST DISCIPLINE APPEAL RIGHTS

1. Non-probationary members have the right to appeal a suspension without pay, demotion, reduction in pay, or step and dismissal from employment.
2. The member has the right to appeal using to the established appeal procedures.
3. In the event of punitive action against a member covered by FBOR, the appeal process shall be in compliance with Government Code § 3254.5.

1019.7 AT-WILL AND PROBATIONARY MEMBERS

1. At-will and probationary members not subject to FBOR may be disciplined and/or dismissed from employment without adherence to any of the procedures set out in this policy and without notice or any cause at any time during the probationary period.
2. These members are not entitled to any rights under this policy. Any probationary period may be extended at the discretion of the Fire Chief in cases where the member has been absent for more than a week or when additional time to review the member is considered by the Fire Chief to be appropriate.

1019.8 DISCIPLINE APPEAL PROCEDURES

Non-Public Safety, Non-Probationary Employees: [See attachment: Non-Public_Safety__Non-Probationary_Employee_Discipline_Appeal_Procedures.pdf](#)

Fresno County Fire Protection District

Policy Manual

Progressive Discipline

Public Safety, Non-Probationary Employees: [See attachment: Public_Safety__Non-Probationary_Employee_Disciplinary_Appeal_Procedures.pdf](#)

Attachments

Non-Public_Safety__Non- Probationary_Employee_Discipline_Appeal_Procedures.pdf

Non-Public Safety, Non-Probationary Employee Discipline Appeal Procedures

100.1 PURPOSE AND SCOPE

The following appeal procedures only apply to the District's non-public safety, non-probationary employees. Employees covered under the Firefighter Bill of Rights shall follow the FBOR Disciplinary Appeals Procedure. All other employees namely temporary, seasonal, extra-help, at-will, probationary employees, may be disciplined or separated at will, with or without cause, and without a disciplinary appeal procedure. The following appeal procedures apply only to suspension without pay, reduction in pay, demotion, or dismissal.

100.2 PROCEDURES

100.2.1 REQUEST FOR APPEAL HEARING

An employee may submit a written request for appeal to the Administration Officer within **7** days from:

1. receipt of the final notice of discipline; or
2. the date of attempted delivery by the post office or delivery service of the notice to the last known address of the employee.

Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline.

100.2.2 APPEAL HEARING OFFICER

1. As long as the Fire Chief did not serve as the officer for the discipline at issue, the appeal hearing officer shall be the Fire Chief or an individual designated by the Fire Chief who is selected through State Mediation and Conciliation Service (SMCS) the California Office of Administrative Hearings (OAH).
2. If the Fire Chief served as the officer for the discipline at issue, then the appeal hearing officer shall be an individual designated by the District Board who is selected through State Mediation and Conciliation Service (SMCS) or the California Office of Administrative Hearings (OAH).

100.2.3 DATE AND TIME OF THE APPEAL HEARING

Once the appeal hearing officer has been designated, the Administration Officer will set a date for an appeal hearing. The employee shall be notified in writing at least 21 days prior to the hearing of the scheduled date.

100.2.4 PREHEARING NOTICE OF WITNESSES AND EVIDENCE

1. No later than 10 days before the hearing date, each party will provide the other and the appeal hearing officer a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing.

Fresno County Fire Protection District

Procedures Manual

Non-Public Safety, Non-Probationary Employee Discipline Appeal Procedures

2. The District will use numbers to identify its evidence; the employee will use alphabet letters.
3. Neither party will be permitted to call any witness or evidence that has not been listed, unless that party can show that the party could not have reasonably anticipated the need for the witness, such as a rebuttal witness, or exhibit.

100.2.5 SUBPOENAS

1. Upon the request of either party, and upon his or her own motion, the hearing officer will issue subpoenas to compel attendance at the appeal hearing.
2. Each party is responsible for serving his/her/its own subpoenas.
3. District employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing.
4. District employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually spend testifying.

100.2.6 CONTINUANCES

1. The appeal hearing officer may continue a scheduled hearing only upon good cause shown.

100.2.7 RECORD OF THE APPEAL HEARING

1. The hearing shall be recorded, either electronically or by a court reporter, at the option of the District.
2. If the District orders a transcript or makes a transcript of the recording, the District will notify the employee within three days of ordering or making the transcript, and will provide a copy of the transcript upon receipt of the duplication cost.

100.2.8 EMPLOYEE APPEARANCE

1. The employee must appear personally before the hearing officer at the time and place set for the hearing.
2. The employee may be represented by any person he or she selects.

100.2.9 CONDUCT OF THE HEARING

1. **Sworn Testimony:** All witnesses shall be sworn in prior to testifying. The hearing officer or court reporter shall request each witness to raise his or her hand and respond to the following: "Do you affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?"
2. **Evidence:** Hearings need not be conducted according to technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner that the hearing officer decides is the most conducive to determining the truth. The rules dealing with privileges shall be effective to the same extent that they are recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. The appeal hearing officer shall determine the relevance, weight and credibility of testimony and evidence.

Fresno County Fire Protection District

Procedures Manual

Non-Public Safety, Non-Probationary Employee Discipline Appeal Procedures

3. **Exclusion of Witnesses:** During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing.
4. **Burden of Proof:** The District has the burden of proof by the preponderance of the evidence.
5. **Authority of Hearing Officer:** Except as otherwise required by law, the appeal hearing officer shall not have the power to alter, amend, change, add to, or subtract from any of the terms of these Policies.
6. **Professionalism:** All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or the appeal hearing officer.

100.2.10 PRESENTATION OF CASE

1. The parties will address their remarks, evidence, and objections to the appeal hearing officer.
2. The appeal hearing officer may terminate argument at any time and issue a ruling regarding an objection or any other matter.
3. The appeal hearing officer may limit redundant or irrelevant testimony, or directly question the witness.
4. The hearing will proceed in the following order unless the appeal hearing officer directs otherwise:
 - (a) The District is permitted to make an opening statement;
 - (b) The employee is permitted to make an opening statement;
 - (c) The District will produce its evidence;
 - (d) The employee will produce his or her evidence;
 - (e) The District, followed by the employee, may present rebuttal evidence; and
 - (f) Oral closing arguments of no more than 20 minutes may be permitted at the discretion of the appeal hearing officer. The District argues first, the employee argues second, and if the District reserved a portion of its time for rebuttal, the District may present a rebuttal.

100.2.11 WRITTEN BRIEFS

1. Either party may request to submit a written brief and/or a draft decision.
2. The appeal hearing officer will determine whether to allow written briefs or draft decisions, the deadline for submitting briefs, and the page limit for briefs.

100.2.12 APPEAL HEARING OFFICERS RECOMMENDED DECISION

1. Within **60** days of the conclusion of the hearing, the appeal hearing officer shall make written findings and a recommended decision as to the discipline.
 - (a) If the Fire Chief was not the appeal hearing officer or the Skelly officer he or she shall review the findings and recommendations of the appeal hearing officer and

Fresno County Fire Protection District

Procedures Manual

Non-Public Safety, Non-Probationary Employee Discipline Appeal Procedures

may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the Fire Chief is final and binding. There is no process for reconsideration.

- (b) If the Fire Chief was the Skelly officer, the District Board shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the District Board is final and binding. There is no process for reconsideration.

100.2.13 PROOF OF SERVICE OF THE WRITTEN FINDINGS AND DECISION

1. The District will mail a copy of the final written findings and decision, along with a proof of service of mailing that confirms that each of the parties and each of the parties' representatives were mailed the final written findings and decision.
2. It shall be the responsibility of the employee to inform the District of his/her address.
3. A copy of the decision shall also be provided to the Administration Officer.

Public_Safety__Non- Probationary_Employee_Disciplinary_Appeal_Procedures.pdf

Public Safety, Non-Probationary Employee Disciplinary Appeal Procedures

101.1 PURPOSE AND SCOPE

1. These disciplinary appeals procedures set forth herein are adopted pursuant to Government Code § 3254.5 of the Firefighter's Procedural Bill of Rights Act.
2. These procedures apply to Firefighter and public safety personnel (as defined by Section 2 of these procedures) that are employed by the District who have completed their initial probationary period with the District. Probationary employees, at-will employees, contracted workers, and at-will non-life safety employees shall not have rights to these procedures.
3. These procedures shall not apply to employees of the California Department of Forestry and Fire Protection who are contracted with the District. Those individuals are instead governed by contract and the policies of the California Department of Forestry and Fire Protection.

101.1.1 DEFINITIONS

- The term "**Firefighter**" means a public safety employee who is considered a "Firefighter" under Government Code § 3251(a). The classifications of employees of the District who are Firefighters for purposes of these policies include Paid Call Firefighters.
- The term "**punitive action**" means any action defined by Government Code §3251(c), i.e., "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

101.2 APPEAL OF A LESSER PUNITIVE ACTION NOT INVOLVING DISCHARGE, DEMOTION, SUSPENSION, OR REDUCTION IN BASE SALARY OF A FIREFIGHTER

The following informal hearing procedure shall be utilized for an appeal by a Firefighter of a punitive action not involving a discharge, demotion, suspension, or reduction in base salary (examples: written reprimand, transfer for purposes of punishment without reduction in base salary).

101.2.1 NOTICE OF APPEAL

Within five (5) calendar days of the effective date of a lesser punitive action subject to this informal hearing procedure, the Firefighter shall notify the Fire Chief in writing of the Firefighter's intent to appeal the punitive action. The Notice of Appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

101.2.2 NOTICE OF HEARING

Within five (5) calendar days of the District's receipt of the Firefighter's Notice of Appeal, the Fire Chief or his/her designee shall serve the Firefighter with a Notice of Hearing that indicates the District has chosen to proceed according to the informal hearing process outlined herein. The

Fresno County Fire Protection District

Procedures Manual

Public Safety, Non-Probationary Employee Disciplinary Appeal Procedures

Notice of Hearing shall state the time and place of the informal hearing. A copy of this informal hearing procedure shall be attached to the Notice of Hearing.

101.2.3 PRESIDING OFFICER

In an informal hearing, the Fire Chief or his/her designee shall be the presiding officer. The Fire Chief or his/her designee shall conduct the informal hearing in accordance with these procedures. The determination of the Fire Chief shall be final and binding. If the Fire Chief cannot serve as the hearing officer because of actual bias, prejudice, or interest as defined by Government Code § 11425.40, then the Administration Chief or his/her designee shall serve as the Presiding Officer. In such cases, the determination of the Administration Chief shall be final and binding. In instances where neither the Fire Chief nor Administration Chief may conduct the hearing, the District shall retain an independent third-party to do so. The decision of such independent-third party adjudicator shall be final and binding.

101.2.4 BURDEN OF PROOF

The District shall bear the burden of proof at the hearing. The District's burden of proof shall be satisfied if the District establishes by a preponderance of the evidence that the action was reasonable. The District's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.

101.2.5 CONDUCT OF HEARING

1. The formal rules of evidence do not apply, although the Presiding Officer shall have discretion to exclude evidence which is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time.
2. The parties may present opening statements.
3. The parties may present evidence through documents and testimony.
 - (a) Witnesses shall testify under oath.
 - (b) Subpoenas may be issued pursuant to Government Code §§ 11450.05 – 11450.50.
 - (c) Unless the punitive action involves a loss of compensation, the parties shall not be entitled to confront and cross-examine witnesses.
4. Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the Presiding Officer.

101.2.6 RECORDING THE HEARING

If the punitive action involves the loss of compensation, then the hearing shall be stenographically recorded by a certified court reporter. Otherwise, the hearing may be tape recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

Fresno County Fire Protection District

Procedures Manual

Public Safety, Non-Probationary Employee Disciplinary Appeal Procedures

101.2.7 REPRESENTATION

The Firefighter may be represented by a representative or attorney of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the Firefighter.

101.2.8 DECISION

The decision shall be in writing pursuant to Government Code § 11425.50. The decision shall be served by first class mail, postage prepaid, upon the Firefighter as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the Firefighter that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.6.

101.3 APPEAL OF A DISCIPLINARY DECISION INVOLVING DISCHARGE, DEMOTION, SUSPENSION, OR REDUCTION IN BASE SALARY OF A FIREFIGHTER

101.3.1 INAPPLICABILITY

In those instances where the procedures in Government Code §§ 11400, are inapplicable to an administrative appeal, the administrative appeal shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.

101.3.2 NOTICE OF DISCIPLINE AS ACCUSATION

The Final Notice of Discipline which may be issued at the conclusion of any pre-disciplinary procedures shall serve as the Accusation as described in Government Code §§ 11500. Pursuant to Government Code § 3254(f), the discipline shall not be effective sooner than 48 hours of issuance of the Final Notice of Discipline. The Notice shall be prepared and served in conformity with the requirements of Government Code §§ 11500, The Accusation shall include or be accompanied by a statement to the employee that advises him or her of the right to request a hearing by filing a Notice of Appeal as provided in Government Code § 11506. A copy of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code shall be provided to the Firefighter concurrently with the Final Notice of Discipline.

101.3.3 NOTICE OF APPEAL

In accordance with Government Code § 11506, within fifteen (15) calendar days after service of the Accusation on the Firefighter as set forth above, the Firefighter shall notify the Administration Chief in writing of the Firefighter's intent to appeal the punitive action by filing a Notice of Appeal. The Notice of Appeal must be signed by either the Firefighter or on his or her behalf and must include the mailing address of the Firefighter and/or his/her representative. Failure to file a timely Notice of Appeal constitutes a waiver of the Firefighter's right to a hearing.

101.3.4 AMENDED OR SUPPLEMENTAL MATERIALS

Pursuant to Government Code §§ 11507 and 11516, at any time before or after the case is submitted for decision, the District may file an amended or supplemental Accusation. All parties must be notified of the amended or supplemental Accusation.

Fresno County Fire Protection District

Procedures Manual

Public Safety, Non-Probationary Employee Disciplinary Appeal Procedures

101.3.5 ADMINISTRATIVE LAW JUDGE

Pursuant to Government Code § 11512, the District has determined that appeals shall be presided over by an administrative law judge on staff of the State Office of Administrative Hearings, hereinafter referred to as the "ALJ". The ALJ shall preside at the appeal hearing, rule on the admission and exclusion of evidence and determine and rule on all matters of law, both procedural and substantive. In conducting the appeal hearing the ALJ shall follow the provisions set forth in section 11513 of the California Government code.

101.3.6 TIME AND PLACE OF HEARING

Pursuant to Government Code § 11508, unless otherwise decided by the Fire Chief or his/her designee, a hearing shall be conducted at District Headquarters at a time to be determined by the Fire Chief or his/her designee in coordination with the employee and his/her representative.

101.3.7 NOTICE OF THE HEARING

Notice of the hearing shall be provided to the parties pursuant to Government Code § 11509:

1. The District shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense, or, as applicable, notice of participation.
2. The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before Fresno County Fire Protection District at **[Place of Hearing]** on **[Date]** at **[Time]** upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by a representative or attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to **[appropriate District officer]**.

101.3.8 FINDINGS

The appeal proceedings shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically. Within 30 days after the case is submitted to him or her, the ALJ shall prepare a proposed written decision to be submitted to the Fire Chief. Within 100 days of receipt by the Fire Chief of the ALJ's proposed decision, the Fire Chief may take any of the following actions:

1. Adopt the proposed decision in its entirety;
2. Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision;

Fresno County Fire Protection District

Procedures Manual

Public Safety, Non-Probationary Employee Disciplinary Appeal Procedures

3. Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the Fire Chief under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision;
4. Reject the proposed decision and refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence. If the case is referred to the ALJ pursuant to this subparagraph, he or she shall prepare a revised proposed decision based on the additional evidence and the transcript and other papers that are part of the record of the prior appeal hearing. A copy of the revised proposed decision shall be furnished and the decision shall be served to each party and his or her representative attorney; or
5. Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties the Fire Chief may decide the case upon the record without including the transcript.

101.3.9 DECISION

The Fire Chief's decision will be reduced to writing and shall be final and binding on the parties. The Fire Chief's written decision shall be served on the parties in person and the decision shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.5.