

Policy C-4	CORRECTIVE ACTION PRINCIPLES		
<u>Effective Date:</u> 07/01/12	<u>Applicable Law/Statute:</u> Garrity v. New Jersey, 385 U.S. 493 (1967); Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).	<u>Source Doc/Dept:</u> All-CPD/HR	<u>Authorizing GB Pol./Reg.</u> Admin. Reg. 6.7; Policy 3.3

A. Purpose. Successful job performance requires a full and clear understanding of and commitment to job performance expectations and applicable workplace procedures. Supervisors and staff are expected to understand and follow applicable job performance and workplace conduct standards. Supervisors are expected to use, as appropriate, coaching, feedback, performance improvement plans and corrective action to assist and guide employees in resolving unsatisfactory job performance or misconduct that violates MCCCDC policies, procedures, or practices.

B. Applicability. All Regular, Board-approved employees who have completed their initial probationary periods.

C. Policy.

1. Corrective Action. The term “corrective action” for purposes of this manual includes but is not limited to the actions of coaching and counseling, Initial Corrective Action, Second Corrective Action, and suspension, demotion, and dismissal from employment. The terms “discipline” and “progressive discipline” refer specifically to the actions of suspension, demotion, and dismissal from employment. The following principles are applicable to the corrective action of all MCCCDC employees covered by this policy:
 - a. Employees shall be advised of expected job performance and workplace conduct, the types of performance and conduct that MCCCDC has determined to be unacceptable, and the normal penalties for such unacceptable performance and conduct.
 - b. Immediate attention shall be given to policy infractions.
 - c. Corrective action should usually be progressive, depending on the severity of the offense.
 - d. An employee's immediate supervisor and all supervisors up to and including the College President/Vice-Chancellor shall be responsible for administering corrective action.
2. Records of Corrective Action. All original records of corrective action shall be maintained in the employee's personnel file at District HR in accordance with MCCCDC's public record retention and disposition policies.
3. Expected Job Performance and Workplace Conduct. The job performance and workplace conduct expected of MCCCDC employees and the types of performance and conduct MCCCDC has determined to be unacceptable are contained in part in

Administrative Regulation 6.7 and in the table in Policy A-20 – Employment Standards (this is not an exhaustive list) and in various other sections of this manual. Employees are also notified of expected job performance and unacceptable conduct through:

- a. New Employee Orientation, which includes a review of MCCCDC policies, employee policies, and safety and security procedures;
 - b. The employee's college's/division's orientation, which includes a review of the college's/division's standard operating procedures and the employee's position-specific performance expectations;
 - c. Employee training and annual disclosure statements;
 - d. MCCCDC's Internet site; and
 - e. Documented coaching, counseling, and progressive corrective action.
4. Progressive Corrective Action. The specific progressive corrective action principles which follow are applicable to the corrective action of Regular, Board-approved employees. Separate principles and rules apply to the corrective action of other employees.
- a. Offenses. As shown in the table in Policy A-20, violations of generally expected job performance and specific rules of conduct are grouped into three separate categories by *type of offense* – A) Conduct, B) Performance, and C) Attendance. Each of these three categories is then separated into two groups based on the *seriousness of the offense* - Group One (more serious) and Group Two (less serious). Examples of these three categories and two groups of offenses are shown in the table in Policy A-20. This is not an exhaustive list.
 - b. Groups of Offenses. Offenses are divided into two groups based on the seriousness of the offense. Group One offenses are the most serious of offenses and are corrected under a progressive corrective action schedule as shown in section C (6) below, which may result in "Any disciplinary action, including dismissal." Group Two offenses are less serious than Group One offenses, yet are policy infractions which normally require formal corrective action under a progressive corrective action schedule as shown in section C (6) below, which begins with an "Initial Corrective Action" and progresses to "Any disciplinary action, including dismissal."
 - c. Types of Offenses. The type of offense determines how multiple policy infractions shall be dealt with for progressive corrective action purposes. Infractions of the same type are deemed to be related for progressive corrective action purposes. Related and unrelated offenses are treated differently for progressive corrective action purposes as explained in section C (6) below.
 - d. Force and Effect. Each record of corrective action shall remain in force and effect for progressive corrective action purposes as follows:
 - i. Initial Corrective Action – up to 12 months
 - ii. Second Corrective Action – up to 24 months

iii. Suspensions without pay, demotions, and reductions in pay – up to 36 months

Thereafter, each record of corrective action shall cease to have force and effect for progressive corrective action purposes, provided no intervening corrective action occurs during the 12, 24, or 36 month period following the respective corrective action. Records of corrective action can be removed from force and effect for corrective action purposes against an employee prior to the maximum period noted above upon written application of the employee and/or approval of the correcting supervisor. Note: Corrective action notices which no longer have force and effect for corrective action purposes may be required to be kept in the employee's personnel file (See Policy B-13 – Personnel Files).

5. Just Cause. Board-approved employees who have successfully completed their initial probationary period may only be disciplined for just cause. "Just cause" is a burden or standard of proof that MCCCCD must meet in order to support the discipline of a Board-approved employee. In order to sustain the discipline of a Board-approved employee, all of the following criteria must be met:
 - a. The employee knew or reasonably should have known that the employee's conduct could lead to disciplinary action;
 - b. The disciplinary action is the result of job performance, violation of law, violation of established MCCCCD policy or procedure, and/or a violation of established college/division/department policy or procedure;
 - c. Management conducted a fair and objective investigation in accordance with MCCCCD policy and the law;
 - d. The investigation produced sufficient evidence or proof to reasonably support the failure of performance or violation as alleged;
 - e. The disciplinary action taken was consistent with disciplinary action for similar or comparable conduct or was otherwise reasonable under the circumstances.
6. Progressive Corrective Action Schedules.

GROUP ONE OFFENSES

FIRST OFFENSE	Disciplinary action, including dismissal from employment
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GROUP TWO OFFENSES

FIRST OFFENSE	Initial Corrective Action
SECOND OFFENSE	Second Corrective Action
THIRD OFFENSE	Disciplinary action including dismissal from employment

7. Progressive Corrective Action Procedure.

- a. Corrective Action Ground Rules.
 - i. All meetings held under this procedure shall be conducted at a prearranged time and place that affords a fair and reasonable opportunity for all persons entitled to be present to attend.
 - ii. At the time the meeting date is established, the employee will be informed that this is a corrective action discussion as set forth in this policy manual. The supervisor will provide the employee sufficient time to locate a representative to accompany the employee to this meeting. The representative must be a fellow MCCCCD employee.
 - iii. The representative shall be permitted a brief time prior to the meeting to confer with the employee. During the meeting the representative shall be permitted to observe and take notes and be permitted a limited right to speak, to include repeating to the management representative points the employee has already made, explaining to the management representative the significance of points made by the employee, and occasionally conferring with the employee in a confidential manner. The representative has no right to bargain at the meeting, no right to make the employee's willingness to cooperate contingent on a guarantee of leniency, and no right to speak for the employee in response to questions. Reasonable breaks shall be provided.
 - iv. As the corrective action moves from one step to the next, the supervisor or the employee may not add new considerations to the original action.
 - v. Employees have the right to request representation pursuant to this procedure without prejudice and all employees who participate in this process shall not be subjected to corrective action, harassed, or otherwise unfairly dealt with as a result.
 - vi. Employees and their representatives will be allowed reasonable release time to meet with management.
- b. Initial Corrective Action Discussion
 - i. The Initial Corrective Action discussion will occur within a reasonable time of when the supervisor becomes aware of the unsatisfactory job performance/conduct.
 - ii. All parties will be notified of who will be attending the meeting.
 - iii. At this meeting the supervisor will provide the employee, in writing, with a draft Notice of Corrective Action (on the MCCCCD form specifying the unsatisfactory job performance/conduct, the required job performance/conduct, and the consequences of failing to meet the required performance/conduct. The employee and supervisor will discuss a plan of action with specific goals designed to produce the desired performance/conduct. After the meeting the supervisor will complete the document and provide the employee with the

opportunity to sign the document and with a copy. This will not be placed in the employee's official personnel file at the DO.

c. Second Corrective Action Discussion

- i. If, after the Initial Corrective Action discussion, the employee fails to improve his/her job performance/conduct (in a reasonable amount of time) as stated in the Initial Corrective Action plan, the immediate supervisor will again schedule a private meeting with the employee regarding his/her lack of improvement. All parties will be notified of who will be attending the meeting.
- ii. The emphasis of this meeting will continue to be corrective in intent. The supervisor will discuss job performance/conduct not yet being met from the Initial Corrective Action Plan
- iii. The supervisor will present the employee with a draft Notice of (Second) Corrective Action (on the MCCCDC form) specifying the unsatisfactory job performance/conduct, the required job performance/conduct, and the consequences of failing to meet the required performance/conduct. The employee and supervisor will discuss a plan of action with specific goals designed to produce the desired performance/conduct. After the meeting the supervisor will complete the document and provide the employee with the opportunity to sign the document and with a copy.
- iv. At the employee's request, upon proof of satisfactory performance after a reasonable amount of time, a letter of resolution will be placed in the employee's official personnel file at the DO. A copy will be retained by the supervisor and the employee.

d. Multiple Policy Infractions.

- i. Multiple policy infractions should be dealt with by following the progressive corrective action procedure set forth below:
 - a) Multiple offenses which are unrelated are progressively corrected in the group in which the offense is classified;
 - b) Multiple offenses which are related are progressively corrected regardless of the group in which the offense is classified and regardless of the order in which the offenses occurred; and
 - c) Multiple offenses which are closely related in time, even if unrelated or in different groups hereunder, may be combined to result in corrective action which is more or less than the severity of the total sum of the separate offenses.
- ii. Examples of progressive corrective action and the difference between the treatment of related and unrelated offenses as shown in the table in Policy A-20 are as follows:

- a) If, as a first offense, an employee commits Group Two, Conduct Offense A (5), " Failure of an employee who is authorized to drive MCCCCD vehicles to report to the employee's immediate supervisor a moving traffic violation occurring in the employee's private vehicle during non-work time," the employee would normally receive an Initial Corrective Action (ICA). If within 12 months the employee commits an unrelated Group Two offense (not a Conduct Offense, but a Performance or Attendance offense), the employee would normally receive an ICA. If, however, the second Group Two offense was related to the first offense, for example, Conduct Offense A (2), "Unknowing violation of MCCCCD's Hiring of Relatives policy or Administrative Regulation 4.18 - Consensual Relationships policy," the employee would receive a Second Corrective Action (SCA).

Type	Group 1	Group 2
Conduct		1-ICA; 2-SCA
Performance		2-ICA
Attendance		

- b) If, as a first offense, an employee commits Group One, Conduct Offense A (3), " Willful and intentional commitment of acts of fraud, theft, embezzlement, misappropriation, falsification of records or misuse of MCCCCD funds, goods, property, services, technology or other resources," the employee would normally be disciplined up to termination of employment. If the employee is not terminated but instead suspended without pay (SWOP) and if, within 36 months, the employee commits an unrelated Group Two offense, for example, Performance Offense B (1), "Neglect of duty. . .," the employee would receive an ICA. If, however, the second offense was related to the first offense, such as Group Two, Conduct Offense A (5), " Failure of an employee who is authorized to drive MCCCCD vehicles to report to the employee's immediate supervisor a moving traffic violation occurring in the employee's private vehicle during non-work time," the employee would receive an SCA.

Type	Group 1	Group 2
Conduct	1-SWOP	2-SCA
Performance		2-ICA
Attendance		