STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

AGOH-SHRD 7 November 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: POLICY - *State Employee Procedure Letter #22 and State Employee Discipline and Work Rules

1. **REFERENCES**.

a. Chapter 124, Ohio Revised Code (Personnel Exempt from Collective Bargaining).

b. Ohio Administrative Code, Section 123:1-47-01.

c. Article 24, OCSEA Contract (Collective Bargaining Personnel).

d. Enclosure with this letter, Table of Penalties for State Employees.

2. **PURPOSE**. This letter outlines the discipline policy of the Adjutant General's Department when dealing with state employees. The principles of progressive, corrective action shall be followed as a means of modifying behavior or correcting inappropriate actions. Actions taken shall be reasonable, consistent with the offense, and commensurate with the individual employee's disciplinary record.

3. **SCOPE.** This policy applies to all state employees of this department as listed:

a. Classified State of Ohio positions (exempt and collective bargaining).

b. Unclassified State of Ohio positions must meet the same expectations and follow the same policies as Classified State of Ohio positions. However, unclassified service appointments are made at the discretion of the Appointing Authority and the incumbent may be removed, suspended or reduced at the pleasure of the same authority. Pre-discipline meetings and State Personnel Board of Review appeals do not apply to unclassified positions.

4. **GENERAL.** Employees shall abide by all directives, rules and policies of the Adjutant General's Department as well as all local, state, and federal laws.

Disciplining an employee who violates rules, policies, and directives of the Adjutant General's Department or the Ohio Revised Code, is necessary, if order and efficiency are to prevail in the work place. The objective of imposing discipline is to correct undesirable behavior that adversely impacts the mission of the Adjutant General's Department.

*This letter supersedes State Employee Procedure Letter #22, dated 1 December 1996.

It is of equal importance that disciplinary action shall be for just cause and shall be administered fairly and consistently throughout the organization within the guidelines set herein. The suggested discipline outlined shall also be commensurate with the offense taking into account the severity of the violation, mitigating circumstances, as well as previous discipline. The Ohio National Guard is dedicated to the policy of corrective progressive discipline. Disciplinary action should be imposed with the intent of giving the employee the opportunity to correct his/her behavior so long as the discipline is commensurate with the offense. If the behavior is not corrected, discipline should become increasingly more severe, up to and including removal. Certain offenses warrant severe discipline to include removal on the first offense.

The infractions included in this directive and the enclosed Table of Penalties are not intended to be all-inclusive. It is likely that there are many other types of infractions that may occur. The infractions listed are intended to be representative examples of activities that will warrant immediate corrective action. Informal counseling and work instruction are not considered disciplinary action and are to be used to direct the work force, as well as place employees on notice of improper behavior.

In general, it is the philosophy of the Adjutant General's Department to offer and encourage the use of the Employee Assistance Program (EAP), where appropriate. The EAP is not considered disciplinary action.

5. **RESPONSIBILITIES.** Supervisors are responsible for the appropriate and consistent application of the work rules, policies, procedures, and directives of the Ohio National Guard and/or laws of the State of Ohio. Supervisors are also responsible for initiating the request for disciplinary action as soon as they are aware of a potential situation.

Employees are responsible for complying with and adhering to all work rules, policies, procedures and directives of the Adjutant General's Department and/or laws of the State of Ohio. Employees are expected to conduct themselves in such a manner that their activities both on and off duty will not adversely affect their ability to perform their duties.

Employees are expected to report to their immediate supervisor violations of policy, procedure and/or law particularly when such violations would adversely impact the mission, public trust or safety of the Adjutant General's Department.

Employees must obtain and maintain all requirements for their position. This requirement includes but is not limited to a valid driver's license, CAC Access, a favorable background check and/or security clearance (NAC or NACI) as required by the Adjutant General, classification specification or the Federal government.

Illegal conduct on the part of any employee, whether on or off duty, is not only unlawful but reflects on the integrity of the Adjutant General and betrays the public trust. In the event any Adjutant General employee is convicted of any felony or degreed misdemeanor, or is required to be a defendant in any court action, that employee must notify his chain of command immediately. Failure to notify the chain of command will subject the employee to potential disciplinary action. Conviction of a felony is cause for removal from employment with the Adjutant General's Department.

6. **PROCEDURES.** Discipline shall be progressive in nature. Each violation of policy or procedure will move the disciplinary process to the next step. Discipline shall be imposed per the Table of Penalties attached, beginning with a reprimand for minor offenses and progressing with each offense. Disciplinary action need not begin at an oral reprimand for a major offense.

The determination of whether an offense is minor or major is a management decision and based upon the circumstances surrounding the offense, as well as the nature of the offense.

7. **DEFINITIONS.**

a. Counseling: A discussion with the employee to notify him/her of a potential disciplinary situation. The supervisor should discuss the problem with the employee, offer advice and assistance/suggestions on how to best resolve the problem. Supervisors may document the counseling session through memoranda, email or notation in the employee's file.

b. Formal Disciplinary Action: Consists of verbal reprimands, written reprimands, suspensions, working suspension, and removals. Exempt employees may also be demoted. No such action will be taken regarding suspension, removals or reductions without review and coordination with the State Human Resources Administrator. Any action involving removal, suspension, or reduction will be processed in accordance with Section 124:34, Ohio Revised Code, or Article 24, OCSEA Contract.

1. Oral Reprimand: An oral reprimand, noted in the employee's file, from the employee's supervisor. The supervisor will identify the offense, the proper course of behavior, and the consequences of future actions.

2. Written Reprimand: A written reprimand for violation of rules and regulations of the Adjutant General's Department. The reprimand is prepared and signed by the immediate supervisor and presented to the employee. The supervisor will identify the offense, the proper course of behavior, and the consequences of future actions. The employee is required to acknowledge receipt of the written reprimand with their signature.

3. Suspension: A temporary removal from duty, without pay, imposed by the Appointing Authority for violation of rules and regulations of the Adjutant General's Department.

4. Working Suspension: Used in lieu of suspension for violation of rules and regulations of the Adjutant General's Department. A working suspension has the same force and effect as a suspension without pay for purposes of progressive discipline, however, the employee is required to report to work as scheduled and is paid for hours worked.

5. Demotion: Non-bargaining unit employees may be reduced in pay and position for violations of Ohio Revised Code 124.34.

6. Last Chance Agreement: In some cases it may be appropriate to offer the employee a last chance. This agreement may accompany disciplinary action and is intended to make employees aware that any subsequent violations of the Adjutant General's Department policy, procedure, and/or directives will result in the removal of the employee from his/her position. Most last chance agreements will be in

effect for a period of two (2) years from the date the notice was signed. The last chance agreement is not a mandatory nor is it an additional step required prior to an employee being removed from service. Last Chance Agreements may be offered and/or developed by management, the employee or the employee representative.

7. Removal: A involuntary termination from duty with the Adjutant General's Department imposed by the Appointing Authority for reoccurring infractions or a serious breach of the rules and regulations or a combination of both.

8. General Provisions: Bargaining unit employees are entitled to union representation during all phases of the disciplinary process. Exempt employees are entitled to representation of their choice, if requested, during all phases of the disciplinary process.

For major breaches in proper behavior, policy or procedure, the principles of progressive corrective disciplinary action may not be appropriate. An employee may be disciplined immediately, without progression, based on the seriousness of the offense. Due process shall always be provided except for those serving in unclassified positions. Disciplinary action shall be commensurate with the offense.

9. Administration Disciplinary Action: For purposes of consistency and to assure the policies of the Adjutant General's Department are being implemented properly, supervisors who are contemplating disciplinary action must first contact the State Human Resource Office for guidance.

Timely discipline is a key to the corrective effect of disciplinary action. All efforts should be made to issue disciplinary action within a reasonable timeframe when an employee has violated policy/procedure/directives.

a. Oral Reprimands: This reprimand is administered verbally, however, a notation of record must be prepared. This may take the form of a memorandum; follow up email or notation in the supervisory record. This must be completed and forwarded to the Adjutant General's Department, State Human Resources Division (AGOH-SHRD). Reprimands not on file at AGOH-SHRD may be determined to be unusable for progressive disciplinary purposes. A copy of this notation record must be provided to the employee.

b. Written Reprimands: Notices of written reprimands must be delivered to the employee in memorandum form and a copy provided to the State Human Resources Division (AGOH-SHRD) for inclusion in the individual's official personnel file. Again, any written reprimands not on file at AGOH-SHRD may be determined to be unusable for future discipline cases. At the time the individual is presented a written reprimand, he/she must be asked to sign the following statement which must appear at the bottom of the letter:

"I _____ _____ have received a copy of this
(Employee's Name)

written reprimand on _____.
(Date)

My signature does not imply that I agree with the content, it only verifies receipt of the letter."

If the employee refuses to sign for the reprimand, another exempt employee may be called in to witness the fact that the employee refused to sign the reprimand, but was provided a copy.

c. Suspensions: See OCSEA Contract for collective bargaining employees. For exempt employees, while no limit is set by statute on the length of suspensions, first time suspensions are normally for three days or less, subsequent suspensions are normally in excess of three days. For all suspensions the following procedure applies except for unclassified employees:

1. Supervisors must first contact the State Human Resources Office for guidance. Prior to disciplinary charges being determined, it may be necessary to conduct an investigation into the event leading up to the violation. Bargaining Unit employees have a right to be represented by a union steward during this investigation. Once the facts have been gathered and documented, the supervisor must forward a copy of the charges and requested discipline, through channels, to the State Human Resources Administrator requesting that a pre-discipline meeting be scheduled before a hearing officer. The hearing officer is often outside of the employee's chain of command.

The person charged with the offense will be directed to appear before the pre-discipline hearing officer. Exempt employees may be accompanied and assisted by anyone of his/her choice, collective bargaining employees may be accompanied by a union steward or officer. The Union and/or the employee shall be given the opportunity to ask questions, comment, refute, or rebut the charges.

2. The employee may, in writing, waive the pre-discipline meeting, which shall be scheduled no earlier than three (3) days following the notification to the employee.

3. The reasons for requested discipline and the possible form of discipline must be identified in the pre-discipline notice letter.

4. The pre-discipline officer will submit a timely, written recommendation with supporting rationale and documents to the Adjutant General or his/her designee through the State Human Resources Division (AGOH-SHRD) for action.

5. The State Human Resources Administrator will review the recommendation for completeness and compliance with Chapter 124, Ohio Revised Code and Article 24 of the OCSEA Contract and then forward to the Adjutant General or his/her designee for final decisions.

d. Removals: Same sequence of events as described above for suspension.

8. **APPEALS.**

a. Personnel exempt from collective bargaining:

1. Verbal Reprimands: Non-appealable.

2. Written Reprimands: Non-appealable.
3. Suspensions: (three days or less) Non appealable.
4. Reductions: Appealable to State Personnel Board of Review.
5. Suspensions: (four days or more) Appealable to State Personnel Board of Review for classified employees.
6. Removals: Appealable to State Personnel Board of Review for classified employees.

b. Collective bargaining employees: See OCSEA Contract Article 25.

9. **DISCIPLINE RECORDS.**

a. All records relating to verbal and/or written reprimands will cease to have any force and effect after twelve (12) months and will be removed from the file if there is no other discipline imposed during the twelve (12) month period.

b. Records of suspensions and removals will be removed from the file after twenty-four (24) months if there is no other discipline imposed during the twenty-four (24) month period.

c. Prior disciplinary action remains active in the employee's file until the expiration of the last action received, based on the schedule outlined above.

10. Point of contact for the above information is Kathy Gulla, Labor Relations Specialist at 614-336-7475/DSN 346-7475 or kathleen.s.gulla@ng.army.mil.

FOR THE ADJUTANT GENERAL:

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Director of Human Resources

DISTRIBUTION:
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Adjutant General's Department
Progressive Disciplinary Guidelines
For State Employees

7 November 2011

The following is a list of specific infractions which constitute unacceptable behavior or inefficient service for employees of the Adjutant General's Department. These infractions are violations of departmental policy, the Ohio Revised Code, the Ohio Administrative Code, or other laws governing civil service employees and/or citizens of the State of Ohio. An employee who commits such infraction(s) shall be subject to the appropriate disciplinary action(s). **This list is not all inclusive nor are the recommended actions herein absolutely mandated.** They will serve as guidelines only. The agency and the collective bargaining agreement state that discipline must be progressive. Each time an employee commits any infraction, discipline is to be imposed at the next higher level. The supervisor should consider offering the Employee Assistance Program (EAP) for employees who are consistently unable to abide by these guidelines. Before any removal, EAP may be offered to the employee and discipline held in abeyance pending successful completion of the EAP program unless the infraction is so serious that removal is necessary. When the employee agrees, a written last chance agreement shall be signed by the employee, his/her union representative and the supervisor. The administration reserves the right to determine the recommended discipline at any step depending on the severity of the infraction. Finally, the Department will comply with the Governor's Illegal Activities policy, requiring that illegal activities be appropriately reported and criminally investigated if outside authorities so determine. Employees have no right to personnel actions in lieu of criminal prosecution.

Note: These guidelines are provided as an aid to supervisors in order to assure proper implementation of discipline. It may be appropriate to impose greater or lesser levels of discipline in specific cases depending on the severity of the offense. Supervisors may issue one or more verbal and written reprimands before progressing to suspension/removal. Progressive discipline may used be for unrelated violations.

TABLE OF PENALTIES FOR STATE EMPLOYEES

		1st Offense	2nd Offense	3rd Offense	4th Offense
A	**Insubordination**				
	1. Failure to carry out a work assignment	Oral/Written Reprimand	1-2 Day Suspension	3-5 Day Suspension	Removal
	2. Willful Disobedience – Failure to comply with a direct order	5 Day Suspension to Removal	Removal		
B	**Dishonesty**				
	1. Using state or federal time/resources for personal reasons; for non work matters; or misuse of state/federal property.	Written Reprimand to 5 Day Suspension	1 Day Suspension to Removal	5 Day Suspension to Removal	**Removal**
	2. Theft of employer/ employee property at work site. Includes theft by fraud or deception.	Removal			
	3. Falsification of employment application	Removal			
	4. Falsification of time records resulting in payment for time not worked	2-5 Day suspension to Removal	Removal		
	5. Falsification/Unauthorized Altering/Unauthorized Removal of Official Documents	Written Reprimand to 5 day suspension	2-5 day Suspension to Removal	Removal	
	6. Using a position for personal gain in the course of carrying out assigned duties.	Written Reprimand to 5 day suspension	2-5 day Suspension to Removal	Removal	
C	**Failure of Good Behavior**				
	1. Deliberate destruction or damage to State/Federal property or the property of other employees.	Written Reprimand to Removal	2-5 day Suspension to Removal	Removal	
	2. Threatening, fighting or intimidating another while on duty or on State/Federal Property	5 day Suspension to Removal	Removal		
	3. Striking another while on duty or on State/Federal Property	Removal			
	4. Rude, unmannerly, impolite acts or remarks	Oral/Written Reprimand	1-3 Day Suspension	4-5 Day Suspension	Removal

	5. Use of obscene, abusive or insulting language or gestures, to include being disrespectful and/or engaging in heated arguments	Oral/Written Reprimand to 5 day Suspension	1-5 Day Suspension to Removal	4-5 Day Suspension to Removal	Removal
	6. Acts of discrimination or insult on the basis of race, sex, color, age, religion, national origin, disability or sexual orientation	2 day suspension to Removal	Removal		
	7. Engaging in horseplay or practical jokes during work time or on State/Federal property. If another is injured stricter penalty will result.	Oral/Written Reprimand to 1 day Suspension	1-3 Day Suspension	4-5 Day Suspension	Removal
	8. Possession, use or sale of illegal drugs while on duty and/or on State/Federal property.	Removal			
	9. Possession/consumption of alcoholic beverages while on duty and/or on State/Federal property.	1-5 day Suspension to Removal	Suspension to Removal		
	10. Immoral or indecent conduct.	Determination of Discipline Based on Severity of Offense			
D	**Neglect of Duty**				
	1. Sleeping while on Duty	Oral-Written Reprimand	1-3 Day Suspension	4-5 Day Suspension	Removal
	2. Failure to perform the duties of the position or performance at sub-standard levels	Oral-Written reprimand to 2 Day Suspension	1-4 Day Suspension	5 Day Suspension	Removal
	3. Failure to follow the policies, procedures and/or directives of The Adjutant General.	Oral-Written reprimand to 2 Day Suspension	1-4 Day Suspension	5 Day Suspension	Removal
	4. Reporting to duty or the workplace under the influence of any intoxicant.	1-5 day Suspension to Removal	Suspension to Removal		
	5. Failure to immediately report a violation of any work rule, policy, law, and/or directive that could jeopardize the health, safety, security and/or good working order of The Adjutant General	Oral/Written Reprimand to Removal	1-5 Day Suspension to Removal	5 Day Suspension to Removal	Removal

	6. Carelessness with tools, keys, equipment, etc.	Oral-Written reprimand to 2 Day Suspension	1-4 Day Suspension	5 Day Suspension	Removal
	7. Failure of supervisor to discipline employee(s) as provided in departmental rules.	Written Reprimand to 5 day suspension	2-5 day Suspension to Removal	Removal	
	8. Suspension/Loss of Driver's License (when license is required for position).	Removal			
	9. Failure to notify supervisor of suspension or loss of Drivers' License (when license is required for position).	Removal			
	10. Failure to obtain/maintain security clearance and/or a favorable determination on a background check (NAC/NACI) and/or CAC access (when required for the position)	Removal			
	11. Damage or unauthorized destruction of State/Federal goods/ property or the goods/property of another employee	Determination of Discipline Based on Severity of Offense			
E.	**Interference with an Investigation**				
	1. Failure to comply and/or cooperate with an official administrative investigation	2 day suspension to Removal	Removal		
	2. Interfering with an official investigation including but not limited to: withholding information; coaching, threatening, coercing or intimidating anyone associated with the investigation; giving false statements	2 day suspension to Removal	Removal		
F.	**Work Stoppage**				
	1. Participating in a work stoppage or other cessation or disruption of services whether in full or in part (e.g. sick out, slowdown, refusal to work) in violation of 4117.11(B) 1-8	2 day suspension to Removal	Removal		

	2. Organizing, leading, coordinating, promoting or planning a work stoppage or other cessation of services in violation of 4117.11 (B) 1-8	Removal				
G.	**Illegal Activity**					
	1. Conviction of any criminal offenses related to the ability to perform the job duties	Reprimand to Removal				
	2. Any felony conviction and/or failure to notify supervisor of conviction.	Removal				
	3. Engaging in political activity as prohibited by O.R.C. 124.57	Reprimand to Removal				
	4. Engaging in conduct that violates the Ethics Act Chapter 102.	Reprimand to Removal				
	5. Possession of a firearm in violation of department policy	Removal				
H.	**Attendance**					
	1. Failure to report to duty – more than one hour but less than 8 hours	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal	
	2. Failure to report to duty – less than one hour	Oral Reprimand	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal
	3. Late call-in, extending a break or lunch period without approval and/or leaving early	Oral-Written reprimand to 2 Day Suspension	1-4 Day Suspension	5 Day Suspension	Removal	
	4. Tardiness	Oral Reprimand	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal
	5. Excessive Absenteeism	Oral Reprimand	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal
	6. Pattern Abuse	Oral Reprimand	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal
	7. Abuse or misuse of sick leave	Oral Reprimand	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal
	8. Failure to provide physician's verification when required.	Oral Reprimand	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal
	9. Failure to complete appropriate Request for Leave Forms	Oral Reprimand	Written Reprimand	2 Day Suspension	5 Day Suspension	Removal
	10. No call/no show or absent without proper authorization (less than three (3) consecutive days)	2 Day Suspension	5 Day Suspension	Removal		

	11. Job Abandonment – no call/no show or absent without authorization (AWOL) for three (3) consecutive work days.	Removal				