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Scott Crow, Interim Director Oklahoma Department of Corrections		Signature on File	

Progressive Disciplinary Procedures

The following procedures have been established to ensure a safe and productive work environment through the prompt application of appropriate discipline that is equitable and suitable for the offense considering the circumstances [Merit Rule 455:10-11-1]. (2-CO-1C-01, 4-4048, 4-ACRS-7E-07, 4-APPFS-3E-16)

The goal of progressive discipline, generally, is to redirect classified employees toward improved job performance and conduct which complies with all applicable statutes, rules, policies, procedures, or practices. These procedures are intended to provide discipline which is consistent, impartial, and predictable while preserving the flexibility to respond with varying penalties, if justified [Merit Rule 455:10-11-5].

Discipline includes both informal and formal actions and, in general, is applied progressively; however, progressive and consistent discipline does not preclude the use of more severe disciplinary responses to serious infractions, nor does it require it be applied without regard for individual differences such as length of service, performance record, position or other mitigating or aggravating circumstances [Merit Rule 455:10-11-4]. (4-APPFS-3E-16)

Prolonged, serious or repetitive job performance deficiencies will also be documented in the performance evaluation and during periodic reviews in accordance with [OP-110225](#) entitled "Performance Management Process." Such evaluations will be used for current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases and discharges (74 O.S. § 840-4.17). With or without the performance evaluations, the appointing authority can make decisions regarding demotions and discharges on current state employees if deemed necessary (Merit Rule 260:25-17-31(e)).

Referrals to the Employee Assistance Program (EAP) for treatment or counseling, in addition to a disciplinary response, may be appropriate under certain conditions and employee participation in treatment or counseling may serve to mitigate a disciplinary response.

Unless otherwise stated in this procedure, the following guidelines may also be applied to employees in the unclassified service.

For the purpose of this procedure, the term "facility head" will apply to wardens and community corrections centers directors and the term "unit head" will apply to unit directors and probation and parole deputy directors.

I. Informal Discipline

Informal discipline may be administered verbally, as in informal discussion or corrective interview, or in writing, as in a letter of concern.

A. General Guidelines

1. The goal of informal discipline is to bring potential problems to an employee's attention before they escalate [Merit Rule 455:10-11-10 (a)].

2. Documentation regarding informal disciplinary actions taken will not be placed in the employee's personnel file; however, the supervisor will retain documentation of any informal disciplinary action taken [Merit Rule 455: 10-11-10 (a)], in a separate supervision file, which will be cited, as appropriate, in any subsequent formal discipline if used in the decision to administer formal discipline [Merit Rule 455:10-11-11].
3. A copy of any written informal disciplinary action will be provided to the employee.

B. Content (See example, [Attachment A](#) (attached) entitled "Example/Letter of Concern")

Both verbal and written informal discipline must notify employees of:

1. The nature of the problem which is cause for the discipline and the steps which must be taken to resolve the problem [Merit Rule 455:10-11-10(b)(1)]; and
2. The consequences of repeated infractions or continuing deficient performance or conduct [Merit Rule 455:10-11-10(b)(2)].

II. Formal Discipline Guidelines

A. Formal Disciplinary Actions

Formal disciplinary actions include letters of reprimand, suspensions without pay, involuntary demotions, and discharges [Merit Rule 455:10-11-11]. (4-APPFS-3E-17)

B. General Guidelines

1. Absent aggravating conditions, formal discipline is normally administered after informal discipline has failed to produce acceptable results [Merit Rule 455:10-11-11].
2. Formal disciplinary actions will include a citation of any other informal or formal discipline which was used in the decision to administer formal discipline [Merit Rule 455:10-11-11]. Supervisors are prohibited from considering incidents that occurred longer than four years prior to an offense in order to move to a higher level of discipline; however, this prohibition does not apply to incidents involving the following types of conduct:
 - a. Criminal activity;
 - b. Sexual misconduct and/or harassment;
 - c. Racial/ethnic discriminatory behavior and/or harassment;

- d. Threats or acts of violence against employees in the workplace; and
 - e. Drug and/or alcohol use or abuse on the job. (74 O.S. § 840-6.3D)
3. Documentation of formal discipline will be maintained in the employee's personnel file and will be available for review by the employee; the employee will be provided a copy of any formal disciplinary document issued and filed [Merit Rule 455:10-11-8 (b) and (c)].
 4. All notices of proposed suspensions without pay, involuntary demotions or terminations, and final letters of suspension without pay, involuntary demotion and termination will be forwarded to the Office of the General Counsel for review prior to issuance.
 5. No suspension without pay, involuntary demotion, or termination will be effective prior to the date of issuance of the final letter delivered to the employee.
 6. A copy of all signed (issued) documents pertaining to formal discipline, to include letters of reprimand, notices of opportunities to respond or pre-termination hearings and letters of suspension without pay, involuntary demotion, and termination will be forwarded to the director of Administration.
- C. Causes for Discharge, Suspension without Pay and Demotion (74 O.S. § 840-6.5) and [Merit Rule 455:10-11-14] (4-4281-6, 4-APPFS-3E-17)

A permanent, classified employee may be terminated, suspended without pay for up to 60 calendar days or demoted for:

1. Misconduct;
2. Insubordination;
3. Inefficiency;
4. Habitual drunkenness;
5. Inability to perform the duties of the position in which employed;
6. Willful violation of the Oklahoma Personnel Act or Merit Rules;
7. Conduct unbecoming a public employee;
8. Conviction of a crime involving moral turpitude; or

9. Any other just cause.

D. Discipline for Failure to Comply with State Income Tax Laws

Upon receipt of notice from the Oklahoma Tax Commission that an employee has failed to comply with state income tax laws, Oklahoma statute (68 O.S. § 238.2) requires that the appointing authority commence disciplinary action.

All disciplinary action required by 68 O.S. § 238.2 and OP-110215 entitled "Rules Concerning the Individual Conduct of Employees" will adhere to the following guidelines:

1. The director of Administration will notify the appropriate director and/or facility/unit head and provide instructions regarding the appropriate disciplinary action. Once the appropriate notice has been provided to the employee, and the notice does not require disciplinary action, a copy of the notice will be maintained in the employee's supervisory file.
2. If the notification is the employee's third notification as a state employee, regardless of which agency the employee was employed by at the time of the first and second notices, the employee will be terminated by ODOC.

The Oklahoma Tax Commission (OTC) has sole responsibility for identifying employees that are not in compliance with state income tax laws and making notification of their respective tax status to ODOC.

3. All discipline will comply with all statute, rules, and these procedures concerning the discipline of permanent classified, probationary, or unclassified employees.
4. Disciplinary actions will reference the provisions of 68 O.S. § 238.2 and the notice received from the Oklahoma Tax Commission. Listed causes for the termination of a permanent classified employee will include misconduct, conduct unbecoming a state employee, and any other just cause.
5. The facility/unit head will forward a copy of all discipline taken as a result to the director of Administration or designee.

III. Letter of Reprimand

A. Guidelines [Merit Rule 455:10-11-13]

1. Letters of reprimand may be issued to probationary, permanent classified or unclassified employees.

2. Notice and opportunity to respond is not provided prior to the issuance of a letter of reprimand.
3. Reprimands may be issued by a supervisor within the employee's chain of command with the approval of the facility/unit head.

B. Content [Merit Rule 455:10-11-13] (See example, [Attachment B](#) (attached) entitled "Example/Letter of Reprimand")

A letter of reprimand will contain:

1. The date of issuance;
2. The statute, rule, policy, practice, or procedure regarding work performance or conduct which was violated;
3. A statement of the act or incident (or omission) which is the cause or reason for the reprimand;
4. The steps which can be taken to resolve the problem;
5. A citation of any other informal or formal discipline which was used in the decision to administer the written reprimand;
6. The consequences of repeated infractions or continuing deficient performance or conduct;
7. A statement that the employee may respond in writing and have that response filed with the reprimand; and
8. Signatures of the issuing supervisor, facility/unit head, receiving employee and the date of receipt.

IV. Suspension Without Pay (Under Oklahoma Personnel Act and Merit Rule)

Employees may be suspended without pay for up to 60 days [Merit Rule 455:10-11-14] in accordance with this procedure. Classified and Unclassified Exempt employees (as defined in [Attachment A](#) of [OP-110305](#) entitled "Overtime Pay and Compensatory Time") will be suspended without pay in full work week intervals, unless the suspension is imposed for a violation of workplace conduct rules (29 CFR 541.602). The facility/unit head will take possession of the employee's badge and assigned weapon during any period of suspension.

A. Unclassified and Probationary Classified Employees

Unclassified and probationary classified employees may be suspended without pay, without notice or right of appeal, for disciplinary or internal investigatory purposes.

The letter of suspension will include the beginning and ending dates of the suspension and the reason(s) for the suspension which may include “for the good of the service.”

B. Permanent Classified Employees

Following notice and opportunity to respond, permanent classified employees may be suspended without pay for any of the causes listed in Section II. item C. [Merit Rule 455:10-11-15(a)] and in accordance with these procedures.

1. Notice of Proposed Suspension and Opportunity to Respond (See example, [Attachment C](#) entitled “Example/Notice of Proposed Suspension Without Pay,” attached).

The employee will be provided notice of the proposed suspension without pay, by personal service or certified/registered mail [Merit Rule 455:10-11-15(b)]. The notice will contain:

- a. The specific disciplinary action that is proposed (the number of work days that is proposed for suspension). If the employee’s work day exceeds eight hours, the suspension letter will indicate the number of hours that constitutes the employee’s work day i.e. suspended for two 12-hour shifts, the letter would state “two working days (24 hours”);
- b. The statute, rule, policy, practice, or procedure regarding work performance or conduct which was violated and is the reason for the proposed suspension without pay [Merit Rule 455:10-11-15(b)(1)];
- c. A description of the specific acts or omissions which violate the above cited statute, rule, policy, practice, or procedure and are the grounds for the proposed suspension without pay [Merit Rule 455:10-11-15(b)(2)];
- d. An explanation of the evidence which justifies the proposed suspension without pay [Merit Rule 455:10-11-15(b)(3)]. The notice will contain sufficient explanation to permit the employee to prepare a response to the allegations. No documents or “evidence” will be attached to the notice;
- e. Any prior discipline (formal or informal) that was used in the decision to propose a suspension without pay;
- f. A statement that the employee may respond and present reasons why the proposed suspension is improper [Merit Rule 455:10-11-15(b)(4)] by completing [Attachment D](#) (attached) entitled “Written Response to Proposed Discipline.” The employee will have seven calendar days to respond;

- g. The signature of the facility/unit head and date of issuance;
- h. Documentation of date of receipt by the employee by personal service or certified/registered mailing, or documentation of the reasonable effort made to provide such service; and
- i. [Attachment D](#) entitled "Written Response to Proposed Discipline."

2. Final Action

An employee must be provided written notice of the final action, by personal service or certified/registered mail, within ten working days after receipt of the employee's written response. [Merit Rule 455:10-11-15(c)].

The appointing authority, upon receipt of the employee's written response, may meet with the employee to discuss or clarify any issues at the appointing authority's discretion; however, no scheduled meeting will delay the issuance of final action.

The appointing authority may decide to take no disciplinary action or any final action that does not exceed the proposed suspension without pay.

The written notice of suspension without pay (final letter) must include (See example, [Attachment E](#) entitled "Example/Suspension Without Pay," attached):

- a. The effective date and inclusive dates of the suspension without pay [Merit Rule 455:10-11-15(c)(4)];
- b. A statement that the action is being taken under Merit Rules 455:10-11-14 and 15 which provides that a permanent classified employee may be suspended without pay for cause to wit: (list the applicable causes cited in Section II. item C. of this procedure) [Merit Rule 455:10-11-15(c)(3)];
- c. The statute, rule, policy, practice or procedure regarding work performance or conduct which was violated and is the reason for the suspension without pay [Merit Rule 455:10-11-15(c)(1)];
- d. The specific acts or omissions that are in violation of the statute, rule, policy, practice, or procedure and that are the grounds for the suspension [Merit Rule 455:10-11-15(c)(2)];
- e. A citation of any prior discipline (formal or informal) which was used in the decision to administer the suspension without pay [Merit Rule 455:10-11-15(c)(5)];

- f. A statement that the employee has a right to file an appeal, within 20 calendar days after receipt of notice, with the Merit Protection Commission (MPC) located at 3545 N.W. 58th Street, Suite 360, Oklahoma City, Oklahoma 73112 (4-APP-3E-17) [Merit Rule 455:10-11-15(c)(6)];
- g. An attachment of the MPC's appeal form [Merit Rule 455:10-11-15(c)(7)] and Request Authorization for Conventional (paper) Filing of Appeal [Merit Rule 455:10-11-16 (c)(7)];
- h. Signature of facility/unit head and date of issuance; and
- i. Documentation of date of receipt by employee by either personal service or certified/registered mailing or the documentation of a reasonable effort made to provide such service.

V. Suspension Without Pay (Under 57 O.S. § 510.B)

The agency director, as represented by the facility/unit head or local appointing authority, may suspend without pay any permanent employee (classified or unclassified) for an indeterminate number of days pending a hearing and final determination of any state or federal felony charge. The facility/unit head will take possession of the employee's badge and assigned weapon during any period of suspension.

This action does not represent, or take the place of, any final disciplinary action that will be taken following disposition of the charges. The final disciplinary action taken must be in accordance with the provisions of the Oklahoma Personnel Act (for permanent classified employees).

In the event the charges are found without merit or not sustained in a court of law, the employee will be reinstated with pay and benefits; however, this does not preclude the facility/unit head from proceeding with the final disciplinary action based on a preponderance of evidence.

In the event the charges are substantiated, the facility/unit head will proceed with the final disciplinary action unless a forfeiture of employment has occurred.

A. Unclassified and Probationary Classified Employees

Suspensions without pay (under 57 O.S. § 510.B) will be administered in accordance with the provisions of Section IV. item A. above except that the suspension period will be for an indeterminate number of days pending disposition of the charges. The notice will state the beginning date of the suspension, and cite the reason for suspension as pending felony charges in accordance with 57 O.S. § 510.B.

B. Permanent Classified Employees

Suspensions without pay (under 57 O.S. § 510.B) will be administered in accordance with the provisions of Section IV. item B. of this procedure except that:

1. The notice of proposed suspension and opportunity to respond will state that the suspension is for an indeterminate number of days pending disposition of charges; and
2. The letter of suspension without pay will cite a beginning date only and cite that the action is taken under 57 O.S. § 510.B, instead of 455:10-11-15, which provides that an employee may be suspended without pay when charged with a state or federal felony.

VI. Involuntary Demotion

A. Unclassified Employees

Unclassified employees may not be demoted. The agency may terminate an unclassified employee at will and appoint the employee to another unclassified position or reinstate the employee to a position in the classified service in accordance with applicable statute, rule or procedure.

B. Permanent Classified Employees

Following notice and opportunity to respond, permanent classified employees may be involuntarily demoted for any of the causes listed in Section II. item C. [Merit Rule 455:10-11-16(a)] and in accordance with these procedures.

1. Notice of Proposed Demotion and Opportunity to Respond

The employee will be provided notice of the proposed involuntary demotion by personal service or certified/registered mail [Merit Rule 455:10-11-16(b)].

The notice will contain the following:

- a. The specific disciplinary action that is proposed (involuntary demotion to a specific job family level);
- b. The statute, rule, policy, practice or procedure regarding work performance or conduct which was violated and is the reason for the proposed involuntary demotion [Merit Rule 455:10-11-16(b)(1)];
- c. A description of the specific acts or omissions which violate the above cited statute, rule, policy, practice or procedure which

are the grounds for the proposed involuntary demotion [Merit Rule 455:10-11-16(b)(2)];

- d. An explanation of the evidence, which justifies the proposed demotion [Merit Rule 455:10-11-16(b)(3)]. The notice will contain sufficient explanation to permit the employee to prepare a response to the allegations. No documents or "evidence" will be attached to the notice;
- e. Any prior discipline (formal or informal) that was used in the decision to propose an involuntary demotion;
- f. A statement that the employee may respond and present reasons why the proposed demotion is improper [Merit Rule 455:10-11-16(b)(4)] by completing [Attachment D](#) entitled "Written Response to Proposed Discipline." The employee will have seven calendar days to respond;
- g. The signature of the facility/unit head and the date of issuance;
- h. Documentation of date of receipt by the employee by personal service or certified/registered mailing or documentation of the reasonable effort made to provide such notice; and
- i. [Attachment D](#) entitled "Written Response to Proposed Discipline."

2. Final Action

An employee must be provided written notice of the final action, by personal service or certified/registered mail within 10 working days after receipt of the employee's written response [Merit Rule 455:10-11-16(c)].

The appointing authority, upon receipt of the employee's written response, may meet with the employee to discuss or clarify any issues at the appointing authority's discretion; however, no scheduled meeting will delay the issuance of final action.

The appointing authority may decide to take no disciplinary action or any final action that does not exceed the proposed involuntary demotion.

The discipline imposed in the final notice will not begin earlier than the date the final notice is issued.

The written notice of involuntary demotion must include:

- a. The effective date of the involuntary demotion and the job family level and pay band to which demoted [Merit Rule 455:10-11-16 (c)(4)];
- b. A statement that the action is being taken under Merit Rules 455:10-11-14 and 16 which provides that a permanent classified employee may be involuntarily demoted for cause to wit: (list the applicable cause(s) cited in Section II. item C. of this procedure) [Merit Rule 455:10-11-16 (c)(3)];
- c. The statute, rule, policy, practice or procedure regarding work performance or conduct which was violated and is the reason for the involuntary demotion [Merit Rule 455:10-11-16 (c)(1)];
- d. The specific acts or omissions that are in violation of the statutes, rule, policy, practice, or procedure and that are the grounds for the involuntary demotion [Merit Rule 455:10-11-16 (c)(2)];
- e. A citation of any prior discipline (formal or informal) which was used in the decision to administer the involuntary demotion [Merit Rule 455:10-11-16 (c)(5)];
- f. A statement that the employee's performance evaluation(s) were reviewed prior to making the final decision to involuntarily demote [Merit Rule 260:25-17-31(e)];
- g. A statement that the employee has a right to file an appeal, within 20 calendar days after receipt of notice, with:

Oklahoma Merit Protection Commission (MPC)
3545 N.W. 58th Street, Suite 360,
Oklahoma City, Oklahoma 73112,

and notifying the employee that appeals must be filed electronically unless conventional filing is requested in writing [Merit Rule 455:10-11-16(c)(6) and 455:10-3-2c];
- h. An attachment of the MPC's appeal form and Request Authorization for Conventional (paper) Filing of Appeal [Merit Rule 455:10-11-16 (c)(7)];
- i. Signature of facility/unit head and date of issuance; and
- j. Documentation of date of receipt by employee by either personal service or certified/registered mailing or the documentation of reasonable effort made to provide such service.

VII. Termination

A. Unclassified and Probationary Classified Employees

Unclassified employees are employees at will, are not entitled to notice or opportunity to respond, and may be terminated with or without cause, without any right of appeal (74 O.S. § 840-4.13D. and 5.1A.)

The probationary appointment of any person may be terminated at any time during the probationary period without right of appeal. [Merit Rule 260:25-11-32].

Probationary classified employees will be terminated upon a conviction or plea of guilty or plea of nolo contendere to a felony offense, but may be terminated earlier.

Letters of discharge will contain the following information: (See example, [Attachment F](#) entitled "Example/Termination Letter-Unclassified or Probationary Employee," attached)

1. A statement that employment is terminated and the effective date;
2. A statement that the action is being taken "for the good of the service" or a brief explanation of the job related reasons for the action (appointing authorities will consult with the Office of the General Counsel prior to listing any job related reasons);
3. Any instructions for the return of agency property;
4. A statement that the employee may provide a written response for placement in the personnel file;
5. The signature of the facility/unit head and date of issuance; and
6. The signature of the employee and date of receipt or date of mailing.

Any probationary or unclassified employee who is terminated under 74 O.S. § 840-2.21 for failure to return to work within one year after the start of workers' compensation leave without pay must be provided a copy of Merit Rule 260:25-15-49(k) regarding reinstatement upon separation which reads: "A classified employee shall be eligible for reinstatement to either classified or unclassified employment with any state agency for 12 months after the date of separation under Merit Rule 260:25-15-49(j)(2). An unclassified employee shall be eligible for reinstatement to unclassified employment with any state agency for 12 months after the date of separation under Merit Rule 260:25-15-49(j)(2). This does not reduce eligibility under other general reinstatement or reemployment laws or rules, such as 260:25-9-102."

B. Permanent Classified Employees (74 O.S. § 840-6.4)

Following notice and opportunity to respond and in accordance with these procedures, a permanent classified employee may be terminated for any of the causes listed in Section II. item C. of this procedure [455:10-11-17(a)].

1. Notice of Pre-Termination Hearing (See example, [Attachment G](#) (attached), entitled "Example/Notice of Pre-termination Hearing").

The employee will be provided notice of the proposed termination by personal service or certified/registered mail. The appointing authority will maintain documentation of reasonable effort to provide such notice at least seven calendar days before the date of the hearing [Merit Rule 455:10-11-17(b)(2)].

A copy of the notice will be filed in the employee's personnel file at least 72 hours prior to the pre-termination hearing [Merit Rule 455:10-11-17(b)(3)].

The notice will contain the following information:

- a. A statement that termination is the proposed disciplinary action;
- b. The date, time, and location of the pre-termination hearing [Merit Rule 455:10-11-17(b)(2)(E)];
- c. A statement that the hearing will be held in order to determine whether or not reasonable grounds exist to believe that the charges against the employee are true and whether or not the grounds support the proposed termination [Merit Rule 455:10-11-17(b)(1)];
- d. A statement of the employee's right to be represented, by an attorney or other person of choice, at the employee's own expense [Merit Rule 455:10-11-17(b)(2)(D)];
- e. A statement that the hearing will be taped in its entirety and the employee will be provided a copy at no cost if the employee appeals to the Merit Protection Commission and requests a copy [Merit Rule 455:10-11-17(b)(4)];
- f. The statute, rule, policy, practice, or procedure regarding work performance or conduct which was violated and is the reason for the proposed action [Merit Rule 455:10-11-17(b)(2)(A)];
- g. A description of the specific acts or omissions which are grounds for the proposed termination [Merit Rule 455:10-11-17(b)(2)(B)];
- h. A summary of the evidence which supports each of the stated grounds for the proposed termination [Merit Rule 455:10-11-

17(b)(2)(C)]. The notice will contain sufficient explanation to permit the employee to prepare a response to the allegations. No documents or “evidence” will be attached to the notice;

- i. A “Disciplinary Certificate” which lists all prior discipline (formal or informal) which was considered in the decision to terminate employment and which states: *“I certify that all mandatory progressive discipline actions as required by statute or rule have been taken.”* [Merit Rule 455:10-11-17(b)(3)];
- j. The signature of the facility/unit head and the date of issuance; and
- k. Documentation of date of receipt by the employee by personal service or certified/registered mailing, or of the reasonable efforts made to provide such.

2. Conduct of the Hearing

The pre-termination hearing is not a full evidentiary hearing and the formal rules of evidence do not apply. The hearing will be audio taped in its entirety. If the audio tape is requested, a copy will be provided no later than 14 calendar days after the request. [Merit Rule 455:10-11-17(b)(4)].

Failure of an employee to attend this hearing will not limit the facility/unit head’s ability to impose disciplinary action.

The facility/unit head will:

- a. Determine who will attend the hearing; however, the employee may bring an attorney or representative at his/her expense;
- b. Review the contents of the notice with the employee as to the allegations and the evidence in support of the allegations; and
- c. Allow the employee to present information pertinent to whether the charges are true and whether the grounds support the proposed termination.

3. Legal Sufficiency Review [Merit Rule 455:10-11-17((b)(5)]

If the decision by the appointing authority is to proceed with termination, the recording of the hearing and all of the evidence used to support the termination (which was summarized in the notice of pre-termination hearing) will be provided to the Office of the General Counsel for review within 48 hours after the hearing.

No termination of an employee will be finalized until the appointing authority is notified by the Office of the General Counsel that the termination may proceed.

4. Final Action

An employee must be provided written notice of the final action, by personal service or certified/registered mail within ten working days after the date of the hearing [Merit Rule 455:10-11-17(c)].

The appointing authority may decide to take no disciplinary action or any final action less than termination.

The discipline imposed in the final notice will not begin earlier than the date the final notice is issued.

The written notice of termination (See example, [Attachment H](#) entitled "Example/Termination" must include:

- a. The effective date of the termination [Merit Rule 455:10-11-17(c)(4)];
- b. A statement that the action is being taken under Merit Rule 455:10-11-14 and 17 which provides that a permanent classified employee may be discharged for cause to wit: (list the applicable causes cited in Section II. item C.) [Merit Rule 455:10-11-17(c)(3)];
- c. The statute, rule, policy, practice or procedure regarding work performance or conduct which was violated and is the reason for the termination [Merit Rule 455:10-11-17(c)(1)];
- d. A description of the acts or omissions that are in violation of the statutes, rule, policy, practice, or procedure cited and that are all the grounds for the termination [Merit Rule 455:10-11-17(c)(2)];
- e. A citation of any prior discipline (formal or informal) which was used in the decision to administer the termination [Merit Rule 455:10-11-17(c)(5)];
- f. A statement that the employee's performance evaluation(s) were reviewed prior to making the final decision to terminate [Merit Rule 260:25-17-31(e)];
- g. A statement that the employee has the right to file an appeal within 20 calendar days after receipt of notice, with the Merit Protection Commission (MPC) located at 3545 N.W. 58th Street, Suite 360, Oklahoma City, Oklahoma 73112, and notifying the employee that appeals must be filed electronically

unless conventional filing is requested in writing [Merit Rule 455:10-11-17(c)(6)];

- h. An attachment of the MPC's appeal form and Request Authorization for Conventional (paper) Filing of Appeal [Merit Rule 455:10-11-17(c)(7)];
- i. Signature of the facility/unit head and date of issuance; and
- j. Documentation of date of receipt by employee by either personal service or certified/registered mailing or the documentation of reasonable effort made to provide such service.

5. Conviction or Plea to a Felony (74 O.S. § 840-6.5C)

In the event an employee is found guilty of, or pleads guilty or nolo contendere to a felony, the facility/unit head will proceed with termination in accordance with these procedures except that:

- a. The notice of pre-termination hearing will cite [OP-110215](#) entitled "Rules Concerning the Individual Conduct of Employees" (pertaining to illegal activity and non-professional conduct) as the rule violation and summarize the contents of the court document that establishes a finding of guilt or a plea of guilty or nolo contendere as the evidence relied upon; and
- b. The notice of final action (termination) will cite 74 O.S. § 840-6.5.C and the applicable cause as conviction of, or plea of guilty or nolo contendere to a felony.

6. Termination for Absence More than One Year (Workers' Compensation) (74 O.S. § 840-2.21.D.) [Merit Rule 260:25-15-49(j)]

A permanent classified employee may be terminated, under 74 O.S. § 840-2.21, when the employee is unable to return to the original position or an alternate position within one year after the start of leave without pay status.

Such termination is subject to the pre-termination hearing requirements of statute, Merit Rule, and these procedures; however, the notice of final action (termination) will meet the following additional requirements:

- a. The authority of 74 O.S. § 840-2.21, and the causes for termination [Merit Rule 455:10-11-14] of inability to perform the duties of the position in which employed and other just cause will be cited; and
- b. Employees will be notified of their eligibility for reinstatement

as specified in Merit Rule 260:25-15-49(k). (See [Attachment I](#) entitled "Example/Notice of Pre-Termination Hearing and Termination," attached) (74 O.S. § 840-2.21).

VIII. Retention/Confidentiality/Distribution of Formal Disciplinary Documents

All formal disciplinary documents will be retained in the employee's personnel file and treated as confidential except that any final disciplinary action which results in the loss of pay will be treated as an open record in accordance with 51 O.S. § 24A.7.

Employees will be provided the originals of any disciplinary document addressed to them. A copy will be placed in the personnel file and a copy provided to the director of Administration.

IX. Status of Employees Pending Disciplinary Action

A. Suspension With Pay [Merit Rule 260:25-11-120(a), 455:10-11-15(b), 455:10-11-16(b), and 455:10-11-17(b)(2)]

1. Eligibility

- a. Permanent classified employees may be suspended with pay for:
 - i. internal investigatory purposes; or
 - ii. pending the outcome of a proposed suspension without pay, involuntary demotion or discharge.
- b. The affected director/unit head may place an unclassified employee on suspension with pay when it is in the best interest of the agency. The employee will be advised the dates and times that the suspension will begin and end. A suspension with pay may be canceled or interrupted at any time and the employee ordered to return to work.

2. Notice

The employee will be informed in writing of the beginning and ending dates and times of the suspension with pay, the requirement to be available during working hours which will specify what working hours the employee is to be available, and any additional reporting requirements. The facility/unit head will take possession of the employee's badge and assigned weapon during any period of suspension.

3. If the employee was suspended with pay for investigatory purposes and is cleared, the employee's personnel records will be fully cleared

and every reasonable effort made to fully clear any related external records.

X. Additional Personnel Actions Which Are Not Discipline

The following personnel actions are not discipline and are not subject to the requirements outlined for discipline within these procedures:

A. Termination upon Conviction or Plea of Guilty or Plea of Nolo Contendere to a Felony Offense

Any unclassified employee who is found guilty, pleads guilty or nolo contendere to a felony will forfeit employment immediately upon entering such plea and will vacate the employment held (51 O.S. § 24.1.F).

B. Leave Without Pay/Unauthorized Absence

Employees may request approval for leave without pay with proper authorization or may be placed on unauthorized absence for any absence from work without proper authorization in accordance with Merit Rule 260:25-15-47.

C. Reinstatement to Former Position [Merit Rule 260:25-11-55 and 76]

An employee serving a trial period following promotion or voluntary demotion may be reinstated to the former position or other position within the same job family level in accordance with Merit Rule and [OP-110235](#) entitled "Hiring and Promotional Procedures."

D. Office Inventory

The office, workspace, and property of any employee who transfers, terminates, is discharged from employment, or on leave or suspension pursuant to an agency investigation is subject to inventory.

E. Annual Leave

An employee may be placed on annual leave whenever the facility/unit head determines that such action is in the best interest of the agency [Merit Rule 260:25-15-11(4)] provided:

1. No employee is required to reduce annual leave balances below five days [Merit Rule 260:25-15-11(4)];
2. No employee is subject to any work related requirements while on annual leave; and
3. There is no internal investigation pending and the employee has not been provided with notice of an opportunity to respond to allegations

contained in a notice of proposed suspension without pay, demotion, or termination.

F. Modification of Work Assignment

Employees may be provided temporary work assignments pending the completion of any final disciplinary action.

XI. Distribution

A. Merit Protection Commission

A copy of these procedures and any revisions will be filed with the Merit Protection Commission [Merit Rule 455:10-11-5(a)].

B. Employees

All employees will receive a copy of this procedure at initial enrollment and any time revisions are made [Merit Rule 455:10-11-5(b)].

[Attachment K](#) entitled "Acknowledgement of Receipt" (attached) will be used to acknowledge employee receipt and filed as documentation in the personnel file.

XII. Statistical Reporting Requirement [Merit Rule 455:10-11-9]

The Central Human Resources Unit will maintain statistical information regarding the number and nature of formal disciplinary actions and file an annual report with the Oklahoma Merit Protection Commission. The report will identify, for the fiscal year, the number of formal disciplinary actions taken, by type of discipline, and the pay band, gender and race of each employee receiving formal discipline. The annual report must be filed no later than August 1 of each year.

XIII. References

Policy Statement No. P-110100 entitled "Uniform Personnel Standards"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-110225 entitled "Performance Management Process"

OP-110235 entitled "Hiring and Promotional Procedures"

OP-110305 entitled "Overtime Pay and Compensatory Time"

Merit Rules for Employment 455:10-11-1 et seq., 260:25-11-32, 10-11-38, 10-11-55, 10-11-76, 10-11-120, 10-15-11(4), 10-15-47, 10-15-49(j) and (k), 260:25-17-31(e), 455:10-3-2(c)

74 O.S. § 840-2.21, 4.13D, 4.17, 5.1A, 6.3.D, 6.4, 6.5

57 O.S. § 510.B

51 O.S. § 24.1.A, 24.1.F, 24A.7

68 O.S. § 238.2

29 CFR 541.602

XIV. Action

The executive/senior staff are responsible for compliance with this procedure.

The director of Administration is responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-110415 entitled "Progressive Disciplinary Procedures" dated December 12, 2017

Distribution: Policy and Operations Manual
Agency Website

<u>Attachments</u>	<u>Title</u>	<u>Location</u>
Attachment A	"Job Family Level Guide"	OP-110305
Attachment A	"Example /Letter of Concern"	Attached
Attachment B	"Example/Letter of Reprimand"	Attached
Attachment C	"Example/Notice of Proposed Suspension Without Pay"	Attached
Attachment D	"Written Response to Proposed Discipline"	Attached
Attachment E	"Example/Suspension Without Pay"	Attached
Attachment F	"Example/Termination Letter – Unclassified or Probationary Employee"	Attached
Attachment G	"Example/Notice of Pre-Termination Hearing"	Attached
Attachment H	"Example/Termination"	Attached
Attachment I	"Example/Notice of Pre-Termination Hearing and Termination (74 O.S. § 840-2.21)"	Attached
Attachment K	"Acknowledgement of Receipt"	Attached

