

 Kinston Police Department	<u>POLICY: Disciplinary Action Policy</u>						<u>POLICY #:</u> 200-1
	<u>NCLEA Standards: 1.18</u>						
	<u>CALEA Standards: 26.1.4</u>						
	<u>NCLM Standards: I10.;</u>						Effective Date:
<input type="checkbox"/> New <input checked="" type="checkbox"/> Revised	Revision Dates:	01/01/21	02/04/25				07-01-2019
Approval: Chief of Police							

I. PURPOSE

The purpose of this policy is to establish guidelines to ensure equitable application of disciplinary action for all City employees, including members of the Kinston Police Department. Nothing herein is intended nor shall be construed to alter the AT-WILL nature of employment of all Kinston Police Department employees. The Kinston Police Department is committed to the fair treatment of all City employees and will comply with all local, state, and federal laws related to the disciplinary process.

This policy is available for reading purposes; however, for disciplinary purposes, refer to the attached City of Kinston Disciplinary Process – HR #1 (updated: 6/30/2015)

II. ORGANIZATIONS AFFECTED

All City employees in all departments, including members of the Kinston Police Department.

III. DEFINITIONS

- A. Oral Warning: A counseling session with the employee in a private setting.
- B. Written Warning: A written form documenting an employee's continuous documented failure in the performance of their duties for which they failed to improve performance as instructed or inappropriate conduct.
- C. Disciplinary Conference: A conference with an employee for the purpose of informing the employee that the City is considering disciplinary action and to receive comment or feedback from the employee regarding the recommended disciplinary action. At least two members of management but not more than three shall be in attendance: for example, the supervisor, the department head and a representative from Human Resources. A disciplinary conference shall be held with an employee prior to a final written warning, disciplinary demotion, or termination.
- D. Disciplinary Suspension without Pay: Relieving an employee from their duties and responsibilities for a specified period of time without any compensation.
- E. Investigative Suspension with Pay: Relieving an employee from their duties to provide time to investigate, establish facts, and reach a decision concerning an employee's status and/or to protect the safety of persons, including other employees, and property.

- F. Disciplinary Demotion: The change in pay grade and/or job title and responsibilities resulting in the reduction of pay.
- G. Final Written Disciplinary Warning: A written form documenting the failure of an employee to respond to a Written Warning and/or development of further inappropriate conduct or job performance related issues.
- H. Dismissal: Termination of employment with the City of Kinston.
- I. Unsatisfactory Job Performance: Work-related performance that fails to satisfactorily meet job requirements as set out in the relevant position description, work plan, or as directed by the management of the work unit or agency.
- J. Grossly Insufficient Job Performance: Failure to satisfactorily perform job requirements as set out in the job description, work plan, or as directed by management of the work unit or agency that causes or risks serious adverse impacts to the City or the public. This may include, but is not limited to, when the act or failure to act causes or results in death or serious bodily injury or creates conditions that increase the chance for death or serious employee has responsibility, or the loss of or damage to city property or funds that result in serious adverse impact on the City and/or work unit.
- K. Unacceptable Personal Conduct: Conduct falling below the standard of conduct that the City of Kinston expects of its employees and includes, but is not limited to:
- a. conduct for which no reasonable person would expect prior warning;
 - b. conduct which the City reasonable constitutes a violation of local, state or federal law;
 - c. conviction of felony or an offense involving moral turpitude;
 - d. conduct that is detrimental to or impacts the employee's service to the City;
 - e. conduct unbecoming to a City employee that is detrimental to City service.
 - f. the willful violation of known or written work rules, including safety rules;
 - g. theft or unauthorized use or misuse of City property;
 - h. the abuse of a customer, trainee, inmate or person(s) over whom the employee has charge or to whom the employee has a responsibility;
 - i. falsification of a City application or in other employment documentation or record;
 - j. unauthorized or excessive absenteeism;
 - k. improper use or abuse of leave;
 - l. leaving work without permission
 - m. use of City position for personal gain;
 - n. willfully engaging in any activity that constitutes a conflict of interest;
 - o. withholding or providing false information or refusal to cooperate in the course of an investigation;
 - p. unauthorized release or disclosure of confidential information;
 - q. inappropriate contact or communication with elected officials;
 - r. inappropriate behavior towards or discourteous treatment of the public or other employees;
 - s. possession of an unauthorized firearm or other weapon while on City property;
 - t. reporting to work under the influence of alcohol or illegal drugs, or consuming the same while at work or on City property;
 - u. suspension or revocation of driver's license if required by the position; or
 - v. insubordination, which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor

- L. Regular Status: An employee who has successfully completed his/her probationary status and who is serving a budgeted position and receiving benefits such as vacation and sick leave. The term also includes part-time employee who is serving a budgeted position and who has completed his/her probationary status and receiving benefits such as vacation and sick leave on a pro-rated basis.

IV. RESPONSIBILITY

- A. All department heads and supervisors are responsible for following the proper disciplinary process as defined by this document.
- B. The Director of Human Resources or his/her designee shall review all disciplinary action, excluding counseling, to ensure compliance with the established disciplinary process.

V. POLICY

A. General

1. Any employee, regardless of occupation, position, or profession may be disciplined by the employee's supervisor or the supervisor's designee. Such action may be taken against a City employee with regular or probationary status.
2. The degree and type of action taken shall be based upon the sound and reasonable judgment of the employee's supervisor or the supervisor's designee in accordance with the provisions of this document. When grounds for disciplinary action exist, the disciplinary actions provided for under this document are: Oral Warning, Written Warning, Final Written Disciplinary Warning, Disciplinary Suspension without Pay, Investigative Suspension with Pay, Disciplinary Demotion and Dismissal.
3. An employee may also be suspended with pay pursuant to an investigative suspension. An investigative suspension is non-disciplinary and non-appealable.
4. No employee may be demoted, suspended without pay or dismissed from employment without prior review of the action by the Human Resources Director and final approval of the City Manager.

B. Grounds for Discipline

1. An employee may be disciplined or dismissed pursuant to this document on the grounds hereinafter set forth.
2. Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct constitutes grounds for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending on the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

C. Form of Discipline

Training (CALEA 26.1.4 a)

1. In cases where skill deficiencies, lack of knowledge, or insufficient training have contributed to the employee's performance issues, training will be provided as part of the corrective action. The organization will:
 - a. Identify appropriate training programs or resources
 - b. Develop a tailored training plan, if necessary, to address specific gaps
 - c. Ensure employees attend required training sessions
 - d. Provide adequate time and support for employees to complete training
 - e. Monitor progress and assess effectiveness

Counseling /Coaching Sessions (CALEA 26.1.4 b)

1. Counseling/Coaching sessions will be used as an initial or ongoing step in the disciplinary process. The goal of counseling/coaching is to provide employees with feedback regarding their behavior or performance, identify the underlying causes, and offer support for improvement. It will involve face-to-face conversations between the employee and their supervisor(s):
 - a. Discuss the behavior or performance concern
 - b. Identify root causes
 - c. Provide feedback and guidance on improvement
 - d. Set clear expectations and a timeline for improvement
 - e. Offer support and resources to help the employee succeed
 - f. Document the counseling session for future reference

Oral Warning (CALEA 26.1.4 c)

1. Oral Warnings shall be provided by the employee's supervisor in a private session with the employee. The supervisor shall inform the employee of the particular unsatisfactory performance(s) that is the basis of the oral warning. The supervisor shall include in such discussion specific information concerning the unsatisfactory performance(s) such as dates, times and/or location(s), observations made by witnesses or the supervisor, summary of previous counseling sessions, if any, held with the employee regarding performance related issues, and provide the employee with feedback on what is expected to improve job performance.
2. Oral Warnings shall be kept in a supervisor and/or department file and are not grievable.

Written Warning (CALEA 26.1.4 c)

1. Written Warnings shall include the following:
 - a. Specific deficiencies that are the basis for the written disciplinary action including specific examples which constitute evidence.
 - b. Specific improvements that must be made to correct the unsatisfactory performance.
 - c. The time allowed to make said improvements, if applicable.
 - d. Consequences of failure to meet corrective actions plan or any other performance or personal conduct.
 - e. a brief summary referencing any previous disciplinary actions.
2. A written warning shall be in writing and the supervisor may choose to have the written disciplinary action prepared and proved to the employee during a counseling session.
3. All written disciplinary actions become part of the employee's personnel file and are not appealable.

Final Written Warning (CALEA 26.1.4 c)

1. The Supervisor shall confer with the department head and a Final Written Disciplinary Warning can only be issued with department head approval. A final Written Disciplinary Warning is the last step prior to dismissal. The department head shall confer with the Human Resources Director and the City Manager prior to issuance of a Final Written Disciplinary Warning.
 - a. A Final Written Disciplinary Warning is prepared for the employee by both the department head and the supervisor in which specific reasons are included for the actions.
 - b. A disciplinary conference will be conducted with the employee. At this conference, the specific reasons for the action, the necessary improvements and the time allowed to make the improvements should be discussed.
 - c. The supervisor should have a discussion with the employee of the necessity for the employee's commitment to improved performance and/or conduct. It should be stressed to the employee that a management decision to continue his/her employment with the City will require a commitment to improve performance and that a lack of improvement will result in further disciplinary action up to and including dismissal.

- d. As a part of this counseling, management may request the employee take up to a day's leave with pay to consider whether or not the employee wishes to continue his/her employment with the City. This time away shall not be charged to the employee's vacation or sick leave.

Disciplinary Suspension without Pay (CALEA 26.1.4 c)

1. If the suspension is for unsatisfactory job performance, the employee must have previously received at least one prior disciplinary action for the same or similar conduct. A suspension on the basis of grossly insufficient job performance or unacceptable personal conduct may be imposed without prior warning or disciplinary action. If circumstances permit, management may hold a disciplinary conference prior to imposing a disciplinary suspension without pay.
2. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provision of the Fair Labor Standards Act (FLSA) must be for a least one full work day, but may not be for more than two work weeks. The length of disciplinary suspension without pay for any employee who is exempt from the overtime compensation provision of the FLSA must be for at least one full work week, but may not be for more than two full work weeks.

Disciplinary Demotion (CALEA 26.1.4 c)

1. For demotions based on job performance, an employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.
2. For demotion regarding personal conduct, an employee may be demoted for unacceptable conduct without any prior disciplinary action. Cause for demotion on the basis of personal conduct does not have to be as serious as cause for dismissal.
3. An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice regarding any grievance or appeal rights granted to that employee. The written notice should address how and to what extent the demotion will affect the employee's salary and pay grade, and it is recommended that, if appropriate, a revised job description outlining the employee's revised duties and responsibilities be attached.
4. The department head shall have discretion to determine the type and extent of an employee's demotion. The employee may be demoted to a lower classification or salary grade with a corresponding loss in pay depending on the change in classification or salary grades, but in no event less than ten percent (10%). The employee may be reduced to a lower step in the same pay grade with a corresponding loss of pay. In no event shall an employee's pay be lowered below step one of his/her current pay grade, unless the employee is demoted to a lower classification. Prior to the decision to demote an employee for disciplinary reasons, the department head must conduct a disciplinary conference with the employee.

Termination (CALEA 26.1.4 c)

1. An employee may be dismissed for unsatisfactory personal conduct, grossly insufficient job performance, or failure to correct unsatisfactory job performance.
 - a. A disciplinary conference will be conducted before a termination shall become effective; provided, however, threat the effective date of the termination may relate back to the date the termination was recommended.
 - b. a terminated employee will be given a written notice of termination which shall set forth the reasons for the termination and shall inform the employee of their right to appeal.

Investigate Suspension with Pay (CALEA 26.1.4 c)

1. An employee may be suspended with pay pending an investigation. An Investigatory Suspension with Pay shall not exceed thirty (30) calendar days. However, a department head may, in the exercise of his/her discretions, extend the period of investigation with pay. The employee must be informed in writing of the extension, the length of the extension, and the specific reasons for the extension.
2. Investigative Suspension with pay of an employee shall not be used for the purpose of delaying an administrative decision of an employee's work status pending the resolution of a civil or criminal court matter involving the employee.
3. An employee who has been suspended for investigatory reasons may be reinstated with up to three (3) days' pay deducted from his/her salary. Such determination is to be used upon management's determination of the degree to which the employee was responsible for or contributed to the reasons for the suspension. This period constitutes a disciplinary suspension without pay as noted above.
4. Placement on investigative suspension with pay does not constitute a disciplinary action and is not subject to appeal.
5. The department head shall notify the employee of the reasons for the investigatory placement in writing and no later than the second scheduled work day after the beginning of the placement.

D. Appeal of Final Adverse Actions (NCLEA 1.18)

1. A City employee who has a final adverse disciplinary action taken against them may file for a formal appeal of the adverse action. For purposes of this section, final adverse disciplinary action means and includes Dismissal, Disciplinary Demotion, or Disciplinary Suspension without Pay. Failure by the employee to request an appeal within the time frames established in 6.9.2.1, 6.9.2.2 and 6.9.2.3 will result in the loss of all appeal rights granted under this policy.

2 A City employee may appeal a final adverse disciplinary action as follows:

a. Appeal to the Chief of Police

The employee shall make a request in writing for an appeal. The request must be submitted to the department head and the Director of Human Resources and must be received within fifteen (15) working days of the occurrence of the adverse action. The department head will then schedule a formal hearing. At this hearing, the employee will be able to provide information to the department head regarding the adverse action and reasons for the appeal. All pertinent evidence and information should be submitted in copy form to the department head for consideration. The department head shall then render a decision to the employee in writing within ten (10) working days.

b. Appeal to City Manager

If the employee is not satisfied with the decision made by the Chief of Police, the employee may request an appeal to the City Manager or his/her designee.

The employee must submit a formal appeal request in writing to the Director of Human Resources and the City Manager within fifteen (15) working days of the date of the letter of the Department Head's decision notification. The City Manager or his designee will then schedule a formal appeal hearing and inform the employee in writing of the date and time of the hearing. At the hearing, the employee will be able to provide evidence on his/her behalf to the City Manager or his/her designee regarding the adverse action and reasons for the appeal. All pertinent evidence and information should be submitted in copy form to the City Manager or his/her designee. The City Manager or his/her designee may affirm, reverse, or modify the disciplinary action being appealed and shall transmit the decision to the employee in writing within thirty (30) working days.

3. All employees entitled to appeal must follow the steps to appeal in the order listed above; provided, however, that in the event the decision in the final adverse disciplinary action being appealed from was rendered by the department head, the employee may appeal directly to the City Manager by written request within fifteen (15) working days of the occurrence of the adverse action.

4. Key Points Regarding These Established Appeal Procedures

1. All time frames must be met. Failure to meet time frames results in loss of appeal rights under this policy.
2. All requests for appeals must be in writing.
3. Only employees in a permanent status have appeal rights under this policy.

4. Employees in probationary or temporary employment situations do not have rights under this policy.
5. The City Manager, at his discretion, may allow witnesses to appear at the final hearing. A list of potential witnesses must be submitted to the City manager at least five (5) working days prior to the scheduled hearing and must provide a brief summary as to why the witness has been asked to appear. Only witnesses addressing facts will be considered. Character witness will not be allowed.
6. Attorneys representing either side may be present at the meeting. The request to have an attorney present must be made in writing at least five (5) working days prior to the scheduled meeting.