

DISPUTE RESOLUTION (GRIEVANCE) RULES AND PROCEDURES

I. PURPOSE

The purpose of this policy and procedure is 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 Arkansas state employee grievances.

Eligible employees may resolve grievances through this established policy and procedure to ensure fair resolution within a reasonable period.

DEFINITIONS

Administrative Record – The case file specific to each grievance assembled by the Grievance Officer following the Office of Personnel Management (“OPM”) guidelines Administrative Review A fact-finding process conducted at the state agency by a Hearing Officer.

Appeal – A written request by a party to OPM for a review of a final decision from the state agency’s internal grievance process, either for a final determination or a State Employee Grievance Appeal Panel (SEGAP) hearing.

Employee – A person 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; and a class title and pay grade are established in the appropriation act for the agency in accordance with the Uniform Classification and Compensation Act. -An employee on initial new-hire probationary status is not an employee for purposes of these rules and procedures. An employee does not include a supervisory employee.



Grievance - A complaint by an employee regarding their termination or suspension.

Grievance Officer – The person designated by the state agency as having the responsibility for acting as the case coordinator liaison-between the employee and the state agency.

Hearing Officer – An impartial person appointed by the agency director to preside over the administrative review hearing and make a recommendation for resolution to the Department Secretary or designee.

Mediation – A collaborative problem-solving and joint decision-making process between the employee and the Department with the help of a mediator.

Party – The Employee affected by a state agency decision or the state agency that made the decision at issue in the grievance.

State Employee Grievance Appeal Panel (SEGAP) – An impartial appeal panel established to review the facts of the grievance and issue a decision.

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 their 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.

Note: State statute Arkansas Code §20-7-131 states that:

(a) The mayor or county judge of any city or county that is providing facilities for a local unit of the Department of Health shall be consulted before the hiring of or the removal of the administrator of the local unit.

(b) Notwithstanding the Freedom of Information Act of 1967, 25-19-101 et seq., the Department of Health, with the consent of the employee, may share personnel information with a mayor or county judge.

(c) Furthermore, any employee removed as administrator of a local unit shall be allowed to participate in the state grievance process.



II. POLICY

Employees shall 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 shall take all reasonable efforts to settle a complaint or grievance as quickly as possible. Informal discussion between a supervisory employee and employee is encouraged.

Participation in the dispute resolution/grievance process is voluntary. The dispute resolution or grievance process may be terminated by the employee at any stage if an agreement between the Parties is reached.

A Party may be legally represented at each step of the dispute resolution/grievance process except during informal discussions between the employee and supervisory employee held prior to the filing of a grievance. Attorney's fees shall not be awarded. Written correspondence will be mailed to the address provided by the Employee, and anyone at the address who signs for the correspondence is presumed to be signing on behalf of the Employee. Any required time frames 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 for all correspondence received by the representative. The Mediation or hearing will not be postponed due to the late hiring of an attorney or representative.

The Employee is allowed reasonable time during work hours to meet with the Grievance Officer or attend a scheduled Mediation or hearing.

These 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 is not prohibited from filing a claim under the Arkansas Whistle-Blower Act and reserves the right to file a complaint with a federal entity or pursue the matter in court. The Department is prohibited from retaliating against an Employee for using the grievance process.

III. PROCEDURE

An eligible Employee may file a grievance for two reasons: 1) termination and 2) suspension without pay.

The Employee has five (5) business days from the date of termination or suspension without pay to submit the Grievance Form HR-2801 to the Grievance Officer. An employee shall complete the Grievance Form completely and provide sufficient information detailing the nature of the disputed action. Incomplete forms will not be accepted.



An employee shall not be subject to adverse action for using the dispute resolution/grievance process.

All complaints or grievances shall be processed through the state agency's Grievance Officer and shall be handled as follows:

1. Determination

- a. The Grievance Officer shall determine whether the complaint meets the eligibility criteria for the grievance process. If the complaint meets the eligibility criteria, the Employee may request Mediation or an Administrative Review Hearing. If the Employee chooses Mediation, it becomes the first step. An Employee cannot request Mediation after the Administrative Review.
- b. If the Grievance Officer determines the Employee is not eligible, The Employee may request a final determination of grievability by OPM. The Employee must make a written request to the Grievance Officer no later than five business days after being notified of the ineligibility determination. The Grievance Officer will submit the documentation to OPM.
- c. If OPM determines the complaint is not eligible, the Employee is prohibited from using the grievance process.
- d. If OPM determines that complaint is eligible, the Employee may proceed to the next step, either Mediation or Administrative Review Hearing. The Grievance Officer shall be responsible for assembling the Administrative Record pursuant to OPM's Administrative Record Rules.

2. Mediation

The Employee and the Department must both agree to participate in the as soon as possible. If the mediation session must be rescheduled, Employee or representative is responsible for communicating with the Grievance Officer regarding availability for the rescheduled Mediation. If the Employee or representative fails to timely communicate with the Grievance Officer, the Employee's case may be dismissed.

OPM shall maintain a roster of certified Mediators and shall be responsible for assigning a mediator.

A Mediator is not required to be an attorney but shall be certified by the Arkansas Alternative Dispute Resolution Commission. The Mediator shall 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.

Mediation sessions are confidential; however, the final results will be part of the case file and the final results of the Mediation session may be subject to disclosure under the Freedom of Information Act.



The Settlement or Non-settlement Agreement shall 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 shall provide a copy of the Settlement or Non-settlement Agreement to the Director.

Settlement Agreement - If the parties reach a settlement during mediation, the grievance is considered resolved, and the settlement is binding. Unless a federal or state statute provides otherwise. The settlement is subject to approval by the OPM Director.

Non-settlement Agreement - If there is a non-settlement, the Employee may request within three (3) business days after the Mediation Administrative Review Hearing.

3. Administrative Review Hearing

The Grievance Officer shall coordinate and schedule the hearing to be held within ten (10) business days of receipt of the Employee's request, unless a later date is agreed upon.

The Grievance Officer shall be responsible for assembling the Administrative Record and providing copies to the parties and the Hearing Officer.

The hearing will be audio recorded 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 Hearing 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.

NOTE: The Department prohibits the Human Resources Director, Employee Relations Manager, Grievance Officers and ADH Legal staff from participating in a grievance as a witness or in any other circumstance. The Grievance Officer acts as the coordinator for the grievance only. The ADH Legal staff may act as the Department's representative.

A party or the Hearing 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 Hearing Officer, the evidence shall become a part of the Administrative Record as an exhibit.

Within-three (3) business days of the conclusion of the hearing, the Hearing Officer shall issue a typewritten recommendation summarizing the hearing and explaining in detail the basis for their decision. The Hearing Officer shall provide a copy to the Department Secretary or their designee the Parties, and the Grievance Officer. The recommendation shall become a part of the Administrative Record.

The Department Secretary or their designee shall review the recommendation and issue a final decision within ten (10) business days.



Appeal to OPM

The Employee may appeal the Secretary's decision by requesting an Appeal Hearing. The Employee must file the OPM Grievance Appeal form with the Grievance Officer not 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.

Appeal Hearing

SEGAP will consist of three (3) state employees selected by OPM. No member of SEGAP will be an employee of the agency that is a Party to the grievance. One member shall be an attorney, licensed to practice law in Arkansas. The other two members shall be current state employees having knowledge in the area of employment law.

A Party may request that the SEGAP hearing be conducted on the record which means no Party will be allowed to present any testimony or additional evidence. If a Party objects to the matter being decided on the record, then an appeal hearing will occur.

The SEGAP hearing should be conducted within twenty-five (25) business days of OPM's notification of the appeal request. A SEGAP hearing will not be postponed or delayed unless a Party presents compelling circumstances justifying postponing.

A Party's failure to appear for an appeal hearing will result in a default decision in favor of the opposing Party, provided that the Party has not given notice of his or her non-appearance due to compelling circumstances.

A Party may be represented by an attorney or other representatives at the SEGAP hearing. Each Party shall be given one and a half (1 ½) hours to present their case. SEGAP has the discretion to grant additional time during the hearing.

Arkansas Rules of Evidence will be applied informally. A Party is allowed to present witnesses at the SEGAP hearing; however, their testimony is limited to new or clarifying information.

SEGAP's standard of review is whether the department followed its disciplinary policy.

In all cases before SEGAP, the department will proceed first. The Employee is then given the opportunity to refute, contradict, or discredit the state agency's case.

SEGAP hearings are audio recorded and a Party may request a copy of the recording.

The grievance may be terminated at any stage or the parties may reach an agreement. An employee shall not be subject to adverse action for using the dispute resolution procedures.



A Party may request within five (5) business days of receiving SEGAP's decision an appeal to the Secretary of the Department of Transformation and Shared Services (TSS) for a final decision. The opposing Party may file a response within five (5) business days of receipt of the appeal. A hearing will not be conducted and the TSS Secretary will only review the Administrative Record and appeal statements.

OPM will maintain a copy of all Administrative Records.

Whistle-Blower Hearing

An Employee who has been terminated may request a whistle-blower hearing if the Employee is alleging the termination is an adverse action for the Employee exercising one of the following protected activities under the Arkansas Whistle-blower law:

- (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 suspected 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;
- (c) Objecting or refusing to carry out a directive 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; or
- (d) Reporting a loss of public funds under Ark. Code Ann. § 25-1-124.

The Employee may request a hearing by submitting the appropriate filing documentation to the ADH Grievance Officer. Along with the filing documentation, the Employee must include evidence that they committed on one of the above protected activities prior to the termination. If the Employee fails to provide the evidence or provides insufficient evidence, OPM can deny the request for a hearing.

If the Employee provides sufficient evidence, OPM will schedule the hearing to be held within fifteen (15) business days of the request. The hearing will take place prior to any steps pursuant to the agency's internal procedures and will be conducted by SEGAP. If the Employee can show that a reasonable person would conclude that agency terminated the Employee as a result of the Employee's activities under the Whistle-Blower law, SEGAP will order that the Employee either be 1) reinstated to his or her position until the conclusion of the grievance; or 2) reinstated and placed on administrative leave until the conclusion of the grievance.

The Employee does not waive their right to file a claim under the Arkansas Whistle-blower Act as set out at Ark. Code Ann. § 21-1-603.

