

This is an amendment to 1.7.11 NMAC Section 13, effective 9-15-09, adopted by the State Personnel Board at a meeting on 8-21-09.

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) for an employee not covered by a collective bargaining agreement inform the employee that the final disciplinary action may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and that the appeal must be received by the director within 30 calendar days of the effective day of final action and that the employee must submit a copy of the notice of final action with the notice of appeal.~~

~~[(b) for an employee covered by a collective bargaining agreement inform the employee that the final disciplinary action may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and that the appeal must be received by the director within 30 calendar days of the effective day of final action and that the employee must submit a copy of the notice of final action with the notice of appeal; or the employee may make an irrevocable election of appeal to an arbitrator and that the appeal to an arbitrator shall be filed in accordance with the steps outlined in the collective bargaining agreement.]~~

(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, P.O. Box 26127, 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 *Sub-paragraph (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]