GENERAL ADMINISTRATION
EMPLOYEE

044 EMPLOYMENT AND SEPARATION

044.7 Disciplinary Action Policy

044.7.1 Purpose

To provide direction to carry out disciplinary actions in a consistent, equitable and timely manner.

044.7.2 Definitions

A. "Bargaining Unit" means HSD employees that are covered under a labor contract between HSD and a Collective Bargaining representative.

B. "Demotion" means an involuntary downward change in position for disciplinary reasons with a reduction of pay.

C. "Dismissal" means the involuntary separation from employment for disciplinary reasons.

D. "Notice of Contemplated Action" describes among other things the conduct, actions or omissions which form the basis of the disciplinary action, provides a general explanation of the evidence, and specifies the contemplated disciplinary action.

E. "Notice of Final Action" specifies among other things the final action to be taken; describes the conduct, actions or omissions which form the basis for the disciplinary action; and specifies when the disciplinary action will be effective.

F. "Official Personnel File" means the personnel file kept in HSD's Office of Human Resources (OHR).

G. "Performance Development Plan" means a development plan which assists the employee to achieve successful job performance.

H. "Progressive discipline" means a range including a verbal warning, a written warning, a written reprimand, suspension, demotion or dismissal.

I. "Suspension" means the involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

J. "Written Reprimand" means a documented communication from a supervisor to an employee regarding conduct that violates job expectations, commonly accepted professional conduct, or other performance standards that is placed in the

employee's official personnel file.

K. "Written Warning or Letter of Concern" means an informal documented communication from a supervisor to an employee regarding conduct that violates job expectations, commonly accepted professional conduct, or other performance standards.

044.7.3 Policy

To carry out disciplinary actions in a consistent, equitable and timely manner.

044.7.4 Progressive Discipline

A. Progressive discipline shall be used whenever appropriate. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

B. Prior to meeting with an employee in the bargaining unit to obtain information that may lead to disciplinary action, the supervisor shall contact OHR's Employee Relations Section.

C. Verbal Warnings. In cases where an employee has committed acts that violate job expectations, commonly accepted professional conduct, or other performance standards, the supervisor may discuss the issue directly with the employee. The incident should be documented by the supervisor and shared with the employee to ensure a mutual understanding of the conversation. It may include information such as a description of the incident, why the conduct or performance is unacceptable, how the employee can remediate the conduct or performance, and consequences for failure to remediate. This will not be part of the employee's official personnel file.

D. Written Warnings or Concern. If the conduct or performance continues or when appropriate based on the severity of the incident, the appropriate supervisor shall contact HSD's Office of Human Resource's (OHR) Employee Relations Section. This may proceed to a written warning or letter of concern. A written warning or letter of concern to the employee may include information such as a description of the incident, why the conduct or performance is unacceptable, how the employee can remediate the conduct or performance and consequences for failure to remediate. The employee may issue a rebuttal to the appropriate supervisor or OHR. The written warning or letter of concern will not be part of the employee's official personnel file.

E. Written Reprimands. If the conduct or performance continues or when appropriate based on the severity of the incident, a written reprimand may be issued as the next step of the progressive discipline. Copies of all written reprimands are forwarded to OHR for review before issuing to the employee. A copy of the reprimand is forwarded to OHR after issuance for inclusion in the employee's official personnel file.

1. Employees may review a written reprimand with a second level supervisor.

2. Employees may issue a rebuttal which will be attached and placed in the employee's official personnel file.

3. Employees may request that a written reprimand, other than a reprimand related to sexual harassment, discrimination, retaliation, or other action which could subject the agency to third party liability, be removed from the employee's personnel file after one year. The OHR Manager, in consultation with the Division Director, decides whether to remove the written reprimand based on: the seriousness of the infraction, the employee's record, and the circumstances surrounding the matter. OHR informs the employee of the decision and if approved, takes action to insure the written reprimand is removed.

F. Performance Evaluation Documentation. Supervisors must record disciplinary action given to an employee in the comments section of the employee's performance appraisal. Disciplinary action is considered in determining the employee's evaluation rating.

044.7.5 Suspensions, Demotions and Dismissals

A. The appropriate Division Director or designee and the OHR Manager determine the level of disciplinary action for suspensions, demotions and dismissals. When determining a decision for proper action, the seriousness of the infraction, the employee's record, HSD's historical practice, and the circumstances surrounding the matter are considered.

B. Career Status and Non-probationary Term Employees. OHR prepares Notices of Contemplated Action and Notices of Final Action for career and non-probationary term employees. The OHR Manager and Division Director or designee approves and signs the Notices of Contemplated Action and Notices of Final Action.

1. Formal Discipline – Notice of Contemplated Action: The Notice of Contemplated Action describes the conduct, actions or omissions which form the basis of the disciplinary action, gives a general explanation of the evidence, advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon, specifies what the contemplated disciplinary action will be and states that the employee has a specified time from service of the Notice to respond in writing or to request an opportunity for an oral response in accordance with SPO rules.

a) Employee Response: Employees may request an oral response meeting by contacting OHR Employee Relations Section and/or provide written responses to OHR within the prescribed time lines, as advised in the Notice of Contemplated Action.

b) Time requirements for an Oral Response: If the employee requests an oral response to the Notice of Contemplated Action, the Division Director and OHR will meet with the employee and/or employee's representative within the specified time unless both parties agree to an extension of time.

2. Formal Discipline – Notice of Final Action: If the employee does not respond to the Notice of Contemplated Action within the time limits stated in accordance with SPO rules, the Division Director and OHR Manager may then issue a Notice of Final Action. All deadlines must be in accordance with SPO rules.

a) Contents of the Notice of Final Action: The Notice of Final Action shall specify the final action to be taken. It will describe the conduct, actions or omissions which form the basis for the disciplinary action. It may not include allegations that were not included in the Notice of Contemplated Action. It will give a general explanation of the evidence the agency has; specify when the disciplinary action will be effective; and inform the employee that the disciplinary action may be appealed to the State Personnel Board.

C. Probationary, Emergency, and Temporary Employees. Probationary, Emergency, and Temporary employees may be suspended, demoted or dismissed effective immediately with written notice and without right of appeal to the State Personnel Board. The written notice should specify the reasons for the disciplinary action taken. The appropriate Division Director or designee and OHR review the final disciplinary action letters for suspensions, demotions and dismissals of these employees. The appropriate Division Director or designee and OHR Manager approves and signs the letters.

044.7.6 Administrative Leave Pending Disciplinary Action

An employee may be placed on administrative leave while OHR investigates and/or prepares a possible disciplinary action.

044.7.7 References

State Personnel Rules 1.7.11 NMAC, 1.7.12 NMAC
HSD 045.5 Administrative Leave Policy

APPROVED: DATE:

PAMELA S. HYDE, J.D., Secretary 2/25/09