



Removal of Employees from the Workplace

POLICY # 309

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Approved 5/22/2023 – Josette Manning,
Cabinet Secretary

1. Policy Purpose

The purpose of this policy is to establish department guidelines for the removal of employees from the workplace when it is determined that their continued presence jeopardizes safety, security, or public confidence in the department.

Further, the department must provide a coordinated and efficient approach to the investigation of allegations of institutional abuse and neglect in out-of-home care settings and/or by a department employee, contractor, or volunteer when the alleged victim is a child who is active with one or more DSCYF divisions.

2. Scope

It is the policy of the department to minimize the risk to youth and families served, our employees, and other visitors by removing employees from the workplace when their continued presence may pose a risk to the safety or security of persons served, staff or the public. This policy applies to all DSCYF employees. If anything in this policy conflicts with an employee's Collective Bargaining Agreement (CBA) or the Merit Rules, the CBA or Merit Rules shall take precedence.

3. Definitions

- A. **Safety and security risk:** behavior by an employee that leads to any of the following (but not limited to):
 - a. criminal charges which, if convicted, could result in a person being prohibited or ineligible for continued employment with the department
 - b. allegations of child abuse/neglect
 - c. threats or acts of violence
 - d. suspected drug or alcohol abuse
 - e. physical or sexual abuse against a child
 - f. harassment
 - g. actions that jeopardize public confidence including but not limited to breaching client confidentiality or falsifying department records
- B. **Garrity warning:** a verbal and written statement advising the employee that they must answer all questions in the administrative investigation fully and truthfully or face discipline up to and including termination, but that any truthful statements given at the risk of severe discipline may not be used against them in any upcoming criminal legal

proceedings. Garrity rights only protect truthful statements that are compelled in furtherance of an administrative investigation.

- C. **Weingarten rights:** the right of an employee to request union representation during an investigatory interview where the employee has a reasonable expectation that discipline may result.
- D. **Out-of-home care setting:** contracted and DFS foster homes, residential childcare facilities, transitional living programs, shelters, day care homes, day care centers, rehabilitative and detention facilities, all facilities at which a reported incident involves a child/children in the custody of the State of Delaware, and all facilities which are operated by the Department.
- E. **Institutional Abuse Investigation Unit (IAIU):** Located within the Division of Management Support Services, this unit is responsible for the investigation of allegations of abuse and/or neglect in out-of-home care settings or when the alleged victim is a child in the custody of the department.

4. Policy / Procedures

- A. When management becomes aware of employee behavior or has other documentation that indicates that an employee poses a safety or security risk or jeopardizes the public confidence, they will immediately remove the employee from the workplace without loss of pay or put the employee on an alternative duty assignment (with division director and HR approval) pending the results of an independent administrative investigation which will be initiated immediately by the employee's manager/supervisor or division designee. The manager/supervisor and Human Resources will, within 72 hours, confirm that the removal from the workplace is both reasonable and consistent with decisions in prior similar circumstances, based on the available information.
- B. If the employee's behavior results in an allegation of abuse or neglect against a child in the custody of the department, the IAIU will screen the report and may begin an investigation.
 - 1. The IAIU is required by 16 Del. C. §906(e)(3) to investigate allegations of abuse or neglect of a child in the custody of DSCYF by an employee, contractor and/or volunteer and to participate in the multi-disciplinary response (including law enforcement and DOJ) as needed.
 - 2. Before interviewing the employee who is the subject of the investigation, the IAIU investigator must give the employee a *Garrity* warning. Under Garrity, any truthful compelled statements obtained from the employee that are self-incriminating regarding their involvement in the incident being investigated may not be used against them in any upcoming criminal legal proceedings. Employee statements obtained for the investigation will be kept confidential. They will not be shared outside of DSCYF, unless approved by the department's General Counsel in accordance with applicable laws.
 - 3. All evidence, including audio and video recordings related to the reported allegations, must be preserved, documented, and provided to the IAIU. Access to audio and video equipment and recordings shall be limited to the division director's designee(s).

4. The IAIU's findings will be distributed to the respective division director and the secretary of the department.
- C. Every effort shall be made to complete the administrative investigation within 14 business days of removal from the workforce, absent extenuating circumstances. If extenuating circumstances exist, management should make the employee being investigated aware of the delay. Before interviewing the employee who is the subject of the investigation, the manager/supervisor conducting the administrative investigation must give the employee a *Garrity* warning. Any truthful compelled statements obtained from the employee, that are self-incriminating regarding their involvement in the incident being investigated, may not be used against them in any upcoming criminal legal proceedings. Employee statements obtained for the investigation will be kept confidential. They will not be shared outside DSCYF, unless approved by the department's general counsel in accordance with applicable laws. The employee may request that their union representative be present for the interview in accordance with their *Weingarten* rights.
- D. The IAIU may provide the findings regarding their independent investigation to the person conducting the administrative investigation. Any information obtained by the IAIU from the multi-disciplinary team should not be shared with the administrative investigation prior to obtaining approval from the multi-disciplinary team.
- E. The manager/supervisor will report their findings and a recommendation to the division director, in conjunction with Human Resources/Labor Relations, through the appropriate chain of command.
- F. After review of the information contained in the administrative review, the division director will determine, in conjunction with Human Resources/Labor Relations, the path forward. Depending on the decision, the manager/supervisor will proceed as outlined below.
 1. If the findings of the administrative investigation do not reveal facts warranting termination, the employee may be returned to the workplace to regular duty with or without a sanction, returned to the workplace with an alternative duty assignment, or remain on administrative leave with pay. This determination shall be made after ensuring that child safety and public confidence will not be jeopardized by the alternative assignment.
 2. The status of any pending investigations shall be reviewed at the end of each pay cycle to determine if any change is required to the employee's work status. Management reserves the right to revisit recommendations for termination should the outcome of a department or external investigation warrant it.
 3. If the findings of the administrative investigation indicate that termination may be warranted, the employee may be suspended without pay pending termination provided management has reviewed with the employee the basis for the action and provides an opportunity to respond in one of the following ways:
 - a) If the employee has requested a pre-decision meeting, the meeting shall be held within the timeframes established by the Merit Rules and/or Collective Bargaining Agreement. The pre-decision meeting shall be an informal meeting to provide the employee an opportunity to respond to the proposed action, and to offer any reasons why the proposed penalty may

be unjustified or too severe. If a pre-decision meeting is requested, the manager/supervisor shall:

- i.) Schedule a meeting with the employee, and if applicable their union representative.
- ii.) Review the charge letter with the employee.
- iii.) Listen to what information the employee may have to offer in their defense or in response to the charges.
- iv.) Certify to Human Resources/Labor Relations, in writing, the date and time the steps above were completed.

- b) If the employee has not requested a pre-decision meeting within required timeframes, the manager/supervisor shall notify Human Resources to coordinate the approval and issuing of the official termination letter.

G. DSCYF reserves the right to not accept resignation in lieu of termination on a case-by-case basis.

H. Investigations will be conducted in accordance with all pertinent laws and the department's Confidentiality of Client Information policy (policy 205).

5. Legal Authority / Associated Regulations/Requirements

[16 Del. C. §906\(e\)\(3\)](#)

[Merit Rules](#)

[DSCYF Policy # 205 Confidentiality of Client Information](#)

6. Responsibility for this Policy

The Division of Management Support Services and HR/LR are responsible for providing guidance related to this policy.