

25 NCAC 01I .2309 SPECIAL PROVISIONS

(a) **GRANDFATHER PROVISIONS** - The following Grandfather provisions establish the force and effect of disciplinary actions in existence on December 1, 1995.

- (1) Oral warnings - any oral warning existing on December 1, 1995 is deemed void and has no further force or effect upon the disciplinary status of any employee.
- (2) All other disciplinary actions existing on December 1, 1995 shall remain in full force and effect as if the warnings or other disciplinary actions had been imposed under this Section. No written warning or other disciplinary action imposed prior to December 1, 1995 shall be deemed inactive by operation of the provisions of this Section until more than 18 months after December 1, 1995 or until the disciplinary action is deemed inactive in accordance with 25 NCAC 1I .2309(b), whichever occurs first.
- (3) Extension of Disciplinary Actions - any written warning or disciplinary action imposed prior to December 1, 1995 may be extended in accordance with the provision of this Section as if the warning or disciplinary action had been imposed after December 1, 1995. No unresolved written warning or disciplinary action issued prior to December 1, 1995 shall become inactive if within 18 months of December 1, 1995, another disciplinary action or warning is imposed on the employee. Notice of the extension of the active status of a disciplinary action may be given at any time within 18 months of the effective date of the disciplinary action.
- (4) Resolution of disciplinary actions under prior agency - any warning or disciplinary action existing on December 1, 1995 shall be deemed inactive if it would have been resolved under the agency procedure existing prior to December 1, 1995.

(b) **INACTIVE DISCIPLINARY ACTION** - Any disciplinary action issued after December 1, 1995, is deemed inactive for the purpose of this Section in the event that:

- (1) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected; or
- (2) 18 months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months and the agency has not, prior to the expiration of the 18 month period, issued to the employee written notice, including reasons, of the extension of the period.

(c) **PLACEMENT ON INVESTIGATION** - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in G.S. 126-35. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written notice of extension by the agency director. When an extension beyond the 30-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by an agency by the end of the 30 day period and no further extension has been imposed, the agency must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstances is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee. It is permissible to place an employee in investigation status with pay only under the following circumstances:

- (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
- (3) To avoid disruption of the work place or to protect the safety of persons or property.

(d) **CREDENTIALS** - By statute, and rule, some duties assigned to positions may be performed only by persons who are duly licensed, registered or certified as required by the relevant provision. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for classifications established by the State Human Resources Commission or in the position description for the position.

- (1) Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

- (2) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with an agency, disciplinary action shall be administered as follows:
 - (A) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure, or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 11 .2304.
 - (B) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.
 - (C) When credential or work history falsification is discovered before employment with an agency, the applicant shall be disqualified from consideration for the position in question.
- (e) OTHER SPECIAL PROVISIONS -
 - (1) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.
 - (2) Warnings, extension of disciplinary actions and periods of placement on investigation, and placement on investigation with pay are not grievable unless an agency specifically provides for such a grievance in its agency grievance procedure. Allegations of a violation of G.S. 153A-98, 130A-42, 122C-158 shall be processed in compliance with procedures established in accordance with these statutory requirements.
 - (3) An agency shall furnish to an employee, as an attachment to the written documentation of a grievable disciplinary action, a copy of the agency grievance procedure.

History Note: Authority G.S. 126-4; 126-35;
Eff. December 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.