

Unfortunately, there will always be a small percentage of employees who, despite counseling, training and lesser forms of punitive action, refuse to modify their behavior to conform to Department standards. Because of the due process rights of tenured public employees, there will always be the need for formal traditional discipline processes for those instances.

In those few cases where the Fire Chief determined that their actions violated the public trust to the point that they no longer remain a member, the Department must have a provable quantum of evidence beyond preponderance and must follow due process in imposing punitive action and proving it to either a Board of Rights or Civil Service hearing officer.

The Professional Standards Division has recognized the need to improve the formal discipline process, including recommending amendments and modifications to the existing Disciplinary Guidelines and City Charter Section 1060 to bring needed changes to the formal disciplinary process. (See BFC 12-040 - Prop. City Charter Amend. - Charter Sec. 1060 - Sworn Fire Disciplinary Statue of Limit, 02/29/2012; BFC 12-145 - Discipline Philosophy – HRDC-Pers. Cmte. 9-28-12, 09/25/2012; BFC 12-146 - Updates to the Discrimination Prev. Policy Handbook - HRDC\_Pers. Cmte. 9-28-12, 09/25/2012; BFC 12-148 - Amended Rules and Regulations/Fire Chiefs Message – HRDC-Pers. Cmte. 9-28-12, 09/25/2012; BFC 12-149 - Summary of Proposed Amend. to City Charter Section 1060 – HRDC-Pers. Cmte. 9-28-12, 09/25/2012).

#### **PHILOSOPHICAL SHIFT TO CORRECT OR MODIFY MEMBERS' BEHAVIOR: LEARNING AND EDUCATION AS ALTERNATIVES TO DISCIPLINE**

In its Audit Action Plan (Board of Fire Commissioners Report 06-041-S Audit Action Plan, 05/02/2006), the Board of Fire Commissioners set, as one of its goals for the Complaint and Disciplinary Process that "[T]he 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."

A review of the Department's Guiding Principles, which includes our Core Values, Vision Statement, Operating Principles and Service Statements place an emphasis on the value of our Members and their value to the Department and its mission.

Our **Core Values** remind us that while Members are expected to conduct themselves with professionalism, integrity and respect, the Department will demonstrate its trust in our employees by using innovation that will improve and advance the LAFD.

**Professionalism** - we conduct ourselves at all times in a manner befitting the oath we swore to uphold.

**Integrity** - we live according to our Code of Conduct that governs our behavior both on and off the job.



**Respect** - we always treat others as they desire to be treated.

**Innovation** - we inspire our employees to take risks that improve our organization and advance our profession.

**Trust** - we trust one another to prepare in such a way that puts the safety, effectiveness, and reputation of the team and the Department first.

The Department's **Vision** reminds us that our members, both sworn and civilian, treat one another as the **LAFD's greatest and most valuable asset**, that our members are committed to creating a diverse workforce free from bias and discrimination and that this **Vision** drives us to be our best for one another, for our Department, and for the people of the City of Los Angeles.

Our **Operating Principles** speak towards operating through **Teamwork**, operating **Ethically and with Integrity** and operating to **Position the Department for the Future**.

Finally, the Department's **Service Statements** speak to commitments owed to citizens, the Department, to each other and to ourselves. Specifically, it reminds us that the LAFD working environment is one characterized by **trust and respect for the individual** and that we will look beyond the norm to **promote teamwork and organizational effectiveness** in order to provide the **highest quality of service to the community and commitment and dedication to the Department**.

The Department's Guiding Principles values our members as the LAFD's greatest asset. This emphasis suggests that disciplining members who make a first-time mistake or error in judgment in non-egregious incidents may not be entirely consistent with those Principles.

## **ALTERNATIVE DISCIPLINE RESOLUTION STRATEGIES**

Current literature in public sector employment recognizes the value of training or education and not punishment, to modify non-egregious employee behavior. The Federal government, through its Merit System Personnel Board (MSPB) encourages their agencies to design and implement alternative discipline resolution strategies to encourage employees with the primary goal of modifying behavior instead of punishing the employee.

Recognizing the shortcomings of current approaches to their disciplinary practice and in an effort to respond to concerns, some fire and police departments have begun to explore alternatives and make changes. Because of the complexity of the processes and the range of influences, most alternate approaches are not complete revisions of the process. Rather, they are designed to address one or more issues that cause major concern specific to the individual department.



Among the alternatives suggested and recommended in the literature is the creation and consistent use of a disciplinary guideline to achieve consistency in discipline by eliminating broad disparities and ensure that members who have been found to have committed similar forms of misconduct will receive similar ranges of discipline. This step was recognized and implemented by the Department based on the efforts of the Stakeholders Group.

The Professional Standards Division believes the evidence supports that the current disciplinary philosophy theories of punitive action may be detrimental to achieving behavioral modification that is consistent with the Department's Guiding Principles. As such, PSD presents two strategies for consideration by the Board of Fire Commissioners as alternatives to the formal discipline process:

## **1. PRE-DISPOSITION RESOLUTION**

One of the goals of the 2006 Audit Action Plan was to create an Internal Affairs section with permanently assigned civilian and sworn investigative staff that possesses the necessary expertise, experiences, and training to conduct the wide range of investigations. Part of the effort to professionalize the Internal Affairs function was to ensure that the administrative disciplinary process satisfied the numerous legal and labor-negotiated safeguards during the investigation and adjudication phases, including those mandated by state and Federal law.<sup>1</sup> It also meant that in accordance with industry investigative practice, the accused member would often be the last person interviewed after the complaint was reviewed, potential policy violations were identified, evidence was collected and witnesses were interviewed. Unfortunately, that effort, coupled with the increased number of cases retained by PSD for investigation, has led to a lengthy turnaround time from complaint to resolution.

Pre-Disposition Resolution (PDR) is an alternative to the full disciplinary investigative process driven by the member's sincere desire to acknowledge his or her error and accept responsibility for his or her actions. Pre-Disposition Resolution would likely involve incidents where the facts are straightforward and undisputed and where the alleged misconduct is of low to moderate seriousness.

Unlike the more protracted and adversarial formal disciplinary process, Pre-Disposition Resolution addresses misconduct directly, forthrightly, and efficiently with benefits for both parties. The member has an opportunity to accept responsibility, recognize their policy violations, and direct their energy toward improving performance. From a management perspective, a settlement achieves the key disciplinary goals of accountability and corrective action, with a minimum drain on resources and minimum delay between incident and resolution. This approach recognizes the LAFD Core Values of "Respect" and "Trust" in our members.

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<sup>1</sup> See Cal. Gov. Code §§ 3250-3262, *Skelly v. State Personnel Bd.*, 15 Cal. 3d 194 (1975), *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985) and *Garrity v. State of New Jersey*, 385 U.S. 493 (1967).



Pre-Disposition Resolution would be available at any stage of the disciplinary process from the receipt of the complaint to adjudication. Because Pre-Disposition Resolution is a settlement option to the formal disciplinary process, the member and/or the Department could reject an early settlement. Instances where the Department may not agree to or delay the use of a Pre-Disposition Resolution include complaints where a Department-directed Board of Rights is likely, where there is a factual dispute or when the severity of potential discipline warrants a formal investigation or where the member's admissions conflict with the evidence.

Pre-Disposition Resolution raises several concerns which must be addressed in the process to consider whether settlement is appropriate and the manner in which the complaint is resolved:

1. **Resolving a Complaint Prematurely:** The true extent of the alleged misconduct must be fully vetted by the Department before a Pre-Disposition Resolution can be considered. This is a critical consideration where a relatively minor allegation is resolved before underlying criminal or EEO implications are discovered.
2. **Member's Prior Disciplinary History:** A member's prior disciplinary history of sustained complaints may elevate a seemingly minor complaint into a higher level under progressive discipline. This is especially true if the current allegation is similar to a prior sustained action.
3. **"Swept Under the Rug":** The manner in which a Pre-Disposition Resolution is handled will prevent the perception that the Department swept the complaint "under the rug". The Pre-Disposition Resolution should include evidence of the member's admission of the misconduct, acceptance of responsibility and imposition of an appropriate penalty, mitigated by the member's remorse. The Department should ensure that the appropriate disciplinary documents are forwarded to Personnel Services Section and the Board of Fire Commissioners as with any other discipline, with the settlement documents maintained in PSD.

The Pre-Disposition Resolution process would occur as follows:

1. The Department receives a complaint and a determination is made by the PSD Commander that (a) the complaint is against a member; and (b) that the allegations, if true, would violate the Department Rules and Regulations and would result in punitive action under the applicable disciplinary guidelines.
2. The UFLAC and COA Memorandums of Understanding require that upon assignment of a PSD Advocate, the member is notified that an official Department investigation involving him or her has been initiated. Should the member decide to seek a Pre-Disposition Resolution upon being notified of the investigation or subsequent to the investigation, the member and/or his or her



Union representative may contact the PSD Commander and initiate discussions about resolving the complaint.

3. Upon becoming aware that a member is seeking a Pre-Disposition Resolution, the PSD Commander may agree to discuss resolution or delay negotiations (1) if the allegations are unsuitable for settlement at that time; (2) until the true extent of the alleged misconduct is known; or (3) settlement is not in the Department's interest.
4. If the PSD Commander believes that the complaint may be suitable for Pre-Disposition Resolution, he or she shall review the member's prior disciplinary history to determine whether settlement of the instant complaint is not in the Department's best interests.
5. If the true extent of the alleged misconduct is known to the Department and a Pre-Disposition Resolution is in the best interests of the Department, the PSD Commander and the member may discuss potential settlement. Because statements made by parties during negotiations for the settlement of a claim may not be used as admissions in later litigation (see California Evidence Code § 1152), the discussions may include what facts the member is willing to admit and what penalty would be imposed if the member were to admit misconduct.
6. If the member is willing to make a full and voluntary admission to the allegations and accept responsibility for his or her actions, the PSD Commander shall calculate a proposed penalty. The proposed penalty shall take into account the nature of the admitted misconduct, the sincerity and extent of the member taking responsibility and the member's past disciplinary history. The proposed penalty shall be within the range of the appropriate penalty guidelines unless the PSD Commander documents, in writing, why the proposed penalty should fall outside of the guidelines.
7. If the parties agree that the member's admission is voluntary, without reservation and adequately addresses the alleged misconduct and that the penalty is agreeable to the Department, the employee's union, and the employee, the case is resolved via a Pre-Disposition Settlement Agreement without a formal investigation into the allegations.
8. If new information becomes known to the Department that disproves the veracity of the member's admissions, the Department may terminate settlement discussions and reopen the matter for investigation.
9. Any settlement agreement made pursuant to a Pre-Disposition Resolution should include, but not be limited to, an agreement that the instant complaint can be used for progressive discipline purposes, that the member waives his or her right to appeal the discipline or to pursue litigation arising from the discipline.



Several law enforcement agencies, including the Washington State Patrol and the Los Angeles County Sheriff's Department, have implemented a Pre-Disposition Settlement Agreement process to streamline their disciplinary processes. Both agencies report a substantial reduction in the number of complaints which need to be fully investigated and a quicker resolution to the complaint because of a Pre-Disposition Resolution.

## **2. LEARNING AND EDUCATION ALTERNATIVES TO TRADITIONAL PUNITIVE ACTION**

In 2008, the Los Angeles County Sheriff's Department (LASD) sought an alternative to their traditional disciplinary system that primarily utilized unpaid suspensions as punishment for policy violations. LASD sought an alternative because of the Sheriff's belief that the traditional "days off" discipline did not force the Department to engage the employee to explore the root causes of the misconduct to prevent a reoccurrence. In collaboration with the Office of Independent Review (one of two civilian oversight entities monitoring the LASD), the Sheriff's Department implemented "Education Based Discipline" (EBD) in early 2009. Designed to focus on behavioral change through education rather than punishment, the Sheriff's Department would have the option of offering EBD to the accused employee as a settlement to their proposed suspension. In their EBD proposal, the Sheriff's Department set forth a personally designed remedial plan involving education, training or other options designed to address the underlying cause or causes of the misconduct issue. As part of that plan, the employee was required to attend an eight-hour "LIFE" class (Lieutenants Interactive Forum for Education) facilitated by a cadre of lieutenants and intended to provide a refresher to employees on leadership and core ethical values of the organization.

### **LAFD Model – "Learning and Education Alternatives to Discipline" (LEAD)**

PSD recommends that a Fire Service version of EBD (Learning and Education Alternatives to Discipline or LEAD) be implemented as a settlement option for first-offense non-egregious misconduct to provide education, training and the tools to prevent a recurrence of the conduct.

#### Definitions

##### **Action Items Menus**

Action Items Menus provide recommended LEAD classes and learning options based on one of six Behavioral Description categories.

##### **Approved Community Activity**

A community based activity related to the circumstances regarding the member's conduct resulting in their participation in LEAD. The activity must be presented and approved by the PSD Commander, who may assign one LEAD credit for each four hours (off-duty) that the member spends providing community service. An example of an Approved Community Activity may be volunteering at a homeless shelter after an indigent patient is abandoned and/or not assessed.



#### LEAD Education Credits

Each suspension day requires the completion of at least one LEAD credit. Each four hours of LEAD approved training or community based activity equals one LEAD credit.

#### LEAD Evaluation

Each employee participating in LEAD completes a LEAD Evaluation. The LEAD evaluation is a written memorandum in which the employee reflects upon their experience with the LEAD process. Completion of the LEAD Evaluation is a mandatory step to completing the requirements of a LEAD Agreement

#### LIFE Class

The LIFE (Lieutenants Interactive Forum for Education) decision-making class is the foundational course for LEAD. Each and every employee, who participates in LEAD, regardless of the number of suspension days, shall attend the eight hour LIFE class as a component of their commitment to the LAFD LEAD process.

### Linking Disciplinary Guidelines to Behavioral Descriptions

The current Disciplinary Guidelines will be assessed and linked to six "Behavioral Descriptions" which will guide the creation of a LEAD Proposal. For Discipline Guideline categories where a "Department Directed Board of Rights" is the only penalty on a first and subsequent offense, no assessment will be done because LEAD will be unavailable as an option.

The six Behavioral Descriptions are:

- 1: Problem Solving and Self-Management
- 2: Skill Enhancement
- 3: Boundary Recognition
- 4: Substance Misuse/Abuse Awareness
- 5: Character Reinforcement
- 6: Mitigating and Aggravating Factors

For example, Category F1 of the Disciplinary Guidelines "Participated in an act of hazing or horseplay" has a First Offense range of discipline of "A-C" or reprimand to 15 day suspension. Because this category does not mandate directing the member to a Board of Rights, LEAD would be available as a settlement option.

In assessing this Guideline, likely behaviors involved in "participating in an act of hazing or horseplay" could involve a lack of self-management, failure to recognize boundaries in the workplace and/or character reinforcement. As such, the Disciplinary Guideline would reflect that the Department should consider Behavioral Description categories 1, 3 and 5 in designing a LEAD Proposal.

HAZING	1st Offense						
<i>F1 Participated in an act of hazing or horseplay</i>	A-C	1		3		5	

The assessment of the Disciplinary Guidelines and linking them to the applicable "Behavior Descriptions" will be done by Department subject matter experts, including PSD, Employee Relations Division (including Dr. Scott), Risk Management Section and Training and Support Bureau.

A draft of one page of the modified Disciplinary Guidelines to incorporate the LEAD Behavioral Descriptions is attached as Attachment Number One.

Each of the six Behavioral Descriptions is linked with separate "Action Items Menus," which include courses and activities which may be considered when creating a LEAD Proposal. Courses and activities listed on an "Action Items Menu" will have been vetted and approved by the Department as addressing some aspect of the involved Behavioral



Description. An example of an Action Items Menu currently used by the Los Angeles County Sheriff's Department is attached as Attachment Number Two.

Eligibility for LEAD as an Alternative to Formal Discipline

Because LEAD is a settlement of a formal discipline action outside of the formal process dictated under City Charter Section 1060, the Department retains discretion over when LEAD will be offered.

In general, the Department may consider some or all of the following factors in determining whether LEAD will be offered as an alternative to the formal disciplinary process:

1. Whether the applicable Disciplinary Guideline does not mandate that the member be directed to a Board of Rights;
2. Whether the misconduct in the current case is first offense as opposed to a repeat offense, based on a sustained finding in a prior Department discipline action;
3. Whether at the time the misconduct occurred, the member was acting in the public or the Department's best interest or for their own personal interest;
4. Whether there was a substantive cost to the Department, the Fire Service and the community, including whether the misconduct undermined the public's confidence in the Fire Department;
5. Whether the member was a relatively new employee or a more experienced employee facing a new task or assignment versus an experienced or trained member who knew and was trained to act in accordance with policy;
6. Whether the act was intentional or a mistake made without intent;
7. To the extent allowed by law and policy, whether the member's personnel record shows a documented history of failing or refusing to follow direction or Department policy versus a record of hard work and dedication to the Department and the community;
8. Whether the member accepted responsibility for his or her actions, the sincerity of that acceptance and when that acceptance was demonstrated during the disciplinary process.

Because LEAD is an option to resolve a disciplinary action short of the formal process under City Charter §1060, the Department reserves the right to not offer alternatives to formal discipline.



Until a member has been offered and accepts LEAD as an alternative to formal discipline, all of the member's rights under City Charter 1060, the applicable MOU and the Firefighters Procedural Bill of Rights will be followed and preserved.

If a member accepts LEAD, he or she must complete all conditions of the LEAD Agreement within the specified time period. Failure to do so will be deemed as a breach of the Agreement and the member will be required to serve the full discipline.

It is the Department's responsibility to make LEAD classes available within the specified time period stated in the LEAD Agreement.

#### Offering LEAD as an Alternative to Discipline

If the Department concludes that it is in the interests of the member, the Department and the community to consider LEAD as an alternative to formal discipline, the Professional Standards Division will create an individualized LEAD plan and may, at its discretion, incorporate input from the member. PSD shall link behaviors underlying the misconduct with the relevant "Action Items Menus" of education options and select education or learning opportunities best suited to address those behaviors based on the factual scenario of the misconduct. An example of an "Action Item Menu" currently used by the Los Angeles County Sheriff's Department is attached as Attachment Number Two.

Regardless of the length of the disciplinary action, the member will be required to attend the LIFE Course (Lieutenants Interactive Forum for Education) class or an LAFD approved equivalent as a mandatory part of the LEAD plan.

The LEAD Proposal may be fashioned a number of ways, depending on the nature of the alleged misconduct, the Action Items Menu category involved and the length of the suspension.