



# Virginia Department of Corrections

## Human Resources

### Operating Procedure 145.4

#### *Employee Grievances*

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Incarcerated Offender

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### **REVIEW**

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

### **COMPLIANCE**

This operating procedure applies to all units operated by the Virginia Department of Corrections. Practices and procedures must comply with applicable State and Federal laws and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

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## DEFINITIONS

**Advocates** - Parties may be represented by legal counsel, another individual of choice, or themselves. The advocate, or the party without an advocate, may examine or cross-examine witnesses and present evidence.

**Correctional Officer Procedural Guarantee Act** - A Virginia law that provides eligible Corrections Officers of all ranks, who may be or have been transferred, suspended without pay, demoted, or dismissed for unacceptable behaviors, with a process for a review of the disciplinary action; COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act*

**Cross-Examination** - Questioning by the opposing party to test the truth or further develop the prior testimony of a witness

**Discrimination** - Any policy or action taken that results in an unfair disadvantage to either an individual or group of individuals who are considered part of a protected class related to race, sex (including sexual harassment, pregnancy, and marital status), color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities

**Dismissal** - termination due to formal discipline or unsatisfactory job performance

**Eligible Corrections Officer** - Duly sworn, non-probationary, VALORS eligible, uniformed DOC security staff of all ranks (Corrections Officer through Lieutenant Colonel) are eligible under COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act* for review of a disciplinary action that may result in transfer, suspension without pay, demotion, or termination.

**Expedited Process** - A shortened process available for grievances challenging a demotion, suspension without pay, separation not considered a “dismissal,” or other action that results in an actual loss of wages; there is only one management resolution step (Step 2) in the expedited process.

**Final Hearing Decision** - A hearing decision with no further possibility of administrative review that is subject to judicial review

**First-Step Respondent** - The immediate supervisor of the employee; for Corrections Officers in institutions, Community Correctional Alternative Programs, the first step respondents will be the Lieutenants

**Grievance** - An official written statement of a complaint on the *Grievance Form A* stating the management actions and omissions being challenged, the facts in support of the claim, and the relief requested.

**Grievance Hearing Implementation** - An order issued by the court directing a party to carry out a final hearing decision

**Immediate Supervisor** - The person who conducts the performance evaluation of the employee (the first management resolution step for grievances)

**Just Cause** - A reason sufficiently compelling to excuse not taking a required action in the grievance process

**Mediation** - Voluntary process through which individuals, with the assistance of mediators, may reach an agreement to resolve work-related issues

**Non-Compliance** - Failure to follow a *Grievance Procedure* rule

**Organizational Unit Head** - The person occupying the highest position in a DOC unit, such as a correctional facility, regional office, probation and parole office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, and individual headquarters unit e.g., Human Resources, Offender Management, Internal Audit

**Party** - The employee who initiates the grievance or their employing agency

**Procedural Requirements** - Formal procedures deemed essential to ensure fairness in the grievance process

**Retaliation** - Adverse employment actions taken by management or condoned by management for participating in the grievance process, complying with any law or reporting a violation of such law to a governmental authority, seeking to change any law before Congress or the General Assembly, reporting an incidence of fraud, abuse, or gross mismanagement, or exercising any right otherwise protected by law

**Second-Step Respondent** - The Organizational Unit Head for regular grievances and for expedited grievances

**Third-Step Respondent** - Senior Management in the employee's line-of-supervision who has the last

opportunity to resolve the grievance in the resolution steps

**Verbatim** - Taken word by word, but not necessarily transcribed

**Witness** - A person who has or may have evidence/information pertinent to a complaint

**Workday** - Normal work schedule (excluding authorized leave time) for the individual responsible for taking the required action

**Written Notice** - Formal written disciplinary action taken under the *Standards of Conduct*.

## PURPOSE

This operating procedure establishes guidance for the resolution of workplace problems and complaints in a timely and fair method when disputes cannot be informally resolved. This operating procedure addresses compliance and proper application of the Commonwealth of Virginia's *Employee Grievance Procedure* and COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act*, within the Department of Corrections (DOC).

## PROCEDURE

- I. Applicability
  - A. All non-probationary, classified Department of Corrections (DOC) employees and all non-probationary Virginia Correctional Enterprises (VCE) employees have access to the *Employee Grievance Procedure*. (4-ACRS-7E-01; 2-CI-6C-4, 2-CI-6D-1; 2-CO-1C-02)
  - B. In accordance with COV §2.2-3001, *State Employees*, and COV §2.2-3002, *Exemptions from chapter*, probationary employees and any other employee exempted from the Virginia Personnel Act under COV §2.2-2905, *Certain officers and employees exempt from chapter* are excluded from the *Employee Grievance Procedure*.
  - C. After any management action or inaction, including but not limited to demotion and termination, employees have the right to request and exhaust the grievance and appeal process as outlined in this operating procedure which will include an open and formal hearing, prior to personnel actions becoming final and irreversible, in accordance with state/federal laws or regulations to ensure fairness. (4-APPFS-3E-15; 2-CI-6C-4)
  - D. Eligible Corrections Officers are also entitled to procedural guarantees in accordance with the COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act*, when issued a *Written Notice* with transfer, suspension without pay, demotion, or termination.
    1. Eligible Corrections Officers must address their complaint through either the *Correctional Officers Procedural Guarantee Act* hearing process or the *State Employee Grievance Procedure*; they cannot initiate both for the same the complaint.
    2. Refer to the *Correctional Officers Procedural Guarantee Act* section of this operating procedure.
- II. Information and Access to the Employee Grievance Procedure
  - A. The DOC Human Resources Office provides liaison between the DOC and the Office of Employment and Dispute Resolution (EDR), Department of Human Resource Management (DHRM), relating to interpretations made by the EDR and will provide information concerning the *Grievance Procedure* to employees and supervisors.
    1. New employees will be given a copy of the *Employee Grievance Procedure* during orientation and will be provided the opportunity to ask questions; see Operating Procedure 102.6, *Staff Orientation*.
    2. A copy of the *Employee Grievance Procedure* should be posted on employee bulletin boards.
    3. Copies of the *Employee Grievance Procedure* and grievance forms will be made available to employees through the onsite Human Resources Office or contact, the [Virtual Library](#), and the [EDR website](#).
  - B. The Director of Human Resources will designate an employee to serve as the DOC Employee Grievance Coordinator in the Office of Human Resources at Headquarters.
  - C. The unit Human Resource Officer will serve as the unit Employee Grievance Coordinator for their designated unit to coordinate the record keeping and processing of employee grievances.
  - D. Employees may call EDR's advice line at (888) 232-3842 for additional information regarding the *Employee Grievance Procedure*, a confidential consultation on employment rights and responsibilities,

and options for resolving workplace conflict.

- E. This operating procedure serves as a guide to the *Employee Grievance Procedure* and the process for submitting employee grievances and appeals.
  - 1. Employees will be referred to the Office of EDR's [Grievance Procedure Manual](#) for specific details and official guidance.
  - 2. All provisions of the *Grievance Procedure Manual* and other EDR guidance will be followed and will have authority when in conflict with this operating procedure.

### III. Overview of Grievance Process

- A. Informal discussion between employee and supervisor (recommended but not required)
- B. Employee submittal of written grievance
- C. Management Resolution Steps
  - 1. First Resolution Step
  - 2. Second Resolution Step
  - 3. Third Resolution Step
- D. Qualification for Hearing
- E. Hearing
- F. Review of Hearing decisions

### IV. Alternatives to the Employee Grievance Procedure

- A. An Employee Ombudsmen may be available to assist with employee problems. Mediation is a voluntary process administered by the Office of EDR through which neutral third persons (mediators) assist people in conflict to explore their differences and develop their own solutions to their concerns.
  - 1. A decision to mediate a dispute does not prevent an employee from initiating a grievance later.
  - 2. Where the parties have entered into an agreement to mediate, the time requirements of the *Employee Grievance Procedure* may be extended by mutual written agreement.
- B. The Governor's [Executive Order 1 \(2018\), Equal Opportunity](#), which prohibits discrimination against state government employees and applicants for state government employment, is enforced through the Office of Equity, Diversity, and Inclusion (EDI) with DHRM.
  - 1. An employee may not simultaneously use the grievance process and file a formal complaint of discrimination through the Office of EDI to address the same work-related action.
  - 2. If employees initiate a grievance based on one of the forms of discrimination covered by DHRM Policy 2.05, *Equal Employment Opportunity*, or the Governor's Executive Order prohibiting discrimination, the employee may conclude the grievance and initiate a complaint or register a concern, respectively, with DHRM through the Office of EDI under the following conditions:
    - a. The grievance must be concluded by the employee prior to the employee's response to the DOC Director's qualification decision, and
    - b. The complaint filed with DHRM or concern must be initiated within 180 days of the alleged act of discrimination.
  - 3. An employee who has timely filed a complaint or registered a concern with DHRM may request that the complaint be withdrawn and initiate a grievance regarding the action under the following conditions:
    - a. The employee must request to withdraw the formal complaint prior to a final decision being issued by DHRM, and

- b. The grievance must be initiated within 30 calendar days of the challenged action(s).
  4. Once an employee has switched from one process to the other, the employee may not revert to the original process.
  5. The use of either procedure does not preclude an individual from utilizing any available federal government resolution process; see Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*, for further guidance.
- C. The DOC will use the *Employee Grievance Procedure* developed by the EDR to ensure that employees have an effective procedure for grievances to be reviewed fairly and objectively.
1. *Open-Door Policy* - The DOC encourages the resolution of employee problems and complaints through a free and open discussion of employee concerns with immediate supervisors and upper management levels. The *Employee Grievance Procedure* is available to afford an immediate and fair method for the resolution of disputes that cannot be resolved informally.
  2. *Informal Discussion* - Prior to the initiation of a grievance, the employee should consider discussing the issues with their supervisor in an attempt to resolve the problem informally.
  3. *Documentation Relating to a Grievance* - The *Employee Grievance Procedure* confers certain rights and responsibilities on both parties to request and provide documentation and information related to a grievance; see Operating Procedure 102.7, *Employee Records*, and DHRM Policy 6.05, *Personnel Records Disclosure*. Generally, documents must be provided within five workdays if available; refer to the *Grievance Procedure Manual* for details.
  4. *Respondent* - No respondent in the resolution steps of the *Employee Grievance Procedure* has the authority to reverse a decision they did not have the authority to make without consulting and reaching an agreement with the person(s) who made the decision. All formal settlement agreements must be coordinated with the DOC Employee Grievance Coordinator.

## V. Grievance Submission and Resolution Steps

### A. Time Limits

1. All grievances must be initiated within 30 calendar days of the date the employee knew, or should have known, of the management action or inaction challenged. If the 30th calendar day by which a grievance must be filed falls on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state office where the grievance is to be filed is closed during normal business hours, the grievance may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state office is closed.
2. Attempts to resolve disputes informally do not extend the 30-day calendar time period.
3. The 30 calendar day period can only be extended when supervisor or manager and the employee grievant agree, in writing, to waive it or extend it.
4. Five of the respondent's workdays are allowed to advance, meet, and respond to the grievance throughout the resolution steps.

### B. Resolution Steps - Initiating a Grievance

#### 1. Grievance Submission

- a. The employee must present a written [\*Grievance Form A\*](#) to the First-Step Respondent; see Attachment 1, *Designated Steps in the Grievance Procedure*, within 30 calendar days of the date the employee knew, or should have known, of the management action or inaction that formed the basis of the complaint.
  - i. A grievance alleging discrimination or retaliation by the immediate supervisor may be initiated with the next level supervisor.
  - ii. A grievance challenging a selection process (hiring) may be initiated with the appointing authority or appropriate member of management who made the selection decision. If so



- initiated, the grievance will then proceed through the remaining grievance steps, to the extent applicable, in that member of management's reporting line.
- iii. Electronic means e.g., facsimile and/or e-mail, including scanned materials, may be utilized by all parties to transmit grievance materials.
2. An "expedited process" is available for a grievance involving a demotion, suspension without pay, separation not considered a dismissal, or loss of wages.
    - a. An expedited process may be initiated with the second-step respondent. Immediately following the response issued after the second-step meeting, a request may be made to the Director that the grievance be qualified for a hearing, see [Grievance Form A - Expedited Process](#).
    - b. The expedited process can be used in any grievance if both parties agree.
  3. A grievance involving a dismissal will proceed directly to a formal hearing, omitting the management resolutions steps and the Director's qualification determination. Dismissal grievances will be initiated directly with EDR by submitting a fully completed [Grievance Form A - Dismissal Grievance](#).
  4. Employees who are terminated on the grounds of offender abuse, a criminal conviction, or as a result of being placed on probation under the provisions of [COV §18.2-251, Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge](#), may appeal their termination only through the DHRM applicable grievance procedure.
    - a. The DHRM grievance procedure does not include successive grievance steps or the formal hearing provided in [COV §2.2-3005, Hearings officers; duties](#).
    - b. If no resolution is reached, the employee may advance the grievance to the Circuit Court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits of the termination; see [COV §2.2-3007, Certain employees of the Departments of Corrections and Juvenile Justice](#) for further guidance.
  5. A grievance challenging the application of the layoff or recall procedure should be initiated with the DOC Human Resources Office. If the grievance involves a direct pay loss, the employee may use the expedited process and initiate the grievance with the second-step respondent.
  6. The written grievance should state the nature of the complaint, the facts in support of the claim, and the relief requested.
    - a. Once the grievance is presented in writing, additional claims may not be added to the grievance.
    - b. To challenge a new management action or inaction occurring after the initiation of a grievance, an employee would need to file a new grievance.
  7. In grievances involving formal discipline (*Written Notices*) issued by someone other than the employee's immediate supervisor, the employee may initiate the grievance with the person who issued the discipline.

#### C. First Resolution Step

1. The first-step respondent must accept the grievance, enter the date received, and report the grievance to the Human Resource Officer.
2. Upon rendering a first resolution step reply, respondents will return the *Grievance Form A* to the Human Resource Officer, who will:
  - a. Ensure the return of the Form A to the employee within five workdays of first-step respondent receipt.
  - b. Will advise the employee in writing of the right to conclude or advance the grievance; see Attachment 2, *Sample Letters*.
3. Within five workdays of receipt of the written response, the employee must indicate on *Grievance Form A* the intention to continue to the second step and submit it to the second-step respondent or to conclude the grievance and submit *Form A* to the Human Resource Officer.



#### D. Second Resolution Step

1. The second-step respondent must accept the grievance, enter the date received, and confirm that the Human Resource Officer has been notified that the grievance has been advanced.
2. If an employee is utilizing the expedited grievance process, the second-step respondent, Organizational Unit Head, is the only resolution step.
3. The employee and the second-step respondent must meet within five workdays of the receipt of *Grievance Form A*.
  - a. An individual of their own choosing may accompany each party.
  - b. The meeting will be conducted for fact-finding and will not include arguments and cross-examination.
  - c. The meeting will not be recorded unless one of the parties has a disability that would be accommodated by recording the meeting.
4. Either party may call witnesses; these witnesses must not be present in the meeting except while providing information.
5. Upon rendering a second resolution step reply, respondents will return the *Grievance Form A* to the Human Resource Officer, who will:
  - a. Ensure the return of *Form A* to the employee within five workdays of the second-step meeting
  - b. Will advise the employee in writing of the right to conclude or advance the grievance, see Attachment 2, *Sample Letters*.
6. Within five workdays of receipt of the written response, the employee must indicate on *Grievance Form A* the intention to continue to the next step and submit it to the third-step respondent or to conclude the grievance and submit *Form A* to the Human Resource Officer.

#### E. Third Resolution Step

1. The third-step respondent must accept the grievance, enter the date received, and notify the DOC Employee Grievance Coordinator that the grievance has been advanced.
2. The third-step respondent must review the grievance record and within five workdays of receipt of the grievance, provide a written response to the issues and the relief requested.
3. A meeting may be held to discuss the issues still in dispute, but such a meeting is not required.
4. Within five workdays of receipt of the written response, the employee must indicate on *Grievance Form A* their request that the grievance be qualified for a hearing or their intention to conclude the grievance. The employee must then submit *Grievance Form A* to the DOC Employee Grievance Coordinator.

### VI. Hearings

#### A. Qualification for a Hearing

1. To proceed to a hearing, a grievance must be qualified.
  - a. A grievance involving a dismissal (termination due to formal discipline or unsatisfactory job performance) will proceed directly to a formal hearing, omitting the management resolutions steps and the Director's qualification determination.
  - b. Dismissal grievances will be initiated directly with EDR by submitting a fully completed DHRM [\*Grievance Form A - Dismissal Grievance\*](#).
  - c. Only those that challenge certain actions may be qualified for a hearing; refer to the *Grievance Procedure Manual* for details.
2. Within five workdays of receiving the employee's hearing request, the Director must determine whether the grievance qualifies for a hearing.
3. The Director must provide a written response on *Grievance Form A* or as an attachment to *Form A*.

The response should notify the employee of their procedural options.

4. Because this is the last opportunity to resolve the grievance within the DOC, the Director may address the issues and the relief requested by the employee.
5. If the Director qualifies the grievance for hearing, the DOC Human Resources Office must request the appointment of a Hearing Officer within five workdays of the qualification decision.
6. Appeal to Office of Employment Dispute Resolution (EDR)
  - a. If the grievance is not qualified for a hearing, the employee may appeal to the EDR.
    - i. The employee must submit the request in writing on *Grievance Form A* to EDR or the DOC Employee Grievance Coordinator within five workdays of receiving the Director's qualification decision.
    - ii. The DOC Employee Grievance Coordinator, upon request of the employee, must copy and send the grievance record complete with all attachments, to EDR within five workdays.
  - b. If the Director qualifies some but not all the grieved issues, the employee may ask EDR to qualify any remaining unqualified issues. A request to EDR for qualification of any such issues temporarily stops the grievance process until EDR issues its ruling.

#### B. The Hearing

1. Within five workdays of qualification of the grievance, the DOC Employee Grievance Coordinator must request the appointment of a Hearing Officer.
  - a. Generally, the hearing should occur within 35 calendar days after the Hearing Officer's appointment.
  - b. This time can be extended only upon a showing of just cause. See *Rules for Conducting Grievance Hearings*, available on the [EDR Web site](#).
2. Planning the Hearing
  - a. It is the responsibility of the Hearing Officer to notify the parties, either in writing or at the pre-hearing conference, of the date, time, location or format of the hearing.
  - b. A pre-hearing conference is required to be held.
    - i. At the Hearing Officer's discretion, this conference can be conducted in person or by telephone.
    - ii. During the pre-hearing conference, either party may request the Hearing Officer to order the appearance of an individual, or the production of a document at the hearing.
3. A verbatim audio recording of the hearing must be made to create a record in case there is an administrative or judicial review of the hearing decision.
4. A Hearing Officer's authority and the requirements for the hearing derive from COV §2.2-3000 et seq., *Policy of the Commonwealth; responsibilities of state agencies under this chapter* the *Rules for Conducting Grievance Hearings*, and the *Grievance Procedure Manual*, which may be referenced for additional details.

#### C. Hearing Officer's Decision

1. A Hearing Officer's decision must be in writing. The decision must contain the findings of fact on the material issues and the grounds in the employee's grievance record for those findings.
2. Hearing Officers may order appropriate remedies but may not grant relief that is inconsistent with law or as established in the EDR [Grievance Procedure Manual](#). In granting relief, the Hearing Officer should consider the relief requested in the written grievance.

#### D. Administrative Review

1. A hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.
2. A Hearing Officer's original decision is subject to administrative review by EDR based on the

request of a party to the grievance.

- a. All requests for review must be made in writing and received by the administrative reviewer within 15 calendar days of the date of the original hearing decision.
  - b. A copy of all requests must be provided to the other party, EDR, and the Hearing Officer.
  - c. A challenge that the hearing decision is inconsistent with state or DOC operating procedures must refer to a particular mandate in state policy or DOC operating procedures.
  - d. A challenge that the hearing decision does not comply with the *Employee Grievance Procedure* (including the *Grievance Procedure Manual* and the *Rules for Conducting Grievance Hearings*) must state the specific requirement of the *Grievance Procedure* with which the hearing decision is not in compliance.
  - e. The Director's authority is limited to ordering the Hearing Officer to revise the decision so that it complies with state policy, DOC operating procedure, and the *Employee Grievance Procedure*.
3. The opposing party may submit a written challenge (rebuttal) to any appeal to the appropriate administrative reviewer.
- a. If the opposing party chooses to submit a rebuttal, it must be received by EDR within ten calendar days of the end of the original 15-day appeal period.
  - b. A copy of any such rebuttal must also be provided to the appealing party and the Hearing Officer.
4. A party may elect to have a transcript of the hearing produced at their own expense to support its position on appeal.
5. Administrative Review Decisions
- a. Administrative review decisions are final and non-appealable.
  - b. If EDR orders the Hearing Officer to reconsider the hearing decision, the Hearing Officer must do so.
- E. Final Hearing Decisions - A Hearing Officer's original decision becomes a final hearing decision, with no further possibility of administrative review, when:
1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
  2. All timely requests for administrative review have been decided and, if ordered to do so, the Hearing Officer has issued a revised decision.
- F. Judicial Review of Final Hearing Decisions
1. Once an original hearing decision becomes final, either party may seek review by the Circuit Court on the grounds that the final hearing decision is incongruous to existing law.
  2. To request approval to appeal, the DOC must, within ten calendar days of the final hearing decision, submit a written request to EDR and must specify the legal basis for the appeal, in other words, the basis for its position that the hearing decision is inconsistent with current law.
  3. An employee does not need EDR's approval before filing a notice of appeal.
  4. A notice of appeal must be filed with the Clerk of the Circuit Court in the jurisdiction in which the grievance arose within 30 calendar days of the final hearing decision. At the time of filing, a copy of the notice of appeal must be provided to the other party and to EDR.
  5. Within ten calendar days of receiving the notice of appeal, the DOC Human Resources Office must forward a copy of the grievance record, complete with all attachments, to the Circuit Court. The Human Resources Office should keep the original grievance record.
  6. In accordance with the EDR [\*Grievance Procedure Manual\*](#), within 30 days of receipt of the grievance record, the Court, sitting without a jury, will hear the appeal on the record.
    - a. The Court may affirm, reverse, or modify the final hearing decision.

- b. The Court's decision will be at no cost to the parties.
  - c. For grievances challenging discharge, the Court will award reasonable attorney's fees and costs to the employee if the employee substantially prevails on the merits of the appeal.
7. Either party may appeal the final decision of the Circuit Court to the Court of Appeals pursuant to COV §17.1-405, *Appellate jurisdiction - Administrative agency, Virginia Workers' Compensation Commission, and domestic relations appeals*.
  8. Either party may petition the Circuit Court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final decision.
    - a. The petitioning party must provide the EDR Director with a copy of the petition.
    - b. The Court will award reasonable attorneys' fees and costs to the employee if the employee substantially prevails on the merits of the implementation.
- G. EDR will publish rulings and hearing decisions on its website in a manner that seeks to preserve privacy. EDR may also publish related Court opinions in full.

## VII. Compliance Specific to Employee Grievances

- A. All claims of non-compliance should be raised immediately; refer to the *Grievance Procedure Manual* for details.
  1. By proceeding with the grievance after becoming aware of a procedural violation, one generally forfeits the right to challenge the non-compliance at a later time
  2. The Director of EDR is authorized to issue final, non-appealable rulings on compliance challenges. A challenge to EDR will normally stop the grievance process temporarily. The *Grievance Procedure* will resume when EDR issues its ruling on the challenge.
- B. Party Non-compliance
  1. To compel a party to take a required action, the other party must notify them in writing of the non-compliance.
  2. If the DOC is out of compliance, written notification of non-compliance must be made to the Director; see *Attachment 2, Sample Letters*.
- C. Hearing Officer Non-compliance - If the non-compliance arises in pre-hearing matters or in the conduct of the hearing, the Hearing Officer's non-compliance may be remedied as follows:
  1. An objection should be made at the time the non-compliance occurs.
  2. A ruling from EDR may be requested in writing and the written request must be received by EDR within 15 calendar days of the date of the hearing decision.
  3. If EDR finds that the Hearing Officer has failed to comply with the *Employee Grievance Procedure*, the sole remedy is an order by EDR that the Hearing Officer correct the non-compliance.

## VIII. Miscellaneous Issues

### A. Compensation and Reimbursement

1. Employees who have initiated a grievance under the *Employee Grievance Procedure* or COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act*, will be granted reasonable time, including reasonable travel time to participate in grievance proceedings. The time allowed for participating in the grievance proceedings must be requested by the employee in advance and authorized by the supervisor in consideration of the operational needs of the unit.
2. DOC employees who serve as witnesses or representatives in grievances arising in the DOC will be compensated for the actual time at the hearing (not preparation time) at their normal salary. Reasonable costs for transportation, meals, and lodging will be reimbursed in accordance with state travel regulations.

**B. Leave**

1. Employees will be granted reasonable leave to prepare for participation in the grievance proceedings, consult with EDR, serve as a representative for an employee within the DOC, and appear as a witness in a grievance proceeding.
2. Leave time used in accordance with this operating procedure will not be charged against any employee's leave balances.
3. The granting of this authorized leave will be based on the operational needs of the facility with reasonable limits established by management.

C. Reasonable Accommodations for Disabled Persons - The DOC must provide reasonable accommodations for disabled persons participating in the grievance process.

D. Use of DOC Office Equipment - Grievances are official business, therefore, in processing grievances, parties may make reasonable use of DOC office equipment including computers, copiers, fax machines, and telephones.

**E. Extension of Timeframes**

1. Upon mutual agreement, parties to a grievance may extend all pre-qualification time limits including, but not limited to, the 30-calendar day grievance initiation requirement.
2. To be enforceable, all extension agreements must be in writing.

**F. Witnesses**

1. DOC employees may serve as witnesses for the grievant and for management when requested to do so.
  - a. The DOC is required to make available for the hearing any employee ordered by the Hearing Officer to appear as a witness.
  - b. Employees ordered to appear as witnesses will be subject to provisions within Operating Procedure 135.1, *Standards of Conduct*, if they refuse to be present at the hearing.
2. Service as a witness during an employee's work hours will be considered official business, for which the employee will be released by the supervisor during working hours.
3. An employee who is a witness in a grievance proceeding will notify the supervisor sufficiently in advance of the scheduled time so that plans can be made for proper work scheduling.
4. No act of reprisal will be taken against any employee for utilization of or participation in the grievance process.
5. Any employee engaging in acts of harassment or reprisal against any employee for utilization of or participation in the grievance process will be subject to the provisions within Operating Procedure 135.1, *Standards of Conduct*.

**G. Consolidation of Grievances**

1. Prior to the appointment of a Hearing Officer, the parties may treat multiple grievances in a joint manner, without a ruling from EDR.
  - a. The parties can agree to address two or more grievances at any given management step, after which the step-respondent could issue a single response that addresses the issues and relief raised in each of the grievances.
  - b. Only EDR can consolidate multiple grievances for a single hearing
2. Before a Hearing Officer is appointed, if more than one grievance is pending involving the same: (1) factual background, and (2) issues or procedures, either party may request consolidation for hearing purposes.
  - a. EDR strongly favors consolidation and will grant consolidation for hearing purposes unless there is a persuasive reason to process the grievances individually.

b. EDR may consolidate grievances for hearing without a request from either party.

#### H. Computation of Time

1. In computing any period of time required by this procedure, the day of the event from which the designated period of time begins to run will not be included.
2. For example, if a step-respondent receives the grievance *Form A* from an employee on Tuesday, then Wednesday is considered the first of the five workdays in which the step-respondent must respond to the grievance. Assuming a normal workweek (Monday through Friday), then Wednesday is counted as day one and the response from the step-respondent will be due on the following Tuesday, day five.

### IX. Correctional Officers Procedural Guarantee Act

#### A. Requesting a Hearing

1. Eligible Corrections Officers have the right to request a hearing under COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act (Act)* to challenge a *Written Notice* with transfer, suspension without pay, demotion, or termination.
  - a. Corrections Officers includes all ranks from Corrections Officer to Lieutenant Colonel, inclusive.
  - b. Eligible Corrections Officers include all duly sworn, non-probationary, VALORS eligible, uniformed DOC security staff.
2. No provision of this section will apply to Corrections Officers transferred, suspended, demoted, or dismissed for punitive reasons because of a criminal conviction.
3. A hearing must be requested by a Corrections Officer within 30 calendar days of the challenged disciplinary action by presenting the [Request for Panel Hearing](#) 145\_F11 to the Director of Human Resources or designee, with a copy to the Officer's Human Resource Officer.
4. A request to extend the time in which a Corrections Officer must select a hearing under the *Act* will only be considered in extraordinary circumstances. Such a request must be submitted in writing to the Director of Human Resources and granted within 30 calendar days of the challenged disciplinary action to avoid waiving the right to have a hearing under the *Act*.
5. With the approval of the Director or designee, the DOC may, in lieu of complying with the provisions of COV §9.1-509, *Conduct of investigation; notice of charges*, may allow the Corrections Officer access to a hearing under the *Act* before imposition of disciplinary action by:
  - a. Giving the Corrections Officer a written statement of the charges and the basis for them, and the action that may be taken, and
  - b. Providing a hearing as directed in this section prior to transferring, suspending, demoting, or terminating the Corrections Officer for disciplinary reasons.

#### B. Selecting a Hearing Panel

1. The hearing will be conducted by panel members selected in the following manner:
  - a. One selected by the Corrections Officer
  - b. One selected by the Director or designee
  - c. One selected by the other two Panel members who will serve as the panel chairperson.
2. Panel members must be Corrections Officers in an active work status within the DOC of an equivalent or higher rank, but no more than three ranks above the affected Corrections Officer's rank at the time the challenged disciplinary action was issued.
3. The Corrections Officer will document the name of the Officer's selected panel member on the [Request for Panel Hearing](#) 145\_F11, as well as the name of their advocate, if applicable.
4. The Director's authority to appoint one panel member from within the DOC is delegated to the Director of Human Resources.
  - a. The selection of the DOC's panel member should be made within three calendar days after



receipt of the *Request for Panel Hearing*.

- b. After the Director or designee selects the DOC's appointee, the Director of Human Resources or designee will notify the two appointed Panel members of their selection.
5. The two panel members will select a third member within four calendar days after the notification of their selection as panel members and notify the Director of Human Resources or designee of their selection.
    - a. The panel members must notify the Director of Human Resources or designee in writing if there is no agreement on a third panel member.
    - b. The Director of Human Resources or designee will then contact the Chief Circuit Court Judge of the circuit where the Corrections Officer is employed to request assistance selecting the third panel member.
    - c. The hearing process will temporarily halt until the third panel member is chosen.
  6. In order to provide an impartial panel, the following persons may not serve as panel members:
    - a. Supervisors and managers who are in a direct line of supervision of the Corrections Officer
    - b. Any persons who had direct involvement with the administrative investigation resulting in disciplinary action, due process proceedings, or issuance of the disciplinary action including but not limited to investigators and representatives who assist Corrections Officers with responding to the disciplinary charges during due process

#### C. Panel Procedure

1. The Director of Human Resources, or designee, and Panel Chairperson will coordinate the date, time, and location for the panel hearing. The parties must be notified of the scheduled date and any other associated deadlines in a scheduling order issued by the Director of Human Resources, or designee.
2. Parties to the challenge will not discuss the substance of any related issues or the challenged disciplinary action with any panel member prior to the hearing.
3. The Director of Human Resources, or designee, will coordinate the panel hearing and may correspond with panel members, the Corrections Officer, the Officer's advocate, DOC management representative, the DOC advocate, witnesses, and others directly on behalf of the panel.
4. Prior to the hearing, the Director of Human Resources or designee will provide the panel with copies of the challenged disciplinary action and related documents.
5. The Corrections Officer or the Officer's advocate may request relevant documentation relating to the disciplinary action being challenged. These requests should be directed to the Director of Human Resources, or designee.
  - a. Absent just cause, the DOC must allow the Corrections Officer access to and copies of all relevant records requested for use in the hearing process.
  - b. The party requesting the documents has the right to request that the hearing process temporarily halt until the requested documentation is provided.
  - c. The DOC will have five workdays to produce this information in a manner that protects the privacy of individuals not personally involved in the disciplinary action, advise if the documents do not exist, or provide justification why the documents are being withheld due to a claim of irrelevance or "just cause."
6. Documents, exhibits, and a list of witnesses will be exchanged between the Corrections Officer or the Officer's advocate, and DOC management's representative at least three days prior to the scheduled panel hearing, unless otherwise agreed.
  - a. Both parties must provide the Panel Chairperson with a copy of their documents, exhibits, and list of witnesses within the same timeframe.
  - b. The panel will not accept any additional witnesses or documentary evidence, unless presented for



purposes of rebuttal. The panel has the discretion to allow any rebuttal evidence.

7. At the request of either the Corrections Officer or the DOC, the hearing panel may issue subpoenas to compel witness testimony; see [Subpoena Template](#) 145\_F13.
  - a. Any DOC employee subpoenaed by the panel to appear as a witness must do so unless excused by the Director of Human Resources.
  - b. Employees ordered to appear as witnesses will be subject to the *Standards of Conduct* if they refuse to be present at the hearing
  - c. If traveling to the hearing is not feasible for a witness, testimony can be received via conference call.
  - d. A witness may be permitted to provide a written or recorded statement in lieu of appearing as a witness by mutual agreement between the parties.

#### D. Hearing

1. A hearing must be held within 14 calendar days following the date of request, unless the Corrections Officer agrees to a later date in writing.
2. The Panel Chairperson must ensure that an audio recording of the hearing is made.
  - a. Both the Corrections Officer and the DOC may be represented by an advocate at the hearing.
  - b. The Corrections Officer will be responsible for any expense for representation by an advocate. Attorney fees are not available under this hearing process.
3. The hearing will be private.
  - a. Only the panel members, the Corrections Officer, the Officer's advocate, the DOC management representative, the management advocate, the witness who is testifying, and the court reporter, if any, will be present at the hearing.
  - b. Employees of the DOC Human Resources Office may be present to support the hearing process except when the panel is deliberating.
  - c. The panel may seek the guidance of the Director of Human Resources, or designee, regarding questions about the hearing process.
4. At the hearing, the DOC management representative and the Corrections Officer will have the opportunity to present evidence and to examine and cross-examine witnesses.
5. The DOC management representative bears the burden of proving that the disciplinary action issued was warranted.
6. The hearing chronology is listed below:
  - a. Opening Statements
    - i. DOC management representative or advocate
    - ii. Corrections Officer or the Officer's advocate
  - b. Presentation of evidence and witnesses
    - i. DOC management representative or advocate
    - ii. Corrections Officer or the Officer's advocate
    - iii. Questioning of Witnesses
      - (a) Direct Examination of Witness
      - (b) Cross-Examination of Witness
      - (c) Redirect
      - (d) Questions from the Panel Members
  - c. DOC Management Rebuttal
    - i. DOC management representative or advocate may present additional witnesses and/or evidence in rebuttal of the Corrections Officer's case.
    - ii. Questioning of any witnesses will proceed as in the presentation section.
  - d. Closing Statements

- i. The DOC management representative or advocate
  - ii. The Corrections Officer or the Officer's advocate
7. The panel by majority vote may decide procedural questions, admissibility of evidence, and rule upon objections raised during the course of the hearing.
  - a. They may exclude evidence that is irrelevant, immaterial, insubstantial, privileged, repetitive, and not timely exchanged consistent with the scheduling order, or otherwise for just cause.
  - b. The panel is not bound by any state or federal rules of evidence.
8. At the conclusion of the hearing, the panel must:
  - a. Deliberate in private to weigh the evidence, determine the witnesses' credibility, and make findings of fact
  - b. Determine whether the DOC management representative has established by a preponderance of evidence, more likely than not, that the disciplinary action taken was both warranted and appropriate under the facts and circumstances of the case
  - c. Document the panel's recommendations, based on whether they find that the disciplinary action was reasonable under the circumstances, and the reasons supporting the recommendations on the [Report of Hearing Panel Recommendations](#) 145\_F12

#### E. Panel Recommendations

1. The panel must document their recommendation related to the challenged disciplinary action(s) and their reasons supporting the recommendations on the *Report of Hearing Panel Recommendations*. Within seven calendar days, the Panel Chairperson must simultaneously provide the completed *Report of Hearing Panel Recommendations* to the Corrections Officer or the Officer's advocate and to the Director of Human Resources.
2. Scope of Relief from Panel:
  - a. The panel only has authority to recommend that a challenged suspension, demotion, or termination be:
    - i. Upheld
    - ii. Modified/reduced
    - iii. Withdrawn/rescinded
  - b. The panel should not make recommendations that are inconsistent with law, the EDR [Grievance Procedure Manual](#), or procedure.
  - c. The *Correctional Officers Procedural Guarantee Act* does not grant panels the authority to reinstate terminated Corrections Officers, or award back pay, attorney fees, or other benefits.
  - d. Recommendations from the Panel will be advisory only.

#### F. Final Decision of the Director of Corrections

1. Within seven calendar days of receiving the panel's recommendation, the Director will submit a final decision to the Corrections Officer or the Officer's advocate, the DOC management representative or advocate, the Human Resource Director, and the Panel Chairperson.
2. In accordance with the provisions of [COV §9.1-508 et seq.](#), *Correctional Officer Procedural Guarantee Act*, the Director, in making a final decision, will consider and give significant weight to the panel's recommendations; however, the Director is not required to follow the panel's recommendations.
3. In consultation with the Director of Human Resources, the Director has the discretion to order reinstatement, all or some back pay and/or benefits to the Corrections Officer.
4. The decision of the Director is final and non-appealable, and must be implemented fully within a reasonable period.

**X. Reporting and Records**

- A. Employee grievances are to be treated as confidential material.
- B. Grievance records should not be maintained in the employee's personnel file; see Operating Procedure 102.7, *Employee Records*, and DHRM Policy 6.10, *Personnel Records Management*.
  - 1. A copy of all grievances and all grievance documents must be kept in a separate, confidential file.
  - 2. Copies of all concluded grievances must be forwarded to the DOC Employee Grievance Coordinator.
- C. Closure of Grievances
  - 1. The Human Resource Officer will be responsible for ensuring proper closure of all regular and expedited grievances at the first and second resolution steps. Closure will be achieved in one of following ways:
    - a. Obtaining the employee's signature on *Form A*
    - b. Obtaining the employee's signature on a separate memorandum of agreement
    - c. Sending a compliance form letter and verifying that the employee did not advance the grievance to the next step according to the procedural requirements
      - i. The Human Resource Officer is responsible for sending the compliance letter to employees who have failed to meet the time requirements for responding after the first or second resolution steps.
      - ii. The grievance can only be officially closed following the issuance of a compliance ruling from EDR.
  - 2. The DOC Employee Grievance coordinator is responsible for all compliance letters and related correspondence after the third resolution step and after an appeal has been made to the Director for qualification of the grievance for a hearing. Copies of all correspondence originating from Headquarters will be forwarded to the employee's Human Resource Officer, including notification that the grievance was closed.
- D. Correctional Officers Procedural Guarantee Act
  - 1. All documents related to proceedings under the *Act* are to be treated as confidential material.
  - 2. Records and documents relating to a proceeding under the *Act* will not be placed in the Corrections Officer's personnel file but will be maintained in a separate file in the DOC Human Resources Office for a period of five years after closure of the proceeding.

**REFERENCES**

COV §2.2-2900, *Virginia Personnel Act*

COV §2.2-2905, *Certain officers and employees exempt from chapter*

COV §2.2-3000 et seq., *Policy of the Commonwealth; responsibilities of state agencies under this chapter*

COV §2.2-3001, *State Employees*

COV §2.2-3002, *Exemptions from chapter*

COV §2.2-3005, *Hearings officers; duties*

COV §2.2-3007, *Certain employees of the Departments of Corrections and Juvenile Justice*

COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act*

COV §9.1-509, *Conduct of investigation; notice of charges*

COV §17.1-405, *Appellate jurisdiction - Administrative agency, Virginia Workers' Compensation Commission, and domestic relations appeals*

COV §18.2-251, *Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations;*

*discharge*

Department of Human Resource Management, Policy 2.05, *Equal Employment Opportunity*

Department of Human Resource Management, Policy 6.05, *Personnel Records Disclosure*

Department of Human Resource Management, Policy 6.10, *Personnel Records Management*

Governor's Executive Order 1 (2018), *Equal Opportunity*

Operating Procedure 102.6, *Staff Orientation*

Operating Procedure 102.7, *Employee Records*

Operating Procedure 135.1, *Standards of Conduct*

Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*

Office of Employment Dispute Resolution, *Grievance Procedure Manual*

## **ATTACHMENTS**

Attachment 1, *Designated Steps in the Grievance Procedure*

Attachment 2, *Sample Letters*

## **FORM CITATIONS**

[Request for Panel Hearing](#) 145\_F11

[Report of Hearing Panel Recommendations](#) 145\_F12

[Subpoena Template](#) 145\_F13

[Grievance Form A](#)

[Grievance Form A - Expedited Process](#)

[Grievance Form A - Dismissal Grievance](#)