

Memorandum of Understanding between
Federal Union of Scientists and Engineers, FUSE/NAGE Local R1-144
and
Naval Undersea Warfare Center Division Newport,
Regarding
NUWCDIVNPT Disciplinary Action Instruction 12751.1A dated March 9, 2017

Approved by the Department of Defense on May 10, 2018.


1. For the purposes of this agreement, Ref. (a) of NUWCDIVNPT Instruction 12751.1A is understood to be SECNAV INSTRUCTION 12752.1A dated 3 May 16, as amended by Change 1 dated 6 November 2017.
2. SECNAV Instruction 12752.1A, Change 1, paragraph 5.a. "Policy" reads in pertinent part, "Officials are encouraged to consider, when appropriate, the use of alternate discipline, such as last change agreements. Officials are also encouraged to use Alternative Dispute Resolution (ADR) to enhance communication and seek positive resolution of issues that might otherwise give rise to disciplinary actions and dispute related thereto."
3. Supervisors are delegated the responsibility for the direction and discipline of employees under the authority described in the applicable references. As such, supervisors have an obligation to such employees to attempt to correct behavioral deficiencies as soon as they are identified and before the behavior has an adverse impact on organizational efficiency.
4. Supervisors are responsible for the determination and administration of all discipline covered by NUWCDIVNPT Instruction 12751.1A and all associated references, and shall administer discipline in accordance with applicable laws, rules, regulations, directives, instructions, the Douglas Factors, and negotiated agreements. Consult with Human Resources Office (HRO) regarding employee conduct when necessary, including the possibility of initiating appropriate and timely direction, warnings, or corrective action to address employee behavior and all labor relations matters related to discipline.
5. As outlined in NUWCINST 12751.1A, the Human Resources Office serves as the principal advisor and technical authority in disciplinary action matters, and maintains disciplinary records per this instruction.
6. Supervisors shall take an adverse action against an employee only for such cause as will promote the efficiency of the service.
7. Supervisors may not take an adverse action against an employee on the basis of any prohibited personnel practice (5 USC 2302).
8. Management shall, for offenses not under investigation, act upon said offenses within a reasonable time based upon the circumstances and complexity of each case.
9. Management will review and consider all information contained in the materials relied upon before proposing/imposing disciplinary action against FUSE bargaining unit employees. All material relied upon will be made available to the employee when a proposed disciplinary action is issued.
 - a. Normally management will interview employees or provide the opportunity to make a statement prior to the issuance of letters of reprimand.

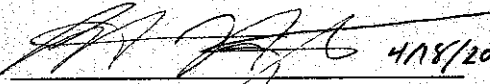
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10. Management agrees to abide by NUWC Division Newport Instruction 12751.1A dated 9 March 2017, which reads in part, "Delegation of Authority. The Commanding Officer delegates authority to effect disciplinary action to supervisors as follows: Written decision, including appealable actions, must be signed by an official in a higher level position than the official who proposed the actions."
11. Employees who disagree with a decision to disallow a choice of representative may forward a request for review to the Commanding Officer within two (2) workdays of the determination. The Commanding Officer will review the request and render a final decision within five (5) workdays. An activity head/commander's decision is grievable.
12. Oral admonishments, Letters of Caution and Letters of Requirement shall not be considered as a first offense in determining an appropriate remedy within the range of the Schedule of Offenses and Recommended Remedies. All such letters will be destroyed and will not be used after the expiration of the reckoning period.
13. Letters of Reprimand shall not be considered as a first offense in determining an appropriate remedy within the range of the Schedule of Offenses and Recommended Remedies after the reckoning period has expired. However, for the duration of the retention period outlined under the Navy's records management program, when an employee commits the same or similar offense, Letters of Reprimand may be considered in determining that an employee was on clear notice of the rule(s) that were violated and that the behavior outlined was inappropriate and in determining an appropriate remedy within the range for any subsequent similar offense.
14. Oral admonishments, and all documents issued to FUSE bargaining unit members that contain admonishments, warnings, directives or requirements, such as Letters of Caution, Letters of Requirement, or any other written warnings directives or admonishments shall be grievable under the parties negotiated grievance procedure.
15. After the reckoning period has expired on Letters of Caution, Letters of Requirement, Letters of Reprimand, or any other written warnings, directives or admonishments, the agency will permanently remove them from the employee's Official Personnel Folder, and supervisory files. Records will be retained in accordance with Department of Navy's records management program. Letters of Reprimand maintained under the Navy's records management program will not be used for any reason after the retention period required by the program (currently 3 years).
16. Notice of Right to Representation. The agency shall notify employees in writing semiannually of their right to representation under 5 USC 7114(a)(2)(B).
 - 16a. Letters of Reprimand - The agency shall notify employees of their grievance rights and right to union representation in all letters of reprimand.

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- 16b. The agency shall notify employees of their right to union representation in all disciplinary proposal letters.
17. If there is a conflict between this MOU and NUWCDIVNPTINST 12751.1A dated 9 Mar 2017 or between this MOU and SENAVINST 12752.1A dated 3 May 2016, this MOU shall prevail if not barred by Law or Government Wide Regulation.
18. The Schedule of Offenses and Recommended Remedies as outlined in SECNAVINST 12752.1A dated 3 May 2016 as amended by CH-1 dated 6 Nov 2017, enclosure (3), reads in part:
- “1. Instructions for use of this schedule:
- a. This schedule is a guide. Discipline is not punitive in nature, is expected to be progressive for subsequent offenses, and normally falls within the range shown in this enclosure or those established in an Alternative Discipline System. The remedy shall be the minimum that, in the judgment of the deciding official, can reasonably be expected to correct the affected employee and maintain discipline and morale among other employees. Mitigating or aggravating factors can justify a remedy outside the range cited herein. For example, remedies greater than those shown can be appropriate when the facts of an aggravated offense, frequent infractions, or simultaneous multiple offenses are established. When sufficient mitigating factors exist, remedies lesser than those shown include informal actions such as counseling, oral admonishments, and letters of caution/requirement.
- b. Consistent with DON policy in this instruction, the schedule generally provides for a range of remedies, e.g., Reprimand to Removal, to provide management with flexibility in correcting conduct deficiencies. Selection of a reasonable remedy from such a broad range MUST be made with good judgment, including consideration of any appropriate "Douglas Factors" (see Appendix A "DOUGLAS FACTORS" of this enclosure). Excessive, arbitrary, or capricious remedies and remedies selected without consideration of mitigating factors may be reversed by third parties if challenged.
- Management agrees to adhere to SECNAVINST 12752.1A dated 3 May 2016 as amended by CH-1 dated 6 Nov 2017 "Instruction for use of this schedule" specified in enclosure (3), when considering, proposing, and/or administering discipline for bargaining unit members.”
19. After 3 years, either party may elect to re-negotiate or cancel this agreement by providing 30 days advance written notice to the other party. Before the agreement is canceled, the parties will negotiate any proposals submitted within the 30 day notice period by either party to the fullest extent allowed by stature. If a proposal is not submitted within the 30 day notice period the agreement is canceled.

 4/18/2018
DALE DANDREA, Date
President FUSE R1-144

 4/18/2018
ALBERT HAUGHTON Date
Management