



Administrative Policies and Procedures: 4.9

Subject:	Employee Disciplinary Actions and Mediation Process
Authority:	TCA 37-5-105 (3), 37-5-106; §8-30-104 – 8-30-319; <i>Rules of the Tennessee Department of Human Resources, Chapter 1120-10 Disciplinary Action; Tennessee Employee Mediation Program, Chapter 1120-14</i>
Standards:	ACA: 4-JCF-3D-07; COA: PA-HR 4; PA-HR 5.01
Application:	To All Department of Children's Services Employees
Policy Statement:	
The Department of Children's Services (DCS) shall comply with all Federal and State Laws, Rules and Regulations of the Tennessee Department of Human Resources (DOHR) to ensure that employee disciplinary actions are administered fairly and timely, and to encourage employees to use the DOHR mediation process to resolve workplace issues.	
Purpose:	
Employee development and retention are vital elements to promoting quality services to the children and families of Tennessee. Job performance problems, inappropriate personal conduct and/or behavior problems related to job performance will be dealt with through corrective counseling, performance evaluation, employee mediation, employee assistance programs, oral/written warnings and other disciplinary actions as appropriate.	
Procedures:	
A. Supervisor's responsibilities	<ol style="list-style-type: none"> 1. It is the responsibility of all managers and subordinate supervisors to become familiar with the <u>Rules of the Tennessee Department of Human Resources</u>. 2. Managers and supervisors contemplating disciplinary actions will consult human resource representatives that are thoroughly trained in disciplinary procedures. 3. All disciplinary actions will be issued as swiftly as possible after the problem behavior or performance issues occur in order to ensure the employee receives prompt feedback on their conduct and/or performance and deter the employee from future problem conduct and/or performance deficiencies.
B. Causes for disciplinary action	<p>Causes for disciplinary action fall into two categories:</p> <ol style="list-style-type: none"> 1. Causes relating to <u>performance of duties</u>. 2. Causes relating to <u>conduct</u> which may affect an employee's ability to successfully fulfill the requirements of the job.

<p>C. Disciplinary action for alleged criminal acts</p>	<ol style="list-style-type: none"> 1. Any employee who is arrested, indicted or convicted of a criminal offense, either misdemeanor or felony, must <u>immediately</u>: <ol style="list-style-type: none"> a) <u>Report</u> the event to their direct supervisor within twenty-four (24) hours following the event. b) If the direct supervisor is unavailable, the employee can report up the chain of command as appropriate. c) If reporting cannot be done due to weekend or holidays, it must be reported on the next work day. 2. It is the responsibility of the supervisor or manager to report the event to the Regional Administrator, Director or Superintendent who will notify their Central Office Division Director. 3. The Central Office Division Director must ensure that the DCS Human Resources and Risk Management Directors/designees are fully informed of the factors surrounding the event. 4. After obtaining all available information, (<i>e.g., any reports/findings from any investigation, etc.</i>), the Regional Administrator, Director or Superintendent, in consultation with DCS Human Resources, may recommend appropriate disciplinary action. 5. In a case where a conviction has not occurred, because: <ol style="list-style-type: none"> a) The case has not gone to trial, b) Has been diverted from normal legal proceedings, or c) Been delayed pending completion of some alternative action; a decision to impose discipline must be supported at the same level of proof required for any disciplinary action (<i>e.g., a preponderance of evidence to support the imposition of the disciplinary sanction, etc.</i>). 6. Factors to consider when recommending disciplinary action include, but are not limited to, the following: <ol style="list-style-type: none"> a) Employee’s position, duties and responsibilities; b) Media coverage of the incident; c) Outcome of any internal investigation; d) Client (child and family) awareness of and reaction to the incident; e) Other employees’ knowledge and reaction; f) Public knowledge and reaction; g) Employee’s work record, including prior disciplinary history; h) If the alleged conduct involved moral turpitude; i) Any unusual circumstances surrounding the incident; and j) Any violent conduct towards others.
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	<ol style="list-style-type: none"> 7. Concealment of an arrest, indictment and/or conviction (including a pre-trial diversion, plea of <i>nolo contendere</i> or a conditional guilty plea) is grounds for disciplinary action, up to and including termination. 8. A substantiation of child abuse against an employee will be grounds for termination.
<p>D. Inappropriate employee/child/youth/relative relationships</p>	<ol style="list-style-type: none"> 1. While DCS encourages employees to engage with children and families, special care must be taken to ensure that relationships between employees and children/youth (and their families) remain professional. 2. Social relationships between an employee and a child (or a child’s immediate family, relatives and/or clearly identifiable close associates) are prohibited, including but not limited to emotional, romantic and/or sexual attachments. 3. Any established relationship with a child/youth (or a child’s immediate family, relatives and/or clearly identifiable close associates) must be reported to the employee’s supervisor upon employment or when the relationship is established. 4. An employee may not trade or barter with children/youth or their relatives except as outlined in policy, nor will an employee carry, mail or pass contraband in or out of any DCS facility/office. 5. An employee may not donate items to children/youth or engage in any financial transaction with the child/youth (or a child’s immediate family, relatives and/or clearly identifiable close associates) without prior written approval of the facility administrator/regional administrator/ director/ superintendent. 6. Visitation of child/youth or their relatives or clearly identifiable close associates at an employee’s home, for social or other functions, is strictly prohibited without prior written approval of the facility administrator/regional administrator/director. 7. An employee may not utilize any child/youth for labor, concerning any personal issue, either paid or unpaid. Such utilization will be considered grounds for termination for gross misconduct. 8. Youth must only be utilized to perform tasks that are part of an approved DCS YDC program, approved vocational program, or an approved work program. 9. Exchange of unofficial correspondence is prohibited with child/youth/families. <u>Only official correspondence</u> necessary to provide services to the child/youth/family as a part of an employee’s duties is permitted (e.g., <i>Family Service Workers/Case Managers routinely correspond with child/youth/families, however, copies of all official correspondence is maintained in the case file</i>). 10. <u>Inappropriate correspondence</u> using social network websites/media (e.g., <i>Myspace, Facebook, Twitter, Instagram, text messaging, and email accounts, etc.</i>) is prohibited between child/youth/families and may result in disciplinary action up to and including termination.

	<ol style="list-style-type: none"> 11. Inappropriate personal telephone communication with either children/youth or their relatives is strictly prohibited. Any such contacts/correspondence must be immediately reported to the supervisor of the facility or office. 12. If an employee has knowledge of any employee engaged in inappropriate relationships with a child/youth (or a child’s immediate family, relatives and/or clearly identifiable close associates) in violation of this policy, is required to report such information to his/her supervisor immediately. 13. Any attempt by a child/youth to use relatives, family and/or clearly identifiable close associates to circumvent this policy must be brought to the attention of the supervisor. 14. Employees, who violate this policy, or an employee who fails to immediately report a violation of this policy may be subject to immediate disciplinary action up to and including termination. 15. Employees must conduct themselves in a firm, non-offensive and professional manner when interacting with children/youth or their relatives. 16. It is the duty of each employee to correct all children/youth observed in violation of rules and regulations in a fair, consistent, and impartial manner. 17. Conversations with children/youth or family representatives are limited to those necessary as part of the employee’s duties as related to case management, counseling, conduct, discipline, rules and regulations. 18. Child/youth questions that cannot be answered will be referred to the immediate supervisor.
<p>E. Grounds for disciplinary action</p>	<ol style="list-style-type: none"> 1. In addition to the disciplinary offenses listed in the <u>Rules of the Tennessee Department of Human Resources – Disciplinary Action</u>, the following offenses may be grounds for disciplinary action, up to and including termination: <ol style="list-style-type: none"> a) Violation of the Oath of Office of the Department of Children’s Services ; b) Failure to comply with DCS Policies and Procedures/Protocols; c) Falsification of any official document; d) Transporting contraband, weapons, or ammunition onto the property of any DCS office or YDC facility, including provider facilities. e) Brutality or abuse of clients or staff, including verbal, physical or sexual abuse in the performance of job duties; or f) Failure to report to immediate supervisor, the suspension/revocation of motor vehicle license, or loss/expiration of automobile insurance coverage, within twenty-four (24) hours of notification of suspension/revocation or loss/expiration.

	<p>g) Violations of the <u>Rules of the Tennessee Department of Human Resources - Leave and Attendance</u> include, but are not limited to:</p> <ul style="list-style-type: none"> ◆ Taking accrued leave without prior supervisory approval; ◆ Failure to notify supervisor in a timely manner of calling out sick; ◆ Pattern of taking leave as it is accrued; ◆ Exhausting all accrued leave, placing the employee in a leave without pay status (AWOL – Absent without Leave); or ◆ Failure to return to work following the exhaustion of all accrued leave or special approved leave, (e.g., Family and Medical Leave, without requesting and being granted approved special leave, etc.). <p>h) Personal or romantic relationships that arise to the level of a conflict of interest with DCS functions.</p> <p>i) A substantiation of child abuse by the employee will be grounds for termination.</p> <p>2. The above list is not inclusive of all possible grounds for disciplinary action.</p>
<p>F. Types of disciplinary actions</p>	<p>1. <u>Oral Warning</u></p> <p>Written follow-up to an oral warning must not be construed as a written warning as described below and will not be maintained as part of the employee's official human resources file.</p> <p>2. <u>Written Warning</u></p> <p>a) A copy of the written warning will be placed in the employee's human resources file.</p> <ul style="list-style-type: none"> ◆ After a period of two (2) years, an employee may submit a written request to expunge the written warning from the employee's file. ◆ The request will be granted, provided that the employee has had no further disciplinary actions with their performance, conduct, and/or discipline during the two (2) year period. ◆ The request will not be considered a part of the employee's human resources file. <p>b) <u>Request for Review of a Written Warning</u>: A preferred employee who wishes to contest a written warning may request a review of the warning.</p> <ul style="list-style-type: none"> ◆ The employee will submit a written request for review to the DCS Commissioner/designee no later than fourteen (14) days from receipt of the written warning. ◆ The request for review will include documentation of any mitigating circumstances causing the employee to believe that the warning is

undeserved.

- ◆ The DCS Commissioner/designee will provide a written decision to the employee within fifteen (15) days of receipt of request for review.
- ◆ The DCS Commissioner/designee's written decision is final and not subject to appeal.
- ◆ If the DCS Commissioner/designee fails to provide a written decision within the prescribed time, the written warning will be removed from the employee's file.

3. Suspension Without Pay

- a) The DCS Commissioner/designee may suspend an employee without pay, for disciplinary purposes, for such length of time as the Commissioner/designee considers appropriate, not to exceed thirty (30) days in any twelve (12) month period. With the approval of the Commissioner of Department of Human Resources, an employee may be suspended for a longer period pending the appeal or the processing of an appeal.
- b) Any employee who is suspended will receive a written notice from the DCS Commissioner/designee that contains the following:
 - ◆ An account of the circumstances which led to the suspension, including the statute, rule or policy that the employee allegedly violated;
 - ◆ The beginning and ending dates of the suspension; and
 - ◆ Information to the employee concerning the appeal process as outlined below.
- c) A copy of the notice will be placed in the employee's human resources file.
- d) The ability to appeal for suspensions of less than three (3) days is limited to the DCS Commissioner/designee under **Step I** and the Commissioner of Department of Human Resources under **Step II** of the appeal process. An employee will not be entitled to appeal a suspension of less than three (3) days to the Board of Appeals.

4. Dismissal

- a) The DCS Commissioner/designee may dismiss any employee for performance and/or conduct.
- b) The DCS Commissioner/designee will submit written notice to the employee and copy DOHR at the time a preferred employee is dismissed.
 - ◆ The notice will specify the circumstances leading to the dismissal, including the statute, rule or policy that the employee allegedly violated, and inform the employee of the appeal process, if any.
 - ◆ The notice will become part of the employee's human resource file.
 - ◆ The date of this written notification will serve as the beginning date for

	<p>the appeal period.</p> <ul style="list-style-type: none"> ◆ An employee will continue to receive compensation for ten (10) days following the date of notification but is not required to report to work during this period. ◆ The employee's accumulated annual leave balance may be used during this period only if the dismissal was for gross misconduct. <p>c) When the dismissal is for gross misconduct, the written notice will describe the job related misconduct and provide applicable section(s) of Tennessee Code Annotated or other relevant law under which the employee may be criminally prosecuted.</p> <p>5. <u>Transfer or Demotion</u></p> <p>a) If the DCS Commissioner/designee determines that a preferred employee's ability to satisfactorily perform the required duties of the position is beyond the capabilities of the employee or the employee has been compromised by conduct that renders the employee ineffective, the DCS Commissioner/designee may choose to demote or transfer the preferred employee to another position. An employee who is demoted will receive written information concerning the appeal process.</p> <p>b) An employee who is transferred does not have the ability to <u>appeal</u>.</p>
<p>G. Appeals procedure for preferred service employees</p>	<p>1. Pursuant to <i>TCA 8-30-318</i>, preferred service employees who have successfully completed the required probationary period may file an appeal regarding the application of a DCS <i>law, rule or policy</i> when <i>disciplinary action</i> outcomes result in the following:</p> <ul style="list-style-type: none"> a) Dismissal, b) Demotion, or c) Suspension <p>2. Preferred service employees will complete and follow instructions outlined on form PR-0467 Employee Step I – Appeal of Demotion, Suspension or Dismissal.</p> <p>3. Executive service employees are at-will and are not eligible to participate in the appeal process.</p>
<p>H. Employee alternative dispute resolution process (formerly Employee Grievance Process)</p>	<p>Employees with workplace conflicts (formerly employee grievance process) may request <u>mediation</u> as determined by the <i>Tennessee Center for Workforce Relations</i>. Refer to this Web link: Department of Human Resources Mediation Program, for additional information related to the employee mediation process.</p>

Forms:	<u>PR-0467 Employee Step I – Appeal of Demotion, Suspension or Dismissal</u> <u>Department of Human Resources Request for Mediation</u>
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Collateral documents:	<u>Rules of the Tennessee Department of Human Resources</u> <u>Department of Human Resources Policy – 12-005 Appeals Procedure for Preferred Service Employees</u> <u>Tennessee Department of Human Resources, Employee Mediation Program, Chapter 1120-14</u> <u>Tennessee Department of Human Resources, Chapter 1120-10 Disciplinary Action</u>
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Glossary:	
Term	Definition
Absent Without Leave (AWOL):	Absent without “prior approval” or any leave that would put the employee in a “Special leave status”, absent when all leave balances are depleted and employee is not on approved leave, or absence not reported appropriately as required.
Appointing Authority:	A commissioner, department, officer or agent having power to make appointments to, and separations from, positions in state service.
Designee:	Refers to a person who has been designated to perform duties or carry out some specific role for another person. It is the person who has been designated. This is also termed as designate.
Executive service:	An employee who holds a position in the executive service. Executive Service employees serve at the pleasure of the Appointing Authority and do not have the ability to appeal a suspension, demotion, or dismissal as defined in <i>Rule 1120-11</i> .
Moral Turpitude:	Extreme immorality or wickedness.
Nolo Contendre:	In U.S. law, a plea entered by a defendant that does not explicitly admit guilt, but subjects the defendant to punishment, while allowing denial of the alleged facts in other proceedings.
Preferred service:	All offices and positions of employment in the state service that have been placed under the preferred service provisions of the T.E.A.M. Act. Employees become members of the preferred service upon successful completion of the probationary period. Preferred service positions will be filled using certified lists of applicants who meet the minimum qualifications for the position, and will have the ability to appeal

	certain employment actions.
Social Network:	A Web site or online service that facilitates communication between a network of friends, colleagues, and other personal contacts.
Tennessee Excellence, Accountability, and Management ("T.E.A.M.") Act:	<p>The TEAM Act was inducted into law October 1, 2012. This Act divides the state service into the <u>preferred service</u> and <u>executive service</u>. Executive service includes the highest ranking employees for public information, fiscal, budget, audit, security, information systems, legislative affairs and human resources, as well as doctors and lawyers.</p> <p>Employees become members of the preferred service upon successful completion of the probationary period. Preferred service positions will be filled using certified lists of applicants who meet the minimum qualifications for the position, and will have the ability to appeal certain employment actions.</p> <p>The Act is designed to attract select, retain and promote the best applicants and employees based on performance and equal opportunities, and free from coercive political influences, and to provide technically competent employees to render impartial service to the public at all times. The Act also gives agencies greater flexibility in personnel management and increase customer-focused effectiveness and efficiency of state government within a best practice environment.</p>