

# KANSAS DEPARTMENT OF CORRECTIONS

	<b>INTERNAL MANAGEMENT POLICY AND PROCEDURE</b>	<b>SECTION NUMBER</b>  <b>02-120D</b>	<b>PAGE NUMBER</b>  <b>1 of 7</b>
	<b>SUBJECT:</b>  <b>HUMAN RESOURCES: Employee Disciplinary Procedures and Informal/Formal Actions</b>		
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<b>APPLICABILITY:</b>	_ ADULT Operations Only	_ JUVENILE Operations Only	<input checked="" type="checkbox"/> DEPARTMENT-WIDE
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## POLICY STATEMENT

To ensure each employee's right to due process and the application of discipline in a consistent and fair manner, supervisors shall apply a program of progressive counseling and discipline, with emphasis on correcting employee behavior or performance. (ACO 2-1C-01, 2-1C-02; 4-JCF-6D-01; ACI 3-4048) Prior to being subjected to any formal disciplinary action, an employee with permanent status or probationary status due to promotion shall be afforded an opportunity to meet with the appointing authority or designee to present any verbal or written information or material relevant to the situation. (APPFS 3-3062)

This policy is separate and apart from the Department's policy regarding review of job performance, which is presented in IMPP 02-107D, Probationary Periods and Performance Appraisals.

## DEFINITIONS

Appointing Authority: The person designated pursuant to IMPP 02-109D for each respective division or facility of the department.

Formal Disciplinary Action: Disciplinary action taken by an appointing authority that results in an employee being suspended without pay, demoted or dismissed under the provisions of K.S.A. 75-2946 or K.S.A. 75-2949.

Informal Disciplinary Action: Letters of reprimand, letters of counseling, or other less severe forms of disciplinary action intended to serve as a warning step in the progressive discipline procedures.

## PROCEDURES

### **I. Informal Disciplinary Action: Supervisors' Responsibilities**

- A. Each supervisor shall be charged with the responsibility of immediately addressing problems resulting from an employee's behavior or performance as such problems are recognized.
  - 1. Supervisors shall be responsible for ensuring employees have received the proper orientation and training required to successfully accomplish assigned responsibilities, in accordance with IMPP 03-104D.
  - 2. Each supervisor has the continuing responsibility of being supportive to those individuals under his or her supervision and to initiate and maintain communication with employees in an effort to prevent or resolve problems.

3. As a problem develops, the supervisor shall discuss the problem with the employee, specifically indicating:
    - a. Problematic behavior or performance;
    - b. Correct behavior or performance; and,
    - c. Steps to be taken to correct the problem.
  4. Supervisors shall use good judgment in carefully evaluating problem situations and giving employees an opportunity to explain their actions.
- B. Each supervisor shall be charged with the responsibility of properly documenting each step taken in the disciplinary process.
1. Each official counseling session shall be documented in the form of a Letter of Counseling to the employee being counseled. A copy of the Letter of Counseling and of the employee's most recent performance review (including documentation of feedback sessions and objectives/competencies) shall be retained in the supervisory file until completion of the employee's next performance review, as outlined in IMPP 02-107D.
    - a. When an employee resigns or otherwise separates from employment with the State, the most recently compiled performance review material retained by the supervisor will be forwarded to the appropriate human resources manager for incorporation into the employee's personnel file. However, such information shall not be included in a personnel file that is transferred to another State agency.
  2. Supervisors shall use the employee performance appraisal system to document problems in employee performance and to set objectives/competencies for improvement.
  3. Documentation concerning a particular problem shall include:
    - a. Coaching/feedback documentation;
    - b. Letters of counseling;
    - c. Performance appraisals; and/or,
    - d. Letters of reprimand
      - (1) Letters of reprimand shall be written by or with the approval of the appointing authority.
      - (2) The appointing authority may delegate the authority to issue letters of reprimand. The delegation of this authority shall be documented by a letter to each employee to whom the authority has been delegated, with a copy on file with the Human Resources office.
  4. Supervisors shall maintain copies of written warnings, letters of counseling, and other material which documents a pattern of behavior through the end of the employee's performance rating period and the time period for any appeal of the rating given in the manner described in IMPP 02-119D.
    - a. The employee shall receive a copy of such documentation.
  5. Letters of reprimand, any documentation of informal disciplinary action for sexual harassment of an offender (including letters of counsel and letters of reprimand), and performance reviews shall be sent to the human resources office for inclusion in the employee's official file and shall be signed by the employee to evidence that the employee

has knowledge of the documentation and understands that it will be placed in the employee's personnel file.

a. If an employee refuses to sign the documentation, a notation shall be made on the copy of the document sent to the human resources office and on the employee's copy of the document.

(1) The employee shall receive a copy of all such documentation.

C. Supervisors shall keep their immediate supervisors advised of all problems with employees that are not immediately resolved. Supervisors shall use any appropriate staff, including the agency human resources officer/representative, as a resource in evaluating and solving such problems.

D. If, after working with an employee to correct a problem in behavior or performance, no satisfactory progress is made, the supervisor of the employee shall recommend and discuss formal disciplinary action with his or her immediate supervisor, department head, and/or agency human resources officer/representative.

1. Nothing herein shall preclude the appointing authority from taking disciplinary action based on a single incident without prior counseling if the circumstances of the incident are of such severity to warrant immediate discipline.

E. Only the appointing authority or designee may take formal disciplinary action (Section II.) and interim steps may be considered, as appropriate.

1. The supervisor may temporarily re-assign an employee to other duties or relieve an employee with pay from duties if:

a. It is necessary for public safety or the orderly function of the facility/office; and/or,

b. In the supervisor's judgment, the employee's assignment to particular duties or presence within the facility/office will cause disruption.

2. If the appointing authority or designee is not available to grant prior approval, and the supervisor determines that the act of reassigning an employee or relieving an employee from duty is immediately necessary, the supervisor may initiate that action. Such action shall be followed up by the appointing authority or designee's review on the appointing authority or designee's first working day following the effective date of the action.

3. If an employee is relieved of duty pending a determination of whether the employee can perform the employee's duties because of illness or disability, the employee shall be required to use accumulated sick leave. If the employee exhausts all accumulated sick leave, the appointing authority may grant the employee leave without pay or, at the employee's request, vacation leave or compensatory credits per provisions of IMPP 02-114D.

4. Upon re-assigning an employee or relieving an employee from duty, with pay, the supervisor shall immediately prepare a written report for the appointing authority or designee.

a. The written report shall be submitted by the supervisor the same day that the employee is relieved of duty with pay or re-assigned.

b. Based upon the supervisor's written report, the department head and the agency human resources officer/representative make appropriate recommendations to the appointing authority.

## II. Formal Disciplinary Action

### A. Proposal of Formal Disciplinary Action

1. Only the appointing authority may propose formal disciplinary action.
  - a. Each appointing authority shall designate those individuals who may administer formal disciplinary action in his or her absence.
2. Formal disciplinary action shall be proposed only after an investigation to determine the facts of a particular situation.
  - a. If, in the opinion of the appointing authority, the circumstances of a situation are such that the employee should not be at the work site, the appointing authority may relieve the employee from duty during the course of an investigation.
    - (1) Relief from duty shall be with pay at least until the employee is formally notified in writing of the proposed disciplinary action.
3. The agency's legal counsel or human resources officer/representative shall prepare or review drafts of all letters proposing disciplinary actions.
4. The letter of an appointing authority's intention or proposed action shall contain the following:
  - a. A statement of the proposed disciplinary action to include specifically what action(s) is to be taken and the date(s) thereof;
  - b. The current statute or regulation under which the disciplinary action is being proposed;
  - c. The reason the disciplinary action is being proposed, including the offense;
  - d. Notice that the employee may respond to the proposed disciplinary action by writing to or meeting with the appointing authority or designee, or by taking both actions;
    - (1) The notice shall inform the employee that he or she may be accompanied by a co-worker or a representative of his or her choice, should he or she elect to meet with the appointing authority.
  - e. The time, date, and place for the employee to meet with the appointing authority or the appointing authority's designee to respond to the proposed action. This meeting shall take place at least one day prior to the effective date of the proposed action; and,
  - f. Instruction to the employee regarding the employee's work status until the matter is finally resolved.
5. The following factors shall be considered by the appointing authority prior to proposing formal disciplinary action:
  - a. Severity of the offense;
  - b. Impact of behavior or performance on the agency;
  - c. Nature and duration of the problem, if the problem is not new;

- d. Efforts made to help an employee adjust and what efforts to adjust, if any, have been made by the employee;
- e. Employee's length of service;
- f. History of the employee's behavior/performance and prior formal disciplinary actions taken against the employee while he or she has been employed by the Department, considering the severity of such problems, and the time elapsed since the last problem situation; and,
- g. Type of disciplinary action taken with other employees under similar circumstances.

B. Implementation of Formal Disciplinary Action for Classified Positions

- 1. All disciplinary action proposed and taken shall be in accordance with applicable Kansas Statutes or Administrative Regulations.
- 2. The appointing authority's letter of proposed action shall be served upon the employee in the manner prescribed by law and regulations.
- 3. The appointing authority and/or designee shall be available for a meeting with the employee or to review any written response submitted by the employee.
  - a. The content of the meeting and/or written response shall be restricted to the employee stating specific reasons why proposed disciplinary action should not be taken or should be modified; and,
  - b. The appointing authority shall consider the following before making a final determination as to whether or not the proposed action shall be taken:
    - (1) Employee's response;
    - (2) Severity of the offense;
    - (3) Impact of behavior or performance on the agency;
    - (4) Nature and duration of the problem, if the problem is not new;
    - (5) Efforts made to help an employee adjust and what efforts to adjust, if any, have been made by the employee;
    - (6) Employee's length of service;
    - (7) History of the employee's behavior/performance and prior formal disciplinary actions taken against the employee while he/she has been employed by the agency, the severity of such problems and the time elapsed since the last problem situation; and,
    - (8) Type of disciplinary action taken with other employees under similar circumstances.
- 4. After giving consideration to information provided by the employee at the meeting or in a written response the appointing authority or designee shall notify the employee by letter that the proposed action will be implemented, modified, or withdrawn.

- a. The letter shall be served on the employee in the manner prescribed by law and regulations and shall advise of the employee's right to appeal any formal disciplinary action to the Civil Service Board and of the manner and time limits for doing so. (APPFS 3-3062)

C. Implementation of Formal Disciplinary Action for Unclassified Positions

1. All disciplinary action shall be in accordance with applicable Kansas statutes and administrative regulations.
2. The appointing authority's letter of formal disciplinary action shall be served upon the employee in a meeting and/or written letter.
3. The appointing authority may modify disciplinary action based on information received from the employee at the disciplinary meeting.
  - a. The letter shall be served on the employee in the manner prescribed by law and regulations and shall advise the employee that formal discipline may not be appealed to the Civil Service Board based on the employee's unclassified employment status. (APPFS 3-3062)

D. Documentation of Formal Disciplinary Action

1. Except as noted below, all materials upon which a disciplinary action is based, including any documentation of disciplinary action for sexual abuse or sexual harassment of an offender, shall be included in the employee's personnel file, and the employee shall have full access to that file in preparing a response to the appointing authority.
  - a. Criminal investigation records and reports of conversations with confidential informants shall be excluded from the employee's personnel file.
    - (1) In their place, a synopsis or summary of investigative findings shall be placed in the employee's personnel file. Under no circumstances shall the identity of confidential informants be placed in the employee's personnel file.
2. Informational copies of all formal disciplinary actions shall be submitted by the appointing authority to:
  - a. Director, Office of Personnel Services, Department of Administration;
  - b. Human Resources Director, Department of Corrections; and,
  - c. The Deputy Secretary.

**NOTE:** The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

**REPORTS REQUIRED**

None.

**REFERENCES**

24 U.S.C. § 15601, *et seq.*

28 C.F.R. §§ 115.76, 115.17, 115.376 and 115.317

K.S.A. 75-2946, 75-2949, 75-2949d, 75-2949e, 75-2949f

K.A.R. 1-2-9, 1-9-5

IMPP 02-107D, 02-109D, 02-114D, 02-115, 02-119D, 03-104D, 10-103D

ACO 2-1C-01, 2-1C-02

ACI 3-4048

APPFS 3-3047, 3-3062

JCF 4-JCF-6D-01

**ATTACHMENTS**

None.