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DOC.ARKANSAS.GOV

SECRETARIAL DIRECTIVE

SUBJECT: Employee Grievance Procedures

NUMBER: 2021-01

SUPERSEDES: AD 14-33 (ADC);
AD 19-06 (ACC); and
Dispute Resolution Rules
and Procedures Directive
(APB)

APPLICABILITY: All Department of Corrections Employees,
with the exception of Correctional School District Employees

REFERENCE: Ark. Code Ann. §§ 21-1-701, *et seq.*; § 25-43-103, § 25-43-105, §25-43-107,
§ 25-43-403; Executive Order 15-02; AR 229 - Uniform Grievance Procedure;
and OPM Policy 63-State Employee Grievance Policy and Procedures.

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ISSUED BY: Original Signature on File

EFFECTIVE DATE: 1/11/2021

I. PURPOSE:

As the executive head of the Department of Corrections (DOC or Department), it is the responsibility of the Secretary to establish a grievance process pursuant to Arkansas Code Annotated §§ 21-1-701 *et seq.*, for the prompt review, impartial consideration, and equitable disposition of DOC employee grievances.

This directive does not apply to employees covered under the Teacher Fair Dismissal Act.

A technical error (minor detail, insignificant item) in the administration of the procedure outlined in this policy is not grounds for overturning the outcome of the dispute resolution process unless the error affected the outcome. (Example: typing January 1, 2200 instead of January 1, 2020.)

II. GENERAL PROCEDURES:

1. Eligible employees may resolve grievances through this established policy and procedure to ensure fair resolution within a reasonable period. The supervisor and grievant shall make reasonable efforts to settle a grievance as quickly as possible. Informal discussion between a supervisor and grievant is encouraged.

2. Participation in the dispute resolution process (a formal procedure that allows parties to constructively manage conflicts through grievances or mediation) is voluntary and may be terminated by the employee at any stage including if an agreement between the parties is reached.
3. The Division Director, Chief of Staff for Shared Services, or DOC Secretary may intervene at any step in the grievance/mediation procedure if the Division Director, Chief of Staff, or DOC Secretary decides that direct action is necessary to resolve the grievance.
4. Decision-making officials (Wardens/Center Supervisors/Supervisors/Area Managers/Division Directors/Chief of Staff) retain the option to increase or decrease disciplinary measures if circumstances warrant such action. If the disciplinary measure is increased by the Division Director, the employee has five (5) business days from date of receipt, to appeal to the DOC Secretary.
5. A party may be represented at each step of the dispute resolution process except during any informal discussions between the employee and supervisor held prior to the filing of a grievance. Attorney's fees shall not be awarded.
6. Any required timeframes will begin the first business day after receipt of the correspondence as indicated by a signature. If the employee chooses to be represented, there is a presumption that the representative is authorized to communicate on behalf of the employee, and the employee is subject to the same time frames and correspondence received by the representative. Any mediation or hearing will not be postponed due to the late hiring of an attorney or representative.
7. The procedures established in this policy 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.
8. Access to any of these procedures does not prohibit an employee from pursuing remedies outside these procedures. An employee reserves the right to file a complaint with a federal entity or pursue the matter in court.
9. The DOC and its employees shall not retaliate against an employee for using the grievance process or attempt to influence the grievance process at any step.

III. ELIGIBILITY FOR GRIEVANCE:

- A. Grievable Matters: Pursuant to A.C.A. an employee may only grieve a termination or suspension without pay.
- B. For purposes of this policy, an "employee" is defined as a person regularly employed in a position of state service by the DOC for which he or she is compensated on a full-time basis or on a pro rata basis for which a class title and pay grade are established in an appropriation act for the DOC in accordance with the Uniform Classification and Compensation Act. An employee on new-hire probationary status, rehire status, transfer probationary status, a temporary employee, an emergency hire, an independent contractor, an extra-help employee, or an appointee of the Governor or Board of Corrections is not considered an "employee" under this policy and is not eligible to participate in the dispute resolution process.

- C. Supervisory employees are not eligible to participate in the Employee Grievance Process. A supervisory employee is: (1) an individual with authority to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline at least one other employee of the DOC or within their Division; (2) an individual who has the responsibility to direct other employees of DOC by which he or she is employed; or (3) an individual whose exercise of authority requires the use of independent judgment and thought, rather than following a manual or pre-determined formula, when providing his or her opinion.

Note: An employee only has to meet one of these requirements.

VI. GRIEVANCE:

Initiation of Process

- A. The employee has five (5) business days from the date of the disputed action to submit a DOC Dispute Resolution Form to the EEO/Grievance Officer or Unit HR Manager via fax or email. The employee must provide sufficient information detailing the nature of the disputed action. Insufficient forms will not be accepted and will be returned for completion. The employee will have two (2) business days to resubmit the form with sufficient information or the employee will forfeit the opportunity to file the grievance. Once an employee submits a grievance in writing, it may be amended one time to correct errors, but not to add new information previously omitted.
- B. The employee has a duty to update the EEO/Grievance Officer with any changes in contact information. Failure to respond to correspondence from the EEO/Grievance Officer in the timeframe established in the correspondence will result in the case being closed.

Determination of Grievable Matters

- A. The EEO/Grievance Officer, in consultation with the DOC Chief Legal Counsel, shall determine whether the complaint is grievable or eligible for mediation. If a matter is determined to be non-grievable, the employee will be notified in writing.
- B. If the employee disagrees with the determination, the employee can appeal to the Office of Personnel Management (OPM) at the Department of Transformation and Shared Services (TSS) for a final determination of grievability. The employee must submit the appeal to the EEO/Grievance Officer within five (5) business days of receipt of the determination that the complaint is non-grievable.
- C. If the employee alleges unlawful discrimination, retaliation, harassment, or hostile work environment in his/her complaint, but whose complaint does not otherwise meet the definition of a "grievable matter," the EEO/Grievance Officer will nevertheless forward a copy of the grievance to the grievant's Warden/Center Supervisor/Area Manager or, if determined necessary by the EEO/Grievance Officer, the Assistant Director/Deputy Director to ensure the claim is brought to their attention. The EEO/Grievance Officer will also notify the Chief Legal Counsel.

Mediation

- A. Mediation is a collaborative, problem-solving, and joint decision-making process between the employee and Department with the assistance of a mediator. Once the EEO/Grievance Officer has issued a determination on whether the complaint meets the eligibility criteria (See Section VI, Determination of Grievable Matters), the employee may request mediation.

- B.** If the matter is determined to be eligible for mediation and the supervisor or manager also consents to mediation, then mediation shall be held within ten (10) business days of both parties agreeing to mediate. OPM shall be responsible for assigning a mediator. If the matter is determined to be ineligible for mediation or the supervisor or manager does not consent to mediation, then the first step shall be the administrative review hearing. The supervisor or manager shall consult with the EEO/Grievance Officer before consenting to mediation to ensure that mediation is appropriate.
- C.** A party may be represented by one attorney or one representative at the mediation. The grievant must inform the Department's EEO/Grievance Officer of the representation a minimum of five (5) business days before the scheduled mediation. The EEO/Grievance Officer will notify the charged party and Chief Legal Counsel.
- D.** The mediation shall be confidential, but any Settlement or Non-Settlement Agreement shall be signed by the parties and become part of the Administrative Record. These agreements must be approved by the Division Director or Secretary.

Grievance Hearing Process

- A.** Within ten (10) business days of receiving a grievant's request for a hearing, the EEO/Grievance Officer will schedule the Internal Grievance Review Hearing (Grievance Hearing) if the matter is grievable. A Hearing Officer designated by the Division Director, or designee, shall conduct the hearing. It is intended that the Hearing Officer will preside over hearings involving only their Division.

Note: The Chief of Staff shall designate the Hearing Officer for Shared Services employee grievances.

- B.** The Grievance Hearing will be conducted before a three-member panel, consisting of the Hearing Officer (Chairperson), as well as two other Division-specific employees. The EEO/Grievance Officer will maintain an updated list of eligible committee members. Hearing Officers and committee members must complete the required training provided by OPM.
- C.** The EEO/Grievance Officer shall be responsible for assembling the Administrative Record and providing copies to the parties and the Hearing Officer. The Administrative Record will be retained electronically and retained according to retention guidelines.
- D.** At the hearing, the sole issue for the three-member panel shall be whether the state agency's decision concerning termination or suspension was consistent with the state agency's employee conduct policy and other relevant policies pursuant to A.C.A. 21-1-702(b)(2).
- E.** A copy of any document that either party intends to introduce at the hearing must be provided to the EEO/Grievance Officer at least five (5) business days prior to the hearing. The EEO/Grievance Officer shall decide whether the information to be presented is relevant. Any evidence not submitted by the deadline will not be introduced or considered by the committee at the hearing.
- F.** In addition, if either party intends to call any witnesses on their behalf, the party must provide a list of witnesses at least five (5) business days prior to the hearing. Excessive requests for witnesses that would cause disruption of Department business or a security risk will be deemed burdensome. The EEO/Grievance Officer may exclude one, or all of the witnesses.

- G.** The EEO/Grievance Officer will notify the parties of this action. The requesting party will be given one (1) business day to supply additional justification for the need of the excluded witnesses. Grievance steps will not be delayed/rescheduled as a result of such request. Any witness not identified or disclosed by the deadline will not be allowed to testify. Character witnesses will not be permitted.
- H.** Only persons with knowledge of matters relevant to the grievance may testify at the hearing. The EEO/Grievance Officer is responsible for notifying any witness employed by the DOC. The parties are responsible for notifying any of their witnesses not employed by the DOC.
- I.** A party may be represented by one attorney or one representative at the hearing. The grievant must inform the EEO/Grievance Officer of the representation a minimum of five (5) business days before the scheduled hearing.
- J.** The hearing will be conducted in an informal manner. The hearing may be conducted virtually at the discretion of the EEO/Grievance Officer. The Arkansas Rules of Evidence do not apply, but all evidence and testimony must be relevant. The Hearing Officer or EEO/Grievance Officer will have the discretion to exclude testimony or evidence if it is privileged, cumulative, or irrelevant. Any party or Hearing Officer may exclude non-party witnesses from the hearing room until they testify. The hearing shall be recorded.
- K.** Either side may make an opening statement of no more than ten (10) minutes. The opening statement should summarize the evidence to be presented, and the grievant's opening statement should include a specific statement of the relief requested.
- L.** After opening statements, each side will be allowed 45 minutes to present its case. The Hearing Officer has the discretion to allow each side additional time to allow all witnesses to testify. The agency will present its case first. After both sides have presented their cases, each side will have the option of presenting a closing statement, limited to five (5) minutes for each side.

Notification of Decision

- A.** Within five (5) business days of the hearing, the Hearing Officer shall issue a recommendation summarizing the hearing and explaining the basis for the recommendation. Under extenuating circumstances, the Hearing Officer may take an additional five (5) business days to submit the recommendation if the Hearing Officer communicates, in writing, the extenuating circumstances to the EEO/Grievance Officer. The Hearing Officer shall submit the recommendation to the EEO/Grievance Officer who will promptly submit the recommendation to the Division Director/DOC Secretary. The recommendation shall become part of the Administrative Record.
- B.** The Division Director or designee shall review the recommendation and issue a final decision within five (5) business days. If the recommendation does not adequately address the issues on appeal or is not clearly written, the Division Director or designee can return the recommendation to the hearing officer with instructions to submit a corrected recommendation. The Division Director or designee will then have five (5) business days upon receiving the corrected recommendation to review the recommendation and issue a final decision. Under extenuating circumstances, the Division Director may take an additional five (5) business days to submit the recommendation if the Division Director communicates, in writing, the

extenuating circumstances to the EEO/Grievance Officer. The EEO/Grievance Officer will then distribute the final decision to the parties and their representatives.

- C. When a matter is decided in favor of the grievant, the charged party or management official and the Division Human Resources Liaison must take corrective action within ten (10) business days of the decision. If documentation is to be removed from a grievant's personnel file (e.g., a disciplinary), the person responsible for taking this action will prepare a memorandum to the Central Human Resources Office, requesting that the documentation be removed. The Division Director must approve the memorandum before it is sent to the Central Human Resources Office. The memorandum must include specific instructions that the original copies of the removed documents be sent to the EEO/Grievance Officer, who will retain the documents as part of the Administrative Record.

V. APPEAL

- A. An employee may appeal the Division Director's decision to the DOC Secretary no later than five (5) business days after receiving the Director's decision. The DOC Secretary has five (5) business days to render his/her final decision.
- B. If the employee is not satisfied with Secretary's decision, he/she may request an Appeal Hearing. The employee must file the Grievance Appeal Form with the EEO/Grievance Officer no later than ten (10) business days after receiving the Secretary's decision. If the employee does not timely appeal, the Secretary's decision will stand. The appeal will be forwarded to OPM for consideration by the State Employee Grievance Appeal Panel (SEGAP). OPM will assign the case to three SEGAP members. One member will serve as the chair and must be an Arkansas licensed attorney and current state employee of the Executive Branch.
- C. The Appeal Hearing will be scheduled by OPM after receiving the request from the EEO/Grievance Officer. The hearing will not be postponed or delayed unless compelling circumstances are presented to OPM prior to the date of the Appeal Hearing. The final decision to postpone or delay is at the discretion of OPM.
- D. The Department has the burden to prove that the termination or suspension without pay was consistent with the Department's Employee Conduct Standards. The Employee is then given the opportunity to rebut, contradict, or discredit the Department's case.
- E. SEGAP generally issues a written recommendation no later than ten (10) business days after the hearing and forwards the recommendation to OPM. The recommendation may be appealed to the Secretary of Transformation and Shared Services. The DOC Secretary shall have the final decision on whether or not the Department will appeal a recommendation.
- F. The appeal must be submitted to the EEO/Grievance Officer no later than seven (7) business days after receiving SEGAP's written decision. The EEO/Grievance Officer must timely provide a copy of the appeal to the opposing side and to OPM. The non-appealing side may file a response to the appeal no later than seven (7) business days after receiving the appeal.
- G. All appeals to the TSS Secretary will be determined solely on the Administrative Record. The TSS Secretary is authorized to order back pay, restore leave and health insurance benefits, and any other benefits the employee would have received if the termination or suspension had not occurred.

- H. The TSS Secretary's decision will be issued no later than fifteen (15) business days after receiving the appeal or response to the appeal, whichever is later. The decision of the TSS Secretary is final.

VI. ATTACHMENTS:

- A. Grievance Form
- B. Mediation Information Sheet
- C. Agreement to Mediate
- D. Grievance Form – Appeal to SEGAP
- E. Grievance Form – Appeal to Secretary
- F. Employee Acknowledgement of Receipt

ATTACHMENT A



Department of Corrections Grievance Form

This form is used to file a grievance pursuant to A.C.A. § 21-1-701 *et seq.* and the [State of Arkansas Grievance Policy and Procedure](#). This form must be completed and submitted to your Department's Grievance Officer to initiate the process. Supporting documentation may be submitted along with this form. Contact your human resources office for more information regarding your Department's grievance policy.

Department: Division, if applicable:
Employee's Name: Job Title:
Address: Supervise: Y/N ☐
Email Address: Phone Number:
Supervisor's Name:

In order for a complaint to be processed, the following information must be provided:

1. What disciplinary action are you grieving?
☐ Termination ☐ Suspension ☐ Other
2. What was the date of the disciplinary action?
3. What action have you taken to address the situation with your immediate supervisor?
4. What remedy do you request?
5. I request as my first step: ☐ Mediation ☐ Administrative Review Hearing

Employee's Signature

Date

Official Use Only

Grievable: ☐ Yes ☐ No If no, explain:

Grievance Officer's Name

Grievance Officer's Signature

Date

ATTACHMENT B

State of Arkansas Grievance Mediation Program

What is Mediation and the State of Arkansas Grievance Mediation Program?

Mediation is an avenue to resolve disputes between conflicting parties. In mediation, a neutral person called a Mediator helps the parties explore ways to resolve their differences and reach an agreement that best addresses their interests. The parties must be willing to work out the problems between them. Mediation does not focus on who is right or wrong, and the Mediator has no authority to make the decision for the parties. A Mediator facilitates the mediation session and guides the parties to become their own decision-makers by understanding and listening to each other.

The State of Arkansas Grievance Mediation Program supports the resolution of differences between supervisors and employees in state government. It is a commitment to a positive approach and joint ownership of concerns and solutions. An eligible employee can request mediation through the grievance program only for a termination or suspension.

Why should I use the Mediation Program?

Mediation is generally faster and less formal in both time and resources for all parties involved. The goal of mediation is that the parties choose to work together to create solutions. Remember the Mediator is a neutral individual who is trained in conflict resolution techniques and who facilitates the conversation.

How does the Grievance Mediation Program work?

The mediation process is initiated when an employee contacts their department's Grievance Officer to request that their termination or suspension be resolved using the grievance process. The employee will submit the Grievance Form to the Grievance Officer and indicate whether they want mediation as their first step. The Grievance Officer will determine whether the complaint is eligible to be reviewed as part of the grievance program.

If the department agrees to mediation, the Grievance Officer will contact all participants to sign the Agreement to Mediate form and to determine a date, time and location that is agreed to by the parties. The Grievance Officer will then contact the Office of Personnel Management (OPM) who assigns a Mediator. Both parties may have a representative or attorney present at the mediation, but witnesses are not permitted. The mediation session is confidential. At the conclusion of the mediation, a Settlement Agreement or a Non-settlement Decision is signed by all parties including the Mediator. The results of the mediation are forwarded to OPM. Any discussion or notes from the mediation is kept confidential.

How can further information about the Grievance Mediation Program be obtained?

For more information, contact the Grievance Coordinator at: OPM.Disputeresolution@dfa.arkansas.gov or visit: <https://www.transform.ar.gov/personnel/dispute-resolution/>.

AGREEMENT TO MEDIATE

Arkansas Department of Corrections

1. I understand that this is an agreement by the parties to attempt to resolve the following issues by submitting the matters to mediation:

2. I understand that mediation is a dispute resolution process that is non-adversarial in nature and seeks to find reconciliation between disputing parties. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, timely, and is advantageous to both parties.

3. I understand that the Mediator is committed to treating this matter in a fair and unbiased way. The Mediators' role is to facilitate and help the parties themselves reach a mutually satisfactory resolution to the problem. The decision-making power rests with the parties, not the Mediator. If the parties cannot agree on a resolution, the Mediator will NOT impose a resolution nor will he/she offer judgment as to which party, if any, is at fault. If an impasse exists, either party or the Mediator may stop the proceedings.

4. I understand that the Mediator has no authority to make decisions or act as a judge or arbitrator. Although the Mediator may be an attorney, the Mediator will not act as an advocate for any party in the mediation. To the extent either the employee or the agency wishes to have a representative or legal counsel to consult with or assist at any stage in the mediation, the party is responsible for taking steps to obtain such a person.

5. I understand that mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. I agree not to subpoena or request the Mediator to serve as a witness or request or use as evidence any materials prepared by the Mediator for the mediation, with the exception of a Settlement Agreement signed by the parties. In no event will the Mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation. However, I understand that matters that are admissible in a court of law or other administrative process continue to be admissible, if otherwise discoverable, even though brought up in a mediation session.

6. Mediation is private, confidential, and privileged from discovery. To ensure confidentiality, any writings or notes made or taken during the mediation session by the Mediator, or either party and/or representatives shall be collected and destroyed by the Mediator, in the presence of all, prior to adjournment of the mediation.

7. I understand that no party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the Mediator shall reduce the agreement to writing, and when signed and approved by the parties and/or appropriate authorities, the Settlement Agreement shall be legally binding upon all parties to the agreement.

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8. In electing to use mediation, I understand that no external statutory deadlines are waived and that all external statutory deadlines must be adhered to.

9. The employee's rights to pursue external formal processes are not waived and will be protected during the mediation process. At the same time, the employee's responsibilities to comply with all requirements of any external administrative or court process, e.g., time limits, points of contact, ARE NOT WAIVED and must be followed.

10. I understand that in the event the mediation is terminated for any reason, the employee may continue to pursue the matter through the fact-finding process. The employee may also pursue the matter through any external formal resolution of the matter as he/she sees fit as long as they are within statutory time limits.

11. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this process.

12. I will sincerely attempt to resolve this matter; agree to cooperate with the Mediator assigned to this matter; and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. I will conduct myself in a courteous and non-hostile manner, use appropriate language, and allow the Mediator to interrupt the process if they feel a caucus or break is needed to facilitate the mediation process. I enter into this process in good faith.

13. The Mediator agrees to notify the parties, their representatives, and the appropriate management official of the status and results of the mediation process, including settlements, withdrawal from, and/or unsuccessful conclusion of the process within one (1) business day of the conclusion or termination of the process.

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND, AND AGREE TO THIS AGREEMENT TO PARTICIPATE IN MEDIATION:

EMPLOYEE'S SIGNATURE DATE

EMPLOYEE REPRESENTATIVE'S SIGNATURE (if appropriate) DATE

MANAGEMENT OFFICIAL'S SIGNATURE DATE

AGENCY REPRESENTATIVE'S SIGNATURE (if appropriate) DATE

MEDIATOR'S SIGNATURE DATE

Attachment D



Department of Corrections Grievance Form - Appeal to SECRETARY

OPM Case # _____

This form is used to file a request for an appeal hearing before the DOC Secretary.

Department: _____ Division, if applicable: _____

Employee's Name: _____

Job Title: _____ Grade: _____

Email Address: _____ Phone Number: _____

Supervisor's Name: _____

In order for a grievance appeal to be processed, the following information must be provided:

1. Why are you appealing the Director's, or designee's, decision?

2. What remedy do you request?

Employee's Signature

Date

Agency Use Only

Eligible for Appeal: ☐ Yes ☐ No If no, explain:

Agency Official's Name

Agency Official's
Signature

Date

Attachment E



State of Arkansas Grievance Form - Appeal to SEGAP

OPM Case # _____

This form is used to file a request for an appeal hearing before the State Employee Grievance Appeal Panel (SEGAP) pursuant to A.C.A. § 21-1-701 *et seq.* and the State of Arkansas Grievance Policy and Procedure. This form must be completed and submitted to your Department's Grievance Officer.

Department: _____ Division, if applicable: _____
Employee's Name: _____
Job Title: _____ Grade: _____
Email Address: _____ Phone Number: _____
Supervisor's Name: _____

In order for a grievance appeal to be processed, the following information must be provided:

1. Why are you appealing the Secretary's, or designee's, decision?

2. What remedy do you request?

Employee's Signature

Date

OPM Use Only

Eligible for Appeal: ☐ Yes ☐ No If no, explain:

OPM Official's Name

OPM Official's Signature

Date

Attachment F

EMPLOYEE ACKNOWLEDGEMENT OF RECEIPT
OF THE ARKANSAS DEPARTMENT OF CORRECTIONS
SECRETARIAL DIRECTIVE
UNIFORM GRIEVANCE PROCEDURE

I have received a copy of the Arkansas Department of Corrections Secretarial Directive, Employee Grievance Procedure and understand that it is my responsibility to read and become familiar with all standards contained herein.

I further understand that I am expected to abide by these standards while employed by the Arkansas Department of Corrections and if I have questions regarding this information, it is my responsibility to contact my immediate supervisor for assistance and/or explanation.

Employee Name (Printed)

Employee Signature

Employee ID #

Unit

Date