

Arkansas Department of Community Correction

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ADMINISTRATIVE DIRECTIVE: 14-26 EMPLOYEE GRIEVANCE AND MEDIATION PROCEDURE

TO: ARKANSAS DEPARTMENT OF COMMUNITY CORRECTION EMPLOYEES

FROM: SHEILA SHARP, DIRECTOR

SUPERSEDES: AD 14-21

APPROVED: Signature on File

EFFECTIVE: October 3, 2014

I. PURPOSE

The purpose of these rules and procedures is to establish a dispute resolution process pursuant to Arkansas law section 21-1-701 through 704 for the prompt review, impartial consideration, and equitable disposition of Arkansas state employee grievances.

II. POLICY

Grievance-eligible employees must be given the opportunity to resolve complaints or grievances they believe adversely affect their employment or working conditions through the established dispute resolution process of this state agency to ensure fair resolution of their complaint or grievance within a reasonable period of time.

The state agency and the employee must take all reasonable efforts to settle a complaint or grievance as quickly as possible. Informal discussion between a supervisory employee and a grievance-eligible employee is encouraged. Participation in the dispute resolution process is voluntary. The dispute resolution process may be terminated by the employee at any stage if an agreement between the parties is reached.

A party may be represented at each step of the dispute resolution process except during informal discussions between the employee and supervisory employee held prior to the filing of a grievance. Attorney's fees must not be awarded.

The procedures established herein recognize the employment-at-will doctrine and its exceptions as defined by the Arkansas Supreme Court and do not confer a property right in employment, either expressed or implied.

Access to any of these procedures does not prohibit an employee from using remedies outside these procedures. An employee reserves the right to file a complaint with a federal entity or pursue the matter in court.

III. DEFINITIONS

- A. Administrative Record.** The case file specific to each grievance assembled according to the Office of Personnel Management (OPM) Administrative Record Rules.
- B. Adverse action.** To discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges.
- C. Appeal.** A written request by a party to OPM for a review by the State Employee Grievance Appeal Panel of a final decision from the state agency Director.
- D. Disciplinary action.** Termination, suspension, involuntary demotion, written reprimands, and non-new-hire probation.
- E. Dispute resolution.** A procedure that allows parties to constructively manage conflicts through grievances or mediation.
- F. Grievance.** A complaint by an employee regarding a disciplinary action, discrimination, harassment, or the approval/denial of compensatory time made by the supervisory employee, but not including compensation and conditions which are beyond the control of the state agency or are mandated by law.
- G. Grievance Officer.** The person designated by the state agency as having the responsibility for acting as the liaison between the employee and the state agency.
- H. Internal Grievance Review Committee (IGRC).** A committee of three DCC employees selected by the Grievance Officer from a pool of DCC employees designated by the DCC Director, who review the facts of grievances and recommend solutions to the Director. Committee members are trained in accordance with guidelines established by the OPM and DCC policy.
- I. Mediation.** A collaborative problem-solving and joint decision-making process between the employee and supervisory employee, through use of a third-party neutral (mediator).
- J. Party.** The employee filing the grievance or the supervisory employee against whom the grievance has been filed.
- K. State agency.** An agency, board, commission, division, or office of state government within the executive branch.
- L. State Employee Grievance Appeal Panel ("Panel").** An impartial appeal panel established to review the facts of the grievance and issue a binding decision.
- M. Supervisory employee.** An individual having authority in the interest of a state agency to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the state agency; or if his or her exercise of authority requires the use of

independent judgment and is not of a merely routine or clerical nature, the responsibility to direct other employees of the state agency by which he or she is employed.

IV. ELIGIBILITY

Employees are eligible to use the grievance and mediation process described in this policy if they meet all of the following criteria:

- must be regularly appointed or employed in a position of state service by the state agency for which he or she is compensated on a full-time basis or on a pro rata basis for whom a class title and pay grade are established in the appropriation act for the state agency in accordance with the Uniform Classification and Compensation Act
- must have completed the agencies' initial-12-month New Hire Probationary Period
- must NOT be on initial new-hire probationary status
- must NOT be a supervisory employee, and
- must NOT be in any of these positions:
 - Attorney
 - Attorney Specialist
 - Attorney Supervisor
 - Managing Attorney,
 - ADC/DCC Captain
 - ADC Training Academy Supervisor
 - DCC Treatment Supervisor
 - Procurement Coordinator
 - ADC/DCC Major
 - ADC/DCC Internal Affairs Administrator
 - ADC/DCC Training Administrator
 - DCC Parole/Probation Asst Area Mgr
 - Grants Manager
 - DCC Asst Treatment Program Mgr
 - Agency Human Resources Manager
 - DCC Parole/Probation Area Manager
 - ADC/DCC Deputy Warden
 - Information Systems Coordinator
 - Agency Controller I
 - DCC Planning & Mgmt Svcs Administrator
 - Human Resources Administrator
 - ADC/DCC Correctional Warden
 - DCC Program Admr Parole & Probation Svcs
 - DCC Proj & Enterprise Program Mgmt Admin
 - DCC Treatment Administrator
 - Information Systems Manager
 - DCC Deputy Dir Administrative Services
 - DCC Deputy Dir Parole/Probation Services
 - DCC Deputy Dir Residential Svcs
 - DCC Chief Deputy Director
 - DCC Director

An employee who otherwise meets eligibility criteria does not lose eligibility if within the agency he/she:

- transfers
- is promoted
- is hired into another position without being separated from employment, or
- is voluntarily or involuntarily demoted.

V. PROCEDURE

- A.** If the complaint is not resolved by informal discussion with the supervisory employee, the grievance-eligible employee may contact the Grievance Officer, or his or her designee, who must assist the employee in initiating the formal dispute resolution process.
- B.** The employee has five (5) business days from the date of the disputed action to submit the Dispute Resolution Form to the Grievance Officer. An employee must complete the Dispute Resolution Form completely and provide sufficient information detailing the nature of the disputed action. Incomplete forms will not be accepted. Once a grievant submits a grievance in writing, it cannot be amended.
- C.** The grievant or DCC may request relevant information from the Grievance Officer regarding the grievance. Moreover, the grievant or DCC may submit relevant information at any and all points in the grievance process. The Grievance Officer will determine relevancy of information requested or submitted. Employees or their representatives who request documents that are not a part of the official case file will be assessed a reasonable copying charge. Information provided should be the minimum amount necessary to support the case.
- D.** An employee must not be subject to adverse action for using the dispute resolution process.
- E.** Any DCC employee who attempts to delay the resolution or disposition of a grievance by willfully failing to meet any of the deadlines set forth herein will be deemed to have forfeited any rights to participation and is subject to disciplinary action. The Grievance Officer will bring such action to the attention of the appropriate supervisor.
- F.** The DCC Director may intervene at any point in the Grievance or mediation process if he or she decides that a particular action is necessary to resolve the complaint. The DCC Director may attempt to resolve all matters involving allegations of unlawful discrimination, termination, suspension without pay, involuntary demotion and/or failure to award compensatory time.
- G.** Under special circumstances, the Grievance Officer has the authority to modify, waive, or otherwise change the grievance procedure in order to fulfill the intent of the process, provided such modifications, waivers or changes are agreed to by the Director and the grievant. The Grievance Officer must include the justification for, and details of, any

variations from established grievance procedures in the final report to the DCC Human Resources Administrator.

- H.** All complaints or grievances must be processed through the state agency's Grievance Officer and must be handled as follows:
1. The employee has the option to choose mediation or proceed to the Internal Grievance Review Committee (IGRC) hearing and must clearly indicate on the Dispute Resolution Form which option is selected as the first step.
 2. Determination.
 - a. The Grievance Officer must determine whether the complaint is grievable or eligible for mediation.
 - b. If the Grievance Officer and employee are unable to agree on whether a complaint is grievable or eligible for mediation, then the complaint must be sent by the Grievance Officer to the Grievance Coordinator at OPM for a review by the Panel.
 - c. The final determination on whether a complaint is grievable or eligible for mediation must be determined by the Panel within seven (7) business days of the Grievance Coordinator's receipt of the complaint.
 - d. If the decision states that the complaint is grievable or eligible for mediation, then the process will continue.
 - e. If the supervisory employee does not consent to mediation, the first step must be the IGRC hearing.
 3. The Grievance Officer is responsible for assembling the administrative record pursuant to OPM's Administrative Record Rules.
- I.** Unless illegal discrimination is alleged, performance evaluations, promotion denials and reductions-in-force (RIF) decisions cannot be grieved. The agency's full non-discrimination statement is in the "Equal Employment Opportunity and Affirmative Action Program" policy.
1. Examples of other non-grievable matters:
 - a. Advice and/or counseling provided by the Grievance Officer, advice by the Human Resources Administrator or by a State attorney;
 - b. Approved Board of Corrections policies, Administrative Regulations, Administrative Directives, Memoranda or any departmental policies;
 - c. Matters governed by law, regulations and/or executive orders which are outside the Department's control;

- d. Non-disciplinary counseling statements (employee file notes) that are used to document a discussion between a supervisor and an employee. These statements can apply to employee job performance, conduct, or both;
- e. Shift assignments, post assignments, reassignments to other units/divisions;
- f. Reassignment or suspension with pay pending investigation outcome. However, if an employee is disciplined after the investigation is completed, he or she may appeal the disciplinary action.

2. Mediation

An employee may request mediation if the complaint concerns an allegation that the employee has been terminated, demoted, suspended for fourteen (14) or more days; or subject to adverse action by his or her state agency for:

- a. Communicating in good faith to an appropriate authority, the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or a violation or suspended violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;
- b. Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; or
- c. Objecting or refusing to carry out a directive that the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state.

The mediation must be held within ten (10) business days of both parties agreeing to mediate.

OPM will maintain a roster of certified mediators and is be responsible for assigning a mediator.

A mediator is not required to be an attorney but must be certified by the Arkansas Alternative Dispute Resolution Commission. The mediator must not be employed by the state agency that is a party to the mediation.

A party may be represented by an attorney or other representative at the mediation.

The mediation must be confidential; however, the Settlement or Non-settlement Agreement is subject to the Freedom of Information Act.

The Settlement or Non-settlement Agreement must be signed by the parties and become a part of the Administrative Record.

Within one (1) business day of the conclusion of the mediation, the mediator must provide a copy of the Settlement or Non-settlement Agreement to the state agency Director.

Settlement Agreement - If the parties reach a settlement during mediation, the dispute resolution process is considered resolved and the settlement is binding on the parties.

Non-settlement Agreement - If the parties reach a Non-settlement Agreement during mediation, the employee may request within three (3) business days of the Non-settlement Agreement an IGRC hearing.

3. Internal Grievance Review Committee (IGRC)

The Grievance Officer must coordinate and schedule the hearing to be held within ten (10) business days of receipt of the employee's request.

The Grievance Officer is responsible for assembling the administrative record and providing copies to the parties and the IGRC participants.

The hearing must be recorded and may be transcribed at the discretion of the Grievance Officer and become a part of the administrative record.

A party may have any persons having knowledge of matters relevant to the grievance present at the hearing to provide testimony. The Grievance Officer is responsible for notifying any state agency witnesses. The employee is responsible for notifying any witnesses that are not an employee of the state agency. The Grievance Officer may request to hear testimony from any persons having knowledge of matters relevant to the grievance that are not already requested to be present.

A party or the Grievance Officer may "Invoke the Rule", excluding all non-party witnesses from the hearing room unless they are testifying.

A party may present additional evidence. If accepted by the Grievance Officer, the evidence will become a part of the administrative record as an exhibit.

Within three (3) business days of the conclusion of the hearing, the IGRC must issue a typewritten recommendation summarizing the hearing and explaining in detail the basis for the decision. The Grievance Officer must provide a copy to the state agency Director, and the parties. The recommendation will become a part of the administrative record.

The state agency Director must review the recommendation and issue a final decision within five (5) business days.

4. Appeal to OPM

If an employee is not satisfied with the decision reached by the state agency Director, he or she may appeal, using a form provided by OPM, and request nonbinding mediation or an appeal hearing before the Panel.

If an employee chooses nonbinding mediation as the first appeal step, he or she does not waive his or her right to later request an appeal hearing before the Panel; however, written reprimands, allegations of discrimination or harassment, and the denial of compensatory time are not eligible for nonbinding mediation.

A request for nonbinding mediation must be filed with the state agency's Grievance Officer no later than fifteen (15) business days of receipt of the Director's decision.

A request for an appeal hearing before the Panel must be filed with the state agency's Grievance Officer no later than ten (10) business days of receipt of the Director's decision or ten (10) business days of the unsuccessful mediation.

J. Appeal to the Arkansas Chief Financial Officer

If a party is not satisfied with the decision reached by the Panel, he or she may file an appeal to the Chief Fiscal Officer ("CFO") of the State within five (5) business days of the party's receipt of the Panel's written decision.

The state agency's Grievance Officer must provide a copy of the appeal to the other party. The non-appealing party may file a response to the appeal within five (5) business days of receipt of the appeal.

All appeals to the CFO must be determined solely on the Administrative Record. The CFO must review the Administrative Record, including the appeal and any response to the appeal, and must determine whether the Panel's decision is clearly erroneous.

The CFO's decision must be issued to both parties and/or their representatives within ten (10) business days of receipt of the appeal or response to the appeal, whichever is later. The CFO's decision is binding on both parties and the matter will be considered final.

VI. DOCUMENTATION. Within (10) business days following the final disposition of the complaint, the Grievance Officer must file a report of the disposition of the grievance or mediation and procedures followed with the Human Resources Administrator. All documentation relating to an employee's complaint must be maintained by the Grievance Officer. Information relating to the grievance or mediation must not become a part of any employee's permanent personnel record. Records must be maintained as required by the Records Management policy.

VII. FORMS. Forms are available from the DCC EagleNet intranet.

OPM Form Administrative Record Tracking (for Employee Grievance) Form
OPM Form Dispute Resolution - Appeal (for Employee Grievance) Form
OPM Form Dispute Resolution (Employee Grievance Submission) Form
OPM Form SEAGP Hearing Witness List (for Employee Grievance) Form
OPM Form Transmittal for Grievance Determination (for Employee Grievance) Form
AD 14-26 Form 1 Employee Grievance Decision

**Arkansas Community Correction
Dispute Resolution Form**

Step 1

This form is to be used by the employee in filing a grievance. The form will be filled in completely and will serve, without amendment, as the source document for the Dispute Resolution Process. All supporting documentation must be attached to this form.

Agency, Board, Commission:

Employee's Name:

Job Title:

Employee's Address:

Employee's Telephone Number:

Immediate Supervisor's/Charged Party's Name:

Grievance Statement:

In order for a formal grievance to be processed, the following five (5) elements must be addressed: (Attach additional pages, if needed)

(1) What was the date of occurrence and what specific behavior, condition, or violation of policy or procedure occurred which you consider constitutes a grievance?

(2) How have you been adversely affected by the behavior, condition, or violation of policy or procedure?

(3) What specific action have you taken to reconcile and improve this situation, including discussing it with your immediate supervisor? What has been the outcome of these efforts?

(4) What specific remedy do you request?

(5) I request as my first step: Mediation Fact Finding/Administrative Review Hearing

Employee's Signature:

Date: