

**R952-1. Purpose:** To provide an effective means of ensuring fair treatment for regular staff employees seeking to resolve work-related problems or conditions of employment believed to be unfair, inequitable, or a hindrance to effective job performance.

## R952-2. References

- 2.1. Policy and Procedures R901, Personnel Definitions
- 2.2. Policy and Procedures R910, Equal Opportunity and Nondiscrimination
- 2.3. Policy and Procedures R952, Discrimination and Sexual Harassment Complaints
- 2.4. Policy and Procedures R954, Sexual Harassment and Consensual Relationships
- 2.5. Policy and Procedures R963, Reduction in Force
- 2.6. Policy and Procedures R964, Corrective Action and Termination of Staff Personnel

## R952-3. Definitions

- 3.1. **Final and Binding Decision:** A final decision in the grievance process. The grievance is considered closed.
- 3.2. **Grievance:** The act of appealing an adverse employment action as defined in R915, R963 or R964.
- 3.3. **Grievant/Petitioner:** A staff employee who has filed a grievance.
- 3.4. **Respondent(s):** A supervisor and/or manager who responds to a grievance.
- 3.5. **Advisor:** A person that the grievant and/or respondent has chosen to assist them in the grievance process. An advisor may only be present during Step III of the grievance process.
- 3.6. **Mediation:** A process by which a trained, neutral third person assists both parties in reaching a mutually acceptable resolution to a work-related grievance. Mediation is completely voluntary. Mediation will occur only when both parties willingly agree to participate. When a party is interested in exploring mediation, that party should contact Human Resources.
- 3.7. **Employment "At-will":** Employees who are "at will" do not have access to the Staff Employee Grievance process.
- 3.8. **Probationary Staff:** Those staff employees hired for, or reinstated to, a Regular Staff full-time or part-time position and serving a probationary period of at least six (6) months. Probationary staff employees are "at will" employees.

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<sup>1</sup> Approved July 19, 1983; replaced March 16, 1995. Replaced R951 and R952, March 18, 2005. Amended October 27, 2005; New R951 approved April 21, 2006.

**3.9. Regular Staff:** Those staff employees who are regularly scheduled to work 20 or more hours per week. Regular staff employees may be full-time (1.0 FTE) or part-time (equal to or greater than .5 FTE but less than 1.0 FTE).

**3.10. Temporary Staff:** Temporary staff employees may be full-time or part-time, receive no benefits, and are employed "at will." Temporary staff employees are either:

**3.10.1.** Those staff whose employment is expected to last less than nine (9) months; or

**3.10.2.** Those staff employees whose employment is expected to last nine (9) months or longer but who do not work at least 20 hours each week for nine (9) continuous months.

**3.11. Corrective Action:** Includes Written Warning, Final Written Warning, Suspension Without Pay, and Demotion.

**3.12. Adverse Employment Action:** Includes corrective actions, involuntary termination, separation, and reduction in force.

#### R951-4. Policy

**4.1. Informal Resolution:** OCHE encourages employees to first discuss potential grievances with their supervisors as appropriate and to seek an informal resolution of work-related problems or conditions of employment that they believe to be unfair.

**4.2. Availability of Step I Grievance:** The Staff Employee Grievance process set forth in Section 5 is available to all regular full- and part-time staff employees who have completed their probationary period. The staff grievance process is not available to at-will employees or other employees who may be excluded from use of this policy by employment contract.

**4.3. Grieving Adverse Employment Actions:** This process is available for grieving adverse employment actions, which are defined as a corrective action (written warning, final written warning, suspension without pay, and demotion), involuntary termination, separation, and reduction in force.

**4.4. Grievable Aspects of Corrective Action:** There are two aspects of a corrective action that can be grieved as outlined in this policy. First, employees can grieve the decision of a manager to take corrective action based on the facts of the situation. Second, employees may grieve the level of corrective action taken. The employee must show that one or both of these decisions made by the manager were arbitrary and capricious.

**4.5. Reductions in Force:** A Reduction in Force is not grievable except insofar as it is alleged that appropriate OCHE procedures have been violated (see R963).

**4.6. Non-Disciplinary Staff Separations:** There are two aspects of an R915 separation that can be grieved. First, employees can grieve if they believe that appropriate OCHE procedures have been violated. Second, they can grieve the decision of a manager to separate the employee from employment based on the facts of the situation.

**4.7. Confidentiality:** Information disclosed by an employee shall be treated as confidential insofar as it does not interfere with OCHE's legal obligation to investigate allegations of misconduct and to take corrective action or as otherwise provided by law.

**4.8. Retaliation:** Employees shall not be subjected to retaliation for initiating the grievance process or for participating in the grievance process as witnesses.

**4.9. Sexual Harassment or Discrimination:** Any employee who feels s/he has been subject to sexual harassment or discrimination on the basis of race, color, national origin, ethnicity, religion, sex, age, disability, sexual orientation, or veteran's status may file a complaint with Human Resources in accordance with R952.

**4.10. Time Off with Pay:** Reasonable time away from regular work duties with pay during scheduled working hours shall be provided to the parties, their representatives, or any witnesses called to testify, for reasonable time spent participating in the grievance resolution process. Prior to taking time off, employees should first contact Human Resources to determine what constitutes "reasonable time off" given the level of grievance and the impact on the work unit.

**4.11. Exceptions to OCHE Policy:** A proposed resolution of a grievance that involves an exception to an OCHE policy requires the prior approval of the cognizant Associate Commissioner and the Director of Human Resources, or the Commissioner, as appropriate.

**4.12. Strict Timelines:** The timeline associated with the grievance process is strict. Exceptions may be granted in advance by the Director for Human Resources or designee for good cause. Time limits stated refer to normal working days and do not include weekends or holidays.

**4.13. Grievance of Loss of Employment:** Grievances regarding loss of employment will proceed directly to Step III, which is the choice of either a hearing by the Staff Grievance Committee or a review by a higher level supervisor. Such grievances are to be submitted to Human Resources within five (5) working days of receipt of written notice of such termination.

**4.14. Dismissal of Grievance:** If the employee receives a decision at any step of the grievance process and does not ask for further review of the grievance within the specified time limit, that particular grievance will be closed and not considered further.

**4.15. Mediation:** At any stage of the grievance process, either party may request mediation to resolve a potential grievance. Mediation will only occur when both parties willingly agree to participate. Mediation is a free service offered to all employees.

**4.15.1.** If resolution is not reached through mediation, the grievant may withdraw the grievance or engage in the grievance process as discussed below.

#### **R951-5. Step I Grievance—Discussion between Employee and Immediate Supervisor**

**5.1. Step I Grievance:** Written warnings, demotions and suspensions without pay begin at Step I. Loss of employment moves directly to Step III.

**5.2. Informal Resolution:** Regular employees who wish to pursue a grievance shall initially attempt to informally resolve the grievance with their immediate supervisor. The grievant should present the grievance to his/her immediate supervisor within five (5) working days of the event prompting the grievance.

**5.3. Supervisor Response:** The supervisor will respond to the grievance within five (5) working days of the discussion.

**5.4. Request to Progress to Step II:** If the grievant feels the matter cannot be prudently discussed or resolved with the immediate supervisor at Step I, the grievant should inform Human Resources that they wish to progress to Step II. In such cases, Human Resources should be notified within five (5) working days of the event prompting the grievance.

#### **R951-6. Step II Grievance—Review by Higher Level Supervisor or Hearing by a Hearing Officer**

**6.1. Five Days to Request Step II:** A grievant has five (5) working days to request a Step II grievance (in writing) upon:

**6.1.1.** notification of the adverse employment action, if the grievant waives Step I, or

**6.1.2.** receipt of the Step I decision, if the grievant is not satisfied, or

**6.1.3.** failure of the supervisor to respond to the Step I grievance within five (5) working days. In this case, the grievant must then make a written request to move to Step II, or

**6.1.4.** the occurrence of the event prompting the grievance if seeking to skip Step I pursuant to 5.4.

**6.2. First Written Warning:** A Step II grievance of a first written warning is conducted by the appropriate higher-level supervisor or manager who was not involved in the Step I grievance and was not involved in the actions being grieved.

**6.2.1.** Upon receipt of the grievance, the higher-level supervisor should render a Step II decision within five (5) working days. In cases of written warnings, this will be the final decision, and the matter will be considered closed.

**6.3. Final Written Warning:** A Step II grievance of a final written warning will be conducted the same as a written warning, except that the employee may request a review by the cognizant Associate Commissioner or designee (see 6.6 below).

**6.4. Demotion or Suspension without Pay:** A Step II grievance of a demotion or suspension without pay consists of a hearing conducted by a "Hearing Officer" chosen from the Hearing Panel. The hearing will be conducted according to the same rules and procedures that govern a Step III grievance hearing.

**6.4.1.** The employee who is grieving a demotion or suspension without pay may waive a hearing by a hearing officer and instead opt to have a Step II grievance conducted by the higher-level supervisor.

**6.4.2.** Once an employee chooses either a hearing officer or a higher-level supervisor, they may not change their decision.

**6.5. Request for Final Review:** For final written warnings, suspensions or demotions, upon receipt of the decision by the higher-level supervisor or the hearing officer, the parties have five (5) working days to request a final review and decision by the cognizant Associate Commissioner or designee. The cognizant Associate Commissioner or designee should issue a final decision within ten (10) working days of receipt of the grievance.

#### **R951-7. Step III—Grievance of Loss of Employment**

- 7.1. **Loss of Employment:** In case of a loss of employment, the grievant may request:
- 7.1.1. A review by a higher-level supervisor or manager who was not involved in the Step I grievance and was not involved in the actions being grieved, or
  - 7.1.2. A hearing by a Committee comprised of an objective panel of staff members.
  - 7.1.3. Once an employee chooses either a Committee or a higher-level supervisor, they may not change their decision.
- 7.2. **Time Limit:** Requests must be made within five (5) working days of notification of the employment action being grieved.
- 7.3. **Review and Recommendations:** Upon conclusion of the review by the higher-level supervisor/manager or the hearing by the Committee, they should report their findings and recommendation(s) to the cognizant Associate Commissioner within five (5) working days.
- 7.4. **Review and Written Decision:** Upon receipt of the grievance, the Cognizant Associate Commissioner will review the submitted documentation and recommendations and should issue a written decision within ten (10) working days. In the event that the Associate Commissioner was involved in the action being grieved, another Associate Commissioner will review the recommendations and issue a written decision.
- 7.5. **When Commissioner is a Respondent:** In cases where the Commissioner is a respondent or otherwise involved in the decision being reviewed, the final decision will be made by an appropriate person designated by the Director for Human Resources in consultation with the Office of the Attorney General.