

**1086 EMPLOYEE GRIEVANCE AND MEDIATION POLICY
(DISPUTE RESOLUTION RULES AND PROCEDURES)**

I. Purpose

- (A) The purpose of these rules and procedures is to establish a dispute resolution process pursuant to Arkansas Code Annotated § 21-1-701 *et. seq.* for the prompt review, impartial consideration, and equitable disposition of Department of Human Services (DHS) employee grievances.
- (B) 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.

II. Disclaimer

A technical error 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.

III. Eligibility for Grievance

- (A) Grievable Matters: An employee may only grieve a termination or suspension without pay taken pursuant to DHS Policies 1084 or 1087.
- (B) Participation in the dispute resolution process is limited to employees. For purposes of this policy, an “employee” is defined as a person regularly appointed or employed in a position of state service by DHS 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 DHS in accordance with the Uniform Classification and Compensation Act. An employee on new-hire probationary status, a temporary employee, an emergency hire, an independent contractor, or an extra-help employee 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 dispute resolution process. A supervisory employee is: (a) an individual with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of DHS; (b) an individual who has the responsibility to direct other employees of DHS by which he or she is employed; or (c) an individual whose exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature. For example, an attorney exercises independent judgment and thought, rather than following a manual or pre-determined formula, when providing his or her opinion. An individual who supervises the equivalent of one full-time Employee is not eligible to use the grievance process.

IV. Grievance Procedure

Initiation of Process

- (A) The employee has five (5) business days from the date of the disputed action to submit a DHS Form 2801, Dispute Resolution Form. 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.

- (B) The employee has a duty to update the Grievance Officer with any changes in contact information. Failure to respond to correspondence from the Grievance Officer in the time-frame established in the correspondence will result in the case being closed.
- (C) If an employee files multiple grievances, the Grievance Officer should combine the grievances into one (1) grievance unless doing so would be impractical.
- (D) A grievable matter in which a concurrent allegation of maltreatment has been made must be filed timely but will be held in abeyance pending a determination from the investigating agency. If the investigating agency does not issue a finding of maltreatment, or if a finding of maltreatment is overturned through the appeals process, the grievant must contact the Grievance Officer within five (5) business days of receiving such notice to request that the grievance be recommenced. However, if the investigating agency's finding of maltreatment is not appealed or is upheld on appeal and the employee's name is placed on a central registry, the grievance will be closed.

Although the two proceedings may share some or all of the same facts, a grievable matter is separate from a maltreatment investigation, and the standard for substantiating a maltreatment finding is different than the standard to support a personnel policy violation. The outcome of a maltreatment investigation has no bearing on a grievable matter involving some or all of the same facts and is not admissible for consideration in a grievance proceeding. If a termination is overturned during the grievance process, the grievant is not entitled to back pay for the time period the grievance was held in abeyance.

Determination of Grievable Matters

- (E) The Grievance Officer shall determine whether the complaint is grievable or eligible for mediation. If a matter is determined to be nongrievable, the employee will be notified in writing. If the employee disagrees with the determination, the employee can appeal to the Office of Personnel Management at the Department of Transformation and Shared Services for a final determination of grievability. The employee must submit the appeal to the Grievance Officer within five (5) business days of receipt of the determination that the complaint is nongrievable.

Mediation

- (F) An employee may request mediation on the DHS Form 2801 if the complaint concerns any matter determined to be grievable.
- (G) If the matter is determined to be eligible for mediation and the supervisor or manager also consent to mediation, then mediation shall be held within ten (10) business days of both parties agreeing to mediate. The Office of Personnel Management 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 Office of

Chief Counsel (OCC) before consenting to mediation in order to ensure that mediation is appropriate.

- (H) A party may be represented by an attorney or other representative at the mediation. The grievant must inform the Grievance Officer of the representative a minimum of five (5) business days before the scheduled mediation. The Grievance Officer will notify the charged party and OCC.
- (I) The mediation shall be confidential, but the Settlement or Non-Settlement Agreement shall be signed by the parties and become part of the Administrative Record.
- (J) If the parties reach a settlement during mediation, the dispute resolution process is resolved. If the parties do not reach a settlement during mediation, the employee has three (3) business days from the date of the mediation to request an administrative review hearing if the employee wishes to continue the dispute resolution process.

Grievance

- (K) Within ten (10) business days of receiving a grievant's request for a hearing, the Grievance Officer will contact the Director of the grievant's Division or Office to schedule the hearing. A Hearing Officer designated by the Division Director, Office Chief, or designee, shall conduct the hearing. All charged parties and witnesses employed by DHS must attend the hearing.
- (L) The Grievance Officer shall be responsible for assembling the Administrative Record and providing copies to the parties and the Hearing Officer.
- (M) Only persons with knowledge of matters relevant to the grievance may testify at the hearing. The Grievance Officer is responsible for notifying any witnesses employed by DHS. The parties are responsible for notifying any of their witnesses not employed by DHS. The Hearing Officer may also request to hear testimony from persons with knowledge of matters relevant to the grievance that are not already testifying. Grievance Officers and DHS attorneys will not be called as witnesses unless they are charged parties or have direct knowledge of the acts that gave rise to the grievance.
- (N) The hearing will be conducted in an informal manner. The Arkansas Rules of Evidence do not apply, but all evidence and testimony must be relevant. The Hearing Officer will have the discretion to exclude testimony or evidence if it is privileged, cumulative, or irrelevant. Any party or the Hearing Officer may exclude non-party witnesses from the hearing room until they testify. The hearing shall be recorded.
- (O) 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.
- (P) After opening statements, each side will present its case. The charged party will present 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.

- (Q) A grievance involving a suspension without pay will be limited to four (4) hours, divided equally between the parties. A party's cross-examination of witnesses will count against its time limit

Notification of Decision

- (R) 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 Grievance Officer. The Hearing Officer shall submit the recommendation to the Grievance Officer who will promptly submit the recommendation to the DHS Secretary. The recommendation shall become part of the Administrative Record.
- (S) The DHS Secretary 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 DHS Secretary or designee can return the recommendation to the hearing officer with instructions to submit a corrected recommendation. The DHS Secretary or designee will then have five (5) business days upon receiving the corrected recommendation to review the recommendation and issue a final decision. The Grievance Officer will then distribute the final decision to the parties and their representatives.
- (T) When a matter is decided in favor of the grievant, the charged party or management official and the Division HR 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, the person responsible for taking this action will prepare a confidential memorandum to the Office of Human Resources, Personnel Section, requesting that the documentation be removed. The Division Director or Office Chief must approve the memorandum before it is sent to the Office of HR. The memorandum must include specific instructions that the original copies of the removed documents be sent to the Office of Employee Relations, which will retain the documents.

V. Appeal

If a grievant is not satisfied with the decision reached by the DHS Secretary, he or she may appeal the decision using DHS Form 2802, Dispute Resolution Appeal. Employees wanting more information about the deadlines for submitting appeals and the post-internal dispute resolution process should refer to the State of Arkansas Grievance Policy and Procedure.