

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 7 STATE PERSONNEL ADMINISTRATION
PART 11 DISCIPLINE

1.7.11.1 ISSUING AGENCY: State Personnel Board.
[1.7.11.1 NMAC - Rp, 1 NMAC 7.11.1, 07/07/01]

1.7.11.2 SCOPE: All state agencies in the classified service.
[1.7.11.2 NMAC - Rp, 1 NMAC 7.11.2, 07/07/01]

1.7.11.3 STATUTORY AUTHORITY: NMSA 1978, Section 10-9-13(H), NMSA 1978, Section 10-9-18(A), NMSA 1978, Section 10-9-22 and NMSA 1978, Sections 28-2-1 to 28-2-6; Chapter 173, laws of 1997.
[1.7.11.3 NMAC - Rp, 1 NMAC 7.11.3, 07/07/01; A, 11/14/02]

1.7.11.4 DURATION: Permanent.
[1.7.11.4 NMAC - Rp, 1 NMAC 7.11.4, 07/07/01]

1.7.11.5 EFFECTIVE DATE: 07/07/01 unless a later date is cited at the end of a section.
[1.7.11.5 NMAC - Rp, 1 NMAC 7.11.5, 07/07/01]

1.7.11.6 OBJECTIVE: The objective of Part 11 of Chapter 7 is: to provide a mechanism by which management can implement constructive, progressive steps towards solving performance or behavior problems.
[1.7.11.6 NMAC - Rp, 1 NMAC 7.11.6, 07/07/01]

1.7.11.7 DEFINITIONS: [RESERVED]
[1.7.11.7 NMAC - Rp, 1 NMAC 7.11.7, 07/07/01]

1.7.11.8 DISCIPLINE:

A. The primary purpose of discipline is to correct performance or behavior that is below acceptable standards, or contrary to the employer's legitimate interests, in a constructive manner that promotes employee responsibility.

B. Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder, to an oral or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

C. Agencies shall utilize alternative methods to resolve conflicts or improve employee performance or behavior whenever appropriate.
[1.7.11.8 NMAC - Rp, 1 NMAC 7.11.8, 07/07/01]

1.7.11.9 NOTICES AND COMPUTATION OF TIME:

A. Notices prescribed by *1.7.11 NMAC* shall be served in accordance with the provisions of *1.7.1.10 NMAC*.

B. The computation of time prescribed or allowed by *1.7.11 NMAC* shall be in accordance with the provisions of *1.7.1.11 NMAC*.
[1.7.11.9 NMAC - Rp, 1 NMAC 7.11.9, 07/07/01; A, 11/14/02]

1.7.11.10 JUST CAUSE:

A. An employee who has completed the probationary period required by *Subsection A of 1.7.2.8 NMAC* may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the agency.

B. Just cause includes, but is not limited to: inefficiency; incompetency; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in *1.7.8 NMAC*; failure to comply with any provisions of these Rules; falsifying official records and/or documents such as employment applications, or conviction of a felony or misdemeanor when the provisions of the *Criminal Offender Employment Act NMSA 1978, Sections 28-2-1 to 28-2-6* apply.
[1.7.11.10 NMAC - Rp, 1 NMAC 7.11.10, 07/07/01; A, 11/14/02]

1.7.11.11 PROBATIONERS AND EMPLOYEES IN EMERGENCY OR TEMPORARY STATUS:

Probationers and employees in emergency or temporary status may be suspended, demoted, or dismissed effective immediately with written notice and without right of appeal to the board. The written notice shall advise the employee of the conduct, actions, or omissions which resulted in the suspension, demotion, or dismissal.

[1.7.11.11 NMAC - Rp, 1 NMAC 7.11.11, 07/07/01; A, 11/14/02]

1.7.11.12 ADMINISTRATIVE LEAVE PENDING DISCIPLINARY ACTION:

Agencies may authorize administrative leave for a period up to 160 consecutive work hours during a disciplinary action proceeding or investigation. Administrative leave in excess of 160 consecutive work hours must be approved by the director.

[1.7.11.12 NMAC - Rp, 1 NMAC 7.11.12, 07/07/01; A, 7-15-05]

1.7.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of contemplated action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, the agency shall serve a notice of contemplated action on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has eleven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by mail, the employee receiving service shall have 3 additional calendar days in which to file a response.

B. Response to notice of contemplated action:

(1) A representative of the employee's choosing may respond in writing to the notice of contemplated action on behalf of the employee.

(2) If there is a request for an oral response to the notice of contemplated action, the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

C. Notice of final action:

(1) If the employee does not respond to the notice of contemplated action the agency shall issue a notice of final action within 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final action no later than 11 calendar days from the date of receipt of the response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be at least 24 hours from the time of service of the notice of final action; and

(e) inform the employee of his or her appeal rights.

(4) Appeal rights:

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the board by delivering a written statement of the grounds for appeal to the state personnel director at 2600 Cerrillos Road, Santa Fe, New Mexico 87505 no later than 30 calendar days from the effective date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

(b) an employee who is covered by a collective bargaining agreement may either appeal the final disciplinary action to the board as stated above in ***Subparagraph (a) of Paragraph (4) of Subsection C of 1.7.11.13 NMAC*** or make an irrevocable election to appeal to an arbitrator pursuant to the collective bargaining agreement.

[1.7.11.13 NMAC - Rp, 1 NMAC 7.11.13, 07/07/01; A, 11/14/02; A, 7-15-05; A/E, 6/19/09; A, 9/15/09; A/E, 4/27/10; Re-pr, 7/30/10]

HISTORY OF 1.7.11 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

SPB Rule 14, Separations and Demotions, filed 05-22-80;
SPB Rule 14, Separations and Demotions, filed 09-01-81;
SPB Rule 14, Separations and Demotions, filed 07-22-82;
SPB Rule 14, Separations and Demotions, filed 10-21-82;
SPB Rule 14, Separations and Demotions, filed 03-04-86;
SPB Rule 14, Separations and Demotions, filed 03-14-86;
SPB Rule 14, Separations and Demotions, filed 10-17-86;
SPB Rule 14, Separations and Demotions, filed 08-31-87;
SPB-18, Disciplinary Actions, filed 04-04-90;
SPB-18, Disciplinary Actions, filed 10-19-90;
SPB-18, Disciplinary Actions, filed 12-24-91;
SPB 17, Discipline, filed 12-15-92;
SPB 17, Discipline, filed 03-18-94.

History of Repealed Material:

1 NMAC 7.11, Discipline, filed 06-13-97.

Other History:

1 NMAC 7.16, Discipline, filed 01-12-96 replaced SPB 17, filed 03-18-94;
1 NMAC 7.16, Discipline, filed 05-02-96;
1 NMAC 7.11, Discipline, filed 06-13-97 replaced 1 NMAC 7.16, filed 05-02-96;
1 NMAC 7.11, Discipline, filed 06-13-97 replaced by 1.7.11 NMAC, Discipline, effective 07/07/01.