



***State of North Carolina
Department of Public Safety
Prisons***

Chapter: G Section: .0300 Title:
Administrative Remedy

Procedure

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POLICY & PROCEDURES

.0301 PURPOSE

- (a) The policy of the North Carolina Department of Public Safety is to provide inmates an opportunity for administrative settlement of legitimate grievances. Most grievances can be resolved quickly through informal communication with responsible authorities at the facility in which the problem arose. An inmate should be encouraged to use this method prior to the initiation of a formal grievance. When this method is not possible, the Department of Public Safety seeks to reduce tension and provide a stable atmosphere by providing formal channels of communication of grievances.
- (b) A grievance is a written complaint by an inmate on the inmate's own behalf concerning an action, incident, policy, or condition within the facility or within Prisons as a whole.
- (c) The Administrative Remedy Procedure shall afford a successful grievant a meaningful remedy to include but not be limited to, an order requiring that specific action be taken, modification of Prisons policy, restoration or restitution for personal property, and such other remedies that will meaningfully resolve the grievance presented.
- (d) Employees who intentionally obstruct the grievance process shall be subject to disciplinary action.

.0302 ACCESSIBILITY

(a) Communication of the Procedure:

- (1) A standard written notification of the Administrative Remedy Procedure shall be given to each inmate as a part of orientation at the Diagnostic Center. This notification shall instruct the inmate as to how and where to obtain a grievance Form DC-410. The notification shall also be available at each facility within Prisons. In addition, as a part of orientation at the Diagnostic Center, each inmate shall have an oral explanation of the procedure and shall have the opportunity to ask questions regarding this procedure.
- (2) Any inmate who is incapable of understanding this procedure or completing the grievance form may request assistance. Requested assistance will be provided by staff designated by the Facility Head.

(3) Inmates may obtain assistance in completing their grievances from other inmates where classification and housing assignments permit.

(4) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates shall be permitted to assist inmates in submitting a grievance relating to allegations of sexual abuse and shall be permitted to submit such a grievance on behalf of an inmate. If a third party submits a grievance on behalf of an inmate, the facility may require, as a condition of processing the grievance, that the alleged victim agree to have the grievance submitted on his or her behalf and also may require the alleged victim personally to pursue any subsequent steps in the grievance process. If the inmate declines to have the grievance processed on his or her behalf, the facility shall document the inmate's decision.

(A) If the inmate declines to have the grievance processed on his or her behalf, the facility shall document the inmate's decision.

(b) Availability of the Procedure:

(1) A copy of the Administrative Remedy Procedure shall be readily available to all inmates and staff for their information and reviews. It shall be posted in conspicuous locations throughout the facility and shall be kept current in all libraries.

(2) The procedure shall be available to all inmates, regardless of any disciplinary, classification or other administrative decisions affecting the inmate.

.0303 REPRISALS

(a) No reprisals shall be taken against any inmate or staff member for a good faith use of or participation in the grievance procedure. The prohibition against reprisals should not be construed to prohibit discipline of inmates who do not use the system in good faith, in accordance with Section .0306 (c)(5) herein.

False Reporting: Inmates will be held accountable for knowingly making false reports of unfounded incidents of sexual abuse against staff or another inmate. If it is clearly established that a false accusation has been made, the inmate may be subject to disciplinary action.

(b) If an inmate believes that a reprisal has occurred, a grievance describing the reprisal action may be submitted or the inmate may submit written comments to the Secretary of Public Safety.

(c) If a staff member believes that a reprisal has occurred as a result of the employee's participation in or assistance with the grievance procedure, a written complaint stating the

nature of the reprisal taken against the employee may be filed with the chain of command.

.0304 SUBMISSION OF GRIEVANCES

(a) Any inmate in the custody of the Department of Public Safety may submit a written grievance on Form DC-410.

(b) An inmate may submit a new grievance after a pending grievance has completed Step 2 review or has been resolved.

(c) If more than one inmate submits a grievance concerning the application of general policies or practices, or acts arising out of the same incident, these grievances will be processed as a group. Each grievance shall be logged in individually; however, the same response will be provided to each grievant.

(d) If a grievance complains about sexual abuse or harassment of an inmate(s), immediate notification shall be made to the Department of Public Safety's PREA office.

(e) Grievances of an emergency nature will be handled in accordance with Section .0308 herein.

.0305 SCREENING OFFICER

Facility Heads will appoint one or more screening officers to review grievances and decide whether they should be accepted or rejected under the criteria set forth in Sections .0304 and .0306 herein. Facility Heads may designate screening officers or screen grievances themselves. The appointment of fair and knowledgeable screening officers will insure compliance with the grievance procedure and facilitate mediation of grievances at the facility level. No employee who appears to be involved in a grievance shall participate in any capacity in the resolution process, except as a witness where necessary. In addition, no employee who appears to be involved in an inmate sexual abuse or harassment allegation shall accept a grievance which suggests such personal involvement or shall participate in any capacity in the response to the grievance.

.0306 REJECTION OF GRIEVANCES

(a) No inmate grievance alleging sexual abuse or harassment shall be rejected.

(b) With the exception of inmate sexual abuse or harassment grievances, any grievance submitted shall be rejected at any level if it:

(1) Seeks to challenge matters already decided by a State or Federal court;

(2) Challenges a Parole Commission decision;

(3) Challenges a disciplinary action; or

(4) Challenges matters beyond the control of the Department.

(c) In accordance with Section .0310, a grievance may be rejected at any level if:

(1) The grievance concerns an action not yet taken or a decision which has not been made.

(2) There has been a time lapse of more than ninety (90) days between the alleged event and submission of the grievance. Under Subsection .0306 herein above, this does NOT apply to a grievance alleging sexual abuse or harassment.

(3) The inmate has requested a remedy for another inmate, except in case of an allegation of sexual abuse or harassment.

(4) The inmate has requested a remedy for more than one incident (see Section .0304).

(5) The inmate's grievance directs toward any person language that is generally considered profane, vulgar, abusive, contemptuous, or threatening. Inmates who violate this rule may be subject to disciplinary action. The grievance may be resubmitted for processing after objectionable language has been eliminated.

(6) Rules and procedures established herein have not been followed.

.0307 TIME LIMITS

(a) From filing to final disposition, all grievances shall be processed within ninety (90) days. For purpose of counting days under the grievance procedure, all references to days shall be interpreted to mean calendar days. The 90 day period commences the day after the grievance has been accepted.

(b) Within three days after submission of the grievance, the inmate who submits the grievance will be notified of acceptance or rejection in writing upon the appropriate form.

(c) If, at any step of the procedure, a response is not made within the prescribed time limits, the grievance will be forwarded to the next step for review.

(d) At each procedural level or step an appeal shall be requested within twenty-four (24) hours of receipt of written denial or the right to appeal shall be waived. The person to whom the appeal is directed has the discretion to accept a late appeal in the event of extenuating circumstances. The twenty-four hours shall be counted as day one of the next level in the appeal process.

(e) Persons responsible for transmitting grievances shall utilize the quickest means of transmittal available. The postal service and the state courier shall be used in appropriate cases.

(f) At each step of grievance review (see Section .0310), the time limits are as follows:

(1) At Step 1, formal written response to the inmate shall be made within fifteen (15) days from the date of acceptance of the grievance.

(A) For inmate sexual abuse or harassment grievances, the following response shall be provided: Your grievance has been identified as an allegation of inmate sexual abuse or harassment. Your grievance has been forwarded to the Facility Head for appropriate action according to the Prison Rape Elimination Act of 2003 and the Division for Adult Correction, Prisons, Inmate Sexual Abuse and Sexual Harassment Policy, Chapter F, Section .3400.

(B) For grievances submitted related to “disability,” “ADA,” and/or “accommodation,” the response process should indicate in writing that the inmate was given a Form DC-746, Inmate Request for Accommodation. This includes any grievance that may be rejected because the inmate has requested a remedy for more than one event. Notice of rejection shall not be returned to the inmate unless the form also states that the inmate was provided with a DC-746.

(2) At Step 2, formal written response to the inmate shall be made within twenty (20) days from the date of request for Step 2 review.

(3) At Step 3, the Inmate Grievance Examiner (IGE) shall forward the decision to the Secretary of Public Safety within twenty (20) days from the date of the inmate's appeal. Within twenty days from the date of transmittal of the DC-410 from the IGE, the Director of Prisons shall forward a written response to the Secretary of Public Safety.

(4) The final decision of the Secretary of Public Safety must be delivered to the inmate within thirty (30) days of the transmittal of the decision from the IGE.

(5) If at any level of the administrative remedy process, including the final level, the inmate does not receive a response within the time provided for reply, including any properly noticed extension, the absence of a response shall be a denial at that level which the inmate may appeal, but the 24 hours time limit to request an appeal does not begin until the inmate receives a written denial.

(6) Prisons may grant an extension of time to respond for up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The

agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(g) Nothing in this Section shall waive or in any way restrict the right or ability of the Division of Adult Correction or Department of Public Safety to assert a statute of limitations defense in a lawsuit brought by an inmate.

.0308 EMERGENCY GRIEVANCES

(a) Emergency grievances shall be defined as matters which present a substantial risk of physical injury or other serious and irreparable harm to the grievant if regular time limits are followed. Emergency grievances shall be forwarded immediately, without substantive review, to the Facility Head, or to the level at which corrective action can be taken.

(b) Any inmate who is in need of urgent medical care may present himself to a member of the medical or custodial staff, who shall handle the matter according to emergency health care procedures set out in the Health Care Manual. If an inmate fears for his personal safety, he may contact the officer-in-charge or any other custodial official. Any request for protective custody will be handled in accordance with Prisons policy.

(c) Matters relating to administrative transfers, time computations, disputes, and family illness or death are not to be treated as emergencies for purposes of this procedure, but shall be handled expeditiously and compassionately by the Facility Head or designee where appropriate.

(d) For emergency situations other than medical or protective custody, an inmate may submit the grievance directly to the screening officer or the officer-in-charge, who shall forward the grievance to the level at which corrective action may be taken. The request shall be handled as expeditiously as possible, and shall be reviewed by the appropriate Region Director.

(e) If an emergency grievance alleges an inmate is subject to a substantial risk for imminent sexual abuse, the facility shall:

(1) immediately forward the grievance (or any portion thereof that alleges such substantial risk) to a level of review at which immediate corrective action can be taken,

(2) provide an initial response within 48 hours, and

(3) issue a final agency decision within 5 calendar days.

The initial response and final agency decision shall document the agency's determination that the inmate is at substantial risk of imminent sexual abuse ~~about~~ and the action taken in response to the emergency grievance.

.0309 CONFIDENTIAL GRIEVANCES

If an inmate believes that a grievance is a confidential nature, his grievance may be submitted directly with the Director of Prisons and mailed as legal mail. The inmate must clearly explain the nature of the complaint and the reasons for not following the regular grievance procedure. If the Director determines that the grievance is not of a confidential nature, the grievance shall be returned to the inmate with instructions to submit it in accordance with the procedure set forth in Section .0310. If the Director determines that the grievance is in fact confidential in nature, the Director shall order any necessary investigation. If the investigation indicates action should be taken, the Director shall cause the appropriate action to be taken to resolve the grievance.

.0310 GRIEVANCE REVIEW PROCEDURE

(a) Step 1 Review.

(1) Any aggrieved inmate may submit a written grievance on Form DC-410.

(2) Upon completion of the form, the inmate may submit it to the Facility Head, designated screening officer, or any other staff member. Grievances may be transmitted by mail or hand delivery.

(3) An inmate who seeks to submit a grievance on general policies or practices may solicit comments on the matter from other inmates. Such solicitation for inmate comment will be permitted provided it does not interfere with the security and orderly operation of the facility. Such comments must be submitted with the grievance when it is submitted.

(4) The screening officer shall review the grievance and decide whether it should be accepted, rejected, or returned under the criteria set forth in this policy. This screening shall be completed within three (3) days of the submitting the grievance. NOTE: If the grievance is related to inmate sexual abuse or harassment, move forward to Step 2 review.

(5) If the screening officer determines that the complaint can be considered under the procedure, the officer may forward it to the staff member whom the officer believes can best provide information or relief. No employee who appears to be involved in an inmate sexual abuse or harassment allegation shall participate in any capacity in ~~to~~ the response. The staff member will prepare a written response along with supporting documentation if any. The response will be returned to the screening officer. The screening officer or designated staff member will meet with the inmate to explain the response and attempt to resolve the grievance. After the screening officer meets with the inmate, the officer shall report to the Facility Head or designee. The Facility Head or designee will complete the formal response to the inmate within fifteen (15) days from the date of acceptance of the grievance.

(6) If the inmate submits a grievance in violation of Section .0304(b), the screening officer may return the grievance to the inmate with written notification on the DC-410 that it may be resubmitted when the current grievance in process completes Step 2.

(7) If the screening officer rejects the grievance under Section .0306, the inmate will be informed of the rejection reason in writing on the DC-410. A copy of all rejected grievances will be reviewed, initialed, and retained by the Facility Head. The Facility Head may determine that the grievance should be accepted. If so, the inmate will be notified in writing and provided the opportunity to resubmit the grievance on a new DC-410, in accordance with Section .0310. If the inmate declines this opportunity, this fact shall be noted on the Facility Head's retained copy of the original rejected DC-410.

(b) Step 2 Review

(1) If the inmate is not satisfied with the Step 1 decision he or she may request relief from the Facility Head. This appeal must be made in writing on form DC-410 within twenty-four (24) hours of notification of the Step 1 decision and submitted to the Facility Head, designee, or screening officer upon notification and explanation of the decision reached at Step 1. The completed Form DC-410 shall be submitted to the Facility Head.

(2) The Facility Head may investigate the grievance or may assign a staff member to investigate it. If an investigator is assigned, the investigator shall accumulate records gathered at Step 1 and complete the investigation within fifteen (15) days after assignment by the Facility Head. The investigator, if one is used, shall submit the findings in writing with relevant records to the Facility Head. NOTE: All inmate sexual abuse or harassment related grievances must be investigated ~~ion~~ by a specially trained PREA investigator. Investigation must be completed within thirty (30) days.

(3) After completing the investigation or after receiving the report of the investigator, the Facility Head shall complete Form DC-410 indicating the decision and reasons for the decision. All relevant records gathered at Step 1 and Step 2 shall be maintained and filed. The Facility Head shall complete the written response and assure that it is delivered to the inmate within twenty (20) days from the date of request for Step 2 review. The Facility Head may explain the decision to the inmate in an attempt to resolve the grievance. If necessary, another appropriate person such as a screening officer or the Facility Head, may be designated to perform this function.

(4) If the grievance complains of action or inaction by the Facility Head, the grievance will be forwarded to the Region Director for completion of the Step 2 review.

(c) Step 3 Review.

(1) If the inmate is not satisfied with the Step 2 decision he or she may appeal to the Secretary of Public Safety through the Inmate Grievance Examiner (IGE). This appeal must be made in writing on form DC-410 within twenty-four (24) hours of notification of the Step 2 decision. If the inmate appeals, the facility screening officer shall immediately forward the completed Form DC-410 to the Executive Director of the Grievance Resolution Board by U.S. Postal Service mail.

(2) The Executive Director of the Grievance Resolution Board or designee will sign the form and indicate the date of receipt. The Executive Director or Inmate Grievance Examiner shall review all grievances that are assigned to them. This review shall be limited to matters brought forward in the grievance and the Department's responses.

(3) In reviewing a grievance, the IGE may conduct an independent investigation, but the investigation will be limited to specific issues brought forward in the grievance. The IGE may rely on any investigations already completed. In investigating the grievance, the IGE shall attempt to resolve the grievance through mediation. The IGE shall have access to inmates and staff at facilities and may review records relevant to the grievance.

(4) The IGE will order such relief as is appropriate or deny the grievance. The IGE shall forward any order for relief on Form DC-410 to the Secretary of Public Safety within twenty (20) days from the date of the inmate's appeal from Step 2. Simultaneously, a copy of the form DC-410 reflecting the decision shall be forwarded to the Director of Prisons.

(5) The Director of Prisons or designee shall review the grievance and may make comments to the Secretary of Public Safety. The Director of Prisons' comments will be forwarded to the Secretary of Public Safety within twenty (20) days from the date of transmittal of Form DC-410 from the Inmate Grievance Examiner. The Secretary of Public Safety shall review the Director of Prisons' comments and then approve the decision of the IGE or make written findings that the relief ordered is not appropriate. If it is determined that the relief ordered is not appropriate, a written explanation for the findings must be given and an alternative order for relief must be made. The Secretary of Public Safety's final decision will be delivered to the inmate by the IGE, with a copy to the Director of Prisons, within thirty (30) days of transmittal of the decision from the IGE.

(6) The decision by the IGE or a modification by the Secretary of Public Safety shall constitute the final step of the Administrative Remedy Procedure.

(d) If at any step of the procedure, the inmate refuses to sign the DC-410 indicating his/her desire to appeal, the DC-410 will automatically be forwarded to the next step in the Administrative Remedy Procedure.

.0311 TRANSFERS DURING GRIEVANCE PROCESS

(a) If an inmate who has submitted a grievance is transferred to another Prisons facility while his grievance is being considered at Step 1, the Facility Head at the sending facility will assure that Step 1 review is completed and will then forward the grievance to the Facility Head at the receiving facility for further processing.

(b) If an inmate is transferred during the period of Step 2 review, the Facility Head at the sending facility will assure that when review is completed the grievance is immediately sent to the Facility Head at the receiving facility for further processing.

(c) If an inmate who has submitted a grievance is no longer in the custody of Prisons or is otherwise unavailable, the reviewing authority shall complete review at the current step. Processing shall then be considered complete and the Form DC-410 will be distributed appropriately. Grievances not fully processed due to the unavailability of the inmate may be resubmitted upon the inmate's becoming available again.

(d) If an inmate who has submitted a grievance related to sexual abuse or harassment is no longer at the facility or in custody, the investigation into the allegations shall continue as per policy.

.0312 RECORD MAINTENANCE AND CONFIDENTIALITY

(a) Records regarding the submitting and disposition of grievances shall be collected and maintained systematically by the facility. Copies of all submitted grievances shall be maintained by the facility for a minimum of five (5) years after final disposition. Summaries of grievances appealed to Step 3 shall be submitted quarterly to the Grievance Resolution Board by the Executive Director.

(b) No copies of grievances shall be placed in an inmate's Combined Records or Facility Field jackets.

(c) Employees of the Department of Public Safety and the Inmate Grievance Examiner who participate in the disposition of grievances shall have access to all relevant records of the Department of Public Safety.

(d) An inmate may receive only the Step 1, 2, and 3 official responses to his or her grievance. All other prison files and records gathered to investigate and respond to an inmate grievance are confidential, may be accessed by persons described in Subsection (c) above, and will not be released to inmates or any other unauthorized persons. No authorized person under Subsection (c) may discuss any confidential information with inmates or unauthorized persons.

.0313 GRIEVANCE RESOLUTION BOARD

(a) Appointment. The Governor shall appoint a Grievance Resolution Board to assist in implementation of this procedure. The Board shall consist of five (5) members who will serve terms of four years. Three (3) members of the Board shall be attorneys selected from a list of ten (10) persons recommended by the Council of the North Carolina State Bar. The two (2) remaining members shall be knowledgeable and experienced in one or more fields under the jurisdiction of the Secretary of Public Safety.

(b) Duties. After consultation with the Secretary of Public, the Board shall appoint an Executive Director and Grievance Examiners who serve at its pleasure. The Board shall review the Administrative Remedy Procedure, meet at least quarterly, and perform those functions assigned to it by the Governor. In addition, the Secretary of Public Safety may request that the Board investigate matters involving broad policy concerns and hold fact-finding hearings to consider the matters presented for investigation. In no event shall such a request by the Secretary of Public result in a delay of the resolution of an inmate's grievance within the ninety (90) days provided by Section .0307.

(c) Procedure Review. The Board shall evaluate the Administrative Remedy Procedure at least quarterly. The Board shall accept comments on the grievance procedure from staff and inmates.

(d) These comments should include perceptions regarding the effectiveness and credibility of the procedure. All evaluations of the procedure shall be reviewed by the Secretary of Public Safety.

 8/01/13
Director of Prisons Date