

PART I
D.C. PERSONNEL REGULATIONS
CHAPTER 16
CORRECTIVE AND ADVERSE ACTIONS; ENFORCED LEAVE; AND GRIEVANCES
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D.C. PERSONNEL REGULATIONS

1600 APPLICABILITY

- 1600.1 This chapter establishes a progressive approach for addressing District of Columbia government employee performance and conduct deficits, pursuant to chapter XVI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, as amended (D.C. Law 2-139; D.C. Official Code §§ 1-616.51 through 1-616.54).
- 1600.2 The provisions of this chapter apply to all District government employees except the following:
- (a) Employees serving in a probationary period;
 - (b) Employees serving in a temporary appointment in the Career Service;
 - (c) Employees organized under the Office of the Chief Financial Officer;
 - (d) Employees of the Board of Trustees of the University of the District of Columbia;
 - (e) Attorneys in the Legal or Senior Executive Attorney Service;
 - (f) Employees in the Executive Service; and
 - (g) Except as provided in § 1600.3, employees in the Management Supervisory Services.
- 1600.3 The rules established in this chapter shall be relied upon as a guide for Management Supervisory Services (MSS) when a disciplinary action is taken for cause.
- (a) For purposes of this chapter, employees in MSS are considered “exempt” employees and § 1625 does not apply to these employees.
 - (b) In accordance with D.C. Official Code § 1-609.54(a), MSS positions are at-will appointments. Nothing in this chapter shall be construed as conferring any substantive rights to MSS employees.

1601 POLICY

- 1601.1 The policies outlined in this section apply to employees and their supervisors, personnel authorities and agency heads, and form the basis for the standards governing this chapter.

- 1601.2 Each supervisor has a duty and responsibility to ensure that employees are aware of the established performance and conduct standards (“standards”) applicable to their role and function and the consequences of not meeting those standards. Whenever such standards are not met, supervisors have an affirmative obligation to provide the employee necessary guidance and training to meet these standards and, when appropriate, to take corrective or adverse action pursuant to this chapter.
- 1601.3 Each employee has the duty and the responsibility to be aware of and abide by the existing rules and policies. Each employee also has the responsibility to perform his or her duties to the best of his or her ability and to the standards established by management and his or her job description.
- 1601.4 The District of Columbia takes a positive approach toward employee management to achieve organizational effectiveness by using a progressive system to address performance and conduct issues.
- 1601.5 The District’s progressive system typically includes the following:
- (a) Verbal counseling;
 - (b) Reprimand;
 - (c) Corrective action; and
 - (d) Adverse action.
- 1601.6 Strict application of the progressive steps in §§ 1601.5 and 1610 may not be appropriate in every situation. Therefore, management retains the right to evaluate each situation on its own merits and may skip any or all of the progressive steps. However, deviation from the progressive disciplinary system is only appropriate when consistent with §§ 1606 and 1607.
- 1601.7 Each agency head and personnel authority has the obligation to and shall ensure that corrective and adverse actions are only taken when an employee does not meet or violates established performance or conduct standards, consistent with this chapter.

1602 EMPLOYEE RIGHTS

- 1602.1 Employees enjoy the protections established in this chapter. No employee may be reprimanded, suspended, demoted, placed on enforced leave, or removed without cause, as defined in this chapter.
- 1602.2 Employees who are subject to a recognized labor agreement shall enjoy the additional benefits of their collective bargaining agreement. Conflicts between such agreements and this chapter shall be resolved as follows:

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- (a) The provisions of any labor agreement shall be construed as complementary to the provisions of this chapter;
- (b) The provisions of any labor agreement shall be construed as to give effect to the provisions of this chapter;
- (c) However, where a specific provision of a labor agreement cannot be reconciled with a specific provision of this chapter, the labor agreement shall control with respect to that provision.

1602.3 Corrective and adverse actions taken against employees are subject to the following limitations:

- (a) A corrective or adverse action shall be commenced no more than ninety (90) business days after the agency or personnel authority knew or should of known of the performance or conduct supporting the action;
- (b) When there is an investigation involving facts or circumstances germane to the performance or conduct supporting a corrective or adverse action, the time limit established in paragraph (a) shall be tolled pending any criminal investigation by the Metropolitan Police Department or any other law enforcement agency with jurisdiction within the United States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General; or, pending any investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, or the Office of Police Complaints.
- (c) Except in matters involving employees of the Metropolitan Police Department and Fire and Emergency Medical Services Department, the time limit imposed in paragraph (a) may be suspended by the personnel authority for good cause and shall be suspended pending any related investigation by the Board of Ethics and Government Accountability.

1603 [RESERVED]

1604 [RESERVED]

1605 MISCONDUCT; PERFORMANCE DEFICITS

1605.1 District employees are expected to demonstrate high standards of integrity, both on and off the job, guided by established standards of conduct and other Federal and District laws, rules and regulations. When established standards of conduct are violated or performance measures are not met, or the rules of the workplace are disregarded, corrective action or adverse action is warranted to encourage conformity to acceptable behavioral and performance standards or to protect operational integrity.

1605.2 Taking a corrective or adverse action against an employee is appropriate when the employee fails to or cannot meet identifiable conduct or performance standards, which

adversely affects the efficiency or integrity of government service. Before initiating such action, management shall conduct an inquiry into any apparent misconduct or performance deficiency (collecting sufficient information from available sources, including when appropriate the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation.

1605.3 Whether an employee fails to meet performance standards shall be determined by application of the provisions set forth in Chapter 14.

1605.4 Though not exhaustive, the following classes of conduct and performance deficits constitute cause and warrant corrective or adverse action:

- (a) Conduct prejudicial to the District of Columbia government, including:
 - (1) Conviction of any felony;
 - (2) Conviction of any criminal offense that is related to the employee's duties or his or her agency's mission;
 - (3) Conduct that an employee should reasonably know is a violation of law or regulation; and
 - (4) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects the employing agency's mission or has an otherwise identifiable nexus to the employee's position.
- (b) False Statements, including:
 - (1) Deliberate falsification of an application for employment or other personal history record by omission of a material fact or by making a false entry;
 - (2) Misrepresentation, falsification, or concealment of material facts or records in connection with an official matter;
 - (3) Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record; and
 - (4) Knowingly and willfully reporting false or misleading information or purposely omitting material facts, to any supervisor.
- (c) Fiscal irregularities;
- (d) Failure or refusal to follow instructions;
- (e) Neglect of duty;
- (f) Attendance-related offenses, including:

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- (1) Unexcused tardiness;
- (2) Unauthorized absence; and
- (3) Falsification of official records concerning attendance (*i.e.* timesheets, overtime requests, etc.).
- (g) Using or being influenced by intoxicants while on duty;
- (h) Unlawful possession of controlled substances and paraphernalia;
- (i) Safety and health violations;
- (j) Discriminatory practices;
- (k) Sexual misconduct;
- (l) Prohibited personnel practices;
- (m) Failure to meet performance standards; and
- (n) Inability to carry out assigned responsibilities or duties.

1605.5 An employee of the Department of Corrections, Department of Youth Rehabilitation Services, or the Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:

- (a) The employee engages in any act or omission that constitutes a criminal offense; or
- (b) There is any credible evidence that the employee unlawfully used a controlled substance.

1606 ESTABLISHING APPROPRIATE ACTION

1606.1 After establishing a sufficient basis for taking action (*i.e.*, evidence to support the allegation(s); a nexus between the conduct or performance at issue and the employee's job or the agency's mission), managers must determine the appropriate action for the employee's conduct or performance deficits.

1606.2 For all agency actions managers shall be prepared to demonstrate that the following factors were considered:

- (a) The nature and seriousness of the misconduct or performance deficit, and its relationship to the employee's duties, position, and responsibilities, including

whether the offense was intentional, technical or inadvertent; was committed maliciously or for gain; or was frequently repeated;

- (b) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (c) The employee's past disciplinary record;
- (d) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (e) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- (f) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (g) Consistency of the penalty with the table of illustrative penalties (§ 1607);
- (h) The notoriety of the offense or its impact upon the reputation of the agency or the District government;
- (i) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (j) Potential for the employee's rehabilitation;
- (k) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (l) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

1606.3 All of these factors shall be considered and balanced to arrive at the appropriate remedy. While not all of these factors may be deemed relevant, consideration should be given to each factor based on the circumstances.

1606.4 The analysis of the factors above shall be included in any final agency decision on adverse action.

1607 TABLE OF ILLUSTRATIVE ACTIONS

1607.1 Once it is established that an employee has failed to meet performance or conduct standards, which requires corrective or adverse action, a supervisor or manager must determine the appropriate action based on the circumstances.

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1607.2 The illustrative actions in the following table are not exhaustive and shall only be used as a guide to assist managers in determining the appropriate agency action. Balancing the totality of the relevant factors established in § 1606.2 can justify an action that deviates from those outlined in the table.

(a)	NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
	Conduct Prejudicial to the District Government		
	(1) Conviction of any felony.	Removal	
	(2) Conviction of any criminal offense that is related to the employee's duties or his or her agency's mission.	Removal	
	(3) Indictment or charge of any felony or a criminal offense that is related to the employee's duties or his or her agency's mission.	Enforced leave pending criminal prosecution.	
	(4) On-duty conduct that an employee should reasonably know is a violation of law or regulation.	Reprimand to Removal	Removal
	(5) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position.	Counseling to 30-day suspension	15-day suspension to Removal
	(6) Concealing, removing, mutilating, altering, or destroying government records required to be kept by statute, regulation, Mayor's Order, document hold or subpoena, or other similar requirements.	Reprimand to Removal	14-Day Suspension to Removal
	(7) Malicious or intentional damage to or loss of District owned or leased property.	Suspension to Removal	14-Day Suspension to Removal
	(8) Using public office for significant private gain.	Removal	

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NATURE OF CIRCUMSTANCES		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(9)	Unethical or improper use of official authority or credentials.	Counseling to Removal	Removal
(10)	Unauthorized disclosure or use of (or failure to safeguard) information protected by statute or regulation or other official, sensitive or confidential information.	Counseling to Removal	Removal
(11)	Obtaining a direct or indirect financial interest that an employee should reasonably expect to be in conflict or appear to be in conflict with his or her official duties and responsibilities.	Reprimand to Removal	Removal
(12)	Use of (or authorizing the use of) District owned or leased property, services or funds for inappropriate or non-official purposes.	Counseling to Removal	Removal
(13)	Use of (or authorizing the use of) District owned or leased vehicles such as cars, vans, trucks, buses, aircraft, boats or any other motor vehicle for use other than official purposes.	15-Day Suspension to Removal	Removal
(14)	Unauthorized use, removal or possession of an item of value belonging to another.	Counseling to Removal	Removal
(15)	Assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property or while on duty.	14-Day Suspension to Removal	30-Day Suspension to Removal
(16)	Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay.	Counseling to 15-Day Suspension	5-Day Suspension to Removal
(17)	Failure to timely and properly pay any debts to the District government.	Reprimand to 14-Day Suspension	1-Day Suspension to Removal

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NATURE OF CIRCUMSTANCES		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(18)	Gambling while on duty or on District government property.	Counseling to Removal	Removal
(19)	Participating in a strike, work stoppage, slowdown, sickout or similar activity against the District government.	Removal	
(b) False Statements / Records --			
(1)	Deliberate falsification of a material item on an application for employment, or other personal history record by omission or by making a false entry.	14-Day Suspension to Removal	Removal
(2)	Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations	Reprimand to Removal	Removal
(3)	Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record.	Counseling to Removal	Removal
(4)	Knowingly and willfully reporting false or misleading material information, or purposely omitting material facts, to any superior.	7-Day Suspension to Removal	Removal
(c) Fiscal Irregularities --			
(1)	Knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).	Suspension to Removal	Removal
(2)	Unauthorized and/or improper use of property, funds, or any other thing of value coming into an employee's custody as a result of employment.	Counseling to Removal	Removal

NATURE OF CIRCUMSTANCES		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(3)	Failure to properly account for or make proper distribution of any property, or any other thing of value coming into an employee's custody as a result of employment.	Suspension to Removal	Removal
(4)	Concealment of (or failing to report) missing, lost or misappropriate funds, or other fiscal irregularities.	Reprimand to Removal	14-Day Suspension to Removal
(d) Failure/Refusal to Follow Instructions -			
(1)	Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions.	Counseling to Removal	5-Day Suspension to Removal
(2)	Deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions.	3-day Suspension to Removal	14-Day Suspension to Removal
(3)	Failure to submit required statement of financial interests and outside employment.	Counseling to 3-Day Suspension	5-Day Suspension to Removal
(e) Neglect of Duty --			
	Careless or negligent work, general negligence, loafing, sleeping or dozing on-duty, wasting time, and conducting personal business while on duty.	Counseling to Removal	5-Day Suspension to Removal
(f) Attendance Related Offenses --			
(1)	Unexcused tardiness, including delay in:	Counseling to 1-Day Suspension	5-Day Suspension to Removal
	(a) Reporting at the scheduled starting time;		
	(b) Returning from lunch or break periods; and		

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NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(c) Returning from an authorized absence to a work station.		
(2) Unauthorized absence of one (1) workday or less, including leaving the work station without permission or before the end of the workday.	Counseling to 3-Day Suspension	3-Day Suspension to Removal
(3) Unauthorized absence of one (1) workday or more, but less than five (5) workdays.	Suspension to Removal	14-Day Suspension to Removal
(4) Unauthorized absence of five (5) workdays or more.	Removal	Removal
(g) Intoxicants – Alcohol and Spirits		
(1) Unauthorized use of intoxicants while on District Government property, including where official duties are performed.	Reprimand to Removal	30-Day Suspension to Removal
(2) Being under the influence of intoxicants when reporting to work or any time while on duty.	Suspension to Removal	30-Day Suspension to Removal
(3) Operating a government owned or leased vehicle (or a privately owned vehicle while on duty) while under the influence of intoxicants.	Removal	
(h) Controlled Substances/Paraphernalia --		
(1) Possession of an illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, on District government property or District government-controlled property, or on premises where official duties are performed.	5-Day Suspension to Removal	Removal

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NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(2) Use of an illegal drug or unauthorized controlled substance while on duty, on District government property or District government-controlled property, or on premises where official duties are performed.	14-Day Suspension to Removal	Removal
(3) Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.	14-Day Suspension to Removal	Removal
(4) Sale or distribution of an illegal drug or controlled substance.	Removal	
(5) Operating a government owned or leased vehicle (or privately-owned vehicle on official business) while under the influence of an illegal drug.	Removal	
(6) Interfering with, or refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample.	Removal	
(i) Safety and Health Violations --		
(1) Failure to report an accident and/or injury as required.	Counseling to Removal	14-Day Suspension to Removal
(2) Failure or refusal to wear/use required protective equipment (<i>e.g.</i> seat belts, earplugs, eye protection, etc.)	Counseling to 14-Day Suspension	14-Day Suspension to Removal
(3) Operating a District owned or leased vehicle (or privately owned vehicle while on official business) without a District or State driver's license.	Suspension to Removal	Removal

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NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(4) Failure or refusal to observe and/or enforce safety and health regulations or to perform duties in a safe manner.	Reprimand to Removal	5-Day Suspension to Removal
(j) Discriminatory Practices --		
(1) Improperly taking or failing to take an official action based on a classification protected under the D.C. Human Rights Act or the Civil Rights Act of 1964.	Reprimand to Removal	Removal
(2) Any reprisal or retaliation against an individual because of his or her involvement in the EEO complaint process.	10-Day Suspension to Removal	Removal
(3) Use of remarks or gestures that relate to and insult or denigrate an individual based on any actual or perceived trait or classification protected under the D.C. Human Rights Act or the Civil Rights Act of 1964.	Counseling to 15-Day Suspension	15-Day Suspension to Removal
(4) Negligent or insensitive conduct with respect to an individual relating to any actual or perceived trait or classification protected under the D.C. Human Rights Act or the Civil Rights Act of 1964.	Counseling to 5-Day Suspension	5-Day Suspension to Removal
(5) Failure of a supervisor to take appropriate action regarding allegations or findings of discriminatory practices.	5-Day Suspension to Removal	Removal
(k) Sexual Misconduct --		
(1) Sexual assault or abuse or attempted sexual assault or abuse.	Removal	
(2) Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal	30-Day Suspension to Removal

NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(3) Pressure for (or official action based on) sexual favors, including taking any action for or against an employee whether favorable or unfavorable, because of the granting of a sexual favor or the withholding of a sexual favor.	Removal	
(4) Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Counseling to 30-Day Suspension	14-Day Suspension to Removal
(l) Prohibited Personnel Actions --		
Abuse of authority or commission of a prohibited personnel action.	Suspension to Removal	Removal
(m) Performance Deficits --		
Failure to meet established performance standards;	Reassignment Reduced Grade Removal	
(n) Inability to carry out assigned duties		
Any circumstance that prevents an employee from performing the essential functions of his or her position, and for which no reasonable accommodation has been requested or can be made, unless eligible for leave protected under the D.C. Family Medical Leave Act.	Removal	

1608 [RESERVED]

1609 [RESERVED]

1610 PROGRESSIVE DISCIPLINE

1610.1 The District strives to employ highly qualified and motivated individuals who successfully perform their job duties, without the need for disciplinary action. To this end, the District uses a progressive disciplinary system when an employee's conduct fails to meet expectations. The District's progressive system includes the following steps:

- (a) Verbal counseling;
- (b) Reprimand;
- (c) Corrective action; and
- (d) Adverse action.

1610.2 Every situation is different and in each case management must consider a number of factors when determining an appropriate action to take. This includes, among others, consideration of the seriousness of the situation, the employee's past disciplinary history, and the employee's work history. When appropriate, and consistent with §§ 1606 and 1607, management may skip any or all of the progressive steps outlined in § 1610.1.

1611 VERBAL COUNSELING

1611.1 As an employer, the District and its managerial staff have an obligation to create a fair, supportive, and transparent work environment that prevents the need for disciplinary action.

1611.2 However, when employees engage in misconduct or fail to meet performance standards, steps shall be taken to gather the relevant facts, correctly identify the problem(s), and then decide whether further action is warranted.

1611.3 As a first step within the continuum of progressive discipline, management should attempt to correct misconduct and performance deficits. When appropriate to the circumstances, employees shall first be counseled concerning misconduct. Performance matters shall be progressively addressed as set forth in Chapter 14.

1611.4 When counseling the employee is deemed appropriate to the circumstances the supervisor or manager shall:

- (a) Articulate the relevant conduct standard(s);
- (b) Explain how the employee has failed to meet those standards;
- (c) Explain management's conduct expectations; and
- (d) Explain the potential consequences if those expectations are not met prospectively.

1611.5 Within five (5) days, supervisors shall follow-up verbal counseling with a letter (or e-mail) to the employee. The correspondence shall establish the date, time, and content of all verbal counseling described in this section, and shall restate the information contained in § 1611.4. Supervisors shall retain a copy of the correspondence for a

period of no less than two years, but it shall not be made a part of the official personnel file.

1611.6 While verbal counseling is a step within the disciplinary model, it is neither a corrective nor adverse action for purposes of this chapter.

1612 REPRIMANDS

1612.1 When counseling fails to correct conduct or performance issues, or where verbal counseling is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, a more formal response may be required. Within the progressive disciplinary model, this formal response is a reprimand and represents a corrective action.

1612.2 A reprimand is a written document issued by an employee's supervisor that identifies a specific conduct fault by an employee. At a minimum, a reprimand shall include:

- (a) A short narrative concerning the factual circumstances warranting the reprimand;
- (b) A description of the conduct standards at issue and how these standards were not met;
- (c) A brief narrative on how the employee should conduct himself or herself prospectively to alleviate the conduct fault;
- (d) The potential consequences if the conduct requirements are not met;
- (e) A notice informing the employee that he or she may submit a written response to the reprimand; and
- (f) Notification to the employee of his or her right to grieve the final decision pursuant to Sections 1626 through 1637, or pursuant to an applicable labor agreement.

1612.3 The employee against whom a reprimand is issued shall be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal shall provide a brief written statement that the employee refused to acknowledge receipt in writing, which shall be signed and dated by the witness.

1612.4 When an employee chooses to submit a written response to the reprimand, he or she must do so within ten (10) workdays of receipt of the reprimand. Such a response shall be in writing and submitted to the person issuing the reprimand. An employee's written response may clarify, expand on, or take exception to the statements or conclusions made in the reprimand. Once submitted, the response shall be maintained and treated as an attachment to the reprimand.

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- 1612.5 The official who issued the reprimand shall consider any written response submitted by the employee. The official may sustain, modify or rescind the reprimand, based on an employee's response. If the reprimand is modified, the modified reprimand shall be served and the employee given an opportunity to submit a supplemental response consistent with §§ 1612.2 through 1612.4.
- 1612.6 Unless modified or rescinded pursuant to § 1612.5, a reprimand shall be final upon receipt of an employee written response, or the expiration of the ten days specified in § 1612.4, whichever is later.
- 1612.7 A reprimand may be considered in establishing a corrective or adverse action, when the action is initiated within three (3) years of the reprimand.
- 1612.8 Nothing in this chapter shall preclude a management official from issuing admonitions. Admonitions shall not be maintained within the official personnel file.

1613 CORRECTIVE ACTIONS

- 1613.1 A corrective action is a reprimand, reassignment, or suspension of less than ten (10) workdays.
- 1613.2 When a corrective action is warranted, the agency shall –
- (a) Provide a notice of proposed action, in accordance with § 1618;
 - (b) Afford the employee an opportunity to respond, in accordance with § 1621;
 - (c) Provide a final decision on the proposed action, in accordance with § 1623; and
 - (d) If a corrective action is taken, notify the employee of his or her right to grieve the final decision pursuant to §§ 1626 through 1637, or pursuant to an applicable labor agreement.
- 1613.3 Immediately following the issuance of a notice of proposed corrective action for a suspension pursuant to § 1613.2(a), the proposing official may conduct a resolution conference with the employee and his or her union representative (if any).
- (a) Through a resolution conference, the proposing official and affected employee may agree to a suspension which is shorter in time than the suspension in the notice of proposed action, or a reprimand in lieu of suspension.
 - (b) To be valid and binding, any agreement reached between the proposing official and the employee shall be reduced to a written agreement, in which the employee voluntarily waives his or her right to file a grievance concerning any circumstances that give rise to the notice of proposed action under this chapter or pursuant to the provisions of a negotiated labor agreement.

- (c) The proposing official may defer the effective date of a proposed suspension by no more than five (5) days to accommodate the resolution conference process.
- (d) Statements concerning an agreement during the resolution conference process may not be used by any party as evidence or precedent in any other disciplinary action. Nevertheless, the outcome of a resolution conference may be considered in the future for purposes of progressive discipline.

1613.4 The use of resolution conferences shall be limited only to proposed suspensions of less than ten (10) days.

1614 ADVERSE ACTION

1614.1 Whenever a corrective action fails to improve a performance or conduct problem, or in the case when an employee cannot carry an essential duty of his or her employment, adverse action may be warranted.

1614.2 An adverse action shall be a suspension of ten (10) or more workdays, a reduction in grade, or removal.

1614.3 When an adverse action is warranted, the agency shall:

- (a) Provide a notice of proposed adverse action, in accordance with § 1618;
- (b) Afford the employee an opportunity to respond, in accordance with § 1621;
- (c) In the case of removal, provide for an independent review by a hearing officer, pursuant to § 1622;
- (d) Provide a final decision on the proposed adverse action, in accordance with § 1623; and
- (e) If an adverse action is taken, notify the employee of his or her applicable appeal rights.

1615 [RESERVED]

1616 SUMMARY ACTIONS

1616.1 An employee may be summarily suspended or removed from his or her position, notwithstanding §§ 1613 and 1614.

1616.2 An employee may be suspended or removed summarily when his or her conduct:

- (a) Threatens the integrity of District government operations;

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- (b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
- (c) Is detrimental to the public health, safety, or welfare.

1616.3 Any decision to take a summary action under this section must be approved in writing by the agency head. All such approvals must identify:

- (a) Sufficient facts relied upon by the agency head to support the actions;
- (b) The specific paragraph(s) of § 1616.2 established by those facts; and
- (c) The specific misconduct, consistent with § 1605, warranting suspension or removal.

1616.4 When the agency head is satisfied that the conditions of § 1616.2 are present, the agency may order the employee to immediately leave his or her duty station. Additionally, the agency may order the employee to stay away from any District government owned or occupied properties, to the extent reasonably necessary to ensure the safety of District employees and property, the integrity of government operations, and the public health, safety, and welfare

1616.5 When summary action is warranted, the agency shall:

- (a) Provide the employee with a notice of summary action, in accordance with § 1620;
- (b) Provide the employee an opportunity to respond, in accordance with § 1621;
- (c) Provide the employee with a final determination, in accordance with § 1623; and
- (d) Advise the employee of his or her applicable appeal rights.

1616.6 Except when the associated suspension or removal action is overturned by a tribunal of competent jurisdiction, an agency head's final decision on a summary action under this section shall be final and not subject to further review.

1617 ENFORCED LEAVE ACTION

1617.1 Enforced leave occurs when an employee is involuntarily placed in a non-duty leave status, which is neither a corrective nor adverse action for purposes of this chapter. This section sets forth the standards for an agency's implementation of an enforced leave action.

- 1617.2 For any period of enforced leave, the employee shall use any accrued leave, except sick leave, until exhausted. Thereafter, the employee will be held in a leave without pay status.
- 1617.3 An agency may place an employee on enforced leave when there is reliable evidence that he or she:
- (a) Utilized fraud in securing his or her appointment;
 - (b) Falsified officials records;
 - (c) Has been indicted on, arrested for, charged with, or convicted of a felony charge (including conviction following a plea of nolo contendere); or
 - (d) Has been indicted on, arrested for, or convicted of any crime that bears a relationship to his or her position.
- 1617.4 Notwithstanding § 1617.3(c), the Metropolitan Police Department may place uniformed members and the Department of Corrections may place a correctional officers on enforced leave when he or she has been arrested, charged, indicted or convicted of any crime irrespective of the relationship between the crime and the employee's duties and responsibilities.
- 1617.5 Any decision to place an employee on enforced leave under this section shall be approved in writing by the personnel authority. All such approvals shall:
- (a) Identify the evidence relied upon by the agency to support the action; and
 - (b) Identify the specific subparagraph(s) of § 1617.3 established by that evidence.
- 1617.6 Upon finding that the conditions described in § 1617.3 are met, the personnel authority shall place an employee on administrative leave for five (5) days prior to the effective date of the enforced leave action.
- 1617.7 When enforced leave is warranted, the agency shall –
- (a) Provide a notice of proposed action, pursuant to § 1618;
 - (b) Provide the employee an opportunity to respond in writing, pursuant to § 1621, orally, or both;
 - (c) Provide the employee a final determination, pursuant to § 1623; and
 - (d) If placed on enforced leave, advise the employee of his or her applicable appeal rights.

- 1617.8 Whenever an employee is placed on enforced leave:
- (a) The agency must initiate either corrective or adverse action based on the evidence supporting the enforced leave action; and
 - (b) The employee shall remain on enforced leave no longer than is required to reach a final determination on corrective or adverse action, or one hundred eighty (180) days, whichever is shorter.
- 1617.9 If the basis for placing an employee on enforced leave pursuant to this section does not result in corrective or adverse action, any annual leave or pay lost as a result of the enforced leave action shall be restored retroactively.
- 1617.10 The personnel authority may extend the time limit prescribed by § 1617.8(b) for good cause.
- 1618 NOTICES OF PROPOSED ACTION**
- 1618.1 Except in the case of a summary actions, described in § 1616, an agency contemplating a corrective, adverse, or enforced leave action shall provide the employee a notice of proposed action. Such notices shall be delivered to the employee:
- (a) No less than five (5) days prior to implementing an enforced leave action;
 - (b) No less than ten (10) days prior to implementing a corrective action; and
 - (c) No less than fifteen (15) days prior to implementing an adverse action.
- 1618.2 The notice of the proposed action shall inform the employee of the following:
- (a) The type of proposed action (corrective, adverse, or enforced leave);
 - (b) The nature of the proposed action (days of suspension or enforced leave, reduction in grade, reassignment, or removal);
 - (c) The specific performance or conduct at issue;
 - (d) How the employee's performance or conduct fails to meet appropriate standards; and
 - (e) The name and contact information of the anticipated deciding official, or if a removal action, the anticipated hearing officer for the administrative review.
- 1618.3 In addition to the information outlined in § 1618.2 the notice shall advise the employee of his or her right to:
- (a) Review any material upon which the proposed action is based;

- (b) Prepare a written response to the notice, as provided for § 1621;
- (c) Representation by an attorney or other representative; and
- (d) An administrative review in the case of a removal.

1618.4 The notice shall be approved and signed by a proposing official, who must be a manager within the employee's chain of command or a management official designated by the personnel authority.

1618.5 The material upon which the notice of proposed action is based, and which is necessary to support the reasons given in the notice, shall be assembled and provided to the employee along with the notice, unless impractical. If the materials cannot be provided at the time of notice, they shall be made available to the employee for his or her review, upon request.

1618.6 The notice of proposed actions and supporting materials shall be served upon the employee. Service shall be accomplished by delivering the notice and materials to the employee in person, or to the employee's address of record by a commercial courier that provides delivery tracking and confirmation information. However, service shall also be deemed proper upon a showing that the employee actually received delivery of the notice, irrespective of delivery method.

1618.7 For notices of proposed actions delivered in person, the employee to whom the notice is issued shall be asked to certify its receipt in writing. If the employee refuses to certify receipt, a brief descriptive written statement, signed by a witness to the refusal, may be used as evidence of service.

1618.8 For purposes of §§ 1618.6 and 1618.7, service shall be deemed effective when the employee has actual notice of the proposed actions.

1618.9 Except in the case of a summary action in § 1615, employees shall remain in an active duty status pending issuance of a final determination of the proposed action pursuant to § 1623.

1619 ADMINISTRATIVE LEAVE DURING NOTICE PERIODS

1619.1 Following the issuance of a notice of proposed corrective or adverse action pursuant to § 1618 of this chapter, an agency head, at his or her discretion, may place the employee on administrative leave pending a final determination in accordance with this section.

1619.2 Except as provided in §§ 1619.3 and 1619.4, an agency may place an employee on administrative leave for no more than ninety (90) calendar days.

1619.3 Prior to the expiration of the limit in § 1619.2 the agency head may make a written request for an extension of time to the personnel authority.

- 1619.4 The personnel authority may approve extensions of time in increments of no more than thirty (30) days when:
- (a) Returning the employee to duty would undermine the integrity of District government operations, threaten the safety of employees, or threaten the health, safety or welfare of the public; or
 - (b) The agency has been diligently pursuing a final decision and the delay is due to circumstances beyond the agency's control.

1619.5 When the time limits prescribed by this section are exhausted, the employee shall be returned to full duty pending a final agency decision.

1620 SUMMARY ACTION NOTICES

1620.1 Whenever an agency summarily removes or suspends an employee, it shall serve the employee with a notice of summary action within five (5) days. Service shall be accomplished pursuant to §§ 1618.6 and 1618.7.

1620.2 The notice shall inform the employee of the following:

- (a) The nature of the summary action;
- (b) The effective date of the summary action;
- (c) The specific conduct at issue;
- (d) How the employee's conduct fails to meet appropriate standards;
- (e) The specific paragraph(s) of § 1616.2 warranting summary action; and
- (f) The name and contact information of the deciding official, or if a removal, the hearing officer.

1620.3 In addition to the information outlined in § 1620.2, the notice of the proposed summary action shall advise the employee of his or her right to:

- (a) Review any material upon which the proposed summary action is based;
- (b) Prepare a written response to the notice of the proposed summary action, as provided for in § 1621;
- (c) Be represented by an attorney or other representative; and
- (d) An administrative review in the case of a removal.

1621 EMPLOYEE RESPONSES

- 1621.1 Whenever an employee is served a notice of proposed or summary action, he or she may submit a written response to the appropriate official identified in the notice. In the case of removals, the appropriate official shall be a hearing officer appointed pursuant to § 1622. Otherwise, the appropriate official shall be the deciding official.
- 1621.2 An agency head shall authorize an employee to use official time to prepare a written response to any notice of proposed action in the following amounts: a minimum of four (4) hours for proposed corrective actions and eight (8) hours for proposed adverse actions.
- 1621.3 Written responses must be received by the appropriate official according to the following schedule:
- (a) For enforced leave actions, within two (2) days of service;
 - (b) For corrective actions, within five (5) days of service; and
 - (c) For adverse actions, within ten (10) days of service.
- 1621.4 Upon application by the employee and a showing of good cause, the deciding official, or in the case of removal the hearing officer, may grant a reasonable extension of time to the limits prescribed by § 1621.3.
- 1621.5 The right to respond shall include the right to present evidence that the employee believes might affect the final decision on the proposed or summary action. Such evidence may include written statements of witnesses, affidavits, or documents or any other form or depiction of information.
- 1621.6 At the time of the response, an employee shall raise every defense, fact or matter in extenuation, exculpation, or mitigation that is relevant to the reasons for the proposed or summary action.

1622 ADMINISTRATIVE REVIEWS

- 1622.1 The personnel authority shall provide for an administrative review of a proposed or summary removal action against an employee, unless he or she is an exempt employee.
- 1622.2 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) Be a licensed attorney, if available;

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- (d) Be neither in the supervisory chain of command between the employee and the deciding official, nor a subordinate to the proposing official; and
- (e) Have no direct and personal knowledge of the matters contained in the proposed or summary removal action, aside from hearsay that does not affect impartiality.

1622.3 In conducting the administrative review, the hearing officer shall:

- (a) Review the notice of proposed or summary action, including any supporting materials; and
- (b) Review the employee's response, if applicable.

1622.4 A hearing officer's review of a proposed or summary removal action shall be limited to the notice and supporting materials and any written arguments and evidence submitted by the employee.

1622.5 Within thirty (30) days after receiving the employee's response, or the expiration of his or her time to respond, the hearing officer shall submit a written report and recommendation to the deciding official, and shall provide a copy to the employee.

1622.6 Upon request, the time limit in § 1622.5 may be extended by the personnel authority for good cause for no more than thirty (30) days.

1622.7 The hearing officer shall ensure that there are no substantive *ex parte* communications during the administrative review process. Any substantive inquiry or information sent by or to the hearing officer shall be served on the employee, the employee's representative (if any), and the agency representative.

1623 FINAL AGENCY DECISION

1623.1 The final agency decision relating to a corrective or adverse action against an employee shall be made by the deciding official, who shall be the agency head, or his or her designee. A proposing official may not serve as the deciding official for the same matter, except when the size of the agency mandates otherwise.

1623.2 In making the final decision, the deciding official shall:

- (a) Consider the notice of proposed or summary action and supporting materials, the employee's response (if any), and any report and recommendation of a hearing officer; and
- (b) Either sustain or reduce the proposed or summary action, remand the action to the proposing official with instructions for further consideration, or dismiss the action. A copy of any remand decision shall be served on the employee.

1623.3 The final determination shall be in writing, dated and signed by the deciding official.

- 1623.4 The final determination shall:
- (a) Provide a concise summary of the action(s) being taken and the effective date of the action(s);
 - (b) Succinctly enumerate each independent cause for which corrective or adverse action is being taken; specifications shall not be used in any final written decision;
 - (c) Provide for an independent corrective or adverse action for each enumerated cause, consistent with § 1623.1(b);
 - (d) Demonstrate reasoned consideration of the relevant factors set forth in § 1606.2 for each independent action; and
 - (e) Articulate the employee's appeal rights, as outlined in § 1625, if any.
- 1623.5 In addition to the information specified in § 1623.4 each final agency decision shall be accompanied by:
- (a) Copies of the materials relied upon by the agency in rendering its decision;
 - (b) For enforced leave of ten (10) or more days and adverse actions:
 - (1) A copy of the Rules of Procedure for the Office of Employee Appeals (OEA); and
 - (2) An OEA appeal form;
 - (c) A notice of the employee's right to elect between the remedies specified in § 1625; and
 - (d) A notice of the employee's right to be represented by an attorney or other representative authorized by law.
- 1623.6 The final decision shall be completed within forty-five (45) days of the latter of:
- (a) The expiration of the employee's time to respond;
 - (b) The agency's receipt of the employee's response (if any);
 - (c) The completion of the hearing officer's report—and recommendation, if applicable; or
 - (d) A date agreed to by the employee.
- 1623.7 The final agency decision shall be served on the employee in accordance with §§ 1618.6 and 1618.7.

- 1623.8 The time limit established in § 1623.6 may be extended by the personnel authority for good cause.
- 1623.9 A copy of the final agency decision shall be placed in the employee's official personnel file. If the decision incorporates a notice of proposed or summary action, in whole or in part, the notice of proposed or summary action shall be attached to the final agency decision before filing in the official personnel file.
- 1623.10 Except in the case of a removals, a final agency decision shall be retained by the personnel authority in the official personnel file for three (3) years unless sooner ordered withdrawn by the issuing official, the official's superiors or successors, a court of competent jurisdiction, an arbitrator of competent jurisdiction, the appropriate personnel authority, the Office of Human Rights, or pursuant to a settlement agreement.
- 1623.11 A final agency decision separating an employee from government service shall be a permanent record maintained by the personnel authority in the official personnel file.
- 1624 [RESERVED]**
- 1625 APPEAL RIGHTS**
- 1625.1 Except for exempt employees, an employee who disputes a final agency reprimand, corrective, adverse, or enforced leave action under this chapter may seek one (1) of the following remedies:
- (a) If the matter is covered by a grievance procedure negotiated between the District and a labor organization, the employee may elect to pursue a grievance in accordance with the applicable collective bargaining agreement;
 - (b) For enforced leave actions of less than ten (10) days and for corrective actions, the employee may elect to pursue a grievance within ten (10) days from the issuance date of the final agency action;
 - (c) For enforced leave actions of ten (10) or more days and adverse actions, the employee may elect to appeal the final agency action to the Office of Employee Appeals (OEA) within thirty (30) days of the effective date of the final agency decision; and
 - (d) For any other agency actions under this chapter, the employee may elect to pursue a grievance within forty-five (45) business days from the date of the alleged violation or final action, whichever is later.
- 1625.2 An employee may elect only one (1) of the remedies specified in § 1625.1. Whenever a labor organization acts on behalf of the employee, the employee shall be deemed to have made his or her election of remedy, irrespective of whether the employee consented to the election.

1625.3 Neither grievances nor appeals to OEA shall delay implementation of any final agency action under this chapter.

1626 GRIEVANCE POLICY AND APPLICABILITY

1626.1 The District of Columbia government maintains a grievance policy and procedure to allow for the prompt, fair and orderly resolution of grievances and complaints relating to District employment. The grievance procedures shall be applied to:

- (a) Provide procedural consistency across District agencies;
- (b) Ensure applicants and employees have access to procedures to address complaints and grievances timely, fairly, and without fear of reprisal; and
- (c) Resolve workplace issues efficiently and effectively.

1626.2 Except for the Mayor and members of the Council, the grievance policies and procedures established at §§ 1626 through 1635 apply to all applicants and employees of all District agencies except:

- (a) The District of Columbia Superior Court and Court of Appeals;
- (b) The District of Columbia Board of Education;
- (c) The University of the District of Columbia;
- (d) The District of Columbia Public Schools;
- (e) District boards and commissions; and
- (f) Advisory Neighborhood Commissions.

1626.3 Employees subject to a negotiated collective bargaining agreement may choose between any grievance procedure contained in the agreement and the grievance procedure outlined in §§ 1627 through 1637, but not both.

1627 MATTERS SUBJECT TO GRIEVANCE PROCEDURES

1627.1 An applicant or employee may grieve any agency action taken pursuant to this subtitle if:

- (a) A provision of this subtitle has been violated; and
- (b) The applicant or employee has suffered or will suffer harm as a result of that violation, which is neither trivial nor speculative.

1627.2 Notwithstanding § 1627.1, no applicant or employee may submit a grievance to an agency action under this subtitle if the action is:

- (a) Not subject to a grievance or appeal by law or regulation;
- (b) Taken to implement the lawful order of a court or other tribunal recognized by law; or
- (c) Agreed to by the applicant or employee.

1628 FILING A GRIEVANCE; TIME LIMITS

1628.1 All grievances shall be made using a grievance form provided by the Director of the District of Columbia Department of Human Resources (DCHR). DCHR shall maintain the grievance form on its internet website.

1628.2 Each grievance shall include the following:

- (a) The name, e-mail address, and phone number of the applicant or employee seeking the relief;
- (b) For employees, the name, e-mail address, phone number, and agency of his or her immediate supervisor;
- (c) The name of the agency at issue;
- (d) A concise written statement of facts, including dates, that establishes the alleged violation;
- (e) A written statement as to the applicant or employee's injury; and
- (f) The relief sought by the applicant or employee.

1628.3 For purposes of this chapter, grievance official means:

- (a) For applicants seeking employment in agencies under the authority of the Mayor, the Director of DCHR, or his or her designee;
- (b) For applicants seeking employment in District government agencies independent of the Mayor's authority, the independent agency head, or his or her designee; and
- (c) For employees, the employee's supervisor who has the authority to resolve the grievance and for whom there is no conflict of interest (typically the immediate supervisor or the immediate supervisor's immediate superior).

1628.4 Grievances of corrective actions and of enforced leave actions of less than ten (10) days shall be filed with the appropriate grievance official within ten (10) days of the issue date of the final decision.

- 1628.5 All other grievances shall be filed with the appropriate grievance official within forty-five (45) business days from the date of the alleged violation or the final action, whichever is later.
- (a) For applicants, the alleged violation occurs on the date the notification is issued to the applicant of the hiring decision, the date on which the applicant knew or should have known of the hiring decision, or the effective date of the selectee's appointment, whichever occurs first.
 - (b) For employees, the alleged violation occurs when the employee knew or should have known of the events or actions that are the basis for the alleged violation.
 - (c) A grievance shall be deemed to have been filed when actually received by the grievance official. The burden of establishing the date of receipt shall rest with the applicant or employee.
- 1628.6 Grievances may be filed with the grievance official by one of the following means:
- (a) By mail to the official's principal business address;
 - (b) By e-mail to the grievance official; or
 - (c) By hand delivery to the grievance official's principal business address.

1629 INITIAL GRIEVANCE REVIEW

- 1629.1 Upon receipt, the grievance official shall make a preliminary determination as to whether the grievance meets the criteria set forth in §§ 1627 and 1628.
- 1629.2 Within five (5) business days of receipt, the grievance official shall do one of the following:
- (a) Acknowledge receipt and begin processing the grievance pursuant to § 1630;
 - (b) Deny the grievance as being a matter not subject to review pursuant to § 1627;
 - (c) Deny the grievance as being untimely pursuant to § 1628.4; or
 - (d) Request the grievant to supply additional information required by § 1628.2.

1630 FIRST LEVEL GRIEVANCE REVIEWS

- 1630.1 Within five (5) days of acknowledging the grievance, the grievance official, or designee, shall interview the grievant and review the record.
- 1630.2 Unless mediation has already been attempted pursuant to § 1635, at the interview, the grievance official shall inform the grievant that he or she has the option of pursuing

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mediation. The grievant shall execute either a declination of mediation or a mediation agreement. If mediation is declined, the grievance official shall proceed with the initial grievance interview, in accordance with § 1630.3. If mediation is elected by executing a mediation agreement, mediation shall proceed in accordance with § 1634.

- 1630.3 During the interview, the grievance official, or designee, shall note the grievant's specific allegations, the facts supporting those assertions and the relief being sought by the grievant.
- 1630.4 The grievance official, or designee, shall interview the subject of the grievance and any additional witnesses deemed appropriate to the grievance. Following each interview, the grievance official shall summarize each interview in writing.
- 1630.5 Within five (5) days of interviewing the grievant, the grievance official, or designee, shall issue a first level grievance decision and report based on the totality of the facts.
- (a) If the grievance official finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.
 - (b) If the grievance official finds that the grievance is not substantiated by the facts, then the grievance shall be denied.
- 1630.6 Within five (5) days of the issuance of the first level grievance decision, a grievant may notify the grievance official in writing that he or she is not satisfied with the decision. The notification shall include any additional arguments and documents that support the grievant's position. Upon receipt of this notification, the grievance official shall proceed to the second level of grievance review.

1631 SECOND LEVEL GRIEVANCE REVIEWS

- 1631.1 At the second level of grievance review, the grievance shall be reviewed by a second level official in the grievant's chain of command who reports directly to the agency head. If the grievance official and the second level official are the same person, the grievance request for further review shall be treated as a notification under § 1631.6 and processed pursuant to § 1632.
- 1631.2 Within two (2) days of receiving the notification specified in § 1630.6, the grievance official shall forward all materials to the second level official for resolution. The materials forwarded shall include the grievance application, the grievance official's decision and report, any interview summaries, any records reviewed by the grievance official in rendering his or her decision, and the notification requesting second level review.
- 1631.3 In his or her discretion, and within no more than ten (10) days, the second level official may interview the grievant and any other individuals deemed necessary. An interview summary shall be created following any interview.

- 1631.4 After having completed any interviews, and any further investigation that may be deemed appropriate by the second level official, the second level official shall issue a second level grievance report and decision based on the totality of the facts.
- 1631.5 If the second level official finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.
- (a) If the second level official finds that the grievance is not substantiated by the facts, then the grievance shall be denied.
- (b) The second level grievance decision shall be issued no more than twenty-one (21) days following the second level official's receipt of the grievance and shall inform the grievant of his or her right to seek a final grievance review.
- 1631.6 Within five (5) days of the issuance of the second level grievance decision, a grievant may notify the original grievance official in writing that he or she is not satisfied with the decision and request a third level grievance review. Upon receipt of this notification, the grievance official shall proceed to the third level grievance review.

1632 THIRD LEVEL GRIEVANCE REVIEWS

- 1632.1 At the third level of grievance review, the grievance shall be reviewed by the agency head.
- 1632.2 Within two (2) days of receiving the notification specified in § 1631.6, the grievance official shall forward all materials to the agency head for resolution. The materials forwarded shall include the grievance application, the second level official's decision and report, any interview summaries, any records reviewed by the second level official in rendering his or her decision, and the notification requesting third level review.
- 1632.3 In his or her discretion, and within no more than ten (10) days, the agency head may interview the grievant and any other individuals deemed necessary. An interview summary shall be created following any interview.
- 1632.4 After having completed any interviews, and any further investigation that may be deemed appropriate by the agency head, the agency head shall issue a third level grievance report and decision based on the totality of the facts.
- 1632.5 If the agency head finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.
- 1632.6 If the agency head finds that the grievance is not substantiated by the facts, then the grievance shall be denied.

1632.7 The third level grievance decision shall be issued no more than twenty-one (21) days following the notification specified in § 1631.6 and shall inform the grievant of his or her right to seek a final review.

1632.6 Within five (5) days of the issuance of the third level grievance decision, a grievant may notify the original grievance official in writing that he or she is not satisfied with the decision and request a final review. Upon receipt of this notification, the grievance official shall proceed to the final grievance review.

1633 FINAL GRIEVANCE REVIEWS

1633.1 At the final level of grievance review, the grievance shall be reviewed and decided by the personnel authority. For purposes of this section, when the grievant is an employee of the Department of Human Resources, the personnel authority shall mean the City Administrator or his or her designee.

1633.2 Within two (2) days of receiving the grievance request for a final review, the grievance official shall forward all materials the agency received during the grievance process to the personnel authority.

1633.3 The personnel authority shall conduct a thorough records review of the grievance.

(a) If the personnel authority finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.

(b) If the personnel authority finds that the grievance is not substantiated by the facts, then the grievance shall be denied.

1633.4 The decision of the personnel authority shall be delivered to the agency and the grievant no more than thirty (30) days after receiving the grievance request. The decision of the personnel authority shall be final and not subject to any further grievance or appeal before any administrative body or court.

1634 GRIEVANCES UNDER COLLECTIVE BARGAINING AGREEMENTS

1634.1 Any valid negotiated grievance procedure established within a collective bargaining agreement shall supersede and replace the grievance procedures established in this chapter.

1635 MEDIATION

1635.1 Mediation shall be initiated by the grievant executing and presenting the grievance official with a mediation agreement, pursuant to § 1630.2. The mediation agreement shall be a standard agreement form issued by the personnel authority. The agreement shall, at a minimum:

- (a) Explain the nature of the mediation process;
- (b) Explain the respective roles the parties;
- (c) Explain the confidential and privileged nature of mediation communications, consistent with D.C. Official Code §§ 16-4203 and 16-4207; and
- (d) Explain the potential remedies that are available, consistent with § 1636.

1635.2 The grievance official shall forward a copy of the agreement to the personnel authority. Within five (5) business days, the personnel authority shall designate an individual to serve as a mediator and the agency head, or his or her designee, shall designate an appropriate agency official to serve as the agency representative. The mediator shall either be an attorney licensed to practice law in the District of Columbia or an individual trained in conducting mediation. The agency representative shall have sufficient authority to mediate the dispute.

1635.3 The mediator shall schedule the mediation date(s) and conduct the mediation proceedings in such a manner as to ensure a fair and equitable result. However, the mediation process must be concluded within thirty (30) days from the date the mediator was designated by the personnel authority. If mediation has not concluded within that time period, the matter shall be returned to the grievance official for the first level of review.

1635.4 The parties may agree to any remedies permitted under § 1636. If an amicable resolution of the grievance is reached through mediation, the terms of the resolution shall be reduced to writing in a Mediation Settlement Agreement and signed by all parties, including the mediator. The written resolution shall be binding on all parties and is not subject to review by any administrative body, court or other tribunal.

1635.5 If the parties are unable to resolve the grievance through the mediation process, the grievance shall be returned to the grievance official to resume the first level grievance review. Grievances shall be returned to the grievance official by the mediator on either the date the mediator determines that no resolution can be reached or thirty (30) days from the date the mediator was designated by the personnel authority, whichever is earlier.

1635.6 If a grievance is returned to the grievance official pursuant to § 1635.5, the grievance official shall proceed with the first level grievance review pursuant § 1630.

1636 REMEDIES

1636.1 Whenever a grievance is substantiated, the appropriate deciding official shall establish a remedy that is equitable and fitting to the circumstances.

1636.2 Remedies provided under this section shall be consistent with, but need not precisely conform to, the provisions of this subtitle. However, remedies that vary from the

precise language of any regulation shall conform to the variance standards established at Chapter 1.

1636.3 Remedies under this section shall be limited to those remedies within the authority of the personnel authority.

1637 DISMISSAL OF GRIEVANCE

1637.1 A grievant may request a dismissal of the grievance at any time.

1637.2 A grievance official may dismiss a grievance if the grievant substantially fails to carry out his or her responsibilities; fails to participate with; or otherwise impedes the grievance process under this chapter.

1637.3 A dismissal issued pursuant to this section following the issuance of a second level grievance decision shall be with prejudice.

1637.4 A dismissal of a grievance under this section shall not toll or otherwise enlarge the time limits established in § 1628.

1699 DEFINITIONS

1699.1 As used in this chapter the following meanings apply –

Administrative leave – an excused absence with full pay and benefits that is not charged to annual leave or sick leave

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) workdays or more, a reduction in grade, or a removal.

Agency – any unit of the District of Columbia government, excluding the courts, required by law or by the Mayor 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).

Cause – a reason that is neither arbitrary nor capricious, such as misconduct or performance deficits, which warrants administrative action, including corrective and adverse actions. The classes of conduct and performance deficits outlined in § 1605 constitute causes for corrective and adverse action.

Conduct – the act, manner or process taken by an employee to carry on, including the lack or omission of taking action or carrying out duties and responsibilities.

Corrective action – an official reprimand, involuntary reassignment or a suspension of less than ten (10) workdays.

Days – are calendar days for all periods of more than ten (10) days; otherwise, days are workdays.

Deciding official – the individual who issues a final decision on a disciplinary action in accordance with § 1623.

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

Enforced leave – involuntary placement of an employee in a leave status in accordance with § 1617.

Ex parte communication – an oral or written communication between a hearing officer and only one of the parties, either the employee or management.

Exempt employee – individuals serving the District of Columbia in the Management Supervisory Services.

Grievance official – see § 1628.

Hearing officer – an impartial individual who assess the sufficiency of a proposed action consistent with § 1622.

Independent agency – an agency that is not subject to the administrative control of the Mayor.

Manager – an individual responsible for controlling or administering all or part of an agency or its operation. The term “manager” includes all individuals who supervise others and are employed in the Executive, Excepted and Management Supervisory Services, and similar managerial at-will employees.

Nexus – connection or link (such as a connection to an employee’s duties and responsibilities).

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.*

Progressive disciplinary process – refers to the incremental steps to correct either misconduct or systemic performance deficits. Typically, the process includes verbal counseling, reprimand, corrective action and adverse action.

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 to a lower grade level, typically with lower pay.

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

Reprimand – a written, official censure of an employee that is placed in the employee's Official Personnel Folder.

Subordinate agency – any agency under the direct administrative control of the Mayor.

Summary action – an action taken to immediately suspend or separate an employee pursuant to § 1616.

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

Standard - any criterion, guideline, or measure established by appropriate authority for the purpose of making objective comparisons or determinations for such purposes, including, but not limited to, the classification of positions, establishment of pay, evaluation of qualifications, and appraisal of work performance.

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.

Toll - to delay, suspend or hold off the effect of a statute, regulation or rule.

With prejudice – mean without the ability to re-bring an action; for example, a grievance dismissed with prejudice cannot be reinitiated and the dismissal is final.

Supervisor – an individual who supervises another employee or his or her activities.

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.

<i>D.C. Register</i> 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, <i>Definition of Cause</i> , 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 <i>et seq.</i> 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. PERSONNEL REGULATIONS

<i>D.C. Register</i> Updates for Chapter 16 continued			
<i>D.C. Register Date</i>	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 <i>Table of Appropriate Penalties</i> added to the chapter (section 1619)
59 DCR 008398 (7/13/12)	Sections 1600.2, 1630.1 and 1630.2	Pages 1, and 22 (DPM Transmittal No. 206)	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.
63 DCR 001265 (02/05/16)	Sections 1600 through 1699	Pages 1 -35 Entire Chapter (DPM Transmittal No. 227)	These rules implemented the new discipline and grievances provision pursuant to D.C. Official Code § 1-616.51 <i>et seq.</i> Name of chapter changed from “General Discipline and Grievances” to “Corrective and Adverse Actions; Enforced Leave; and Grievances”.