

DUE PROCESS: THE IDENTIFICATION AND PROCEDURES FOR MANAGEMENT OF INTERN PROBLEMATIC BEHAVIORS

This section is to provide both interns and the Counseling Center training staff an overview of the processes by which professional and ethical behavior, job task performance, and other issues relating to the doctoral psychology internship program are brought to the attention of the appropriate personnel. This section also outlines the steps to be taken by training staff in responding to problematic intern behavior or performance, including alternatives for remediation and/or disciplinary sanction alternatives once a concern or problem has been identified and substantiated.

Due Process Guidelines

Orientation Period:

1. Interns will be provided hard copies of their rights and responsibilities as interns and the Counseling Center's expectations (see **Intern Rights and Responsibilities/Grievances** document) of them regarding professional functioning. Interns will also be provided a hard copy of the due process procedures. Time will be allotted during orientation for the Training Director to discuss interns' rights and responsibilities, as well as due process and grievance procedures.
2. The evaluation process, including how and when evaluations will be conducted, will be described. Formal evaluations will occur quarterly.
3. The procedures and actions involved in the decision making process regarding problematic behaviors will be described and discussed.

General:

4. The Counseling Center will communicate early on and regularly with the intern if any substantiated concerns or problems that are significantly interfering with the intern's

performance are identified. The intern's academic program may be informed depending on the nature and severity of the problematic behavior.

5. The intern will be provided an adequate and meaningful opportunity to respond to any identified concern or problem.
6. The Training Director and Training Staff may initiate any of the actions, or a combination of the actions, identified in **Section D (Possible Courses of Remediation and Sanction)** of this document. A time frame for expected remediation and consequences of not rectifying the identified concern or problematic behavior will be identified.
7. The Counseling Center's due process procedures will make certain that interns have sufficient time to respond to any action taken by this program before the action is implemented.
8. If an intern wishes to appeal this program's action(s), section E (**Appeal Procedure/Hearing**) of this document describes the steps for doing so.
9. When making decisions about an intern's performance, the Counseling Center Training Staff will seek input in a confidential manner from relevant professionals in the field including but not limited to members of ACCTA, APPIC, APA.
10. The Training Director will document (in writing) the actions taken by this program and the rationale for the action(s). All relevant parties will be provided with a copy of the document.

A. Problem Identification

Problematic behavior is defined broadly as personal behavior or job performance which the interferes with professional functioning and which is reflected in one or more of the following ways: 1) "an inability and/or unwillingness to acquire and integrate professional standards into one's repertoire of professional behavior; 2) an inability to acquire professional skills in order to reach an acceptable level of competency; and/or 3) an inability to control personal stress, strong emotional reactions, and/or psychological dysfunction which interferes with professional functioning" (Lamb, Cochran, & Jackson, 1991; 291-292). As evident in this definition, unethical behavior is but one example of problematic behavior—other problematic behaviors

(i.e., skill deficit such as poor theoretical, assessment or interpersonal skills, poor clinical judgment, or immaturity, etc) may or may not result in unethical actions.

A distinction needs to be made between when an intern's behaviors, attitudes, or characteristics are of *concern* versus when they are determined to be *problematic*. Making this distinction requires the professional judgment of the training staff as they identify and document the facts relevant to the observed behaviors that are of concern. *Concerns* may include an intern's behaviors, attitudes, or characteristics that are revealed in the performance of official duties on behalf of the Counseling Center that is not unexpected or excessive for professionals in training but which require verbal coaching and/or a remediation plan. *Problems* are identified by Lamb, Roehlke, & Butler (1986) when one or more of the following characteristics are occurring:

- 1) the intern does not acknowledge, understand, or address the problem when it is identified;
- 2) the problems are not merely a reflection of a skill deficit which can be rectified by academic or didactic training;
- 3) the quality of services delivered by the intern is sufficiently negatively affected;
- 4) the problem is not restricted to one area of professional functioning;
- 5) a disproportionate amount of attention by training personnel is required;
- 6) the problematic behavior has potential for ethical or legal ramifications if not addressed or changed;
- 7) the intern's behavior does not change as a function of feedback, remediation efforts, and/or time;

Additionally, the following two statements are also considered to be part of the definition of problematic behavior:

- 8) the intern's personal behavior or job task performance negatively impacts the public view of the Counseling Center; and,
- 9) the intern's personal behavior or job task performance negatively impacts relationships with peers (intern cohort), supervisors, or other staff in a manner that disrupts normal work activities.

Interns will also want to acquaint themselves with the NMSU Policy Manual. **Policy 8.30 A and B** describe behaviors that could result in disciplinary action/involuntary termination. **Policy 4.05.11** describes the disciplinary appeal process that an employee can take in response to a disciplinary action including involuntary termination.

B. Steps taken in response to *concerns* or *problems* identified during the internship

The response to a *concern* or *problem* will depend upon the nature and severity of the offense. Major misconduct may consist of a single serious offense or may be the culmination of minor infractions that have not been corrected after bringing it to the intern's attention. The goal of identifying any concerns or problems is to assist the intern in successfully addressing the issue. The Training Staff value and are committed to providing the training and support through this process so that interns can leave the program as competent professionals.

Depending upon the circumstances, an intern may need to be removed from the work place to facilitate the confidential internal investigation or for the safety and security of university property or personnel; in this event, Counseling Center staff will coordinate with the Office of Human Resource Services for authorization.

Mitigating factors may be taken into consideration when deciding what level of corrective or disciplinary action is appropriate.

Corrective/disciplinary action resulting in a loss of pay or termination from the program requires the intern to be given notice and a meaningful opportunity to respond. See section C.

Some of the administrative options that will be considered include and are not limited to:

- Verbal Counsel
- Written Warning
- Performance Improvement Plan
- Remediation Plan
- Probation
- Suspension of Direct Service and all Internship Activities
- Termination

NMSU Human Resources could be consulted regarding any of the above administrative options.

Examples of *Concerns* (Minor Infractions)

Examples of concerns that an intern could do include the following:

- arrives late three (3) days during a week;
- does not submit recordings to supervisor for several weeks;
- inappropriately answers personal calls during seminar;
- takes longer lunch time than permitted;
- does not inform supervisor and front desk when they are out of the office; on a number of occasions,
- does not submit client intake or progress notes within the specified 48 hours

Examples of *Problems*

Problems are defined broadly as personal behaviors or job performance that interfere with an intern's ability to meet their work responsibilities in an adequate manner. This could include significant skill deficits, major misconduct, unethical or unprofessional behavior including the following examples:

- consistently rejecting or discounting feedback
- breaking confidentiality
- shredding original test protocol/results
- does not consult in high-risk client situations
- exhibits poor judgment, i.e., assessing client welfare, boundary violations with clients or supervisees, does not apply the appropriate standard of care
- exhibits poor interpersonal skills with clients, supervisees, staff, colleagues, or consultees
- inability to reach an expected level of competence
- continues to fail to submit recordings to supervisor despite being given feedback

Examples of Mitigating Factors

There are reasons why interns may receive different sanctions including:

- Impact on client or supervisee welfare

- Intern able to be self aware and self monitor
- Intern recognizes the need to address the concern or problem and begins to self-correct
- Intern brings concern or problem to supervisor and keeps supervisor up to date regarding the issue
- Intern physical or psychological health

C. Decision making process

Interns are required to earn a rating of “3”(intermediate level of proficiency) on each competency on the Intern Competency and Therapy Skills Evaluation form. A rating of “2” on any item within a given competency will be brought to the Training Director to decide on any next steps to be taken. Should a rating of “1” be given for any items within a given competency, a minimum of a Performance Improvement Plan. If an intern receives a “minimally developed skill” rating (2) or “unsatisfactory skill” (1) rating in the Intern Competency and Therapy Skills Evaluation form or if a staff member has concerns about an intern’s behavior (i.e., ethical or legal violations, professional incompetence or inappropriate behavior) the following procedural steps will be taken:

Step 1: Identification of a potential *concern* or *problem* could arise from several sources including but not limited to:

- (a) If any staff member within the Counseling Center (i.e., training staff member, seminar leader, support staff) has a complaint about an intern’s behavior, the staff member will consult with the Training Director. The Training Director will then discuss the concern with the intern’s primary supervisor and/or other relevant staff members to determine if a *concern* needs to be addressed or if a serious violation (*problematic behavior*) has occurred or needs to be investigated further to determine whether or not it has occurred.
- (b) If the intern’s individual supervisor has given a rating of (2) “minimally developed skill” or (1) “unsatisfactory skill” on the Intern Competency and Therapy Skills Evaluation form, the intern’s supervisor will meet with the Training Director to discuss the evaluation rating.

Step 2: Depending upon the facts of each specific complaint, the Training Director’s internal investigation may involve confidentially consulting with other staff members to

obtain information about the allegations in the complaint, including whether or not the complaint of problematic behavior may also be evident in other areas (such as in seminars, interactions with other staff, etc).

Step 3: Another part of the internal investigation conducted by the Training Director will involve meeting with the intern to hear her/his view and discuss whether or not the intern agrees or disagrees with the complaint. The intern will be encouraged to provide additional information that addresses why he/she disagrees and does not feel the concerns or problems are an issue. The intern will be able to express options that might be most helpful to them in addressing the skill deficit, concern or problem. The intern, primary supervisor, and Training Director will come to an agreement about the requirement about the performance plan or remediation plan and the amount of time the intern will need to provide the additional information.

Step 4: The Training Director will meet with members of the Training Staff (all staff involved in providing supervision and the Director of the Center) to discuss the concerns and/or evaluation rating and provide information gathered from other relevant staff members and the intern. **These meetings will determine and identify possible courses of action (see section D: Possible Courses of Remediation and Sanction) that could be taken to address the issue and if there is a reason to proceed with further due process steps.**

Step 5: The intern will be informed of the Training Staff's decision of whether or not further steps will be taken in a meeting with his or her primary supervisor and/or the Training Director. If no further actions, the documentation maintained will be in the primary supervisor's supervision process record including the fact that the intern appropriately rectified the situation.

Step 6: If the Training Staff decision is that further action will be taken, the intern will be notified in writing that a review has occurred and the Training Director will meet with the intern to inform him/her of the sanction. This meeting will include the supervisor, primary or otherwise, that is responsible for overseeing the completion of the performance improvement or remediation plan. The intern will be informed that they will have the opportunity to provide a written response to the rating or to the problematic behavior that has been raised by a staff member.

Step 7: The intern may choose one of the following in response to the decision:

- (a) To accept the decision of the Training Director and Training Staff,
or
- (b) To challenge the decision using the steps outlined in the Appeal Process section (*see Appeal Procedure/Hearing – Section D*)

Step 8: Should the intern choose to accept the decision, the intern will be able to express options that might be most helpful to them in addressing the skill deficit, concern or problem. The intern, supervisor, primary or otherwise that is responsible for overseeing the completion of the plan and Training Director will come to an agreement about the requirements of the plan and the amount of time to complete the plan. If the intern chooses to challenge the plan, the Training Director and intern will establish the amount of time the intern will need to provide the additional information to support their position.

Step 9: If the sanction is to complete a performance improvement plan, the intern's academic department may be contacted. With a remediation plan, the intern's academic department will be notified whether intern chooses to accept or challenge the decision to remediate the *concern* or *problem*. This notification would include a description of the complaint and/or evaluation rating and the plan recommended to address the concern or problem. Depending upon which sanction, the documentation of the intern's decision could be in either their primary supervisor's supervision process record or in the intern's personnel file.

Step 10: With the exception of the verbal counsel, all of the sanctions are followed by a letter from the Training Director regarding whether or not the intern completed the requirements of the sanction along with supporting documentation. In the case of verbal counsel, the fact that the intern engaged in self-corrected change is documented in the supervisor's record and possibly in the next quarterly evaluation as well.

D. Possible Courses of Remediation and Sanction

It is important to have meaningful ways of addressing problematic behavior that has been substantiated through a confidential review. After the review, and consistent with the due process principle outlined in the next paragraph, the Training Director and Training Staff may initiate any of the actions, or a combination of the actions, described below. Each action may be imposed independently from another; there is no requirement for progressive discipline, and the sanction imposed should correlate to the seriousness of the concern or problematic behavior.

Due process requires **notification** to the intern that a concern or problem has been raised, and that if not addressed, may jeopardize their successful completion of the internship. **Notification** may be at the beginning of the confidential review, to inform the intern that an investigation is going to take place, or, depending upon the nature of the allegation, may be given during the confidential review to obtain the intern's side of the story, after some investigation has been conducted. The intern shall be provided an adequate and meaningful opportunity to respond to any concern or problem identified, during the confidential review, as well as at any meeting or hearing set up to propose a disciplinary sanction. In matters involving more serious charges of problematic behavior such as incompetent, or an ethical behavior, and which involved proposed suspension or dismissal from the program, the intern shall be given the opportunity to contest not only the factual basis for the charge, but also to contest the level of sanction proposed for the problematic behavior alleged, in accordance with these guidelines. The goal of these guidelines is to insure that accusations are not made, nor investigations conducted in an unfair, arbitrary or unreasonable manner.

Possible courses of notification to address problematic behavior include:

- **Verbal Counsel:** Feedback to the intern that is warranted to bring about a change in the behavior and/or attitude that is of concern. The expectation would be that the intern engages in self-corrected change. Feedback will be documented in the intern's supervision record.

- **Written Warning:** Indicates to the intern the need to discontinue the inappropriate behavior and/or attitude. The warning letter includes description of the unsatisfactory behavior and/or attitude; action needed to be taken; time line for correcting the problem; and, identifies the consequences if the problem is not corrected. This letter and relevant documentation will be kept in the intern's supervision record. The intern will be provided a copy of the letter and will be asked to accept or reject the warning in writing and any other responses he/she may have. It is possible that the intern's academic program will be contacted.
- **Performance Improvement Plan:** The Training Director in conjunction with the intern's supervisors will work with the intern to rectify the concern or problem. The necessary steps to correcting the concern or problem will be identified and the time frame for completion of the plan. The intern will be provided a copy of the plan and will be asked to accept or reject the improvement plan in writing and any other responses he/she may have. It is possible that the intern's academic program will be contacted.
- **Remediation Plan:** Used when an intern has a clearly defined problem that is significantly impacting their work performance. The remediation plan can be invoked when there is a significant skill deficit, personal problem, major misconduct, or unethical behavior. There will be a specified time frame for completion of the plan. Potential outcomes include; notification that the intern satisfactorily completed the remediation plan, the remediation effort could be extended for another specified time period, or the intern could be placed on probation. We would work closely with the intern's academic department if an intern is placed on remediation. The intern will be asked to respond in writing whether they accept or reject the remediation plan and any other responses he/she may have.
- **Probation:** Used when an intern will be provided time-limited, remediation oriented, closely supervised period of training designed to assess the ability of the intern to complete the internship. In addition to all of the steps in the remediation plan the intern will be notified that if the problem is not corrected, the intern will not successfully complete the internship. Options for additional actions include continuation of the probation for another period of time, suspension, or dismissal from the internship. The intern's academic program would be kept informed of the sanction and provided copies of the relevant documentation.
- **Suspension of Direct Service and all Internship Activities:** Could be invoked if the requirements of probation were not successfully completed or the welfare of a client, consultee, or supervisee has been jeopardized. The suspension of direct

service activities would have a specified period of time before the problems are resolved or while decisions are being made regarding the possibility that the intern would be dismissed from the internship. The intern's academic program would be kept informed of the sanction and provided copies of the relevant documentation.

- Termination: The process for termination is as follows.

In the rare event an internal investigation has substantiated serious misconduct, policy, legal, or ethical violation, or other wrongful conduct, or in the event that other corrective actions for minor infractions have not resulted in satisfactory performance, the following procedures apply:

The Director and Training Director will present the intern with a Notice of Intent to Terminate from Program, which provides the intern notice of the basis or bases for the termination, including supporting documentation. The intern's academic program would be kept informed of the decision to terminate the intern and provided copies of the relevant documentation.

An informal hearing will be scheduled, if the intern desires to challenge the proposed action. The informal hearing will be conducted by an impartial hearing officer and a written decision will be rendered.

If an intern disagrees with this decision or any of the aforementioned sanctions, the intern can initiate an appeal and this process is outlined in the section Appeal Procedure/Hearing (Section E) that follows.

E. Appeal Procedure/Hearing

Interns have the right to hear the expressed concerns of the training program and have an opportunity to contest or explain the behavior of concern. This section provides an appeal procedure that shall be utilized if an intern is contesting and appealing a sanction (outlined in section D – Possible Courses of Remediation and Sanction) implemented by the Training Director and Training Staff.

An intern may initiate an appeal process that would lead to an informal hearing. The following steps should be taken to begin the process:

- 1) The intern would formally submit an appeal in writing with all supporting documents to the Training Director. The intern would need to submit these documents within five (5) business days of the date of receiving the sanction letter.
- 2) Upon receipt of the appeal, the Training Director has five (5) business days within which to consult the Director of the Center and the Director will implement an appeal committee. The appeal committee will be composed of 3 professionals with one serving as the committee chair. These professionals could be adjunct members of the Counseling Center (i.e., Counseling and Educational Psychology faculty who are involved with the Center), staff from the Counseling Center who are not involved as training staff, and possibly from other NMSU departments, or universities i.e., UTEP Counseling Center and be chosen based upon input of the Training Director. The Director will also obtain input from the intern regarding his/her request for one of the member positions of the committee.
- 3) The appeal committee will schedule an informal hearing. The appeal committee and intern will meet within five (5) business days to hear the appeal complaint and review all relevant material presented. The appeal committee will be provided with information from the Counseling Center including reasons for termination and supporting documents.
- 4) Within five (5) business days of this meeting, the committee will submit a written report of the findings and provide their recommendations to the Director. Recommendations made by the appeal committee will be made by majority vote.
- 5) Within 3 work days of receipt of the recommendation, the Director will either accept or reject the appeal committee's recommendations. If rejected due to an incomplete or inadequate evaluation of the dispute, the Director may refer the matter back to the appeal committee for further deliberation and submit revised recommendations or final decision with 7 calendar days of the rejection. The Director then makes a final decision regarding what action is to be taken and informs the Training Director.

- 6) The Training Director informs the intern, staff members involved and necessary members of the training staff of the decision and any action taken or to be taken.

- 7) If the intern is not satisfied with the results of a formal appeal or has other concerns with regard to Counseling Center operations, the intern may consult with the APPIC Standards and Review Committee (ASARC) to determine if the complaint falls under ASARC's jurisdiction. Information can be obtained at <http://appic.org/>

References

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