

	LOWER MERION TOWNSHIP POLICE DEPARTMENT Ardmore, Pennsylvania	
	Policy 3.2.2	
Subject:		Distribution:
Internal Discipline Procedure		All Personnel
Date of Issue:	Expiration Date:	Rescinds:
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References:		
CALEA: 25.1.1, 26.1.4, 26.1.6, 26.3.2, 52.1.1 – 52.1.3, 52.2.1, 52.2.3; PLEAC: 2.3.1		
By Authority of:		
		Superintendent of Police

PURPOSE

This policy is to establish the general process for handling employee performance issues and investigating complaints of employee misconduct in order to ensure that the Police Department's core values of integrity, professionalism and respect are preserved.

POLICY

- A.** It shall be the policy of this Department to expeditiously address employee performance issues and investigate all complaints, even if anonymous, against this agency and/or its employees for the following reasons:
(CALEA 35.1.9 d, 52.1.1) (PLEAC 2.3.1)
1. To maintain the integrity of the Police Department
 2. To protect the rights of all people
 3. To protect innocent police employees
 4. To correct an employee's errors, poor performance, address misconduct, and remove those whose transgressions make them unacceptable for further police service

INVESTIGATIVE RESPONSIBILITY

- A.** The Staff and Inspections Unit Commander is responsible for the investigation of all complaints received from the public and all allegations of criminal conduct and serious internal misconduct. The Staff and Inspections Unit Commander has the authority to report directly to the Superintendent of Police. Among examples of criminal conduct and serious internal misconduct are the improper use of a weapon or vehicle, unnecessary force, falsification of official reports, perjury, acceptance of gratuities, and participation in any crime. **(CALEA 52.2.1b, 52.1.3) (PLEAC 2.3.1b)**

- B.** The Staff and Inspections Unit's responsibility in this policy does not diminish the responsibility of line supervisors to take corrective action when employee misconduct is reported or observed, particularly when immediate action is required such as in the case of an employee being unfit for duty. Line supervisors also have the responsibility of immediately gathering initial information for forwarding to the Staff and Inspections Unit Commander when good judgment dictates, such as in the case of a complaint of misconduct against a subordinate made directly to the supervisor or in his/her presence. **(CALEA 52.2.1a) (PLEAC 2.3.1 a)**
- C.** Minor infractions such as lateness, poor performance, uniform defectiveness, and deviation from operating procedures, shall be dealt with by the immediate line supervisor to ensure swift, fair and efficient correction of these infractions and performance issues. **(CALEA 52.2.1a) (PLEAC 2.3.1 a)**

INVESTIGATION PROCEDURES

- A.** All investigations of internal discipline shall be conducted by supervisory personnel and in as confidential a method as practical and in a manner that best reveals the facts while preserving the dignity of all persons involved.
- B.** All internal discipline investigations are to be completed in a reasonable time period. If due to circumstances an investigation cannot be concluded within 45 days from the date the complaint is made, the Superintendent of Police is to be advised of the reason for the delay. The complainant and accused employee are to be notified of the delay and the anticipated completion date of the investigation. **(CALEA 52.2.3)**
- C.** Communications Center and other civilian personnel who receive complaints against any employee of this Department, are to:
 - 1.** Record the name, home and business addresses, and home, cell and business phone numbers of the complainant. The complainant will be advised that the Staff and Inspections Unit will handle the complaint promptly, and that departmental procedures restrict discussion with civilian personnel beyond the amount necessary to establish it as a personnel complaint.
 - 2.** Once the complainant's information is documented and if the complaint is received by phone, and if Staff and Inspections Unit personnel are on duty, transfer the call to that Unit ensuring that the call has gone through. If no one is immediately available, advise the complainant that a Staff and Inspections Unit supervisor will call the complainant back in a timely manner. If urgency dictates, the problem should be referred to either Division Commander in the absence of Staff and Inspections Unit personnel.
 - 3.** When Staff and Inspections Unit personnel are not on-duty, record the complainant's information as indicated above, and advise the complainant that their call will be returned as soon as possible. The call taker shall then contact an on-duty supervisor and advise them of the complaint. The on-duty supervisor is to contact the complainant to make an assessment of the nature of the complaint and make the appropriate referral. If the supervisor's assessment dictates immediate response, contact an on-call Watch Commander for guidance

and further instructions. Minor infractions will be referred to the supervisor of the accused employee to investigate. A major infraction or misconduct should be referred to the Staff and Inspections Unit for investigation.

4. If the complaint is made in person at the Police Department, contact Staff and Inspections Unit personnel. If Staff and Inspections Unit personnel are not immediately available, contact an on-duty supervisor and advise them of the complaint. The on-duty supervisor will assist the person and explain department procedures regarding personnel incident follow-up. Any information obtained during such contacts that cannot be handled by the on-duty supervisor shall be forwarded to the Staff and Inspections Unit Commander.
- D. If a complainant is not willing to speak directly to a supervisor, *Complaint Against Department Member* forms (S&I – 34) are available in the Public Safety Building lobby, at the front counter, and on the Police Department's website. The forms include submitting instructions.
- E. Any investigator or supervisor who initiates an Incident Record or begins a personnel incident investigation is to notify the Police Administration by email.
- F. The Staff Services Division Commander is to ensure that all internal discipline complaints are investigated thoroughly and in a reasonable time period.

ADJUDICATION OF COMPLAINTS

- A. The adjudication, and if warranted, disciplinary action shall be based upon an overall review of the elements of the incident including recommendations by the investigator, and if appropriate, the involved employee's immediate supervisor. The Factors of Equity will be taken into consideration in determining what level of disciplinary action will be taken or whether termination will occur. Each decision will be made on a case-by-case basis. The Factors of Equity are; **(PLEAC 2.3.1d)**
1. The seriousness of the offense as it relates to the nature and extent of damage or the potential damage or future liability.
 2. The deterrent effect (i.e., message) that needs to be conveyed to other department employees to prevent similar infractions or to ensure that similar infractions will not occur or be tolerated.
 3. The degree of employee culpability (i.e., fault), if any, and the employee's attitude about acknowledging wrong doing and making a commitment to improve; this includes the employee's cooperation in the investigation and resolution processes.
 4. The employee's previous disciplinary and performance records to include, but not limited to; time between other offenses, the nature of other offenses, work productivity, attendance record, cost of supervision, types of performance errors and the level of discipline issued in similar circumstances in the past.

5. The employee's experience level. A lack of experience is not an excuse for failing to comply with policies, however, a lack of experience may play some part in the decision making process of employees in the area of judgment. In which case additional training is an option in the discipline process. This should be evaluated on a case-by-case basis. **(CALEA 26.1.4 a)**

B. Internal discipline incident dispositions shall be classified as follows:

1. **Sustained** – Investigation indicates that an infraction or an act of misconduct was committed by the employee.
2. **Partly Sustained** – Investigation indicates that the employee committed part of the alleged infraction or act of misconduct or the discovery of misconduct not alleged in the original complaint.
3. **Not Sustained** – Investigation disclosed insufficient evidence to clearly prove or disprove the allegations made by the complainant.
4. **Exonerated** – Investigation disclosed that an incident occurred but the actions of the employee were lawful and proper.
5. **Unfounded** – Investigation indicates the acts complained of did not occur or were not committed by an employee of this Department.

NON-DISCIPLINARY STEPS

- A.** Not every supervisory interaction or intervention with an employee is to be construed as discipline. Except in cases of direct intent to do wrong (or failure to do right), correcting undesirable conduct, behavior or work performance is at times best handled by the immediate supervisor in a non-formal "consulting" atmosphere, taking the employee aside and discussing the problem candidly and openly. These actions may or may not be formally documented depending on the supervisor's discretion when the matter is not being investigated as a personnel incident. If a personnel incident investigation has been initiated, then the reporting process described in this policy is to be followed.
- B.** Facts to be considered in making these decisions will include, but will not be limited to, the employee's intentions to do well, the employee's appreciation of the supervisory consulting and the employee's immediate actions to correct the problem.
- C.** Corrective Counseling - At times, personal problems, work related factors or other issues might interfere with the employee's ability to perform normally. When the results are not serious enough for discipline but call for a more formal type of supervision than consulting with the employee, formal counseling is the proper tool to help the employee. Corrective counseling is not discipline but is the last tool supervisors and management have available to correct a problem prior to discipline. **(CALEA 26.1.4b)**

- D. All corrective counseling is to be documented on prescribed forms and will serve as proof that the employee was formally warned to correct the problem or face progressive constructive disciplinary action up to and including termination.

STEPS OF PROGRESSIVE CONSTRUCTIVE DISCIPLINE

- A. The progressive constructive discipline process holds that the level of disciplinary action taken against an employee should be commensurate with the Five Factors of Equity as expressed above. Discipline normally progresses incrementally from the lowest to the highest level. Generally, prior infractions have a lesser impact if the employee's work history shows improvement over time. Depending on the circumstances, steps can be skipped, particularly if the offense is of a serious nature. Each case requires a case-by-case analysis.
- B. The steps comprising the progressive constructive discipline system consist of: caution, reprimand, restitution, suspension, demotion and termination. All steps related to progressive constructive discipline must be documented on prescribed forms.
- C. **Caution** - A caution is typically the lowest and least intrusive step in the progressive constructive discipline system; however, it may be skipped if warranted by the five factors of equity.
- D. **Reprimand** - A reprimand is the second step in the progressive constructive discipline system. It may be utilized or skipped if warranted by the Five Factors of Equity. Reprimands should be utilized when the nature of the violation is willful or the employee demonstrates a poor attitude (this includes the employee's cooperation in the investigation and resolution processes) or refuses to acknowledge wrongdoing or make a commitment to improve.
- E. **Restitution** - Restitution or reimbursement for damaged or lost equipment (or other work-related items) may be required if the Department suffers a loss due to the employee's careless, negligent or reckless behavior. Restitution may or may not be coupled with another form of discipline based on the circumstances. **(CALEA 26.1.4c)**
- F. **Suspension** - Suspensions are serious in nature and occur when an employee fails to respond positively to lesser forms of corrective action, or the nature of the violation is serious enough to justify skipping lower levels of discipline. This means the offense is serious enough that corrective counseling, a caution or a reprimand would send the wrong message to others or is likely to have little or no effect on the offending employee's conduct or behavior.
1. An employee (in accordance with the five factors of equity presented above) may be suspended without pay for any single offense or for multiple offenses arising out of the same incident.

2. An employee being suspended for three or more days (Note: A day equals eight (8) hours) will surrender their department issued firearm and badge to their immediate supervisor. The firearm and badge are to be stored by the supervisor until the suspended officer returns to duty. Platoon supervisors may store the equipment in the lock boxes located in the Sergeants' Ready Room. Other units should arrange for storage of the equipment with the Staff and Inspections Unit.

G. Demotion - Demotion is an extremely serious action to take as a disciplinary step. The nature of the violation is serious enough to justify skipping lower levels of discipline, but termination may not be appropriate. This means the offense is serious enough that a suspension would send the wrong message to others.

H. Termination - Termination is an action taken to remove an employee from a job. Implicit in a termination decision is a reasonable assumption that the employee's job cannot or should not be saved.

1. Certain violations of policy such as fighting, theft, falsifying reports, harassment and the like can lead directly to termination without the benefit of a second chance.
2. Management will not give an employee the benefit of a second chance in situations that include but are not limited to; an unreasonable risk of negligent retention is at issue or when the employee continually fails to accept the responsibility to bring about an effective and lasting change in an area of deficient conduct, behavior or performance.

PRE-DISCIPLINARY/LOUDERMILL PROCESS

A. The following process is required in situations involving the potential for a suspension or greater discipline. This process should take place prior to making a formal recommendation to the Township Manager or the Board of Commissioners. This process will be accomplished by issuing the employee a *Pre-disciplinary/Loudermill Process* form. The purpose of this process is to assure that:

1. The employee is made aware that he/she may be subject to disciplinary action, which would affect his or her pay.
2. An explanation of evidence against the employee is provided.
3. The employee is given an opportunity to respond to allegations and offer any evidence that might mitigate the discipline imposed or cause the reconsideration of the decision to discipline the employee.

PRIOR DISCIPLINARY HISTORY

A. If a personnel incident investigation indicates discipline is appropriate, the investigator should contact the Staff and Inspections Unit and obtain a disciplinary summary report outlining the disciplinary history of the employee under investigation.

- B. When considering the appropriate disciplinary level, the employee's work history, prior violations, or a lack of prior violations, should be taken into consideration.
- C. Prior violations, however, should not be considered if they do not bear some relation to the current incident under review. Also, the amount of time that has passed since discipline has been issued should be considered. The level of discipline and the time period for which the discipline should be taken into consideration is as follows:
 - 1. Verbal Warnings – within the last twelve months.
 - 2. Formal Counseling – within the last two years.
 - 3. Cautions and Reprimands – within the last three years.
 - 4. Suspensions of three days or less – within the last four years.
 - 5. Suspensions of four to six days – within the last six years.
 - 6. Suspensions for more than six days – for the full term of employment.
- D. If no further performance problems occurred during the period listed above, the prior discipline issued should not be considered when determining the appropriate discipline for the current violation absent any extenuating or extraordinary circumstances. Note: In termination decisions, the employee's complete employment history will be taken into consideration.

REPORTING SYSTEM

- A. All Personnel Incident Investigative reports will be recorded in the Alert Records Management System and be coded 6011. Record the information of all persons involved in the incident in the Alert Report. Investigative report narratives will be completed on prescribed forms.
- B. After the above step has been taken, the process follows the following steps:
 - 1. The investigative report and Personnel Action Recommendation, along with the employee's supplemental report is forwarded for review by the investigator's immediate supervisor.
 - 2. The supervisor forwards the approved report to their Division Commander.
 - 3. The Division Commander reviews the report and forwards it to the Superintendent of Police. **(CALEA 26.3.2) (PLEAC 2.3.1c)**
- C. If the discipline appears to warrant consideration of a suspension or more serious discipline, Command Staff then will meet to review the incident. The Pre-disciplinary/Loudermill Process should be completed prior to this meeting. The purpose of the meeting is to provide a recommendation to the Superintendent of Police.

- D. The Superintendent of Police reviews the staff recommendation and makes a determination as to the final recommendation for discipline in the matter.
(CALEA 26.3.2) (PLEAC 2.3.1 c)
- E. If the discipline is a reprimand or a lesser discipline, then the matter is referred back to the appropriate Division Commander to administer.
- F. Employees are to meet with their supervisor, unit or division commander and review and have the opportunity to discuss the discipline (or pre-disciplinary counseling). The employee shall sign the appropriate form to acknowledge reviewing the action with a supervisor or management (signing the form indicates that the employee reviewed the form, it does not indicate concurrence). Employees are entitled to provide appropriate comments on the form if desired. A copy of the personnel action should be provided to the employee.
- G. If the discipline is a suspension or above, then the investigator will draw up the Charges and Specifications that describe the violation or misconduct. The Superintendent of Police will then confer with the Township Manager. After conferencing with the Township Manager, the recommendation of the Superintendent of Police is made to the Police Sub-committee of the Board of Commissioners. A summary of the incident is presented to the committee. The Board of Commissioners makes the final determination as to the appropriate level of discipline to be adjudicated.
- H. Per Civil Service Regulations, once the Board of Commissioners makes its determination as to the appropriate level of discipline, the Superintendent of Police will forward the Charges and Specifications to the appropriate Division Commander to assure that the charges are delivered to the officer, either by personal service or by certified or registered mail within the five (5) day requirement. The officer is also advised of his/her appeal rights at this time.
- I. All internal discipline investigation reports shall be confidential, and the reports shall be retained and stored by the Staff and Inspections Unit Commander.
(CALEA 52.1.2)
- J. Unauthorized distribution or receipt or attempts to access written or electronic internal disciplinary reports is a serious offense that will lead to disciplinary action up to and including termination.
- K. Administrative discipline shall be neither a barrier to, nor impeded by, potential criminal prosecution in cases involving violations of the law.
- L. All persons who file a personnel complaint and the accused employee are to be notified of the results of the investigation. The Staff and Inspections Unit Commander shall be responsible for making such disclosure upon completion of the investigation.

GRIEVANCE PROCEDURES

A grievance is a claim or complaint by an employee based upon an event or condition that affects the circumstances under which the employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions. Upon receipt of a grievance, the Command Officer shall have an incident record initiated and document the grievance in the records management system. Department Incident Code 6015 shall be assigned.

SWORN PERSONNEL GRIEVANCE PROCEDURES (CALEA 26.1.6)

- A. The Lower Merion Township Police Fraternal Order of Police Lodge 28 and the Lower Merion Township Board of Commissioners have entered into a basic labor contract under the laws of the Commonwealth of Pennsylvania, hereafter referred to as the Collective Bargaining Agreement (CBA).
- B. Article 15 (Grievance Procedure) of the CBA establishes a formal procedure relating to any dispute arising under the agreement regarding the application or interpretation of any provision of the agreement. **(CALEA 25.1.1)**

NON-SWORN PERSONNEL GRIEVANCE PROCEDURES (CALEA 26.1.6)

- A. The Lower Merion Township Workers Association and the Lower Merion Township Board of Commissioners have entered into a basic labor contract under the laws of the Commonwealth of Pennsylvania, hereafter referred to as the Workers Association Contract (WAC).
- A. Article 9 (Grievance Procedure) of the WAC establishes a formal procedure relating to any dispute arising under the agreement regarding the application or interpretation of any provision of the agreement. **(CALEA 25.1.1)**

RESPONSIBILITY

- A. All employees are to comply with all provisions of this policy and are collectively responsible to ensure that the Department's core values of integrity, professionalism and respect are promoted and that the public's trust is preserved.
- B. All employees are to fully cooperate with investigators of this Department or any other law enforcement organization or government agency conducting a personnel investigation. **(CALEA 26.3.5)**
- C. It shall be the responsibility of the Staff and Inspections Unit Commander to review and compile departmental data relative to Personnel Incidents and on an annual basis, submit a report to the Superintendent of Police.

TRAINING

- A. All employees that conduct internal investigations shall receive training upon promotion to a supervisory level. **(PLEAC 2.3.2)**