OhioDAS

CONDUCT and DISCIPLINE POLICY

POLICY NUMBER: 500-04	EFFECTIVE DATE: 07/012015	APPOINTING AUTHORITY APPROVAL:
REPLACES POLICY DATED: 8/20/2009	AUTHORITY: Ohio Revised Code Chapter 4117 and 124; Article 5 & 24 OCSEA Contract; Article 8 SEIU/1199 Contract	

I. PURPOSE

This policy sets minimum standards of workplace conduct (and closely related off-duty conduct) for all DAS employees. This policy also sets forth requirements to administer discipline for DAS employees in the Classified Civil Service under Ohio Revised Code 124.11(B) and DAS employees governed under a collective bargaining agreement. Employees in the unclassified service under ORC 124.11(A) do not enjoy just cause protection or substantive due process protection under the civil service statute.

II. POLICY

A. Employees may be disciplined for any violation of laws, rules, policies or procedures.

B. Division personnel are under a duty to promptly notify the assigned Office of Employee Services "OES" representative when there is reasonable suspicion to believe that an employee has violated one or more rules in this Policy.

C. "Warning" Corrective Counseling

1. This is a written non-disciplinary warning letter. The letter will cite prohibited behavior and admonish the employee not to engage in future similar misconduct.

2. A supervisor may issue a warning letter in consultation with their assigned OES representative IF the employee has NO prior discipline. An intervening corrective counseling/warning letter may also be used in lieu of discipline in cases where an employee has prior active discipline. Intervening corrective counseling must be reasonable under the circumstances and must receive **pre-approval** through the DAS-OES Labor Relations Manager or HR Administrator.

3. Oral reprimands issued prior to July 1, 2015 are hereby reduced to warning letter/corrective counseling.

D. <u>Statement about certain discipline related monetary deductions and the Fair Labor Standards Act (FLSA) [Safe Harbor Provision]</u>

For FLSA Overtime Exempt Employees, there are certain restrictions on monetary deductions coming from fines or suspensions. If an affected employee believes an improper deduction is made in violation of the Fair Labor Standards Act, he or she should file a complaint in writing to the DAS-OES Labor Relations

Manager within two years of when the deduction is made. The Labor Relations Manager will research the matter which may include obtaining a legal opinion regarding the legality of the deduction. If the deduction is deemed improper, the monies deducted will be promptly returned. (The Labor Relations Manager will investigate the possibility of other similar problems and remedy as proper.) In cases where monies are returned to the employee, the discipline will automatically convert to a working suspension and the discipline will remain active for any remainder of the two year period. Use of this procedure in no way affects or limits any rights the employee may otherwise hold.

E. Discipline Grid

1. The grid is used by determining the Infraction Level (top row) and comparing it with Prior Discipline (left column) to arrive at the "position" on the grid. The "position" on the grid lists the "range" of recommended discipline. Aggravating and mitigating factors are taken into consideration when recommending a specific discipline within the range.

2. Employees may be charged with more than one infraction arising out of the same incident. The highest level infraction charged shall be used to determine the "position" on the grid. If an employee is charged with a Level 5 "variable" infraction and an infraction at another level, the recommended discipline will be in the range of the non-level 5 infraction or higher.(EXAMPLE: Employee is charged with a Level 3 and Level 5 infraction with no prior discipline. According to the grid, the recommended range cannot be lower than 1 day, but may be higher because of the variable infraction.)

3. In all circumstances, discipline shall be progressive. This means that discipline for subsequent infractions must be greater than prior discipline (which is active).

DISCIPLINE GRID

Prior Discipline	**Level 1 (Minor Infraction)**	**Level 2 (Mid-level Infraction)**	**Level 3 (Serious Infraction)**	**Level 4 (Major Infraction)**	**Level 5 (Variable)**	**Level 6 Automatic Termination**
None	Reprimand	1 Day	2 Day	5 Days to Termination	Reprimand to Termination	Termination
Reprimand	1 Day	2 to 4 Days	3 to 5 Days	5 Days to Termination	Reprimand to Termination	Termination
Minor Suspension (1 Day)	2 to 4 Days	3 to 5 Days	5 Days to Termination	Termination	Reprimand to Termination	Termination
Medium Suspension (2-4 Days)	3 to 5 Days	5 Days to Termination	5 Days to Termination	Termination	Reprimand to Termination	Termination
Major Suspension (5 Day)	Termination	Termination	Termination	Termination	Reprimand to Termination	Termination

F. Infractions

1. Infractions are noted according to Family (A-Z) and Level (1-6). If there is more than one infraction in a family with the same level, (a-z) is added to distinguish one from the other.

2. Some infractions are "lesser included infractions" as noted. An employee may be charged, but shall not be disciplined for an infraction and any lesser included infractions arising out of the same element of an act or omission. (Example: An employee will not be disciplined for D-4 dishonesty and D-2 misrepresentation arising out of the same false statement. Dishonesty is purposeful misrepresentation and is considered more serious misconduct than a careless utterance.)

3. OES representatives will use infractions listed in this policy for charges of misconduct. OES can list charges in the alternative for necessarily included offenses. OES can also list multiple charges for various infractions even though they arise out of the same transaction. (Example 1: D-4 Dishonesty OR D-2 Misrepresentation) (Example 2: Neglect of Duty AND Failure of Good Behavior) OES reserves the right to amend charges at any time prior to final discipline with appropriate prior notice and due process to the Employee. Charges are used to operate the grid and guide the level of any resulting discipline.

WORK RULES

Attendance Family	
A-1a Tardy	Late five (5) or more times within any calendar month with no single episode exceeding 30 minutes. **OR** Violation of applicable Division/Department tardy rule.
A-1b Improper Call-off	Failure to call in to an authorized official to notify of an impending absence within thirty (30) minutes after scheduled start time. **OR** Failure to comply with Division/Department call off procedure.
A-1c Using More Leave than Available	The employee exceeds leave balances (but would be otherwise approved for leave).
A-2a Unexcused Absence	The employee is denied leave, or is not privileged to take leave for an absence of less than 10 hours within a pay period.
A-2b Misuse or Abuse of Sick Leave	Other violation of the State of Ohio Sick Leave Policy Art. 29.04; R.C. 124.382 and OAC 123: 1-32-05 or successor provisions.
A-2c Failure to Provide Physician's Verification	The employee does not provide physician's verification when required or does not provide it within the required timeline.
A-3 AWOL #1	The employee has not requested leave for an absence or is denied leave for an absence more than 10 and less than 17 hours within a pay period.
A-4 AWOL #2	The employee has not requested leave for an absence or is denied leave for 17 or more hours within a pay period (but is not absent for 3 or more consecutive days,

	unexcused.)
A-5 Violation of DAS Attendance Policy (otherwise unspecified)	Use this for violations of DAS policies or procedures, or divisional work rules related to attendance but not otherwise specified here.
A-6 Job Abandonment	Three or more consecutive days of unexcused absence.
Convictions	
C-5 Conviction of a misdemeanor closely related to fitness for duty	Including but not limited to crimes of deceit and loss of driving privileges for persons who must be able to drive a vehicle in order to perform job duties.
C-6 Conviction of a Felony	See R.C. 124.34.
Dishonesty	Note: All infractions are lesser included for D-4 Dishonesty.
D-2 Misrepresentation	Creating or allowing a false impression about facts or events which affects the interests of the employer and/or well being of employees.
D-4 Dishonesty	Intentional attempt to mislead others by generating a lie or falsehood which affects the material interest of the employer and/or well being of employees.
D-5 Failure to cooperate in an Official Inquiry	Withholding information or engaging in any act of deceit which affects the interest of the employer or others in officially investigating any matter that is agency related.
Ethics	
E-5 Violation of Ethics Policy	Any violation of DAS Policy 100-01 or successor policy; or violation of Ohio Ethics Laws.
Failure of Good Behavior	
F-5 Failure of Good Behavior	Any acts or omissions which fall below accepted standards of social conduct in the workplace, and under the circumstances, or any off duty acts which bring discredit to the agency. Examples include but are not limited to: fighting; horseplay; discourteous treatment of others.
Harassment & Discrimination	
H-5 Violation of Anti-Harassment or Anti-Discrimination Policies	Violation of DAS 500-02 Anti-Harassment /Anti-Harassment Policy, its successor or violation of R.C. 4112, The Civil Rights Act of 1964, or related laws and rules.
Insubordination	All infractions are lesser included of I-4.
I-1 Failure to follow procedures	Failure to follow a procedure which the employee has reason to know.
I-2 Failure to follow	Failure to follow written instructions of a superior

instructions	
I-4 Failure to follow a direct order or command	The employee does not comply with a command or direct order where: 1. The employee has actual notice of the order or command; 2. The employee does not follow the command or order; 3. The employee has actual or implied notice that failure to follow the command or order may result in discipline.
Neglect of Duty	
N-5 Neglect of Duty	1. The employee has a pre-existing duty to do or not do something either actually or impliedly by the fact of the employer-employee relation; 2. The employee fell below the standard by his/her act or omission. Examples include but are not limited to: sleeping on duty; misuse of state property; leaving the work areas without permission; engaging in personal work; violation of dress code, etc.
Overtime	
O-1 Unauthorized Overtime	Working beyond regular schedule without prior authorization.
O-2 Failure to report for voluntary overtime	Failure to report for scheduled overtime accepted (voluntary).
O-4 Failure to work mandatory overtime	Failure to report for or work mandatory overtime.
Prohibited Political Activity	
P-6 Political Activity	Violation of DAS Political Activity Policy 100-08 or Successor or Violation of R.C. 124.57 or similar laws.
Substance Abuse	(Drug Free Workplace DFWP)
S-5a Drug Related Conviction	Failure to report a workplace drug-related conviction.
S-5b DFWP	Violation of DAS 300-01 Drug Free Workplace policy, or successor policy, or drug free workplace rule not otherwise specified
S-6 Under the Influence	Positive Test for Illicit or Illegal Drugs or Reporting to Work under the influence, or refusal to test.
Tobacco	
T-1 Smoking	Smoking in state buildings, state vehicles, or space leased to the State of Ohio, or other prohibited areas except areas specifically designated for smoking.
T-5 Other Tobacco Violation	Violation of state smoking laws and related fire codes (on or off state property while on duty or holding self out as on duty), OR other DAS rules concerning tobacco.
Workplace Violence	

V-5 Violation of Workplace Violence Policy	Violation of DAS Policy 500-05 Workplace Violence Prevention.
V-6 Violation of Weapons Policy	Violation of DAS Policy DAS 500-06 Weapons Policy (Use or possession of a weapon without privilege).
Violations Otherwise Unspecified	Violations of other rules or policies not specified above. Examples include but are not limited to, Health and Safety, or other violations of R.C. 124.34.
Z-5a Violation of Laws, Rules, Policies or Procedures	When using, state specific law, policy, rule or procedure including divisional work rule or DAS 100-02 general work rules if not specified in this Policy.
Z-5b Violation of R.C 124.34	When using, state specific R.C. 124.34 ground i.e. misfeasance, nonfeasance, incompetency, inefficiency.

G. Types of Discipline: "Reprimand," "Days"

1. Reprimand is usually the first discipline following a non-disciplinary warning.
2. Days take the form of: 1. Unpaid suspensions (deduction from pay plus required absence); 2. Working suspensions ("paper suspension" with no loss of pay and no required absence); 3. Fines or Leave deductions (levies against pay or accrued leave balances with no corresponding absence - SEE LIMITS on FINES below):

    i. Discipline for exempt employees may include leave reduction which is equivalent to "Days" on the grid. *(accomplished by reduction of prospective accumulation of vacation pay)*
    ii. For exempt employees, demotion may be used as an alternative to the first instance of termination level, and in accordance with Ohio Revised Code.
    iii. Fines may be initiated for exempt employees only. Fines may be levied only in conformance with the Fair Pay provisions of the Fair Labor Standards Act.
    iv. Fines CANNOT be levied against OCSEA bargaining unit employees as a disciplinary action in the first instance. However, if the employee grieves a working suspension, any portion of the discipline upheld will revert either to a fine or leave deduction at the option of the employee.

The OES HR Administrator or OES Labor Relations Manager shall recommend discipline in accordance with this policy. The recommended discipline will be based upon application of the grid. The Appointing Authority has final decision making authority on all disciplinary action.

III. REVISION HISTORY

Date	Description of Change
1/25/2008	Original Policy Release
08/20/2009	Revision replaces 100-03 Discipline Policy and is renumbered 500-04 Conduct and Discipline Policy and modifies DAS 100-02 Work Rules
7/1/2015	Revision – removal of obsolete language regarding proportional conversion of discipline greater than 5 days; revise grid to conform to 2015 OCSEA contract; inclusion reference to SEIU/1199;

DAS: Request for Discipline (Attachment A from DAS 500-04)

Division: ❑ASD ❑GSD ❑EOD ❑HRD ❑OCB ❑OIT

Employee Name: _____

❑Bargaining Unit: ❑OCSEA ❑SEIU/1199
❑Exempt: ❑Classified ❑Unclassified

Years of continuous service with DAS _____

Date of Incident: _____

Prior Discipline level: _____

Current Charges: ___-___; ____-____; ____-____ Example A-5; I-4; N-5 from DAS 500-04

1. Is there a completed Administrative Investigation? ___
   a. Summary of Incident Attached? ___
   b. Copy of procedure, order or instructions as applicable? ____
   c. Witness statements, records of interview and other documentation included as applicable? ___

2. Is there substantial evidence indicating violation of DAS 500-04?___

_____ _____
OES representative assigned to Division DATE

_____ _____
Supervisor/Manager DATE