

LOS ANGELES FIRE DEPARTMENTBRIAN L. CUMMINGS
FIRE CHIEF

April 29, 2013

BOARD OF FIRE COMMISSIONERS
FILE NO. 13-062

TO: Board of Fire Commissioners

FROM: Brian L. Cummings, Fire Chief

SUBJECT: LEARNING AND EDUCATION BASED ALTERNATIVES TO MODIFY OR
CORRECT BEHAVIOR IN LIEU OF FORMAL PUNITIVE ACTION

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

RECOMMENDATIONS: That the Board:

1. Approve the recommendation that the Fire Department implement strategies which use learning and education as alternatives to the formal discipline process where such methods fulfill both management's need to modify a member's behavior and provides the member with the tools and opportunity to learn from that experience;
2. Approve the recommendation that the Fire Department implement "Pre-Disposition Resolution" (PDR) as a means of expeditiously resolving disciplinary complaints where the member readily admits culpability and accepts responsibility for his or her actions;
3. Approve the recommendation that the Fire Department implement "Learning and Education Alternatives to Discipline" (LEAD) as a means of using education and learning in lieu of punitive action to resolve lower-level misconduct cases.

SUMMARY:

On September 28, 2012, the Professional Standards Division (PSD) presented Board of Fire Commission Reports 12-145 (entitled "Disciplinary Philosophy: Consideration of Alternative Discipline Resolution Strategies to Modify and Correct Behavior in lieu of Punitive Action") to the HRDC/Personnel Committee. After the presentation, the HRDC/Personnel Committee asked that PSD provide a briefing with recommendations to the full Board of Fire Commissioners. This Report is intended to provide that briefing to the Board of Fire Commissioners.

INTRODUCTION

The literature, the experience of those in the disciplinary process and anecdotal stories agree: There is a high level of aggravation in public safety disciplinary procedures for nearly everyone involved and those interested in the outcomes. Police and fire chiefs are frustrated by the months and sometimes years it takes for an allegation of misconduct to be investigated, adjudicated and resolved. The frequency in which the agency's decision is reversed or modified by arbitrators, civil service boards, grievance panels and the courts is another source of increasing uncertainty. Members and their unions generally feel that discipline is arbitrary and fails to meet the fundamental requirements of consistency and fairness. Those who watch or monitor these disciplinary systems from the outside are mystified by both the time involved in dealing with complaints of misconduct and the various steps in a lengthy, confusing and overly legal process.

In fire stations, police roll-call rooms and civilian workplaces from coast to coast, many have asked: Is there a better way of holding employees accountable for their actions and encouraging behavior that falls within departmental expectations and values other than the traditional disciplinary process. When one considers the legal, political, constitutional and human factors involved in public safety discipline here at the Los Angeles Fire Department and abroad, the question is not an easy one to answer.

CURRENT DISCIPLINARY MODEL WITHIN THE LOS ANGELES FIRE DEPARTMENT

Following the 2006 City Controller and City Personnel Audits, the Board of Fire Commissioners approved an Audit Action Plan (Board of Fire Commissioners Report 06-041-S Audit Action Plan, 05/02/2006) to address the personnel concerns raised in those reviews. As to the "Complaint and Disciplinary Process", the Audit Action Plan set forth the following goals and measurements of success:

Disciplinary Guidelines

Goal: The Department will adhere to disciplinary guidelines that are equitable, consistent, free of undue influence, and clearly understood by all levels of the Department; and that reflects the best practices with demonstrated success in achieving a self-disciplined workforce, and also reflect the Core Values and vision of the Department.

Evaluation/Measurement of Success:

- *Fewer opted member Boards of Rights hearings.*
- *Greater understanding by all members of the Department at all levels regarding the disciplinary process and the consequences for misconduct.*
- *Increased reliance on self-discipline by individuals at all levels.*
- *Demonstrated adherence to LAFD Core Values.*

Equal Employment Opportunity Unit

Goal: The Department will have an Equal Employment Opportunity Unit that is independent from the chain of command, responsible for all EEO investigations, EEO policies, training of Department members in EEO related issues, uses complaint tracking information to maximize recognition of trends and proactive solutions to reach equitable conclusions.

Evaluation/Measurement of Success:

- *Decrease in outside agency complaints*
- *Enhanced recognition of EEO trends within the Department*
- *Specialized and appropriately trained investigators*
- *Increased counseling, effective training, mediation and conflict resolution services for all members*

Code of Conduct

Goal: The Fire Department will have a Code of Conduct and a Disciplinary Process that is fair, consistent and easily understood by all members and reflects the Department's Core Values and Rules and Regulations.

Evaluation/Measurement of Success:

- *Implementation of a Code of Conduct for all sworn and civilian employees.*
- *Familiarity and adherence by all employees to the Code of Conduct, Core Values, and the Rules and Regulations.*
- *Implement a fair and consistent disciplinary process measured by improved morale of Department personnel.*
- *Reduced number of disciplinary complaints.*

Internal Affairs Division/Professional Standards Division

Goal: To create an independent body with permanently assigned civilian and sworn investigative staff who possess the necessary expertise, experiences, and training to conduct the wide range of investigations to ensure public accountability of the LAFD, as well as prepare and maintain professional documented investigative files.

Evaluation/Measurement of Success:

- *Significantly shorten time for resolution of complaints/reprimands.*
- *Ease of identifying EEO complaints vs. disciplinary complaints.*
- *Reduction of inconsistencies in assigning disciplinary consequences for all offenses.*
- *Disseminate the survey and analyze the feedback to determine whether or not the disciplinary process has improved morale of rank and file members and firehouse captains.*

Tracking and Reporting System

Goal: The Department will develop a comprehensive tracking and reporting system to create a central repository of all complaints and discipline. This system will allow for employee comment at every appropriate step in the tracking/reporting process, in his or her complaint.

Evaluation/Measurement of Success:

- *Analysis of Department survey with the goal of incremental increase of satisfaction with the system at all levels*
- *Fewer lawsuits relative to discipline*
- *Fewer lawsuits with EEO components*
- *Fewer Board of Rights appeals*
- *Significant reduction of cases involving hazing, harassment, inappropriate comments regarding race, sexual orientation, ethnic or cultural differences.*

The product of these efforts resulted in the creation of the present structure of PSD. When created in 2008, PSD implemented processes to follow the recommendations of the Controller's and Personnel Department Audits and the intent of the Stakeholders by:

1. Creating the Complaint Tracking System (CTS) to track all complaints received by the LAFD against its members;
2. Assessing incoming complaints to determine if they alleged misconduct against LAFD members and if so, assigning the complaint for investigation to either the chain of command or to PSD;
3. Creating procedures for the handling of complaints of serious misconduct and EEO/Hazing by the PSD to ensure thorough, complete and well documented investigations;
4. Creating a review and adjudication process within the PSD to determine whether the investigation is complete and to adjudicate the complaint without involvement of the chain of command;
5. If one or more of the allegations were sustained, proposing discipline consistent with the Disciplinary Guidelines;
6. Utilizing an investigative team of a sworn Advocate and a civilian Investigator on all cases to marry LAFD knowledge with investigative expertise in all PSD cases;
7. Ensuring that all implemented practices not only satisfied the City Charter and existing MOUs, but complied with the newly enacted Firefighters Procedural Bill of Rights (FFBOR).

ONGOING CONCERNS AND PERCEPTIONS REGARDING THE DISCIPLINARY PROCESS

In the past four and one-half years, the following trends and perceptions have become the reality and/or the perceived reality of the LAFD disciplinary process:

Excessive Time to Complete Disciplinary Process.

The current approach to conducting and adjudicating disciplinary investigations often exceeds eight months to complete, with an increasing number of complex cases taking the full one-year statute of limitations period to adjudicate. The backlog of Board of Rights has been bogged down by a large percentage of "Member-Requested" Boards of Rights to challenge what they believe to be unjust penalties under the Penalty Guidelines.

Disciplinary Process Perceived by Members to be Unfair.

The perception of many members is that the disciplinary process takes too long and is inconsistent in application. This is partly due to the long delay in investigating and adjudicating complaints, the perceived focus on "punishment" in the current process, PSD's strict adherence to the penalty guidelines and the delays in completing investigations and Boards of Rights. The delay lessens the connection between the alleged misconduct and the penalty and leaves the member in limbo until he or she is served.

Disciplinary Process as an Ongoing Source of Conflict with the Unions.

Likewise, the strict adherence to the intent of the Controllers, Personnel and Stakeholders has created an ongoing source of conflict with the Unions over issues such as representation, penalties and investigative practices. The message consistently heard from the Unions is that the Penalty Guidelines are rigid and harsh, intended solely to punish the member and not to correct his or her behavior and the perception that PSD's strict adherence to the Stakeholders' intent equates to a lack of cooperation and collaboration.

Current Appeal Process Weakens the Current Disciplinary Model.

The LAFD's experiences since the creation of PSD suggest that both the Board of Rights process and the ability of members to challenge a Board decision at arbitration weaken the effectiveness of the current disciplinary model.

The current composition of a Board of Rights by three sworn Chief Officers means they are forced to rule on significant legal, evidentiary and procedural questions without immediate legal advice. In several Board Hearings not involving terminable misconduct, the Chief Officers have voiced their struggle with independently deciding on a proper

penalty, especially when their opinion conflicts with the Penalty Guidelines. This suggests a disconnect between the current Penalty Guidelines and the collective perception of the Chief Officers who sit in judgment of the disciplinary process in Boards of Rights.

Under the current Memorandum of Understandings, a member may take a decision by a Board of Rights to arbitration. Under the wide ranging discretion of the arbitrator, the matter may be reviewed as to specific issues raised by the parties or may be heard *de novo* (or in its entirety), giving the member a second opportunity to appeal the LAFD's actions. The multiple opportunities for the member to challenge the proposed punitive action dilute the intent and weight of the LAFD's decision to impose discipline, the disciplinary process and the Disciplinary Guidelines.

Underlying Issues in Workplace Environment Cases Not Addressed by Punitive Action.

One of the most challenging types of complaints received by PSD is complaint alleging a single act of misconduct stemming from a simmering dispute with other members in the workplace. Although PSD may investigate and adjudicate the single act, the current disciplinary process does not require nor incorporate meditative or non-punitive options to address, remedy or resolve the issues underlying the misconduct, leaving the likelihood of another incident occurring to remain high.

Demand on PSD Resources at a Breaking Point.

Consistently, over half of the active complaint investigations at any one time are assigned to PSD because of their complexity or nature (i.e. serious misconduct, criminal, EEO, off-duty, etc.) Inadequate field investigations which might be sustained with additional investigation are taken back by PSD to complete, adding to their case burden. Finally, the increased number of Board of Rights (80% of which are member requested challenging the proposed disciplinary action) has created yet another burden on PSD resources.

The resulting domino effect has resulted in investigations taking months to complete, adjudications occurring right before the statute of limitations expires and other investigations suffering because of pending critical investigations and/or Boards of Rights.

Perception of the Current Disciplinary Model is to Punish, Not to Modify Behavior.

The experiences of the past four years, including numerous discussions with involved members, Union leadership, Chief Officers, and internally within PSD support that the intent of the current disciplinary model is to punish members for violating LAFD rules and regulations. A repeated example of this is the repeat offender in discourtesy

complaints stemming from emergency medical responses. Although the disciplinary process will address the issue through punitive action, nothing in the LAFD's approach attempts to address how to modify the member's behavior in the positive, often resulting in the filing of additional complaints for similar behavior.

TRADITIONAL FORMAL DISCIPLINE: A CONTINUING NECESSARY EVIL

In the public sector, management has the authority and responsibility to train, direct and manage the actions of their employees in the furtherance of the agency and entity's mission and core functions. If the policies and procedures defining those expectations are promulgated, the employer should expect that the employee will follow them. When the employee fails to do so, management has the authority to correct the employee's behavior with the hope that future behavior will conform within the agency's rules.

Non-Disciplinary Action

Not all inappropriate behavior requires the imposition of formal discipline. In many cases, non-disciplinary action, such as counseling, training or oral warning by the immediate supervisor, may be appropriate. The purpose of non-disciplinary action is to (1) inform the member of a potential problem which may result in discipline if it continues; and (2) help correct the problem before it becomes significant and enters the formal disciplinary arena. Non-disciplinary action allows for behavior to be modified at the lowest level without the need for formal discipline. However, whether a potential problem is identified and/or addressed at that level depends entirely on the individual supervisor's diligence and supervisory style.

Formal Discipline (Punitive Action)

After the non-disciplinary approach is used without achieving the desired behavioral change or where the nature of the misconduct requires the imposition of formal discipline, punitive action may be necessary.

The formal discipline allowed under Los Angeles City Charter § 1060 and/or the Firefighters Procedural Bill of Rights as to sworn members, from least to most severe, are:

- Written Reprimand
- Suspension
- Board of Rights

Progressive Discipline

Generally, the degree of formal discipline will follow the "progressive discipline" theory. Progressive discipline attempts to correct, resolve or remove the employee's performance problem or misconduct at the lowest, most effective level. It should be

imposed when the manager can reasonably anticipate that the discipline will be effective.

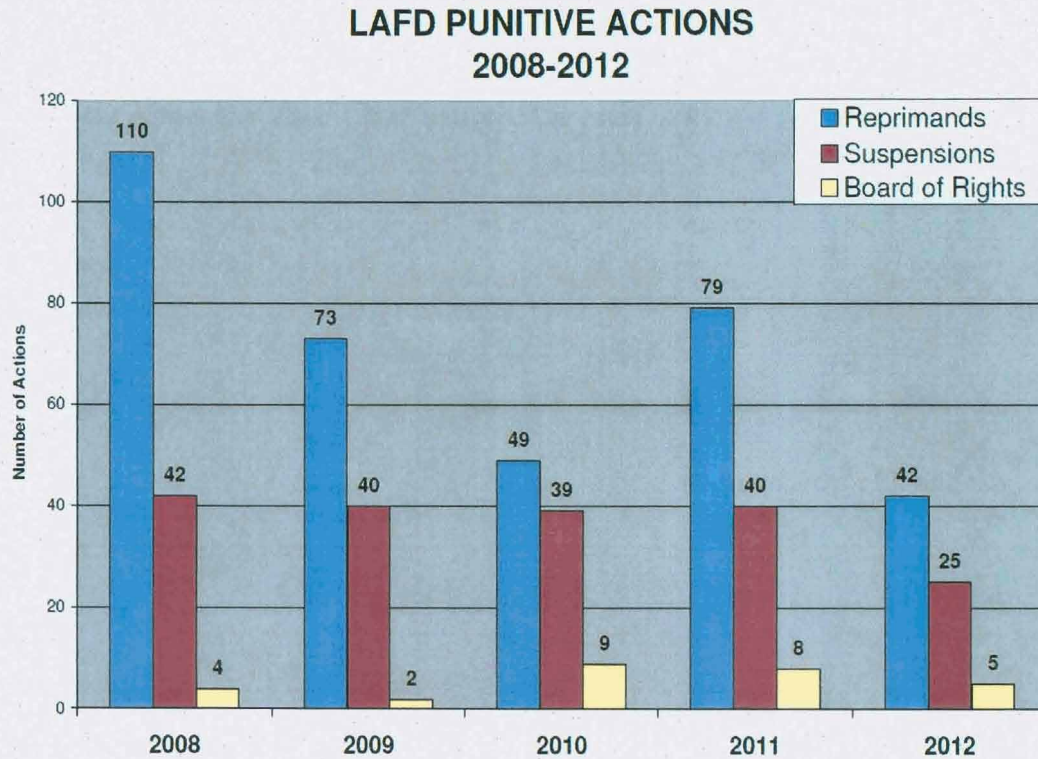
Non-Progressive Discipline

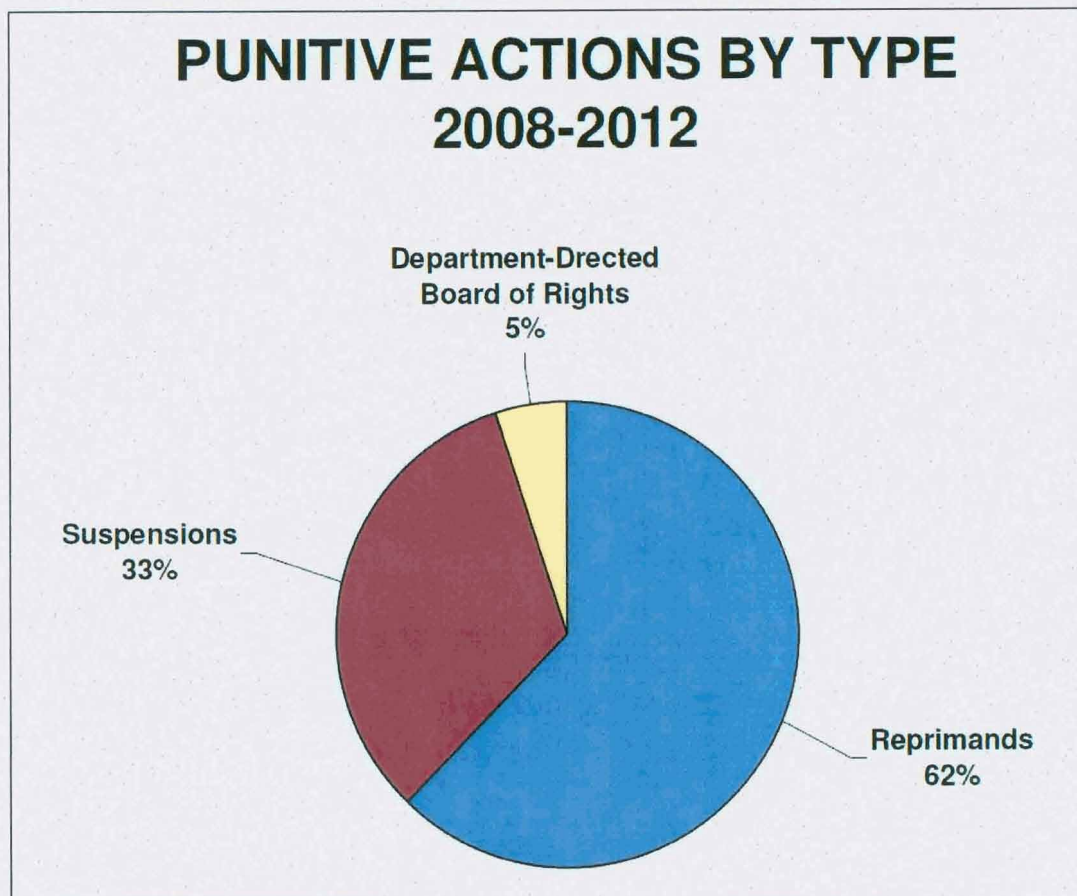
Some acts of misconduct, by their nature, are inappropriate for progressive discipline. These are conduct problems which the member should have reasonably known to be unacceptable without specific notice from the Department or which are generally socially unacceptable. Such behavior may include, but is not limited to substance abuse, dishonesty, theft, violence or illegal or criminal behavior in violation of federal, state or local laws, or court orders.

These acts may result in relatively harsh discipline, including discharge, without the use of progressive discipline.

PUNITIVE ACTIONS BY THE LOS ANGELES FIRE DEPARTMENT 2008-2012

A review of punitive actions (reprimands, suspensions and Department-directed Board of Rights or civilian terminations) from 2008 to 2012 revealed the following information:





This review of sustained complaints resulting in punitive action shows that in 28 of 567 complaints, or 4.94%, the Department concluded that the proper penalty would be one that could result in the member's removal from employment. Thus, in 95% of sustained complaints resulting in punitive action, the Department has no intent to remove the member from service.

Unfortunately, with punitive action as the current and only option, PSD, after a prolonged investigation and adjudication, imposes penalties consistent with the Disciplinary Guidelines which often leaves the member bitter about the process, without being given tools or training which might help them avoid a recurrence.

As of the date of this report, the Department has twenty-two pending Board of Rights hearings. Two are Department-Directed Board of Rights where the Members have been unavailable due to personal leave issues. The remaining Boards are member-requested Board of Rights.

EFFORTS TO ENHANCE THE CURRENT FIRE DEPARTMENT DISCIPLINARY PROCESS