

West Virginia Northern Community College

Disciplinary Action Rule

Rule Number: NC-2031

Effective Date: April 1, 2009

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Authority Reference: WV Code 18B-1-6; WVCTC Series 4, Title 133, Procedural Rule, WVHEPC, Series 9, Section 12.1

Replaces previous rule dated: NA

Purpose:

To outline the means by which the College may provide disciplinary action and/or counseling to correct an employee's work related behavior which does not meet the expectations set by the College, supervisor or other appropriate authority in accordance with the College rules and procedures.

Rule:

All employees must maintain standards of performance and conduct as outlined by the President, department administrator, immediate supervisor, job description, PIQ, and comply with applicable rules, procedures and laws. Disciplinary action may be taken to correct work-related behavior and work performance issues. When an employee does not maintain the appropriate standards of performance or conduct, disciplinary action including, but not limited to, counseling, progressive discipline, demotion, suspension, or termination may be taken.

Dependent upon the actual and potential consequences of the offense, employee misconduct may be considered minor misconduct or gross misconduct.

Minor misconduct results in the appropriate action being taken through progressive discipline. Progressive discipline requires notice of concern and expectations to the employee through verbal communication and letter(s) of warning, with potential suspension and/or demotion, which could result in termination, for subsequent similar offenses.

The supervisor will give the employee notice of the unacceptable performance, an explanation of the supervisor's concerns and an opportunity for the employee to provide an explanation for the minor misconduct in question before any form of disciplinary action occurs. Notice and an opportunity to explain will precede disciplinary actions. Dependent upon the severity of the performance issue or improper conduct, the supervisor may issue a written warning to the employee after giving the employee verbal notice of the unacceptable performance.

The immediate supervisor, in conjunction with the Human Resource Director, is responsible for initiating disciplinary action. This may include meeting with the employee to discuss and

establish goals and standards to be achieved and may also include additional counseling provided by the supervisor and/or Human Resource Director and/or an improvement plan.

Gross misconduct may result in any level of discipline up to and including immediate dismissal at the President's or the President's designee's discretion.

The final approval to suspend or terminate any employee for minor misconduct rests with the President. The final approval for gross misconduct rests with the President or the President's designee.

Procedure for Disciplinary Action:

Four-Part Progressive Discipline for Minor Misconduct

This rule applies to classified employees and faculty and provides for the application of four-part progressive discipline as the method for remedying instances of inadequate work performance and/or behavior that does not rise to the level of the infractions set forth in the rule on gross misconduct employee infractions. Progressive discipline may, at the President's option, be utilized for non-classified employees but is not required before suspension or termination.

West Virginia Northern Community College (hereinafter the College) utilizes four-part progressive discipline as the prescribed method for attempts to remedy instances of inadequate work performance and/or behavior that does not rise to the seriousness of the infractions set forth in the rule on gross misconduct employee infractions.

Four-part progressive discipline is to be applied in instances of inadequate work performance and/or behavior that is believed to be remediable (e.g.-can be improved or eliminated with some effort on the part of the employee). The goal of four-part progressive discipline is to restore the employee's work performance and/or behavior to an acceptable level.

The four components of progressive discipline are (1) verbal warning; (2) written warning; (3) suspension without pay; and (4) termination from employment. The components are applied in the order listed.

The principles of four-part progressive discipline are as follows:

1. To ensure such progressive discipline is provided fairly and consistently among employees and across departmental lines;
2. To provide clear communication about the problem to the employee; and
3. To set forth a written plan (in step one and/or step two) to provide the employee a reasonable opportunity to improve.

The employee's immediate supervisor is responsible for initiating the four-part progressive discipline for instances of inadequate work performance and/or behavior for which four-part progressive discipline is appropriate. The employee's immediate supervisor, in cooperation with the Human Resource Director, is responsible for creating and maintaining appropriate documentation and records to support the application of four-part progressive discipline.

The Four-Part Progressive Discipline Steps include the Following:

Step One: Verbal Warning: When a supervisor observes a work performance deficiency and/or behavior that (a) is not a deficiency requiring written warning, immediate suspension without pay or termination of employment as set forth in these rules and (b) has not happened in the past for a more serious issue or several times for a minor issue, he/she shall discuss the problem or issue with the affected employee.

The employee is asked to take steps to improve the workplace behavior and is given a reasonable timeframe in which to demonstrate the required improvements. The timeframe varies according to the nature of the problem. For example, a problem such as chronically arriving late for work without prior approval should be remedied immediately unless there is a compelling situation that would require a longer timeframe in which to improve.

A verbal warning is a spoken warning. The issue should be simply and clearly discussed with the employee. The employee will be required to sign an acknowledgement of receipt of the verbal warning by the supervisor. The supervisor will retain in his/her files a brief note that identifies the employee, the situation, the required improvement, the timeframe for improvement, and the consequences of failure to improve along with the signed acknowledgement. These documents should be retained in the event that it is necessary to go to the next step in four-part progressive discipline which is written warning.

If a period of time goes by (six months or less) during which the supervisor is satisfied with the improvement made by the employee, he/she may at his/her own discretion determine the progressive discipline process to be ended and may determine to destroy all his/her notes about the verbal warning.

Step Two: Written Warning: If verbal warning does not result in an acceptable level of improvement or remedy of the problem cited or if the offense is deemed serious enough or impacts the College in a significant manner, the supervisor shall proceed to write and tender a written warning.

The written warning should state the following:

1. The employee was given a verbal warning on a specific date for a specific problem or in the case where no verbal warning was given, why the supervisor is proceeding to Step Two.
2. A new incident or offense has occurred indicating that the verbal warning was insufficient or an immediate written warning is necessary and the timeframe for improvement.
3. The consequences of failure to improve.
4. An Improvement Plan, when deemed necessary and beneficial, (College approved template) will be issued as part of the written notice with specific timelines for correcting the issues addressed in the warning.

A written warning and an improvement plan should be signed by the supervisor. An original and one copy of the written warning and the improvement plan are provided to the employee. He/she is asked to sign one copy acknowledging receipt of the written warning and the improvement plan then return the copy signed by him/her to the supervisor and Human Resource Director.

If the employee refuses to sign the written warning or the improvement plan, the supervisor should write a note on a copy of the written warning indicating the employee refused to sign the documents. The copy of the written warning and the improvement plan with the employee's signature or the supervisor's note that the employee would not sign the written warning and/or the improvement plan should be retained by the Human Resource Office. The employee can submit a rebuttal statement within ten calendar days if they want additional information included in the file concerning the misconduct.

If a period of time goes by during which the supervisor is satisfied with the improvement made by the employee, he/she may at his/her own discretion determine the progressive discipline process to be ended at the written warning stage.

Copies of the written warning and the improvement plan in the possession of the Human Resource Office will not ordinarily be used as the basis for further progressive discipline beyond one year after the last observation of inadequate work performance of this particular type, but may be used in a grievance as evidence of ongoing conduct

Beginning at the written warning stage, the supervisor shall send a copy of the written warning and the improvement plan to the Human Resource Director where the written warning and the improvement plan will be maintained in the employee's personnel file. The supervisor shall attach to the copy of the written warning forwarded to the Human Resource Director a copy of the notes created by the supervisor at the time of the verbal warning event.

Step Three: Suspension Without Pay: If written warning does not result in an acceptable level of improvement or remedy of the problem cited or if it is a deficiency requiring immediate suspension without pay, the supervisor shall write to the employee indicating he/she is recommending the employee be suspended without pay for a reasonable period of time not to exceed five (5) work days. Such communication must be approved by the Human Resource Director.

The following process will be followed:

1. Approval for suspension without pay rests with the President.
2. A copy of the written communication shall be sent to the Human Resource Director who shall obtain a decision from the President to approve or disapprove suspension without pay.
3. A copy of the written warning issued earlier to the employee must be in the personnel file maintained by the Human Resource Office. Provided, this provision shall not apply where immediate suspension without pay is being sought.

4. Suspension without pay, if approved by the President, after proper procedural due process is given, will be imposed on consecutive work days to be determined by the supervisor and Human Resource Director based on work schedule demands.
5. The Human Resource Office shall process the request as a set number of days without compensation and without charging any type of accrued leave. No accrued leave may be taken in lieu of time without pay under the provisions of suspension without pay.

If after a reasonable period of time following the employee's return to work from suspension without pay the supervisor is satisfied with the improvement made by the employee, he/she may recommend the progressive discipline process be ended. Copies of the recommendation for suspension without pay in the possession of the Human Resource Director will not ordinarily be used as the basis for further progressive discipline beyond one year after the last observation of inadequate work performance of this particular type, but may be used in a grievance as evidence of ongoing conduct. The Human Resource Office will keep the suspension information for payroll records.

Step Four: Termination of Employment: If suspension without pay does not result in an acceptable level of improvement or remedy of the problem cited or if it is a deficiency requiring immediate termination, the supervisor will prepare a written recommendation to terminate the individual's employment.

The following process will be followed for termination of employment:

1. The written recommendation along with any supporting documentation is to be sent to the Human Resource Director. The Human Resource Director will consult with the President and provide a copy of all documentation to determine if the President will approve or deny the termination of employment.
2. Termination of employment cannot be imposed without a complete record of the preceding disciplinary actions being present in the personnel file. Provided, this provision does not apply where immediate termination is being requested.
3. The recommendation for termination of employment should:
 - a) Identify the employee, the problem, and the reasons that led to the decision to recommend termination.
 - b) Be signed by the supervisor.
 - c) Be submitted to the Human Resource Director.
4. If the termination of employment is approved, the Human Resource Director will provide a written notice to the employee explaining the problem, an explanation of the evidence and an opportunity to respond prior to a final decision to terminate the employee (pre-termination hearing).

Termination of employment can occur only with the written approval of the President as communicated by the Human Resource Director to the employee and the supervisor.

5. Termination of employment, if approved by the President, becomes effective immediately on that working day.

Gross Misconduct

If a classified employee or faculty of the College commits one or more of the employee infractions set forth below and it is factually determined that he/she committed the infraction(s), he/she may be suspended from employment without pay or terminated from employment. All suspensions without pay or terminations from employment require the advance approval of the President or the President's designee and an opportunity for a pre-termination hearing.

The Human Resource Director is responsible for investigating and fact finding in any allegation of the commission of an employee infraction from among those set forth below. The President shall obtain the recommendation of the Human Resource Director or his/her designee before imposing the penalty of suspension without pay or termination from employment for commission of one or more of the employee infractions as set forth below:

Employee Infractions Considered to be Gross Misconduct:

- Theft of or malicious damage to College property;
- Gross insubordination, including willful and flagrant disregard of a legitimate order, threatening or striking a supervisor;
- Possession or consumption of alcoholic beverages or improper use of illegal narcotics while on duty and/or appearing to work under the influence of alcohol or improper use of narcotics. (Alcohol and Drug-free Environment Rule);
- Unauthorized carrying and/or use of firearms, weapons, or explosives on College property;
- Conviction of a crime which could seriously affect the employee's work performance or the College;
- Deliberate falsification of employment application or other College records such as medical records, timesheets, degrees earned, or any other dishonest acts committed for personal gain or for malicious intent;
- Unauthorized occupation or use of College facilities;
- Obstruction or disruption of teaching or administration;
- Physical abuse of persons on College property or at any College authorized function or event;
- Setting unauthorized fires;
- Excessive unapproved tardiness (6 days per fiscal year), excessive unapproved absenteeism (4 days per fiscal year), and absence for three consecutive work days without notification or reasonable cause for failure to notify;
- Stealing from fellow employees, the College, or others on College property;

- Immoral or indecent conduct on College property;
- Sexual harassment, assault, stalking or rape;
- Fighting or threatening to fight on College premises or during College work time.
- Conduct on or off campus which adversely affects the operation of the College or the image of the College in the community;
- Other activities that pose an immediate risk to the College's property, its personnel or its students;
- Faculty dismissal will be subject to the provisions of Series 9, Section 12.1.

The Human Resource Director is responsible for developing, implementing, and administering sufficient procedure to effectuate the provisions of this rule and procedure.