

Due Process: The Identification and Management of Fellowship Problems/Impairment

This document provides fellows and staff a definition of impairment, a listing of possible sanctions and an explicit discussion of due process procedures. Also included are important considerations in the remediation of problems or impairment.

I. Definition of Impairment

Impairment is defined as an interference in professional functioning, which is reflected in one or more of the following ways:

1. inability and/or unwillingness to acquire and integrate professional standards into one's professional behavior;
2. inability to acquire professional skills in order to reach an acceptable level of competency; and/or
3. inability to control personal stress, strong emotional reactions and/or psychological dysfunction that interfere with professional functioning.

It is a professional judgment when a fellow's behavior becomes impaired rather than problematic. A problem refers to a trainee's behaviors, attitudes or characteristics which, while of concern and requiring remediation, are not unexpected or excessive for professionals in training. Problems typically become identified as impairments when they include one or more of the following characteristics:

1. The fellow does not acknowledge, understand or address the problem when it is identified.
2. The problem is not merely a reflection of a skill deficit which can be rectified by academic or didactic training.
1. The quality of services delivered by the fellow is sufficiently negatively affected.
2. The problem is not restricted to one area of professional functioning;
3. A disproportionate amount of attention by training personnel is required.
4. The trainee's behavior does not change after receiving feedback, remediation efforts and/or time.

II. Remediation and sanction alternatives

Meaningful ways to address impairment once it has been identified is important. In implementing remediation or sanction interventions, the training staff must be mindful and balance the needs of the impaired or problematic fellow, the patients involved, members of the fellow training group, the training staff and other agency personnel.

1. **Verbal warning** to the fellow emphasizes the need to discontinue the inappropriate behavior under discussion. No record of this action is kept.
2. **Written acknowledgment** to the fellow formally acknowledges:
 - a) the Training Director (TD) is aware of and concerned with the performance rating,
 - b) the concern has been brought to the attention of the fellow,
 - c) the TD will work with the fellow to rectify the problem or skill deficits, and

- d) the behaviors associated with the rating are not significant enough to warrant more serious action.

The written acknowledgment will be removed from the fellow's file when the fellow responds to the concerns and successfully completes the fellowship.

3. **Written warning** to the fellow indicates the need to discontinue an inappropriate action or behavior. This letter will contain:

- a) a description of the fellow's unsatisfactory performance,
- b) actions needed by the fellow to correct the unsatisfactory behavior,
- c) the time line for correcting the problem,
- d) what action will be taken if the problem is not corrected and
- e) notification that the fellow has the right to request a review of this action.

A copy of this letter will be kept in the fellow's file. Consideration may be given to removing this letter at the end of the fellowship by the TD in consultation with the fellow's supervisor and Psychology Service Head. If the letter is to remain in the file, documentation should contain the position statements of the parties involved in the dispute.

4. **Schedule modification** is a time-limited, remediation-oriented, closely supervised period of training designed to return the fellow to a more fully functioning state. Modifying a fellow's schedule is an accommodation made to assist the fellow in responding to personal reactions to environmental stress, with the full expectation that the fellow will complete the fellowship. This period will include more closely scrutinized supervision conducted by the regular supervisor in consultation with the TD. Several possible and perhaps concurrent courses of action may be included in modifying a schedule. These include:

- a) increasing the amount of supervision, either with the same or other supervisors,
- b) changing the format, emphasis and/or focus of supervision,
- c) recommending personal therapy,
- d) reducing the fellow's clinical or other workload and
- e) requiring specific academic coursework.

The length of a schedule modification period will be determined by the TD in consultation with the primary supervisor and the Psychology Service Head. Termination of the schedule modification period will be determined, after discussions with the fellow, by the TD in consultation with the primary supervisor and the Psychology Service Head.

5. **Probation** is a time limited, remediation-oriented, more closely supervised training period. Its purpose is assessing the ability of the fellow to complete the fellowship and to return the fellow to a more fully functioning state. Probation defines a relationship and specific length of time that the TD systematically monitors the degree to which the fellow addresses changes and/or otherwise improves the behavior associated with the inadequate rating. The fellow is informed of the probation in a written statement, including:

- a) specific behaviors associated with the unacceptable rating,
- b) recommendations for rectifying the problem,
- c) time frame for the probation during which the problem is expected to be ameliorated and
- d) procedures to ascertain whether the problem has been appropriately rectified.

If the TD determines there has not been sufficient improvement in the fellow's behavior to remove the probation or modified schedule, then the TD will discuss with the primary supervisor and the Psychology Service Head possible courses of action to be taken. The TD will communicate in writing to the fellow the conditions for revoking the probation or modified schedule have not been met. This notice will include the course of action the TD has decided to implement. These courses of action may include continuation of the remediation efforts for a specified time period or implementation of another alternative. Additionally, the TD will communicate to the Psychology Service Head that if the fellow's behavior does not change, the fellow will not successfully complete the fellowship.

6. **Suspension of direct service activities** requires a determination that the welfare of the fellow's patient has been jeopardized. Therefore, direct service activities will be suspended for a specified period determined by the TD in consultation with the primary supervisor and the Psychology Service Head. At the end of the suspension period, the fellow's supervisor in consultation with the TD will assess the fellow's capacity for effective functioning and determine when direct service can be resumed.

7. **Administrative leave** involves the temporary withdrawal of all responsibilities and privileges in the agency. If the probation period, suspension of direct service activities or administrative leave interferes with the successful completion of the training hours needed for completion of the fellowship, this will be noted in the fellow's file and the fellow's academic program will be informed. The TD will inform the fellow about the effects the administrative leave will have on the fellow's stipend and accrual of benefits.

8. **Dismissal from the fellowship** involves the permanent withdrawal of all agency responsibilities and privileges. When specific interventions do not, after a reasonable time period, rectify the impairment and the trainee seems unable or unwilling to alter her/his behavior, the TD will discuss with the Psychology Service Head the possibility of termination from the training program or dismissal from the agency. Either administrative leave or dismissal would be invoked in cases of severe violations of the American Psychological Association's (APA) Code of Ethics, when imminent physical or psychological harm to a patient is a major factor or the fellow is unable to complete the fellowship due to physical, mental or emotional illness. When a fellow has been dismissed, the TD will inform the fellow's academic department.

III. Procedures for responding to inadequate performance by a fellow

If a fellow receives an "unacceptable rating" from any of the evaluation sources in any of the major categories of evaluation or if a staff member has concerns about a fellow's behavior (ethical or legal violations, professional incompetence), the following procedures will be initiated.

1. The staff member will consult with the TD to determine reason exists to proceed and/or if the behavior in question is being rectified.
2. If the staff member who brings the concern to the TD is not the fellow's primary supervisor, the TD will discuss the concern with the fellow's primary supervisor.
3. If the TD and primary supervisor determine that the alleged behavior in the complaint, if proven, would constitute a serious violation, the TD will inform the staff member who initially brought the complaint.

4. The TD will meet with the Psychology Training Committee to discuss the performance rating or the concern.
5. The TD will meet with the Psychology Service Head to discuss the concerns and possible courses of action to be taken to address the issues.
6. The TD, primary supervisor and Psychology Service Head may meet to discuss possible courses of action.
7. When the TD or Psychology Service Head has made a decision about a fellow's training program or status in the agency, the TD will inform the fellow in writing and will meet with the fellow to review the decision. This meeting may include the fellow's primary supervisor. If the fellow accepts the decision, any formal action taken by the Training Program may be communicated in writing to the fellow's academic department.
8. The fellow may choose to accept the conditions or may choose to challenge the action. The procedures for challenging the action follow.

IV. Due process: general guidelines

Due process ensures that decisions about fellows are not arbitrary or personally based. It requires the Training Program identify specific evaluative procedures that are applied to all trainees and provide appropriate appeal procedures available to the fellow. All steps must be appropriately documented and implemented. General due process guidelines include:

1. Presenting to the fellows, in writing, the program's expectations related to professional functioning during the orientation period. Discussing expectations with the fellows in group and individual settings.
2. Stipulating the procedures for evaluation, including when and how evaluations will be conducted. Such evaluations should occur at meaningful intervals.
3. Articulating the various procedures and actions involved in making decisions regarding impairment.
4. Communicating, early and often, with graduate programs about any suspected difficulties with fellows and when necessary, seeking input from these academic programs about how to address such difficulties.
5. Instituting, when appropriate, a remediation plan for identified inadequacies, including a time frame for expected remediation and consequences of not rectifying the inadequacies.
6. Providing a written procedure to the fellow that describes how to appeal the program's action.
7. Ensuring fellows have sufficient time to respond to any action taken by the program.
8. Using input from multiple professional sources when making decisions or recommendations regarding the fellow's performance.
9. Documenting in writing and to all relevant parties the actions taken by the program and its rationale.

V. Due process: procedures

The basic meaning of due process is to inform and to provide a framework to respond, act or dispute. When a matter cannot be resolved between the TD and fellow or staff, the steps to be taken are listed below.

A. Grievance procedures

There are two situations in which grievance procedures can be initiated.

A fellow can challenge the action taken by the TD or a member of the training staff may initiate action against a fellow. These situations are described below.

- **Fellow challenge:** If the fellow wishes to formally challenge any action taken by the TD, the fellow must, within five (5) workdays of receipt of the TD decision, inform the TD, in writing, of such a challenge. When a challenge is made, the fellow must provide the TD information supporting the fellow's position or concern. Within three (3) workdays of receipt of this notification, the TD will consult with the Psychology Service Head and will implement Review Panel procedures as described below.
- **Staff challenge:** If a training staff member has a specific fellow concern that is not resolved by the TD, the staff member may seek resolution of the conflict by written request to the TD for a review of the fellow's behavior. Within three (3) working days of receipt of the staff member's challenge, the TD will consult with the Psychology Service Head and a Review Panel will be convened.

B. Review Panel and Process

1. When needed, the Psychology Service Head will convene a review panel. The panel will consist of three staff members selected by the Psychology Service Head with recommendations from the TD and the fellow involved in the dispute. The fellow has the right to hear all facts and to have an opportunity to dispute or explain the behavior of concern.

2. Within five (5) work days, a hearing will be conducted in which the challenge is heard and relevant material presented. Within three (3) work days of the completion of the review, the review panel must submit a written report to the Psychology Service Head, including any recommendations for further action. Recommendations made by the review panel will be made by majority vote.

3. Within three (3) work days of receipt of the recommendation, the Psychology Service Head will either accept or reject the Review Panel's recommendations. If the Psychology Service Head rejects the panel's recommendations, due to an incomplete or inadequate evaluation of the dispute, the Psychology Service Head may refer the matter back to the Review Panel for further deliberation and revised recommendations or make a final decision.

4. If referred back to the panel, it will report back to the Psychology Service Head within five (5) work days of the receipt of the Psychology Service Head's request of further deliberation. The Psychology Service Head then makes a final decision regarding what action is to be taken.

5. The TD informs the fellow and, if necessary, the training program of the decisions made.

6. If the fellow disputes the Psychology Service Head's final decision, the fellow has the right to contact the Department of Human Resources to discuss this situation.