

 <p style="text-align: center;"><b>WEST VIRGINIA DIVISION OF JUVENILE SERVICES</b></p>	<p><b><u>POLICY NUMBER:</u></b></p> <p style="font-size: 2em; font-weight: bold;">138.00</p>	<p><b><u>PAGES:</u></b></p> <p style="text-align: center;">6</p>
<p><b><u>CHAPTER:</u></b> Administration and Management</p>	<p><b><u>REFERENCE AND RELATED STANDARDS:</u></b> WV Code §49-2-903; WV Division of Personnel Administrative Rule; Prison Rape Elimination Act (PREA), §§115.311, 115.317, 115.366 and 115.376</p>	
<p><b><u>SUBJECT:</u></b> Progressive Discipline</p>		
<p><b><u>DATE:</u></b> July 1, 2016</p>		

### PURPOSE

It is the policy of the West Virginia Division of Juvenile Services to ensure progressive discipline for Division employees is consistent with applicable policies, regulations, and statutes.

### CANCELLATION

This policy has been revised and supersedes Policy 138.00 dated October 1, 2015.

### APPLICABILITY

This policy applies to all Division of Juvenile Services' employees and contract employees.

### PROCEDURES

1. The Division Director, Deputy Director, Department and Regional Directors, Facility Superintendents/Directors and Supervisors are responsible for ensuring the issuance of disciplinary action is consistent with this policy.
  - a. The Division of Juvenile Services expects its employees to:
    - i. Conduct themselves in such a manner that their activities both on and off duty will not discredit either themselves, other employees, or the Division;
    - ii. Conduct themselves in a manner that creates and maintains respect for the Division of Juvenile Services and the State of West Virginia;
    - iii. Avoid any action which might result in, or create the appearance of, affecting adversely the confidence of the public in the integrity of the Division or the State;
    - iv. Follow and comply with all division policy directives, operational procedures or post orders; and,
    - v. Maintain a satisfactory level of job performance.

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- b. All supervisors have the responsibility to apply these guidelines in a fair and equitable manner to all employees, documenting the facts of each case.
- c. Except for verbal warnings, counseling checklists or written reprimands, prior approval must be obtained from the Division Director/designee before issuing disciplinary actions.
  - i. When the Division Director's approval is required, the Facility Superintendent/Director shall review each violation and provide the necessary documentation to the Legal Department, along with a recommendation for the course of action.
  - ii. The Division Director/designee may act on the existing documentation or, at his/her discretion, cause further review of the matter.
- d. The goal of corrective and disciplinary action is to correct behavior. In order to correct behavior, a supervisor should inform the employee of:
  - i. What the employee did wrong;
  - ii. What the employee should have done;
  - iii. What conduct or work performance is expected; and
  - iv. Consequences of future violations.
- e. Management must demonstrate just cause for any discipline, taking into consideration:
  - i. The nature and circumstances of the act(s) committed;
  - ii. Any previous discipline; and
  - iii. Comparable offenses by other staff with similar histories.
- f. The proof of wrongdoing must be established by a preponderance of the evidence.
- g. In the grievance process the Division bears the burden of proof in disciplinary actions. However, if a probationary employee is dismissed as a result of unsatisfactory job performance, the **probationary employee** bears the burden of proof.
- h. The Division has the responsibility to place a staff member in a no-contact position with residents pending the outcome of an investigation into any allegations of abuse and/or threat against a resident, outcome of criminal proceeding bearing a connection to the employee's position, or other misconduct. Additionally, an employee may be suspended without pay while the agency conducts an investigation because of threat of continuing danger to persons/property to protect the integrity of evidence or pending court action.

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- i. Determined by the severity of the violation, corrective action and progressive discipline follows the concept of increasingly severe actions taken by supervisors and managers to correct/prevent an employee's initial or continuing unacceptable work behavior or performance.

- i. The level of discipline shall be determined by the severity of the violation.
- ii. Employees will be made aware of expected and acceptable levels of performance and notification will be documented and retained, with the documentation being specific and avoiding conclusions that are not supported by facts.
- iii. As indicated below, progressive and constructive corrective and disciplinary action will normally proceed along a continuum from verbal warning (least severe) to dismissal (most severe), with incremental steps between unless aggravating or mitigating factors exist to justify deviation.

Verbal      Counseling      Written  
Warning → Checklist → Reprimand → Suspension → Demotion → Dismissal

- j. The following disciplinary tools will be utilized for progressive discipline:
  - i. **Verbal Warning:** Issued when the deficiency or misconduct is not of a serious or repetitious nature.
    - 1) The verbal warning may contain all the elements of a written action, and documentation may be retained only in an administrative file separate from the employee's personnel file maintained by the agency.
    - 2) A copy of the documentation must be given to the employee.
  - ii. **Counseling Checklist** is a form that can be used to document a verbal warning when the deficiency or misconduct has been repeated or is of a more serious nature but does not rise to the level of a written reprimand (Attachment #1).
  - iii. **Written Reprimand:** May be issued when minor infractions/deficiencies continue or when a more serious infraction/deficiency is discovered.
    - 1) Such written communication should contain:
      - a) A description of the infraction or violation and expected changes in performance or behavior with consequences for failure to do so;
      - b) An opportunity for the employee to respond in person or in writing;

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- c) Notice of right to file a grievance specifying to whom the appeal should be directed and the time limits to appeal the reprimand.
    - d) Employee signature line.
  - 2) The original is given to the employee (after signature) and a copy placed in the employee's personnel file, a copy forwarded to the Division of Juvenile Services' Director of Human Resources, the Legal Department and the Division of Personnel.
- iv. **Suspension**: Issued where minor infractions/deficiencies continue beyond the written reprimand or when a more serious singular incident occurs. Additionally, an employee may be suspended without pay while the agency conducts an investigation because of threat of continuing danger to persons/property to protect the integrity of evidence or pending court action. Elements of a suspension are:
  - 1) Pre-determination meeting with employee to advise him/her of the contemplated disciplinary action;
  - 2) Three (3) working days written notice, prior to the effective date of the action;
  - 3) Specific written reason(s) for suspension;
  - 4) Specific period of time for the suspension (except where employee is the subject of a criminal proceeding or indictment);
  - 5) Written notice of opportunity to respond, either in person or in writing, prior to the effective date. Immediate suspension without written or a pre-determination conference can occur in limited situations, but requires written confirmation;
  - 6) Notice of right to file a grievance specifying to whom the appeal should be directed and the time limits to appeal the suspension;
  - 7) A copy placed in the employee's personnel file, a copy forwarded to the Division of Juvenile Services' Director of Human Resources, the Legal Department and the Division of Personnel.
- v. **Demotion (with prejudice)**: Demotion shall be for cause and may be the final attempt at corrective action, prior to dismissal. Elements of a demotion with prejudice are:
  - 1) A pre-determination meeting with the employee to advise him/her of contemplated disciplinary action (may include reduction in pay);
  - 2) An advance written notice to the employee of fifteen (15) calendar days prior to the effective date of the action;
  - 3) Specific written reason for demotion;
  - 4) Opportunity for the employee to respond either in person or in writing prior to the effective date;

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- 5) Notice of right to file a grievance specifying to whom the appeal should be directed and the time limits to appeal the demotion; and
  - 6) A copy placed in the employee's personnel file, a copy forwarded to the Division of Juvenile Services' Director of Human Resources, the Legal Department and the Division of Personnel.
- vi. **Dismissal:** May be issued when infractions/deficiencies in performance and/or behavior continue after the employee has had adequate opportunity for correction or the employee commits a singular offense of such severity that dismissal is warranted. Elements of a dismissal are:
- 1) Pre-determination meeting with the employee to advise him/her of contemplated disciplinary action.
  - 2) Fifteen (15) calendar day written notice of the offense, prior to the effective date of the action. A pre-determination meeting and notice is not required in cases of "gross misconduct" where there is a continuing danger to persons/property or the orderly conduct of the affairs of the agency.
  - 3) Specific written reason(s) for the dismissal.
  - 4) The opportunity for the employee to respond, either in person or in writing, prior to the effective date of the dismissal.
  - 5) Notice of right to file a grievance specifying to whom the appeal should be directed and time limits to appeal the dismissal.
  - 6) A copy placed in the employee's personnel file, a copy forwarded to the Division of Juvenile Services' Director of Human Resources, the Legal Department and the Division of Personnel.
2. An employee who is informed of a contemplated dismissal and chooses to resign prior to issuance of receiving formal notice or an employee who is permitted to resign through settlement after being dismissed is considered to have not separated in good standing, and the employee is ineligible for reinstatement and may be disqualified from employment in the classified service.
  3. Any employee who is dismissed from employment or resigns in lieu of dismissal for child abuse or child sexual abuse shall be reported to law enforcement and any relevant licensing bodies.
  4. An employee has the right to appeal any disciplinary action through the Public Employees Grievance Board, in accordance with WV State Code 6C-2 *et seq.*
  5. The Facility Superintendent/Director shall enter and upload all employee discipline into the Intranet under their facility's progressive discipline list.

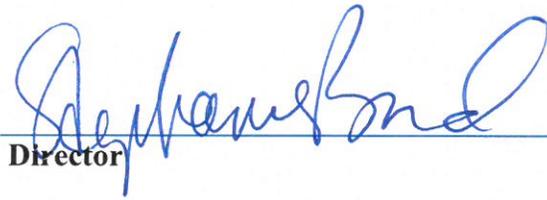
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6. Persons assigned as contract workers and volunteers are not subject to progressive discipline by the Division; however, they must adhere to policies, regulations, and statutes of the agency or face loss of privilege to volunteer or contract with the Division.
7. This policy will be adopted in its entirety and the facility will not create an operational procedure.

**RIGHTS RESERVED**

The Director reserves the right to modify, suspend or cancel any provision herein in part or entirety, without advance notice, unless prohibited by law.

**APPROVED:**

 7/1/16  
Director Date



# DIVISION OF JUVENILE SERVICES

## Counseling Checklist

1. Employee's Name: \_\_\_\_\_ Date: \_\_\_\_\_

2. Supervisor's Name: \_\_\_\_\_

3. Date/Time of Incident: \_\_\_\_\_

4. Minor infraction/deficiency to be covered: \_\_\_\_\_

5. Confirmed that the description of the infraction/deficiency is accurate.  Yes  No

6. Asked reason for his/her infraction/deficiency.  Yes  No

Comments: \_\_\_\_\_  
\_\_\_\_\_

7. Clearly defined expectations of employee responsibility.  Yes  No

Comments: \_\_\_\_\_  
\_\_\_\_\_

8. Developed a plan to correct the infraction/deficiency.  Yes  No

9. The plan that was developed is as followed: \_\_\_\_\_  
\_\_\_\_\_

10. Consequences for recurrence if infraction/deficiency persists were clearly defined to the employee.  Yes  No

Comments: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

***(Use Reverse Side If Needed)***

\*Original Facility Administrator

\*Copy to Supervisors File