

YOUTH SERVICES POLICY

Title: Employee Grievance Procedure	Type: A. Administrative Sub Type: 2. Personnel Number: A.2.46
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References: Louisiana State Constitution, Article X, Section 10, Paragraph (A) (1); Civil Service Rule 3.1(m) and the Louisiana Department of State Civil Service Human Resources Handbook; La. R.S. 13:5231; Executive Order No. JBE 2016-II "Equal Opportunity and Non-Discrimination"; ACA Standards 2-CO-1C-01, 2-CO-1C-02 (Administration of Correctional Agencies); 4-JCF-6D-01, and 4-JCF-6D-04 (Performance-based Standards for Juvenile Correctional Facilities); YS Policy Nos. A.2.1 "Employee Manual", A.2.8 "Sexual Harassment", A.2.12 "Personnel Records", A.2.45 "Performance Evaluation System (PES) and Market Rate Adjustments" and A.2.57 Prohibited Harassment and Discrimination	
STATUS: Approved	
Approved By: James Bueche, Ph.D., Deputy Secretary	Date of Approval: 12/23/2019

I. AUTHORITY:

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviations from this policy must be approved by the Deputy Secretary.

II. PURPOSE:

To establish a formal and uniform procedure at the unit level to address certain employee concerns and issues not appealable to the Director of the Department of State Civil Service (DSCS) or to the Louisiana Civil Service Commission (CSC).

III. APPLICABILITY:

All currently employed Youth Services employees.

Each Unit Head shall ensure that appropriate procedures are in place to comply with the provisions of this policy.

IV. DEFINITIONS:

Business Days – Business days are Monday through Friday.

Calendar Days – Calendar days are consecutive days including weekends and holidays.

Confidential Information - Information that is deemed confidential either by statute, court decision, or Civil Service Rule. Information that can remain confidential includes that information for which an employee has a reasonable expectation of privacy.

Equal Employment Opportunity Commission (EEOC) - The U.S. EEOC is the federal regulatory agency responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), sexual orientation, gender identify, national origin, political affiliation, age (40 or over), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Grievance – For the purposes of this policy, a grievance is an official, internal agency procedure used to resolve employee complaints and other personnel actions that are not appealable to the Civil Service Director or to the Civil Service Commission or that are not complaints or charges which could be filed with the Equal Employment Opportunity Commission (EEOC).

Harassment - Harassment is an act committed by a person that makes another feel uncomfortable, offended, intimidated or oppressed. Harassment that is prohibited by law includes harassment based on sex, religion, gender, race, national origin, age and disability.

Federal law distinguishes two types of sexual harassment. The first is *quid pro quo*. Under *quid pro quo*, a person in authority demands sexual favors from a subordinate in exchange for employment security or job benefits. The second is identified as *hostile workplace/environment harassment*. This occurs when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Hearing/Grievance Hearing - An informal meeting between a supervisor and an employee conducted to allow the employee the opportunity to air a grievance and to allow the supervisor the opportunity to resolve the grievance when possible.

Human Capital Management (HCM) – A system that replaced the state employee payroll processing which was formerly performed by ISIS.

Performance Evaluation System (PES) – PES is a system which was designed by DSCS to govern performance evaluations and performance adjustments. This system replaces Performance Planning and Review (PPR), which was a formal procedure used for evaluating job performance.

Unit Head – For the purposes of this policy, the Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, Executive Management Advisor, General Counsel, Regional Directors, Facility Directors, and Regional Managers.

V. POLICY:

Pursuant to Executive Order No. JBE 2016-II “Equal Opportunity and Non-Discrimination”, YS is committed to maintaining a work environment that is free of harassment and discrimination on the basis of race, color, religion, sex, sexual orientation, gender identify, national origin, political affiliation, disability, or age.

Therefore, it is the Deputy Secretary’s policy to have an internal grievance process available in all units and offices to ensure that employees have a fair and impartial review, and resolution of their grievances.

VI. GENERAL PROVISIONS:

- A. A "grievance procedure" is a method by which employees can describe their grievance, have it reviewed by ascending levels of authority, and receive a resolution of the grievance. The procedure is intended for use when a dissatisfaction that cannot be resolved by less formal means arises in a day-to-day relationship between employees or between an employee and their employer.
- B. Supervisors shall objectively investigate and discuss all complaints brought to their attention as soon as possible, giving them their immediate attention with the express intent of finding a reasonable solution to the complaint or concern.

As a follow-up to any complaint brought to the attention of supervisors, they shall notify the employee either verbally or in writing within five (5) calendar days. If more than five (5) days is needed to collect information to address the complaint, the supervisor shall send written notice of the additional time needed and provide a date by which the employee will be advised of the outcome.

- C. Employee problems shall be resolved at the lowest possible supervisory level and at the earliest opportunity. The Employee Grievance Procedure is an official, internal agency procedure used to resolve work related employee issues and other personnel issues that cannot be settled by informal means that are not appealable to the Director of State Civil Service (SCS) or the Civil Service Commission (CSC); or that are not complaints or charges that could be filed with the Equal Employment Opportunity Commission (EEOC). [see Attachment A.2.46 (a) "Choosing the Right Process"]. The grievance procedure is handled entirely within YS and will be decided by the Deputy Secretary/designee if it was not resolved at a lower level.

- D. Employees of YS are encouraged to make use of the agency's grievance procedure when informal efforts to resolve differences do not suffice; however, nothing contained herein should be construed as denying employees the right to seek relief from any outside entity from which relief may be requested directly, including the CSC, SCS or EEOC.
- E. Grievances shall be filed using the attached "Employee Grievance Form" [see Attachment A.2.46 (b)]. The grievance forms are accessible on the OJJ website under "OJJ Forms", and as an attachment to this policy. Grievances concerning sexual harassment or discrimination of protected classes, including race, color, sex, gender, sexual orientation, religion, national origin, political affiliation, age, or disability, shall be handled pursuant to YS Policy A.2.8 and YS Policy A.2.57 respectively.
- F. If an employee claims harassment by the person designated to hear the grievance, the employee's grievance will proceed to the next step.
- G. The procedure outlined in this policy is a method of determining the specific cause for a grievance and finding the best resolution. This procedure applies to all current YS employees. Although an employee filing a grievance, and the party the grievance is filed against make seek legal representation, neither is allowed to have their legal representative present at a grievance hearing. The person against whom the grievance/complaint is made shall have the right to give a statement.
- H. Retaliation against an employee who files a grievance is strictly prohibited.
- I. No employee may use their position to coerce, attempt to coerce, or influence in any manner the YS employee handling or hearing a grievance or other person involved in the grievance process. An employee who uses their official position in such a manner shall be subject to disciplinary action.
- J. Information concerning an employee grievance shall remain confidential.
- K. Grievances arising from allegations of sexual harassment or discrimination of protected classes may be filed as a grievance, but will likely be handled pursuant to YS Policy No. A.2.8 or A.2.57.

VII. ISSUES NOT APPROPRIATE FOR EMPLOYEE GRIEVANCE PROCESS:

- A. Performance Evaluation System (PES) complaints or appeals shall be addressed through procedures outlined in YS Policy No. A.2.45. Requests for agency review or review by the Director of SCS are explained in the referenced policy.

- B. Appeals of letters of warning, reprimand, or counseling shall not be handled through the YS grievance procedure. Employees in receipt of such performance letters have the opportunity to respond in writing, and a copy of their response is attached to each copy of the letter maintained by YS.

VIII. STEPS IN THE GRIEVANCE PROCEDURE:

A. Step One

1. Using the Employee Grievance Form, the employee shall present their grievance to the Unit Head within 14 calendar days from the date the employee first became aware of, or should have become aware of, the cause of such grievance. If the Unit Head heard the complaint informally or is the subject of the grievance, the employee shall file the grievance with the appropriate Regional Director within 14 calendar days.
2. The Unit Head shall forward a copy of the grievance to Legal Services and Public Safety Services, Human Resources Office (PSS/HR).
3. The Unit Head shall meet with the employee to discuss the grievance and try to come to a resolution of the problem.
4. The Unit Head shall provide a written response to the grievance by completing the Step One Response of the Employee Grievance Form (page 2), and furnish a copy to the employee and the Regional Director within seven (7) calendar days following receipt of the grievance.
5. Central Office employees shall present their grievance to the immediate supervisor within 14 days from the date the employee first became aware of, or should have become aware of, the cause of such grievance. If the Supervisor heard the complaint informally or is the subject of the grievance, the employee shall file the grievance with the Assistant Secretary/designee within 14 calendar days.

B. Step Two

1. If the employee is not satisfied with the outcome of Step One, or if a response is not provided within the prescribed time limit, the employee may complete the Employee Response section of the

“Step One Response Form” and submit their written grievance to the Regional Director to initiate Step Two of the grievance process.

The employee must file the Step Two grievance within seven (7) calendar days following the date the employee received the Unit Head’s Step One response; or within seven (7) calendar days following the date the Unit Head’s Step One response was due, *if the Unit Head fails to respond within the prescribed time limit.*

2. The Regional Director shall schedule a hearing, and may also reschedule or continue a grievance hearing. The Regional Director shall give the employee reasonable advance notice of the hearing. The employee must attend the hearing.
3. The Regional Director shall complete the Step Two portion of the Employee Grievance form, and provide a written response to the employee within 14 calendar days after the grievance hearing is completed.
4. Central Office employees not satisfied with the outcome of Step One, or if a response is not provided within the prescribed time limit, the employee may complete the Employee Response section of the “Step One Response Form” and submit their written grievance to the Assistant Secretary/designee to initiate Step Two of the grievance process.
5. A copy of the completed Step Two Employee Grievance Form shall be provided to PSS/HR and all parties involved in Step Two of the grievance procedure.

C. Step Three

1. If the employee is not satisfied with the outcome of Step Two or if a response is not provided within the prescribed time limit and the employee wishes to go to Step Three, he shall submit the Employee Response section of the Step Three Response Form to the Deputy Secretary/designee to initiate Step Three Grievance.

The employee must submit the Step Three Response Form within seven (7) calendar days following the date the employee received the Regional Director/Assistant Secretary/designee Step Two response; or within seven (7) calendar days following the date the Regional Director/Assistant Secretary/designee Step Two response was due, *if the Regional Director/Assistant Secretary/designee fails to respond within the prescribed time limit.*

2. The employee's Step Three grievance request shall include copies of the Step One and Step Two decisions.
3. The employee shall also submit a copy of the Step Three grievance request to the Unit Head and Regional Director/Assistant Secretary/designee as notification that the grievance is on appeal to the Deputy Secretary.
4. The Deputy Secretary/designee shall handle the Step Three grievance as follows:
 - a. Respond to the grievance after reviewing the Step One and Step Two responses;
 - b. Respond after conducting further investigation;
 - c. Conduct a hearing; or
 - d. Any combination of the above.

If the Deputy Secretary/designee conducts a hearing, the employee must be given at least three (3) business days' advance notice. The employee must attend the hearing.

5. The Deputy Secretary/designee shall complete the Step Three Deputy Secretary/Designee portion of the "Employee Grievance Form", and provide a written decision to the employee within 21 calendar days following receipt of the grievance by the Deputy Secretary/designee.
6. When the grievance is directly against the Assistant Secretary or Deputy Secretary, the grievance shall be submitted to the Deputy Secretary, who shall designate a representative or grievance committee to hear the grievance. A recommendation shall be submitted to the Deputy Secretary within fourteen (14) calendar days of the hearing. The Deputy Secretary shall issue a final decision within twenty-one (21) calendar days following the hearing.

Additionally, a copy of the completed Step Three "Employee Grievance Form" shall be provided to the Unit Head, Regional Director/Assistant Secretary/designee, PSS/HR, and all parties involved in Step Three of the grievance procedure.

IX. DISMISSAL OF GRIEVANCE:

- A. When a Unit Head receives a grievance whose subject matter is not appropriate for the grievance procedure, the Unit Head may discuss with the employee that the grievance is subject to dismissal.

- B. Employees shall be notified in writing within 14 calendar days if their complaint is dismissed.
- C. Grievances may be dismissed at any stage of the process by the Unit Head, Regional Director/Assistant Secretary/designee or the Deputy Secretary/designee due to one or more of the following:
 - 1. The action is appealable to the Director of (SCS) or to the (CSC);
 - 2. The employee does not work for the agency;
 - 3. The person against whom the grievance is filed does not work for the agency;
 - 4. The grievance has not been submitted in the required manner or within the prescribed time period;
 - 5. A decision on the grievance would be ineffective or moot;
 - 6. The remedy requested cannot be granted;
 - 7. The grievance is found to be frivolous;
 - 8. The grievance is being used to impede the efficient operation of the agency; and/or
 - 9. The employee did not appear for the grievance hearing.
- D. When a Unit Head, Regional Director/Assistant Secretary/designee or Deputy Secretary/designee dismisses a grievance, they shall send written notice of the dismissal to the employee, PSS/HR, and the Unit Head who received the grievance.

X. RESPONSIBILITIES OF PSS/HR:

- A. HCM located at DPS shall be responsible for the following:
 - 1. Maintaining employee grievance records. All records and documents related to grievances shall be filed pursuant to YS Policy No. A.2.12.
 - 2. Tracking the number and nature of grievances through the HCM system under the grievance info-type to help define and address internal concerns and issues.
 - 3. Compiling employee grievance statistics for reporting purposes.
 - 4. Providing training and support to Unit Heads and supervisors upon request.

5. Analyzing grievances and reporting notable trends to the Deputy Secretary on an annual basis.

B. Questions regarding grievances shall be directed to the Undersecretary/designee or PSS/HR.

Previous Regulation/Policy Number: A.2.46

Previous Effective Date: 08/21/2018

Attachments/References: A.2.46 (a) Choosing the Right Process. December 2019

A.2.46 (b) Employee Grievance Form

CHOOSING THE RIGHT PROCESS

Concerns, disagreements or disputes should be handled by the process designed to grant relief for that particular concern. Some areas of concern are properly handled through the grievance process, while others are proper subject matter for the Civil Service Commission (CSC) or the Equal Employment Opportunity Commission (EEOC).

There are different time limits for filing an internal grievance, a Civil Service appeal, and an EEOC charge. If the wrong process is chosen, the employee may find that the time limit for the correct means has expired by the time the mistake is discovered. The lists below offer guidelines for making a proper determination.

Examples of complaints handled appropriately through the grievance process

- Health and safety concerns
- Personality disputes between supervisor and subordinates or among workers
- Perceived unfair treatment that does not rise to the level of discrimination of a protected class
- Changes in work location or hours

Examples of matters appealable to the Director of State Civil Service

- Allocation or reallocation decisions (Civil Service Rule No. 5.3)
- Rejection of a job application (Civil Service Rule No. 22.4)
- Determination that an applicant lacks the minimum qualifications (Civil Service Rule No. 22.5)
- Reviewer's decision concerning the Performance Evaluation System (PES) of a permanent employee (Civil Service Rule No. 10.14)

Examples of matters appealable to the Civil Service Commission

- Suspension without pay, reduction in pay, involuntary demotion, or dismissal of a permanent employee
- Non-disciplinary removal of a permanent employee
- Layoff of a permanent employee
- Employment action/decision that discriminates against an employee because of his political or religious beliefs, sex, or race
- An employment action/decision that violates a Civil Service Rule other than a rule in Chapter 10 or the Louisiana State Constitution, Article X, Section 10, Paragraph (A) (1).

Examples of matters referred to the Equal Employment Opportunity Commission (EEOC)

- Complaints or charges alleging discrimination based on race, color, sex, sexual orientation, religion, veteran status, national origin, political affiliation, age and disability.

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