



Due Process Reference Guide

Before issuing a Group Notice to a classified employee under DHRM Policy 1.60, Standards of Conduct, the agency is required to provide the employee with the appropriate due process or notice of intent to discipline. This meeting or document should address allegations, observations, facts, and investigative findings related to an employee's misconduct. This guidance is provided to ensure due process is provided in an appropriate and respectful manner.

Policies	<ul style="list-style-type: none">• Policy 1.60 - Standards of Conduct• Chapter 5 of the Code of Virginia – Law Enforcement Officers Procedural Guarantee Act• Chapter 5.1 of the Code of Virginia - Correctional Officer Procedural Guarantee Act• Classified State Employee Grievance Policy & Procedures
Purpose	To provide employees with their rights under state policy and treat employees with respect and dignity during the meetings during the disciplinary process.
Draft the Due Process Letter	<ul style="list-style-type: none">• Include sufficient supporting facts for the proposed disciplinary action(s).• Provide adequate time and opportunity for the employee to respond to the due process letter (i.e., 2-3 workdays ideally, but 24 hours minimum.)• Inform the employee of the highest recommended Written Notice level and potential disciplinary action being considered, such as Group III Written Notice with termination.• If the employee is a Law Enforcement or Correctional Officer, Inform employee of their options under the Law Enforcement Officers Procedural Guarantee Act or the Correctional Officers Procedural Guarantee Act.• Determine if the employee will be placed on pre-disciplinary leave pending the outcome of the due process considerations.
Plan the Due Process Meeting	<ul style="list-style-type: none">• If the employee is a law enforcement or correctional officer, ensure that all relevant provisions of Chapter 5 or 5.1 of the Code of Virginia are followed.• Conduct a preliminary violence assessment to determine what level of security is needed at the due process meeting.<ul style="list-style-type: none">○ Contact the employee's immediate supervisor to learn about the employee's past demeanor and conduct.○ Review the employee's personnel file for any history of violent behavior.○ If potentially violent behavior is suspected, contact Capitol Police, State Police, or local sheriff's office to request that an officer be present during the meeting. The officer should not be

	<p>in the room during the meeting but should be stationed nearby ready to respond if needed.</p> <ul style="list-style-type: none"> • Select an appropriate meeting location, such as: <ul style="list-style-type: none"> ○ Off-site location ○ Conference room near an emergency exit ○ Conference room near the agency's security desk ○ An area with limited access to other agency employees ○ Location that has an entry with a metal detector ○ Conference room with an available panic button ○ In the case of serious potential for violence, send the due process via e-mail, certified mail, courier service, and regular postal mail instead of a face-to-face meeting and advise the employee to respond in writing. • Schedule in-person meetings at the end of the workday. • Determine who will conduct the due process meeting and who will attend as a witness. Typically, the witness should be an individual in the employee's chain of command or an HR staff member. HR should normally not conduct the meeting. • Plan what will be discussed and who will lead each discussion item. • If the employee is currently on pre-disciplinary leave, determine if the employee will remain on pre-disciplinary leave pending their response and the agency's decision on disciplinary actions. • If the employee is a sworn officer and is issued a weapon as part of their duties, determine if the weapon needs to be retrieved prior to or at the start of the meeting. This may have already been done if the employee is on pre-disciplinary leave and should consider the level and type of offense. For instance, you may retrieve the weapon if the employee is accused of assaulting another employee but elect not to do so for allegations of chronic tardiness. Be sure to establish a plan for retrieving and securing the weapon prior to going into the meeting room.
Conduct the Due Process Meeting	<ul style="list-style-type: none"> • Encourage supervisor/manager and witness to sit nearest the exit door in case the employee reacts in a violent manner. • Provide the employee with the Due Process/Notice of Intent letter. • Stay calm and lead the conversation without being drawn into additional discussions of the issues. Keep it brief and do not get into an argument or confrontation with the employee. • Treat the employee with dignity and avoid embarrassing the employee. • Except for a handshake, do not touch the employee for any reason or allow the employee to touch the supervisor/manager or the witness to include attempts to console the employee. • Recognize and report any warning signs displayed by the employee during the meeting such as: <ul style="list-style-type: none"> ○ Unusual body language ○ Any alarming behavior such as banging on the table ○ Threatening remarks ○ Noticeably unstable, emotional responses

	<ul style="list-style-type: none"> ○ Explosive outbursts, anger, or rage ○ Suicidal comments ○ Paranoid behavior ○ Talk of severe financial problems ○ Talk of previous incidents of violence ○ Expressions of empathy with individuals committing violence ○ Increase in unsolicited comments about firearms, other dangerous weapons, and violent crimes <ul style="list-style-type: none"> ● Inform the employee that a written response to the allegations may be submitted by the date established in the due process letter and assure the employee that agency management will consider the employee's response before a final decision is made. ● Place or keep the employee on pre-disciplinary leave if appropriate. Document the leave in the Agency's time and attendance system and inform payroll. If placing the employee on pre-disciplinary leave: <ul style="list-style-type: none"> ○ Request the employee immediately return their state badge, keys, and any other state property. ○ Building and IT access should be turned off immediately. ● Escort the employee from the premises, if necessary and appropriate.
Review the Employee's Response	<ul style="list-style-type: none"> ● Review the employee's response to the due process notice with agency management and Human Resources. ● Consider any mitigating circumstances provided by the employee. ● Make a final decision if agency management will issue disciplinary action to include the level of discipline and any additional action to be taken, such as Group II Written Notice with 10 days suspension. ● Prepare the Written Notice and relevant documentation. ● Schedule the disciplinary meeting.