



**OFFICE OF THE DIRECTOR OF POLICE
THE UNIVERSITY OF TEXAS SYSTEM
POLICY AND PROCEDURE MANUAL**



Subject DISCIPLINE AND APPEAL PROCEDURE			Policy Number 208
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I. PURPOSE

To establish a procedural framework outlining the discipline process for officers and employees of The University of Texas System (UTS) Police. The objective is to provide an appeal process for disciplinary action as the result of a suspension without pay, demotion, or termination from employment. This Policy should be read in conjunction with ODOP Policy 204 – Complaint Investigation and ODOP Policy 205 – Grievance Procedure.

Officer is defined as a sworn peace officer commissioned through the University of Texas System Police or an employee licensed by the Texas Commission on Law Enforcement (TCOLE).

Employee is defined as all members of the department including sworn and non-sworn personnel.

The provisions of this policy do not constitute a contract, express or implied, between any officer/employee and The University of Texas System and its institutions. No provision of this policy and its procedures should be interpreted as providing additional rights, including rights contrary to the "employment at will" doctrine.

This policy does not apply to sworn staff members (commissioned officers) of the Office of the Director of Police.

II. CONDUCT AND PERFORMANCE

Each employee is responsible for understanding the job task performance criteria related to his/her specific position and any applicable UTS Code of Conduct obligations, Policies/Procedures of the Office of the Director of Police, the Board of Regents Rules and Regulations, local laws, state laws, federal laws, provisions of an Institution’s Handbook of Operating Procedures, or the Institution’s Police Department rules and regulations. An employee who does not fulfill the work responsibilities established by such performance criteria, rule, procedures, or standards of conduct may be subject to disciplinary action up to and including termination. The disciplinary process with an employee includes unsatisfactory work performance and/or a sustained misconduct complaint.

A. Work Performance

Work performance is defined through a supervisor's performance evaluation and assessment of the quality and quantity of job tasks performed by each employee. If an employee fails to maintain satisfactory work performance standards, is negligent in the performance of their duty, or does not meet reasonable and objective measures of efficiency and productivity, disciplinary action can occur.

B. Misconduct

Misconduct is defined as an act, decision, behavior or omission of the same which violates the UTS Code of Conduct, Policies/Procedures of the Office of the Director of Police, the Board of Regents Rules and Regulations, local laws, state laws, federal laws, provisions of an Institution's Handbook of Operating Procedures, or the Institution's Police Department rules and regulations. Misconduct by an employee could result in disciplinary action.

III. CORRECTIVE ACTION AND DISCIPLINARY ACTION

Corrective action is a global term that is used to impact/improve an employee's performance and/or conduct. The term includes counseling, coaching, mentoring, remedial training, supervisory intervention and oral reprimands. The term also includes all forms of disciplinary actions from a written reprimand, suspension without pay and demotion. Termination of employment is not considered a form of corrective action as its purpose is not to correct behavior, but rather to end the employment relationship. Whenever possible, corrective action should involve positive intervention between the employee and a supervisor. Intervention can be both informal and formal. To the extent possible, these activities should be positive and focus on learning and professional growth. Corrective action, regardless of the form, should always be constructively critical.

Intervention through formal corrective action will include a written directive such as a performance action/improvement plan. The performance plan should cite the specific job tasks needing improvement. The supervisor should outline through the plan standards that include what constructive corrective training is available for the employee, an acceptable time frame for completion of the performance action/improvement plan, frequency of meetings between the employee and supervisor to discuss the status and progression of the plan, how success will be measured, and consequences if the performance standards are not met.

Corrective Action in the form of discipline is considered punitive action or sanctions imposed upon an employee in response to a sustained allegation of misconduct or improper actions (i.e.: Complaint Class I or Class II) or repetitive unsatisfactory work performance. Disciplinary action may or may not be progressive in nature, depending on the facts and circumstances of the conduct. Discipline does not require a sequence of punitive steps and is intended to correct behavior. Any recommendation for disciplinary action should consider the degree of severity of the offense, the employment record of the employee (specifically any same or similar conduct performance issues), and the seriousness of the action or violation.

A. Written Reprimand

A written reprimand is the lowest form of disciplinary action utilizing a memorandum to document a minor infraction or work performance deficiency. The written reprimand should contain clear and specific language that describes the infraction or repetitive unsatisfactory work performance, lists any previous counseling or intervention directly related to the infraction or unsatisfactory work performance, the impact the infraction or work performance deficiency has on department operations that result from the employees failure to perform to standards, outline steps the employee is expected to complete for meeting the job task standards, and a statement delineating the consequences that can be

expected if the performance fails to improve. The employee shall be given the original and a copy shall be placed in their personnel file.

B. Disciplinary Probation (also known as a Performance Improvement Plan)

Disciplinary probation is a supervisory staff performance review that monitors specific terms and definable conditions.

1. When the employee is notified that he/she is being placed on disciplinary probation, the employee will also be provided the terms and conditions of the probation.
2. The length of disciplinary probation shall not exceed 6 months. During the probationary period, progress reports will be prepared every 30 days by the employee's immediate supervisor. Each progress report will be discussed with the employee prior to being reviewed by the command staff.
3. If during any point in the disciplinary probationary period the employee fails to meet the terms and conditions outlined, the employee's immediate supervisor shall make recommendations to the Chief of Police for additional disciplinary action up to and including termination.

C. Suspension without Pay

Suspension without pay is an ordered absence from duty without pay for a specific time period. An employee who is suspended without pay continues to accrue vacation and sick leave, is covered by group insurance and entitled to other employee benefit programs.

D. Demotion

Demotion is a reduction from one salary group to a lower salary group and/or a reduction from a higher rank to a lesser rank. An employee who is demoted continues to accrue vacation and sick leave, is covered by group insurance and entitled to other employee benefit programs.

E. Termination from employment

Termination from employment is the involuntary termination of employment of an employee by the Institution.

IV. PROCEDURES FOR IMPOSING AND APPEALING CERTAIN DISCIPLINE

The following procedure is applicable to misconduct and unsatisfactory work performance of an employee that results in a decision to impose a disciplinary penalty of suspension without pay, demotion, or termination from employment. This procedure does not apply to:

1. Suspension with pay (also called Paid Investigative Leave) pending the investigation of allegations relating to an employee; otherwise known as administrative leave with pay;
2. non-disciplinary demotion or termination resulting from reorganization, reduction in force or financial exigency;
3. dismissal of an employee during the initial 180-day period of employment; otherwise known as probationary dismissal; or
4. decisions or actions that are subject to review pursuant to procedures provided by other approved policies or procedures of The University of Texas System, its institutions, the Office of the Director of Police, or the Institution's Police Department. (Example:

Decisions or actions resulting in a verbal reprimand, written reprimand or disciplinary probation are reviewable pursuant to procedures provided in UTS Employee Grievance Process Policy number 205).

A. Imposing Discipline

1. Pre-discipline Notification to Employee

The Chief of Police or Chief's designee shall inform the employee of the reason(s) for the proposed disciplinary action and provide the employee details supporting the disciplinary action. The employee shall be provided an opportunity to respond to the proposed disciplinary action as a rebuttal before a final decision is made. The employee is not entitled to representation by an attorney at the pre-discipline notification.

2. Decision of Chief of Police

Once the rebuttal is received from the employee and reviewed by the Chief of Police or Chief's designee, a final decision regarding discipline shall be made. If the decision is to pursue disciplinary action, the employee must be informed in writing of the following:

- a) The type of disciplinary action (e.g. written reprimand, suspension without pay, demotion or termination) and the effective date(s);
- b) if a suspension without pay, then a specific time period should be listed;
- c) a brief description of the specific incident, misconduct, course of conduct, or unsatisfactory work performance that serves as the basis for the disciplinary action;
- d) previous efforts, if any, that were utilized as an attempt to increase the employee's awareness of the need to change or improve work performance or conduct; and
- e) reference to any relevant law, rule, regulation, or policy.

B. Appealing Disciplinary Actions

Disciplinary actions resulting in suspension without pay, demotion, and termination from employment may be appealed by the employee. The time frames outlined by this policy must be adhered to by both the employee and the appropriate Institution Vice President (or administrative equivalent; hereinafter called Vice President) unless extended, with written notification, for cause by the Vice President. The failure of an employee to comply with the time limits constitutes a withdrawal of the appeal.

1. Written Appeal to the Vice President

a) The employee may submit a written appeal to the Vice President within ten (10) business days from the date of notification of the disciplinary action (date of notification and effective date of disciplinary action are not necessarily the same. Date and manner of notification must be recorded on written documentation). The written appeal document shall contain:

- (1) A complete statement of the circumstances related to the alleged misconduct and/or unsatisfactory work performance, including time(s) and date(s) of relevant facts;
- (2) The discipline imposed;
- (3) A clear and concise statement of why the disciplinary action was inappropriate; and
- (4) The disciplinary correction requested.

b) The employee shall provide a copy of the appeal and any attachments to the Chief of Police at the same time the appeal is submitted to the Vice President.

2. Response of the Vice President

If the disciplinary action recommended was suspension without pay or demotion, the Vice President will review the written appeal from the employee.

a) The Chief of Police, within ten (10) business days of receipt of the employee's appeal, will provide a written response and all documentation pertaining to the suspension without pay or demotion of the employee to the Vice President. The employee's personnel file may also be submitted to the Vice President if requested. A copy of the written response from the Chief of Police shall be provided to the employee.

b) Within ten (10) business days after receiving information from the Chief of Police, the Vice President will render a decision. The written decision will be e-mailed to the employee's personal email address along with a hard copy delivered by courier or US mail to the employee's last known home address. Each employee is responsible for keeping their Chief of Police notified of their current e-mail and home mailing address.

c) The decision by the Vice President for suspension without pay or demotion is final.

d) If the appeal of the suspension without pay or demotion is successful, the employee shall receive payment for wages lost as a result of the suspension without pay or demotion.

V. TERMINATION OF EMPLOYMENT

A written appeal with the decision for termination from employment will be referred by the Chief of Police to the Vice President for review. Within ten (10) business days after the effective date of the termination. The terminated employee will deliver a copy of the appeal, including any attachments to the Chief of Police.

A written appeal from a terminated non-probationary commissioned police officer may follow one of two procedures. First, the terminated police officer's appeal may be made directly to the Vice President, in

which the decision of the Vice President is final. Second, the appeal may inform the Vice President that the terminated officer is requesting the appointment of an Appeal Review Board (hereinafter called Board) to review the termination and make a recommendation to the Vice President prior to the Vice President making a final decision. If a Board is requested, the terminated officer must provide a copy of the appeal (with any attachments), along with the request to appoint a Board, to the Office of the Director of Police (ODOP) within 10 business days of the effective date of the termination.

A. Hearing Procedures for Officers Terminated from Employment

1. After receiving a request for an appeal hearing review, the Office of the Director of Police will appoint the Board. The hearing should be conducted as soon as practical, but not later than thirty (30) calendar days from the date the Board is appointed.
2. The Office of the Director of Police will appoint Board members and decide the appropriate format (in person, by teleconference, etc.). Reimbursement for travel, hotel, per diem or other costs for the Board members will be the responsibility of ODOP.
3. The Chairperson of the Board shall preside at the hearing and ensure the order of presentation as well as rule on questions of relevancy. The Chairperson will provide instructions to the advocates related to exchanging exhibits. An agreed deadline date of exchange well before the hearing date should be established for proper document review. This policy does not require ODOP, UTS or the UTS Institutions to find or produce documents for the terminated officer and/or his attorney beyond obligations under the Public Information Act. The Chairperson of the Board shall have the discretion to determine the length of the hearing and the form and scope of examination allowed during the hearing. Upon request, the Board may consult with and be advised by counsel from the Office of General Counsel of The University of Texas System Administration.
4. The terminated officer may be represented at the hearing by an attorney or other individual representative of an employee organization that does not claim the right to strike or engage in other labor action. If the officer is so represented by an attorney or a representative of an employee organization, the Institution will be represented by an attorney from the Office of General Counsel of The University of Texas System Administration. The officer must provide written notice of representation to the Chief of Police, or designee, at least fourteen (14) calendar days prior to the hearing.
5. In all appeal hearings, the Institution shall make a tape recording of the hearing and make a copy of the tape available to the officer on request. The tape recording shall be the official record of the hearing. This may be an audio or video recording.
6. The Institution shall have the burden of proof. By a preponderance of the evidence, the Institution must show the truth of the sustained citations and that just cause exists for the imposition of discipline. The essence of the just cause principle is the requirement an employer must have some demonstrable reason for imposing discipline. The reason must concern the employee's ability, work performance, or conduct and the employer's legitimate business needs. (*City of Houston v. Matamoros*, AAA #70 390 00803 05).

7. While the formal rules of evidence and procedure do not apply to the hearing, the hearing shall consist of testimony by witnesses called by the Institution and the Officer. Cross examination of a witness is available to both parties and Board members. Applicable exhibits may be introduced by either party. The Board can take notice of the Officer's personnel record if introduced during the hearing as evidence.
8. Neither the Institution nor the Officer has the authority to compel the attendance of a witness at the hearing. Any employee can be asked to appear as a witness for either party. It shall be the duty of an employee requested to testify to do so concerning any facts which may be relevant to the appeal and to be truthful in doing so. It is the responsibility of each party to assure attendance by its witnesses.

B. Post Hearing Rules and Procedures

1. The Board shall prepare and forward written recommendation(s) to the Vice President within five (5) business days from the close of the hearing. The Board shall also include a copy of the record (tape recording and exhibits). After reviewing the Board's recommendation(s), the Vice President shall issue a final decision to the terminated officer within ten (10) business days from the receipt of the recommendation(s) from the Board.
2. The Board recommendation(s) shall rely on the majority vote of the Board members and the Chair shall be a voting member.
3. The decision of the Vice President is final.
4. If an appeal of termination is successful, the officer shall be reinstated to the same or similar position and receive payment of back wages less any unemployment compensation insurance benefits received by the officer after the date of termination. Employee benefits such as vacation and sick leave shall be credited back to the date of termination.

VI. APPEAL REVIEW BOARD

A. Appointment of Board Members

When the Vice President of an Institution or the terminated officer requests a Board be appointed, the Executive Director of Police shall select three (3) officers, with one (1) alternate, to serve as an Appeal Review Board. One member of the Board must be of the same rank as the officer. All other members of the board must be of a higher rank than the terminated officer. Officers from the officer's Institution will not be selected to serve. The Executive Director shall appoint the Chairperson of the Board.

The alternate Board member's role is to act in the absence of another Board member. The alternate member should be present during the hearing and post hearing deliberations but their activities are limited to observation only unless another member's absence occurs.

B. System Coordinator

The Executive Director of Police will assign a representative from Office of the Director of Police (ODOP) to coordinate matters relating to the hearing presided over by the Board. The tasks for each Board member are outlined through attachments to this document. Funding for travel, lodging, per diem and other costs associated with the hearing are provided through ODOP. Prior to the start of the hearing, the ODOP representative will provide the Board an orientation to assist with operational guidelines and procedures

related to the hearing. The ODOP representative will be available to the Board during the hearing to address questions related to policy or procedural issues. This representative will normally be the ODOP Chief of Staff.

VII. DOCUMENTATION

Copies of all documents pertaining to disciplinary actions shall be filed in the officer's personnel file in the department and at ODOP.

A handwritten signature in cursive script that reads "Michael Parks".

Michael Parks
Executive Director of Police