

Stark County Board of Developmental Disabilities

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PROGRAM DISCIPLINE AND CORRECTIVE ACTION

POLICY

It is the policy of the Stark County Board of Developmental Disabilities that all employees shall maintain high standards of behavior, conduct, and work performance befitting the trust and responsibility imposed on them as public employees. The purpose of this policy is to set forth the Board's Standards of Conduct and the disciplinary process to address unacceptable behavior, conduct, and related employment problems in the workplace, or outside the workplace, which would prohibit employment for represented employees, or when conduct impacts an employee's ability to do his/her job and/or influences the Board's overall effectiveness.

It is the intent of this policy that the Board follows a course of progressive discipline that fairly and consistently addresses employee behavior, conduct, or performance that is incompatible with the Board's Standards of Conduct, ORC 5126.23 (non-represented), the Collective Bargaining Agreements, and/or related Board policies. Disciplinary actions must be founded on the principles of due process and will employ a range of corrective and disciplinary actions that are applied based on the nature and history of the misconduct, unacceptable performance and the employee's history. Corrective and disciplinary actions must be administered through a prompt and fair process as described in this policy's procedures. The ultimate goal of this policy and its procedures is to help employees become fully contributing members of the Board. Conversely, this policy is also designed to fairly and effectively discipline and/or terminate employees whose conduct and/or performance does not improve or where the misconduct and/or unacceptable performance is of such a serious nature that a first offense warrants termination.

Historical Resolution Information	Reviewer(s):
Date Resolution Number	Superintendent
8/18/12 08-63-12	Director of Human Resources
6/20/15 06-34-15	

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PROCEDURE

- I. This procedure prescribes guidelines to be used when an employee is suspected of misconduct that may result in some form of discipline. Discipline will be imposed for just cause without regard to race, color, religion, sex, national origin, disability, age, or veteran status.
- II. Supervisors are responsible for implementing this procedure. This procedure supersedes all previous procedures and memoranda on the subject.

Employee Responsibilities

- I. It is the responsibility of all employees of the Board to familiarize themselves with and adhere to the policies and procedures of the Board.
- II. Employees shall conduct themselves in such a manner that their activities, both on and off duty, are consistent with the Board's policy on Code of Conduct.

Employee Assistance Program

- I. Employees experiencing personal problems that interfere with their duties and responsibilities should seek the services of the Board's Employee Assistance program. If an employee comes to the Board seeking employee assistance prior to it becoming an issue of formal corrective action, the Board will take this into account and not pursue the corrective action process.
- II. Participation by an employee in the Board's Employee Assistance program may be considered in mitigating disciplinary action. Imposition of discipline may, or may not be delayed until the employee completes the program.

Investigation

- I. In the event of a suspected breach of policy or procedure, it is the responsibility of the Superintendent, who is the Appointing Authority, to ensure that a fair and consistent investigation is conducted and that all employees are afforded due process prior to the recommendation or imposition of discipline. Bargaining unit employees under investigation are entitled to union representation, if requested, during investigation phases of the disciplinary process. Non-union employees may be accompanied by a co-worker of their choosing.

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- II. During an investigation, employees may be placed on administrative leave or reassigned to less sensitive duties at the discretion of the Superintendent pursuant to Policy 4.75. If the investigation involves alleged abuse of an individual with developmental disabilities, administrative leave or change of duties will not be of unreasonable duration and does not constitute discipline.

Written Instruction and Cautioning

- I. Written Instruction and Cautioning is a tool used to communicate and define expectations, and provide the employee with an opportunity to achieve success. Written Instruction and Cautioning is always an option and may be utilized prior to any disciplinary action as well as between various steps of progressive discipline. Written Instruction and Cautioning is not discipline.

Pre-Disciplinary Process - Union employees

- I. An employee has the right to a meeting prior to the imposition of a suspension, a leave, reduction, working suspension or termination. The employee may waive this meeting, which shall be scheduled no earlier than 72 hours following the notification to the employee. An employee who is charged, or his/her representative, may make a written request for one (1) continuance of up to 48 hours. Such continuance shall not be unreasonably denied. A continuance may be longer than 48 hours if mutually agreed to by the parties but in no case longer than fourteen (14) working days. In the event an employee refuses, is incapacitated or fails to attend a pre-disciplinary meeting, the union steward and/or representative shall represent the employee in the matter at hand. Where the affected employee is on disability, or applying for disability, and is unable or unwilling to attend the meeting, he/she shall be offered the right to participate by telephone. The call shall be initiated via speakerphone in the presence of the steward and Board representative or designee. Failure of the employee to respond to the offer or phone call shall result in the meeting proceeding without his/her presence. Any action resulting from said meeting shall not be challengeable on the basis of the employee's absence or lack of participation. Prior to the meeting, the employee and his/her representative shall be informed in writing of the reasons for the contemplated discipline and the possible form of discipline.
- II. When the pre-disciplinary notice is sent, the Board will provide a list of witnesses to the event or act known of at that time and documents known of at that time used to support the possible disciplinary action. If the Board becomes aware of additional witnesses or documents that will be relied upon in imposing

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discipline, they shall also be provided to the Union and the employee prior to the meeting. In the event the Board provides documents on the date of the meeting, the Union may request a continuance not to exceed three (3) working days. Such request shall not be unreasonably denied.

- III. The Superintendent's designee, who is a neutral supervisor or an outside hearing officer, shall conduct the meeting. The Union and/or the employee shall be given the opportunity to ask questions, comment, refute or rebut the charges and evidence presented. The employee shall provide a list of witnesses to the neutral hearing officer or the outside hearing officer as far in advance as possible, but not later than one (1) hour prior to the pre-disciplinary hearing. Represented employees who are witnesses for either party offering factual testimony regarding the alleged offenses for the pre-disciplinary process shall be made available during work hours. If the employee witness is not scheduled, they will be compensated at their hourly rate. The Hearing Officer maintains the right in the hearing process to discover whether the employee's witnesses can provide information regarding the specific charge. Witnesses called solely for the purposes of character support may be dismissed by the Hearing Officer. Nothing in this Policy requires either party to call a potential witness during the pre-disciplinary hearing.
- IV. At the discretion of the Board, in cases where a criminal investigation may occur, the pre-disciplinary meeting may be delayed until after disposition of the criminal charges.
- V. The neutral supervisor or outside hearing officer's report will be provided to the employee within five (5) working days following its preparation. The hearing officer will make a determination as to whether or not the alleged conduct occurred.

Pre-Disciplinary Process - Management Employees

- I. Prior to taking any action, the employee must receive written notice of the charges against them as set out in ORC §5126.23 that governs the discipline, discharge or demotion of a management employee and/or the superintendent of the county board of developmental disabilities. The management employee may be disciplined, discharged or demoted for the following reasons:
 - A. Violation of written rules;
 - B. Incompetency;
 - C. Inefficiency;

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- D. Dishonesty;
 - E. Drunkenness;
 - F. Immoral conduct;
 - G. Insubordination;
 - H. Discourteous treatment of the public;
 - I. Neglect of duty; or
 - J. Other acts of misfeasance, malfeasance or nonfeasance.
- II. A pre-disciplinary conference shall be held no sooner than 72 hours after the notice is given and no greater than 30 days after the notice. At the conference, the employee has the right to respond to the charges. The pre-disciplinary conference is held by the Superintendent or his designee. The Superintendent then has 15 days after the conference to notify the employee of the decision.
- III. After receiving the decision, the employee may file a written demand with the Board for a hearing. This written demand must be given within 15 days of the decision and must indicate whether the appeal is to the Board or to a referee. After receipt of the demand, the Board must set a time for the hearing within thirty days from the demand and must also give the employee at least a 20 day notice of the time and place of the hearing.
- IV. At the hearing, the Board is required to provide a stenographic record that is furnished to the employee. Both parties may be present, be represented by counsel, require witnesses to be placed under oath, cross examine witnesses, and require the presence of witnesses by subpoena. Any member of the Board may issue the oath. The Board must take action by majority vote. This Board decision can later be appealed to the Court of Common Pleas within 30 days.
- V. In lieu of this procedure, the county board and employee may agree to submit issues to binding arbitration.

Progressive Discipline

- I. Guidelines for the progression of discipline are outlined in the attached *Standard Guidelines for Progressive Discipline* grid. Progressive discipline is intended to impose discipline at a level that is commensurate with the offense and progress through the grid when further violations are committed. Any discipline imposed, up to removal, is intended to be corrective rather than punitive. Prior to the imposition of any discipline, the Superintendent will consider the individual facts of the case, which may be mitigated or aggravated by other factors, and the seriousness of the offense including, but not limited to, the employee's current disciplinary record and length of service.

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- II. All relevant circumstances must be taken into consideration prior to the imposition of discipline for violation of a rule. An employee may be disciplined for violating more than one rule arising out of the same incident. In all cases, mitigating and aggravating circumstances along with the relationship of multiple offenses must be considered.

- III. The sequence of progressive discipline shall be commensurate and may include the following:
 - A. Written Notice of Failure to Perform
 - B. Two Day Suspension, Working Suspension
 - C. Five Day Suspension, Working Suspension
 - D. Ten Day Suspension, Working Suspension
 - E. Removal

Written Notice of Failure to Perform - Memorandum to the employee with a copy to the personnel file recording and documenting the nature of the written admonishment. The memorandum should include the time, date, and nature of the violation as well as the proper course of behavior and future consequences if the behavior is not corrected. A [template](#) is attached to ensure that all discipline is in a similar format.

Suspension - The loss of a scheduled work day(s) without pay. Working Suspension: Used in lieu of a suspension for any violation covered by this procedure. A working suspension has the same effect as a suspension without pay for purposes of progressive discipline; however, the employee is required to report to work as scheduled and is paid for hours worked.

Removal - Termination of employment.

- IV. Where the *Standard Guidelines for Progressive Discipline* grid indicates a two-day suspension or working suspension, a one-day or two-day reduction in vacation may be implemented for overtime exempt employees. Suspensions without pay for overtime exempt employees may be imposed only in increments of 40 hours (e.g., 5 days, 10 days, 15 days). Classified employees who are exempt from collective bargaining may be demoted pursuant to Ohio Revised Code Section 124.34.

- V. The *Standard Guidelines for Progressive Discipline* grid reflects two separate tracks for progression of discipline. A "track" is defined as the grouping of offenses that will be considered same and similar in nature. Continued violations within the same track shall lead the employee through progressive discipline.

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There is a Performance Track and an Attendance Track. The tracks are separate and distinct for discipline purposes.

- VI. The *Standard Guidelines for Progressive Discipline* grid is intended to provide a measure of consistency in application and progression of disciplinary actions. The *Guidelines*, however, do not require the employer to administer the specified level of disciplinary action in each and every instance. Each instance of a violation turns on its own facts and distinguishing variables such as prior disciplinary history, length of time since the last discipline, and mitigating or aggravating circumstances. The *Guidelines* are designed to impose progressive discipline in either of the two tracks of violations (Performance or Attendance). If an employee has previously been disciplined for a first offense violation in one of the tracks and is now faced with a violation for a different offense within the same track, the penalty for the second offense of the violation for which just cause is presently found will be imposed. In instances where there is a choice or a range of penalties, issues of mitigation or aggravation shall determine the penalty.
- VII. If the violation calls for discipline that involves a choice between two levels of discipline (e.g., five day time/working suspension or removal), one of the two levels of discipline will be imposed. For violations that carry a range of penalties (e.g., written notice of failure to perform to removal), the penalty imposed may include any discipline within the specified range.
- VIII. All incidents specific to the individual tracks (Performance or Attendance) of which the Superintendent has knowledge of and for which an employee may be disciplined, which occur prior to an incident for which disciplinary action is being considered, are to be considered together with the initiating incident. Incidents occurring after the date of notification of scheduling of a disciplinary hearing for which a disciplinary action is being considered should form the basis for subsequent disciplinary action unless management agrees to admit additional incidents and the employee waives notification of such incidents.

Prior Disciplinary Action

- I. All records relating to written notice of failure to perform will cease to have any force and effect and will be sealed from view in an employee's personnel file twelve (12) months after the date of the written notice of failure to perform if there has been no other discipline imposed during the past twelve (12) months.

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- II. Records of other disciplinary action will cease to have any force and effect and will be sealed from view in an employee's file under the same conditions as written notice of failure to perform after eighteen (18) months if there has been no other discipline imposed during the past eighteen (18) months. If intervening discipline occurs, the information will remain in effect an additional eighteen (18) months. A retention period for a disciplinary action's effect may be extended for an employee taking a leave of absence longer than fourteen (14) days. The extension period will be equal to the days of the leave of absence.

Nothing in this Policy will be interpreted to override and/or alter in any way an express provision of a collective bargaining agreement or a statutory provision that is applicable.