

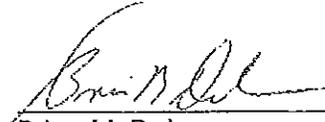
 COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF AGING Harrisburg, PA 17101	PENNSYLVANIA DEPARTMENT OF AGING	
	1. File Number: APD # 11-05-04	2. Disposition: Rescinds Attachment 5 of APD 07-05-01 and replaces APD 11-05-01
	3. Issuance Date: October 7, 2011	4. Effective Date: September 27, 2011
	5. Program Area: Senior Community Service Employment Program (Title V)	
6. Origin: Bureau of Individual Support		7. Contact: Rocco Claroni (717) 772-2932

AGING PROGRAM DIRECTIVE

SUBJECT: SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP) POLICIES GOVERNING FEDERAL HOLIDAYS, NECESSARY SICK LEAVE, LEAVE OF ABSENCES, TERMINATIONS AND GRIEVANCES (Revised 9-27-11)

TO:

EXECUTIVE STAFF ALLEGHENY COUNTY AAA ARMSTRONG COUNTY AAA BUTLER COUNTY AAA LYCOMING/CLINTON BI-COUNTY OFFICE OF AGING GREATER ERIE COMMUNITY ACTION COMMITTEE SOUTHWESTERN PA AAA, INC. EXPERIENCE WORKS, INC.	LANCASTER COUNTY OFFICE OF AGING LEHIGH COUNTY AAA LUZERNE/WYOMING COUNTIES BUREAU FOR AGING NORTHAMPTON COUNTY AAA NORTHUMBERLAND COUNTY AAA PHILADELPHIA CORPORATION FOR AGING SCHUYLKILL COUNTY OFFICE OF SENIOR SERVICES AAA OF WESTMORELAND COUNTY
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FROM: 
 Brian M. Duke
 Secretary
 Pennsylvania Department of Aging

PURPOSE: The purpose of this Aging Program Directive (APD) is to transmit to the Area Agencies on Aging (AAAs) and Experience Works, Inc. the Department's revised SCSEP policies governing Federal Holidays, Necessary Sick Leave, Leave of Absences, Terminations and Grievances.

I. Background

On September 1, 2010, new Final Regulations were published for SCSEP. The effective date of the new SCSEP regulations was October 1, 2010. There were several program changes promulgated in the new regulations that related to participants. The Department issued APD 11-05-01 on February 22, 2011 to provide the AAAs and Experience Works with its SCSEP policies related to Federal Holidays, Necessary Sick Leave, Leave of Absences, Terminations and Grievances. The U.S. Department of Labor recently reviewed these policies and required significant changes in the Department's Termination and Grievance policies. It should be noted that no changes were made to the Federal Holiday, Necessary Sick Leave, and Leave of Absence policies that were contained in APD 11-05-01. It should also be noted that the Federal Holiday, Necessary Sick Leave, Leave of Absence, Termination and Grievance policies contained in this APD only apply to the AAA's SCSEP program and not to any other AAA programs, services or to AAA staff.

II. Requirements

- A. Federal Holidays (NOTE: *There are no changes from APD 11-05-01*) - Section 641.565 (b)(1)(v) of the SCSEP regulations states that "grantees and sub-recipients must provide compensation for scheduled work hours during which a host agency's business is closed for a federal holiday, which may be paid or in the form of rescheduled work time." The federal holidays are: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. If the participant's host agency is closed on a federal holiday, subgrantees shall offer the participant the opportunity to work the number of scheduled hours that fall on a federal holiday on another day when the host agency is not closed. Participants wishing to make up the hours that they miss because the host agency is closed for a federal holiday may do so during the same pay period that the federal holiday falls in or in the pay period immediately before or after the pay period that the federal holiday falls in. Please note that this policy shall also apply to other days that the host agency may be closed when the participant is scheduled to work.
- B. Necessary Sick leave - (NOTE: *There are no changes from APD 11-05-01*) Section 641.565 (b)(1)(vi) of the SCSEP regulations states that "grantees and sub-recipients must provide necessary sick leave that is not part of an accumulated sick leave program, which may be paid or in the form of rescheduled work time." Subgrantees shall allow participants who are unable to work because of an illness to make up the scheduled hours on another day(s). Participants wishing to make up the hours that they miss because they are off sick may do so during the same pay period that they are off sick or in the pay period immediately after the pay period that they are off sick.
- C. Leave of Absence (NOTE: *There are no changes from APD 11-05-01*) - Participants may be granted a leave of absence without pay (LWOP) for up to 90 days for medical, educational, military, bereavement, or other reasons. LWOP may be granted for up to 90 calendar days with the approval of the host agency supervisor and the subgrantee. Only in extenuating circumstances such as illness, family care or institutionalization will a participant be approved for LWOP for up to 120 days. When a situation will take a participant away from his or her assignment for any period of time, the participant should request a leave of absence from the host agency supervisor at least 5 working days prior to the proposed leave date. Participants shall notify the subgrantee in writing for all

requests for LWOP. Participants are expected to return to their assignment after their approved LWOP ends. In extenuating circumstances, if participants have requested less than 30 days and need additional time before they return, they should seek permission from the subgrantee to extend their leave period. Participants who do not return from LWOP after their approved leave has ended may be exited from the program. Participant leave data are entered into DOL's database system as an "approved break in participation". Time spent on approved leave is excluded when calculating durational time limits for projects or participants. This works to the advantage of the grantee and for that reason, it is important to capture leave of absence data in the SCSEP database system. Participant leaves of absence affect performance (community service measure). For this reason, they are part of DOL's Title V Data Validation process. "Reason for Approved Break in Participation" is a data element which must be validated. Validation of this element requires verification of the existence of a written grantee policy regarding breaks in participation. Without such a policy, no break in participation will pass validation.

D. Terminations (NOTE: Revised Significantly)

Participant Involuntary Termination Policy for the Senior Community Service Employment Program (SCSEP) There are six (6) reasons a participant may be involuntarily terminated from the SCSEP. The reasons are listed below along with an explanation. This Termination Policy will be followed fairly and equitably when involuntarily terminating participants. Participants will not be terminated based on age; there is no upper age limit for participation in the SCSEP. Except as noted below in the case of serious violations, participants will receive progressive discipline and an opportunity for corrective action before a formal termination notice is issued. In all cases, participants will receive a 30 day termination letter notifying them of the date of exit, the reason for the termination, and the right to appeal under PDA's grievance procedure. A copy of the grievance procedure will be attached to the termination letter. Participants will receive both a copy and a verbal explanation of the Involuntary Termination Policy during orientation. This policy is based on the Older Americans Act Amendments of 2006 and the SCSEP Final Rule, effective on October 1, 2010.

Types of Involuntary Terminations

A participant can be involuntarily terminated from the SCSEP for six (6) reasons. The reasons are:

1. Knowingly providing false information in the eligibility process
2. Being incorrectly determined eligible at enrollment or the annual recertification
3. Being determined no longer eligible at recertification
4. Reaching the maximum 48 months enrollment limit
5. Becoming employed during enrollment
6. For cause, including refusing to accept a reasonable number of job offers or referrals to unsubsidized employment based on the Individual Employment Plan (IEP) (with no extenuating circumstances hindering the participant from moving to unsubsidized employment)

1. Termination Due to Knowingly Providing False Information in the Eligibility Process

A participant may be terminated for fraudulent actions, such as intentionally providing inaccurate information to qualify for the SCSEP. If this occurs, the participant will be

placed on Leave without Pay immediately, and a 30 day notification of termination will be sent to the participant.

2. Termination Due to Being Incorrectly Determined Eligible

A participant will be terminated if found ineligible for participation in the SCSEP either after enrollment or after the annual recertification through no fault of the participant. A participant may be enrolled or deemed eligible for continued enrollment based on an error in determining program eligibility, e.g. income may be recorded or calculated inaccurately. When this occurs, the participant will be notified regarding the error and immediately sent a 30 day notification of termination letter. The participant will be able to continue participating in the program until the date of exit as noted in the letter.

3. Termination Due to No Longer Being Eligible

Annually, or more frequently if there is a substantial change in circumstances, each participant is recertified to determine if he or she continues to be eligible for participation. During the recertification, a participant may be determined no longer eligible due to a change in eligibility criteria such as income, family of one due to a change in disability status, employment status, and number of household members. The participant will be notified and immediately sent a 30 day notification of termination letter. The participant will be able to continue participating in the program until the date of exit as noted in the letter.

4. Termination Due to 48 Month Participation Limitation

Effective November 1, 2011, a participant will be terminated when he or she meets the 48 month maximum participation date. The participant will be sent a 30 day notification of termination letter 30 days before the 48 month maximum participation date. The participant will be able to continue participating in the program until the date of exit as noted in the letter. For the period June 30, 2011 to October 31, 2011, a participant will be terminated when he or she meets the 48 month maximum participation date unless he or she has a documented waiver factor based on PDA's Individual Durational Limit Policy. A waiver factor qualifies the participant for a 12 month extension. If the participant does not qualify for a 12 month extension, he or she will be sent a 30 day notification of termination letter 30 days before the 48 month maximum participation date. The participant will be able to continue participating in the program until the date of exit as noted in the letter.

5. Termination Due to Becoming Employed During Enrollment

To qualify for enrollment in the SCSEP, a participant has to be unemployed; all participants are informed that they may not be employed while participating in the program and that they must notify the program representative immediately upon becoming employed. A participant who is discovered to be employed while enrolled without having notified the program of the employment will be terminated from the program. If this occurs, the participant will be placed on Leave without Pay immediately, and a 30 day notification of termination will be sent to the participant.

6. Termination for Cause

There are several reasons to terminate a participant "for-cause." When warranted, a participant may be terminated for certain behaviors and/or conduct. The following are specific reasons; however, other similar reasons that demonstrate willful misconduct or an intentional disregard of program rules may cause involuntary termination:

- *IEP related reasons:* Refusing to accept a reasonable number of job offers or referrals to unsubsidized employment or for not complying with the Individual Employment Plan (IEP). A participant may be subject to disciplinary action up to and including termination when he or she refuses a total of three job offers and/or referrals to job openings and/or to follow through with objectives to achieve goals that are based on the IEP. If the participant fails, without good cause, to cooperate fully with PDA's subgrantees to accomplish the goals of his or her IEP, an IEP- Related termination "for-cause" may be in order. Examples of lack of cooperation with PDA subgrantees to accomplish IEP goals may include but are not limited to the following when provided for in the participant's IEP:
 - Refusing to search for a job
 - Sabotaging a job interview, for example, a participant tells the interviewer that he or she is not interested in the job or tells the interviewer that he or she is not qualified.
 - Refusing or not participating fully in training opportunities
 - Refusing to transfer to a new community service training assignment
 - Refusing to register at the local CareerLink
 - Refusing to take advantage of WIA opportunities
 - Refusing to accept or lack of follow-through in obtaining supportive services that will enhance the participant's ability to participate in a community service assignment consistent with the IEP
 - Refusing to cooperate with other IEP-related referrals
 - Refusal to cooperate with the assessment or IEP process, e.g., refusing to participate in completing the assessment and IEP

An IEP Related Termination would not be considered appropriate under the following extenuating circumstances:

When occurrences are not within control of the participant, e.g. transportation is not available to training or an unsubsidized job;

When situations such as the death of a closely related person or partner or a physical condition impact the training or work situation;

When the training or unsubsidized job places undue hardship on the participant that exceed those of the community service assignment;

When the proposed unsubsidized employment is more costly to the participant than the SCSEP position; and

Other related reasons for an IEP Related Termination should be considered on a case-by-case basis.

- *Non-IEP related reasons:*
 - Refusal to cooperate in recertifying eligibility, for example, refusing to provide required documents to determine continued eligibility or refusing to attend or be available for the recertification appointment.
 - Failure or refusal to perform assigned duties, e.g., refusing without good cause to do assignments that are part of the IEP and required to increase skills and knowledge
 - Falsification of official records, such as timesheets, for example, intentionally signing the signature of the host agency supervisor on a timesheet or other official document, or including hours on a time sheet that are not accurate
 - Intentional disclosure of confidential or private information obtained from the host agency, subgrantee, or grantee, for example, informing others of information that is supposed to be kept private or confidential
 - Frequent tardiness or unauthorized absences, including reporting to the assignment late or not reporting to the assignment and not informing the supervisor. Generally, three instances of absence without good cause or without proper notice may warrant termination.
 - Insubordination, defined as intentionally refusing to carry out the direction or instructions of a host agency supervisor or PDA subgrantee staff member, provided there were no extenuating circumstances and the directions or instructions were reasonable
 - Workplace harassment or discrimination on the basis of sex, race, color, religion, national origin, age, marital status, or disability
 - Obscene, abusive, harassing, or threatening language or behavior
 - Physical violence or intentional destruction of property, for example, being violent and threatening to or carrying out threats that physically harm individuals or property
 - Theft, meaning illegal taking or withholding the property of another without permission
 - Causing an imminent threat to health or safety of self or others
 - Consuming, selling, purchasing, manufacturing, distributing, possessing or using any illegal or non-prescribed drug or from being under the influence of alcohol and or drugs while performing his or her host agency assignment or while carrying out objectives required by the IEP. Legally prescribed medications are excluded if they do not affect the participant's ability to perform his or her duties or protect the safety of the participant or others
 - Exceeding approved Leave without Pay by failing to return from an approved break by the required date without due notice or good cause

Participant Corrective Action and Warning

A participant will be given an opportunity to correct his or her behavior or conduct, or his or her failure to comply with the IEP requirements, except in cases involving serious harm or imminent threat to health, safety, property, etc. At any point, if a participant makes positive efforts or the participant's lack of action is justified, corrective action will be discontinued. The following steps for corrective action will be taken:

- **Step 1: First Formal Warning**
If a participant displays behavior or conduct outlined in the reasons for "for-cause" terminations or refuses to comply with the IEP requirements, the participant will be given a verbal warning and counseled to correct his or her actions. Absent extenuating circumstances, the participant will be informed in writing by the PDA Subgrantee SCSEP

Director of the requirement to correct his or her behavior or conduct.

- Step 2: Second Formal Warning
When a participant for a second time displays behaviors or conduct outlined in the reasons for "for-cause" terminations or refuses to comply with the IEP requirements, the participant will be verbally warned and counseled to correct his or her actions. Absent extenuating circumstances, the PDA Subgrantee SCSEP Director will send the participant a written warning that he or she has 30 days from the date of the letter to correct his or her behavior or conduct. In the case of an IEP violation, the participant may be directed to complete a specific IEP-related task. The written warning will include a statement that failure to make improvement or complete the IEP-related tasks will result in termination.
- Step 3: When a participant does not make improvement in his or her actions or for a third time displays behavior or conduct outlined in the reasons for "for- cause" terminations, a letter will be sent notifying the participant that he or she will be exited 30 days from the date of the letter.

For example, a participant's IEP goal is to become computer literate in preparation for a clerical position. First the subgrantee staff person identified a community service assignment at the library but the participant refused it because she wouldn't have her own cubicle (she would be in an open area) so she turned down that opportunity. Next, the subgrantee staff person identified a training site in a school, but the participant turned down that opportunity. Finally, the subgrantee staff person tried the local museum, and the participant refused the training assignment at the museum, too. The subgrantee staff person spoke with the participant, and she had no legitimate reason for refusing the training offered at various assignments. After the first refusal, the subgrantee staff person asked the subgrantee SCSEP Director to send the participant the first written warning letter. The subgrantee SCSEP Director sent her the second warning letter stating that she risked being terminated if she continued to fail to follow her IEP or to take corrective action. When the participant turned down a third assignment and there was no extenuating circumstance, the subgrantee SCSEP Director sent a 30-day notification of termination letter.

For-Cause Terminations that Require Immediate Removal from Host Agency and Leave without Pay Pending Termination

When a participant's violation of PDA's Termination policy is of a serious nature, immediate action to remove the participant from the host agency may be required. In this case, the participant will be placed on leave without pay and a written 30-day notice of termination sent. Examples of circumstances warranting immediate removal from the host agency and leave without pay include, but are not limited to:

- Gross misconduct such intentionally endangering the lives of themselves or others
- Violence, including but not limited to physical or extreme verbal violence at the training site

E. Grievance Procedures (NOTE: Revised Significantly)- As per the language contained in Section 641.910 of the SCSEP Regulations, the information that follows describes the procedures for resolving complaints between the Department's Area Agencies on Aging (AAAs) sub-grantees and the participants. Experience Works (EW), which is the Department's largest sub-grantee, will use their own internal procedures for resolving complaints between participants and EW. The only difference will be that EW shall allow their participants to appeal to the Department of Aging after they appeal to the EW State Director. EW's participants shall not have the right to appeal to the President of EW after they have appealed to the EW State Director. EW shall provide the Department with its

grievance procedures for applicants and participants as well as copies of all correspondence related to participant complaints.

Subgrantees shall adhere to the following grievance procedures for applicants and participants. First, an informal process involving the person grieving and the SCSEP Director will be tried. If this does not satisfactorily resolve the grievance, then a formal process will be initiated. The grievance will be prepared in writing by both parties and the AAA Director will hear representatives from each side. A decision will be rendered by the AAA Director within ten business days and a written copy of said decision shall be provided to the complainant and to the PDA. If this decision is believed to be unjustified by either party, they may appeal to the PDA, Bureau of Individual Support, 555 Walnut Street, 6th Floor, Harrisburg PA 17101-1919, ATTN: SCSEP Program Manager within 30 days of the date of the AAA Director's letter. The PDA will render a written decision within ten business days after receiving the written grievance. The PDA will maintain the complaint and decision in its files after the completion of the grievance process. The PDA's decision will be final unless the complainant believes that a federal law, other than those alleging unlawful discrimination, was broken or if the complainant believes that the PDA's grievance procedures were not followed.

If the complainant believes that a federal law was broken or that PDA's grievance procedures were not followed, he or she can appeal the decision to the USDOL within 60 days of the date of the PDA written decision. Appeals to the USDOL shall be sent to: Chief, Division of Adult Services, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Allegations determined to be substantial and credible will be investigated and addressed by the U.S. Department of Labor.

AAAs, Experience Works as well as the PDA shall document all grievances after receiving the grievance in writing. Written testimony and minutes must be kept on file as well as decision justifications. This general procedure will be used as the process for adverse actions such as a denial of service, a reduction of service, or a termination of service. The PDA grievance policy shall be applied fairly and uniformly for all complainants. Questions about, or complaints alleging a violation of, the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, § 504 of the Rehabilitation Act of 1973, § 188 of the Workforce Investment Act of 1998 (WIA), or their implementing regulations, may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW., Washington, DC 20210.

A copy of the grievance procedure must be given to applicants during the initial intake interview and this must be documented. A copy of the grievance procedure must be provided to all involuntarily terminated participants, including participants who are terminated for cause, when the AAA issues a written termination to the participant 30 days prior to the termination date. Please note that prior to October 1, 2010, participants who were terminated for cause were immediately removed from the host agency. Effective 10-1-10, for all involuntary terminations, including termination for cause, the AAA must write the terminated participant a letter which states that he or she will be terminated in 30 days and the reason(s) for the termination. The letter shall include a copy of the AAA's grievance policy. The official exit date will be 30 days after the last date of work if the participant does not grieve the termination. If the participant needs to be removed from the host agency because of the cause of the termination, then the participant shall be put on Leave without Pay or reassigned to another host agency for the 30 days. If the participant is placed on Leave without Pay, you must enter the beginning and ending dates of the 30 days in the approved break fields in the Community Service Assignment Form in SPARQ.

Questions should be directed to Rocco Claroni at telephone number (717) 772-2932 or via e-mail at rclaroni@pa.gov.