

STATE OF MISSISSIPPI DEPARTMENT OF EDUCATION	TOPIC: EMPLOYEE CORRECTIVE AND DISCIPLINARY ACTION
EMPLOYEE PROCEDURES MANUAL	SECTION: 10.0 PAGE 1 OF 11 EFFECTIVE DATE: MAY 1, 2000 REVISION #6: NOV. 1, 2023

EMPLOYEE CORRECTIVE AND DISCIPLINARY ACTION

Mississippi Code Annotated §25-9-127 provides that no employee of any department, agency or institution under the State Personnel System, who is subject to the policies and procedures prescribed by MSPB, may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause. Before such disciplinary action, a State Service employee must be provided written notice and hearing within the department, agency, or institution as provided in the policies and procedures promulgated by MSPB complying with due process of law.

DISMISSED OR OTHERWISE ADVERSELY AFFECTED AS TO COMPENSATION OR EMPLOYMENT STATUS

Dismissed means an involuntary termination of employment. An employee is **adversely affected as to compensation or employment status** when the employee is dismissed, involuntarily demoted with a reduction in pay, or suspended without pay. Each of these personnel actions either reduces or terminates an employee's compensation and shall be based on **inefficiency or other good cause**. State Service employees are first entitled to due process of law before receiving such disciplinary action.

Mississippi Code Ann. § 25-9-127 provides that this provision **does not** apply to the following persons: 1) employees separated from employment due to a curtailment of funds or a reduction in force approved by the MSPB; 2) employees dismissed or otherwise adversely affected as to compensation or employment status during the probationary period of state service of 12 months; or 3) employees dismissed or otherwise adversely affected as to compensation or employment status, as an executive officer or other Non-State Service employees of any state agency who serves at the will and pleasure of the Governor, board, commission or other appointing authority.

WRITTEN REPRIMAND AND INFORMAL CORRECTIVE ACTION

Employees may also be issued a Written Reprimand before disciplinary action reducing or terminating an employee's compensation is necessary. A Written Reprimand is formal notice to an employee of inefficiency or other good cause warranting disciplinary action and is intended to correct unacceptable behavior or unsatisfactory job performance.

When warranted, an employer may attempt to correct unacceptable behavior or unsatisfactory job performance with a documented warning/counseling session or other appropriate informal means, before taking **formal disciplinary action** (Written Reprimand, Suspension Without Pay, Involuntary Demotion or Dismissal.).

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INEFFICIENCY OR OTHER GOOD CAUSE

The following list of examples illustrating inefficiency or other good cause is not all-inclusive. It is not intended to limit an appointing authority's discretion in determining that inefficiency or other good cause exists, warranting disciplinary action in compliance with MSPB procedures.

- Failure to report to work at the required time;
- Unauthorized time away from the assigned work area;
- Leaving the worksite without permission during assigned work hours;
- Failure to report to work without giving the required notice to the supervisor;
- Acts in violation of Section 5.7 of the MSPB Handbook (Workplace Harassment);
- Acts in violation of Section 5.8 of the MSPB Handbook (Conflicts of Interest);
- Acts in violation of Section 5.9 of the MSPB Handbook (Political Activity);
- Acts in violation of Section 5.10 of the MSPB Handbook (Workplace Violence);
- Acts in violation of Section 5.14 of the MSPB Handbook (Prohibited Relationships);
- Acts in violation of Section 5.15 of the MSPB Handbook (Outside Employment);
- Acts in violation of Section 5.16 of the MSPB Handbook (Social Media);
- Conviction of a moving traffic violation while operating a state vehicle, or operating a state vehicle in an unsafe manner;
- Operation of a state vehicle without a valid driver's license;
- Arrest or conviction of driving under the influence while in a state vehicle or while in a personal vehicle while on state business;
- Failure or refusal to follow supervisor's instructions or perform assigned work.
- Failure or refusal to comply with agency policies or procedures;

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INEFFICIENCY OR OTHER GOOD CAUSE (continued):

Theft on the job.

Arrest or conviction for a felony criminal charge

Arrest or conviction for a misdemeanor criminal charge that is related to an employee's job duties or conflicts with the mission of the agency.

Other violations of MSPB or agency policies, procedures, rules or regulations not specifically referenced herein.

DUE PROCESS

A State Service employee may be dismissed or otherwise adversely affected as to compensation or employment status only after being given **written notice** and **hearing**, complying with **due process of law**. A Non-State Service employee may be dismissed or otherwise adversely affected as to compensation or employment status, with or without cause and is not entitled to due process.

Written notice means the employee is provided with a statement summarizing the reason(s) the employee is facing possible disciplinary action. The notice should state with sufficient specificity the inefficiency and/or other good cause reason(s), so the employee may adequately respond. The notice must state an appointed time and location for the employee to respond to the allegation(s) in a hearing. The employee may choose to submit a written waiver of the hearing or respond in writing to the allegation(s) in the notice.

The hearing is an informal conference between the employee and the appointing authority or designated representative. The employee must be provided the notice at least five (5) working days prior to the hearing. The purpose of the hearing is to give the employee a meaningful opportunity to respond to the allegation(s) in the notice and for the employer to determine if inefficiency or other good cause exists, warranting disciplinary action.

ADMINISTRATIVE LEAVE/SUSPENSION WITH PAY PENDING THE EMPLOYEE'S DUE PROCESS HEARING

An employee may be placed on administrative leave/suspension with pay *before* the due process hearing. The hearing must take place within 25 working days from the first day of the administrative leave/suspension with pay and the written notice must be provided to the employee at least five (5) working days prior to the hearing. Factors an employer shall consider

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in determining if administrative leave/suspension with pay pending the hearing is appropriate include, but are not limited to:

The seriousness of the allegation(s) against the employee, taking into account the mission of the agency and the employee’s particular job duties;

The reasonable possibility of serious disciplinary action being issued as a result of the pending hearing; and

Whether the employee’s continued presence at work pending the hearing would be contrary to the best interests of the agency.

In circumstances where the employee has been charged with a felony, the employee may be suspended without pay before the hearing. This period of suspension without pay prior to the hearing shall not be considered as a disciplinary Suspension Without Pay pursuant to Forms of Discipline and Corrective Action.

DISCIPLINARY/CORRECTIVE ACTION DECISION

In the hearing, the appointing authority or designated representative should only consider the reasons stated in the written notice, any related supporting documentation, and the employee’s response. A determination and recommendation from the designated representative to the appointing authority should include both a summary of the employee’s response and the basis for his or her decision and recommendation. The appointing authority should carefully consider the designated representative’s determination and recommendation, but may choose to accept, modify, or disregard the recommended personnel action.

If it is determined that inefficiency or other good cause exists, factors to consider in determining the appropriate personnel action include, but are not limited to:

- The seriousness of the misconduct/unsatisfactory job performance.
- The mission of the agency and the employee’s particular duties
- The employee’s assigned level of responsibility
- The employee’s previous record of both formal and informal disciplinary/corrective action.
- Consistency with past disciplinary/corrective action for other similarly situated employees.

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DISCIPLINARY/CORRECTIVE ACTION DECISION (continued):

Disciplinary action should be timely, and employers are to ensure fair treatment for employees while also providing efficient operation of the agency. When warranted, employers should practice progressive disciplinary/corrective action to address employee misconduct or unsatisfactory job performance. Depending on the particular circumstances, escalated disciplinary/corrective action may not be possible.

If a disciplinary notice is issued as a result of the due process hearing, the notice shall:

- Re-state the reasons contained in the written notice that was the subject of the due process hearing and were determined to be inefficiency or other good cause for disciplinary action;
- State the effective date(s) of the disciplinary action. If the employee is involuntarily demoted, the notice should state the new job class and salary;
- State the decision may be appealed to the Mississippi Employee Appeals Board (MEAB) with a written Notice of Appeal filed within 15 calendar days after receipt of the disciplinary notice or within fifteen 15 calendar days of the first attempted delivery date by certified mail, return receipt requested, whichever comes first. The disciplinary notice may be hand delivered or sent by certified mail;
- Refer the employee to chapter nine (9) of the MSPB Handbook for additional information concerning appeals to the MEAB.

Mississippi Code Ann. §25-9-127 provides that any State Service employee who appeals to the MEAB his or her dismissal or action adversely affecting compensation or employment status shall be required to furnish evidence that the reasons stated by the employer are not true or are not sufficient grounds for the action taken.

FORMS OF DISCIPLINE AND CORRECTIVE ACTION

DISMISSAL

Dismissal is an involuntary termination of employment. Involuntary termination of employment can occur based upon disciplinary action or a Reduction in Force approved by the MSPB. Dismissal can also occur based on the failure of the employee to continue to meet the eligibility criteria for the position held or an inability to perform the essential functions of the job.

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INVOLUNTARY DEMOTION

An involuntary demotion is when an employee is demoted for disciplinary reasons from a position in one job class to a position in a lower job class having a lower salary range. The involuntary demotion shall include a reduced salary in accordance with the MSPB Variable Compensation Plan. An employee may receive an involuntary demotion in addition to a suspension without pay.

SUSPENSION WITHOUT PAY

A disciplinary suspension without pay is the temporary removal of an employee from performing his or her duties and from receiving payment. The maximum period an employee may be suspended without pay during any 12 month period is 30 cumulative work days. The 12 month period shall begin with the first day of the initial suspension.

WRITTEN REPRIMAND

A written reprimand is a formal notice to an employee of inefficiency or other good cause warranting disciplinary action. It is intended to correct unacceptable behavior or unsatisfactory job performance before disciplinary action reducing or terminating an employee's compensation is necessary. A written reprimand should state with sufficient specificity the inefficiency or other good cause reason(s) for the disciplinary action. The reprimand must also:

- Inform the employee of his/her right to grieve the reprimand in accordance with MSPB grievance procedures;
- Inform the employee that a copy of the reprimand will be placed in his/her personnel file;
- Contain the employee's signature acknowledging that he/she has received the reprimand. If the employee refuses to sign the acknowledgment, the person issuing the reprimand should sign the acknowledgment section confirming the reprimand was delivered to the employee.

An employee is not entitled to a due process hearing before being issued a written reprimand. If the employee has a due process hearing before being issued the reprimand, the reprimand may be appealed directly to the MEAB without first exhausting the MSPB grievance procedure. Otherwise, employees must exhaust the grievance procedure before appealing the reprimand to the MEAB.

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INFORMAL CORRECTIVE ACTION

When warranted, an employer may attempt to also correct unacceptable behavior or unsatisfactory job performance with a documented warning/counseling session or other appropriate informal means, before taking **formal disciplinary action** (Written Reprimand, Suspension Without Pay, Involuntary Demotion or Dismissal.) Informal corrective action **is not** grievable.

A formal disciplinary action notice shall be maintained in the employee's personnel file. Supervisors should coordinate with Human Resources as to whether documentation of informal corrective action should be included in the employee's personnel file. Employees must be given copies of any disciplinary/corrective action documentation placed in his/her personnel file. Documentation of formal disciplinary action or informal corrective action may be kept indefinitely in the employee's personnel file.

GRIEVANCES

Grievable Issues

The following issues are grievable and appealable to the Mississippi Employee Appeals Board (MEAB) after exhausting the MSPB grievance procedure:

- A. Written Reprimands issued pursuant to Section 7.5 of the MSPB Handbook. Non-state service employees may only grieve Written Reprimands on the basis of alleged violations of state or federal law;
- B. Open Competitive Appointments or Promotions into a Permanent State Service position alleged to be in violation of MSPB or agency policy;
- C. Promotions or appointments alleged to be in violation of state or federal law;
- D. Involuntary relocation of an employee as an alleged disciplinary measure or for arbitrary or capricious reasons; or
- E. Alleged violations of Mississippi Code Ann. §§ 25-9-171 through 25-9-177.

An employee is not permitted to file a grievance or appeal to the MEAB concerning issues which are pending or have been concluded in a separate administrative or judicial forum.

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GRIEVANCE PROCEDURE

- A. Grievances must be submitted to the agency Human Resources Director or other agency designee (s) within seven (7) working days of the employee becoming aware of the alleged grievable issue. The Human Resources Director or other agency designee shall then timely forward the grievance to the appropriate level supervisor to review the issues, meet with the employee and provide a 1st Level Agency Response. The agency Human Resources Director or other agency designee shall assist the supervisor in this process. A grievable complaint should be submitted in writing, on the Grievance Form located at www.mdek12.org/OHR/forms.
- B. Within seven (7) working days of the employee initially submitting the grievance, the designed supervisor shall meet with the employee. This timeframe may be extended by agreement of the parties. Within three (3) working days of the meeting, the appropriate level supervisor shall provide the employee with the **1st Level Agency Response** to the grievance.
- C. If not satisfied with the 1st Level Agency Response, within three (3) working days of receipt, the employee may re-submit the grievance to the Human Resources Director or other agency designee for it to be timely forwarded to the agency Appointing Authority or designee.
- D. Within seven (7) working days of the grievance being re-submitted, the Appointing Authority or his/her designed shall meet with the employee. This timeframe may be extended by agreement of the parties. Within three (3) working days of the meeting, the **Final Agency Response** shall be provided to the employee.
- E. If not satisfied with the Final Agency Response, the employee may file an appeal with the Mississippi Employee Appeals Board in compliance with Chapter 9 of the MSPB Handbook.

GRIEVANCE FORM AND TIMEFRAME REQUIREMENTS

Grievances are to be submitted using the MSPB Grievance Form and management shall provide the 1st Level and Final Agency Response on the grievance form. If necessary, either party may attach relevant supporting documents.

An employee's failure to comply with the required timeframe in Section 8.2 of the MSPB State Employee Handbook prohibits the employee from using or exhausting the grievance procedure. In such circumstances, the MEAB does not have jurisdiction to hear an appeal concerning the issue.

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GRIEVANCE FORM AND TIMEFRAME REQUIREMENTS (continued):

An employee’s failure to comply with or exhaust the grievance procedure does not relieve an agency’s responsibility to timely and appropriately address such issues as necessary. Issues of concern to an employee that are not considered grievable may still require an immediate and appropriate response by the agency. MDE is required to timely and effectively respond to complaints of alleged workplace harassment (Section 5.7) and workplace violence (Section 5.10) of the MSPB State Employee Handbook.

If the agency fails to comply with the required timeframe, the employee may elect to treat the relief requested as denied at that step and immediately appeal the grievance to the next step.

WHO MAY APPEAL; ACTIONS WHICH MAY BE APPEALED

- A. State service employees may appeal having been dismissed or otherwise adversely affected as to compensation or employment status.
- B. Non-State Service employees may appeal having been dismissed or otherwise adversely affected as to compensation or employment status **only** on the basis of alleged violations of state or federal law.
- C. Employees may appeal issues that are grievable pursuant to Section 8.1 of the Employee Handbook after having properly exhausted the grievance procedure pursuant to Section 8.2 of the Employee Handbook. When an employee has received due process (written notice and hearing) prior to being issued a Written Reprimand, the employee may appeal directly to the MEAB without exhausting the MSPB grievance procedure.

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WHO MAY APPEAL; ACTIONS WHICH MAY BE APPEALED (continued)

D. Employees may appeal alleged violations of Mississippi Code Ann. §§ 25-9-171 through 25-9-177.

E. Pursuant to Mississippi Code Ann. §25-3-95 (8) (e) an employee may appeal the decision that he or she is not eligible to receive donated leave because the injury or illness of the employee or member of the employee’s immediate family is not, in the appointing authority’s determination, a catastrophic injury or illness.

PERFECTION OF APPEAL BY TIMELY FILING

- A. All appeals shall be initiated by filing a written Notice of Appeal with the Administrative Office. Notice of Appeal forms are available to all State agencies and employees on the MSPB website at <http://www.mspb.ms.gov/employee-appeals-board/appeal-form.aspx>.
- B. A Notice of Appeal must be filed within 15 calendar days after the date a person receives written notice of formal disciplinary action defined in Section 7.1 or the Final Agency Response to a grievance pursuant to Section 8.2 (e) or within 15 calendar days of the first attempted delivery date by certified mail, return receipt requested, whichever occurs first.
- C. A fee of one hundred dollars (\$100.00) in the form of a cashier’s check, bona fide attorney’s check, or money order made payable to the “Mississippi Employee Appeals Board” shall be filed by the appealing party with each Notice of Appeal. Cash or personal checks will not be accepted.

JURSDICTION

- A. When an appeal is filed, a presiding hearing officer shall determine whether or not he or she has jurisdiction. If not, the appeal shall be dismissed without further hearing. If an appeal is dismissed for lack of jurisdiction and without hearing, the MEAB shall return the appellant’s \$100 filing fee.
- B. An employee is not permitted to appeal issues which are pending or have been concluded in a separate administrative or judicial forum.
- C. Pursuant to Mississippi Code Ann. §25-9-127, an employee separated from employment due to a curtailment of funds or a reduction in force approved by the MSPB is not permitted to appeal such decision to the MEAB.