



DoDEA ADMINISTRATIVE INSTRUCTION 1426.01

DISCIPLINARY AND ADVERSE ACTIONS

Originating Division: Human Resources

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Approved by: Thomas M. Brady, Director

Purpose: This Issuance establishes policy, assigns responsibilities, and implements procedures governing the management and administration of disciplinary and adverse actions for the Department of Defense Education Activity (DoDEA) in accordance with the authorities in Chapters 43 and 75 of Title 5, United States Code.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This Issuance applies to the DoDEA Headquarters Organization, and includes all schools under DoDEA authority in the DoDEA Americas Region, the DoDEA Europe Region, and the DoDEA Pacific Region.

b. The following employees are covered by this Issuance unless otherwise excluded in Section 1.1.c. of this Issuance, and are hereafter referred to as “employees” in this Issuance:

(1) An employee in the competitive service who is not serving a probationary period under an initial appointment.

(2) An excepted service employee who has completed two (2) years of current continuous service under other than a temporary appointment limited to two (2) years or less.

(3) A preference eligible employee in the excepted service who has completed one (1) year of current continuous service in the same or similar position in an Executive Agency, the United States Postal Service, or the Postal Regulatory Commission.

(4) An employee, other than a preference eligible employee, in the excepted service who is not serving in a probationary or trial period under an initial appointment pending conversion to the competitive service or who has completed two (2) years of current continuous service in the same or similar positions in an Executive Agency under other than a temporary appointment limited to two (2) years or less.

c. Employees who are not covered under this Issuance:

(1) Reemployed annuitants.

(2) Senior Executive Service.

(3) Foreign national employees.

1.2. POLICY. It is DoDEA policy that:

a. DoDEA supervisors and management officials initiate corrective action when an employee’s conduct or performance does not promote the efficiency of Federal service. Any corrective action must be initiated in accordance with this Issuance.

b. The authority to initiate disciplinary or adverse actions shall be made by a DoDEA supervisor or management official at least one (1) level higher than the employee being disciplined. Generally, this authority is placed at the First-Level Supervisor. However, any DoDEA supervisor or management official at any level of supervision within the employee’s chain of command may initiate an action consistent with and in accordance with this Issuance.

c. Decisions to suspend, reduce in grade, or remove shall be made by a DoDEA supervisor or management official at least one (1) level higher than the DoDEA supervisor or management official who proposed the action unless the proposing official is the DoDEA Director.

d. DoDEA supervisors and management officials are prohibited from discriminating against employees (e.g., employees, applicants, former employees, and in certain circumstances, contractors) based on race, color, sex, including gender identity and sexual orientation, national origin, age, disability, religion, reprisal, and genetic information.

e. Collective Bargaining Agreements (CBA). Where provisions of this Issuance differ from enforceable negotiated bargaining agreements, the provisions of the negotiated bargaining agreements will apply. When provisions of this Issuance differ from changes in Federal law or regulation, the changes in Federal law or regulation will apply.

1.3. INFORMATION COLLECTION. This Issuance may result in the collection of information due to its policy and procedures. Any collection of information must follow all applicable Federal, DoD, and DoDEA regulations, policies, and guidance.

SECTION 2: RESPONSIBILITIES

2.1. DODEA DIRECTOR. The DoDEA Director oversees the implementation of this Issuance.

2.2. DODEA LABOR MANAGEMENT AND EMPLOYEE RELATIONS BRANCH CHIEF. Under the authority, direction, and control of the DoDEA Director, the DoDEA Labor Management and Employee Relations (LMER) Branch Chief:

a. Provides technical assistance to all levels of DoDEA management concerning disciplinary, adverse, and performance-based actions, including the proper processes and procedures to be followed by the DoDEA supervisors and management officials and the appeals processes in accordance with this Issuance.

b. Ensures all official records related to disciplinary, adverse, and performance-based actions are maintained in accordance with the Office of the Chief Management Officer Administrative Instruction 15, Office of the Secretary of Defense (OSD), Records Disposition Schedules, DoD Instruction 5015.02, and DoDEA Regulation 5015.01.

2.3. DODEA LABOR MANAGEMENT AND EMPLOYEE RELATIONS SPECIALIST. Under the authority of the LMER Branch Chief, the servicing DoDEA LMER Specialist:

a. Provides advice and guidance at all levels, including the Region and Headquarters levels, to DoDEA supervisors and management officials considering disciplinary or adverse actions.

b. Prepares all draft memoranda for official disciplinary actions, including Letters of Reprimand (LOR), performance-based actions, and adverse actions.

c. Prepares all draft final decision letters for the DoDEA Deciding Official.

d. Ensures appropriate coordination with the DoDEA Office of General Counsel.

e. Maintains all official records related to disciplinary, adverse, and performance-based actions in accordance with applicable Federal, DoD, and DoDEA regulations, policies, and guidance.

2.4. DODEA PROPOSING OR ISSUING OFFICIAL. The DoDEA Proposing or Issuing Official:

a. Contacts the servicing DoDEA LMER Specialist for regulatory and procedural guidance when misconduct occurs and formal or informal disciplinary or adverse action is considered or justified.

- b. Investigates circumstances concerning any misconduct relevant to the action and considers all available information in accordance with Section 3.2. of this Issuance when conducting a management inquiry.
- c. Compiles all relevant documents, statements, or other information to establish the need for the administrative action and forwards the documents to the servicing DoDEA LMER Specialist. Any material evidence that the DoDEA Deciding Official will consider when making the decision will become part of the case file.
- d. Ensures any disciplinary or adverse action is executed in a nondiscriminatory manner, timely, uniformly applied, and promotes the efficiency of the Federal service.
- e. Provides the employee a copy of any information that was compiled to support the proposed disciplinary action.
- f. Provides a copy of the signed and dated proposal letter and all information compiled to support the proposed disciplinary action to the DoDEA Deciding Official.
- g. Avoids improper *ex parte* communications with the DoDEA Deciding Official and consults with the servicing DoDEA LMER Specialist assigned to the case to determine if a contemplated communication would be *ex parte*.

2.5. DODEA DECIDING OFFICIAL. The DoDEA Deciding Official:

- a. Avoids improper *ex parte* communications. Consults with the servicing DoDEA LMER Specialist assigned to the case to determine if a contemplated communication would be *ex parte*.
- b. Ensures employees are aware they may request legal representation by an attorney or other representative.
- c. Coordinates with the servicing DoDEA LMER Specialist before approving requests for extensions.
- d. Considers any oral or written reply received from the employee or the employee's representative. If the employee avails themselves of the opportunity to present an oral or written reply, the DoDEA Deciding Official may also consider:
 - (1) Exculpatory information the employee raises. If the employee does not provide additional detail, the primary role of the DoDEA Deciding Official is to listen and obtain clarification. Under this circumstance, the DoDEA Deciding Official may ask questions and ask for documentation if the employee indicates there is proof of some relevant fact that they have not yet submitted.
 - (2) Documentation relevant to the main points of the employee's presentation, including if the employee admits to the offense, denies the facts, is remorseful, or requests mitigation.
 - (3) The timeliness and responsiveness of the employee.

(4) Pertinent facts. If the employee's response expands into other areas, the decision should only be based on the merits of the proposal and any pertinent facts established during the reply.

(5) If the employee raises an issue of health (either mental or physical) as a reason, explanation, or mitigating circumstances; it is the responsibility of the employee to provide medical documentation and to explain how the medical condition caused or is related to the misconduct or unsatisfactory performance. The employee should contact the respective Region Diversity Management and Equal Opportunity (DMEO) office.

(6) If an employee believes they are being discriminated against in one (1) or more of the protected classes (i.e., race, sex, age, color, religion, disability, national origin) refer the employee to the Region Equal Employment Opportunity Counselor within 45 calendar days of the date they became aware of the alleged discrimination. For more information: <https://www.dodea.edu/Offices/DMEO/compliance.cfm>.

e. Considers any aggravating or mitigating factors when considering disciplinary action.

f. Considers only the charges and justification for the proposed disciplinary action specified in the notice of proposal to include prior offenses. This should include a review of all information in the disciplinary and adverse action case file and may include additional fact-finding.

g. Provides the employee with the opportunity to review and reply to any additional evidence the DoDEA Deciding Official considers.

h. Issues a written final decision letter informing the employee of the decision to either sustain the disciplinary action as proposed, reduce the penalty, offer the employee an alternative sanction, or cancel the proposed disciplinary action in its entirety. The draft final decision letter will be prepared by the servicing DoDEA LMER Specialist, as appropriate.

2.6. EMPLOYEES. Employees will:

a. Conduct themselves, both on and off duty, in a way that ensures their behavior does not reflect adversely on DoDEA and the DoD.

b. Comply with the standards of conduct as described in DoD Directive 5500.07.

c. Cooperate with individuals performing management inquiries.

SECTION 3: DISCIPLINARY AND ADVERSE ACTIONS

3.1. DISCIPLINARY AND ADVERSE ACTIONS.

a. Federal law mandates that covered employees are entitled to due process when the decision has been made to initiate a disciplinary or adverse action and that all charges be supported by a confession and/or a preponderance of evidence.

b. Prior to initiating an action, the DoDEA supervisor or management official shall seek advice and assistance from the servicing DoDEA LMER Specialist to ensure regulatory compliance and consistency of actions.

3.2. GATHERING SUPPORTING DOCUMENTATION.

a. The gathering of facts and information pertaining to an employee's conduct is necessary prior to taking an official disciplinary or adverse action in accordance with this Issuance. This process is often referred to as an administrative or management inquiry and is referred to as "management inquiry" in this Issuance. A management inquiry provides the basis for determining what action, if any, should be proposed or taken.

b. A management inquiry involves the DoDEA supervisor or management official gathering documented evidence consisting of physical documentation (i.e., emails, time and attendance records, training records, and regulations). For instance, proposing discipline for an employee's absence without leave (AWOL) could involve the DoDEA supervisor or management official forwarding a Memorandum for Record (MFR) summarizing the incident, any email correspondence between the DoDEA supervisor or management official and the employee illustrating that the employee's request to use leave was properly denied, and a copy of the employee's timecard.

c. A management inquiry does not always require witnesses or extensive interviews but may only require a private discussion with the employee, and, if requested, their representative, to provide an explanation. Supervisors and management officials are not required to interview or meet with the employee prior to initiating a disciplinary action. If the DoDEA supervisor or management official personally witnesses the misconduct, they should prepare an MFR summarizing the incident.

d. A management inquiry may also involve the DoDEA supervisor or management official conducting interviews and obtaining witness statements to ascertain the appropriate level of discipline. Supervisors or management officials may also appoint an investigator or examiner to analyze, conduct inquiries, and make recommendations. Employees are required to cooperate with individuals performing management inquiries. Failure to cooperate may be grounds for a disciplinary or adverse action. Other pertinent documents or records are sometimes needed to establish the facts of the matter. The DoDEA supervisor, management official, or appointed investigator or examiner should document all conversations with all the parties concerning the inquiry. The signed and dated documents will become part of the report and case file if the

generation of a formal report is warranted. A report from the DoDEA Office of Inspector General or another investigatory office of DoDEA or another agency, such as the Family Advocacy Program or law enforcement agency, may constitute a management inquiry.

e. Weingarten Right. When an employee is a member of a bargaining unit, the exclusive representative of the bargaining unit shall be given the opportunity to be present when an employee in the bargaining unit reasonably believes that the examination may result in disciplinary actions against the employee and the employee requests representation in accordance with Section 7114 of Title 5, United States Code, also known and referred to in this Issuance as the “Weingarten Right.” The employee’s notification of this right is governed by the law and the applicable collective bargaining agreement.

3.3. EMPLOYEE STATUS DURING MANAGEMENT INQUIRIES, FORMAL INVESTIGATIONS, AND NOTICE OF PROPOSED DISCIPLINARY ACTION PERIODS.

a. Once the decision has been made to launch a formal investigation, employees remain in a duty status in their regular positions during an investigation of a potential disciplinary action, during adverse action procedures, and during performance-based action procedures. Other work status options may be appropriate in specific situations (e.g., employee requests voluntary use of leave). In rare circumstances, the employee may be placed in an administrative leave status during an investigation or during the notice of proposed disciplinary action period. In even more rare circumstances, employees may be suspended without pay if charged with a crime. Administrative leave status is discouraged and is used only in those rare circumstances where retention of the employee in a duty status during the investigation or notice of proposed disciplinary action period may pose a threat to the employee or others; result in the destruction of evidence relevant to an investigation; result in loss of or damage to U.S. Government property, or would otherwise jeopardize U.S. Government interests.

b. Care must be exercised to use the minimum amount of administrative leave necessary in any specific situation. Any determinations to place an employee in administrative leave status must be coordinated with servicing DoDEA LMER Specialist and take into consideration: Assigning the employee to duties in which they no longer pose a threat described above; allowing the employee to take leave for which they are eligible; carrying the employee in AWOL status if they are AWOL; and, curtailing the notice of proposed disciplinary action period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. DoDEA supervisors and management officials must consult with their servicing DoDEA LMER Specialist on the compliance requirements.

3.4. INFORMAL DISCIPLINARY ACTIONS. Examples of informal disciplinary actions are oral admonishment, a letter of caution, and other verbal or written warnings or counselings. These measures may be used for an offense that does not, by itself, warrant an LOR or more severe formal disciplinary action, but that will, if repeated, warrant formal disciplinary action.

a. For oral admonishments, the DoDEA supervisor or management official should create an informal written record of the date of the discussion and the subjects covered.

b. Previous informal disciplinary actions are not considered as prior offenses for the purpose of selecting a penalty. Reference to previous informal disciplinary actions may be cited in a future disciplinary action, to include formal disciplinary action, as evidence that the employee was put on notice of the seriousness of the offense and that further misconduct can lead to future disciplinary action.

3.5. LETTER OF REPRIMAND.

a. The LOR is the least severe form of formal disciplinary action. An LOR is intended to correct employee deficiencies in conduct or work habits when it is determined that more severe action is not warranted.

b. A draft of the LOR is prepared by the servicing DoDEA LMER Specialist. The draft LOR shall be forwarded to the employee's supervisor or management official for final review, signature, and presentation to the employee. The draft LOR shall state the following information:

(1) A detailed description of the offense, so the employee understands the misconduct or deficiency. This includes a narrative description of the circumstances involved giving rise to the draft LOR, including times, locations, dates of events, and statements from any witnesses, if applicable.

(2) A delineation of past attempts to correct the employee's behavior if pertinent to the incident(s) contained in the draft LOR.

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

(4) A statement providing the maximum period of time the LOR will remain in the employee's Electronic Official Personnel Folder (eOPF) (i.e., one (1), two (2), or three (3) years).

(5) A statement advising the employee of their grievance rights relative to an LOR.

c. The servicing DoDEA LMER Specialist will ensure the LOR is removed from the employee's eOPF when:

(1) The term of the LOR has expired.

(2) The employee is separated from DoDEA.

(3) A decision to remove the LOR prior to the expiration date is rendered by the DoDEA supervisor or management official or an appropriate third-party official vested with the authority to adjudicate the merits of the disciplinary action.

3.6. SUSPENSIONS OF 14-CALENDAR DAYS OR LESS.

a. Federal law and regulations prescribe procedures that must be followed when taking a disciplinary action against an employee. Federal law and regulation require that disciplinary action charges be supported by a preponderance of the evidence. Disciplinary actions may also be taken against an employee covered by this Issuance only for such cause that will promote the efficiency of the Federal service. Actions are affected through due process that may include a notice of proposed disciplinary action, an opportunity to respond to charges, a notice of decision, and access to appellate or grievance procedures.

(1) An employee against whom a suspension of 14-calendar days or less is proposed by the Proposing Official, is entitled to advance written notice of the proposed disciplinary action. The employee shall also be given a reasonable period of time to reply orally, in writing, or both, to the proposed disciplinary action. The employee is entitled to provide affidavits and other evidence as a part of the reply and shall be afforded the right to representation.

(2) A draft of the notice of proposed suspension shall be prepared by the servicing DoDEA LMER Specialist, setting forth the information required in accordance with this Issuance. The draft notice of proposed suspension shall be forwarded to the DoDEA Proposing Official for final review, signature, and issuance to the employee. The notice of proposed suspension shall state the following information:

- (a) The specific reason(s) for the proposed disciplinary action.
- (b) Inform the employee of their right to reply, orally, in writing, or both to the proposed action within a reasonable amount of time after receiving the notice of proposed suspension.
- (c) The name and title of the DoDEA Deciding Official designated to hear the oral reply and receive the written reply.
- (d) The employee's right to review the materials compiled to support the proposed disciplinary action.
- (e) The employee's right to a reasonable amount of time to review the notice of proposed suspension and supporting documentation to prepare a response and secure affidavits.
- (f) The employee's right to be represented by an attorney or other representative. An employee's choice of representation may be disallowed if the representation would result in a conflict of interest or position if the release of the employee from their duties could give rise to unreasonable costs to the U.S. Government or the employee's priority work assignments preclude their release to serve. For example, the employee may not be represented by a member of the DoDEA Human Resources (HR) staff, a DoDEA Equal Employment Specialist, DoDEA supervisor or management official, counselor, investigator, a military or DoDEA attorney or specialist, or anyone whose service as a representative would result in a conflict or apparent conflict of interest with their position or with the priority needs of the DoD.

(g) When applicable, information concerning the employee's right to grieve the decision, pursuant to an administrative or negotiated grievance procedure, the right to file a complaint with the U.S. Office of Special Counsel (OSC), and the right to file a complaint through the Equal Employment Opportunity (EEO) process, if the decision is to uphold the proposed disciplinary action.

b. Notice of Final Decision.

(1) Consideration shall be given to an employee's reply, if any, to the written notice of proposed suspension, and a draft final decision letter shall be prepared by the servicing DoDEA LMER Specialist.

(2) The draft final decision letter will be forwarded to the DoDEA Deciding Official for final review, signature, and issuance to the employee on or before the effective date of the suspension and will state the following information:

(a) Whether or not the employee replied to the proposed disciplinary action and, if so, that their reply was considered and adjudicated.

(b) Whether or not the DoDEA Deciding Official found sufficient evidence to support the proposed disciplinary action and include a specific reason or reasons for the decision.

(c) Any aggravating or mitigating factors which were considered by the DoDEA Deciding Official. This includes any applicable factors listed in the "Factors To Be Considered In Assessing Penalties" in accordance with Section 5.1. of this Issuance.

(d) When applicable, information concerning the employee's right to grieve the final decision letter, pursuant to an administrative or negotiated grievance procedure, the right to file a complaint with the U.S. OSC, and the right to file a complaint through the EEO process if the decision is to uphold the proposed disciplinary action.

(e) State the effective date of the disciplinary action, if any.

(f) Date and signature of the DoDEA Deciding Official.

(3) If the decision is to cancel or mitigate the proposed disciplinary action, the employee will receive a final decision letter to that effect.

(4) The servicing DoDEA LMER Specialist initiates and submits U.S. Office of Personnel Management (OPM) Standard Form (SF) 52, "Request for Personnel Action" to the servicing DoDEA HR Division for processing.

3.7. SUSPENSIONS OF 15-CALENDAR DAYS OR MORE, INDEFINITE SUSPENSIONS, REDUCTIONS-IN-BAND, GRADE, OR PAY, AND REMOVALS.

a. Adverse Actions. Federal law and regulations prescribe procedures that must be followed when taking adverse action against an employee. Adverse actions may be taken against an

employee covered by this Issuance only for such cause that will promote the efficiency of the Federal service. Actions are affected through due process that may include a notice of proposed adverse action, an opportunity to respond to the charges, a notice of decision, and access to appellate or grievance procedures. Federal law and regulation require that adverse action charges be supported by a preponderance of the evidence.

b. Non-disciplinary adverse actions. Certain kinds of adverse actions are considered non-disciplinary in nature. For example, separation for poor performance, failure to maintain a condition of employment, disability, reduction-in-grade or pay as a result of a classification action or reorganization, and furlough for 30-calendar days or less.

c. Excluded Actions. The following actions are excluded from coverage under Section 3.7. of this Issuance.

(1) A reduction-in-force action, including furloughs of more than 30-calendar days.

(2) A reduction-in-grade or band of a DoDEA supervisor or management official who has not completed a required supervisory or management official probationary period, if such reduction is to the band or grade held immediately before becoming a DoDEA supervisor or management official.

(3) A reduction of an employee's rate of pay from a rate of pay that is contrary to Federal law or regulation to a rate of pay required or permitted by Federal law or regulation.

(4) A voluntary action initiated by the employee.

(5) An action directed or taken by the OPM for suitability reasons.

(6) A termination on the expiration date specified as a basic condition of employment at the time of appointment.

(7) A personnel 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 band, grade, and pay, if the employee was informed that the promotion was to be of limited duration.

(8) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a non-duty or non-pay status, in accordance with conditions established at the time of appointment.

(9) Termination of probationary employees.

d. Notice of Proposed Adverse Action.

(1) An employee against whom an adverse action is proposed is entitled to a minimum of 30-calendar-days advance written notice of the proposed adverse action. The employee shall be given a reasonable amount of time, but not less than ten (10) calendar days, to reply to the written notice orally or in writing. The employee may also provide affidavits and other supporting evidence as a part of the reply and shall be afforded the right to legal representation.

(2) A draft notice of the proposed adverse action shall be prepared by the servicing DoDEA LMER Specialist, setting forth the information required by this Issuance. The draft notice of proposed adverse action will be forwarded to the DoDEA supervisor or management official for final review, signature, and issuance to the employee. The draft notice of proposed adverse action shall include the following:

- (a) The specific reason or reasons for the draft notice of the proposed adverse action.
- (b) The name and title of the DoDEA supervisor or management official designated to receive the oral and written replies from the employee or their representative.
- (c) The amount of time the employee is allowed to provide an answer orally or in writing, or both. Notify the employee that any request for an extension of the time limit permitted for a reply will be considered and granted by the DoDEA Deciding Official and may be approved for good cause.
- (d) The employee's right to review the materials supporting the draft notice of the proposed adverse action.
- (e) The employee's right to a reasonable amount of time to review the draft notice of the proposed adverse action and supporting documentation, to prepare a response, and to secure affidavits if the employee is otherwise in a duty status.
- (f) The employee's right to be represented by an attorney or other representative. An employee's choice of representation may be disallowed if the representation would result in a conflict of interest or position if the release of the employee from their duties could give rise to unreasonable costs to the U.S. Government or the employee's priority work assignments preclude their release to serve. For example, the employee may not be represented by a member of the DoDEA HR staff, a DoDEA EEO specialist, DoDEA supervisor or management official, counselor, investigator, a military or DoDEA attorney or specialist, or anyone whose service as a representative would result in a conflict or apparent conflict of interest with their position or with the priority needs of the DoD.
- (g) Inform the employee of any right to appeal the decision with the Merit Systems Protection Board (MSPB), any right to grieve the draft notice of the proposed adverse action pursuant to a negotiated grievance procedure, the right to file a complaint with the U.S. OSC, and the right to file a complaint through the EEO process.

e. Notice of Final Decision Letter.

(1) If, after consideration of the employee's response, if any, to the written draft notice of proposed adverse action, it is decided the action is warranted, a draft Notice of Final Decision letter shall be prepared by the servicing DoDEA LMER Specialist.

(2) The draft Notice of Final Decision letter shall address the relevant Douglas Factors in accordance with Section 5 of this Issuance. The completed draft Notice of Final Decision letter will be forwarded to the DoDEA Deciding Official for final review, signature, and issuance to

the employee on or before the effective date of the action. At a minimum, the Notice of Final Decision letter will:

(a) Indicate whether or not the employee replied to the proposed adverse action and, if so, that the employee's reply was considered.

(b) Inform the employee whether or not there was sufficient evidence to support the notice of the proposed adverse action and include the specific reason or reasons for the final decision letter.

(c) State the effective date of the adverse action, if any.

(d) The signature of the DoDEA Deciding Official and the date signed.

(e) Inform the employee of any right to appeal the decision with the MSPB, any right to grieve the proposed adverse action pursuant to a negotiated grievance procedure, the right to file a complaint with the U.S. OSC, and the right to file a complaint through the EEO process, if the decision is to uphold the proposed adverse action.

(3) If the decision is to cancel or mitigate the proposed adverse action, the employee will receive a final decision letter to that effect.

(4) Shortened Notice Period. The required notice period may be shortened when there is reason to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed.

3.8. TERMINATIONS DURING TRIAL OR PROBATIONARY PERIOD.

a. General. The requirement, Section 1599e of Title 10, United States Code, that DoD employees serve a two (2)-year probationary or trial period provides protection against the retention of any person whom, despite having met basic qualification standards, is found lacking for permanent Federal service. When a DoDEA employee's conduct, capacity, or performance deficiencies during the probationary or trial period indicate that they may not be fit for continued Federal service, the DoDEA supervisor or management official must initiate action to separate the employee.

b. 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 they are being terminated and the effective date of the termination action.

3.9. RELATED PERSONAL OR MEDICAL ISSUES.

a. Referrals to the Employee Assistance Program (EAP). If a DoDEA supervisor or management official suspects an employee has a personal or medical problem that may be affecting their conduct or performance, the DoDEA supervisor or management official may

encourage the employee to contact the EAP. Contact details for EAP can be obtained by contacting the servicing DoDEA LMER Specialist. The employee's participation in EAP is voluntary and confidential.

b. If an employee cites a personal or medical problem in response to counseling or discipline, the DoDEA supervisor or management official has an obligation to consider the employee's input and should contact the servicing DoDEA LMER Specialist and DME0 EEO Specialist for guidance:

(1) Employees with personal or medical issues shall be held to the same standards of conduct and performance as other employees.

(2) Reasonable accommodations in the workplace may be available to address an employee's medical condition.

(3) Employee personal medical issues are confidential and must not be shared or discussed with anyone, including other DoDEA supervisors or management officials, except on a need-to-know basis.

3.10. RECORDS MAINTENANCE.

a. Delivery and recording of the disciplinary action. The DoDEA supervisor or management official personally delivers the notice of the proposed disciplinary action letter to the employee and, if possible, obtains a written acknowledgment of receipt by the employee. The employee's refusal to sign a delivered action does not affect the processing of the notice of proposed disciplinary action. The employee signing a notice of proposed disciplinary action does not necessarily mean the employee agrees with the content of the notice of proposed disciplinary action. If in-person delivery is not practicable, alternatives such as mail, courier service, electronic delivery, etc., may be used. The DoDEA supervisor or management official will discuss alternative delivery options with the servicing DoDEA LMER Specialist in advance. A copy of the issued notice of proposed disciplinary action and draft final decision letter must be provided to the servicing DoDEA LMER Specialist for the Activity case file.

b. Activity case files. The servicing DoDEA LMER Specialist ensures that the official Activity case files on all formal disciplinary and adverse actions, including performance-based actions, are maintained in accordance with LMER office procedures. These Activity case files are kept separate from the employee's eOPF.

c. eOPFs:

(1) Informal disciplinary actions. Documentation of oral admonishments and written warnings are not maintained in the employee's eOPF. These documents are maintained by the DoDEA supervisor or management official.

(2) Formal disciplinary and adverse actions. An SF 50, "Notification of Personnel Action" authorizing any formal disciplinary or adverse actions, except written reprimands, is maintained in the employee's eOPF. Written reprimands are retained in the employee's eOPF

for one (1) year but no later than three (3) years. Supporting documentation of letters of reprimand and adverse actions are maintained by the servicing DoDEA LMER office and retained for four (4) years but no later than seven (7) years.

d. Administrative Procedures. The lifecycle management of active case files, informal disciplinary actions, and formal disciplinary and adverse actions and associated records are outlined in Office of the Chief Management Officer Administrative Instruction 15. Retention and disposition periods are published in the OSD, Records Disposition Schedules, Record Group 330.

3.11. EMPLOYEE GRIEVANCES AND APPEALS.

a. Grievance of formal disciplinary action (i.e., Letter of Reprimand or suspension of 14-calendar days or less). In accordance with Subpart 752.203 of Title 5, Code of Federal Regulations, written reprimands or suspensions of 14-calendar days or less may be grieved through the administrative grievance procedure or a negotiated grievance procedure found in the employee's CBA, as appropriate.

b. Grievance or appeal of an adverse action (i.e., suspension of 15-calendar days or more, reduction-in-grade or pay, or removal). In accordance with Subpart 752.405 Title 5, Code of Federal Regulations, suspensions of 15-calendar days or more, reductions-in-grade or pay, and removals may be appealed to the MSPB.

(1) Employees represented by a union may have the right to grieve the adverse action in accordance with the negotiated grievance procedures found in the applicable CBA or appeal this action to the MSPB, but not both.

(2) Suspensions of 15-calendar days or more, reductions-in-grade or pay, and removals are appealable to MSPB. Adverse actions appealable to the MSPB are excluded from the administrative grievance procedures.

SECTION 4: PERFORMANCE-BASED ACTIONS

4.1. TYPES OF PERFORMANCE-BASED ACTIONS.

a. Performance-based actions may be taken in accordance with Chapter 75 of Title 5, United States Code using the procedures in accordance with Section 3 of this Issuance. These actions are most appropriate under one (1) of the following circumstances:

- (1) The circumstances involve both performance and conduct matters.
- (2) Performance standards are in place, but certain deficiencies are not covered by the standards (e.g., carelessness, inattention to detail, delay in carrying out work assignments).
- (3) It would not be in the best interest of DoDEA to place an employee on a performance improvement plan (PIP) and provide the opportunity to demonstrate acceptable performance.
- (4) Performance standards are in place, and an employee has the knowledge, skills, and abilities necessary to perform their duties but is unwilling, or is intentionally failing, to do so.
- (5) It would not be in the best interest of DoDEA to place a probationary employee on a PIP. There are removal processes for a probationary or trial employee.

b. Performance-based actions taken in accordance with Chapter 43 of Title 5, United States Code. Performance-based actions may be taken in accordance with Chapter 43 of Title 5, United States Code, using the procedures set forth in Section 4.2. of this Issuance. Performance-based actions taken in accordance with Chapter 43 of Title 5, United States Code, are most appropriate when an employee is performing duties to the best of their ability but are unable to meet the minimum requirements of one (1) or more critical elements of the performance plan for their position.

4.2. PERFORMANCE-BASED ADVERSE ACTION PROCEDURES.

a. When taking a performance-based action, in accordance with Chapter 43 of Title 5, United States Code, including removal or reduction-in-grade or pay, the action may be taken against an employee at any time during the performance appraisal cycle when performance in one (1) or more critical elements of the job becomes unacceptable.

b. Prior to taking a performance-based adverse action, the employee must be given the opportunity to improve through a PIP. In accordance with Subpart 432.104 of Title 5, Code of Federal Regulations, a PIP must:

- (1) Notify the employee of the critical element or elements for which performance is unacceptable.
- (2) Inform the employee of the performance requirements or standards that must be attained to demonstrate acceptable performance in their position.

(3) Give the employee a reasonable opportunity (i.e., not fewer than 30-calendar-days) to demonstrate acceptable performance.

(4) Inform the employee that unless their performance in the critical elements improves to, and is sustained at, an acceptable level, the employee may be reduced-in-grade, reassigned, or removed.

(5) Explain what the DoDEA rating official will do to assist the employee in improving their unacceptable performance.

c. The DoDEA supervisor or management official may propose a reassignment, reduction-in-grade, or removal if the employee's performance remains unacceptable in one (1) or more critical elements. If proposing a reduction-in-grade, reassignment, or removal, the employee must be given at least 30-calendar-days advance written notice of the proposed performance-based adverse action before the performance-based adverse action may be effectuated. The notice of proposed performance-based adverse action must:

(1) Identify specific instances of unacceptable performance upon which the notice of proposed performance-based adverse action is based, including the specific critical elements the employee failed to meet. The reduction-in-grade, reassignment, or removal may be based upon instances of unacceptable performance which occur within a one (1) year period ending on the date of the notice of proposed performance-based adverse action.

(2) Reference the PIP and any past counseling or other attempts to correct the employee's performance.

(3) Inform the DoDEA employee of their right to reply orally, in writing, or both, to the notice of proposed performance-based action within a reasonable period of time. Inform the DoDEA employee that a request for an extension of the time limit permitted for a reply will be considered by the DoDEA Deciding Official and may be approved for good cause.

(4) Include the name and contact information of the DoDEA Deciding Official.

(5) Inform the employee of their right to representation by an attorney or other representative, such as a union representative, as appropriate. The employee's choice of a representative may be disallowed for the same reasons, in accordance with Section 3 of this Issuance.

(6) Inform the employee of their right to review and obtain copies of the materials compiled to support the notice of proposed performance-based adverse action.

(7) Inform the employee of their duty status during the notice of proposed performance-based adverse action period.

d. The employee may submit an oral or written response, or both, to the DoDEA Deciding Official during the specified reply period. This is the employee's opportunity to present for consideration to the DoDEA Deciding Official any information that supports the employee's

position and to furnish any affidavits and other documentary evidence before a final decision is made. The employee may have a representative during an oral reply.

e. The Final Decision letter must be based on careful consideration of the notice of proposed performance-based adverse action, the materials compiled for the proposed performance-based action, the replies the employee provides, and any evidence presented by the employee. The DoDEA Deciding Official must consider only the facts specified in the notice of proposed performance-based adverse action and provided for in the employee's reply, if any. The Final Decision letter must:

(1) Indicate whether or not the employee replied to the proposed performance-based adverse action and, if so, that their reply was considered.

(2) Inform the employee whether or not the DoDEA Deciding Official found sufficient evidence to support the proposed performance-based adverse action. If there was sufficient evidence to support the notice of proposed performance-based adverse action, specify the instances of unacceptable performance by the employee upon which the performance-based action is based.

(3) State the effective date of the performance-based action, if any.

(4) The signature of the DoDEA Deciding Official and date signed.

(5) Inform the employee of any right to appeal the decision with the MSPB, any right to grieve the decision pursuant to a negotiated grievance procedure, the right to file a complaint with the U.S. OSC, and the right to file a complaint through the EEO process.

f. If, because of performance improvement by the employee during the notice of proposed performance-based adverse action period, the employee is not reduced-in-grade, reassigned, or removed, and the employee's performance continues to be acceptable for one (1) year from the date of the advance written notice any entry or other notation of the unacceptable performance for which the action was proposed must be removed from any DoDEA record relating to the employee.

g. An employee who successfully passes a performance improvement period must maintain acceptable performance for one (1) year after the end of the employee's performance improvement period. If the employee fails to maintain acceptable performance within one (1) year from the end of their performance improvement period, the employee may be removed without the opportunity for placement in another performance improvement period.

SECTION 5: DOUGLAS FACTORS

5.1. FACTORS TO BE CONSIDERED IN ASSESSING PENALTIES.

- a. To ensure the appropriate penalty is selected when taking an adverse action and that the adverse action is taken to improve the efficiency of the Federal service, certain factors should be considered.
- b. The MSPB enumerated twelve (12) factors that are considered relevant when determining the reasonableness of an adverse action. These factors, referred to as the "Douglas Factors" (*Douglas v. Veterans' Administration, 1981*) are widely accepted, and their use assures not only those adverse actions are fair and equitable, but that the adverse action can withstand the scrutiny of a third party, such as an MSPB administrative law judge or an arbitrator.
- c. Although not all the Douglas Factors will apply in every case, all the relevant factors listed in Section 5.2. of this Issuance will be taken into consideration prior to taking formal disciplinary or adverse action. Contact the servicing DoDEA LMER Specialist for assistance when considering the Douglas Factors.

5.2. DOUGLAS FACTORS.

- a. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities. This includes whether the offense was intentional, technical, or inadvertent, was committed maliciously or for gain, or was frequently repeated.
- b. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
- c. The employee's past disciplinary record.
- d. The employee's past work record.
- e. The effect of the offense upon the employee's ability to perform at a satisfactory level.
- f. The consistency of the penalty with those imposed upon other employees for the same or similar offense in like or similar circumstances.
- g. The consistency of the penalty with any applicable DoDEA table of penalties.
- h. The notoriety of the offense or its impact upon the reputation of the Activity.
- i. The clarity with which the employee was on notice of any rules violated in committing the offense.
- j. The potential for the employee's rehabilitation.

- k. Any mitigating circumstances surrounding the offense.
- l. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee.

SECTION 6: SCHEDULE OF OFFENSES AND PENALTIES

6.1. OVERVIEW OF TABLE OF OFFENSES AND PENALTIES.

a. The information in Table 1: Table of Offenses and Penalties should be used as a guide. It is not a substitute for supervisory judgment and does not dictate penalties.

b. The table does not cover every possible offense. Prior to specifying an offense other than those listed in the table, supervisors and management officials should contact the servicing LMER Specialist for guidance. The servicing LMER Specialist may recommend additional offenses that more accurately reflect the misconduct.

c. Due to the nature of the position, an offense by a supervisor or management official may warrant a more severe penalty than would be warranted for the same offense committed by a non-supervisory employee. Supervisors and management officials are held to a higher standard than other employees within the Activity.

6.2. HOW TO USE THE TABLE OF OFFENSES AND PENALTIES.

a. The columns in Table 1: Table of Offenses and Penalties identify first, second, and third offense penalties and establish a range from less severe to more severe as offenses progress from the first through the third offense. Penalties for offenses should normally fall within the range shown 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.

b. The rows in Table 1: Table of Offenses and Penalties identify a range of remedies, e.g., reprimand to removal, to provide flexibility in correcting conduct deficiencies. Selection of a reasonable remedy from such a broad range should be made with good judgment. Excessive, arbitrary, or capricious remedies, and remedies selected without consideration of mitigating factors, may be reversed by third parties if challenged.

c. Past Offenses.

(1) Past offenses may be used in determining a remedy when:

(a) The employee was officially disciplined in writing.

(b) The action was made a matter of record in the employee's eOPF.

(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.

(3) The following actions may not be counted as past offenses for determining a range of penalties:

(a) Oral admonishments and letters of caution or requirement.

(b) Letters of reprimand dated more than two (2) years before the date of any advance written notice or no longer documented in the employee's eOPF. However, a letter of reprimand may be referenced to demonstrate that the employee was put on notice of unacceptable conduct even when the letter is no longer counted as a past offense for determining an appropriate penalty.

(c) Reductions-in-band/grade or pay not effected for disciplinary reasons.

Table 1: Table of Offenses and Penalties

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
1. ATTENDANCE.			
a. Tardiness (Delay in reporting to duty or returning from lunch or break period and returning to duty after leaving the workstation on official business.)	Reprimand	1-5 day suspension	6-14 day suspension
b. Unauthorized absence of 1-5 consecutive workdays.	Reprimand to 5-day suspension	5-day suspension to removal	14-day suspension to removal
c. Unauthorized absence of six (6) or more consecutive workdays.	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal
d. AWOL from the regular scheduled tour of duty or worksite to include leaving the work area without permission or 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	14-day suspension to removal
(2) Where safety of children or other personnel/property is a factor.	Reprimand to removal	14-day suspension to removal	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- day suspension to removal	14-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
2. CHILD ABUSE AND RELATED ISSUES.			
a. Failure to report suspected child abuse to the proper authorities within 24 hours.	1-day suspension to removal	Removal	
b. Misconduct involving sexual activity with a DoDEA student. This includes: Sexual harassment, sexual assault, and any other related abusive misconduct by any employee within DoDEA. (Misconduct consisting of unwelcome sexual advances, requests for sexual favors, and other objectively offensive verbal, written, or physical conduct of a sexual nature.)	Removal		
c. Substantiated charges of child abuse.	Removal		
d. Administering physical punishment, or hitting, pushing, or pulling a student; throwing objects at a student.	Removal		
e. Using physical force to alter the behavior of a student.	Removal		
f. Involvement or use of a DoDEA student(s) or student's family in the pursuit of a personal concern.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
g. Use of abusive or offensive language (profanity/vulgarity) directed at DoDEA students or in front of students, to include the use of gestures; threats, and emotional abuse.	Reprimand to removal	Removal	
h. Use of poor judgement in dealing with students.	Reprimand to removal	Reprimand to removal	Reprimand to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
3. CONDUCT - AFFECTING PERFORMANCE.			
a. Loafing; sleeping on duty, to include idleness, wasting time; inattention to duty: Negligence			
(1) When the safety of students, personnel, or property is not involved, or when there is no injury or significant loss.	Reprimand to 5-day suspension	5-14 day suspension	14-day suspension to removal
(2) When the safety of students, personnel, or property is involved, or when there is injury or significant loss.	5-day suspension to removal	14-day suspension to removal	Removal
b. Careless workmanship or negligent performance, which may/may not result in delay or waste.	Reprimand to removal	3-day suspension to removal	14-day suspension to removal
c. Covering up or attempting to conceal defective work; removing or destroying work without permission.	Reprimand to removal	14-day suspension to removal	30-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	5-day suspension to removal	14-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
4. CONDUCT – PHYSICAL AND VERBAL NOT INVOLVING STUDENTS.			
a. Fighting or provoking fights; creating a disturbance, making threats to an employee or supervisor; engaging in dangerous horseplay; threatening to inflict bodily harm.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
b. Hitting, pushing, or other acts against another:			
(1) Without causing injury.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
(2) Causing injury.	14-day suspension to removal	30-day suspension to removal	Removal
c. Use of abusive language or offensive (profanity/vulgarity) language towards co-workers, subordinate employees, supervisors or management officials, or members of the public having official or legitimate dealings with the DoDEA; discourtesy (to include gestures).	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
d. Making false, malicious, slanderous, defamatory, or unfounded statements against co-workers, supervisors or management officials, subordinates, or U.S. Government officials that may/may not damage the reputation or undermine the authority of those involved.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
e. Disrespectful conduct; disruptive behavior.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
5. CONDUCT – INSUBORDINATION.			
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	5-day suspension to removal	30-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 5-day suspension	5-day suspension to removal	14-day suspension to removal
(2) Where the safety of students or other personnel/property is endangered.	Reprimand to removal	30-day suspension to removal	Removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
6. CONDUCT – GENERAL.			
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 Activity.	Reprimand to removal	14-day suspension to removal	Removal
c. Off duty misconduct of such major importance that the employee is unable to fulfill his/her job responsibilities.	Removal		
d. Betting, gambling, or the promotion thereof while on duty.	Reprimand to 5-day suspension	5-14 day suspension	14-day suspension to removal
e. Operating, assisting, or promoting an unauthorized gambling activity while on U.S. Government premises, 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
f. Operating or conducting a private business while in a duty status, to include soliciting to others.	Reprimand to removal	14-day suspension to removal	Removal
g. Participating in a strike, work stoppage, slowdown, sick out, or other job action.	Removal		
h. Picketing, if such action interferes with Activity operations.	Reprimand to removal	30-day suspension to removal	Removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
7. DISCRIMINATION.			
a. Discrimination against an employee or applicant based on race, sex, color, national origin, disability, religion, age, marital status, handicap, sexual orientation, status as a parent, sponsor, or legal guardian, or reprisal or retaliation for engaging in a protected activity.	Reprimand to removal	30-day suspension to removal	60-day suspension to removal
b. Sexual Harassment. Misconduct consisting of unwelcome sexual advances, requests for sexual favors, and other objectively offensive verbal, written, or physical conduct of a sexual nature.	Reprimand to removal	Removal	
c. Any act intended to inappropriately influence or threaten the rights or privileges of a victim by coercing or forcing a relationship against the victim's free will.	Reprimand to removal	Removal	
d. Inappropriate Communications. Lewd, vulgar, indecent, and/or obscene speech or writings published, posted, emailed, texted, or otherwise shared. Conversations or discussions with a victim that are sexually degrading or insulting, humiliating, pry inappropriately into a victim's person business or medical history or include remarks, gestures, or innuendoes about a victim's sex, gender, body, appearance, sexual orientation, or sexual activity.	Reprimand to removal	Removal	
e. Interference with an employee's exercise of, or reprisal against an employee for exercising, right to grieve, appeal, or file a complaint through established procedures.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
8. DRUG AND ALCOHOL ABUSE.			
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 to consume alcoholic beverages or drugs while under the supervision of an Activity employee.	30-day suspension to removal	Removal	Removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
9. DRUG TESTING.			
a. Refusal to provide a urine sample when required.	14-day suspension 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
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

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
10. MISREPRESENTATION, FALSIFICATION, AND FALSE STATEMENTS.			
a. Lack of candor or truthfulness, misrepresentation, concealing, or withholding of a material fact, providing statement(s) (oral, written, or electronic) that are less than candid, truthful, accurate, or complete.	Reprimand to removal	5-day suspension to removal	14-day to removal
(1) Misrepresentation was not deliberate or done with the intent to deceive, mislead, or defraud for personal gain.	Reprimand to removal	5-day suspension to removal	Removal
(2) Misrepresentation was deliberate and done with the intent to deceive, mislead, or defraud for personal gain.	14-day suspension to removal	30-day suspension to removal	Removal
b. Filing or aiding/assisting in filing false claims against the U.S. Government.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
c. Falsifying or aiding/assisting in falsifying time and attendance records.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
d. Providing false testimony or refusal to testify in an inquiry, investigation, or other official proceeding.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
e. 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	14-day suspension to removal
f. Falsification, misstatement, or concealment of a material fact in connection with an official record or proceeding, including lying in an official investigation.	14-day suspension to removal	30-day suspension to removal	Removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
11. GOVERNMENT PROPERTY AND CREDENTIALS.			
a. Theft, unauthorized possession, removal, misuse, loss, or damage of U.S. 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
(2) Where substantial value is involved.	14-day suspension to removal	Removal	
b. Misuse of official U.S. Government credentials.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
c. Using U.S. Government employees in a duty status for other than official purposes.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
d. Willful misuse of a U.S. Government vehicle.	30-day suspension to removal	Removal	
e. Misuse, improper use, or unauthorized use of a U.S. Government purchase card or travel card.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
12. MISAPPROPRIATION.			
a. Directing, expecting, or rendering services not covered by appropriations.	Removal		
b. Making an unauthorized commitment, as defined in the Defense Federal Acquisition Regulation 1.602-3(a), that is, committing the U.S. Government to purchase goods or services in the absence of authority to do so.	Removal		
c. Participation in any type of outside activities or relationships with contractors, lenders, or others engaged in business with the Activity or relationships with those seeking contracts which would be contrary to the best interest of the Activity.	14-day suspension to removal	Removal	
d. 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 Activity, except as authorized by conduct regulations.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
13. MANAGEMENT OFFENSES.			
a. Abuse of supervisory authority.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
b. Violation of an employee's Constitutional rights (freedom of speech, association, religion, etc.).	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
c. Committing a prohibited personnel practice.	3-day suspension to removal	Removal	
d. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct/actions of a subordinate supervisor/employee.	Reprimand to removal	14-day suspension to removal	Removal
e. Using U.S. Government employees in duty status for other than official purposes.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
14. SAFETY.			
a. Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions.	Reprimand to removal	5- day suspension to removal	14-day suspension to removal
b. Violation of safety regulations which endangers life or property.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
c. Endangering the safety of or causing injury to others through carelessness.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
d. Violating traffic regulations, reckless driving on U.S. Government premises, or improper operation of a motor vehicle.	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
e. Failure to report duty related personal injury or accident.	Reprimand to 3-day suspension	5-14 day suspension	14-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
15. SECURITY.			
a. Violation of security regulations, instructions or directives:			
(1) When the breach does not result in release of security information to unauthorized persons and there is no evidence of compromised classified information.	Reprimand to removal	14 day suspension to removal	30-day suspension to removal
(2) When the breach results in release of security information to unauthorized persons.	14-day suspension to removal	30-day suspension to removal	Removal
(3) When the breach is intentional.	14-day suspension to removal	Removal	
b. Unauthorized disclosure or use of information or other protected material, or records covered by Section 552a, Title 5, also known as the Privacy Act of 1974, as amended.	Reprimand to 14-day suspension	14-day suspension to removal	30-day suspension to removal
c. Failure to safeguard confidential information or documentation.	Reprimand to 14-day suspension	14-day suspension to removal	30-day suspension to removal

OFFENSE	1ST DOCUMENTED OFFENSE	2ND DOCUMENTED OFFENSE	3RD DOCUMENTED OFFENSE
16. INVESTIGATIONS AND REPORTING.			
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 U.S. Government property or facilities of any kind for other than official U.S. 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 U.S. 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
c. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated).	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal

GLOSSARY

G.1. ACRONYMS.

AWOL	Absence Without Leave
CBA	Collective Bargaining Agreement
DMEO	Diversity Management and Equal Opportunity
EAP	Employee Assistance Program
EEO	Equal Employment Office
eOPF	Electronic Official Personnel Folder
HR	Human Resources
LMER	Labor Management and Employee Relations
LOR	Letter of Reprimand
MFR	Memorandum for Record
MSPB	Merit Systems Protection Board
OPM	Office of Personnel Management
OSC	Office of Special Counsel
OSD	Office of the Secretary of Defense
PIP	Performance Improvement Plan
SF	Standard Form

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this Issuance only.

administrative leave. A paid, non-duty status.

adverse action. A disciplinary or non-disciplinary removal, suspension, furlough for 30-calendar days or less, or reduction-in-grade or pay.

annuitant. A person who is receiving a Civil Service Retirement System or Federal Employee Retirement System retirement annuity.

counseling. The communication between an employee and supervisor or management official concerning deficiencies in conduct, attitude, or performance. Counseling shall encompass any form of communication, written or oral, which is not recorded in the employee's eOPF. The

notation on an MFR documents a counseling event and is not a disciplinary action. Counseling may be used to support future adverse actions.

disciplinary action. A positive and constructive form of behavior modification and an important leadership tool that should not be confused with punishment.

DoDEA Deciding Official. The DoDEA Deciding Official issues a notice of final decision on a disciplinary or adverse action should be a supervisor or management official who is of a higher organizational level than the supervisor or management official proposing the disciplinary or adverse action.

Douglas Factors. Factors the Activity must consider when determining an appropriate penalty for misconduct when taking a disciplinary or adverse action.

efficiency of Federal service. When the grounds for the action relate to either an employee's ability to accomplish their duties satisfactorily or to some other legitimate U.S. Government interest.

ex parte communication. Oral or written communication between an interested party to a proceeding and decision-making personnel without providing the other party or parties an opportunity to participate. Not all *ex parte* communications are prohibited, but an improper *ex parte* communication may occur when a proposing supervisor or management official speaks to, writes to, or otherwise communicates directly with the DoDEA Deciding Official about the merits or issues of the case without the employee's knowledge.

excepted service. Excepted service organizations or positions that are specifically excluded from the OPM's competitive service procedures. These organizations have their own hiring system which establishes the evaluation criteria used in filling vacancies.

exculpatory. Anything that clears someone or something of guilt or blame.

First-Line Supervisor. An employee's immediate supervisor.

formal disciplinary action. An action that is taken for disciplinary reasons and made a matter of record in the employee's eOPF, such as a letter of reprimand, suspension, removal, or reduction-in-pay or grade.

furlough. A temporary non-duty and non-pay status of 30-calendar-days or less because of a lack of work or funds or for other non-disciplinary reasons.

grade. The level of classification under a position classification system.

indefinite suspension. The placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Activity 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 proposed disciplinary action that may include the completion of any subsequent administrative action.

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

Issuing Official. The official who issues the document proposing an action. A supervisor or management official at least one (1) level higher than the employee being disciplined.

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.

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 eOPF for a period of one (1) to three (3) years.

management official. Position meets the definition of Management Official in accordance with Title 5, United States Code, but does not meet the General Schedule Supervisory Guide definition of supervisor management official.

oral admonishment. A discussion between a supervisor and employee in which the employee is informed that they were disciplined by receipt of an oral admonishment.

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

performance-based actions. Action taken outlining the necessary proficiency training needed to improve performance in the employee.

preference eligible. A U.S. military veteran who substantially completed three (3) or more years of active service under honorable conditions.

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

probationary or trial period. An extension of the appointment process to give the Activity an opportunity to assess the employee's overall 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.

proposing official. The official who issues the document proposing an action. A supervisor or management official at least one (1) level higher than the employee being disciplined.

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

reduction-in-pay. The involuntary placement of an employee into a lower pay category.

reemployed annuitant. A reemployed annuitant is a retired federal employees who have been rehired by their former agency or another agency in the federal government.

removal. An involuntary separation based on a decision of an appropriately designated supervisor or management official.

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

supervisor. A person in a position requiring the exercise of supervisory responsibilities that meet the minimum requirements for application of the General Schedule Supervisory Guide or similar standards of minimum supervisory responsibility specified by position classification standards or other directives of the applicable pay schedule or system.

temporary appointment. An employee on a time limited appointment.

Weingarten Rights. Weingarten Rights involve the right to request and have a union representative at an investigatory interview that an employee reasonably believes may lead to discipline or “at which the employer seeks information to enable it to impose discipline or termination”.

REFERENCES

- Code of Federal Regulations, Title 5
- Defense Federal Acquisition Regulation Supplement, current edition
- DoD Directive 5500.07, “Standards of Conduct,” November 29, 2007
- DoD Instruction 5015.02, “DoD Records Management Program,” February 24, 2015, as amended
- DoDEA Regulation 5015.01, “Records Management Program,” December 19, 2017
- Douglas v. Veterans' Administration*, 5 Merit Systems Protection Board, 313 (1981)
- Office of the Chief Management Officer Administrative Instruction 15, “OSD Records and Information Management Program,” May 3, 2013, as amended
- Office of the Secretary of Defense, “Records Disposition Schedules,” April 2021, as amended
- United States Code, Title 5
- United States Code, Title 5, Section 552a, (also known as the Privacy Act of 1974, as amended)
- United States Code, Title 10
- United States Office of Personnel Management Standard Form 50, “Notification of Personnel Action”, July 1991
- United States Office of Personnel Management Standard Form 52, “Request for Personnel Action”, July 1991

APPENDIX

APPENDIX 1: INTERNAL CONTROLS EVALUATION CHECKLIST – DODEA LMER SPECIALIST CHECKLIST

REQUIREMENT	YES/NO
Did the servicing DoDEA LMER Specialist ensure proper regulatory guidance and procedures were followed when the DoDEA supervisor or management official addressed employee misconduct?	
Did the servicing DoDEA LMER Specialist ensure evidence is objectively analyzed?	
Did the servicing DoDEA LMER Specialist determine if additional documentation was needed from the DoDEA supervisor or management official?	
Did the servicing DoDEA LMER Specialist provide the DoDEA supervisor or management official with resources and available options that will address the workplace issue in an appropriate manner?	
Did the servicing DoDEA LMER Specialist recommend the proper penalty level after reviewing the supporting documentation and the employee’s past disciplinary record?	
Did the servicing DoDEA LMER Specialist draft disciplinary letters, leave restriction letters, Activity grievance responses, and other correspondence?	
Did the servicing DoDEA LMER Specialist answer employee procedural and regulatory questions and ensure the employee’s due process rights are not violated?	
Did the servicing DoDEA LMER Specialist provide the employee options for addressing their concerns about workplace issues or direct them to the appropriate office where assistance can be obtained such as DMEQ or EAP?	
Did the servicing DoDEA LMER Specialist initiate a personnel action, annotating the proper nature of action and legal authority codes and route to the servicing HR representative?	
Did the servicing DoDEA LMER Specialist remove the employee’s personnel action from the eOPF and ensure that the SF 50, “Notification of Personnel Action,” has been accurately processed?	
Did the servicing DoDEA LMER Specialist properly maintain the official disciplinary file for four (4) years or seven (7) years during litigation?	
Did the servicing DoDEA LMER Specialist save the following documents as one (1) PDF file in the “Closed Cases” file under the LMER folder on the K-drive:	
SF 50, “Notification of Personnel Action”	
Signed Final Decision Letter	

Attachments to the Final Decision Letter	
Douglas Factors Analysis Written Reply	
MFR of Oral Reply	
Any amendments to Proposal or Final Decision Letters	
Signed Proposal Letter	
Attachments to Proposal Letter	
Supporting Documentation/Materials Compiled	