

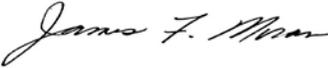
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To: DDSO Directors

From: James F. Moran 
Acting Executive Deputy Commissioner

Subject: **Interim Disciplinary Policy – Procedural Changes**

Date: May 31, 2011

Background

As was discussed at the May 20, 2011 video conference, we have begun the process of implementing a more centralized approach to managing and addressing events of abuse and neglect that take place in our system. One of the components of the Centralized Incident Management is employee discipline.

The redesign of the employee disciplinary process is designed to improve the effectiveness of OPWDD's disciplinary program. The redesign will also better ensure that employees who are found to have engaged in misconduct, abuse or neglect are held accountable and that there is greater consistency in the application of discipline and the assignment of penalties state-wide, across all OPWDD worksites.

The new OPWDD disciplinary program reinforces OPWDD's guiding principle of putting the individuals with disabilities we support first and reinforces values that are centered on positive relationships and interactions, and an organizational culture where abuse is not tolerated. The process triages cases based on the severity of the alleged incident or misconduct and better defines the role of the Employee Relations Office (ERO) in disciplinary related matters.

One of the goals of the new process is to more formally engage ERO staff at the first instance when serious allegations of abuse are being investigated. This upfront engagement is designed to not only help achieve greater consistency across our enterprise, but to also streamline and shorten cycle times between the substantiation of an allegation and appropriate disciplinary action.

The following interim processes define the roles and responsibilities of the Office of Investigations, the Employee Relations Office and the DDSOs and are now in effect and must be followed.

Process to be Followed

I. Misconduct alleging Abuse or Neglect

Office of Investigations

All misconduct cases alleging abuse or neglect as defined by regulation will be submitted directly by the Office of Investigations (OI) to the Employee Relations Office (ERO) as follows. **Please note that on an interim basis**, the Office of Investigations assigns the investigation to the central investigations unit or to the **DDSO**. **DDSOs will no longer develop employee disciplinary charges** for abuse or neglect cases.

I. The Office of Investigations will submit to ERO the following:

- The complete investigative report
- All supporting documentation and evidence
- A transmittal sheet identifying the employee(s) and a brief summary of the employee's work history and allegations of abuse or neglect. (Transmittal form to be developed jointly by OI and ERO)

Note: In Investigations designated as **Most Critical or Highly Significant**, as defined in the February 15, 2011 revised memorandum on Critical and Significant Event Notification Protocol from Acting Executive Deputy Commissioner Moran, **the ERO Representative will work with the Office of Investigations to expedite disciplinary action**. This may include:

- Meeting with the Regional Supervisor and/or lead investigator to review evidence obtained in the preliminary investigation.
- Determining if there is sufficient evidence to move forward with disciplinary action prior to the Quality Assurance Review.
- Identifying issues that may require additional investigation or follow-up before disciplinary action can be taken.

II. Employee Relations Office

The ERO Representative assigned to DDSO where the misconduct occurred will:

- Review the investigative report and supporting documentation
- Work with the Lead Investigator to obtain additional information or evidence as needed

- Draft disciplinary charges.
- Make a final determination on the disciplinary penalty
- Submit final charges to the Director of Institutional Human Resources Management (DIHRM).

Note: It is now the responsibility of the Central Employee Relations Office to determine the disciplinary penalty to be issued to the employee. Previously the DDSO had responsibility for determining penalties. **The Central Employee Relations Office will also review any proposed administrative action for substantiated abuse or neglect in which a disciplinary action is not recommended.**

III. Developmental Disabilities Service Office

The DIHRM or his/her designee will:

- Prepare the Notice of Discipline (NOD) in final using templates found on the ERO Forms Drive.
- Obtain the DDSO Director's signature
- Process and serve the NOD, and complete the appropriate union notifications.
- Implement and process employee suspensions pursuant to disciplinary action.

Note: Any disagreements with the proposed disciplinary action will be brought to the attention of the Director of Employee Relations. **The Director of Employee Relations will make the final decision.** In the event that a resolution regarding a disagreement related to disciplinary actions cannot be reached between the DDSO Director and the Director of Employee Relations, the DDSO Director may request a review of the disciplinary case by the Statewide Disciplinary Panel. Such requests must be made to the Deputy Commissioner, Workforce and Talent Management and the Deputy Commissioner, Service Delivery and Development.

Disciplinary Penalties

- **For Serious Abuse and Neglect Cases**

In alignment with OPWDD's organizational values and our regulatory responsibilities termination will be pursued against employees found to have committed:

- Intentional physical abuse
- Sexual abuse
- Serious psychological abuse
- Neglect that results in serious injury or death
- Neglect that is egregious and put individuals at serious risk of harm
- Any criminal act against a person with disabilities

- Neglect with repeated history of discipline for neglect
- Abandonment of post
- Failure to intervene to prevent a person with developmental disabilities from harm is abuse

- **Other Serious Misconduct Cases**

In addition to abuse and neglect related cases, other instances of serious misconduct that may warrant termination must also be submitted to the ERO for review of the investigative findings, the drafting of charges and determination of penalty. This includes misconduct that may not currently be investigated by the Office of Investigations. This includes:

- Physical assault on a co-worker
- Theft
- Falsification of work records
- Any misconduct by recalcitrant employees with progressive disciplinary history. This includes any misconduct where there are at least two prior NODS (excluding time and attendance)
- Serious off duty misconduct where there is a nexus to employer
- On the job criminal activity
- Other misconduct that puts the health and safety of an individual at serious risk

- **Other Misconduct Cases**

During this interim period, other misconduct will continue to be subject to the pre-clearance process with the Central Office Employee Relations Office (ERO). The ERO has the authority to withdraw, reissue, or amend all Notices of Discipline (NOD) to ensure consistency and alignment of disciplinary actions across state operations system wide. **DDSOs will be notified prior to the action being taken by ERO that a NOD is being withdrawn, reissued, or amended.**

Case Resolution – New Process

The DDSO **may not enter into any settlement agreement** involving abuse or neglect allegations, nor **any termination NOD** without approval from the Employee Relations Office.

DDSO Human Resources Offices remain responsible for ensuring copies of finalized Notices of Discipline and/or settlement agreements are submitted timely to the ERO. DDSO remain responsible for maintaining copies of all NODs and settlement and arbitration awards in the DDSO's HR disciplinary files and the employee's Personal History Folder.

Working Together

The DDSO, the Office of Investigations and the Employee Relations office all have integral roles in the Disciplinary process. It is extremely important that we work together during this transition to ensure consistency across the enterprise. More detailed guidance and procedures will be developed and disseminated as we transition to a centralized disciplinary system.

As we go forward it is extremely important that any problems, obstacles or other issues be identified, discussed and addressed so that collectively we can obtain the best outcomes for the people we serve and support. The Employee Relations Office will continue to work closely with you and your staff regarding this new procedure.

Any questions regarding this disciplinary procedure should be addressed to Matt Guinane. Your cooperation and support in implementing this procedure is appreciated. Questions regarding the centralized incident management should be addressed to Leslie Fuld. Questions related to centralized investigation should be addressed to Nimmi Sankaran.

Thank you.

cc: Commissioner Burke
John Monteiro
Matt Guinane
Helene DeSanto
Jill Gentile
DIHRMS
Leslie Fuld
Nimmi Sankaran