



Employee Discipline (PPM 2651.00)

Approved By: <i>Gladys Carrión (signed)</i> Gladys Carrión, Commissioner	Date Issued: 05/21/12	Number of Pages: 7	Appendix Pages:
Related Laws: Civil Service Law, section 75	Division/Office: Human Resources	Contact Office/Bureau/Unit: Labor Relations	
Supporting Regulations: Article 33 Collective Bargaining Agreements	American Correctional Association Standards (ACA): JTS-1-01, JCRF 1C-02		
Regulatory Bulletins & Directives:	Related Policies: Employee Grievances (PPM # 2641.00) Special Investigations (PPM # 1600) Addressing Allegations ...Supervision of Youth...(3243.17)	Supersedes: DFY PPM 2651.01 (CSEA) DFY PPM 2651.02 (PEF)	
<p>SUMMARY: The purpose of this policy is to provide guidelines for disciplinary procedures for Office of Children and Family Services (OCFS) employees. Current collective bargaining agreements between the State and the Civil Service Employees Association (CSEA) and the Public Employees Federation (PEF) provide a mechanism for imposing discipline on employees. Article 33 of the collective bargaining agreements contains the procedural steps and statements of employee rights in disciplinary actions. Some persons designated Managerial/Confidential (M/C) and other non-bargaining unit employees may be disciplined in accordance with Section 75 of the Civil Service Law. This policy will not duplicate those requirements, but will define responsibilities and expectations</p>			

I. POLICY

All employees of the Office of Children and Family Services (OCFS) are expected to maintain satisfactory attendance, work performance and appropriate conduct on and off the job. Supervisors shall advise employees of the level of performance, proper conduct, and attendance standards which are required and monitor for compliance. Employees who do not fulfill their obligations shall be advised of their deficiencies and any misconduct shall be addressed with prompt and appropriate corrective measures. The earlier the supervisory intervention occurs, the more likely it is to have a positive impact without involving formal processes.

If supervisory attempts to secure acceptable performance are unsuccessful, OCFS will seek appropriate disciplinary action through the procedures contained in Article 33 of the contracts for employees in bargaining units (CSEA and PEF) or

Section 75 of the Civil Service Law for M/C or other non-bargaining unit employees. The disciplinary process is intended to be progressive; that is, the penalty becomes greater if the employee continues to show unacceptable behavior or performance. The proposed penalties shall be fair and equitable, taking into consideration the severity of the deficiency or misconduct, and the individual employment record. Some offenses may be so serious that, on balance, immediate and severe penalties, including dismissal are warranted, even if there is little or no disciplinary history. As an example, as a matter of OCFS policy, OCFS will not tolerate unnecessary, inappropriate, or excessive use of force against youth in OCFS care.

All proposed disciplinary matters, reassignments, or suspensions without pay must be reviewed by the Bureau of Labor Relations before any action is taken. Authorization to proceed with any such actions must be granted by the appropriate Deputy Commissioner.

Generally, disciplinary charges must be served within one year of the occurrence of the act, unless the act constitutes a crime. If a Notice of Discipline is issued and it is determined that the employee is guilty of all or part of the charges, or if the employee agrees to the settlement of the Notice of Discipline, the Notice of Discipline and all related records will be filed in his/her personal history file and may in some instances be reflected in the employee's due evaluation. If the employee is ultimately found to be not guilty, all materials relating solely to the discipline will not be filed in his/her personal history file.

II. DEFINITIONS

Counseling (oral or written): The process of telling an employee that his/her conduct is unacceptable, or otherwise is in need of improvement, coupled with an explanation of the appropriate behavior or performance. Counseling is not in and of itself a part of the disciplinary procedures, but may be used to identify and help correct employee behavior or performance prior to the imposition of discipline. Counseling is a constructive tool and should be positive in tone. If possible, a corrective action plan should be established to assist the employee in meeting the performance standard in question.

Days: As used in this policy shall mean calendar days.

Deputy Commissioner: The Deputy Commissioner responsible for the employee or the Deputy Commissioner's designee.

Incompetence: Work performance that is inadequate for or unsuitable for a particular purpose, lacking the qualities needed for effective action, or demonstrating that a person is unable to function properly. This includes, but is not limited to, submission of incomplete assignments, habitually missed deadlines, work accidents

caused by carelessness, inability to comprehend assignments, failure to respond to training, or frequent failure to perform effectively.

Interrogation: The process of obtaining information from an employee who is a likely subject of disciplinary action concerning the matter. Prior to the initiation of an interrogation, employees must be given the written statement of rights appropriate to their bargaining unit.

A form is to be read and signed by the employee at the beginning of the interrogation indicating that the employee understands his/her rights. An employee is entitled to have prior notification of his/her right to representation during an interrogation, but may sign the appropriate form pertinent to the particular bargaining unit waiving such right prior to the interrogation. M/C employees have the right to a representative of their choice during interrogation and must be given written notice of such right prior to interrogation.

Misconduct: Willful failure to perform assigned duties, intentional wrongdoing, or deliberate violation of a law or standard. This includes but is not limited to: insubordination, poor attendance, other violations of the attendance rules, fraudulent practices, acts of assault, intimidation or harassment of work associates, use of excess force on youth in OCFS custody, violation of agency or facility policies/procedures and inappropriate "off duty" behavior that is relevant to an individual's status as an employee.

Program Supervisor: The supervisor designated by the division deputy commissioner to address employee disciplinary matters.

Resignation: A separation from employment resulting from a request of an employee made in accordance with rules governing resignations as established in separate articles of the collective bargaining agreements. Employees must be advised of their rights under those agreements before being asked to resign in lieu of disciplinary action. *Form DG 4* must be provided to CSEA represented employees before requesting or securing any resignation. A similar form, *OER 20*, is recommended, but not required, for employees covered by the PEF agreement. (Managers should consult with the Bureau of Labor Relations prior to asking an employee to resign). There are no specific rules governing resignation set forth in Section 75 of the Civil Service Law relating to M/C and other non-bargaining unit employees.

Supervisor: The individual, who normally assigns and reviews the employee's work, approves the employee's time record and/or evaluates the employee's work performance.

Suspension without pay: A specific period of time following disciplinary action as a penalty for incompetence or misconduct. During this period, the employee is

precluded from coming to work and is not paid. Employees also may be suspended without pay prior to the issuance of a Notice of Discipline or during disciplinary action. Employees may be suspended without pay when there is probable cause to believe that an employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with OCFS operations. M/C employees may be suspended for up to 30 days pending the hearing and determination of charges. In addition to suspension for probable cause PEF employees may also be suspended without pay for up to 30 days prior to the issuance of a Notice of Discipline if they have been charged with a crime. Pre-hearing suspension requires prior approval by the Human Resources, Bureau of Labor Relations, and the appropriate Deputy Commissioner after due process requirements are met.

Temporary Reassignment: A change in work location as deemed necessary to maintain safety and orderly operation that may involve the performance of out of title work allowable by the collective bargaining agreements of the impacted employee. Employees shall be notified in writing of the reassignment. Refusal to accept the reassignment per the collective bargaining unit shall result in suspension without pay. Employees without the representation of a bargaining unit may be reassigned without notice.

Time and Attendance Umpire: A special arbitrator who hears all disciplines which involve solely time and attendance issues, including tardiness. This expedited time and attendance disciplinary process is limited to CSEA represented employees. (See Article 33.5 of the CSEA agreement.)

III. PROCEDURE

The time limits for disciplinary action, employee rights, and appeal requirements for bargaining unit employees are contained in Article 33 of the negotiated agreements for the Professional, Scientific and Technical Services Unit, the Institutional Services Unit, the Administrative Services Unit and the Operational Services Unit and in Section 75 of the Civil Service Law which sets forth the requirements for employees not assigned to a bargaining unit.

Prior to any disciplinary action, an employee's supervisor may recognize inappropriate employee behavior or performance. If this behavior or performance is not serious enough to warrant immediate disciplinary action, the supervisor should counsel the employee orally or in writing regarding the need for immediate corrective action

If discipline is being considered, the Program Supervisor should consult with the Bureau of Labor Relations as early as possible to see that all procedural aspects are handled correctly and to provide feedback concerning the situation and guidance in the employee discipline process

A. Procedures Pending Disciplinary Action

In the event of a situation that may warrant disciplinary action:

1. The Program Supervisor shall take necessary steps to establish and maintain safety and security in the workplace.
2. The Program Supervisor shall compile relevant documents supporting the need for disciplinary action if no investigation is needed to support the allegations. If an investigation is needed to determine whether disciplinary action is warranted, the Program Supervisor shall, in consultation with the Bureau of Labor Relations, see that an investigation is initiated. Investigations should be conducted by individuals who are not directly involved in the matter being investigated. The Program Supervisor shall refer to Special Investigations Policy (PPM No. 1600) to determine if the matter should be referred to the Special Investigations Unit for investigation.
3. In situations where it appears that the subject employee's continued presence in the workplace represents a potential danger to persons or property or would severely interfere with operations, the Program Supervisor shall consult with the Bureau of Labor Relations and the appropriate Deputy Commissioner regarding reassignment or pre-disciplinary suspension without pay of the involved employee. The Deputy Commissioner shall authorize the reassignment, suspension without pay, or any other necessary action if warranted and the Program Supervisor shall execute the authorized action.
4. Interrogations are to be conducted in accordance with the provisions of the applicable bargaining unit contract (CSEA or PEF) or Section 75 of the Civil Service Law (M/C and certain other non-bargaining unit employees). Interrogations are to be scheduled as soon as possible after determining that disciplinary action may be warranted.

B. Submission of Reports/Investigation

1. The material supporting disciplinary action shall be forwarded to the Bureau of Labor Relations with copies to the appropriate Deputy Commissioner.
2. The Bureau of Labor Relations shall review and evaluate the investigation for completeness and content
3. The Bureau of Labor Relations shall consult with the appropriate Deputy Commissioner and discuss potential appropriate penalties. With such consultation the Deputy Commissioner shall determine the appropriate penalty, taking into consideration the subject employee's work record, the nature of the misconduct and similar penalties. The Deputy Commissioner shall also authorize suspension without

pay pending disciplinary proceedings where appropriate. Penalties may range from a Letter of Reprimand to dismissal if necessary.

4. When disciplinary action is warranted, the Bureau of Labor Relations shall prepare and forward the Notice of Discipline to the appropriate Bureau, Division, or Facility Director.
5. If the Bureau of Labor Relations believes that discipline is not warranted, the Bureau of Labor Relations shall inform the Program Supervisor with a recommendation that no action or counseling occur as necessary.

C. Disciplinary Proceedings

1. The Program Supervisor shall personally serve the employee with the Notice of Discipline and the necessary attachments. In the event that employee is absent, reassigned, or suspended without pay, the employee shall be served via regular mail and return receipt requested. An additional letter is required in the case of an employee that is suspended without pay indicating that he or she has 24 hours to appeal the suspension without pay.
2. The Program Supervisor shall distribute copies of the Notice of Discipline to those designated by contractual agreement. The Program Supervisor shall also inform the following persons of the issuance of a Notice of Discipline and any settlement agreements as appropriate: (1) the PEF President or designee; or (2) the CSEA Arbitration Administrator and the local president.
3. The subject employee of the Notice of Discipline may elect to:
 - a. ACCEPT the penalty stated in the Notice of Discipline; or
 - b. OBJECT to the Notice of Discipline by submitting a fully executed OER Form 4 or 6, "Disciplinary Grievance Form" to:

Director of Labor Relations
52 Washington Street,
Rensselaer, New York, 12144

within 14 days from the date of the service of the Notice of Discipline. These forms may be submitted in person or by certified mail, return receipt requested. Only CSEA can file a grievance without the employee's written consent. M/C employees will be notified of appeal procedures if served with a Notice of Discipline.

- c. If the discipline involves a suspension without pay, the employee may submit an appeal of the suspension to the Bureau Director of Labor Relations within one business day of being served with the Notice of Suspension. The Bureau of Labor Relations will respond promptly.

4. If an employee fails to file a grievance within 14 days of service of Notice of Discipline, the Bureau of Labor Relations shall notify the Program Supervisor to impose the penalty as required in the Notice of Discipline. .
5. In the event the discipline/penalty is appealed, the Bureau of Labor Relations shall:
 - a. Conduct a meeting with the employee and his/her representative in a timely fashion to discuss relevant information related to the notice of discipline. An employee may waive his/her right to this meeting at the time of appeal if suspended or reassigned.
 - b. Any settlement agreement shall be approved by the appropriate Deputy Commissioner prior to the agreement being finalized. If the matter is not settled or withdrawn, the parties shall proceed with the arbitration hearing.
6. When the arbitrator's decision is delivered, the Bureau of Labor Relations will advise the appropriate Program Supervisor. If the Bureau of Labor Relations and the appropriate Deputy Commissioner believe the decision to be so irregular as to warrant further action, the Bureau of Legal Affairs shall be contacted. Otherwise, the appropriate Program Supervisor shall implement the arbitrator's decision.

D. CONFIDENTIALITY AND NON-RETALIATION

There shall be no retaliation against any individual for cooperation in any aspect of reporting, investigating and addressing allegations of misconduct. Reporting and investigating shall be done in a manner that preserves confidentiality consistent with the need to investigate and address allegations.