

College Operating Procedures (COP)



Procedure Title: Disciplinary Procedures
Procedure Number: 05-0901
Originating Department: Office of Human Resources

Specific Authority:

Board Policy 6Hx6:5.02
Florida Statute 1001.65
Florida Administrative Code n/a

Procedure Actions: Adopted: 11/21/1996; 07/1/2000; 12/2/2008; 11/01/2010;
09/19/2014; 02/05/2021; 07/18/23; 01/19/24

Purpose Statement: To provide College employees with guidelines to conduct business and themselves in a constructive manner.

Guidelines:

Florida SouthWestern State College (FSW) strives to provide a safe and harmonious work environment where employees are able to perform their work productively and effectively. Employees' conduct should uphold the integrity and reputation of the College. FSW's Board of Trustees has adopted a policy, Employee Code of Ethics and Professional Responsibilities [6Hx6:5.03](#), which establishes standards that all employees must follow in their dealings with other employees, students, and the community at large. Employees must be aware of, and follow, all other college policies, in addition to those set out in the Employee Code of Ethics and Professional Responsibilities [6Hx6:5.03](#), must also follow all local, state, and federal laws in fulfilling their employment duties. Corrective Action or Disciplinary Action may be taken in cases where an employee does not meet conduct or performance expectations or violates any law or college policy or procedure. This Policy does not constitute a contract, either express or implied, between the College and its employees. The College may change, alter, modify, or discontinue any of its policies, including this one, in accordance with College policy.

SCOPE:

This COP applies to all regular full-time and part-time employees. It does not apply to introductory employees or to temporary employees.

Prohibited Conduct

All FSW employees are expected to: fulfill the duties outlined in their job descriptions, abide by College policies and established procedures, and engage in professional conduct throughout their employment. All FSW employees are expected not to engage in prohibited conduct. Types of prohibited conduct may include, but are not limited to:

- A. Violation of any college policy(ies), procedure(s), standard(s), or other college departmental rules and regulations governing the workplace;

- B. Conflict(s) of interest; improper activities as defined in College Policy 6Hx6:5.03 Employee Code of Ethics and Professional Responsibilities;
- C. Conduct on or off campus which adversely affects the operation of the College or the image of the College in the community;
- D. Insufficiency of productivity, quality of work, or neglect of duty – Isolated incidents or continued pattern of inefficiency, missed deadlines, disorganization, lack of initiative, reduced and/or insufficient productivity, inability or unwillingness to follow procedures/processes or any other performance deficiency that is not meeting acceptable standards;
- E. Excessive or habitual tardiness, absenteeism, and/or unauthorized or unexcused absences
 1. An unreasonable, or unacceptable number (determined by the supervisor based on operational needs), or frequency of absences (which may include a pattern which coincides on the day preceding or following the employee's regular days off, absence on the same day of each week or each month, or failure of an employee to obtain prior approval for an absence from work);
 2. A habitual failure of an employee to report to work at the established time to begin a shift, after a lunch or after a break period, or leaving work early without authorization that results in a negative impact on the workplace.

Note: Absences or tardiness as authorized by law, regulation, policy, or procedure are not taken into consideration for potential disciplinary action (ie. FMLA).

Three (3) consecutive scheduled work day absences without approved leave or without appropriate notification of extenuating circumstances or medical emergency may also be evaluated as a resignation under College 05-0501 Scheduling Work - Section H.

- F. Failure to obtain minimum job qualifications/certifications, or loss of or failure to report the loss of minimum job qualifications/certifications;
- G. Leaving assigned work area or workplace without authorization – Unauthorized absence from the workplace or assignment during the established work schedule or leaving the workplace for a lunch, break period, or prior to the end of the work schedule without proper relief where coverage is expected and/or required during specific periods of time;
- H. Safety violations – Performing unsafe acts, failure to wear safety equipment, failure to abide by or follow established safety procedures or practices, and/or actions or non-work related activities that result in property damage or injury to self or others;
- I. Abuse or misuse of prescribed medication which poses a safety risk; possession or consumption of illegal drugs while on duty; consumption of alcoholic beverages while on duty, except at approved College functions; and/or reporting to work or being under the influence of alcoholic beverages or drugs at work;
- J. Insubordination (blatant disregard of supervisor directions), or failure to follow supervisor's

directions or directions of another employee in a position of authority at the College –

1. Failure to carry out a directive from a manager or supervisor as a verbal refusal or an unreasonable delay in completing the work; and/or disrespectful behavior towards a manager/supervisor including directing profanity towards a manager/supervisor, verbally or physically intimidating or abusing a manager/supervisor, or speaking loudly or argumentatively to or about a manager/supervisor

K. Violation of Florida Statute §553.865 “Safety in Privacy Spaces Act”

As provided by Section §553.865, willfully entering a restroom or changing facility designated for the opposite sex on the premises of the College and refusing to depart when asked to do so by a faculty member, security personnel, administrator or law enforcement except when entering for these purposes:

1. To accompany a person of the opposite sex for the purpose of assisting or chaperoning a child under the age of 12, an elderly person as defined in s. 825.101, F.S., or a person with a disability as defined in s. 760.22, F.S., or a developmental disability as defined in s. 393.063, F.S.;
2. For law enforcement or governmental regulatory purposes,
3. For the purpose of rendering emergency medical assistance or to intervene in any other emergency situation where the health or safety of another person is at risk;
4. For custodial, maintenance, or inspection purposes, provided that the restroom or changing facility is not in use; or;
5. If the appropriate designated restroom or changing facility is out of order or under repair and the restroom or changing facility designated for the opposite sex contains no person of the opposite sex.
6. In addition, administrative personnel, faculty members, security personnel, and law enforcement personnel have a right to file a complaint with the Attorney General of Florida alleging that FSW has failed to meet the minimum requirements set forth in §553.865.
7. For investigative procedures please refer to Prohibition Against Sexual Misconduct and Retaliation Document.
8. For disciplinary actions please refer to Formal Disciplinary Action within this COP.

a. **Exceptions:**

For purposes of this new rule, a person may only enter a restroom or changing facility designated for the opposite sex under the following circumstances:

1. To assist or chaperone a child under the age of 12, an elderly person, a person with a disability or a person with a developmental disability;
2. For law enforcement or governmental regulatory purposes;
3. For the purposes of rendering emergency medical assistance or to intervene in any other emergency where health or safety is at risk;
4. For custodial, maintenance or inspections (provided the restroom is not in use);
or
5. When the designated restroom is out of order or under repair (provided the restroom is not in use by anyone of the opposite sex).

L. Disruptive or Aggressive Behavior – Behavior that is considered disruptive or aggressive towards others, or in the work environment. This may include and is not limited to:

1. Language that may be considered or perceived as threatening, profane, vulgar, or abusive towards others;
 2. Gossip that is pervasive or persistent to disrupt the work environment;
 3. Physical violence or threats of violence committed against any member or guest of the College community;
 4. Forcible interference with the freedom of movement of any member or guest of the College;
 5. Obstruction of the normal processes, activities, and functions of the College community; and/or
 6. Disruptive activities as defined and prohibited in accordance with the criminal provisions of Section 877.13, Florida Statutes;
- M. Refusal or failure to work cooperatively with others – This includes and is not limited to failing to communicate, interact, supervise, and/or work with other individuals or in a collaborative environment in a professional or effective manner;
- N. Revealing Privileged Information – Revealing to unauthorized individuals information considered privileged, private, or confidential based on law, policy, or procedure;
- O. Sleeping on compensated time, during the scheduled work period and/or in the performance of duties;
- P. Fraud, misrepresentation, or dishonesty – Willful and/or deliberate misrepresentation or omission of any verbal and/or written documented facts, including fabricating information or knowingly furnishing false information to the College or to College officials acting in the performance of their duties including and not limited to falsification of submitted timekeeping records;
- Q. Unauthorized entry to, possession, receipt, abuse, defacement of, or unauthorized removal of College property or the property of others while on College premises;
- R. Loss of or failure to report lost or stolen College property (i.e. supplies, technology devices, keys, equipment, etc.);
- S. Misuse or inappropriate use of compensated time – Isolated incident or continued pattern of non-productiveness or inactivity which diverts an employee from performing their assigned duties or interferes with the business needs and operations of the College;
- T. Failure by an employee to notify their supervisor of any criminal charges the employee has been the subject of within two (2) business days (BOT Policy 6Hx6:5.03 Employee Code of Ethics and Professional Responsibilities – Section B);
- U. Failure by an employee, who is officially designated as a Sexual Offender/Sexual Predator in accordance with Florida Statute 775.21 (The Florida Sexual Predators Act), to notify their supervisor of such sexual offender/sexual predator designation.

Note: Florida law, in section 775.21 (The Florida Sexual Predators Act) states in part, “repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat

their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes.”

Florida law, in section 943.0435, states in part, “the Legislature finds that sexual offenders, especially those who have committed offenses against minors, often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount government interest.

In July 2002, new provisions of these laws became effective which require sexual predators and sexual offenders to notify the state or sheriff, as appropriate, of enrollment, employment, or the carrying on of a vocation at an institution of higher education in Florida. Each change in enrollment or employment status must be similarly reported. The state or sheriff must promptly notify each institution of the sexual predator’s or sexual offender’s presence and any change in the sexual predator’s or sexual offender’s enrollment or employment status.

The College has determined that the employment of persons officially designated as Sexual Offenders/Sexual Predators would be disruptive of the orderly process of the College’s programs and/or would interfere with the rights and privileges of the members of the College community. In accordance with 1001.64, F.S. the College may consider the past actions of any person applying for employment and may deny employment to a person because of misconduct if determined to be in the best interest of the College. Accordingly, applicants for employment at the College who are officially designated as Sexual Offenders/Sexual Predators will be excluded from further consideration, and employees who are officially designated as Sexual Offenders/Sexual Predators shall be given the opportunity to resign, or in the alternative, shall be separated from the College in accordance with applicable policies and procedures.

Information regarding sexual predators or offenders attending or employed by an institution of higher learning may be obtained from the local law enforcement agency with jurisdiction for the particular campus or by calling FDLE hotline (1-888-FL-PREDATOR) or (1-888-357- 7332), or by visiting the FDLE website at www.fdle.state.fl.us/sexual_predators/search.asp.

Progressive Discipline

To address issues of performance or conduct that involve regular non-introductory employees, the College encourages on-going honest feedback and communication between supervisors and their direct reports. Therefore, the College expects a supervisor to share any conduct or performance concern with the individual employee as early and as informally as appropriate. For typical performance issues, the supervisor should then give the employee a reasonable opportunity to address and resolve the concern. If the employee fails to resolve the concern, the progressive discipline model is provided as a guideline. Depending on the particular circumstances and/or severity of the occurrence, any step or steps in the progressive discipline outlined in this policy may be skipped. A severe sanction, up to and including termination, may be appropriate for a first or subsequent offense. The College distinguishes between Corrective Action and Disciplinary Action. Note: The faculty disciplinary process is outlined in the Collective Negotiations Agreement.

Informal Corrective Action

A supervisor is encouraged to address employee performance and/or behavior concerns when first identified and in a timely manner to allow opportunities for the employee to correct and improve performance and/or behavior. This includes, and is not limited to, conversations during which a supervisor and employee work together to identify ways to resolve the concerns.

Informal corrective action is not considered disciplinary in nature and should demonstrate an attempt by the supervisor to correct the deficient performance and/or behavior. Should the employee's performance and/or behavior continue to be inconsistent with the College's established policies or procedures, the supervisor is expected to address and document these issues through a formal disciplinary action process and, as applicable, should use the informal corrective action(s) utilized as supporting documentation for the disciplinary action(s) taken.

Although informal corrective action includes tools that may be utilized by a supervisor, it is not a prerequisite to formal disciplinary action. If utilized, however, the supervisor shall maintain any documentation of informal corrective action. Examples of informal corrective actions include, and are not limited to:

Coaching - A supervisor should engage in coaching discussions with an employee to address performance and/or behavior concerns. Coaching conversations are informal and should allow the supervisor to provide direct feedback to the employee on the concerning performance and/or behavior, the impact of the concerning performance/behavior, and allow the employee an opportunity to respond to the concerns. Additionally, coaching conversations should include a discussion on possible ways that the employee can correct the concerning performance and/or behavior.

A supervisor should maintain documentation of the coaching conversation within Agile utilizing the Manager's Journal functionality and should include and is not limited to the date/time/location of the conversation, the performance and/or behavior issues discussed, supervisor expectations, suggestions and established timeline for employee improvement, and any other relevant information. Examples of documentation may include and is not limited to a chronology of events, written notes by the supervisor, and/or a follow up email(s) to the employee.

Written Counseling - Where appropriate, a supervisor should document concerns and agreed upon next steps to an employee through a Written Counseling. A Written Counseling is an informal written corrective measure or a follow up email to the respective employee that should include the date of the conversation, a summary of the concerns discussed, and if applicable, a highlight of prior conversations of a similar nature. The documentation should also include a summary of expectations moving forward, consequences for failing to adhere to those expectations, and developmental resources available to support the employee on improving the performance and/or behavior. These resources may include and are not limited to the assignment of internal or external training (technical and/or soft-skill based training) and/or the assignment of mentors who may be able to provide additional support and guidance.

Formal Corrective Action

All disciplinary actions issued by appropriate College personnel are determined on a case-by-case basis. In determining the proper level of disciplinary action, the supervisor may repeat, modify, or omit a level of disciplinary action based upon the facts and severity of the specific case to include prior disciplinary action for similar circumstances. Behaviors may be

considered so significant that dismissal may be the first course of action, regardless of an employee's length of service, prior conduct, or performance record. Though supervisors have discretion in determining the disciplinary action to be issued, the type of disciplinary action should be proportionate with the behavior and/or performance concern(s).

In circumstances when a supervisor determines that disciplinary action may be appropriate, the supervisor is first encouraged to meet with the employee to discuss the concerning performance and/or behavior. This conversation should be held in a timely fashion, and in a private setting, which allows for more open and robust conversation. The supervisor is expected to inform the employee of the concern(s), and to provide the employee with the opportunity to respond.

After meeting with the employee and upon review of all available information, if the supervisor determines that disciplinary action is still appropriate, the supervisor must contact the Chief Human Resource & Organizational Development Officer (CHRODO). The CHRODO shall provide consultation and guidance prior to the supervisor issuing any formal disciplinary action in order to promote the appropriate and equitable application of this policy.

In certain situations, an inquiry or investigation may be necessary in order to obtain sufficient facts related to a potential employee disciplinary matter. The supervisor of the respective area may request an inquiry or investigation through HR to assist in understanding the totality of circumstances in order to make an informed decision. Note: HR may also initiate an inquiry and/or investigation based on available information. (COP 05-0107 Unlawful Harassment, Discrimination and Retaliation Complaint Procedure addresses investigations specific to discrimination, harassment, and related misconduct complaints).

As a condition of employment, employees may be required to participate in job related meetings, hearings, inquiries, or investigations. To ensure that open and forthright dialog occurs, attorneys are not permitted to accompany individuals during interviews unless allowable by law or based on other applicable policies/procedures. Those interviewed are entitled to also submit a written statement if they so choose.

All individuals who participate in this process are expected to maintain appropriate privacy regarding the information and individuals engaged in this process. Employees are expected to not disrupt the normal operations of the College by discussing or disclosing private information with regards to this process. Under certain circumstances, employees disclosing confidential or privileged information may be subject to disciplinary action as outlined in this policy.

In certain circumstances and after consultation with HR, an employee may be placed on paid administrative leave pending the resolution of an inquiry/investigative process or while reviewing all relevant facts and circumstances prior to determining if disciplinary action is an appropriate next step. Placing an employee on an administrative leave with pay is not disciplinary in nature and is taken to ensure continuity of normal operations of the College. Employees placed on administrative leave with pay shall be notified both verbally and in writing of this decision and any additional expectations while on administrative leave. For more detail please see COP 05-0506 Other Leaves of Absence.

Formal Disciplinary Action

There is not a set number of verbal warnings that must be given prior to a written warning or how many written warnings must precede termination. Factors that may be considered in

determining a particular level of discipline include but are not limited to:

- The nature and number of problems involved
- The seriousness of the infraction(s).
- The employee's response to prior disciplinary action(s).
- The amount of time that has elapsed between offenses
- The employee's job performance or behavior prior to the infraction

For serious offenses termination may be the first disciplinary step taken. Any step(s) in the disciplinary process may be skipped at the discretion of the Cabinet level executive with the approval of the CHRODO.

Disciplinary action may include and is not limited to the following:

Verbal Warning

In situations where the employee has demonstrated performance or conduct problems that an employee's supervisor considers in need of correction, the supervisor will meet with the employee, explain that the meeting is a verbal warning, the nature of the unsatisfactory performance or conduct and indicate what is expected of the employee. The employee will have the opportunity in the meeting to discuss the issues raised with the supervisor and to clarify expectations. A verbal warning is intended to help the employee to improve their performance and to correct any inappropriate conduct. The supervisor will document the fact that a verbal warning was given to the employee. This document will include the date, issues discussed, recommendations made and the response by the employee. Written documentation of the verbal warning is placed in the employee's personnel file when a verbal warning occurs.

Written Warning

This action occurs when prior coaching or counseling attempts by the supervisor have been unsuccessful and the employee's performance and/or behavior continues to be below expectations. Under most circumstances, written warnings occur before more progressive disciplinary actions are undertaken by supervisors. Circumstances may also arise when a warning is appropriate without previous informal resolution attempts. The written warning formally documents the discussion between the supervisor and employee and may also be accompanied by a Performance Improvement Plan (PIP). A copy of the Written Warning is placed in the employee's personnel file when a Written Warning occurs. For more information about the PIP Process, supervisors should contact the CHRODO.

Suspension – This action documents discussion(s) between a supervisor and employee who continues to not meet behavioral or performance expectations after receiving a written warning and/or a PIP. Circumstances may also arise when a suspension is appropriate without a written warning previously issued to the employee. Suspensions shall be without pay and leave balances may not be used. Suspensions shall be for a period of no less than the balance of the employee's shift on the day the action is taken and shall normally not exceed up to five (5) working days/shifts.

Administrative Leave (Unpaid) - An employee may be placed on an administrative leave of absence without pay pending a review, inquiry, investigation, or disciplinary action surrounding an employee's performance and/or behavior where the employee's continued presence at the worksite may interfere with the College's ability to effectively evaluate the circumstances or provide services. For more detail please see COP 05-0506 Other Leaves of Absence.

Demotion – This action occurs if there is a serious violation of policies or there are repeated offenses and other disciplinary actions have been unsuccessful, there is an available vacant position for demotion, and there exists a reasonable expectation that the employee can be successful in their new role. The employee will receive a written notice outlining the new position and salary associated with the position. A copy of the written notice will be placed in the employee’s personnel file. Should the employee refuse the demotion, the employee will be dismissed from employment.

Dismissal – This action occurs when there is a serious violation of policy(ies) and/or there are repeated offenses that other disciplinary actions have failed to rectify. Circumstances may also arise when dismissal is appropriate without a previous disciplinary action issued to an employee. The employee will receive a written notice confirming termination. A copy of the written notice will be placed in the employee’s personnel file. With regard to Florida Statute §553.865 “Safety in Privacy Spaces Act”, a second documented offense must result in a termination;

Performance Improvement Plan (PIP) is a formal performance management process that is placed in the personnel file and is used to outline performance issues to be improved. A specific written plan of action is developed by the supervisor(s) to guide an employee’s necessary improvement. The PIP process lasts for a predetermined length of time (typically 60, or 90 days), in which the employee’s performance progress is evaluated in periodic meetings (usually weekly or bi-weekly) with the supervisor. The supervisor completes written summaries of these meetings to review at the end of the PIP process in order to determine appropriate next steps.

The CHRODO shall provide consultation to the supervisor on drafting the written notice of disciplinary action. At a minimum, the disciplinary action documentation should describe the performance and/or behavior concerns (including when applicable a reference to the prohibited actions and the disciplinary action(s) that were taken to address the performance and/or behavior). Additionally, the document should include, when appropriate, the type of conduct or behavior expected in future similar situations, and the consequences if improvement is not achieved or if repetition of unacceptable performance, behavior or work habit occurs.

The supervisor is responsible for assuring that all disciplinary documents and related written notifications signed by the employee are sent to HR to be placed in the personnel file as well as providing a copy to the affected employee.