# ELECTRONIC-DISTRICT PERSONNEL MANUAL
# TRANSMITTAL SHEET
# NUMBER 206

The attached pages replace the rules in Part I of Chapter 16 of the *Electronic-District Personnel Manual* (*E-DPM*), General Discipline and Grievances. These rules are being replaced because of final rulemaking published in the *D.C. Register* (*DCR*) on July 13, 2012 (59 DCR 008398). The rules amend subsections 1600.2, 1630.1 and 1630.2 to add the Educational Service employees in the Office of the State Superintendent of Education. For the convenience of *E-DPM* readers, the entire chapter is being provided in this transmittal.

## MAKE THE FOLLOWING CHANGES TO PART I OF CHAPTER 16 OF THE *E-DPM*, GENERAL DISCIPLINE AND GRIEVANCES

| E-DPM Transmittal | |
|---|---|
| **This E-DPM Transmittal contains pages 16-I-i and 16-I-ii, 16-I-1 through 16-I-30** | The attached pages replace **Transmittal No. 161**, dated March 4, 2008 (pages 16-I-i and 16-I-ii, 16-I-1 through 16-I-28 and 16-I-29 and 16-I-30 (Addendum) |

August 27, 2012
Date

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Director

Attachment

# PART I
# D.C. PERSONNEL REGULATIONS
# CHAPTER 16
# GENERAL DISCIPLINE AND GRIEVANCES
# CONTENTS


| Section | | Page |
|---|---|---|
| 1600 | APPLICABILITY: GENERAL DISCIPLINE | 1 |
| 1601 | GENERAL: GENERAL DISCIPLINE | 1 |
| 1602 | ADMONITION: GENERAL DISCIPLINE | 3 |
| 1603 | DEFINITION OF CAUSE: GENERAL DISCIPLINE | 3 |
| 1604 | CORRECTIVE ACTION: GENERAL DISCIPLINE | 5 |
| 1605 | ADVERSE ACTION: GENERAL DISCIPLINE | 6 |
| 1606 | AGENCY RESPONSIBILITY: GENERAL DISCIPLINE | 6 |
| 1607 | DUTIES AND RESPONSIBILITIES OF PROPOSING OFFICIAL: GENERAL DISCIPLINE | 7 |
| 1608 | ADVANCE WRITTEN NOTICE: GENERAL DISCIPLINE | 7 |
| 1609 | OFFICIAL TIME: GENERAL DISCIPLINE | 8 |
| 1610 | EMPLOYEE'S REPRESENTATIVE: GENERAL DISCIPLINE | 8 |
| 1611 | EMPLOYEE'S RESPONSE: GENERAL DISCIPLINE | 9 |
| 1612 | ADMINISTRATIVE REVIEW OF REMOVAL ACTIONS: GENERAL DISCIPLINE | 9 |
| 1613 | DUTIES AND RESPONSIBILITIES OF DECIDING OFFICIAL: GENERAL DISCIPLINE | 10 |
| 1614 | FINAL DECISION NOTICE: GENERAL DISCIPLINE | 10 |
| 1615 | SUMMARY SUSPENSION: GENERAL DISCIPLINE | 11 |
| 1616 | SUMMARY REMOVAL: GENERAL DISCIPLINE | 12 |
| 1617 | DISCIPLINARY GRIEVANCES: GENERAL DISCIPLINE | 14 |
| 1618 | APPEALS TO THE OFFICE OF EMPLOYEE APPEALS | 14 |
| 1619 | TABLE OF APPROPRIATE PENALTIES: GENERAL DISCIPLINE | 14 |
| 1620 | ENFORCED LEAVE | 20 |

1621 - 1629 (RESERVED) ..... 22

1630 APPLICABILITY: GRIEVANCES ..... 22

1631 MATTERS GRIEVABLE: GRIEVANCES ..... 22

1632 GENERAL: GRIEVANCES ..... 24

1633 AGENCY RESPONSIBILITY: GRIEVANCES ..... 24

1634 OFFICIAL TIME: GRIEVANCES ..... 25

1635 TIME LIMITS FOR FILING: GRIEVANCES ..... 25

1636 PROCEDURE: GRIEVANCES ..... 25

1637 DISMISSAL: GRIEVANCES ..... 26

1699 DEFINITIONS: GENERAL DISCIPLINE AND GRIEVANCES ..... 26

*D.C. REGISTER* UPDATES FOR CHAPTER 16 OF THE
D.C. PERSONNEL REGULATIONS, GENERAL DISCIPLINE AND GRIEVANCES ..... 29

# *D.C. PERSONNEL REGULATIONS*

## 1600 APPLICABILITY: GENERAL DISCIPLINE

1600.1 The rules for the adverse and corrective action system specified in sections 1601 through 1619 of this chapter are established in accordance with the provisions of sections 604 and 1651 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-606.04 and 1-616.51) (2006 Repl.).

1600.2 Sections 1601 through 1619 of this chapter shall apply to:

(a) A Career Service employee who has completed a probationary period; and

(b) An Educational Service employee in the Office of the State Superintendent of Education who has completed a probationary period.

1600.3 The following employees are excluded from coverage under sections 1601 through 1619 of this chapter:

(a) An employee serving under a Career Service appointment (Probational);

(b) An employee serving on a term appointment during the period in which he or she is completing the required probationary period;

(c) An employee given a temporary appointment in the Career Service;

(d) An employee of the Board of Trustees of the University of the District of Columbia;

(e) An employee in the Legal Service;

(f) An employee in the Excepted Service;

(g) An employee in the Management Supervisory Service; and

(h) Any 905 series attorney not in the Legal Service.

## 1601 GENERAL: GENERAL DISCIPLINE

1601.1 An employee covered by section 1600.2 of this chapter may not be suspended, reduced in grade, removed, given an official reprimand, or placed on enforced leave except as provided in this chapter or in chapter 24 of these regulations.

1601.2 Any procedural system for the review of adverse actions negotiated between the District of Columbia and a labor organization shall take precedence over the provisions of this chapter for employees in a bargaining unit represented by a labor organization, to the extent that there is a difference. A contract, memorandum of understanding, or collective bargaining agreement cannot modify the standard for cause as defined in § 1603.

1601.3 If an employee is authorized to choose between the negotiated grievance process set forth in a collective bargaining agreement and the grievance or appellate process provided in these rules, the employee may elect, at his or her discretion, to do one (1) of the following:

(a) Grieve through the negotiated grievance procedure; or

(b) Appeal to the Office of Employee Appeals or file a disciplinary grievance, each as provided in these rules.

1601.4 An employee shall be deemed to have elected his or her remedy pursuant to § 1601.3 when he or she files a disciplinary grievance or an appeal under the provisions of this chapter or files a grievance in writing in accordance with the provisions of the negotiated grievance procedure applicable to the parties, whichever event occurs first. This section shall not be construed to toll any deadlines for filing.

1601.5 (a) Any procedures for handling corrective or adverse actions involving uniformed members of the Metropolitan Police Department, or of the Fire and Emergency Medical Services Department (FEMSD) at the rank of Captain or below provided for by law, or by regulations of the respective departments in effect on the effective date of these regulations, including but not limited to procedures involving trial boards, shall take precedence over the provisions of this chapter to the extent that there is a difference.

(b) The provisions of this chapter shall apply to uniformed members of the FEMSD at the rank of Battalion Fire Chief and above who are in the Career Service.

1601.6 Except as provided in § 1601.7, the final decision notice on a corrective or adverse action shall remain in the employee's Official Personnel Folder (OPF) for not more than three (3) years from the effective date of the action. The official personnel action document effecting the corrective or adverse action is a permanent record and shall remain in the employee's OPF.

1601.7 Documentation placed in an OPF pursuant to § 1601.6 may be withdrawn earlier than stipulated therein if so ordered by the official issuing the corrective or adverse action, that official's superiors or successor, the Office of Employee Appeals, a court of competent jurisdiction, an arbitrator of competent jurisdiction, the appropriate personnel authority, or the Office of Human Rights.

1601.8 A deciding official may not dismiss a proposed disciplinary action solely on the basis of error in the application of the agency's procedures which did not cause substantial harm or prejudice to the employee's rights.

1601.9 Notwithstanding any other provision of this chapter, and in accordance with the provisions of section 502 of Title V of the Omnibus Public Safety Agency Reform Amendment Act of 2004 (D.C. Law 15-194; D.C. Official Code § 5-1031) (2005 Supp.), the following will apply to all corrective and adverse actions against any employee, uniformed and non-uniformed, of the Fire and Emergency Medical Services Department (FEMSD) or Metropolitan Police Department (MPD):

(a) No corrective or adverse action against any employee, uniformed and non-uniformed, of the FEMSD or MPD will be commenced more than ninety (90) days, not including Saturdays, Sundays, or legal holidays, after the date that the FEMSD or MPD knew or should have known of the act or occurrence allegedly constituting cause for the corrective or adverse action.

(b) If the act or occurrence allegedly constituting cause for the corrective or adverse action is the subject of a criminal investigation by the MPD, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General for the District of Columbia, or an investigation by the Office of Police Complaints, the ninety-day (90-day) period for commencing a corrective or adverse action under section 1601.9 (a) of this section shall be tolled until the conclusion of the investigation.

## 1602 ADMONITION: GENERAL DISCIPLINE

1602.1 An admonition shall not be a corrective or adverse action under this chapter, and shall not be made a part of the official personnel folder, but shall be retained by the agency for not more than three (3) years unless sooner ordered withdrawn by the official issuing the admonition, that official's superiors or successor, a court of competent jurisdiction, an arbitrator of competent jurisdiction, the appropriate personnel authority, or the Office of Human Rights.

1602.2 An admonition may be considered in determining the penalty for a corrective or adverse action when the admonition was issued not more than three (3) years prior to the date of the proposed corrective or adverse action, and has not been ordered withdrawn as provided in § 1602.1.

1602.3 The admonition shall inform the employee that he or she may respond in writing, within two (2) workdays of receipt of the admonition, to the person issuing the admonition to clarify, expand on, or take exception to the statements or conclusions it contains, and any response shall be filed and removed with the admonition.

1602.4 The employee against whom an admonition is issued shall be asked to acknowledge its receipt. If the employee refuses to acknowledge receipt, a brief descriptive written statement, signed by a witness, may be used as evidence of service.

1602.5 An admonition issued in accordance with this section may be grieved as provided in § 1631.

## 1603 DEFINITION OF CAUSE: GENERAL DISCIPLINE

1603.1 There must be full accountability for managers and supervisors for all disciplinary actions taken under section s 1601 through 1619 of this chapter. Therefore, no corrective or adverse action may be initiated under those sections unless the action is first authorized by a manager or supervisor who the Mayor or an agency head may remove from his or her position at will.

1603.2 In accordance with section 1651 (1) of the CMPA (D.C. Official Code § 1-616.51 (1)) (2006 Repl.), disciplinary actions may only be taken for cause.

1603.3 For the purposes of this chapter, except as provided in section 1603.5 of this section, cause for disciplinary action for all employees covered under this chapter is defined as follows:

(a) Conviction of a felony;

(b) Conviction of a misdemeanor based on conduct relevant to an employee's position, job duties, or job activities;

(c) Any knowing or negligent material misrepresentation on an employment application;

(d) Any knowing or negligent material misrepresentation on other document given to a government agency;

(e) Any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law;

(f) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include:

(1) Unauthorized absence;

(2) Absence without official leave;

(3) Neglect of duty;

(4) Insubordination;

(5) Incompetence;

(6) Misfeasance;

(7) Malfeasance;

(8) Unreasonable failure to assist a fellow government employee in carrying out assigned duties; and

(9) Unreasonable failure to give assistance to the public;

(g) Any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious;

(h) Any act which constitutes a criminal offense whether or not the act results in a conviction; and

(i) Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result.

1603.4 The causes specified in section 1603.3 of this section shall include but not necessarily be limited to the infractions or offenses under each cause contained in the Table of Appropriate Penalties in section 1619 of this chapter.

1603.5 Cause for disciplinary action under this chapter shall also mean the following for the five (5) categories of employees described in subsection 1603.5 (b)(1) through (5) below, whether on or off duty:

(a) Any act or omission which constitutes a criminal offense, whether or not such act or omission results in a conviction; and

(b) Any credible evidence of use of an illegal drug, unauthorized use or abuse of prescription drugs including, without limitation, the results of any drug test:

(1) All employees of the MPD;

(2) All employees of the Department of Corrections, including correctional officers;

(3) Any commissioned special police officer employed by the District government;

(4) Any employee of the Department of Youth Rehabilitation Services covered by the law enforcement retirement provisions of the Civil Service Retirement System or the detention officer provisions of the District government's retirement benefits program established in accordance with sections 2605 through 2614 of the CMPA (D.C. Official Code §§ 1-626.05 through 1-626.14) (2006 Repl); or

(5) Any other District government employee authorized to carry a firearm while on duty, including employees of the Office of the Inspector General covered by this chapter.

1603.6 The authority to adopt corrective or adverse action penalty guidelines or requirements is held exclusively by the Mayor and independent personnel authorities covered under this chapter, except that with regard to the MPD, such authority is held by the Mayor and the Chief of Police.

1603.7 Notwithstanding the provisions in sections 1603.3, 1603.5, and 1603.6 of this section, the Director, D.C. Department of Human Resources (DCHR), or independent personnel authority may, on a case-by-case basis, approve the use of penalty guidelines or requirements developed by an agency head for employees of the agency covered under this chapter. The Director, DCHR, shall publish in the District Personnel Manual any such guidelines or requirements approved for a subordinate agency.

1603.8 Unless otherwise required by law, in selecting the appropriate penalty to be imposed in a disciplinary action, consideration will be given to any mitigating or aggravating circumstances that have been determined to exist, to such extent and with such weight as is deemed appropriate.

1603.9 In any disciplinary action, the District government will bear the burden of proving by a preponderance of the evidence that the action may be taken or, in the case of summary action, that the disciplinary action was taken for cause, as that term is defined in this section. A criminal conviction will estop the convicted party from denying the facts underlying the conviction.

1603.10 All notices issued in connection with an adverse or corrective action under this chapter shall conform to all requirements of the Fifth Amendment Due Process Clause of the United States Constitution.

## 1604 CORRECTIVE ACTION: GENERAL DISCIPLINE

1604.1 A corrective action shall be an official reprimand, or a suspension of less than ten (10) days.

1604.2 Except as provided in section 1604.3 of this section, a corrective action may be contested as a disciplinary grievance pursuant to section 1617 of this chapter.

1604.3 (a) Notwithstanding the provisions of section 1604.1 of this section or any other provision of this chapter, a proposing official may attempt to resolve a proposed corrective action of a suspension of less than ten (10) days by conducting a Resolution Conference with the employee subject to the proposed suspension and his or her union representative (unless representation is voluntarily waived by the employee), if applicable. The following conditions shall apply:

(1) Resolution Conferences shall be limited to proposed suspensions of less than ten (10) days proposed under this chapter;

(2) Any Resolution Conference shall be conducted immediately after the issuance of the advance written notice;

(3) A successful Resolution Conference shall result in a written agreement between the proposing official and affected employee to a suspension less than originally contemplated, or an official reprimand in lieu of a period of suspension without pay;

(4) A lesser suspension or official reprimand penalty shall not be instituted unless the proposing official and affected employee reach mutual agreement in writing and the employee voluntarily waives his or her right to file an administrative grievance under section 1617 of this chapter or to appeal under a negotiated grievance procedure, as applicable;

(5) If an agreement is not reached, normal procedures to effect the suspension action originally proposed shall be followed; and

(6) Statements concerning an agreement resulting from a Resolution Conference shall not be used by either party as evidence or precedent in another disciplinary action, except that the outcome of a Resolution Conference may be considered in the future for purposes of progressive discipline.

(b) The personnel authority shall set forth procedures for Resolution Conferences under this section.

**1605 ADVERSE ACTION: GENERAL DISCIPLINE**

1605.1 An adverse action shall be a suspension of ten (10) days or more, a reduction in grade, or a removal.

1605.2 An adverse action may be appealed to the Office of Employee Appeals pursuant to § 1618. In lieu of appealing to the Office of Employee Appeals, an employee may elect to contest an adverse action as a disciplinary grievance pursuant to § 1617.

1605.3 An employee electing to contest an adverse action as a disciplinary grievance as provided in § 1605.2 shall sign a statement acknowledging that this election constitutes a waiver of his or her right to appeal to the Office of Employee Appeals.

**1606 AGENCY RESPONSIBILITY: GENERAL DISCIPLINE**Error! Bookmark not defined.

1606.1 In taking disciplinary actions under this chapter, each agency head shall ensure the following:

(a) That actions covered by this chapter are taken in accordance with the provisions herein;

(b) That each employee covered by this chapter is afforded fair and equitable treatment, as well as the rights and protections provided herein; and

(c) That the employee, the employee's representative, and witnesses, have freedom from restraint, coercion, interference, or reprisal by any official of the agency.

1606.2 In determining the penalty for a disciplinary action under this chapter, documentation appropriately placed in the OPF regarding prior corrective or adverse actions, other than a record of the personnel action, may be considered for not longer than three (3) years from the effective date of the action, unless sooner ordered withdrawn in accordance with section 1601.7 of this chapter.

1606.3 When a disciplinary action is proposed for cause as provided in section 1603.3 (b) of this chapter, the agency shall present evidence to demonstrate that the employee engaged in the alleged conduct during duty hours or off-duty hours, when such evidence is relevant to assessing a penalty.

1606.4 In showing that an employee's conduct would affect or has affected adversely the ability of the employee or the employing agency to perform effectively, the agency must demonstrate nexus, which may include but is not limited to one (1) or more of the following:

(a) That the agency is less able to carry out its assigned functions;

(b) That the employee is unable or unsuitable to perform his or her assigned duties;

(c) That other employees refuse to work with the employee who engaged in the misconduct;

(d) That the conduct has been publicized or has gained notoriety which has a deleterious effect on the operation of the agency; or

(e) That there is otherwise an adverse effect on the operation of the agency.

1606.5 Federal case law, arbitration decisions, or other relevant authorities may be relied upon by the agency in taking any action for cause or in demonstrating nexus.

1606.6 Except as provided by sections 1601.2 and 1601.5 of this chapter, no provision in this chapter shall be interpreted to permit a modification of the corrective action procedures and standards in this chapter by contract, memorandum of understanding, informal agreement, past practices, or agency order. Any modification of these corrective action procedures and standards shall be done explicitly by the adoption and issuance of additional regulations.

1606.7 In appropriate discipline-related cases, agency heads may utilize the counseling program for troubled employees as provided under section 2007 of the CMPA (D.C. Official Code § 1-620.07) (2006 Repl).

## 1607 DUTIES AND RESPONSIBILITIES OF PROPOSING OFFICIAL: GENERAL DISCIPLINE

1607.1 The proposing official shall issue the advance written notice proposing corrective or adverse action against an employee, as provided for in §§ 1608.1 and 1608.2.

1607.2 At any time prior to the deciding official rendering the final decision, the proposing official may withdraw a proposed corrective or adverse action with or without prejudice and, if withdrawn, shall so notify the employee and the deciding official.

1607.3 The proposing official shall not be the deciding official, except the proposing official may be the deciding official when the proposing official is the head of an agency.

## 1608 ADVANCE WRITTEN NOTICE: GENERAL DISCIPLINE

1608.1 Except in the case of a summary suspension action pursuant to § 1615 or a summary removal action pursuant to § 1616, an employee against whom corrective or adverse action is proposed shall have the right to an advance written notice, as follows:

(a) In the case of a proposed adverse action, an advance written notice of fifteen (15) days; or

(b) In the case of a proposed corrective action, an advance written notice of ten (10) days.

1608.2 The advance written notice shall inform the employee of the following:

(a) The action that is proposed and the cause for the action;

(b) The specific reasons for the proposed action;

(c) The right to prepare a written response, including affidavits and other documentation, within six (6) days of receipt of the advance written notice;

(d) The person to whom the written response or any request is to be presented;

(e) The right to review any material upon which the proposed action is based;

(f) In the case of a proposed adverse action only, the right to be represented by an attorney or other representative;

(g) The right to an administrative review by a hearing officer appointed by the agency head, as provided in § 1612.1, when the proposed action is a removal; and

(h) The right to a written decision.

1608.3 The material upon which the notice is based, and which is relied upon to support the reasons given in the notice, shall be assembled and made available to the employee for his or her review, upon request. A copy of the material will be provided to the employee upon request.

1608.4 Material that cannot be disclosed to the employee, or to his or her representative, shall not be used to support the reasons given in the notice. This rule does not prohibit the redaction of documents so long as the redacted information is not used to support the reasons given in the notice.

1608.5 The first day of the notice period shall be the day following the date on which service is made to the employee, either in person, by courier, or by certified or registered mail, or the date on which service was attempted and refused.

1608.6 For notices delivered in person, the employee to whom the advance notice is issued shall be asked to acknowledge its receipt. If the employee refuses to acknowledge receipt, a brief descriptive written statement, signed by a witness, may be used as evidence of service.

1608.7 If the employee is not in a duty status, i.e., at work, the notice of proposed action shall be sent to the employee's last known address by courier, or by certified or registered mail, return receipt requested.

1608.8 An employee against whom a corrective or adverse action is proposed may be placed on administrative leave at the discretion of the agency head.

1608.9 An employee against whom a corrective or adverse action is proposed shall be entitled to be retained in an active duty status during the notice period, except when the employee has been placed on administrative leave as provided in sections 1608.8 or 1620.1 of this chapter.

## 1609 OFFICIAL TIME: GENERAL DISCIPLINE

1609.1 If otherwise in a duty status, each employee against whom an adverse action has been proposed shall be entitled to a reasonable amount of official time to prepare his or her response, not to exceed ten (10) hours of administrative leave. Such preparation shall not take place at the employee's duty station or any non-public area of a government office, unless authorized by the agency head.

1609.2 All absence from duty in excess of the time approved in accordance with § 1609.1 shall be charged in accordance with Chapter 12 of these regulations.

## 1610 EMPLOYEE'S REPRESENTATIVE: GENERAL DISCIPLINEError! Bookmark not defined.

1610.1 An employee against whom an adverse action is proposed shall have the right to be accompanied, represented, or advised by an attorney or other representative of his or her choice, except as provided in § 1610.2.

1610.2 The agency head or his or her designee shall have the right to disallow a person chosen by the employee to represent him or her if:

(a) The person is another District government employee and representation by that person conflicts with a governmental priority; or

(b) Representation by that person creates a clear conflict of interest or conflict of official position, or the person is a material witness to the facts underlying the proposed adverse action.

1610.3 The decision to disallow an employee's choice of representative shall not be subject to any further administrative review.

**1611 EMPLOYEE'S RESPONSE: GENERAL DISCIPLINE**

1611.1 The employee's response shall be in writing and presented to the deciding official, except for a response to a proposed removal, which shall be presented in writing to the hearing officer.

1611.2 Extensions of time in which to respond may be granted for good cause by the deciding official or, in the case of a removal, the hearing officer.

1611.3 The right to respond shall include the right to present evidence that the employee believes might affect the final decision on the proposed action. Such evidence may include written statements of witnesses, affidavits, or documents or any other form or depiction of information.

1611.4 At the time of the response, an employee shall raise every defense, fact or matter in extenuation, exculpation, or mitigation of which the employee has knowledge or reasonably should have knowledge or which is relevant to the reasons for the proposed action, specifications, or proposed penalty.

**1612 ADMINISTRATIVE REVIEW OF REMOVAL ACTIONS: GENERAL DISCIPLINE**

1612.1 The personnel authority shall provide for an administrative review of a proposed removal action against an employee.

1612.2 The administrative review shall be conducted by a hearing officer, who shall meet the following criteria:

(a) Be appointed by the agency head;

(b) Be at grade levels DS-13 and above or equivalent;

(c) Not be in the supervisory chain of command between the proposing official and the deciding official, nor subordinate to the proposing official;

(d) Have no direct and personal knowledge (other than hearsay that does not affect impartiality) of the matters contained in the proposed removal action; and

(e) Be an attorney, if practicable, or if required pursuant to § 1612.7.

1612.3 The hearing officer shall be responsible for keeping the proposed removal action moving to a conclusion at the earliest practicable date.

1612.4 In conducting the administrative review, the hearing officer shall:

(a) Review the notice of proposed removal action;

(b) Review the employee's response, if there is one; and

(c) Conduct an adversary hearing when required in accordance with § 1612.5.

1612.5 An adversary hearing, including the confrontation of witnesses, shall be conducted only when both of the following conditions are met:

(a) When the hearing officer determines that a decision based on a preponderance of the evidence cannot be made because the written record is inadequate for this purpose; and

(b) The personnel authority grants approval to the hearing officer to conduct a hearing.

1612.6 Failure by an employee to respond to a charge or specification raised in the advance written notice shall not constitute a reason to conduct an adversary hearing.

1612.7 The hearing officer conducting an adversary hearing pursuant to § 1612.5 shall be an attorney who meets the requirements of §1612.2(a) through (d).

1612.8 The procedures for conducting an adversary hearing pursuant to this section shall be as follows:

(a) For agencies subordinate to the Mayor's personnel authority, except for the Metropolitan Police Department, the Director of Personnel shall develop and publish appropriate procedures in the District Personnel Manual, and these procedures shall constitute the internal rules and regulations for those agencies as required by D.C. Official Code § 1-606.04(a); and

(b) Other personnel authorities and the Metropolitan Police Department shall either develop and publish appropriate procedures or adopt the procedures published in the District Personnel Manual.

1612.9 The rules of evidence shall not apply to an adversary hearing conducted pursuant to this section, except that the hearing officer may, at his or her discretion, be guided by and apply the District of Columbia rules of evidence to the extent that he or she believes their application would promote the presentation of reliable evidence.

1612.10 After conducting the administrative review, the hearing officer shall make a written report and recommendation to the deciding official, and shall provide a copy to the employee.

1612.11 For the purposes of §1612.2 and 1612.7 of this section only, an "attorney" is an individual authorized to practice law in any jurisdiction of the United States.

## 1613 DUTIES AND RESPONSIBILITIES OF DECIDING OFFICIAL: GENERAL DISCIPLINE

1613.1 The deciding official, after considering the employee's response and the report and recommendation of the hearing officer pursuant to § 1612, when applicable, shall issue a final decision.

1613.2 The deciding official shall either sustain the penalty proposed, reduce it, remand the action with instruction for further consideration, or dismiss the action with or without prejudice, but in no event shall he or she increase the penalty.

## 1614 FINAL DECISION NOTICE: GENERAL DISCIPLINE

1614.1 The employee shall be given a notice of final decision in writing, dated and signed by the deciding official, informing him or her of all of the following:

(a) Which of the reasons in the notice of proposed corrective or adverse action have been sustained and which have not been sustained, or which of the reasons have been dismissed with or without prejudice;

(b) Whether the penalty proposed in the notice is sustained, reduced, or dismissed with or without prejudice;

(c) When the final decision results in a corrective action, the employee's right to grieve the decision as provided in § 1617;

(d) When the final decision results in an adverse action, the right to appeal to the Office of Employee Appeals as provided in § 1618. The notice shall have attached to it a copy of the OEA appeal form; and

(e) The effective date of the action.

1614.2 Except as provided in § 1614.3, the final decision shall be rendered at the earliest practicable date.

1614.3 The final decision in the case of a summary suspension or summary removal action taken pursuant to §§ 1615 or 1616, respectively, shall be rendered not later than forty-five (45) days from the date of delivery of the summary suspension or summary removal notice, as appropriate, except that the period may be extended as follows:

(a) When the employee requests and is granted an extension of time in which to respond under § 1611.2; or

(b) When the employee agrees to an extension of time requested by the agency.

1614.4 The notice of final decision shall be delivered to the employee, if in a duty status, i.e., at work, on or before the time the action is effective.

1614.5 The employee to whom the notice of final decision is delivered shall be asked to acknowledge its receipt. If the employee refuses to acknowledge receipt, a brief descriptive written statement, signed by a witness, may be used as evidence of service.

1614.6 If the employee is not in a duty status, i.e., at work, the notice of final decision shall be sent to the employee's last known address by courier, or by certified or registered mail, return receipt requested, before the time the action becomes effective.

1614.7 If the final decision is to impose an official reprimand, the official reprimand shall be included in the notice of final decision itself, since the notice will constitute the official reprimand that goes into the employee's Official Personnel Folder, and shall contain a statement to that effect.

1614.8 If the final decision is to dismiss the proposed action, the notice of final decision must state whether the proposed action is dismissed with or without prejudice.

1614.9 The decision made by the deciding official, in the case of a corrective action, shall be the final decision for the purpose of a disciplinary grievance pursuant to § 1617.

1614.10 The decision made by the deciding official in the case of an adverse action shall be the final agency decision for the purpose of an appeal to the Office of Employee Appeals pursuant to § 1618.

## 1615 SUMMARY SUSPENSION: GENERAL DISCIPLINE

1615.1 An agency head may summarily suspend an employee when the employee's conduct:

(a) Threatens the integrity of government operations;

(b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or

(c) Is detrimental to public health, safety, or welfare.

1615.2 An agency head may summarily suspend an employee under this section only if at the time the summary suspension action is taken, a good faith effort has been made to determine that at least one (1) of the conditions described in § 1615.1 is met; and only if the action is taken for cause pursuant to § 1603. Otherwise, an employee shall be entitled to an advance written notice as specified in § 1608.

1615.3 An employee who is notified by written or oral directive of a summary suspension from his or her position pursuant to this section shall immediately leave his or her duty station or District government facility.

1615.4 Within three (3) days of the summary suspension, the agency head or his or her designee shall provide a written summary suspension notice to the employee that includes all of the following:

(a) The reason for the summary suspension action;

(b) The effective date of the summary suspension action and its duration;

(c) The right to review any material upon which the summary suspension action was based and to receive a copy, if requested;

(d) The right to prepare a written response, including affidavits and other documentation within six (6) days of receipt of the notice;

(e) The person to whom the written response is to be presented;

(f) In the case of a summary suspension of ten (10) days or more, the right to be represented by an attorney or other representative; and

(g) The right to a final decision as provided in § 1614.3.

1615.5 The deciding official shall issue a final decision sustaining, reducing, or dismissing the summary suspension action with or without prejudice.

1615.6 When the final decision is to sustain or reduce the summary suspension action, the final decision shall inform the employee of his or her right to file a disciplinary grievance when the summary suspension is for less than ten (10) days, or to appeal to the Office of Employee Appeals when the summary suspension is for ten (10) days or more, as applicable.

1615.7 When the final decision is to dismiss the summary suspension action or to reduce it to a lesser penalty, any pay lost as a result of the summary suspension action, to the extent that the pay loss exceeds the pay lost as a result of the final decision, shall be restored to the employee.

## 1616 SUMMARY REMOVAL: GENERAL DISCIPLINE

1616.1 An agency head may remove an employee summarily when the employee's conduct:

(a) Threatens the integrity of government operations;

(b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or

(c) Is detrimental to public health, safety, or welfare of others.

1616.2 An agency head may summarily remove an employee under this section only if at the time the summary removal action is taken, a good faith effort has been made to determine that at least one (1) of the conditions described in § 1616.1 is met; and only if the action is taken for cause pursuant to § 1603. Otherwise, the employee shall be entitled to an advance written notice as specified in § 1608.

1616.3 An employee who is notified by written or oral directive of a summary removal from his or her position pursuant to this section shall immediately leave his or her duty station or District government facility.

1616.4 Within three (3) days of the summary removal, the agency head or his or her designee shall provide a written summary removal notice to the employee that includes all of the following:

(a) The reason for the summary removal action;

(b) The effective date of the summary removal action;

(c) The right to review any material upon which the summary removal action was based;

(d) The right to prepare a written response, including affidavits and other documentation within six (6) days of receipt of the notice;

(e) The person to whom the written response is to be presented;

(f) The right to be represented by an attorney or other representative;

(g) The right to an administrative review, as provided in § 1612; and

(h) The right to a final decision as provided in § 1614.3.

1616.5 An administrative review, as provided for in § 1612, shall be conducted prior to the issuance of a notice of final decision.

1616.6 The deciding official, after considering the report and recommendation of the hearing officer pursuant to § 1612, shall do one (1) of the following, as appropriate:

(a) Remand the summary removal action to the hearing officer;

(b) Designate a new hearing officer to conduct a review de novo; or

(c) Issue a final decision sustaining, reducing, or dismissing the summary removal action.

1616.7 When the final decision is to sustain the summary removal action, or to reduce it to a suspension of ten (10) days or more or to a reduction in grade, the final decision shall inform the employee of his or her right to appeal to the Office of Employee Appeals, in which case the decision shall have attached to it a copy of the OEA appeal form.

1616.8 When the final decision is to reduce the summary removal action to an official reprimand or a suspension of less than ten (10) days, the final decision shall inform the employee of his or her right to file a disciplinary grievance.

1616.9 When the final decision is to dismiss the summary removal action, the employee shall be restored to active duty status, and receive back pay and other entitlements, for the period during which the summary removal was in effect.

1616.10 Except as provided in § 1616.11, when the final decision is to reduce the summary removal action to a lesser penalty, the employee shall be restored to active duty status, and receive back pay and other entitlements, for the period during which the summary removal was in effect.

1616.11 When the final decision is to reduce the summary removal action to a suspension, the number of days during which the employee was separated from government service shall be applied to reduce the number of days of the suspension imposed by the deciding official, as applicable.

1616.12 For time and attendance purposes, a summary removal action taken pursuant to this section shall become effective at the end of the employee's scheduled tour of duty on the effective date of the action.

## 1617 DISCIPLINARY GRIEVANCES: GENERAL DISCIPLINE

1617.1 An employee against whom a corrective action has been taken shall be entitled to contest the final decision as a disciplinary grievance under the procedure set forth in § 1636.

1617.2 The filing of a disciplinary grievance shall not serve to stay or delay the effective date of the final decision.

## 1618 APPEALS TO THE OFFICE OF EMPLOYEE APPEALS

1618.1 Unless otherwise authorized or required as provided in §§ 1601.2 through 1601.5, an employee shall be entitled to appeal the following final agency actions to the Office of Employee Appeals (OEA):

(a) Any final decision regarding an adverse action; or

(b) Any final decision placing an employee on enforced leave that lasts ten (10) days or more.

1618.2 Any enforced leave lasting less than ten (10) days may be grieved as specified in § 1635.

1618.3 Any appeal of an action described in § 1618.1 shall be in accordance with the regulations issued by the OEA, and shall be filed within thirty (30) days of the effective date of the appealed agency action.

1618.4 The filing of an appeal to the OEA shall not serve to stay or delay the effective date of the final decision.

1618.5 When upon appeal, the action taken by an agency is reversed by the OEA, the remedial action directed by the OEA shall be taken within thirty (30) days of the final decision of the Office, unless the decision is reopened or reviewed in accordance with the regulations of the OEA.

## 1619 TABLE OF APPROPRIATE PENALTIES: GENERAL DISCIPLINE

1619.1 The Table of Appropriate Penalties, which begins on the next page, shall be used as specified in this chapter:

| CAUSES<br>SPECIFICATIONS/GENERAL CONSIDERATIONS | FIRST OFFENSE | SECOND OFFENSE | THIRD OFFENSE |
|---|---|---|---|
| **1. Conviction of a Felony:** | | | |
| Conviction including a plea of *nolo contendere* of a felony at any time following submission of an employee's job application.<br><br>Notes: A felony is a serious crime usually punishable by a prison term of more than one (1) year. The term *"nolo contendere"* means a plea entered by the defendant in response to being charged with a crime. If a defendant pleads *nolo contendere*, he or she is neither admitting nor denying commission of the crime, but agreeing to a punishment (usually a fine or jail time) as if guilty.<br><br>Proof Needed: Court Order or Decision | Removal | N/A | N/A |
| **2. Conviction of a Misdemeanor Based on Conduct Relevant to an Employee's Position, Job Duties, or Job Activities:** | | | |
| Includes conviction of a misdemeanor at any time following the submission of an employee's job application, when the conviction is based on conduct that would affect adversely the employee's or the agency's ability to perform effectively, or conduct that is relevant to the employee's position, job duties, or job activities.<br><br>Notes: A plea of guilty or a conviction following a plea of *nolo contendere* to a charge of a misdemeanor involving the specified conduct shall constitute prima facie evidence of the elements of the misdemeanor.<br><br>A misdemeanor is a less serious crime than a felony, punishable by no more than one (1) year in jail. | Removal | N/A | N/A |
| **3. Any Knowing or Negligent Material Misrepresentation on an Employment Application:** | | | |
| The willful and deliberate misrepresentation or omission of any facts in the employment application which would have precluded or cast doubt upon the selection for appointment or promotion.<br><br>Note: Misrepresentation or omission is related to major requirements of the position, educational background, work history, arrest record, drug use, licenses, and proof of residency.<br><br>Proof Needed: Corroboration that the statement is false. Example, transcripts, certification from license agencies that the person is unlicensed, arrest records, affidavits indicating person is not a resident. | Removal | N/A | N/A |

| CAUSES<br>SPECIFICATIONS/GENERAL CONSIDERATIONS | FIRST OFFENSE | SECOND OFFENSE | THIRD OFFENSE |
|---|---|---|---|
| **4. Any Knowing or Negligent Material Misrepresentation on Other Document Given to a Government Agency:** | | | |
| (a) A non-intentional false statement as a result of negligence. | Suspension for 5-15 days | Suspension for 30 days to Removal | Removal |
| (b) An intentional false statement or omission with respect to other government documents or making a false entry on government records which call into question the credibility of the document.<br><br>Note: Aggravating factors to consider include whether as a result of the falsification the employee received financial gain, misused government property or jeopardized the safety of others.<br><br>Examples: Falsification of time and attendance records, travel vouchers or other documents related to entitlements. | Suspension for 15 days | Suspension for 30 days to Removal | Removal |
| **5. Any On Duty or Employment-Related Act or Omission that the Employee Knew or Should Reasonably Have Known is a Violation of Law:** | | | |
| Engaging in activities that have criminal penalties or are in violation of federal or District of Columbia laws and statutes, such as: | | | |
| (a) Unauthorized smoking in the workplace; incidents of a sexual or ethnic nature involving unwelcome remarks, joking, offensive comments or slurs; and acts of insubordination that are verbally abusive.<br><br>Note: Certain on-duty acts are more egregious than others, requiring more severe discipline. | Suspension for 5-15 days | Suspension for 10-30 days | Removal |
| (b) Misuse of resources or property; unwanted sexual advances or propositions; etc. | Suspension of 30-days up to Removal | Removal | N/A |
| (c) Assault or fighting on duty; battery, violation of EEO laws; such as incidents of sexual harassment involving physical or financial threats; touching (Class Four felony or stalking); or other violations of EEO law that result in the loss of employment; misuse of funds; resources or property; unfair labor practices or illegal work stoppage; use or distribution of controlled substances, etc. | Removal | N/A | N/A |

| CAUSES<br>SPECIFICATIONS/GENERAL CONSIDERATIONS | FIRST OFFENSE | SECOND OFFENSE | THIRD OFFENSE |
|---|---|---|---|
| **6. Any on-Duty or Employment-Related Act or Omission that Interferes with the Efficiency and Integrity of Government Operations:** | | | |
| (a) Unauthorized Absence: Ten (10) consecutive days or more constitutes abandonment | Removal | N/A | N/A |
| (b) Absence Without Official Leave | Reprimand to Removal | Suspension for 10-20 days | Suspension for 30 days to Removal |
| (c) Neglect of Duty: Failure to follow instructions or observe precautions regarding safety; failure by a supervisor to investigate a complaint; failure to carry out assigned tasks; careless or negligent work habits. | Reprimand to Removal | Suspension for 15-days to Removal | Suspension for 30-days to Removal or Reduction Grade |
| (d) Insubordination: Includes refusal to comply with direct orders, accept an assignment or detail; and carry out assigned duties and responsibilities. | Reprimand to Suspension for up to 10 days | Suspension for15-30 days | Reduction in Grade to Removal |
| (e) Incompetence: Includes careless work performance; serious or repeated mistakes after given appropriate counseling or training; failing to complete assignment timely. | Suspension for 5-15 days | Suspension of 20-30 days | Suspension for 45 days to Removal |
| (f) Misfeasance: Includes careless work performance, failure to investigate a complaint, providing misleading or inaccurate information to superiors; dishonesty; unauthorized use of government resources using or authorizing the use of government resources for other than official business. | Suspension for 15 days | Suspension for 20-30 days | Removal |
| (g) Malfeasance: Doing something illegal. This term is often used when a professional or public official commits an illegal act that interferes with the performance of his or her duties. This includes misuse, mutilation or destruction of government property; concealment, misuse, removal, mutilation, alteration of government property, public records or funds; misuse of official position for unlawful or personal gain.<br><br>Example: A contracting officer accepts a bribe in exchange for issuing a contract to a vendor. | Suspension for 30 days to Removal | Suspension for 45 days to Removal | Removal |

| CAUSES<br>SPECIFICATIONS/GENERAL CONSIDERATIONS | FIRST OFFENSE | SECOND OFFENSE | THIRD OFFENSE |
|---|---|---|---|
| **6. Any on-Duty or Employment-Related Act or Omission that Interferes with the Efficiency and Integrity Government Operations (Continued):** | | | |
| (h) Unreasonable Failure to Assist a Fellow Government Employee in Carrying Out Assigned Duties: Refusal of an employee to carry out a directive by a superior to perform a duty that is outside the normal scope of the employee's duties or responsibilities. | Reprimand to Suspension for up to 10 days | Suspension for 15-25 days | Suspension for 30 days to Removal |
| (i) Unreasonable Failure to Give Assistance to the Public: Includes discourteous treatment of the public; violation of department customer services standards; failure to return phone calls; failure to offer assistance when requested, etc. | Reprimand to Suspension for up to 10 days | Suspension for 15-25 days | Suspension for 30 days to Removal |
| **7. Any Other On Duty or Employment-Related Reason for Corrective or Adverse Action that is not Arbitrary or Capricious:** | | | |
| "Catchall" phrase; may include any activities for which the investigation can sustain that is not "de minimis" (i.e., very small or trifling matters) can include:<br>• Drunkenness on duty<br>• Gambling<br>• Arguing<br>• Use of abusive or offensive language<br>• Rude or boisterous playing<br>• Sleeping on the job<br>In most instances, the behavior can be placed in one of the categories outlined above. | Reprimand to Suspension for up to 15 days | Suspension for 20-30 days | Removal |
| **8. Any Act which Constitutes a Criminal Offense whether or not the Act Results in a Conviction:** | | | |
| Conviction not needed; may act on the arrest if the arrest is related to the job.<br>Proof Needed: Arrest record | Suspension for 10 days to Removal | Removal | N/A |

| CAUSES<br>SPECIFICATIONS/GENERAL CONSIDERATIONS | FIRST OFFENSE | SECOND OFFENSE | THIRD OFFENSE |
|---|---|---|---|
| **9. Use of Illegal Drugs; Unauthorized Use or Abuse of Prescription Drugs; or Positive Drug Test Result:** | | | |
| The District government has a drug-free work policy that prohibits not only the use of illegal drugs, but extends to the inappropriate use (or abuse) of prescription drugs and over-the-counter drugs. | Suspension for 15 days to Removal | Removal | N/A |

## 1620 ENFORCED LEAVE

1620.1 Notwithstanding any other provision of this chapter, a personnel authority may authorize placing an employee on enforced leave if:

(a) A determination has been made that the employee utilized fraud in securing his or his or her appointment or that he or she falsified official records;

(b) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of nolo contendere); or

(c) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of nolo contendere) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections.

1620.2 Placement of an employee on enforced leave pursuant to this section is not a corrective or adverse action.

1620.3 A personnel authority may propose the placing of an employee on enforced leave in accordance with this section as follows:

(a) For actions based on any of the conditions described in section 1620.1 (a) or (c) of this section, only if the personnel authority has a good faith belief that any of the conditions described in section 1620.1 (a) or (c) of this section are met after reviewing and considering the information contained in affidavits, legal indictments, charges or complaints, arrest records, or other documents or other credible information; and

(b) For actions based on any of the conditions described in section 1620.1 (b) of this section, only after the personnel authority has obtained official documentation such as affidavits, legal indictments, charges or complaints, arrest records, or other documentation, to support the determination that any of the conditions described in section 1620.1 (b) of this section are met.

1620.4 If the personnel authority determines that the conditions described in section 1620.1 of this section are met, an employee shall initially be placed on administrative leave for a period of five (5) workdays.

1620.5 The first day of the administrative leave period shall be the first workday that immediately follows the day on which the employee was placed on administrative leave pursuant to section 1620.4 of this section.

1620.6 The proposing official shall issue a written notice to propose placement of an employee on enforced leave. The notice shall inform the employee of the following:

(a) The reasons for the proposed enforced leave;

(b) The specific basis, including affidavits or other documentation, upon which the decision to propose placement of the employee on enforced leave was based and which establishes that the conditions described in section 1620.1 of this section have been met. The employee shall be provided with a copy of the notice;

(c) The beginning and ending dates of the five (5) workdays of administrative leave;

(d) The beginning date of the proposed enforced leave;

(e) The right to make a written or oral response, or both, to the notice, and to furnish written statements of witnesses or other documentation in support of the response, all within one (1) workday of receipt of the notice of proposal;

(f) The person to whom the response is to be presented;

(g) The right to be represented by an attorney or other representative; and

(h) The right to a written final decision within the five (5) workdays of administrative leave.

1620.7 Prior to actual delivery of the notice under section 1620.8 of this section, initial delivery of the notice proposing placement of an employee on enforced leave may be acomplished by reading the notice to the employee over the telephone.

1620.8 During the five-day (5-day) period of administrative leave under section 1620.4 of this section, the agency shall deliver the notice proposing placement of an employee on enforced leave to the employee personally, or by leaving a copy at the employee's home with some person of suitable age and discretion who is present.

1620.9 The response period provided for in section 1620.6 (e) of this section shall begin the first workday that immediately follows the day on which initial delivery of the notice is made, regardless of the method by which delivery was acomplished.

1620.10 If a determination is made to place the employee on enforced leave, the written final decision shall inform the employee of the following:

(a) The placement on enforced leave as provided in section 1620.12 of this section;

(b) The date the enforced leave is to commence; and

(c) The right to grieve the action under the procedure set forth in section 1636 of this chapter, and that if the enforced leave lasts ten (10) days or more, the employee has the right to file an appeal with the Office of Employee Appeals within thirty (30) days of the final decision.

1620.11 The enforced leave period shall commence on the first workday that immediately follows the five (5) workdays of administrative leave, as provided in section 1620.4 of this section.

1620.12 During the period in which the employee is in the enforced leave status, each day of absence is to be charged against the employee in the following sequence:

(a) Accrued annual leave, if available, until exhausted;

(b) Compensatory time which is authorized and recorded on time and attendance reports, if available, until exhausted; or

(c) Leave without pay when annual leave and compensatory time are exhausted or not available.

1620.13 If a determination is made not to place the employee on enforced leave, the written final decision shall so inform the employee.

1620.14 An employee shall remain on enforced leave until such time as disciplinary action, in accordance with this chapter and taken as a result of the event that caused the administrative action, is effected, or a determination is made that no disciplinary action will be taken.

1620.15 If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provisions of this chapter, any annual leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively.

**1621 - 1629 (RESERVED)**

**1630 APPLICABILITY: GRIEVANCES**

1630.1 Except for an employee excluded by subsection 1630.2 below, sections 1630 through 1637 of this chapter shall apply to any of the following:

(a) An employee in the Career or Excepted Services;

(b) An Educational Service employee in the Office of the State Superintendent of Education;

(c) An applicant for employment; or

(d) A former employee.

1630.2 The following employees are excluded from coverage under sections 1631 through 1637 of this chapter:

(a) An employee of the Board of Trustees of the University of the District of Columbia;

(b) An employee in the Legal Service;

(c) An employee in the Excepted Service appointed under the authority of sections 903 or 908 of the CMPA (D.C. Official Code § 1-609.03 (2006 Repl. & 2011 Supp.) or D.C. Official Code 1-609.08 (2006 Repl.));

(d) An employee in the Management Supervisory Service; or

(e) Any 905 series attorney not in the Legal Service.

**1631 MATTERS GRIEVABLE: GRIEVANCES**

1631.1 Persons covered under § 1630 may grieve any matter except the following:

(a) Any action implemented to comply with a decision by the Office of Employee Appeals, the Merit Systems Protection Board, an arbitrator of competent jurisdiction, the Office of the Inspector General, the Executive Office of the Mayor, the Office of Human Rights, the Commission on Human Rights, a court of competent jurisdiction, or any other agency authorized by law to mandate a particular action;

(b) Any action terminating an employee's temporary promotion that returns the employee to the position from which the employee was temporarily promoted or to a different position that is not at a lower grade or level than the position from which the employee was temporarily promoted;

(c) Expiration of an appointment with a specified time limit;

(d) Forfeiture of position due to failure to maintain bona fide District residency, or to meet the residency or domicile requirements, respectively, as provided in Chapter 3 of these regulations;

(e) Termination or discipline of an employee serving a probationary period as provided in Chapter 8 of these regulations;

(f) The return or assignment to the position from which promoted or to an equivalent position of an employee who does not successfully complete a supervisory probationary period pursuant to Chapter 8 of these regulations;

(g) Termination or discipline prior to the expiration date of a temporary appointment;

(h) Voluntary action initiated by, or at the request of, the employee;

(i) Conversion of any position to the Management Supervisory Service or the Excepted Service;

(j) Reduction of an employee's rate of pay from an erroneous rate;

(k) Termination of pay retention, as that term is defined in Chapter 11 of these regulations, by action in accordance with reclassification procedures or reduction-in-force procedures pursuant to, respectively, Chapters 11 and 24 of these regulations;

(l) A decision declining to waive repayment of an erroneous payment under D.C. Official Code § 1-629.01.

(m) Termination of a term promotion upon completion or termination of the assigned project, and the return of the employee to the position from which promoted or to a different position of equivalent grade and pay;

(n) An action implemented to comply with any law, rules or regulations established under the District of Columbia Administrative Procedure Act;

(o) Any other matter for which no District government agency has the power or authority to provide the remedy sought or an equivalent remedy;

(p) Designation as a "management employee" or a discretionary decision to grant or not grant any retreat from the Management Supervisory Service to another service pursuant to D.C. Official Code § 1-609.54;

(q) An allegation of unlawful discrimination, or any other matter within the jurisdiction of the Office of Human Rights;

(r) An allegation of an unfair labor practice, or any other matter required to be decided by the Public Employee Relations Board;

(s) A final agency decision which, pursuant to D.C. Official Code § 1-606.03(a), may be appealed to the Office of Employee Appeals;

(t) A grievance required to be submitted through the grievance procedures contained in a collective bargaining agreement covering the employee as provided in §§ 1632.2 and 1632.3, or through a procedure pursuant to § 1632.5;

(u) Non-selection for any competitive or non-competitive appointment or promotion from a group of candidates who were properly qualified, ranked, or certified;

(v) Performance evaluations conducted under the provisions of Chapter 14 of the D.C. personnel regulations, under which employees may seek review of the performance evaluation;

(w) The application or coverage of the Fair Labor Standards Act;

(x) A prior grievance dismissed with prejudice; or

(y) The disallowance of an employee's representative pursuant to this chapter; or

## 1632 GENERAL: GRIEVANCES

1632.1 The informal presentation by employees of concerns and grievances is encouraged and shall be reasonably accommodated by management. The provisions of this chapter do not control informal presentation by employees of concerns and grievances.

1632.2 Any grievance resolution process negotiated between the District of Columbia and a labor organization shall take precedence over the provisions of this chapter for employees in a bargaining unit represented by a labor organization, to the extent that there is a difference.

1632.3 If an employee is authorized to choose between the negotiated grievance process set forth in a collective bargaining agreement and the grievance process provided in these rules, the employee may, at his or her discretion, do either of the following:

(a) Grieve through the negotiated grievance procedure; or

(b) File a disciplinary grievance as provided in these rules.

1632.4 An employee shall be deemed to have elected his or her remedy pursuant to § 1632.3 when the employee files a grievance under the provisions of this chapter or files a grievance in writing in accordance with the provisions of the negotiated grievance procedure applicable to the parties, whichever event occurs first. This section shall not be construed to toll any deadlines for filing.

1632.5 Any system for grievance resolution involving uniformed members of the Metropolitan Police Department or the Fire and Emergency Medical Services Department provided for by law, or by regulations of the respective departments in effect on the effective date of these regulations, including but not limited to procedures involving trial boards, shall take precedence over the provisions of this chapter relating to grievances, to the extent that there is a difference.

1632.6 An employee, former employee, or applicant for employment may present a grievance to the agency with authority to provide the remedy. Employing agencies, or the Office of Personnel in the case of an applicant for employment in an agency subordinate to the Mayor, shall be responsible for referring the grievance to the appropriate agency.

1632.7 A grievance by an applicant for employment shall be limited to a request for non-monetary relief in matters involving the application of the merit staffing process.

## 1633 AGENCY RESPONSIBILITY: GRIEVANCES

1633.1 Each agency head shall:

(a) Ensure prompt handling of grievances of employees, former employees, and applicants for employment pursuant to this chapter;

(b) Reasonably make the grievance system known to all employees;

(c) Provide for mediation or other non-binding alternative dispute resolution mechanism as part of the grievance system;

(d) Ensure that copies of the grievance procedures and alternative dispute resolution procedures are made available upon request to an employee, former employee or applicant for employment; and

(e) Ensure each grievant or witness freedom from restraint, coercion, interference, discrimination, or reprisal by any official of the agency for the act of filing or supporting a grievance.

## 1634 OFFICIAL TIME: GRIEVANCES

1634.1 If otherwise in a duty status, each employee submitting a grievance under the provisions of this chapter may be granted a reasonable amount of official time for preparation or presentation of the grievance.

1634.2 Each absence from duty in excess of the time granted in accordance with § 1634.1 shall be charged in accordance with Chapter 12 of these regulations.

## 1635 TIME LIMITS FOR FILING: GRIEVANCES

1635.1 Except as provided in § 1635.2, an employee, former employee or applicant for employment filing a grievance under this chapter shall present the grievance within forty-five (45) days, not including Saturdays, Sundays, and legal holidays, after the date that he or she knew or should have known of the act or occurrence that is the subject of the grievance.

1635.2 An employee may file a disciplinary grievance or a grievance of enforced leave that lasts less than ten (10) days, within ten (10) days of receipt of the final decision on the corrective action or the enforced leave.

## 1636 PROCEDURE: GRIEVANCES

1636.1 A grievance shall be in writing, shall contain sufficient detail to identify and clarify the basis for the grievance, and shall specify the relief requested.

1636.2 Except as provided in § 1636.3, a grievance must be presented to an official (hereinafter referred to as the "grievance official" who has the authority to grant the relief sought.

1636.3 A grievance of enforced leave or a disciplinary grievance shall be presented to the grievance official, who shall be an official who is at a higher administrative level than the deciding official on such actions; however, when the deciding official was an agency head, the agency head shall designate an official from another agency as the grievance official.

1636.4 The grievance official shall attempt to resolve a grievance through the mediation or non-binding alternative dispute resolution mechanism, or any other similar procedure. If the grievance is resolved, the parties may agree to dismiss the action.

1636.5 In the case of a grievance of enforced leave or a disciplinary grievance, the grievance official shall either sustain, reduce, or dismiss the penalty imposed by the final decision, but in no event shall increase the penalty.

1636.6 The grievance official shall inform the grievant, in writing, of the decision on the grievance.

1636.7 If the relief requested has been denied in whole or in part, the grievant shall be advised of the basis for the denial.

1636.8 The decision of the grievance official to deny the grievance, in whole or in part, shall be the final administrative decision, and shall not be subject to further administrative appeal.

1636.9 The decision on the grievance shall be issued not more than thirty (30) workdays from the date the grievance was filed.

**1637 DISMISSAL: GRIEVANCES**

1637.1 An agency may dismiss a grievance with or without prejudice at the grievant's request.

1637.2 An agency shall dismiss a grievance with prejudice in any of the following instances:

(a) Upon termination of the employee's employment with the agency, unless the personal relief sought may be granted after termination of employment;

(b) Upon the death of the employee or former employee, unless the grievance involves a question of compensation; or

(c) For failure to pursue, if the grievant does not furnish required information or duly proceed with the advancement of his or her grievance.

1637.3 The procedures used to permit and process a grievance and the dismissal of a grievance of an employee or former employee under the provisions of § 1637.2(a), (b), or (c) shall be the final agency decision, and shall not be subject to further administrative review.

**1699 DEFINITIONS: GENERAL DISCIPLINE AND GRIEVANCES**

1699.1 When used in this chapter, the following terms shall have the meaning ascribed:

**Administrative leave** – an excused absence with full pay and benefits that is not charged to annual leave, sick leave, or leave without pay.

**Admonition** – any written communication from a supervisor or manager to an employee, up to but excluding an official reprimand, that advises or counsels the employee about conduct or performance deficiencies, and the possibility that future violations will result in corrective or adverse action.

**Adverse action** – a suspension of ten (10) days or more, a reduction in grade, or a removal.

**Agency** – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term "agency" shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency, and shall include boards and commissions as described in D.C. Official Code § 1-603.01(13).

**Corrective action** – an official reprimand or a suspension of less than ten (10) days.

**Covered supervisor** – a Career Service employee covered under the provisions of section 1600.2 of this chapter who occupies a supervisory position.

**Days** – calendar days, unless otherwise specified.

**Deciding official** – the individual who issues a final decision on a disciplinary action in accordance with section 1613 of this chapter, or enforced leave action, in accordance with section 1620 of this chapter.

**Disciplinary action** – a corrective or adverse action taken against an employee.

**Disciplinary grievance** – a request for personal relief concerning the final decision on a corrective action, as provided in § 1617.

**Enforced leave** – involuntary placement of an employee on annual leave, compensatory time authorized and recorded on the appropriate time and attendance reports, or leave without pay, as applicable, as provided in section 1620 of this chapter.

**Grievance** – any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees, including but not limited to a request by an employee for relief concerning a final written decision that involuntarily placed him or her on enforced leave that lasts less than ten (10) days, as provided in section 1620.10 (c) of this chapter; or a request by an applicant for employment for non-monetary relief in matters involving the application of the merit staffing process; or a request by a former employee for relief in a matter of concern or dissatisfaction that is subject to the control of the District government, and that is related to an employment condition, as provided in section 1636 of this chapter. This definition does not include adverse actions resulting in removals, suspension of ten (10) days or more, reductions in grade, or enforced leave actions that last ten (10) days or more; reductions in force; or classification matters, nor is it intended to restrict matters that may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees.

**Grievance official** – the individual who issues a final decision on a grievance, in accordance with § 1636.

**Hearing officer** – the official, other than the proposing official, who has no direct and personal knowledge (other than hearsay that does not affect impartiality) of the matters contained in a proposed removal action or a summary removal notice, and is designated by the agency head who, pursuant to § 1612, reviews the proposed removal action or the summary removal notice, as applicable, and the employee's response, if there is one, conducts a hearing where appropriate, and makes recommendations regarding the proper course of action.

**Nexus** – a reasonable connection between the conduct of an employee and the ability of the employee to perform his or her job or the ability of the employing agency to perform effectively, determined in accordance with sections 1606.4 and 1606.5 of this chapter.

**Official reprimand** – a final decision letter that is placed in the employee=s Official Personnel Folder, and that censures an employee.

**Personnel authority** – an individual or entity with the authority to administer all or part of a personnel management program as provided in D.C. Official Code § 1-604.01 et seq.

**Proposing official** – an agency head or an official authorized by the agency head to issue a written notice of proposed corrective or adverse action or enforced leave.

**Reduction in grade** – an involuntary action that changes an employee, while continuously employed, to a grade level with a lower representative rate.

**Relief** – a specific remedy requested by and directly benefitting the grievant, but may not include a request for disciplinary action against another employee.

**Removal** – the involuntary separation of an employee from District government service.

**Summary removal** – an action taken to immediately separate an employee pursuant to § 1616.

**Summary suspension** – an action to immediately suspend an employee pursuant to § 1615.

**Suspension** – the temporary placing of an employee in a non-duty, non-pay status.

**Temporary appointment** – a Career Service appointment effected as provided in Chapter 8 of these regulations that has a specific time limitation of one (1) year or less.

**Term appointment** – a Career Service appointment effected as provided in Chapter 8 of these regulations that has a specific time limitation in excess of one (1) year, but not exceeding four (4) years, unless extended by the personnel authority.

**With prejudice** – the withdrawal or dismissal of a disciplinary action that prevents the alleged charge or charges from being re-filed; or in the case of a grievance, the dismissal of the grievance by the agency that prevents the employee from resubmitting the grievance.

**Without prejudice** – the withdrawal or dismissal of a disciplinary action that does not prevent the alleged charge or charges from being re-filed; or in the case of a grievance, the dismissal of the grievance by the agency at the request of the employee.

## *D.C. Register* Updates for Chapter 16 of the D.C. Personnel Regulations, General Discipline and Grievances

The following *D.C. Register* citations identify when a given section(s) of Chapter 16, General Discipline and Grievances, of Title 6 of the District of Columbia Municipal Regulations, was amended. Following the publication in the *D.C. Register* of subsequent final rulemaking notices, this Addendum will be updated accordingly.

For the convenience of DPM subscribers, the Addendum identifies amendments on a section-by-section basis, as well as the page in this DPM Transmittal impacted by the amendment(s) occurred, and provides brief comments on the amendment(s) accomplished.

| ***D.C. Register* Date** | **Section(s)** | **Change(s) Reflected on Page(s)** | **Comments** |
|---|---|---|---|
| 34 DCR 1845 (3/20/87) | Sections 1601 through 1618; 1631 through 1641 | Pages 1- 37 (DPM Transmittal No. 1 (undated)) | |
| 37 DCR 8297 (12/21/90) | Sections 1601, 1603, 1618 | Pages 3, 5, 6, 19, 22 (DPM Transmittal No. 22) | |
| 46 DCR 7208 (9/10/99) | Section 1603 | DPM Transmittal not issued | Section 1603, *Definition of Cause*, amended in chapter |
| 47 DCR 7094 (9/1/00) | Sections 1600 through 1637; and 1699 | Pages 1-19 Entire Chapter (DPM Transmittal No. 63) | These rules implemented the new general discipline and grievances provisions pursuant to D.C. Official Code § 1-616.51 *et seq.* Name of chapter changed from "Adverse Action and Grievances" to "General Discipline and Grievances;" Table of Appropriate Penalties **removed** from the chapter |
| 49 DCR 11781 (12/27/02) | Sections 1601, 1603, 1606, 1612, 1614, 1615, 1616, 1617, 1630, 1631, 1699 | Pages 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19 (DPM Transmittal No. 92) | Deleted provision stating that at-will employees may be subjected to any or all of the measures in the chapter, etc.; added a provision that the final decision in the case of summary suspension/summary removal actions shall be issued not later than 45 days from the date of delivery of the summary suspension/summary removal notice |
| 50 DCR 3185 (4/25/03) | Section 1631 | Page 15 (DPM Transmittal No. 97) | Clarifies that the non-adoption of a suggestion or the failure to receive an incentive award are not grievable matters |
| 51 DCR 7951 (8/13/04) | Sections 1600, 1604, 1605, 1608, 1614, 1615, 1616, 1617, 1618, 1619, 1631, 1634, 1635, 1699 | Pages 1, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 19, 20 (DPM Transmittal No. 114) | Among other changes, the rules informed covered employees of their right to file an appeal with the OEA for any enforced leave that lasts 10 or more days |
| 53 DCR 3974 (5/12/06) | Section 1601 | Pages 1, 2 (DPM Transmittal No. 144) | Amended section 1601.5 of the chapter to add the provisions of Title V of the Omnibus Public Safety Agency Reform Amendment Act of 2004 |

| *D.C. Register* Updates for Chapter 16 continued | | | |
|---|---|---|---|
| ***D.C. Register* Date** | **Section(s)** | **Change(s) Reflected on Page(s)** | **Comments** |
| 55 DCR 1775 (2/22/08) | Sections 1600, 1601, 1603, 1604, 1606, 1608, 1619, 1620, 1699 | Pages 1, 3, 4, 5, 6, 8, 14-22, and 26-28 (DPM Transmittal No. 161) | Addition of a new section 1604.3 to the chapter to provide that a proposing official may attempt to resolve a proposed corrective action of a suspension of less than 10 days by conducting a Resolution Conference; changes to section 1603.3 to modify the definition of the causes for which disciplinary action may be taken; and *Table of Appropriate Penalties* added to the chapter (section 1619) |
| 59 DCR 008398 (7/13/12) | Sections 1600.2, 1630.1 and 1630.2 | Pages 1, and 22 | The rules amended subsections 1600.2, 1630.1 and 1630.2 to add the Educational Service employees in the Office of the State Superintendent of Education. |