

Durham Police Department

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POLICY # 52.1.1

SUBJECT: Internal Affairs

NOTE: This written directive is for the internal governance of the Durham Police Department, and as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

PURPOSE

The purpose of this directive is to establish guidelines for receiving, investigating, and processing compliments and complaints made about individual officers or the Department. This function is critical for the maintenance of professional conduct. The Internal Affairs function is often the basis by which the police departments' integrity and professionalism are measured.

There are five specific functions of the Internal Affairs process:

- **Protection of the Public:** The public has the right to expect efficient, fair, and impartial law enforcement, therefore, any misconduct by the department personnel must be detected, investigated, and properly adjudicated to assure the maintenance of these qualities.
- **Protection of the Department:** The department is often evaluated and judged by the actions of its individual members. It is imperative that the entire organization not be subjected to public censure because of the misconduct of one member. When the public knows that the department honestly and fairly investigates and adjudicates all allegations against its members, it is less likely that the public will find the need to raise a cry of indignation over alleged incidents of misconduct.
- **Protection of the Employee:** Employees must be protected against false allegations of misconduct. Although being the subject of an investigation may be unpleasant or uncomfortable, the best protection for an employee is a complete and thorough investigation conducted in a timely manner that clearly and unequivocally supports the employee's honesty and integrity.
- **Removal of Unfit Personnel:** Personnel who engage in serious acts of misconduct, or who have demonstrated that they are unfit for law enforcement work must be removed for the protection of the public, the department, and fellow employees.

- **Correction of Procedural Problems:** The department is constantly seeking to improve its efficiency and its personnel. Occasionally, Internal Affairs investigations disclose faulty procedures that would otherwise have gone un-noticed.

POLICY

It is the policy of the Durham Police Department to ensure that the integrity of the department is vigilantly guarded by investigating all complaints alleging misconduct by an employee, sworn, or non-sworn; such complaints may be filed by the public or by employees of the department. All complaints will be investigated thoroughly, fairly, impartially, and expeditiously.

The Internal Affairs procedure shall be used to investigate recommendations for certain awards as described in the Commendations, Honors, and Awards Policy of this manual.

PROCEDURE

Definition

Complaint: Action taken by a citizen or employee to focus administrative attention toward any action or inaction by an officer or employee which the complainant considers to be illegal, contrary to proper procedure or conduct, or is in any manner prejudicial to that citizen or employee, the department, or community as a whole. Complaints may be made by any person, regardless of whether they are the affected person; however, the assigned investigator shall make every effort to identify and secure a statement from all affected persons. Complaints made by department employees will be in written form. **ALL** complaints, even those which may be of an anonymous origin, will be given full attention.

Complaints of Discrimination or Bias

Any person reporting alleged misconduct of a Durham Police Officer that includes discrimination or bias based on race, color, religion, national origin, sex, age, or handicapped status shall be given a Durham Police Department “Complaint of Discrimination Form”. The officer taking the complaint shall review the form with the complainant and ask that the complainant send the form to the Strafford County Attorney’s office in Dover, NH. This does not relieve the Durham Police Department from the responsibility of taking and investigating the complaint in the first instance!

Posting of Procedures

- Procedures to be followed in registering compliments and complaints against this agency or its’ employees will be posted in the Main Lobby of the Durham Police Department.

Complaint Classifications

- All complaints received by the Department will be classified according to the nature of the complaint. The classification will be either a **MINOR COMPLAINT** or a **SERIOUS COMPLAINT**. This classification will be utilized for the appropriate assignment of investigative responsibility.
 - ◆ **MINOR COMPLAINT:** Complaints that indicate minor infractions of any rules or regulations, procedural infractions, or acts such as rude or discourteous conduct shall be included in this classification. This list is a basic guide but is not all-inclusive. Any complaint may be placed in this classification upon the direction of the Chief of Police.
 - ◆ **SERIOUS COMPLAINT:** Any complaint that alleges or concerns the use of excessive force, deadly force, serious misconduct, illegal, or criminal conduct, or driving while intoxicated, brutality, corruption, or breach of civil rights shall be included in this classification. This list is a basic guide but is not all-inclusive. Any complaint may be placed in this classification at the direction of the Chief of Police.
 - ◆ **INFORMATIONAL COMPLAINT:** Whenever a member of the department is contacted by anyone who relates a complaint as to the actions or lack of appropriate actions of a departmental employee, but advises that they do not desire to file a complaint, the information will be recorded on the departments' Citizens' Complaint Form and the top portion of the form indicating that the report is made for informational purposes only shall be checked.

Investigative Responsibility

- **Minor Complaints**
 1. May be assigned to any Sergeant at the direction of the Chief of Police. Results of the investigation must be delivered to the Chief of Police or Captain for review, approval, and necessary administrative action.
 2. Upon completion of investigation and administrative action, the complaint packet is forwarded to the Chief of Police for review and approval.
- **Serious Complaints**
 1. Investigated by the Captain or other trained Internal Affairs Investigator at the discretion of the Chief of Police.

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2. Investigative procedures to be used in investigations of alleged criminal activity by a member of the Durham Police Department shall be established by the Chief of Police before the start of an Internal Affairs investigation. The procedures shall be consistent with the departments' procedures and will protect the rights of all persons involved.
- The Chief of Police may assign Internal Affairs investigations outside these guidelines, to include: the Chief of Police may request outside agencies to conduct the internal investigation or a parallel criminal investigation, ie. State Police or Attorney General's Office.
 - ◆ If an outside agency is requested to conduct a criminal investigation parallel to the Internal Affairs investigation being conducted by the Durham Police Department, the Durham Police Department shall fully cooperate with that investigation. However, any information learned as a result of having informed the subject employee of their Administrative Rights, shall not be released to any person conducting a criminal investigation; such information may be found to be "fruit of the poisonous tree", resulting in the inability to prosecute a criminal case.
 - ◆ When the department seeks to investigate an internal affairs complaint through both a criminal and administrative procedure, the criminal matter SHALL be resolved before the administrative violation is investigated. However, this does not preclude the department from taking a temporary administrative measure, such as ordering administrative leave, while the criminal matter is investigated.
 - ◆ It is recommended that the County Attorney review any criminal investigation and provide written direction to the department before an administrative investigation is undertaken.

Notification, Routing, and Time Frame

- All Internal Affairs complaints shall be forwarded to the Chief of Police within eight working hours of receipt. However, complaints received while an acting Chief of Police has been designated, notification to the Chief of Police shall be within eight working hours of his/her return to duty.
 - Chief's notification by phone is sufficient as a temporary measure only.
 - All internal affairs investigations shall be assigned by the Chief of Police or in his/her absence the Acting Chief of Police.
 - A written copy of such assignment shall be included in the investigation file. **NO INTERNAL INVESTIGATION SHALL BE INITIATED WITHOUT WRITTEN AUTHORIZATION FROM THE CHIEF OF POLICE OR HIS DESIGNEE.**
- The expedient investigation of all complaints will follow this basic time schedule:

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- ◆ The Chief of Police or the assigned investigator shall advise the complainant in writing that the complaint has been received and the name of the officer assigned to the investigation. (52.2.4-A)
- ◆ If the investigation is assigned to an officer other than the Captain, the investigator shall report daily to the Captain or the Chief of Police, as appropriate. This report does not have to be in writing.
- ◆ Assignment of the investigation will be made within forty-eight hours.
- ◆ The assigned investigator shall keep the complainant informed of the status of the investigation at regular intervals, not to exceed thirty days. (52.2.4-B)
- ◆ All investigations will be completed within thirty days of receipt unless additional investigation requires an extension.
- ◆ Extensions must be approved by the Chief of Police.
- ◆ Extensions shall be granted in thirty-day increments.
- ◆ The subject officer and complainant shall be notified in writing when an extension is granted.
- ◆ During extensions, status reports shall be submitted to the Chief of Police at least once every seven days.
- ◆ The Chief of Police is responsible for the written notification provided to each complainant and subject officer telling them the results of the investigation. (52.2.4-C)
- ◆ This notification must be made within five calendar days of receipt of the completed investigation.

Use of Complaint Forms

NOTE: Complaint forms are not required to be completed by members of the Durham Police Department when they are acting as complainant on any internal matter. A written statement to the Chief of Police or his designee shall be sufficient. Any matter reported verbally to the Chief of Police, or any other supervisory officer, may result in the initiation of an Internal Affairs investigation by the receiving supervisor.

- Internal Affairs Complaint forms are available 24-hours a day on each employee's computer "desk top".
- Persons filling out the forms shall adhere to the basic guidelines for completion as follows:

In the absence of a supervisory officer, any employee is required to take a citizen complaint and forward it to the Chief of Police in accordance with other sections of this directive.

The employee receiving the complaint shall complete all information blocks for which information is known.

Use and Routing of the Form

1. The Citizen Complaint Report should be read to the complainant if there is any doubt as to whether they understand the form.
2. The Citizen Complaint Report is now complete. Before the complainant signs the form, they should read it to check for accuracy.
3. The complainant shall be told that they will receive a letter in the mail as a receipt for their complaint.
4. The investigating officer shall maintain only an original copy of the report. This folder shall be the only means for distribution of the report to the investigating officer. No permanent computer copies of reports or notes shall be authorized.

General Information

- All complaints are to be taken by a supervisor, **in the absence of a supervisor; any employee is authorized to take the complaint.** Should an acting supervisor receive a Serious Complaint, they shall notify the Captain or Deputy Chief immediately so that they may interview the complainant.
- Once a complaint is received, no member of the department may contact the complainant unless they are assigned to the investigation. Any attempt to make unauthorized contact with the complainant may result in disciplinary action.
- All interviews with complainants are to be conducted in the confines of an office or interview room. Under no circumstances is any member of the department to discuss a complaint in any public place, including the police department reception area, which may be observed by an uninvolved person. If the complainant is intoxicated at the time of their report, they shall be interviewed a second time when they are not intoxicated.
- Under no circumstances will it be acceptable to refuse to hear a complaint nor will we require a complainant to come back another time to take their complaint. The initial report must be completed the first time a complaint is taken. This includes reports taken by phone and anonymous complaints.
- When the information given does not meet the criteria of a complaint but is given for informational purposes only, the initial report form will be completed. It does not have to be signed, and shall be marked with “information only” at the top of the form. This type of report shall follow the same routing as a formal complaint.

Organization and Responsibility

- It is the responsibility of every employee to report any and all known or suspected violations of department policy or law by any other employee of the department. This section shall include any known or suspected violations learned through a third party or “rumor”.

- The Captain for Personnel and Administration is responsible for Internal Affairs. All internal affairs matters shall come under the direct supervision of the Chief of Police.
- The primary responsibility of the Internal Affairs component of Personnel and Administration shall be to investigate all allegations of a serious complaint, or any other complaint as assigned by the Chief of Police.

Procedural Process of Investigation

NOTE: This process is not to be confused with the normal supervisor/employee relationships that deal with performance and disciplinary matters that may occur on a regular basis.

- The Captain will conduct investigations into all allegations of criminal acts, use of deadly force, excessive use of force, or serious misconduct, or any complaint assigned by the Chief of Police.
- All investigations relating to improper action or conduct will be conducted according to the following procedures:
 1. The employee that receives the original complaint will complete a citizen complaint form. The form will be forwarded to the Chief of Police for investigative assignment. Once assignment has been made, a written notice shall be given to the Deputy Chief and Captain, as applicable.
 2. All informational complaints shall be resolved at the lowest supervisory level possible; all others shall be forwarded to the Chief of Police. The assigned supervisor shall submit a letter to the Captain and the Chief of Police that shall include the details of the processing of the complaint, the investigation, and the disposition of the complaint.
 3. The investigator shall notify the complainant within two working days of receiving the complaint that they are the assigned investigator.
 4. All Internal Affairs investigations shall be conducted confidentially. Only the Chief of Police shall release the *results* of the investigation; the IA investigation reports shall not be made available to the public. All Internal Affairs investigation reports shall be maintained in a secure file within the office of the Chief of Police and will only be available to the Chief of Police and Division Commanders. This file may be maintained as an exception to the personnel records or centralized records system.
 - ◆ If allegations are made as a result of an officer making an arrest or taking a criminal investigation report, the IA investigator may use *copies* of those reports, and statements taken pursuant to those reports, as part of the Internal

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Affairs Investigation. However, the original reports and written statements shall remain within the public domain in accordance with the requirements of A-170, Public Information and Court Rule 2.10.

5. All Internal Affairs records shall be maintained for the effected employees length of employment plus seven years, with the exception of minor infractions, where no suspension occurred, which may be purged after one year at the discretion of the Chief of Police.
- When an employee is under investigation or subjected to questioning for any reason that *may* lead to demotion, dismissal, or suspension, such investigation or questioning shall be conducted under the following conditions and requirements:
 - ◆ When an employee is the subject of a complaint or an investigation, they shall be notified in writing unless notification would jeopardize the investigation. The notification shall include the nature of the complaint, the name of the complainant, the location of the alleged violation or complaint, and the name and rank of the officer conducting the Internal Affairs investigation.
 - ◆ When interviews are conducted, the employee shall be told the names of all persons present during the interview. All questions shall be asked orally, however, once the initial interview is conducted, the questions may be asked again in writing to refresh the subject employee's memory.
 - ◆ If an employee is the subject, witness, or potential witness in an administrative investigation, the investigator may ask the employee to answer questions voluntarily or to provide voluntary statement. If the employee is the subject or witness of the administrative investigation and refuses to provide a voluntary statement, that refusal shall not be held against them, but they shall be read their Administrative Rights and compelled to answer questions and/or provide written statement(s).
 - If a written statement is given voluntarily, the employee must complete an Internal Affairs Employee Voluntary Statement Form, but may note on the form that they are completing the statement by another means, i.e. department memo, letterhead, etc. In all cases that a voluntary statement is taken, the employee's signature and date must be affixed to every page.
 - If an employee is making a statement after having been ordered to do so, they shall NOT complete their statement on a voluntary statement form of any kind. They must complete the written statement on a department memo or letterhead. In all cases that a compelled statement is taken, the employee's signature and date must be affixed to every page. The investigating officer shall note all compelled statements in their final report.

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- If, after an employee has been read their Administrative Rights, they provide information that incriminates them, the investigating officer shall complete a comprehensive report noting the incriminating information. Before the Internal Investigation is pursued further, the investigator shall notify the Captain or Deputy Chief as applicable. The Internal Investigation may be suspended and a criminal investigator assigned.
- ◆ If the employee is being questioned in a criminal matter, before they are questioned, the investigator SHALL read them their Miranda Rights regardless of whether the officer is under arrest or not; there is no such thing as a “voluntary statement” during an internal criminal investigation.

Officers from Outside Agencies

- If allegations are made about an officer from an outside agency, the Durham Police Department shall forward a copy of the allegations to the Chief Executive Law Enforcement Officer of the department having responsibility for the accused officer. However, if the accused officer is alleged to have committed a criminal offense within the jurisdiction of the Durham Police Department, the Durham Police Department shall investigate the matter, or shall cause to have the matter investigated.
 - ◆ The Durham Police Department shall maintain an Internal Affairs Investigation case number and report file of activity relative to the outside agency notification, initial complaint, etc.
- **If the allegations against any officer rise to the level of a criminal offense, the Durham Police Department shall inform the Director of the New Hampshire Police Standards and Training Council that such an investigation is underway.**
- If an officer from an outside agency may be a witness to allegations against a Durham Police Officer, the Durham Police Department shall contact the CEO of the witness officer’s agency and request permission to speak with the witness officer.
 - ◆ If the outside agency refuses to give permission or the witness officer refuses to give voluntary testimony and the allegations are classified as a “serious complaint” and allege criminal conduct, the Durham Police Department shall subpoena the witness officer and compel their testimony. If the allegations are classified as a “minor complaint”, the Chief of Police shall decide whether or not to proceed with the subpoena process.

Recording and Representation

- ◆ Interviews may be audio or video recorded during the investigation of SERIOUS complaints at the discretion of the Chief of Police. There will be no “off the

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record” conversations. Upon request, copies of any recordings or interview transcripts made shall be provided to the employee at the departments’ expense.

- ◆ All questions shall be pertinent to the investigation. No loud or abusive language shall be used. No threats or promises shall be made.
- ◆ During proceedings that may result in suspension, demotion, or termination, employees are permitted to have a union representative or a lawyer present during any interview. Investigators cannot tell the representative that they may observe only, but in fact, that they are encouraged to participate with regard to matters of contract and law. If the employee requests representation, the employee is entitled to a reasonable delay while waiting, provided that the employee is separated from other employees and the actions complained of do not represent a danger (NLRB v. Weingarten, 420 U.S. 251).
- ◆ Employees shall cooperate fully with any Internal Affairs investigation and shall answer all questions asked of them during any Internal Affairs investigation. In the event that an employee refuses to answer questions, the Captain or Deputy Chief shall be contacted; they shall issue a direct order to the employee to answer the question. If the employee still refuses to answer questions, they shall be immediately placed on Administrative Leave pending further actions by the Chief of Police. This directive shall not apply if the employee invokes their Miranda Right.
 - If an employee has been read their Miranda Rights pursuant to any Internal Affairs investigation and refuses to answer any question, that employee shall be placed on Administrative Leave, pending further actions by the Chief of Police. However, the employee shall not be compelled to answer questions once informed of their Miranda Rights. No ranking officer shall order an employee to answer questions once they have been informed of their Miranda Rights.
 - If an employee is making a statement after having been read Miranda, they may complete their statement on a voluntary statement form but may note on the form that they are completing the statement by another means, i.e. department memo, letterhead, etc. In all cases that a voluntary statement is taken, the employee’s signature and date must be affixed to every page.
- ◆ All interviews shall be conducted during the employees scheduled work hours whenever possible. If the interview takes place during the officers off duty hours, they shall be compensated at their overtime rate as governed by the Agreement between the Town of Durham and the DPOU, DPMMA, or the Town Personnel Policy.
- ◆ Interviews shall be of reasonable length. Employees shall be afforded breaks for necessities, meals, and rest periods.

- ◆ When a complaint is filed and an investigation conducted, the employee may be required to submit to a medical or laboratory examination at the departments' expense, photographs, audio or video recordings, lineups, financial statement disclosure, polygraph examinations, searches of lockers, desks, or other assigned work areas on Town property.
 - Investigators shall have probable cause to believe that their use of one of these techniques will be instrumental in finding a conclusion of fact.
 - In no instance is a search warrant required to search an employees' desk, locker, department issued vehicle, or other department owned workspace or equipment. In no instance is a search warrant required to seize any department owned property for examination provided that the item is located in a place that a search warrant would not otherwise be required. If an employee has department issued property on their person, they shall be required to surrender such property upon demand of a superior officer.
- ◆ Employees shall be notified in writing of any search conducted and given a receipt for any item seized. Refusal to submit to any investigative technique could result in disciplinary action up to and including dismissal. When used, these techniques shall be narrowly and specifically related to the alleged offense. I.E. if a complainant alleges a financial impropriety, disclosure of financial statements may be appropriate, but medical and laboratory exams would not.
 - In no instance may an employee's home, car, or person be searched without a warrant or other existing exceptions as defined in the Search and Seizure policy of this manual.
- ◆ If an employee is subjected to a criminal proceeding or arrest as the result of a complaint, the criminal process shall be brought to a conclusion before the completion of the Internal Affairs investigation. The Internal Affairs investigation is for the purpose of determining whether there has been a violation of Department policy, not to enter a criminal investigation. However, the results of a criminal action may be pertinent to the Internal Affairs function.
- An employee that is the subject of an investigation into misconduct may be placed on administrative leave as a temporary administrative action. This leave may be due to physical or psychological fitness for duty or an action pending disposition of the Internal Affairs investigation. Administrative Leave may be ordered by any Sergeant or Superior Officer, but revoked only by the Chief of Police. The Chief of Police must be notified of any action taken by a supervisory officer within twenty-four hours of the action. If a supervisor orders Administrative Leave, they may recommend suspension when reporting to the Chief of Police.
- Administrative Leave may be ordered under the following circumstances:

1. When a Felony or Misdemeanor has been alleged or is suspected, or
2. When it is believed that the officer is mentally or physically unfit for duty, or
3. When a complaint is classified as a Serious Complaint, at the discretion of the Chief of Police or designee.
4. Unfit for Duty – Alcohol or Drugs
 - a. This section is not limited to internal affairs investigations, but may be employed *at any time* that a supervisor has articulable suspicion that an employee may be under the influence of alcohol or drugs (including but not limited to those that are lawfully consumed and/or are prescribed or may be purchased over the counter).
 - b. When a supervisor has articulable suspicion that an employee may be under the influence of alcohol or drugs, the supervisor may order the employee to *immediately* submit to physical tests (Standardized Field Sobriety Testing or Drug Recognition Expert examination), breath (PBT or Intoxilyzer 5000), blood, or urine testing, or any combination of these tests to determine the employees' fitness for duty. Failure to comply with an order to submit to tests or tests at the discretion of the supervisor shall result in the employee being immediately ordered to administrative leave pending further investigation and/or disciplinary proceedings, up to and including termination.
 - c. In the event that an employee produces a breath alcohol concentration equal to or greater than .01 BrAC, that employee shall be ordered to immediate administrative leave pending further investigation or disciplinary action.
 - d. If an employee is subjected to tests that do not produce immediate results (blood or urine testing), the employee shall be placed on paid administrative leave pending the results of such tests.
 - e. When a supervisor orders an employee to administrative leave under the circumstances described in this section, they shall not permit the employee to drive; alternative transportation must be sought.

Findings and Reporting

- Individuals who make false or unfounded complaints against a department employee may be subject to criminal prosecution. Employees shall have the right to file civil suits against these individuals.
- If a complaint or subsequent Internal Affairs investigation reveals that a criminal charge may be brought against an officer, the assigned investigator must notify the Captain or the Chief of Police. The Captain shall report to the Chief of Police and

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then shall notify the State Attorney General's office and shall maintain contact with that office as necessary.

- An annual statistical report shall be submitted by the Captain of Personnel and Administration to the Chief of Police. This report shall be made available to the public by being posted in the front lobby of the Durham Police Department, and to employees by being posted on the Chief's Information Clip Board in the Patrol Room.
- The Captain shall identify training needs based on the statistical report, as applicable. This report shall be made available to the Training Committee for future planning.

Disposition of Internal Affairs Investigation

- Upon completion of the internal investigation, the assigned investigator shall submit a report of their findings to the Captain of Personnel and Administration within one working day of the conclusion. The investigator shall be a finder of fact only, and shall not make any recommendation as to disciplinary action. The report shall include the only copy of the entire case file. The Captain shall submit a letter to the Chief of Police with a recommendation for final disposition, as applicable.
- The Chief of Police shall notify the complainant and the subject employee within five days of the conclusion of the investigation and the disposition.
- One of the following conclusions of fact shall be the final disposition:
 1. **Not Sustained:** There is insufficient evidence to prove or disprove this complaint. This finding may be used for any complaint that has gone "unresolved".
 2. **Exonerated:** The incident occurred but the employees' actions were justified, lawful, and proper.
 3. **Unfounded:** The complainant admits to false allegations; the charges were false or not factual, or the employee was not involved in the incident.
 4. **Sustained:** The allegation(s) is supported by sufficient evidence to indicate the employee did, in fact, commit one or more of the alleged acts.

Disciplinary Action

- The authority to discipline is exclusively that of the Chief of Police. Disciplinary actions shall be rendered within five days of the conclusion of the investigation.

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- Employees (excluding probationary employees), shall only be disciplined or terminated for just cause. Cause may be determined by a violation of the Departments Rules and Regulations, General or Special Orders, Town Ordinances, State or Federal Laws.
- The Chief of Police shall notify NHPSTC of any suspension exceeding ten days, any termination, or forced resignation. The Chief shall include a brief note of explanation for the suspension, termination, or forced resignation.
- The Chief of Police shall notify the Director of NHPSTC upon arresting or formally charging any person known to be a full or part time police officer or correctional officer in this or any other state with a misdemeanor or felony within 15 days in accordance with NHPSTC Pol. 502.01.
- Any disciplinary action shall be subject to the Departments Grievance Procedure.