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SUBCHAPTER 3. HUMAN RESOURCES UNIT

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PART 5. DEPARTMENT OF REHABILITATION SERVICES - EMPLOYEE MEDIATION

5 **DRS:3-3-71. Definitions [AMENDED]**

6 The following words and terms, when used in this Part, shall have the following
7 meaning, unless the context clearly indicates otherwise:

8 **"Adverse action"** means formal disciplinary actions of suspension without pay,
9 involuntary demotion, and discharge taken against a ~~permanent classified~~ state
10 employee.

11 **"Discharge"** means the act of terminating the employment relationship of a
12 ~~permanent classified state~~ employee who did not voluntarily resign or otherwise forfeit
13 his or her position according to any other statutory provision. ~~Discharge does not~~
14 ~~include separation due to reduction in force.~~

15 **"Formal discipline"** means written reprimand, suspension without pay,
16 involuntary demotion, or discharge.

17 **"Informal discipline"** means verbal warning, informal discussion, corrective
18 interview or oral reprimand.

19 **"Involuntary demotion"** means the involuntary removal of a ~~permanent~~
20 ~~classified state~~ employee in ~~permanent status~~ in a job family level to another job family
21 level assigned a lower pay band.

22 **"Official personnel file"** means the employee's permanent personnel file
23 maintained in the Personnel office of the DRS Human Resources Unit, Management
24 Services Division, Oklahoma City.

25 **"Progressive discipline"** means a system designed to ensure not only the
26 consistency, impartiality and predictability of discipline, but also the flexibility to vary
27 penalties if justified by aggravating or mitigating conditions. Absent mitigating
28 circumstances, repetition of an offense is accompanied by a generally automatic
29 progression to the next higher level of discipline. Based on relevant circumstances, a
30 single incident may justify a higher step of discipline without proceeding through lower
31 steps of discipline.

32 **"Suspension with pay"** means the placement of an employee on suspension
33 while continuing in pay status for internal investigatory purposes or pending completion
34 of the notice and response procedures of adverse action.

35 **"Suspension without pay"** means a formal disciplinary action in which the
36 employee is removed from duty and placed on time off from work without pay for a
37 specific period of time not to exceed sixty (60) calendar days in a 12-month period.

38 **"Written reprimand"** means the first phase of formal discipline, but is not an
39 adverse action.

1 **DRS:3-3-72. Purpose and scope [AMENDED]**

2 (a) The purpose of this Section is to establish the responsibilities for managing the
3 Progressive Discipline procedures as contained in ~~Subchapter 11 of the Oklahoma~~
4 ~~Merit Protection Commission (MPC) Merit Rules~~ the DRS:3-3-74 and DRS:3-3-75. The
5 procedures provide standards and guidelines for applying prompt, equitable, and
6 suitable discipline of ~~classified~~ state employees as a means of ensuring professional
7 performance and conduct.

8 (b) The maintenance of high standards of performance, honesty, integrity, impartiality,
9 and conduct of agency employees is essential to assure the achievement of the
10 agency's mission and to provide services to citizens of Oklahoma.

11 (c) The provisions of this Section shall apply to ~~classified~~ state employees. The
12 provisions of this policy shall not apply to ~~unclassified~~ exempted employees except as
13 indicated defined by OAC 260:130-1-1.

14 (d) Progressive discipline usually advances from Informal Discipline to Formal
15 Discipline. Unless otherwise justified, the progression of DRS Formal Discipline is: 1)
16 written reprimand; 2) suspension without pay; 3) involuntary demotion; and 4)
17 discharge. A single incident may justify more severe discipline without beginning with
18 the lowest step or proceeding through lower steps. ~~OAC 455:10-11-14 provides that~~
19 ~~any employee in the classified service may be discharged, suspended without pay for~~
20 ~~not to exceed sixty (60) calendar days, or demoted for misconduct, insubordination,~~
21 ~~inefficiency, habitual drunkenness, inability to perform the duties of the position in which~~
22 ~~employed, willful violation of the Oklahoma Personnel Act or of the rules prescribed by~~
23 ~~Human Capital Management or by the Oklahoma Merit Protection Commission, conduct~~
24 ~~unbecoming a public employee, conviction of a crime involving moral turpitude, or any~~
25 ~~other just cause. A DRS employee in the classified service, upon final conviction of, or~~
26 ~~pleading guilty or nolo contendere to, any felony shall be discharged; further, a~~
27 ~~classified employee shall forfeit benefits pursuant to Section 24.1 of Title 51 of the~~
28 ~~Oklahoma Statutes if the felony is job-related DRS will take the appropriate disciplinary~~
29 ~~action against any employee, supervisor, and/or manager for attempts at coercion and~~
30 ~~intimidation of or reprisal and retaliation against anyone who participates in a DRS civil~~
31 ~~rights investigation. Moreover, DRS will also take the appropriate disciplinary action~~
32 ~~against staff members who obstruct a civil rights investigation by giving false or~~
33 ~~misleading statements. The supervisor and employee should be aware that the State~~
34 ~~Employee Assistance Program (EAP) is available as a voluntary service for employees~~
35 at any stage of the progressive discipline process.

36 ~~(1) A DRS employee, in the unclassified service, who is convicted of, or enters a~~
37 ~~plea of guilty or nolo contendere (no contest) to, any felony charge shall be~~
38 ~~discharged; further, an unclassified employee shall forfeit benefits in accordance~~
39 ~~with Section 24.1 of Title 51 of the Oklahoma Statutes if the felony violates the~~
40 ~~employee's oath of office.~~

41 ~~(2) Additionally, DRS will take the appropriate disciplinary action against any~~
42 ~~employee, supervisor, and/or manager for attempts at coercion and intimidation of~~
43 ~~or reprisal and retaliation against anyone who participates in a DRS Civil Rights~~
44 ~~Office investigation. Moreover, DRS will also take the appropriate disciplinary~~
45 ~~action against staff members who obstruct a Civil Rights Office investigation by~~
46 ~~giving false or misleading statements. The supervisor and employee should be~~
47 ~~aware that the State Employee Assistance Program (EAP) is available as a~~
48 ~~voluntary service for employees at any stage of the progressive discipline process.~~

1 **DRS:3-3-74. First phase Step One - informal discipline [AMENDED]**

2 (a) The objective of the beginning level of discipline is to address actions at the lowest
3 level and to correct situations before more severe penalties become necessary. The
4 first phase step of progressive discipline shall be informal discipline and may include
5 ~~any of the steps of informal discipline such as informal discussion, verbal warning,~~
6 discussion, corrective interview, coaching, counseling, or oral reprimand or a Letter of
7 Concern. Informal discipline may be utilized to correct infractions of statute, rule, policy,
8 practice or procedure regarding work performance or behavior. This step may serve to
9 streamline the progressive discipline process and to bring potential problems to an
10 employee's attention before they escalate. Documentation of informal discipline should
11 be noted and maintained by the supervisor and employee. The supervisor or employee
12 should be prepared to recall the events of the informal discipline when progressing to
13 the next steps in the progressive discipline process.

14 (b) A supervisor will be clear with the employee as to the start of informal discipline and
15 which step of informal discipline the occasion constitutes. ~~Documentation of informal~~
16 ~~discipline may be noted and maintained by the supervisor and employee.~~

17 (c) As a minimum, an employee shall be told:

18 (1) the nature of the problem which is cause for discipline;

19 (2) the steps which must be taken to correct the situation or behavior; and

20 (3) the consequences of repeated offenses or continuing deficient performance or
21 behavior.

1 **DRS:3-3-75. ~~Second phase~~ Step two - formal discipline [AMENDED]**

2 (a) **Purpose.** The purpose of formal discipline is to correct violations of statute, rule,
3 policy, practice or procedure regarding work performance or behavior. Unless
4 aggravating circumstances are present, formal discipline is usually imposed after
5 informal discipline has failed to produce acceptable results. Supervisors are
6 responsible for reviewing all the facts of the situation to present and justify the
7 recommended disciplinary action to ~~his or her~~ their supervisor supervisors including a
8 ~~citation of~~ any other informal or formal discipline which was used in the
9 recommendation. Formal discipline should be commensurate with the offense. ~~All~~
10 ~~steps of formal discipline will comply with applicable Merit Rules. Unless otherwise~~
11 ~~justified, the progression of DRS formal discipline is: 1) written reprimand; 2)~~
12 ~~suspension without pay; 3) involuntary demotion; and, 4) discharge. The agency shall~~
13 ~~maintain documentation of formal discipline in the official personnel file~~ DRS may
14 enforce one, some or all types of the following disciplinary actions as a means to correct
15 an employee's behavior: written reprimand, suspension without pay, and involuntary
16 demotion. Disciplinary action documentation shall include a citation of any other
17 discipline which was used in the decision to administer disciplinary actions with
18 complaint rights. Actionable discipline documentation should be maintained by the
19 supervisor and employee. Such documentation should also be maintained in the official
20 personnel file.

21 (1) An employee shall be given a copy of any disciplinary action documents at the
22 time the disciplinary action was taken.

23 (2) An employee shall have a right to review disciplinary action documents in his or
24 her agency personnel record.

25 (3) Documents shall be provided to an employee in person. In the event that an
26 appointing authority is not able to provide the documents in person, the appointing
27 authority shall provide these documents through acceptable electronic means.

28 (4) The Civil Service Division, because of statutory responsibility, shall have a right
29 of access to disciplinary action documents.

30 (b) **Written Reprimand.**

31 (1) A written reprimand is normally the first step phase of formal discipline and is
32 intended to correct continuing performance or conduct problems not resolved by
33 informal discipline; or, to address problems so serious in nature or detrimental, they
34 warrant formal discipline. After consultation with his/her reviewing supervisor, the
35 Human Resources Management Specialist for Employee Relations and the DRS
36 Legal Counsel, a supervisor will determine whether or not there is sufficient
37 justification to issue a written reprimand. Once the decision has been made to
38 issue a reprimand, the written notice of reprimand should not be issued until it has

been reviewed by the Human Resources Management Specialist for Employee Relations and the DRS Legal Counsel.

(2) A memorandum will be provided to the employee that includes as a minimum:

(A) the date of the written reprimand;

(B) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated;

(C) a statement of the act or incident that is cause or reason for the written reprimand;

(D) steps which can be taken to resolve the problem;

(E) a citation of any other informal or formal discipline, which was used in the decision to administer the written reprimand;

(F) consequences of repeated infractions or continuing deficient performance or behavior;

~~(G) a notice of the employee's right to submit a written response within five (5) working days from receipt of the written reprimand for inclusion in his or her official personnel file. Such response will become part of the discipline documentation and filed in the official personnel file~~ a statement of the employee's right to file a complaint with the Civil Service Division.

~~(H) a notice of the employee's right to grieve the written reprimand in accordance with the Department's grievance policy~~ a copy of the Civil Service Division's complaint petition.

(3) The employee shall be provided an opportunity to respond in writing to the written reprimand. Any response shall be attached to the written reprimand; the written reprimand and any response shall be filed in the employee's disciplinary file.

~~(34)~~ **Distribution of written reprimand.** The original is given to the employee and copies to the appropriate supervisory staff, DRS Employee Relations and the official personnel file.

~~(45)~~ Petition to remove written reprimand from official personnel file.

(A) An employee may petition to remove a written reprimand from his/her official personnel file. Written reprimands involving discrimination, sexual harassment or workplace violence cannot be petitioned for removal. After an employee has performed satisfactorily without another disciplinary incident of any kind for a period of two (2) years, the employee may request the removal of written reprimand from their official personnel file. Such requests shall be made in writing to the Division Administrator or Superintendent through appropriate supervisory channels. Supervisors in turn will attach documentation of their

75 recommendation to the Division Administrator/Superintendent to approve or
76 disapprove the request.

77 (B) Within ten (10) working days after receipt of a written request, the Division
78 Administrator/Superintendent will render a decision whether or not to purge the
79 official file. If the decision is to purge, a copy of such decision will be provided to
80 the Human Resources Programs Director and supervisor with instructions to
81 purge and destroy the written reprimand and related documentation. If the
82 decision is not to purge, a written notice will be sent to the employee by the
83 Division Administrator/Superintendent detailing reasons for the denial. Such
84 notice will advise the employee of the right to grieve the decision in accordance
85 with the Department's grievance policy.

86 (c) **Adverse Action.** An adverse action is a formal disciplinary action that results in
87 loss of pay. Adverse actions include suspensions without pay, involuntary demotions or
88 discharge. The Division Administrator or Superintendent is the final decision-maker
89 regarding all adverse actions. No letter of suspension without pay, involuntary demotion
90 or discharge may be imposed without the signature of the Division Administrator or
91 Superintendent and review by the Human Resources Management Specialist for
92 Employee Relations, the Human Resources Programs Director and the DRS Legal
93 Counsel. Consistent with OAC 260:130-19-8, a ~~OAC 260:25-11-120 provides that a~~
94 ~~permanent employee may be suspended with pay for internal investigatory purposes or~~
95 ~~to facilitate the required notice and response opportunity prior to a~~ state employee may
96 be suspended with pay for internal investigatory purposes leading up to the suspension
97 without pay, involuntary demotion or discharge. ~~OAC 260:25-15-11(b)(4) prohibits the~~
98 ~~placement of an employee on annual leave for internal investigatory purposes.~~

99 (1) **Suspension without pay.** Upon approval of the Division Administrator or
100 Superintendent and review by the Human Resources Management Specialist for
101 Employee Relations, Human Resources Programs Director and DRS Legal
102 Counsel, a ~~permanent classified~~ state employee shall be provided a notice of the
103 ~~proposed suspension without pay by personal service or certified or registered mail.~~
104 ~~Pending completion of the notice and response opportunity, a permanent, classified~~
105 ~~employee may be suspended with pay if it is considered to be in the best interests~~
106 ~~of the agency.~~

107 (A) ~~Proposed~~ The notice shall include, ~~as a minimum:~~

108 (i) The date the employee was informed of the suspension without pay.

109 (iii) the The statute, rule, policy, practice or procedure regarding work
110 performance or behavior which was violated and cause for the ~~proposed~~
111 suspension without pay;

~~(iii) the specific acts or omissions which are cause or reason for the proposed suspension; A statement of the act, incident or omission which is cause or reason for the suspension without pay.~~

~~(iiiiv) an explanation of the evidence which justifies the proposed suspension without pay; and A citation of any employee engagement or disciplinary actions which were used in the decision to administer the suspension without pay.~~

~~(ivv) an opportunity, either in writing or orally, within five (5) working days to present reasons why the proposed suspension without pay is improper Effective date, the total number of days and date(s) of the suspension without pay.~~

~~(vi) Steps which can be taken to resolve the problem.~~

~~(vii) Consequences of repeated infractions or continuing deficient performance or behavior.~~

~~(viii) A statement of the employee's right to file a complaint with the Civil Service Division.~~

~~(ix) A copy of the Civil Service Division's complaint petition.~~

~~(B) **Final action.** Within ten (10) working days after the employee has had an opportunity to respond, the Division Administrator or Superintendent, after consultation with Human Resources Management Specialist for Employee Relations, Human Resources Programs Director and DRS Legal Counsel, shall provide written notice of final action to the employee by personal service or certified or registered mail. If the decision is to proceed with the suspension without pay, the notice will include as a minimum: The employee shall be provided an opportunity to respond in writing to the suspension without pay. Any response shall be attached to the suspension without pay notice; the suspension without pay notice and any response shall be filed in the employee's official personnel file.~~

~~(i) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the suspension without pay;~~

~~(ii) grounds for the action;~~

~~(iii) a citation of the law or rule under which the action is being taken;~~

~~(iv) effective date;~~

~~(v) inclusive dates of the suspension without pay;~~

~~(vi) a citation of any other informal or formal discipline which was used in the decision to administer the suspension without pay;~~

~~(vii) consequences of repeated infractions or continuing deficient performance or behavior;~~

~~(viii) the employee's right to file an appeal with the Merit Protection Commission, the twenty (20) calendar day time limit for the Commission's receipt of the appeal, the address of the Commission; and~~

~~(ix) the Commission's petition for appeal form (MPC-200).~~

(C) ~~Distribution of final action for~~ Copies of the notice of suspension without pay. ~~The original is given to the employee and copies will be provided to the appropriate supervisory staff, and DRS Employee Relations and the official DRS personnel file.~~

(2) **Involuntary demotion.** Upon approval of the Division Administrator or Superintendent and review by the Human Resources Management Specialist for Employee Relations, the Human Resources Programs Director and DRS Legal Counsel, supervisors recommending an involuntary demotion shall provide notice to the employee, ~~by personal service or by certified or registered mail, of the contemplated action. Pending completion of the notice and response opportunity, a permanent, classified employee may be suspended with pay if it is considered to be in the best interests of the agency.~~

(A) ~~Proposed~~ The notice shall include ~~as a minimum:~~

(i) The date the employee was informed of the involuntary demotion.

(iii) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the proposed involuntary demotion;

(iiiii) the specific acts or omissions which are cause or reason for the proposed involuntary demotion; A statement of the act, incident or omission which is cause or reason for the involuntary demotion.

(iiiv) an explanation of the evidence which justifies the proposed involuntary demotion; and, A citation of any employee engagement or previous disciplinary actions which were used in the decision to administer the involuntary demotion.

(ivv) an opportunity, either in writing or orally, within five (5) working days to present reasons why the proposed involuntary demotion is improper. The effective date of the involuntary demotion and the job level and pay.

(vi) Steps which can be taken to resolve the problem.

(vii) Consequences of repeated infractions or continuing deficient performance or behavior.

(viii) A statement of the employee's right to file a complaint with the Civil Service Division.

(ix) A copy of the Civil Service Division's complaint petition.

(B) **Final action.** ~~Within ten (10) working days after the employee has had an opportunity to respond, the Division Administrator/Superintendent, after consultation with DRS Human Resources and DRS Legal Counsel, shall provide written notice of the final action to the employee by personal service or certified or registered mail. If the decision is to proceed with involuntary demotion, the notice shall include: The employee shall be provided an~~ opportunity to respond in writing to the involuntary demotion. Any response shall be attached to the notice of involuntary demotion; the notice of involuntary demotion and any response shall be filed in the employee's official personnel file.

~~(i) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the involuntary demotion;~~

~~(ii) grounds for the action;~~

~~(iii) a citation or the law or rule under which the action is being taken;~~

~~(iv) effective date of the involuntary demotion and the job family level and pay band to which demoted;~~

~~(v) citation of any other informal or formal discipline which was used in the decision to administer the involuntary demotion;~~

~~(vi) a statement of the employee's right to file an appeal with the Merit Protection Commission, the twenty (20) calendar day time limit for the Commission's receipt of the appeal, the address of the Commission; and~~

~~(vii) the Commission's petition for appeal form (MPC-200).~~

(C) **Distribution of final action for involuntary demotion.** ~~The original is given to the employee and copies~~ Copies of the notice of involuntary demotion will be provided to the appropriate supervisory staff, DRS Employee Relations and official personnel file.

(3) **Discharge.**

(A) **Consultation requirements.** Prior to recommending discharge, the supervisor will review the employee's discipline history, the current offense, and the employee's work performance management plan. If the supervisor

decides to continue, recommendation for discharge must be approved through administrative channels. When the recommendation has been approved by the Division Administrator/Superintendent, ~~the decision~~ it will be reviewed by the Human Resources Management Specialist for DRS Employee Relations, Human Resources Programs Director and DRS Legal Counsel. If the decision is made to proceed, the employee will be provided a notice of the termination. The notice shall include:

(i) The date the employee was informed of the termination.

(ii) The statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the termination.

(iii) A statement of the act, incident or omission which is cause or reason for the termination.

(iv) A citation of any previous disciplinary actions which were used in the decision to administer the termination.

(v) Effective date of the termination.

(vi) A statement of the employee's right to file a complaint with the Civil Service Division.

(vii) A copy of the Civil Service Division's complaint petition.

~~(B) **Action required.** Before a permanent classified employee may be discharged, he or she will be afforded a pretermination hearing to be held before the Director or Director's designee. Such designee will be selected on a case-by-case basis. A pretermination hearing is not required for an employee being terminated as part of a reduction-in-force~~ Copies of the notice will be provided to the appropriate supervisory staff, Employee Relations and the employee's official personnel file.

~~(C) **Notice of pretermination hearing.** Prior to its issuance, the notice shall be reviewed by the Human Resources Management Specialist for DRS Employee Relations, the DRS Legal Counsel and the Human Resources Programs Director. The notice will be signed by the Division Administrator or Superintendent in the employee's supervisory channel and will be provided to the employee, by personal service or certified or registered mail, at least seven (7) calendar days prior to the scheduled hearing. This notice shall include, as a minimum:~~

~~(i) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the proposed action;~~

~~(ii) all grounds for the proposed action;~~

~~(iii) a summary of evidence or physical evidence to support each of the stated grounds for the proposed action;~~

~~(iv) a statement of the employee's right to be represented by an attorney or other person of his or her choice at the pre-termination hearing; and~~

~~(v) date, time and location of the pretermination hearing.~~

~~(D) **Disciplinary certificate.** The Director or designee shall ensure a certificate is prepared and placed in the employee's official personnel file at least seventy two (72) hours before the pretermination hearing. It shall indicate what disciplinary actions have been taken to comply with progressive discipline prior to the pretermination hearing and proposed termination and further certifies that all mandatory progressive discipline actions as required by statute have been taken before pretermination hearing. The disciplinary certificate is not required where grounds for proposed discharge are for commission of a criminal offense and/or acts involving moral turpitude. The Human Resources Management Specialist for Employee Relations will coordinate preparation of this certificate with the appropriate official(s).~~

~~(E) **Conduct of hearing.** The purpose of a pretermination hearing is to provide the Director or designee (hereafter called the hearing official) with information from which a determination may be made as to whether or not reasonable grounds exist to believe the charges against an employee are true and whether or not the grounds support the proposed discharge. The pretermination hearing need not be a full evidentiary hearing and formal rules of evidence shall not apply. The pretermination hearing shall be recorded by audiotape in its entirety. If the employee requests a copy of the tape, a copy will be provided at no cost to the employee.~~

~~(i) Participants in the pretermination hearing generally are the hearing official, DRS Legal Counsel, supervisor recommending the discharge, the employee and the employee's representative, if any.~~

~~(ii) The designated hearing official will preside over the hearing. Generally, hearings may proceed on the following order:~~

~~(iii) introductions of all individuals present and whether they represent the Department or the employee;~~

~~(iv) statement of the Department's view followed by the employee or their representative's response to the statute, rule, policy, practice or procedure of work performance or behavior which was violated and cause for the hearing;~~

~~(v) statement of the Department's view followed by the employee or their representative's response to the summary of evidence or physical evidence to support each of the stated grounds for the proposed discharge; and,~~

~~(vi) as final statements, the Department's representative and the employee or their representative will state their views and response to opposing arguments.~~

~~(F) **Legal review.** Within three (3) days of the hearing, a copy of the decision, the tape recording of the hearing and all supporting evidence will be forwarded to DRS Legal Counsel pursuant to Merit Rule 455:10-11-17(b)(5). If the hearing official requires more than three (3) working days to provide this report, an extension may be granted by the Division Administrator or Superintendent.~~

~~(G) **Final action.** Within ten (10) working days after the pretermination hearing, the employee shall be provided written notice of the final action by personal service or certified or registered mail. This notice will be prepared by the Division Administrator or Superintendent. This notice will be reviewed by the Human Resources Management Specialist for Employee Relations, Human Resources Programs Director and the DRS Legal Counsel prior to its issuance. If the decision is to proceed with discharge, the notice shall include, as a minimum:~~

~~(i) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the discharge;~~

~~(ii) all grounds for the discharge;~~

~~(iii) a citation of the law or rule under which the discharge is being taken;~~

~~(iv) effective date of the discharge;~~

~~(v) a citation of any other informal formal discipline which was used in the decision to administer the discharge;~~

~~(vi) a statement of the employee's right to file an appeal with the Merit Protection Commission, the 20 calendar day time limit for the Commission's receipt of the appeal and the address of the Commission; and~~

~~(vii) a copy of the Commission's petition for appeal form.~~

~~(H) **Distribution of final action for discharge.** The original is given to the employee and copies to the appropriate supervisory staff, DRS Employee Relations and official personnel file.~~

DRS: 3-3-92. Purpose and scope [AMENDED]

The purpose of this section is to establish the guidelines for managing the agency grievance procedures ~~as set forth in Subchapter 19 of the Merit Rules (455:10-19 et al).~~ The procedures provide standards for the prompt and equitable resolution of grievances at the lowest possible level within the agency. Employees may also seek other remedy options through the ~~Oklahoma Merit Protection Commission~~, U.S. Equal Employment Opportunity Commission or the ~~Oklahoma Human Rights Commission~~ Oklahoma Office of the Attorney General, Office of Civil Rights Enforcement. Time limits for these agencies should be closely followed. The filing of a formal grievance with the agency and appeal with other authorities are separate actions. The filing of one does not substitute for the filing of the other.

1 **DRS: 3-3-93. Employee eligibility [AMENDED]**

2 All ~~classified~~ employees of the Department of Rehabilitation Services have
3 access to the employee grievance resolution process. No employee will be disciplined
4 or otherwise prejudiced in his or her employment for exercising his or her rights under
5 these procedures. A copy of these procedures will be provided to each employee.

6 (1) All DRS employees, ~~both classified and unclassified~~, have the right to file
7 complaints of discrimination. For information regarding the processing of such
8 complaints, ~~classified~~ employees may refer to DRS: 3-3-95 and ~~unclassified~~
9 ~~employees may refer to DRS: 3-3-101.~~

10 (2) All DRS employees, ~~both classified and unclassified~~, have access to mediation
11 services and are encouraged to use the mediation process ~~through the Oklahoma~~
12 ~~Merit Protection Commission~~ to resolve any job related dispute. ~~Classified and~~
13 ~~unclassified employees~~ Employees can use the mediation process as described in
14 DRS: 3-3-48. ~~Classified employees~~ Employees may also refer to DRS:3-3-100 for
15 information related to mediation during the grievance process.

DRS:3-3-94. Grievable and non-grievable issues [AMENDED]

(a) Grievable issues, may include, but are not limited to: ~~any direct or indirect form of discipline, reduction in force (on basis of procedural errors),~~ work assignments, withholding of work, classification, reclassification, promotion, leave, performance appraisal, length of service, overtime, compensatory time, transfers (except punitive transfers), or any alleged violation of the Oklahoma Personnel Act or ~~Oklahoma Human Capital Management and Merit Protection Commission Merit Administration Rules,~~ including discrimination. Employees whose employment has been directly affected by unfair treatment, unsafe working conditions or erroneous interpretation or application of policy, procedure, ~~merit rule~~ Personnel Administration Rule or law have a right to file a grievance in accordance with ~~Subchapter 19 of the Merit Rules~~ and these procedures.

(b) Non-grievable issues include, but are not limited to: proposed disciplinary actions and furloughs.

1 **DRS: 3-3-95. Types of grievances [AMENDED]**

2 (a) **Promotion.** An employee who feels that he or she has not been treated fairly with
3 regard to a promotional action has the right to file a formal grievance. ~~The Merit~~
4 ~~Protection Commission will accept an appeal regarding a promotional action only after~~
5 ~~such complaint has been reviewed in the formal grievance procedure.~~

6 (b) **Classification.** An employee who believes he or she is not classified in
7 accordance with the work assigned on a regular and consistent basis as an integral part
8 of his or her work assignment and job family descriptor has the right to file a formal
9 grievance. An employee who believes he or she is entitled to compensation for having
10 performed duties on a regular and consistent basis which do not conform to the job
11 family descriptor for the position he or she occupies or occupied has the right to file a
12 formal grievance. For additional information regarding classification grievances, refer to
13 Section DRS:3-3-98 (b) of these procedures and ~~Merit Rule 455:10-19-35 (c).~~

14 (c) ~~**Discipline.** An employee who has reason to believe that any discipline imposed~~
15 ~~was not uniform, appropriate or in compliance with the agency progressive discipline~~
16 ~~policy has the right to file a formal grievance. Except for a suspension without pay,~~
17 ~~involuntary demotion or discharge, the Merit Protection Commission will accept appeals~~
18 ~~concerning discipline only after such complaint has been reviewed in the formal~~
19 ~~grievance procedure.~~

20 (d) **Leave.** An employee who feels he or she has not been treated fairly with regard to
21 annual, sick or any other leave accrual, accumulation, use or eligibility, including leave
22 without pay and leave sharing has the right to file a formal grievance. ~~The Merit~~
23 ~~Protection Commission will accept an appeal regarding leave issues only after such~~
24 ~~complaint has been reviewed in the formal grievance procedure.~~

25 (e) **Employee Performance Management Process (PMP) Appraisal.** An employee
26 who disagrees with his or her individual performance rating has the right to file a formal
27 grievance. ~~The Merit Protection Commission will accept, for alternative dispute~~
28 ~~resolution only, a complaint involving disagreement with the individual performance~~
29 ~~rating only after such complaint has been reviewed in the formal grievance procedure.~~
30 ~~The Commission will accept an appeal of alleged violations of the Oklahoma Personnel~~
31 ~~Act or Merit Rules in regard to the employee performance rating system only after such~~
32 ~~complaint has been reviewed in the formal grievance procedure. Alleged violations of~~
33 ~~Title 74 O.S. Section 840-2.5 and Section 840-2.9 in regard to the employee~~
34 ~~performance rating system may be appealed directly to the Commission.~~

35 (f) **Discrimination.** Complaints of illegal discrimination, including sexual harassment,
36 are subject to the grievance process and are filed with the designated agency grievance
37 manager/assistant grievance manager and are handled in accordance with the special
38 procedures outlined in DRS:3-3-101. A complaint of discrimination must describe an
39 adverse employment condition or action which the employee believes occurred, or was
40 directed at him or her, due to the employee's political or religious opinions or affiliations,
41 race, creed, gender (including sexual harassment), color, age (over 40), national origin
42 or disability. Grievances which allege retaliation for any previous discrimination
43 complaint filed will also be processed as a complaint of discrimination. Any employee
44 filing a grievance alleging a complaint of discrimination must indicate on the Internal
45 Agency Grievance Resolution Form, ~~MPC Form 900~~ DRS-A-114, the basis under which
46 the complaint is being filed. Complaints which fail to properly identify one of the above
47 listed reasons as the basis of any complaint of discrimination will be processed the
48 same as grievances which do not allege discrimination. Time frames for resolving

49 complaints of discrimination will adhere to those time frames set by merit rule and this
50 procedure.

51 (g) **Pay movement mechanisms and other compensation issues.** Any employee
52 who feels that a violation of law, rule, policy or practice has occurred with regard to pay
53 movement mechanisms or other compensation issues has the right to file a formal
54 grievance. ~~The Merit Protection Commission will accept an appeal regarding pay~~
55 ~~movement mechanisms and other compensation issues only after such complaint has~~
56 ~~been reviewed in the formal grievance procedure.~~

1 **DRS: 3-3-96. General Grievance Provisions [AMENDED]**

2 (a) **Records.** Grievance records will be maintained separate and apart from other
3 individual employee personnel files. Access will be governed in accordance with the
4 Oklahoma Open Records Act, 51 O.S. Section 24 A.1 (*et. seq.*).

5 (b) **Leave and travel.** The grievant may be approved for necessary and reasonable
6 absence not to exceed sixteen (16) working hours in order to gather information in
7 preparation to file and process a formal grievance. Requests should be made to the
8 immediate supervisor in advance and may be approved if the absence will not cause
9 undue hardship or ~~upset~~ disrupt the work place operation. Any approved absence will
10 not result in loss of pay or leave for the employee. A grievant or witness whose
11 attendance is required at meetings held to decide grievances will not be charged leave
12 to attend such meetings. Employees will provide their immediate supervisors with
13 advance notice of scheduled meetings. Approved travel and other expenses incurred to
14 resolve a formal grievance shall be reimbursed by the employing agency in accordance
15 with the State Travel Reimbursement Act, 74: O.S. 500 (*et. seq.*).

16 (c) **Employee Representation.** ~~A Grievant's grievant~~ A Grievant ~~have~~ has the right to be
17 represented by a person of his or her own choosing at the Step Two level of the
18 grievance resolution procedure. The representative must be willing and available to
19 serve and have authority to negotiate settlement. The employee is responsible for all
20 costs and expenses of his or her representation. A representative who is a state
21 employee will be on approved leave or leave without pay while working on the
22 grievance during regularly scheduled work hours. Any representative working on a
23 grievance during work hours will inform the immediate supervisor and request leave
24 appropriately. Such requests should be made in advance and may be approved if the
25 absence will not cause undue hardship or ~~upset~~ disrupt the work place operation.

26 (d) **Responsibilities of all staff.** All employees involved in the grievance resolution
27 process will make every effort to work towards a prompt resolution of disputes, adhere
28 to the rules and time frames outlined in this procedure and seek to resolve disputes at
29 the lowest level within the appropriate chain of command. Employees may use the
30 mediation services available when appropriate. All employees should refrain from idle
31 talk and should treat information about formal grievances with discretion ~~as required by~~
32 ~~rules adopted by the Administrator of Human Capital Management regarding the~~
33 ~~conduct of classified employees.~~ Employees are encouraged to contact their
34 designated agency grievance manager/assistant grievance manager whenever they
35 believe their use of the formal grievance procedures is imminent or appropriate.

36 (e) **Supervisor responsibilities.** Supervisors are responsible for the following:
37 informing their employees of the grievance resolution procedure; the name of the
38 designated agency grievance manager/assistant grievance manager for their respective
39 division/school; ensuring that applicable time limits pertaining to supervisory
40 responsibility within the grievance procedure are met; informally discussing, addressing
41 and resolving disputes brought to their attention; and referring matters outside of their
42 authority to resolve to the appropriate authority.

43 (f) **Employee responsibilities.** An employee who has reason to believe his or her
44 employment has been directly affected by unfair treatment, unsafe working conditions or
45 erroneous interpretation or application of agency policy, procedure, ~~merit~~ rule or law,
46 has a duty and responsibility to attempt to resolve the dispute informally. Thereafter,
47 the employee has a right to file a formal grievance. An employee filing a formal
48 grievance has the duty and responsibility to provide accurate, timely information to

49 support and document the complaint and to make a good faith effort to resolve the
50 dispute.

51 **(g) Agency Grievance Manager and Assistant Grievance Manager**
52 **Responsibilities.** The Director has designated the Human Resources Management
53 Specialist for DRS Employee Relations, DRS Human Resources Unit, Management
54 Services Division as the Agency Grievance Manager. The Alternate Agency Grievance
55 Manager is the Human Resources Programs Director, DRS Human Resources Unit,
56 Management Services Division. The Agency Grievance Manager is the contact for all
57 ~~classified~~ employees of the agency. The Director can also designate an Assistant
58 Grievance Manager for a particular Division or School and such a designation can be
59 withdrawn by the Director at any time.

60 (1) The Agency Grievance Manager and the Assistant Grievance Managers are
61 responsible for providing advice, assistance and technical direction to all levels of
62 staff regarding the grievance resolution procedure, reviewing formal grievances and
63 accepting or rejecting them, ensuring applicable time limits are met, facilitating the
64 prompt, equitable and timely resolution of grievances at the lowest level possible,
65 ensuring the formal grievance is reviewed and addressed by the appropriate step
66 two decision maker as defined in DRS:3-3-99 (b) (8), and maintaining grievance
67 records and statistics ~~required by merit rule~~. The Assistant Grievance Managers
68 are responsible for coordinating and consulting with the Agency Grievance Manager
69 during all phases of grievance process.

1 **DRS: 3-3-97. Time limits [AMENDED]**

2 (a) **Time calculation.** For purposes of this procedure, time will be counted in terms of
3 calendar days. If the last day of the count is a Saturday, Sunday, or legal holiday as
4 proclaimed by the Governor, the period will continue to the next business day.

5 (b) **Filing a formal grievance.** A formal grievance must be filed within twenty (20)
6 calendar days of the date of the act or incident; or twenty (20) calendar days of the date
7 the employee becomes aware of, or with reasonable effort, should have become aware
8 of a grievable issue. The designated agency grievance manager/assistant grievance
9 manager of each division may extend the time limit for filing a formal grievance if the
10 employee shows that he or she could not have otherwise timely filed.

11 (c) **Resolution Time.** A formal grievance must be resolved within forty-five (45)
12 calendar days after the filing of the grievance. The designated agency grievance
13 manager/ assistant grievance manager may extend the resolution time up for a
14 reasonable period of time up to an additional 45 days ~~to an additional fifteen (15) days~~
15 for good cause and will provide the grievant written notification of the extension prior to
16 the expiration of the original forty-five (45) calendar day time limit. The notification and
17 include the reasons for the extension. ~~The grievant and the designated agency~~
18 ~~grievance manager/ assistant grievance manager may agree to extend the grievance~~
19 ~~time limit up to an additional thirty (30) calendar days for good cause. The extension~~
20 ~~will be made in writing and contain the reasons for the extension. Copies of the~~
21 ~~extension agreement will be provided to all parties concerned. In no case will the~~
22 resolution time of a formal grievance exceed ninety (90) calendar days.

1 **DRS: 3-3-98. Special grievances [AMENDED]**

2 (a) **Group Grievances.** Employees may file a formal grievance as a group when the
3 grievance issues and remedy sought are the same or similar for each member of the
4 group. The group will select a member to serve as spokesperson who will speak and act
5 on behalf of all members of the group. The group is also entitled to a representative in
6 ~~accordance with Merit Rule 455:10-19-39~~ consistent with DRS:3-3-96(c). The
7 spokesperson is responsible for completing and filing the Internal Agency Grievance
8 Resolution form, ~~MPC Form 900~~ DRS-A-114, and the Group Grievance Form, DRS-A-
9 111. Employees who file a group grievance will forfeit their right to file individual
10 grievances on the same complaint. Members may withdraw from the group grievance,
11 but they may not complete the grievance individually without the written agreement of
12 the grievance manager or assistant grievance manager.

13 (1) The designated agency grievance manager/assistant grievance manager may
14 consolidate formal grievances containing the same or similar issues filed by two or
15 more employees to effect a more efficient, economical or more timely processing
16 and resolution of the grievances, so long as it will not adversely affect the interest of
17 the employees filing the grievances.

18 (2) The designated agency grievance manager/assistant agency grievance
19 manager may join two or more formal grievances filed by an employee to effect a
20 more efficient or timely processing and resolution of the grievances so long as it will
21 not adversely affect the interest of the employee.

22 (b) **Classification Grievances.** An employee has the right and responsibility to file a
23 classification grievance when duties performed on a regular and consistent basis do not
24 conform to the employee's job family descriptor. Employees are entitled to the job family
25 level they are currently assigned and to perform work consistent with their job family
26 level. Employees are entitled to the compensation assigned to the job family level for
27 which duties were performed on a regular and consistent basis. This provision does not
28 entitle the employee to a higher job family level and does not prohibit reclassification in
29 ~~accordance with other merit rules~~ consistent with the duties and responsibilities of the
30 position. Employees have no right to reclassification, to occupy a specific position, or to
31 the continued assignment of specific duties and responsibilities.

32 (4) The Step Two Decision Maker and employee shall attempt to resolve these
33 disputes through the formal grievance procedure. Classification grievances are
34 processed in the same manner as other grievances.

35 Corrective actions available at Steps One and Two of the Grievance Resolution Process
36 include modification of the duties so that the duties are consistent with the employee's
37 classification, or in-class transfer of the employee to a position properly allocated to the
38 job family level the employee currently holds.

(2) If the dispute cannot be resolved, the Step Two decision maker will advise the employee to complete a Classification Dispute Review Request form which will be sent to the DRS Human Resources Unit, ~~Attention: Personnel Office~~. A classification grievance must be concluded before an employee may file a Classification Dispute Review Request form, DRS-A-112.

(3) Upon receipt of a Classification Dispute Review Request, the DRS ~~Personnel Office~~ Human Resources Unit will review it along with other appropriate records, including the internal grievance file, to determine the nature and scope of the grievance.

(A2) If the grievance concerns only the job family level to which the position is assigned, a position audit will be conducted by the DRS ~~Personnel Office~~ Human Resources Unit to determine the proper job family level. If the grievance concerns the job family level to which the position is allocated, the decision by the DRS Human Resources Unit will include both the appropriate job family and the level of the position. The audit shall be completed within thirty (30) calendar days or the requesting official and the incumbent shall be notified in writing of the expected completion date. The employee will be sent a written notice of the ~~level assignment~~ the classification decision and its effective date. The decision of the DRS Human Resources Unit is final and is not subject to further appeal.

~~(B) If the Classification Dispute Review Request and other related information indicates the grievance concerns the job family to which the position is allocated, the form will be forwarded within twenty (20) days to Human Capital Management requesting that a position audit be completed and determination of an appropriate job family for the position. Upon receipt of the allocation decision from Human Capital Management, the DRS Personnel Office will determine the proper job family level for the position. The completion and notification of such audit will be carried out according to subparagraph (A) above in the Section.~~

~~(4) If an employee does not agree with the job family level assigned after completion of a grievance audit, he or she may request a review by Human Capital Management. Such request must be submitted to the DRS Personnel Office within twenty (20) calendar days of the date of the final notice of the decision by the agency. DRS Personnel will then submit the request, along with the documents that were considered in determining the job family level, to Human Capital Management who will issue a final decision concerning the proper level of assignment within fourteen (14) calendar days of receipt of the request.~~

(5) If a classification grievance or a classification dispute review indicates an employee has not been compensated for the duties which were performed on a regular and consistent basis, the employee shall be compensated for the difference between the employee's actual rate of pay and the rate of pay the employee would

79 have received on promotion to the job family level that was consistent with the
80 duties and responsibilities of the employee. Back pay will be limited to the date the
81 employee filed the classification grievance. (~~OAC 260:25-5-51~~)

DRS:3-3-99. Grievance Resolution Process [AMENDED]

The grievance resolution process will consist of two steps, (1) informal discussion between the employee and the immediate supervisor, or lowest level supervisor with the authority to resolve the dispute, and (2) the formal grievance. Employee concerns and complaints should, whenever possible, be promptly and informally resolved at the lowest possible level of supervision and in a manner least disruptive to the work place.

(1) Step One - Informal Discussion.

(A) The employee must verbally notify his or her immediate supervisor of a dispute as soon as possible. The supervisor and the employee will attempt to informally resolve the complaint. If the employee fails to attempt resolution at the lowest level, the process will end. If the employee dispute alleges misconduct by the immediate supervisor, the employee may contact the reviewing supervisor. Allegations of illegal discrimination, including sexual harassment, are handled in accordance with DRS:3-3-95 (f) of these procedures and in accordance with special procedures outlined in DRS:3-3-101.

(B) The supervisor and the employee will consider mediation prior to exhausting efforts to informally resolve the dispute. If mediation is used, the time limit for filing a formal grievance will be suspended pending completion of the mediation process.

(C) If the supervisor is unable to resolve the dispute because it is not within his or her control or authority, the supervisor will refer the dispute to the person within the division or school with the authority to resolve the dispute informally. If the employee and the supervisor are unable to resolve the dispute through informal discussion or mediation, the supervisor will provide a written response to the employee describing the efforts to resolve the dispute informally and provide a copy to the reviewing supervisor. If the dispute is not resolved, the employee may proceed to Step Two - Formal Grievance.

(2) Step Two - Formal Grievance.

(A) An employee who files a formal grievance must state the grievance using the Internal Agency Grievance Resolution Form, ~~MPC Form 900~~. In lieu of filing a paper form, employees are encouraged to use the digital Internal Agency Grievance Resolution Form in iDRS. The employee must file the completed original MPC-900 form with the designated agency grievance manager/assistant grievance manager. Except for formal grievances charging discrimination and sexual harassment, a copy of the supervisor's written response describing the efforts to resolve the dispute informally must be attached.

(B) The designated agency grievance manager/assistant grievance manager may add a party to a grievance, though not named, to protect any rights or interests they may have. Employee(s) so named or directly affected may participate in the grievance process.

(C) The formal grievance must be filed within twenty (20) calendar days after the employee first became aware of or should have been aware of the grievance issue. If the issue is a continuing condition, the employee must file within twenty (20) calendar days after the last occurrence. The designated agency grievance manager/assistant grievance manager may consider a grievance timely filed if the employee can show that he or she could not have otherwise timely filed. In any case, a grievance must be filed no later than twelve (12) months after the day of the action that is the reason for the grievance.

(D) The employee must write the statement of grievance in a reasonable and understandable manner. The statement of grievance must describe the cause of the grievance and other descriptive information, such as date and place of the occurrence or date the employee became aware of the matter, names of those involved or having knowledge of the matter; laws, rules or policies applicable to the grievance; description of the actions taken to resolve the complaint informally; proposed resolution of the grievance.

(E) Within five (5) calendar days, the designated agency grievance manager/assistant grievance manager will take one of the following actions:

(i) Reject the grievance and notify the grievant in writing of the reason for the rejection. ~~The grievant may appeal the decision in accordance with the provisions of Merit Rule 455:10-19-46.~~ Reasons for rejecting a grievance include, but are not limited to, the following:

(I) the issue is not timely filed;

(II) the issue is not within the control of the appointing authority;

(III) the grievant has not been directly affected by the matter which is the subject of the grievance;

(IV) failure to complete an informal discussion pursuant to DRS:3-3-99 (1)(A);

(V) the grievance information is incomplete.

(ii) The decision of the grievance manager to reject a grievance is final and is not subject to further appeal.

(iii) Accept the grievance and refer to the appropriate decision maker, including a written statement of the issues to be addressed, and notify the grievant.

(iv) Accept the grievance and refer to mediation pursuant to DRS:3-3-100.

(F) The decision maker will have forty (40) days to resolve the dispute unless he/she requests an extension in accordance with ~~merit rules~~ and these procedures.

(G) Upon receipt of the grievance, the decision maker will review the grievance and discuss the matter with the employee either in person or by telephone. The decision maker is also responsible for consulting with the designated agency grievance manager/assistant grievance manager, with necessary levels of supervision and other personnel as appropriate. The decision maker will provide a written decision to the employee and submit a copy to the designated agency grievance manager/assistant grievance manager for the designated division.

(H) Except for formal grievances charging discrimination, the Step Two decision maker will be the manager/supervisor who directly reports to the Director, Chief of Staff or a Division Administrator/Superintendent who has been assigned authority to be the decision maker. On a case-by-case basis, the designated agency grievance manager/assistant grievance manager in consultation with the appropriate individual, to include the Director, Chief of Staff, or Division Administrator/ Superintendent, may assign a Step Two decision maker outside the grievant's chain of command when appropriate.

(I) Resolution decisions must:

(i) address the issues raised in the formal grievance;

(ii) be made in writing to the employee filing the formal grievance or to the spokesperson of a group grievance; and

(iii) be delivered personally or by mail.

(J) The grievance procedure will end when:

(i) the grievance is withdrawn in writing by the grievant;

(ii) a resolution proposed by the employee in the written statement of the grievance is accepted in writing by an agency official who has authority to obligate the agency;

(iii) a resolution is reached at any step of the procedure and agreed to in writing and signed by the employee and an agency official who has authority to obligate the agency;

111 (iv) the grievant fails to comply with any time limit specified in this policy
112 without an approved time extension;

113 (v) a final decision on the grievance is provided to the grievant by the Step
114 Two decision maker.

115 (K) The grievant, supervisor and appropriate agency official(s) will be notified in
116 writing by the designated agency grievance manager/assistant grievance
117 manager that the grievance procedure has ended. The resolution of any
118 grievance must be in agreement with ~~the Oklahoma Personnel Act, Merit Rule~~
119 ~~and DRS policies~~ applicable law and Personnel Administration Rules.

1 **DRS:3-3-100. Mediation during grievance process (~~classified employees~~)**
2 **[AMENDED]**

3 (a) Mediation services are available to resolve disputes during each step of the
4 grievance process. Parties to a grievance issue may decide to use the services of a
5 certified mediator to attempt resolution of their dispute. All applicable time limits will be
6 "tolled" after receipt of a request for voluntary mediation by the Merit Protection
7 Commission and will end upon conclusion of the voluntary mediation session or at such
8 time that any participant withdraws from the voluntary mediation session. If the grievant
9 wishes to pursue the grievance following completion of the mediation process, at either
10 step, the grievance will resume as though it were the day following the date of the
11 request for voluntary mediation.

12 (b) Participation in a mediation, whether or not it results in a resolution of any or all of
13 grievance issues, will serve as completion of Step One of the grievance process. If a
14 signed agreement is reached by the parties as a result of the mediation session(s), the
15 grievant may elect to withdraw the grievance or proceed with Step Two.

16 (c) All mediated agreements which are in compliance with law, rule and procedure will
17 also be issued as the Step Two decision. The Step Two decision maker may address
18 issues not resolved by the mediated agreement as long as nothing in the decision
19 conflicts with any provision of the signed agreement. If during a mediation session, the
20 parties are unable to reach a signed agreement, the Step Two decision maker will
21 resume jurisdiction and, within the time remaining, render a decision as though
22 mediation had never occurred.

DRS:3-3-101. Discrimination and harassment complaint policy and procedure
[AMENDED]

(a) The purpose of this Section is to define discrimination and harassment and to establish a procedure to be used when handling grievances charging discrimination or harassment. The Department of Rehabilitation Services does not tolerate discrimination or harassment of employees. If subjected to such conduct, employees are encouraged to use the Discrimination and Harassment Complaint and Grievance Resolution Procedure (DHCGRP), contained in this section, to reach resolution. No employee will be disciplined or retaliated against for filing a grievance in accordance with these procedures.

(b) Respect for the rights of all and for the differences among people of diverse characteristics and backgrounds is a guiding principle of the DRS. Discrimination or harassment of staff members or clients because of race, religion, sex, national origin, age or disability, has no place in the DRS work force. Such practices violate both the law and the ideals of the DRS. Incidents which constitute actual or apparent discrimination or harassment can sometimes be the result of inadequate communication or insensitivity and can be quite unintentional. In such cases, simple honest discussion among the individuals involved may be the best way to resolve the matter. In other cases, communication may have broken down, the intent may have been malicious, or may involve a violation of DRS policy, State and/or Federal Law. In such instances, alleged violations can be handled through the Discrimination and Sexual Harassment Complaint Procedure.

(c) Employees who believe they have been subjected to discrimination or sexual harassment are encouraged to utilize the DRS Discrimination and Sexual Harassment Complaint Procedure for resolution of their concerns. The use of this procedure does not, however, prohibit an employee from filing a complaint with the Office of Civil Rights Enforcement, and/or the Federal Equal Employment Opportunity Commission and/or the Merit Protection Commission. The filing of a complaint through this process does not constitute filing a complaint or appeal with any of the above-referenced agencies. The rights, feelings and perceptions of all staff in the work unit must be respected. Concerns about conditions that affect one's work performance should be addressed through normal supervisory and administrative channels, whenever possible. The Discrimination and Sexual Harassment Complaint Procedure attempts to balance the rights of all parties, while ensuring the right of each employee to work in a setting free of discrimination and harassment.

(d) For purposes of this Section, discrimination shall be defined as any violation of applicable state and/or federal civil rights laws or any violation of DRS Policy or procedure in which an employee's race, sex, national origin, religion, age and/or disability is the basis for an employment decision.

(e) Sexual harassment is defined as repeated or unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

(1) submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;

(2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions; or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance (may include mutually agreeable conduct between parties if the activity results in adverse working conditions for uninvolved co-workers or subordinates).

(f) Sexual harassment is a serious form of discrimination which can take various forms, such as inappropriate remarks, comments, gestures, overtures or physical contact. In addition to being contrary to DRS Policy, sexual harassment is a violation of Title VII of the Civil Rights Act of 1964. The Federal Equal Employment Opportunity Commission has issued a regulation (29 CFR 1604) elaborating on the types of conduct that constitute sexual harassment. This regulation states, "With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the work place where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action...prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned."

~~(g) Pursuant to MPC Merit Rule 455:10-19-35, this~~ This Subsection sets forth the necessary steps and time frames a DRS employee must utilize in order to resolve work related disputes involving an allegation of discrimination and/or sexual harassment. There are three levels in the grievance process when it involves an allegation of discrimination and/or sexual harassment. These levels are the informal discussion, the formal grievance, and the final resolution. The necessary steps and time frames for resolving work related disputes involving an allegation of discrimination and/or sexual harassment are presented in (1) through (5) of this Subsection.

(1) **Informal discussion.** An employee with a work related dispute involving allegations of discrimination or sexual harassment is required to speak to his/her immediate supervisor, except in instances where the immediate supervisor is alleged to be a party to the discriminatory or sexual harassing act. In situations where the immediate supervisor is accused of discrimination or sexual harassment, the employee is required and must speak with either the Grievance Manager, or any other supervisor. Once any of the above-named officials are apprised of allegations of discrimination or sexual harassment, said official must initiate appropriate corrective action.

(2) **Filing period.** If an employee cannot resolve the alleged discriminatory issue during counseling with any of the officials named in (1) of this Subsection, a formal grievance may be filed:

(A) within twenty (20) calendar days of the date of the act or incident; or

(B) within twenty (20) calendar days of the date the employee becomes aware of or, with reasonable effort, should have become aware of the grievable issue.

~~[See MPC 455:10-19-42]~~

(3) **Filing a formal grievance.** Once the employee has completed the MPC Internal Agency Grievance Resolution form, he/she must give the form and all written documentation, such as witness statements, to the Grievance Manager. The employee should not submit documents he/she wants returned. The Grievance Manager is assigned the responsibility of coordinating complaints alleging discrimination. Upon receipt of discrimination complaints, the Grievance Manager will refer them to the DRS Director or designee within three (3) business days. Pursuant to MPC Rule 455:10-19-44, the The formal grievance must be resolved (including any investigation and the issuance of the final resolution letter) within forty-five (45) days from the filing of the grievance. The Grievance Manager may extend This this period may be extended up to fifteen (15) up to 45 additional days days for good cause. ~~The grieving employee and DRS may agree to extend up to an additional thirty (30) days for good cause.~~ The agreement extension must be in writing and include the reason for the extension. In no case shall the resolution time exceed ninety (90) days.

(4) **Civil Rights investigation.** Upon receipt of a discrimination grievance, the Director or designee shall refer it for an independent investigation. The investigator is empowered to gather information pertaining to the complaint and interview parties involved. In complaints involving alleged sexual harassment, the grievant may request to initially interview with a member of the same sex, as designated by the Director.

(5) **Final resolution.** The discrimination and sexual harassment complaint procedure will end when the Director receives the investigation report and issues a letter containing DRS's final resolution to the Grievant. Copies will be provided to the Grievance Manager and the individual responsible for committing the alleged discriminating act.