



DEPARTMENT OF DEFENSE
EDUCATION ACTIVITY
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PERSONNEL CENTER

DoDEA Regulation 5751.9

AUG 27 1999

DEPARTMENT OF DEFENSE EDUCATION ACTIVITY

DISCIPLINARY AND ADVERSE ACTIONS

- References:
- (a) Chapter 75 of title 5, United States Code
 - (b) Title 5, Code of Federal Regulations, Part 752, "Adverse Actions," current edition
 - (c) Title 5, Code of Federal Regulations, Part 361, "Reduction in Force," current edition
 - (d) Title 5, Code of Federal Regulations, Part 430, "Performance Management," current edition
 - (e) DoDEA Regulation 5430.9, "Transfer Program," September 29, 1989, with changes 1 and 2

A. PURPOSE

To implement the provisions of references (a) and (b), and to provide procedural guidance for managers in contemplating and effecting the full range of disciplinary and adverse actions.

B. APPLICABILITY AND SCOPE

1. This Regulation applies to all organizational entities of the Department of Defense (DoD) Education Activity (DoDEA). Excluded from coverage are employees assigned to DoD Domestic Dependent Elementary and Secondary Schools at the installation level and foreign national employees.

2. Employees covered.

- a. An employee who has completed a probationary or trial period.
- b. An employee serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less.

c. An employee with competitive status who occupies a Schedule B appointment.

d. An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position.

3. Employees excluded.

a. An employee who is a reemployed annuitant.

b. An employee who is serving a probationary or trial period, or who is serving in a temporary appointment limited to 1 year or less.

c. An employee in the competitive service who has not completed 1 year of current continuous service, under other than a temporary appointment limited to 1 year or less, in the same or similar positions.

d. An employee in the excepted service (other than a preference eligible) who has not completed 2 years of current continuous service, under other than a temporary appointment limited to 2 years or less, in the same or similar positions.

NOTE: An employee excluded from coverage under this regulation is not precluded from receiving an oral admonishment, letter of caution, letter of reprimand, or suspension when such actions are consistent with the policies contained herein. However, if separation of an excluded employee is warranted, the employee's appointment may be terminated without adherence to the procedures set forth below.

4. Special Procedures for Excepted Service Employees. The rights of employees serving in positions outside the competitive service generally are limited with regard to disciplinary and adverse actions. Prior to initiating disciplinary or adverse action against any employee, the supervisor must contact the Personnel Center, Employee Relations Section, for guidance in determining the procedures to be followed.

5. Termination Actions. When it has been determined that an employee has no grievance or appeal rights, the employee shall be given written notification of the action prior to the effective date of the action. The written notification shall contain a brief statement of the reasons for the action and specify the effective date of the action.

6. Collective Bargaining Agreements. Where the provisions of this regulation vary with those of a negotiated agreement with a labor organization holding exclusive recognition for a Department of Defense Dependents Schools (DoDDS) bargaining unit, the provisions of the agreement shall prevail for bargaining unit members.

c. POLICY

It is the policy of DoDEA that supervisors initiate prompt corrective action when an employee's conduct or performance does not promote the efficiency of the Federal service. Such corrective action must be initiated in accordance with the policies and procedures outlined in this Regulation. In deciding whether to take action under this Regulation, there must be no discrimination based on race, sex, religion, color, national origin, sexual orientation, political partisan beliefs, marital status, mental or physical handicap, or other non-merit factors.

D. DEFINITIONS

See Enclosure 1.

E. RESPONSIBILITIES

1. The Personnel Center, Employee Relations Section shall:

a. Provide advice and guidance to supervisors and managers contemplating disciplinary or adverse actions covered by this Regulation.

b. Prepare a draft proposal letter for the action and ensure that the following is adhered to:

(1) The notice of proposed action is clearly identified as a "proposal" and not a final decision.

(2) The necessary degree of specificity is included in the narrative statement of offense to ensure the employee understands the reason(s) for the proposed action.

(3) The notice of proposal informs the employee of his/her right to review the documentary evidence used to support the proposed action, and the location where the documents may be reviewed. Identify the name, location, and telephone number of the management official who may assist in this review.

(4) The notice of proposal provides the employee with a reasonable period of time to respond to the notice, both orally and in writing, and to furnish affidavits and other documentary evidence in support of such reply.

(5) The notice of proposal provides a specific statement that the employee will remain in a normal duty status or non-duty status pending the final decision.

(6) The notice of proposal advises the employee of the right to designate an attorney or other individual as a representative. This designation must be made in writing, and provided to the deciding official.

(7) The notice of proposal identifies the deciding official by name, address, and telephone number, as the individual to whom any oral and/or written reply must be made. In cases where the deciding official is located outside the employee's commuting area, oral replies may be made by telephone. The notice will include a statement requiring the employee to schedule in advance any desired appointment or teleconference with the deciding official.

(8) The notice of proposal identifies any past disciplinary actions considered in proposing the action.

(9) The notice of proposal states that an extension to the reply period may be granted for justifiable reasons. A request for extension must be submitted in writing to the deciding official prior to the expiration of the reply period.

c. Prepare a draft decision letter for the deciding official.

d. Ensure that appropriate coordination with the DoDEA Office of General Counsel is obtained.

e. When applicable, initiate a Standard Form 52, "Request for Personnel Action."

f. Maintain records of disciplinary actions together with any supporting material.

2. First level supervisors/managers shall:

a. When misconduct occurs and a supervisor may be contemplating a formal or informal disciplinary or adverse action, contact the Personnel Center, Employee Relations Section, for regulatory or procedural advice.

b. Investigate circumstances concerning any misconduct relevant to the action and consider all available information. An investigation should include a meeting with the employee.

(1) Pre-action Investigation and Case File. The gathering of facts and information pertaining to an employee's conduct is necessary prior to taking a disciplinary action covered by this Regulation. The pre-action investigation provides the basis for determining what action, if any, should be proposed or taken. The investigation process itself is not a corrective action.

(2) This process may involve no more than a private discussion with the employee whereby the employee provides an explanation for the conduct and the employee's understanding

of the situation. The immediate supervisor usually undertakes a pre-action investigation. In some cases, there may be a need to interview witnesses and obtain statements. Employees are required to cooperate with individuals performing pre-action investigations. Failure to cooperate may be grounds for disciplinary action. Other pertinent documents or records are sometimes needed to establish the facts of the matter. The supervisor (investigator) should document all conversations with the party(ies) concerning the investigation, date, and sign the documentation. Such documents should become part of the pre-action investigation report or case file, if generation of a formal report is deemed warranted. When witnesses are involved and documentation is required, the investigation may involve employees of other Federal activities or civilian agencies. An appropriate official may appoint another official to conduct such a comprehensive pre-action investigation or may request, from a higher organizational level, to provide a pre-action investigator. A report from an investigatory office of another agency may constitute a pre-action investigation.

(3) When a pre-action investigation leading to a disciplinary action involves written statements or documentation, it is compiled into a case file and sent to the Personnel Center, Employee Relations Section. This material is subject to review by the affected employee (upon request) or designated representative, as well as a third party who may be involved in an official grievance, appeal, or complaint. The case file will include the following documents: advance notice (if applicable), decision notice, written reply (if any), summary of oral reply (if any). A copy of the original case file once completed, will be retained for record purposes in the Personnel Center, Employee Relations Section.

c. Ensure that the action is for such cause as will promote the efficiency of the Federal service, is fair, timely, and for good cause. Most breaches of the employee-employer relationship, of the nature of those described in Enclosure 4 (Schedule of Offenses and Guidelines for Penalties) satisfy this requirement.

d. Compile all relevant documents, statements or other information relied upon in establishing the need for the proposed action and forward documents to the Personnel Center, Employee Relations Section. The documentation will become part of the case file.

e. Provide to the employee, upon request, a copy of any information that is relied upon to support a proposed action.

f. Forward a copy of the case file to the deciding official in disciplinary/adverse action cases.

3. The deciding official shall:

a. Consider only the charges and reasons for the proposed action specified in the notice of proposal, and prior offenses. This may include a review of all information contained in the disciplinary/adverse action case file and may include a personal investigation, if considered necessary.

b. Give full consideration to any oral and/or written reply received from the employee or his/her representative.

c. In deciding whether or not the proposed action is warranted, give full consideration to any aggravating or mitigating factors, such as those identified in Enclosure 3 (Factors to be Considered in Assessing Penalties).

d. Prepare, sign, and issue a written final decision letter to the employee. The draft letter will be prepared by the Personnel Center, Employee Relations Section. The final decision letter must include at least:

(1) A statement that a oral or written reply was received from the employee and the reply was considered, or, in the alternative, a statement that no reply was received from the employee.

(2) A specific statement that the proposed action is sustained, not sustained, or reduced/modified, and the reasons for the decision.

(3) If the proposed action is sustained, the final decision letter shall include mention of any aggravating or mitigating factors which were considered by the deciding official. These should include any applicable factors listed in Enclosure 3 (Factors to be Considered in Assessing Penalties) of this Regulation.

(4) A statement of the effective date of any action arising from the final decision.

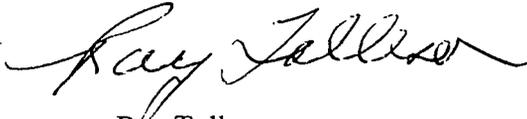
(5) A statement of the employee's grievance/appeal rights.

F. EFFECTIVE DATE AND IMPLEMENTATION

This Regulation is effective immediately for Headquarters DoDEA employees, and 60 days from publication for all other employees. It may not be amended or changed without prior written approval of the Interim Director, DoDEA.

G. CANCELLATION

The following regulations are canceled: DSG Regulation 5751.2, DoDDS, Germany Region, Disciplinary Actions, dated March 7, 1984; DSPA Regulation 5751.1, DoDDS, Pacific Region, Administration of Disciplinary, Adverse, and Other Corrective Actions, dated April 3, 1990, with Change 1; DSA Administrative Instruction 5751.2, DoDDS, Atlantic Disciplinary Actions, dated October 6, 1983; DSG Regulation 5752.2, DoDDS Germany Region, Adverse Actions, dated March 8, 1984; DSM Regulation 5751.1, DoDDS Mediterranean Region, Administration of Disciplinary, Adverse and Other Corrective Actions.



Ray Tolleson
Interim Director

Enclosures - 4

1. Definitions
2. Procedures for Disciplinary and Removal Actions
3. Factors to be Considered in Assessing Penalties
4. Schedule of Offenses and Recommended Penalties

DISTRIBUTION: E, N, O

DEFINITIONS

1. Advance notice. A written notice for a specific number of calendar days in advance of a proposed action. When determining the number of days, the following shall apply:
 - a. A calendar day is the 24-hour period between 12 midnight of one day and 12 midnight of the next.
 - b. The day on which the notice is delivered is not counted.
 - c. A Saturday, Sunday, or Federal U.S. holiday is never counted as the last day. In such a case, the next scheduled duty day will be the last day of the notice.
2. Adverse action. A disciplinary or nondisciplinary removal, suspension of 14-calendar days or more, furlough for 30 days or less, or reduction in grade or pay.
3. Counseling. The communication between an employee and supervisor concerning deficiencies in conduct, attitude, or performance. Counseling shall encompass any form of communication, written or oral, which is not made a record in the employee's Official Personnel Folder (OPF). The notation on an Employee Record Card, or a memorandum for the record, documents a counseling event, and is not a disciplinary action.
4. Deciding official. The official who issues a notice of final decision on an adverse or disciplinary action should normally be an official who is of a higher organizational level than the official who proposes the action.
5. Formal disciplinary action. An action that is taken for disciplinary reasons and made a matter of record in the employee's OPF, such as a letter of reprimand, suspension, removal, or reduction in pay or grade.
6. Furlough. A temporary non-duty and non-pay status of 30-calendar days or less because of lack of work or funds, or for other nondisciplinary reasons.
7. Grade. The level of classification under a position classification system.
8. Indefinite suspension. The placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the condition(s) set forth in the notice of action that may include the completion of any subsequent administrative action.

9. Informal disciplinary action. Minor corrective action, such as an oral admonishment or letter of caution or warning, maintained by the supervisor, that is not made a matter of record for inclusion in the employee's OPF.

10. Letter of Caution or Warning. A written warning by an appropriate official that puts the employee on clear notice that continued improper conduct may lead to formal disciplinary action. A letter of caution or warning is not a formal disciplinary action. (A warning may be issued to inform the employee of a decline in performance.)

11. Letter of Reprimand. A formal written disciplinary remedy by an appropriate official for an employee's improper conduct that may be maintained in the employee's OPF for a period of 1 to 3 years.

12. Letter of Requirement. A written order by an appropriate official to establish a requirement for an individual that does not apply to the rest of the work force. Letters of requirement are not disciplinary in nature.

13. Oral Admonishment. A discussion between a supervisor and employee in which the employee is informed that he/she was disciplined by receipt of an oral admonishment.

14. Pay. The rate of basic pay of an employee, such as the pay fixed by law or administrative action, for the position held.

15. Prior offense. A prior cause of action for which a disciplinary penalty was imposed.

16. Probationary or Trial Period. An extension of the appointment process to give the agency an opportunity to assess the employee's overall on the job conduct, performance, qualifications, and general character traits, for continued employment. Unacceptable performance or conduct during the probationary or trial period may result in removal without formal procedural protections.

17. Proposing official. The official who proposes an action, usually the immediate supervisor.

18. Reduction in grade. The involuntary assignment of an employee to a position of lower classification or grade level.

19. Reduction in pay. The involuntary placement of an employee into a lower pay category.

20. Removal. An involuntary separation based on a decision of an appropriately designated management official.

21. Suspension. A temporary non-duty and non-pay status imposed for disciplinary reasons.

PROCEDURES FOR DISCIPLINARY AND REMOVAL ACTIONS

A. GENERAL

1. Principles of Corrective Discipline

Corrective discipline is progressive in nature. The objectives are to:

- Develop, correct, and rehabilitate employees.
- Encourage employees to accept responsibility.
- Prevent situations where no alternative to taking discipline exists.

2. Penalty Selection

a. Guidelines. There are many disciplinary situations and a wide variety of penalties. In deciding which action to take, careful judgment must be used so that the penalty is not out of proportion to the character of the offense, especially a first offense, and to assure that the penalty is imposed with consistency and equity. Factors which may affect the selection of the appropriate penalty include those established by *Douglas v. Veterans' Administration*, 5 MSPB 313 (1981), commonly referred to as the "Douglas Factors." These factors are listed at Enclosure 3 (Factors to be Considered in Assessing Penalties).

b. Schedule of offenses and penalties. Enclosure 4 (Schedule of Offenses and Recommended Penalties) provides guidance on the selection of appropriate disciplinary action for typical offenses. Normally, a progression of disciplinary measures is applied in an effort to correct an employee's conduct.

3. Informal disciplinary actions. Informal disciplinary actions include the following:

a. Oral Admonishment - a discussion between a supervisor and employee as a result of an offense which does not, by itself, warrant a reprimand but which may, if repeated, warrant formal disciplinary action. The supervisor makes an informal record of the date of the discussion and subjects covered.

b. Letter of Caution or Warning - a written letter placing the employee on clear notice concerning unacceptable performance or conduct issues, and to correct behavior at the lowest possible level. An oral admonishment or a letter of caution or warning may be cited in any subsequent action as evidence that the employee was counseled regarding the seriousness of the offense and the possibility of formal action if continued. The employee should be advised that a

record of the counseling is being kept, and that the incident could be cited in support of a future disciplinary action. The employee shall have the right to make a written rebuttal for the record.

4. Formal disciplinary actions. Formal disciplinary actions consist of official reprimands, suspensions, removals, and reductions in pay or grade. The immediate supervisor or manager of the employee being disciplined normally initiates a formal disciplinary action. With the exception of a letter of reprimand, all formal disciplinary actions are two-step actions, with a proposing official and a deciding official. The deciding official may uphold, mitigate, or fail to uphold a proposed action. The following are formal disciplinary actions:

a. Reprimand. A reprimand is a formal letter given to an employee for a serious violation of ethics, a rule of conduct, law, regulation, official instruction, or particular responsibility. A reprimand may also be given for repeated minor offenses for which the employee was counseled, or for which the employee was admonished orally. A letter of reprimand will be placed in the employee's OPF (left side) for a period of 1, 2, or 3 years. (Negotiated Agreements covering bargaining unit employees must be complied with in determining the duration of a letter of reprimand.) The letter or reprimand is removed from the OPF and destroyed upon expiration.

b. Suspension, removal, and reduction in grade or pay. An employee may be suspended without pay for a specified number of days, removed from his/her position, or reduced in grade or pay, for misconduct. The action taken depends on the seriousness of the offense and other factors outlined in Enclosure 3 (Factors to be Considered when Assessing Penalties).

c. Nondisciplinary adverse actions. Adverse actions may be taken against an employee covered by this Regulation only for such cause as will promote the efficiency of the service. Just cause is necessary as a basis for an adverse action, and the action must be determined on the merits of each individual case. Certain kinds of adverse actions, however, are considered nondisciplinary in nature. For example, separation for poor performance or disability, reduction in grade or pay as a result of a classification action or reorganization, and furlough for 30-calendar days or less.

(1) Separation for medical disqualification. An employee's inability to perform the duties of his or her position due to a medical condition, may warrant removal under the provisions of Enclosure 4 (Schedule of Offenses and Recommended Penalties).

(2) Removal or reduction in grade or pay for unacceptable performance. Removal and reduction in grade or pay constitute adverse actions and are subject to the procedural requirements stated in this enclosure.

(3) Furlough. A furlough of 30-calendar days or less is an adverse action, and is subject to the procedural requirements stated in this enclosure. A furlough for more than 30-calendar days is a Reduction-in-Force (RIF) action, and is subject to the RIF procedural requirements contained in 5 CFR 351 (reference (c)).

B. LETTERS OF REPRIMAND

1. Purpose. A letter of reprimand is the least severe form of formal disciplinary action. A reprimand is intended to correct employee deficiencies in conduct, or work habits. A reprimand is issued when it is determined that action is necessary which is more stringent than counseling, or when past counseling sessions were unsuccessful, and/or when it is determined that more severe action is not warranted.

2. Procedures.

a. Supervisor/Manager. Prior to initiating a letter of reprimand, the supervisor will normally meet with the employee to investigate and explore all circumstances concerning the alleged misconduct. When distance or other circumstances render such a meeting impractical, the discussion may be held by telephone. If a meeting is held, the supervisor should:

b. Afford the employee, if a member of an exclusively represented bargaining unit, the opportunity to be accompanied by a representative, if requested by the employee.

c. Attempt to ascertain all facts involved in the matter being investigated.

d. Determine any mitigating circumstances and allow the employee the opportunity to explain fully the act being investigated.

e. Based on an analysis of all information gathered, the supervisor must decide if a letter of reprimand is warranted. If the supervisor decides not to initiate action, the employee shall be informed. If the supervisor decides that formal disciplinary action is warranted, all pertinent information gathered in the course of the investigation will be forwarded to the Personnel Center, Employee Relations Section.

3. The Personnel Center, Employee Relations Section, will prepare, and forward to the supervisor, a draft letter of reprimand, ensuring the inclusion of the following:

a. A detailed description of the offense. This should include at least a narrative description of the circumstances involved in the incident(s) giving rise to the letter, including times, locations, dates of events, and statements from any witnesses if applicable.

b. If pertinent to the incident(s) contained in the letter, a delineation of past counseling or other attempts to correct the employee's behavior.

c. A warning that any recurrence of the misconduct may result in more severe disciplinary action.

d. A statement providing the maximum period of time that the letter will remain in the employee's OPF (i.e., 1, 2, or 3 years).

e. If appropriate, the availability of remedial resources to assist the employee.

f. A statement advising the employee of his or her grievance rights relative to a letter of reprimand.

4. The Personnel Center, Employee Relations Section, will also ensure that the letter of reprimand is removed from the employee's OPF when:

a. The term of the letter has expired; or

b. The employee is separated from the agency rolls; or

c. A decision to remove the letter prior to the expiration date is rendered by the employee's supervisor, a higher level manager, or an appropriate third party official vested with authority to adjudicate the merits of a disciplinary action.

C. SUSPENSION FOR 14- CALENDAR DAYS OR LESS

1. Employees Excluded.

Senior Executive Service employees may not be suspended for 14-calendar days or less, and are excluded from coverage under this subsection.

2. Notice of Proposed Suspension.

a. An employee against whom a suspension of 14-calendar days or less is proposed is entitled to at least 10 calendar-days advance written notice of the proposed action. The employee shall also be given a reasonable amount of time, but not less than 7-calendar days, to reply orally and/or in writing to the proposed action, and to furnish affidavits and other evidence as a part of the reply and shall be afforded the right to representation.

b. A draft of the notice of proposed suspension shall be prepared by the Personnel Center, Employee Relations Section, setting forth the information required by this Regulation. The draft notice shall be forwarded to the supervisor for final preparation, signature, and issuance to the employee.

3. Notice of Final Decision.

a. If, after consideration of the employee's reply (if any) to the written notice of proposed

suspension, it is decided that the suspension is warranted, a draft final decision letter shall be prepared by the Personnel Center, Employee Relations Section.

b. The draft final decision letter will contain all of the information required by this Regulation, and will advise the employee of any applicable grievance rights relative to the action. The completed draft letter will be forwarded to the deciding official for final preparation, signature, and issuance to the employee.

D. REMOVAL, SUSPENSION FOR MORE THAN 14-CALENDAR DAYS, FURLOUGH WITHOUT PAY OF 30-CALENDAR DAYS OR LESS, AND REDUCTION IN GRADE OR PAY

1. Actions Excluded. The following actions are excluded from coverage under this section:

- a. A suspension or removal taken in the interest of national security.
- b. A reduction-in-force action.
- c. A reduction in grade of a supervisor or manager who has not completed a required supervisory or managerial probationary period, if such reduction is to the grade held immediately before becoming a supervisor or manager.
- d. A reduction in grade or removal based solely on unacceptable performance.
- e. A reduction of an employee's rate of pay from a rate that is contrary to law or regulation to a rate required or permitted by law or regulation.
- f. A voluntary action initiated by the employee.
- g. An action directed or taken by the Office of Personnel Management for suitability reasons.
- h. A termination on the expiration date specified as a basic condition of employment at the time of appointment, or the termination of a temporary appointment at any time.
- i. An action that terminates a temporary or term promotion, and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the employee was informed that the promotion was to be of limited duration.
- j. Placement of an employee serving on an intermittent, part-time, or seasonal basis in a non-duty, non-pay status, in accordance with conditions established at the time of appointment.

2. Notice of Proposed Action.

a. An employee against whom an action is proposed is entitled to at least 30-calendar days advance written notice of the proposed action. The employee shall also be given a reasonable time, but not less than 10-calendar days, to reply orally and/or in writing to the proposed action, and to furnish affidavits and other evidence as a part of the reply.

b. A draft notice of proposed action shall be prepared by the Personnel Center, Employee Relations Section, setting forth the information required by this Regulation. The draft notice shall be forwarded to the supervisor for final preparation, signature, and issuance to the employee.

3. Notice of Final Decision.

a. If, after consideration of the employee's reply (if any) to the written notice of proposed action, it is decided that the action is warranted, a draft final decision letter shall be prepared by the Personnel Center, Employee Relations Section.

b. The draft final decision letter shall contain all of the information required by this Regulation, and will advise the employee of any applicable grievance and/or appeal rights relative to the action. The completed draft letter will be forwarded to the deciding official for final preparation, signature, and issuance to the employee.

E. TRIAL AND PROBATIONARY PERIOD SEPARATIONS

1. General. The requirement that Federal employees serve a probationary or trial period, provides protection against the retention of any person whom, in spite of having met basic qualification standards, is found lacking in fitness and capacity for permanent Federal service. When an employee's conduct, capacity, or performance deficiencies during the probationary or trial period indicate that he or she may not be fit for continued government service, the supervisor/manager must initiate action to separate the employee.

2. Termination Action.

When the termination action is based on deficiencies in performance or conduct that occurred after the employee's entrance on duty, the employee is entitled to written notification of the reason why he or she is being terminated and the effective date of the action. This notification must also inform the employee of the right to appeal, if applicable.

F. UNACCEPTABLE PERFORMANCE

1. General. A removal or reduction in grade or pay, of an employee for unacceptable performance, will normally be processed through the procedures set forth in 5 CFR 430 (reference (d)) and DoDEA Regulation 5430.9, "Transfer Program," (reference (e)).

2. Relationship to Disciplinary Adverse Actions. An action against an employee that is considered a combination of misconduct and unacceptable performance shall be processed under the provisions of this enclosure.

G. RECORDS MAINTENANCE

A file will be maintained by the Personnel Center, Employee Relations Section, for any disciplinary or adverse actions taken. This information will be furnished to an appropriate third party adjudicating authority or union, upon request. The action file will contain at least:

- a. The notice of proposed action.
- b. The written reply and/or a summary of the oral reply received from the employee.
- c. The notice of final decision.
- d. Any order effecting an action, and other supporting documentation.

A. FACTORS TO BE CONSIDERED I-N ASSESSING PENALTIES

Once a supervisor or manager establishes some form of wrongdoing, he or she has the responsibility for determining the penalty, from reprimand to removal. In order to ensure that a disciplinary action represents the least severe penalty to deter the employee from future infractions, and that the disciplinary action is taken for just cause, (i.e., to improve the efficiency of the service) certain factors should be taken into account.

In the case of *Douglas v. Veterans' Administration*, 5 MSPB 313 (1981), the Merit Systems Protection Board enumerated twelve factors that it considered relevant when determining the reasonableness of a disciplinary action. These factors, commonly referred to as the "Douglas Factors," are widely accepted, and their use assures not only that actions taken are fair and equitable, but that the action can withstand the scrutiny of a third party, such as an administrative law judge or an arbitrator.

All of the factors listed below shall be taken into consideration (if applicable) prior to taking formal disciplinary action. (Contact the Personnel Center, Employee Relations Section, for assistance when considering these factors.)

B. DOUGLAS FACTORS

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee's past disciplinary record.
4. The employee's past work record.
5. The effect of the offense upon the employee's ability to perform at a satisfactory level.
6. Consistency of the penalty with those imposed upon other employees for the same or similar offense in like or similar circumstances.
7. Consistency of the penalty with any applicable agency table of penalties.

8. The notoriety of the offense or its impact upon the reputation of the agency.
9. The clarity with which the employee was on notice of any rules violated in committing the offense.
10. Potential for the employee's rehabilitation.
11. Mitigating circumstances surrounding the offense.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

SCHEDULE OF OFFENSES AND RECOMMENDED PENALTIES

A. INSTRUCTIONS FOR USE

1. **This table of penalties is a guide.** Penalties for offenses should normally fall within the range shown in the table unless mitigating or aggravating factors justify a remedy outside the range. For example, remedies greater than those shown can be appropriate when an aggravated offense, frequent infractions, or simultaneous multiple offenses are established.

2. The schedule does not cover every possible offense. Prior to specifying an offense other than those listed in the table, managers should contact the Personnel Center, Employee Relations Section for guidance.

3. Due to the nature of the position, an offense by a supervisor or other management official may warrant a more severe penalty than would be warranted for the same offense committed by a nonsupervisory employee. Supervisors and managers are held to a higher level of conduct as officials within the agency.

B. PAST OFFENSES

1. When used to select a penalty, a past offense must be specifically mentioned in the proposal and final decision letters. A past offense may be counted as a prior offense in determining a penalty or range of penalties when:

- a. The employee was disciplined in writing; and
- b. The employee was provided an opportunity to dispute (i.e., grieve or appeal) the action to a higher level official; and
- c. The action was made a matter of record in the employee's Official Personnel Folder.

2. Any past offense may form the basis for proposing a remedy from the next higher range of remedies for a subsequent offense. The offenses need not be identical or similar in nature.

3. Oral admonishments and letters of caution, warning, or requirement may not be counted as a past offense for purposes of determining the appropriate range of remedies. However, they may be considered as notices to the employee when determining an appropriate remedy within a range for any subsequent offense.

SCHEDULE OF OFFENSES AND GUIDELINES FOR PENALTIES

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
1. <u>ATTENDANCE</u>			
a. Tardiness (delay in reporting to duty or returning from lunch or break period, and returning to duty after leaving the work station on official business.)	Counseling to Reprimand	Reprimand to 1-day suspension	1-5 day suspension
b. Unauthorized absence of 1-5 consecutive workdays.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
c. Unauthorized absence of 6 or more consecutive workdays.	Reprimand to removal	10-day suspension to removal	30-day suspension to removal
d. Unauthorized or early departure from worksite; to include leaving the classroom/students unattended:			
(1) Where safety of children or other personnel/property is not a factor.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
(2) Where safety of children or other personnel/property is a factor.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
e. Failure to follow established leave requesting procedures; failure to honor a valid denial of a leave request.	Reprimand to 5-day suspension	5-14 day suspension	10-day suspension to removal

2. <u>CHILD ABUSE & RELATED ISSUES</u>			
a. Failure to report suspected child abuse to the proper authorities within 24 hours.	Reprimand	1-5 day suspension	5-14 day suspension
b. Misconduct involving sexual activity with a student.	30-day suspension to removal	Removal	
c. Substantiated charges of child abuse.	Reprimand to removal	3-day suspension to removal	10-day suspension to removal
d. Administering physical punishment, or hitting, pushing, or pulling a student; throwing objects at a student.	Reprimand to removal	3-day suspension to removal	10-day suspension to removal
e. Using physical force to alter the behavior of a student.	Reprimand to removal	3-day suspension to removal	10-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
2. <u>CHILD ABUSE & RELATED ISSUES (Continued)</u>			
f. Involvement or use of a student(s) in the pursuit of a personal concern.	Reprimand to removal	3-day suspension to removal	10-day suspension to removal
g. Use of abusive or offensive language (profanity/vulgarity) directed at students or in front of students, to include the use of gestures; threats and emotional abuse.	Reprimand to 5-day suspension	5-10 day suspension	10-day suspension to removal
h. Use of poor judgement in dealing with students.	Counseling to Reprimand	Reprimand to 5-day suspension	Reprimand to 5-day suspension

3. <u>CONDUCT - AFFECTING PERFORMANCE</u>			
a. Loafing; sleeping on duty, to include idleness, wasting time; inattention to duty:			
(1) When safety of students, personnel or property is not acute, or when there is no injury or significant loss	Reprimand to 5-day suspension	1-10 day suspension	14-day suspension to removal
(2) When safety of students, personnel or property is acute, or when there is injury or significant loss.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
b. Careless workmanship, negligent performance which may/may not result in delay or waste.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
c. Covering up or attempting to conceal defective work; removing or destroying work without permission.	Reprimand to removal	5 day suspension to removal	14-day suspension to removal
d. Delay or failure to carry out orders, work assignments or instructions; failure to complete work within established time frame.	Reprimand to 5-day suspension	1-10 day suspension	14-day suspension to removal

4. <u>CONDUCT - PHYSICAL/VERBAL</u>			
a. Fighting or provoking fights; making threats to an employee or supervisor; engaging in dangerous horseplay; threatening to inflict bodily harm.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
4. <u>CONDUCT - PHYSICAL/VERBAL (Continued)</u>			
b. Hitting, pushing, or other acts against another:			
(1) Without causing injury.	Reprimand to removal	3-day suspension to removal	10-day suspension to removal
(2) Causing injury.	Reprimand to removal	Removal	
c. Use of abusive language or offensive (profanity/vulgarity) language towards co-workers, students, subordinate employees, supervisors or other management officials or members of the public having official or legitimate dealings with the agency; discourtesy (to include gestures).	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
d. Making false, malicious, slanderous, defamatory, or unfounded statements against co-workers, supervisors, subordinates, or government officials that may/may not damage the reputation or undermine the authority of those involved.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
e. Disrespectful conduct; disruptive behavior.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal

5. <u>CONDUCT - INSUBORDINATION</u>			
a. Insubordination; defiance to constituted authorities; deliberate refusal or failure to follow a directive (written or oral), or delay in carrying out a proper order, including failure to follow local or higher level policy.	Reprimand to removal	1-day suspension to removal	5-day suspension to removal
b. Failure to observe written regulations, instructions, or directives to include standards of conduct:			
(1) Where the safety of students or other personnel/property is not endangered.	Reprimand to 3-day suspension	3-day suspension to removal	5-day suspension to removal
(2) Where the safety of students or other personnel/property is endangered.	Reprimand to removal	5-day suspension to removal	30-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
5. <u>CONDUCT - GENERAL</u>			
a. Criminal, immoral, indecent, dishonest, infamous or notoriously disgraceful conduct (on or off duty); disorderly conduct.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
b. Off duty misconduct having an adverse effect on the agency.	Reprimand to 3-day suspension	3-day suspension to removal	5-day suspension to removal
c. Off duty misconduct of such major importance that the employee is unable to fulfill his/her job responsibilities.	Reprimand to removal	1-day suspension to removal	5-day suspension to removal
d. Failure to honor just debts or legal obligations without good cause. Just debts include debts acknowledged by the employee, reduced to a judgement by a court, or imposed by law such as, Federal, state, or local taxes. Failure to meet financial obligations.	Counseling to Reprimand	Reprimand	1-5 day suspension
e. Failure to comply with a management directed reassignment.	Removal		
f. Betting, gambling, or the promotion thereof while on duty.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
g. Operating, assisting, or promoting an unauthorized gambling activity while on government premises or while in a duty status or while others involved are in a duty status.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
h. Operating or conducting a private business while in a duty status, to include soliciting to others.	Reprimand to 10-day suspension	14-day suspension to removal	30-day suspension to removal
i. Participating in a strike, work stoppage, slowdown, sick out, or other job action.	Removal		
j. Picketing, if such action interferes with agency operations.	Reprimand to removal	Reprimand to removal	5-day suspension to removal
7. <u>DISCRIMINATION</u>			
a. Discrimination against an employee or applicant based on race, color, religion, sex, handicap, national origin, age, marital status, political affiliation, handicap, sexual orientation or reprisal or retaliation for engaging in a protected activity.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
7. <u>DISCRIMINATION (Continued)</u>			
b. Sexual Harassment.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
c. Interference with an employee's exercise of, or reprisal against an employee for exercising, a right to grieve, appeal, or file a complaint through established procedures.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

8. <u>DRUG/ALCOHOL ABUSE</u>			
a. Unlawful use or possession of drugs/drug paraphernalia on or off duty.	Reprimand to removal	Removal	
b. Unlawful distribution, sale, trafficking, or transfer of drugs, or drug paraphernalia on or off duty.	Removal		
c. Unauthorized possession, sale or transfer of alcohol on duty, or on a military aircraft, ship or installation.	Reprimand to removal	30-day suspension to removal	Removal
d. Use of, or being under the influence of alcohol or drugs while on duty.	Reprimand to removal	30-day suspension to removal	Removal
e. Serving alcohol to minors or allowing minors (knowingly or unknowingly) to consume alcoholic beverages or drugs while under the supervision of an agency employee.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

9. <u>DRUG TESTING</u>			
a. Refusal to provide a urine sample when required.	Reprimand to removal	Removal	
b. Substitution, adulterating or otherwise tampering with a urine sample, testing equipment or related paraphernalia.	30-day suspension to removal	Removal	
c. Unauthorized possession and/or disclosure of a urinalysis test result.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
9. <u>DRUG TESTING (Continued)</u>			
d. Attempted or actual falsification, misstatement or concealment of a material fact, record, correspondence, or other communication prepared in connection with the collection, handling, transportation or testing of urine samples.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

10. <u>FALSIFICATION/FALSE STATEMENTS</u>			
a. Filing or aiding/assisting in filing false claims against the government.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
b. Falsifying or aiding/assisting in falsifying time and attendance records.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
c. Providing false testimony or refusal to testify in an inquiry, investigation, or other official proceeding.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
d. Misrepresentation or falsification of information provided on an official document:			
(1) When financial payment is not involved.	Reprimand to 5-day suspension	5-day suspension to removal	14-day suspension to removal
(2) When financial payment is involved.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
e. Falsification, misstatement, or concealment of a material fact in connection with an official record or proceeding, to include lying in an official investigation.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

11. <u>GOVERNMENT PROPERTY/CREDENTIALS</u>			
a. Theft, unauthorized possession, removal, use, loss, or damage of government property or the property of others:			
(1) Where substantial value is not involved.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
11. <u>GOVERNMENT PROPERTY/CREDENTIALS (Continued)</u>			
(2) Where substantial value is involved.	14-day suspension to removal	Removal	
b. Misuse of official Government credentials.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
c. Using Government employees in a duty status for other than official purposes.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
d. Willful misuse of a government vehicle (as defined by 31 USC 1349(b)).	30-day suspension to removal	Removal	
e. Misuse, improper use, or unauthorized use of a Government credit card.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
12. <u>MISAPPROPRIATION</u>			
a. Participation in any type of outside activities or relationships with contractors, lenders, or others engaged in business with the agency or relationships with those seeking contracts which would be contrary to the best interest of the agency.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
b. Accepting gifts or gratuities (goods, money, services, purchases at a discount, entertainment, or similar favors) from individuals or firms doing business with or having contractual relations with the agency, except as authorized by conduct regulations.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
13. <u>MANAGEMENT OFFENSES</u>			
a. Abuse of supervisory authority.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
b. Violation of an employee's constitutional rights (freedom of speech, association, religion).	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
c. Committing a prohibited personnel practice (see 5 USC 2302).	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
14. SAFETY			
a. Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions.	Reprimand to removal	1-10 day suspension	10-day suspension to removal
b. Violation of safety regulations which endangers life or property.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
c. Endangering the safety of or causing injury to others through carelessness.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
d. Violating traffic regulations, reckless driving on government premises, or improper operation of a motor vehicle.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
e. Failure to report personal injury or accident.	Reprimand	Reprimand to 3-day suspension	3-14 day suspension
15. SECURITY			
a. Violation of security regulations, instructions or directives:			
(1) When breach does not result in release of security information to unauthorized persons and there is no evidence of compromised classified information.	Reprimand to 3-day suspension	1-10 day suspension	10-day suspension to removal
(2) When breach results in release of security information to unauthorized persons.	Reprimand to removal	5-day suspension to removal	Removal
(3) When breach is intentional.	14-day suspension to removal	Removal	
b. Unauthorized disclosure or use of information or other protected material, or records covered by the Privacy Act.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
c. Failure to safeguard confidential information or documentation.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

<u>OFFENSE</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
16. <u>INVESTIGATIONS/REPORTING</u>			
a. Failure to report to proper authorities, or concealment of violations of federal statutes or DoD Standards of Conduct; fraud, waste, or abuse of federal funds; or aiding or abetting others in the taking, disposing, or using of government property or facilities of any kind for other than official government purposes.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
b. Refusal to cooperate in an investigation conducted by a responsible government official, or the provision of knowingly erroneous or misleading information in connection with an investigation.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal