

**Chapter: Discipline, Grievances, and Mediation**  
**Title: Employee Grievances**

**Effective Date:** 12/1/11  
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**New**

**ACA Standards:** 4-JCF-6C-09, 6D-04  
**Statute:** Human Resources Code § 242.004

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(a) **Policy.**

To promote fairness, the Texas Juvenile Justice Department (TJJD) provides its employees a comprehensive grievance system through which work-related complaints can be addressed.

(b) **Definitions.**

For definitions of certain terms used in this policy, see the PRS glossary.

(c) **General Provisions.**

- (1) Subject to certain exceptions and limitations listed below, an employee may file a grievance regarding any employment-related matter, including working conditions, employment discrimination, harassment, and adverse personnel actions. Except for the examples listed in (d) below, the employee grievance coordinator will determine on a case-by-case basis whether an issue is a grievable, employment-related issue.
- (2) **A grievance is not an appropriate method for reporting allegations of abuse, neglect, exploitation, or other mistreatment of youth. Suspected mistreatment of youth must be reported as required by GAP.07.03.**
- (3) Requests for inappropriate relief will not be considered. Examples of inappropriate relief include, but are not limited to:
  - (A) a request that discipline be issued to another employee; or
  - (B) a request for money to be paid in compensation for damages or for attorney's fees.
- (4) In case of disciplinary termination of employment, the discharged employee is provided a choice between requesting independent dismissal mediation under PRS.35.06 or filing a termination grievance under this policy. The discharged employee cannot choose both options.
- (5) This policy establishes grievance processing and resolution timelines to provide a grievant with a clear expectation of the approximate date that he/she will receive a grievance response. A delay in processing or resolving a grievance does not create any additional right for the grievant or have any impact on whether the requested relief will be granted. If the written grievance decision is not timely delivered as set forth in this policy, an explanation for the delay must be included.
- (6) The following guidelines apply when computing timelines established by this policy.
  - (A) A grievance is considered to be filed only when it has been actually received by the local grievance contact or the employee grievance coordinator in Central Office. The grievance file date is not based on the date that the grievance is mailed or otherwise sent to one of these employees.
  - (B) When calculating maximum time periods or due dates for an action in the grievance process, the date of an event (e.g., the date of receipt of a disciplinary document, a grievance assignment, or a grievance decision) is not counted. The first day following the event is counted as the first day of the applicable time period.
  - (C) The end of a maximum time period or a due date that falls on a weekend or holiday will be extended to the next regular workday.

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- (7) Unless specified otherwise within this policy, references to decision authority will mean the grievance decision authority.

**(d) Grievable and Non-Grievable Issues.**

- (1) Issues that can be grieved under this policy (“grievable issues”) include the following:
  - (A) disciplinary actions and other forms of adverse personnel action (subject to the limitations in the list of non-grievable issues and limitations established by agency policies relating to administrative separation);
  - (B) working conditions;
  - (C) unlawful conduct or other serious impropriety (e.g., inappropriate sexual conduct, any form of illegal discrimination; retaliation prohibited by policy or law); and
  - (D) adverse findings against the grievant in an official investigation (provided, however, that if the investigative findings result in discipline, the employee must grieve the discipline in order to challenge the investigative findings).
- (2) Issues that may not be grieved (“non-grievable issues”) include but are not limited to the following:
  - (A) youth management issues (e.g., a supervisor’s decision concerning a youth);
  - (B) legislative action;
  - (C) employee position classification or reclassification;
  - (D) administrative suspension with pay;
  - (E) discipline in progress but not yet issued;
  - (F) discipline or other adverse personnel action issued to someone else;
  - (G) a recommendation for termination of employment;
  - (H) a decision to conduct an investigation or the assignment of an investigation to a particular person;
  - (I) the findings resulting from a criminal investigation conducted by the Office of Inspector General;
  - (J) a decision of the employee grievance coordinator or an administrative law judge to dismiss a grievance or accept a grievance for processing;
  - (K) the assignment of a grievance to a particular decision authority;
  - (L) a delay in grievance processing or resolution;
  - (M) any of the following issued or directed by the executive director:
    - (i) termination of employment;
    - (ii) other disciplinary or payroll action; or
    - (iii) a change in working conditions;
  - (N) an agreement reached through employee mediation or independent dismissal mediation;
  - (O) acceptance of a voluntary resignation; and
  - (P) a designation of ineligibility for rehire.

**(e) Filing and Content.**

- (1) To file a grievance, the employee must submit the following documents to the local employee grievance contact or the employee grievance coordinator in Central Office by the deadlines established in (g) below:
  - (A) an accurately completed Statement of Grievance form, HR-210; and
  - (B) any documents issued to the employee relating to the action, event, or condition being grieved (e.g., copy of shift change notice, dorm reassignment notice, performance evaluation, or employee disciplinary action record).

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- (2) A grievance may identify only **one** employment-related matter. An allegation of discrimination, including sexual harassment, will be considered one employment-related matter.
- (3) A grievance challenging an adverse personnel action must identify the specific adverse personnel action being challenged.
- (4) If a grievance challenges a documented adverse personnel action (such as a disciplinary termination of employment or other disciplinary action, or a performance evaluation), the facts as stated in the challenged document are presumed to be true and accurate. The grievant bears the burden of proving that the facts are incorrect or the action is otherwise contrary to policy, illegal, unfair, or not in the best interests of the agency.
- (5) The employee must use his/her own personal time and resources when preparing a grievance. State time and resources, including postage and supplies, may not be used in the preparation of a grievance. However, an agency fax machine may be used to submit a grievance or grievance appeal to the employee grievance coordinator in Central Office.

(f) **Employee Access to Evidence.**

An employee grieving an adverse personnel action (or an adverse finding in an official investigation) may include in his/her grievance a request that the decision authority provide copies of any documentary evidence that are not in the employee's possession and were relied upon for the challenged adverse personnel action or finding. Upon request, the decision authority will provide the employee with copies of such evidence.

- (1) The decision authority has the discretion to delete names from copies of documents provided to the employee upon a determination that the names are not necessary for the fair resolution of contested facts.
- (2) Prior to delivery of the documentary evidence to the grievant, the decision authority must delete any information which is confidential by law.
- (3) Audio or video recordings which contain confidential information (e.g., which include names or pictures of TJJD youth) are not to be released to the employee but will be made available for review.

(g) **Deadlines for Filing.**

- (1) Except as described in (2) and (3) below, grievances must be received by the local grievance contact or the employee grievance coordinator in Central Office within 21 calendar days after the action, event, or condition which is the subject of the grievance. When such a grievance is received and an official investigation conducted by the Employee Relations Department is completed, the deadline for the grievant to challenge the investigative findings is set forth in (j)(5)(B) below.
- (2) Grievances alleging illegal discrimination or inappropriate sexual conduct (i.e., alleged violations of PRS.01.01 or PRS.01.02) must be received by the local grievance contact or the employee grievance coordinator in Central Office within 90 calendar days after the alleged violation.
- (3) Grievances regarding disciplinary termination of employment must be received by the local grievance contact or the employee grievance coordinator in Central Office no later than 14 calendar days after the grievant's receipt of the written termination notice from the disciplinary decision authority. A written notice of employment termination properly addressed to the employee's address of record will be presumed to have been received on the date of actual receipt or ten calendar days after mailing, whichever is earlier.
- (4) Grievances that are not received by either the local grievance contact or the employee grievance coordinator in Central Office by the appropriate filing deadline will be considered for acceptance on a case-by-case basis.

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**(h) Grievance Revision or Dismissal.**

- (1) The employee grievance coordinator may require a grievant to revise and re-file any grievance that is incomplete, unclear, or deals with more than one employment-related matter. If revision is required, the employee grievance coordinator will set a deadline by which the revised grievance must be filed.
- (2) The employee grievance coordinator may dismiss any grievance, or any separable issue in a grievance, which:
  - (A) is considered a non-grievable issue as set forth in (d)(2) of this policy;
  - (B) is not received by either the local grievance contact or the employee grievance coordinator in Central Office within the applicable deadline and good cause for delay has not been shown;
  - (C) after the employee has been given notice and a reasonable opportunity to make required revisions, remains so unclear that the nature of the grievance or the relief requested cannot reasonably be determined;
  - (D) is the same or substantially the same as a pending grievance filed by the same employee; or
  - (E) concerns a working condition that has already been resolved through the grievance process within the preceding 12 months.
- (3) The assigned administrative law judge may dismiss a grievance challenging disciplinary termination of employment if the grievance fails to set out the full legal or factual basis for the grievant's claim that:
  - (A) the facts relied upon in taking the action are incorrect; or
  - (B) the termination of employment is contrary to policy, illegal, unfair, or not in the best interest of the agency.
- (4) If the employee grievance coordinator or an administrative law judge dismisses a grievance, the grievant will be provided written notice of the reason for the dismissal. The decision of the employee grievance coordinator or administrative law judge to dismiss a grievance is final and cannot be appealed.

**(i) Representation.**

An employee may present a grievance through a representative.

- (1) By state law, an employee may not be represented in the grievance process by a person who claims the right to strike.
- (2) The person chosen to represent the grievant may be an employee of TJJJD. A TJJJD employee who serves as a grievant's representative may only do so on his/her own time.

**(j) Decision Authority Assignment.**

- (1) Grievances regarding disciplinary termination of employment are assigned to the Office of General Counsel (OGC) for review and recommendation by an administrative law judge to the executive director or his/her designee. The decision of the executive director or his/her designee will be final and non-appealable.
- (2) Grievances regarding discipline or other adverse personnel action, other than disciplinary termination of employment, are assigned to the appropriate chief local administrator (CLA).

- (3) Grievances which challenge the factual findings from an official investigation (whether through a grievance challenging discipline based on official investigative findings or a grievance of investigative findings that do not result in discipline) are assigned to the general counsel or his/her designee for resolution. The general counsel's or his/her designee's decision regarding the challenge to the investigative findings will be final.
- (4) All other grievances under this policy are assigned to the appropriate manager, as determined by the employee grievance coordinator.
- (5) Within seven calendar days after a grievance file date, the employee grievance coordinator will:
  - (A) assign the grievance to the appropriate decision authority; or
  - (B) verify with the employee relations supervisor that the Employee Relations Department will conduct an official investigation regarding the grievant's allegation of discrimination (including sexual harassment) or other especially serious misconduct before the grievance is assigned to the appropriate manager.
    - (i) As a general rule, the official investigation should be completed within 35 calendar days after the decision was made to conduct the investigation.
    - (ii) The grievant will be provided written notice of the investigative findings. The notice will inform the grievant of his/her option to file a separate grievance challenging the investigative findings.
      - (I) If the grievance elects to appeal the findings, the grievance must be received by the local grievance contact or the employee grievance coordinator in Central Office within seven calendar days after the date of the written notice of the investigative findings.
      - (II) Procedures for assignment of a decision authority for challenges to official investigations will apply as set forth in paragraph (3) of this subsection.
    - (iii) The employee grievance coordinator will assign the initial grievance that resulted in the official investigation to the appropriate decision authority within three calendar days after:
      - (I) the final written decision regarding the grievant's challenge to the investigative findings; or
      - (II) expiration of the grievant's deadline to file a separate grievance challenging the investigative findings.
    - (iv) The decision authority for the initial grievance will receive a copy of the investigative findings report and, if applicable, the grievance decision for the grievant's subsequent grievance that challenged the investigative findings.

(k) **Written Grievance Decision.**

- (1) A decision authority may delegate investigation of a grievance and/or drafting of a grievance resolution, but may not delegate the grievance decision.
- (2) The decision authority is expected to promptly consider, sign, and issue a written grievance decision. As a general rule, in all grievances other than termination grievances, a decision will be considered timely if it is issued within 21 calendar days following receipt of the latter of:
  - (A) the grievance assignment from the employee grievance coordinator; or

- (B) the written investigative report resulting from an official investigation of the grievance; or
- (C) the written decision from the OGC in response to the decision authority's appeal of investigative findings.

- (3) The written grievance decision is to be delivered to the grievant in person, by regular mail, or by other reliable means. A copy of the written grievance decision must also be provided to the employee grievance coordinator.
- (4) Delivery of the written grievance decision to the grievant finalizes the grievance unless the grievant exercises his/her option, if any, to appeal the decision.

**(l) Appeals of Grievance Decision.**

- (1) Some grievance decisions are not appealable, including but not limited to:
  - (A) the decision of the executive director or his/her designee in a disciplinary termination grievance; or
  - (B) a grievance decision issued at or above the level of a division director.
- (2) If a grievance decision is subject to appeal, only one appeal is allowed.
  - (A) A grievant electing to appeal a grievance decision must submit a completed Grievance Appeal form, HR-235, to the employee grievance coordinator in Central Office. The HR-235 must include the specific reasons for the appeal.
  - (B) The appeal must be received by the employee grievance coordinator in Central Office no later than 14 calendar days after the date the grievant received the grievance decision. If the grievance decision was mailed, the grievant's presumed receipt date will be ten calendar days after the date the decision was mailed.
- (3) Within five calendar days after receipt of the HR-235, the employee grievance coordinator will assign the grievance appeal to the appropriate decision authority. As a general rule, an appeal will be assigned for final decision to the supervisor of the initial decision authority.
- (4) The decision authority for the appeal is expected to issue a prompt written decision. As a general rule, a grievance appeal decision will be considered timely if issued within 21 calendar days after the appeal assignment.
- (5) The grievance appeal decision must be delivered to the grievant in person, by regular mail, or by other reliable means. A copy of the written grievance appeal decision must be provided to the employee grievance coordinator.

**(m) Technical Review and Correction.**

Upon receipt of a copy of the written grievance decision or grievance appeal decision, the employee grievance coordinator will conduct a technical review and advise the decision authority of any necessary revisions to the written decision.

**(n) Follow-up on Grievance Resolutions.**

When the granted relief indicates that certain actions will occur, the decision authority must provide the employee grievance coordinator with documentation that the actions did take place. As a general rule, the documentation must be provided to the employee grievance coordinator within 30 calendar days of the grievance decision date.

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(o) **Retaliation Prohibited.**

- (1) The agency strictly prohibits retaliation against any person for:
    - (A) filing a complaint through the employee grievance system or through an outside agency; or
    - (B) participating as a witness in any complaint or complaint investigation.
  - (2) This prohibition includes harassment, intimidation, or coercion of any person because of involvement in a grievance or complaint, whether as a party, representative, or witness.
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