

**BOARD OF TRUSTEES  
UNIVERSITY OF THE DISTRICT OF COLUMBIA  
UDC RESOLUTION NO. 2017 –**

**SUBJECT: NOTICE OF FINAL RULEMAKING FOR MODIFICATIONS TO THE  
UNIVERSITY RULES REGARDING PROGRESSIVE DISCIPLINE**

**WHEREAS**, The Board of Trustees (the “Board”) of the University of the District of Columbia (the “University”) pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§38-1202.01(a); 38-1202.06 (2001 & 2011 Supp.)), and under the District of Columbia Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code, § 1-601.1 et seq.), has the authority to adopt, prescribe, and enforce rules and regulations it considers necessary for the governance and administration of the University; and

**WHEREAS**, the Board seeks to amend, adopt, and repeal certain sections of the regulatory framework provided in Title 8B of the District of Columbia Municipal Regulations (DCMR), Chapter 15, Adverse Actions: §§1505-1525, to set forth employee rights including the roles and responsibilities of both supervisors and employees (excluding represented faculty, probationary employees, temporary, at-will, or time limited appointments, and Cabinet level appointments); to define classes of conduct and performance deficiencies that will constitute cause and warrant corrective or adverse action; to establish standards for determining appropriate penalty; to provide procedures for implementing disciplinary action; to define the components of the final administrative decision; to provide an internal administrative grievance process and mediation; and to define employee appeal rights beyond the University;

**WHEREAS**, the Board seeks to repeal and supersede UDC Resolution No. 82 - 43, Employee Disciplinary Management Program—an Interim Guide on Employee Conduct and Discipline.

**WHEREAS**, the Board seeks to change the title of Chapter 15 “Adverse Actions” to Chapter 15 “Progressive Discipline;”

**WHEREAS**, the substance of the proposed rule enacted herein was published on October 20, 2017 at 64 DCR 010562 for a thirty-day public comment period in accordance with D.C. Official Code § 2-505(a); and no public comment was received during the public comment period; and

**WHEREAS**, pursuant to 8B D.C.M.R. §128.4, where no comments are received, the Chairperson of the committee may forward the rules for final adoption without committee action;

**NOW, THEREFORE BE IT RESOLVED**, that the Board hereby takes final rulemaking action to amend Chapter 15 of Title 8B of the DCMR as indicated in the Notice of Final Rulemaking attached hereto as Exhibit A and to repeal UDC Resolution No. 82 - 43; and

**BE IT FURTHER RESOLVED**, that the Rules enacted herein shall take effect upon publication in the D.C. Register and that all prior inconsistent resolutions, customs, procedures, and practices are hereby repealed.

Approved by the Board of Trustees:

November 28, 2017

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Christopher Bell  
Chairperson of the Board

## EXHIBIT A

### NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06(3), (13) (2001 & 2011 Supp.) and under the District of Columbia Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code, § 1-601.1 *et seq.*), hereby amends Chapter 15 (Adverse Action) of subtitle B (University of the District of Columbia) of title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR) as follows, effective upon publication of this Notice in the D.C. Register.

The purpose of the proposed rule is to amend the University's Adverse Actions to establish more comprehensive Progressive Discipline regulations for Non-Faculty employees.

The substance of the proposed rule enacted herein was published on October 20, 2017 at 64 DCR 010562 for a thirty-day public comment period in accordance with D.C. Official Code § 2-505(a). No public comment was received during the public comment period. The rule was adopted by the Board as final on November 28, 2017, and will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 15, ADVERSE ACTION: NON-FACULTY, of subtitle B, UNIVERSITY OF THE DISTRICT OF COLUMBIA, of title 8, HIGHER EDUCATION, is amended as follows:**

**8-B15 Adverse Action, is amended as follows:**

8-B15 Progressive Discipline.

**Section 1500, GENERAL PROVISIONS, is amended as follows:**

#### **1500 GENERAL PROVISIONS**

- 1500.1 This Chapter establishes a progressive approach for addressing employee performance and conduct deficiencies at the University of the District of Columbia.
- 1500.2 The provisions of this Chapter shall apply to all University employees, except the following:
- (a) Faculty to the extent that their terms and conditions of employment regarding discipline are covered by a labor agreement;
  - (b) Employees serving in a probationary period;
  - (c) Employees with a temporary, at-will or time-limited appointment; and
  - (d) The University Administration (President's Cabinet).

- 1500.3 The provisions of this Chapter do not apply to:
- (a) Reductions in force;
  - (b) Reassignments; and
  - (c) Memoranda of Counseling, except to the extent specified herein.

**Section 1501, RESERVED, is amended as follows:**

**1501 POLICY**

- 1501.1 The policies outlined in this section apply to employees and their supervisors, and form the basis for the standards governing this chapter.
- 1501.2 Each supervisor has a duty and responsibility to ensure that employees are aware of the established performance and conduct standards (“standards”) applicable to their roles and functions and the consequences of not meeting those standards. Whenever such standards are not met, a supervisor has an affirmative obligation to provide the employee with the necessary guidance and training to meet the standards and when appropriate, to take disciplinary action pursuant to this chapter.
- 1501.3 Each employee has the duty and the responsibility to be aware of and abide by the existing rules and policies. Each employee also has the responsibility to perform his or her duties to the best of his or her ability and in accordance with the standards established by management and the job description for his or her position.
- 1501.4 The University takes a positive approach toward workforce management to achieve organizational effectiveness by using a progressive system of discipline to address performance and conduct issues.
- 1501.5 The University employs a progressive disciplinary system to address performance and conduct issues, and it includes:
- (a) Verbal Counseling (admonishment or warning) and Memorandum of Counseling;
  - (b) Written Reprimand;
  - (c) Suspension;
  - (d) Demotion; and

(e) Termination.

- 1501.6 Strict application of the progressive steps in §1501.5 may not be appropriate in every situation. Therefore, the University retains the right to evaluate each situation on its own merits and may skip any or all of the progressive steps. However, deviation from the progressive disciplinary system is only appropriate when consistent with §1504.
- 1501.7 University officials have the obligation to ensure that disciplinary actions are taken only when an employee does not meet or violates established performance or conduct standards.

**Section 1502, RESERVED, is amended as follows:**

**1502 EMPLOYEE RIGHTS**

- 1502.1 Employees enjoy the protections established in this chapter. No employee subject to this chapter may be reprimanded, suspended, demoted, or removed without cause, as defined in this chapter.
- 1502.2 Employees who are subject to a recognized labor agreement enjoy the benefits of their collective bargaining agreement. Conflicts between such agreements and this chapter will be resolved as follows:
- (a) The provisions of any labor agreement shall be construed to give effect to the provisions of this chapter;
  - (b) Where a specific provision of a labor agreement cannot be reconciled with a specific provision of this chapter, the labor agreement shall control with respect to that provision(s).
- 1502.3 Disciplinary actions taken against employees are subject to the following limitations:
- (a) A disciplinary action must be commenced no more than ninety (90) days after the agency or personnel authority knew or should have known of the performance or conduct supporting the action;
  - (b) When there is an investigation involving facts or circumstances relevant to the performance or conduct supporting a disciplinary action, the time limit established in paragraph (a) will be delayed or suspended pending:
    - (1) Any criminal investigation by the Metropolitan Police Department or any other law enforcement agency with jurisdiction within the United

States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General; or

(2) Any investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, the Office of Police Complaints, or the University Office of the General Counsel.

(c) The time limits imposed in paragraph (a) may be suspended by the Vice President of Human Resources or designee for good cause and will be suspended pending any related investigation by the Board of Ethics and Government Accountability.

**Section 1503, RESERVED, is amended as follows:**

**1503 MISCONDUCT & PERFORMANCE DEFICIENCIES**

1503.1 University employees are expected to demonstrate high standards of integrity, both on and off the job, guided by established standards of conduct, and other Federal and District laws, rules, and regulations. When established standards of conduct are violated or performance measures are not met, or the rules of the workplace are disregarded, disciplinary action is warranted to encourage conformity with acceptable behavior and performance standards, ensure safety, or to protect operational integrity.

1503.2 Taking a disciplinary action against an employee is appropriate when the employee fails to or cannot meet identifiable conduct or performance standards, which adversely affects the efficiency or integrity of University service. Before initiating such action, the University will conduct an inquiry into any apparent misconduct or performance deficiency (collecting sufficient information from available sources, including, when appropriate, the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation.

1503.3 Whether an employee fails to meet performance standards will be determined by application of the provisions set forth in Chapter 19 of this Title.

1503.4 Though not exhaustive, the following classes of conduct and performance deficiencies constitute cause and warrant disciplinary action:

(a) Conduct prejudicial to the University of the District of Columbia and/or the District of Columbia Government, including:

(1) Conviction of any felony;

(2) Conviction of any criminal offense that is related to the employee's duties or the University's mission;

- (3) Conduct that an employee should reasonably know is a violation of law or regulation; and
  - (4) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects the University's mission or has an otherwise identifiable nexus to the employee's position;
- (b) False Statements, including:
- (1) Deliberate falsification of an application for employment or other personal history record by omission of a material fact or by making a false entry;
  - (2) Misrepresentation, falsification, or concealment of material facts or records in connection with an official matter;
  - (3) Knowingly and willfully making, an incorrect entry on an official record or approving an incorrect official record; and
  - (4) Knowingly and willfully reporting false or misleading information or purposely omitting materials facts, to any supervisor;
- (c) Fiscal irregularities which include actions that impinge on the financial viability and/or accountability of the University;
- (d) Failure or refusal to follow instructions;
- (e) Neglect of duty;
- (f) Attendance-related offenses, including:
- (1) Unexcused tardiness;
  - (2) Unauthorized absence; and
  - (3) Falsification of official records concerning attendance (*e.g.* timesheets, overtime requests);
- (g) Using or being influenced by intoxicants while on duty;
- (h) Unlawful possession of controlled substances and paraphernalia;
- (i) Safety and health violations;

- (j) Discriminatory actions or practices;
- (k) Sexual misconduct;
- (l) Prohibited personnel practices, such as:
  - (1) Deceitful obstruction of a person's right to compete for employment;
  - (2) Granting preference or an advantage to an applicant; and
  - (3) Discriminating for or against an applicant;
- (m) Failure to meet performance standards; and
- (n) Inability to carry out assigned responsibilities or duties.

1503.5 An employee of the University's Office of Public Safety and Emergency Management who is authorized to carry a firearm while on-duty, and/or who is a commissioned police officer, is held to a higher standard of conduct and therefore, will be deemed to have engaged in conduct prejudicial to the University if:

- (a) The police officer engages in any act or omission that constitutes a criminal offense; or
- (b) There is any credible evidence that the police officer unlawfully used a controlled substance.

**Section 1504, RESERVED, is amended as follows:**

**1504 ESTABLISHING APPROPRIATE ACTION**

1504.1 After establishing a sufficient basis for taking action (*i.e.*, evidence to support the allegation(s) and a nexus between the conduct or performance at issue and the employee's job or the University's mission), a supervisor must determine the appropriate action to address the employee's conduct or performance deficiencies based on the totality of circumstances.

1504.2 For all disciplinary actions, supervisors must be prepared to demonstrate that the following factors were considered:

- (a) The nature and seriousness of the misconduct or performance deficiency, and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical or inadvertent; was committed maliciously or for gain; or was frequently repeated;

- (b) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (c) The employee's past disciplinary record;
- (d) The employee's past work record, including length of service, performance on the job; ability to get along with fellow workers, and dependability;
- (e) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee's ability to perform assigned duties;
- (f) The consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (g) The consistency of the penalty with any table of disciplinary and adverse actions the University may decide to issue;
- (h) The notoriety of the offense or its impact upon the reputation of the University or the District Government;
- (i) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (j) The potential for the employee's rehabilitation;
- (k) The mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation on the part of those involved in the matter; and
- (l) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

1504.3 These factors should be considered and balanced to arrive at the appropriate remedy. While not all of these factors may be relevant, consideration should be given to each factor based upon the circumstances.

1504.4 An analysis of the factors above will be included in any final agency decision on an adverse action.

**Section 1505, ADVERSE ACTIONS: NON-FACULTY, is amended as follows:**

**1505 MEMORANDUM OF COUNSELING**

- 1505.1 As an employer, the University, through its managerial staff, has an obligation to create a fair, supportive, and transparent work environment that prevents the need for disciplinary action. However, when an employee engages in misconduct or fails to meet performance standards, steps will be taken to gather the relevant facts, correctly identify the problem(s), and then determine whether further action is warranted.
- 1505.2 As a first step on the continuum of progressive discipline, management will attempt to correct misconduct and performance deficiencies.
- (a) When appropriate to the circumstances, employees will first be counseled concerning misconduct.
  - (b) Performance matters will initially be addressed as set forth in Chapter 19 of this Title.
- 1505.3 When verbal counseling (admonishing or warning) is deemed an appropriate action in the circumstances, the supervisor or manager must:
- (a) State the relevant conduct standards;
  - (b) Explain how the employee has failed to meet those standards;
  - (c) Explain management's conduct expectations; and
  - (d) Explain the potential consequences if those expectations are not met in the future.
- 1505.4 The supervisor will follow-up the verbal counseling (admonishment or warning) with a Memorandum of Counseling to the employee. The memorandum will establish the date, time, and content of the verbal counseling and will include the information required by §1505.3. Supervisors will retain a copy of the memorandum for a period of no less than two years, but the Memorandum of Counseling will not be made a part of the Official Personnel File.
- 1505.5 While verbal counseling is a means of addressing performance and conduct deficiencies as a first step within the Progressive Disciplinary Model, it is neither a corrective nor an adverse action for purposes of this chapter.

**Section 1506, NOTICE OF ADVERSE ACTION: NON-FACULTY, is amended as follows:**

**1506 CORRECTIVE ACTION: WRITTEN REPRIMAND**

- 1506.1 A Corrective Action is a Written Reprimand or a Suspension of less than ten (10) days.
- 1506.2 When counseling (admonishing or warning) fails to correct conduct or performance issues, or where such counseling is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, a more formal response may be required. Within the Progressive Disciplinary Model, one formal response is a Written Reprimand, and it is classified as a Corrective Action.
- 1506.3 A Written Reprimand is a document issued by the Proposing Official that identifies specific conduct and/or performance deficiencies by an employee. At a minimum, a Written Reprimand includes:
- (a) A short narrative concerning the factual circumstances warranting the action;
  - (b) A description of the conduct and/or performance standards at issue and how these standards were not met;
  - (c) A brief narrative describing how the employee should conduct himself or herself prospectively to correct the conduct and/or performance deficiency;
  - (d) The potential consequences if the conduct and/or performance requirements are not met;
  - (e) A notice informing the employee that he or she may submit a written response to the Written Reprimand; and
  - (f) Notification to the employee of his or her right to grieve the Final Administrative Decision pursuant to the provisions of this chapter or any applicable labor agreement, but not both.
- 1506.4 The employee to whom a Written Reprimand is issued will be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal will provide a brief written statement that the employee refused to acknowledge receipt in writing, and that statement will be signed and dated by the witness.
- 1506.5 Within fifteen (15) days of receipt of the Written Reprimand, an employee may elect to submit a written response to the Deciding Official.

(a) An employee's written response may clarify, expand on, or object to the statements or conclusions made in the Written Reprimand. Once submitted, the response will be maintained and treated as an attachment to the Written Reprimand.

1506.6 The Deciding Official will consider any written response submitted by the employee. The Deciding Official may sustain, modify, or rescind the Written Reprimand, based on the employee's response, and will issue a written determination within fourteen (14) days of receipt of the employee's response.

1506.7 If the Written Reprimand is modified, it will be served on the employee, who will be provided an opportunity to submit a supplemental response consistent with §1506.4.

1506.8 Unless modified or rescinded pursuant to §1506.5, a Written Reprimand will constitute the Final Administrative Decision upon either the issuance of the Deciding Official's final determination, or the expiration of the fifteen (15) day employee response period as specified in §1506.4, whichever is later.

1506.9 A Written Reprimand may be considered in determining whether additional and/or more severe disciplinary action is warranted in any subsequent instances of conduct or performance deficiencies when such disciplinary action is initiated within three (3) years of the Written Reprimand.

**Section 1507, APPEAL OF ADVERSE ACTION: NON-FACULTY, is amended as follows:**

**1507 CORRECTIVE ACTIONS: SUSPENSION OF LESS THAN TEN (10) DAYS**

1507.1 When counseling or a Written Reprimand fail to correct conduct or performance issues, or where counseling or a Written Reprimand is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, a more substantial response may be required. Within the Progressive Disciplinary Model, one more substantial response is a suspension of less than ten (10) days, and it is classified as a Corrective Action.

1507.2 Except in the case of a Written Reprimand in accordance with §1506 or a summary disciplinary action in accordance with §1510, the Proposing Official shall issue a Notice of Proposed Corrective Action, which will inform the employee of the following:

- (a) The type of proposed corrective action (suspension of less than ten (10) days);
- (b) The nature of the proposed corrective action (days of suspension);

- (c) The specific performance or conduct at issue;
- (d) The ways in which the employee's performance or conduct fails to meet appropriate standards;
- (e) The name and contact information of the Deciding Official; and
- (f) The employee's right to:
  - (1) Review material upon which the proposed corrective action is based;
  - (2) Prepare a written response to the notice, and
  - (3) Be represented by an attorney or other representative.

1507.4 The Notice of Proposed Corrective Action will be approved and signed by the Proposing Official.

1507.5 The employee to whom a Notice of Proposed Corrective Action is issued will be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal will provide a brief written statement that the employee refused to acknowledge receipt in writing, and that statement will be signed and dated by the witness.

1507.6 The material upon which the Notice of Proposed Corrective Action is based, and which is necessary to support the reasons given in the Notice, will be assembled and provided to the employee along with the Notice, unless impractical. If the materials cannot be provided at the time of Notice, they will be made available to the employee for his or her review, upon request.

1507.7 Within fifteen (15) days of receipt of the Notice of Proposed Corrective Action, an employee may elect to submit a written response to the Deciding Official.

1507.8 An employee's written response may clarify, expand on, or object to the statements or conclusions made in the Notice of Proposed Corrective Action. Once submitted, the response will be maintained and treated as an attachment to the Notice of Proposed Corrective Action.

1507.8 Except in the case of summary disciplinary action in accordance with §1510, an employee will remain in an active duty status pending issuance of a final determination of the proposed corrective action.

**Section 1508, EMPLOYEE STATUS DURING NOTICE PERIOD: NON-FACULTY, is amended as follows:**

**1508 ADVERSE ACTIONS: SUSPENSIONS OF 10 DAYS OR MORE, DEMOTIONS, AND TERMINATIONS**

1508.1 Whenever a corrective action fails to improve a performance or conduct problem or is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, or in the case when an employee cannot perform an essential duty of his or her employment, an adverse action may be warranted.

1508.2 An adverse action is a suspension of ten (10) days or more, a demotion, or a termination of employment.

1508.3 Except in the case of summary disciplinary actions in accordance with §1510, the Proposing Official will issue a Notice of Proposed Adverse Action, which will inform the employee of the following:

- (a) The type of proposed adverse action (suspension of ten (10) days or more, demotion, or termination);
- (b) The nature of the proposed adverse action (days of suspension, demotion, or termination);
- (c) The specific performance or conduct at issue;
- (d) The ways in which the employee's performance or conduct fails to meet appropriate standards;
- (e) The name and contact information of the Deciding Official; and
- (f) The employee's right to:
  - (1) Review material upon which the proposed adverse action is based;
  - (2) Prepare a written response to the notice, and
  - (3) Be represented by an attorney or other representative.

1508.4 The Notice of Proposed Adverse Action will be approved and signed by the Proposing Official.

1508.5 The employee to whom a Notice of Proposed Adverse Action is issued will be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal will provide a brief

written statement that the employee refused to acknowledge receipt in writing, and that statement will be signed and dated by the witness.

- 1508.6 The material upon which the Notice of Proposed Adverse Action is based, and which is necessary to support the reasons given in the Notice, will be assembled and provided to the employee along with the Notice, unless impractical. If the materials cannot be provided at the time of Notice, they will be made available to the employee for his or her review, upon request.
- 1508.7 Within fifteen (15) days of receipt of the Notice of Proposed Adverse Action, an employee may elect to submit a written response to the Deciding Official.
- (a) An employee's written response may clarify, expand on, or object to the statements or conclusions made in the Notice of Proposed Adverse Action. Once submitted, the response will be maintained and treated as an attachment to the Notice of Proposed Adverse Action.
- 1508.8 Except in the case of summary disciplinary action in accordance with §1510, an employee will remain in a pay status pending issuance of a final determination of the proposed adverse action.

**Section 1509, RESERVED, is amended as follows:**

**1509 ADMINISTRATIVE LEAVE DURING NOTICE PERIODS**

- 1509.1 Following the issuance of a Notice of Proposed Adverse Action or a Notice of Proposed Corrective Action, the Vice President of Human Resources or designee may, at his or her discretion, place the employee on administrative leave pending a final determination in accordance with this section.
- 1509.2 The Vice President of Human Resources may place an employee on administrative leave for no more than ninety (90) days.
- 1509.3 The Vice President of Human Resources may extend the period of administrative leave in increments of no more than thirty (30) calendar days when:
- (a) Returning the employee to duty would undermine the integrity of University operations, threaten the safety of employees, or threaten the health, safety, or welfare of the public; or
- (b) The University has been diligently pursuing a final decision and the delay is due to circumstances beyond the University's control.
- 1509.5 When the time limits prescribed by this section are exhausted, the employee will be returned to full duty pending a Final Administrative Decision.

**Section 1510, RESERVED, is amended as follows:**

**1510 SUMMARY DISCIPLINARY ACTIONS**

- 1510.1 An employee may be summarily suspended or terminated, notwithstanding the processes described in §§1507-1508 of this chapter.
- 1510.2 An employee may be suspended or terminated summarily when his or her conduct:
- (a) Threatens the integrity of University operations;
  - (b) Constitutes an immediate hazard to the University, to other University employees or students, or to the employee; or
  - (c) Is detrimental to public health, safety, or welfare.
- 1510.3 Any decision to take a summary disciplinary action under this section must be approved in writing by the Vice President of Human Resources, or designee. All such approvals must identify:
- (a) Sufficient facts relied upon by the Vice President of Human Resources to support the actions;
  - (b) The specific paragraph(s) of §1510.2 justifying the summary action; and
  - (c) The specific misconduct, consistent with §1504, warranting suspension or termination.
- 1510.4 When the Vice President of Human Resources is satisfied that the conditions of §1510.2 are present, the University may order the employee to immediately leave his or her duty station. Additionally, the University may order the employee to stay away from any University owned or occupied properties to the extent reasonably necessary to ensure the safety of University employees and property; the integrity of University operations; and the public health, safety, and welfare.
- 1510.5 When summary action is warranted, the University will:
- (a) Provide the employee with a Notice of Summary Disciplinary Action;
  - (b) Provide the employee with an opportunity to respond in writing within fifteen (15) days of receipt;

(c) Provide the employee with a Final Administrative Decision if the employee submits a written response; and

(d) Advise the employee of his or her applicable appeal rights.

1510.6 Whenever the University summarily removes or suspends an employee, the Proposing Official will provide the employee with a Notice of Summary Disciplinary Action within five (5) days. The notice will inform the employee of the following:

(a) The nature of the summary action;

(b) The effective date of the summary action;

(c) The specific conduct at issue;

(d) The ways in which the employee's conduct fails to meet appropriate standards;

(e) The specific paragraph(s) of §1510.2 warranting summary action;

(f) The right to review material upon which the summary action is based;

(g) The right to be represented by an attorney or other representative.

(h) The right to prepare a written response to the notice of the proposed summary action;

(i) The name and contact information of the Deciding Official.

1510.7 Within fifteen (15) days of receipt of the Notice of Summary Disciplinary Action, an employee may elect to submit a written response to the Deciding Official.

**Section 1511, RESERVED, is amended as follows:**

**1511 CORRECTIVE & ADVERSE ACTIONS: FINAL ADMINISTRATIVE DECISION**

1511.1 The Final Administrative Decision relating to a corrective, adverse or summary disciplinary action will constitute the University's final determination on the matter and will be made by the Deciding Official.

1511.2 In making the Final Administrative Decision, the Deciding Official will consider the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or

Notice of Summary Disciplinary Action and supporting materials, the employee's response (if any), and any report of investigation, if applicable.

- 1511.3 The Final Administrative Decision will be issued within fourteen (14) days of receipt of the employee's response (if any) to the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action.
- 1511.4 The Deciding Official may:
- (a) Sustain the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or Notice of Summary Disciplinary Action;
  - (b) Reduce the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action;
  - (c) Remand the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or Notice of Summary Disciplinary Action to the Proposing Official with instructions for further consideration; or
  - (d) Dismiss the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or Notice of Summary Disciplinary Action.
- 1511.5 The Final Administrative Decision must be in writing, dated, and signed by the Deciding Official, and will:
- (a) Provide a concise summary of the action(s) being taken and the effective date of the action(s);
  - (b) Succinctly enumerate each independent cause for which the corrective or adverse action is being taken;
  - (c) Set forth a penalty for each enumerated cause;
  - (d) Demonstrate reasoned consideration of the relevant factors set forth in §1504.2 for each independent action; and
  - (e) Articulate the employee's appeal rights, if any.
- 1511.6 In addition to the information specified in §1511.5, each Final Administrative Decision will be accompanied by:
- (a) Copies of materials relied upon by the University in rendering its decision;
  - (b) A notice of the employee's appeal rights, if any.

- 1511.7 The Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action will become final upon either the issuance of the Deciding Official's Final Administrative Decision, or the expiration of the fifteen (15)-day employee response period, whichever is later.
- 1511.8 The Final Administrative Decision will be provided to the employee by electronic mail and by first class mail, postage prepaid, to the employee's address of record.
- 1511.9 A copy of the Final Administrative Decision, and all documents it incorporates, will be placed in the employee's Official Personnel File.

**Section 1512, RESERVED, is amended as follows:**

**1512 APPEAL RIGHTS**

- 1512.1 An employee who disputes a Final Administrative Decision on a corrective or adverse action under this chapter may seek one (1) of the following remedies:
- (a) If the matter is covered by a grievance procedure negotiated between the University and a collective bargaining unit, the employee may elect to pursue a negotiated grievance in accordance with the applicable collective bargaining agreement;
  - (b) For corrective actions, the employee may elect to pursue an administrative grievance pursuant to the provisions of this chapter within ten (10) days from the issuance date of the Final Administrative Decision; and
  - (c) For adverse actions, the employee may elect to appeal the Final Administrative Decision to the Office of Employee Appeals (OEA) within thirty (30) days of the effective date of the Final Administrative Decision.
- 1512.2 An employee may elect only one (1) of the remedies specified in §1512.1. Whenever a labor organization acts on behalf of the employee, the employee shall be deemed to have made his or her election of remedy, irrespective of whether the employee consented to the election.
- 1512.3 Neither administrative grievances, mediation pursuant to the provisions of this chapter, nor appeals to OEA shall delay implementation of any Final Administrative Decision under this chapter.

**Section 1513, RESERVED, is amended as follows:**

**1513 GRIEVANCES**

- 1513.1 An employee may grieve a corrective action to modify, reverse, or dismiss a Final Administrative Decision only if:
- (a) A provision of this chapter has been violated such that the Final Administrative Decision is arbitrary or capricious; and
  - (b) The employee has suffered or will suffer harm as a result of that violation, which is neither trivial nor speculative.
- 1513.2 Notwithstanding §1512.1, no employee may submit a grievance to a Final Administrative Decision under this chapter if the action is:
- (a) Not subject to a grievance or appeal as set forth in this chapter;
  - (b) Taken to implement the lawful order of a court or other tribunal recognized by law; or
  - (c) Agreed to by the employee.
- 1513.3 For purposes of this chapter, an administrative grievance will be initiated with the Grievance Official.
- 1513.4 Grievances of corrective actions will be submitted to the Grievance Official within ten (10) days of the issuance of the Final Administrative Decision.
- 1513.5 A grievance will be deemed to have been filed when actually received by the Grievance Official. The burden of establishing the date of receipt will rest with the employee.
- 1513.6 Grievances may be filed with the Grievance Official by one of the following means:
- (a) By first class mail, postage prepaid, to the official's principal business address;
  - (b) By electronic mail; or
  - (c) By hand delivery to the official's principal business addresses.
- 1513.7 Each grievance must include the following:
- (a) The name, e-mail address, and phone number of the employee seeking the relief;
  - (b) The name, e-mail address, phone number, and mailing address of the employee's immediate supervisor;

- (c) A copy of the Final Administrative Decision that is the subject of the grievance;
- (d) A concise written statement of facts, including dates, that establishes why the Final Administrative Decision on the challenged corrective action should be reversed, modified or dismissed; and
  - (1) The statement may include as supporting evidence written statements of witnesses, affidavits, documents or any other form or depiction of information.
  - (2) The statement should include all information the employee deems relevant to the grievance, including information of which the employee has knowledge or reasonably should have knowledge.
- (e) The relief sought by the employee.

1513.8 Upon receipt, the Grievance Official will make a preliminary determination as to whether the grievance meets the criteria set forth in §1513.7 above.

1513.9 The Grievance Official will make arrangements to interview the grievant and to review the record. Within twenty (20) working days of receipt of the grievance, the Grievance Official will issue a grievance decision and report based upon the totality of the facts that sustains, modifies or reverses the Final Administrative Decision.

**Section 1514, RESERVED, is amended as follows:**

**1514 MEDIATION**

1514.1 A grievant may request mediation of their challenge to their corrective action, in writing, when presenting their grievance to the Grievance Official.

1514.2 The Grievance Official will forward the request for mediation to the Vice President of Human Resources who will designate an individual to serve as the mediator. The mediator will either be an attorney licensed to practice law in the District of Columbia or an individual trained in conducting mediation.

1514.3 The mediator will schedule the mediation and conduct the mediation proceedings in such a manner as to ensure a fair and equitable result. However, the mediation process must be concluded within 30 days from the date the mediator was designated by the Vice President of Human Resources

- 1514.4 If an amicable resolution of the grievance is reached through mediation, the terms of the resolution will be reduced to writing and signed by all parties, including the mediator. The written resolution will be binding on all parties and is not subject to review by any administrative body, court, or other tribunal.
- 1514.5 If the parties are unable to resolve the grievance through the mediation process, the grievance will be returned to the Grievance Officer to resume the grievance review. Grievances will be returned to the Grievance Officer by the mediator on either the date the mediator determines that no resolution can be reached or 30 days from the date the mediator was designated by the Vice President of Human Resources, whichever is earlier.

**Sections 1515 – 1525, FACULTY ADVERSE ACTIONS, are repealed.**

**Section 1599, DEFINITIONS, is amended as follows:**

**1599 DEFINITIONS**

1599.1 As used in this chapter the following meanings apply:

**Adverse action** – a suspension of ten (10) work days or more, or demotion, or a termination.

**Cause** – a reason that is neither arbitrary nor capricious, such as misconduct or performance deficiencies, that warrants administrative action, including corrective and adverse actions. The classes of conduct and performance deficiencies outlined in §1503 of this chapter, constitute cause for corrective and adverse actions.

**Conduct** – the act, manner or process taken by an employee to carry out duties and responsibilities. This can include the failure to act when required to do so.

**Corrective action** – a written reprimand or a suspension of less than ten (10) working days.

**Days** – calendar days unless otherwise specified.

**Deciding Official** – an employee's 2nd level manager, or a management official within the employee's chain of command who is designated by the Vice President of Human Resources, who issues a final decision on the proposed corrective action, proposed adverse action, or notice of summary disciplinary action.

**Disciplinary action** – a corrective or adverse action taken for cause to address an employee's conduct or performance deficiencies.

**Final Administrative Decision** – a decision rendered by the Deciding Official on a proposed corrective or adverse action or on a summary disciplinary action.

**Grievance Official** — the Cabinet member to whom the Deciding Official reports, except if the Cabinet member is the Deciding Official, in which case the Grievance Official is the President.

**Progressive Disciplinary Model** – refers to the incremental steps to correct either misconduct or systemic performance deficiencies. Typically, the process may include verbal counseling, corrective action (to include written reprimands and suspensions of less than 10 days) and adverse action (suspensions of ten (10) days or more, demotions and terminations).

**Proposing Official** – an employee’s immediate supervisor, or a management official in the employee’s chain of command who is designated by the Vice President of Human Resources, who issues a written Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action.

**Demotion**– an involuntary adverse action that changes an employee to a lower grade level, typically with lower pay.

**Removal or Termination** – the involuntary separation of an employee from University service.

**Supervisor** – an individual who supervises another employee or his or her activities.

**Summary disciplinary action** – an action taken to immediately suspend or separate an employee pursuant to § 1510.

**Suspension** – the temporary placing of an employee in a non-duty, non-pay status.

**Written Reprimand** – a written, official censure of an employee that is placed in the employee’s Official Personnel Folder.

**TO:** Jerome Shelton  
Chairperson, Operations Committee

**FROM:** Karen M. Hardwick, General Counsel  
Alonzo Chisolm, Assistant General Counsel

**SUBJECT:** Notice of Final Rulemaking – Progressive Discipline

**DATE:** November 20, 2017

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On September 19, 2017, the Board of Trustees approved a Notice of Proposed Rulemaking (NPRM) to amend and adopt certain sections of the University’s Adverse Action regulations in order to establish more comprehensive Progressive Discipline regulations for Non-Faculty employees and to repeal certain sections of the University’s Adverse Actions regulations for Faculty employees. The Notice of Proposed Rulemaking was published in the D.C. Register on October 20, 2017 for a thirty (30) day comment period. The public comment period has lapsed, and no comments have been submitted during the period pursuant to the instructions printed in the Notice.

The Notice of Proposed Rulemaking was initially adopted and forwarded for consideration by the Operations Committee. Pursuant to 8 D.C.M.R. §128.4, if no public comments are received on a Notice of Proposed Rulemaking, “the chairperson of the Board committee may forward the rules to the Board for final adoption without a meeting of or action by the committee.” Accordingly, we are requesting that you, as Chairperson of the Operations Committee, forward the referenced rulemaking action to the full Board of Trustees for its further consideration and final rulemaking action at the Board Meeting on November 28, 2017. Please contact us if we can be of further assistance.



## FISCAL IMPACT STATEMENT

**TO:** The Board of Trustees  
**FROM:** Managing Director of Finance *David L. Franklin*  
**DATE:** August 21, 2017  
**SUBJECT:** Fiscal Impact Statement - Progressive Discipline

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### **Conclusion**

It is projected that there is no fiscal impact involved in effectuating changes to the Progressive Discipline chapter of 8B DCMR.

### **Background**

The current 8B DCMR regulation is being updated to modify the regulatory framework and change the title of Chapter 1500 Adverse Actions: Non-Faculty to Chapter 1500 Progressive Discipline. Progressive discipline will not apply to faculty, employees with a temporary or time-limited appointment, or Cabinet level appointments.

### **Financial Impact**

There are no funding requirements associated with the recommended Title 8B of the DCMR. This request has been approved based upon the information provided. There are no anticipated risks at this time.