



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-032000 Employee Grievance Policy	Issued: 7/19/96 Effective: 7/19/96	Reviewed: 3/30/20 Revised: 4/3/15
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

Policy *CD-010100*

REFERENCE:

- A. ACA Standard 2-CO-1C-02, Standards for Administration of Correctional Agencies, 2nd Edition.
- B. ACA Standard 2-CI-6D-1, *Standards for Correctional Industries*, 2nd Edition.

PURPOSE:

Acknowledge the right of employees to seek resolution of grievances and to establish procedures for such resolution. [**2-CO-1C-02**]

APPLICABILITY:

All employees of the New Mexico Corrections Department (NMCD or Department).

FORMS:

- A. **Grievance form** (*CD-032001.1*)
- B. **Level One Response form** (*CD-032001.2*)
- C. **Grievant Appeal to Level Two form** (*CD-032001.3*)
- D. **Grievant Appeal to Level Three form** (*CD-032001.4*)
- E. **Grievant Appeal to Level Four form** (*CD-032001.5*)

ATTACHMENTS:

- A. **Informal Resolution Attachment** (*CD-032001.A*)
- B. **Waiver of Time Limit Attachment** (*CD-032001.B*)

DEFINITIONS:

- A. Duty time: An employee's regularly scheduled work hours.
- B. Formal disciplinary action: A suspension, demotion or dismissal.

- C. Grievance: A written or oral complaint by which grievants can seek to remedy problems associated with their working conditions with the exception of unlawful discrimination and sexual harassment.
- D. Grievant: A Department employee to whom this policy applies and who invokes these procedures on his or her own behalf.
- E. Informal disciplinary action: An oral reprimand or letter of reprimand.
- F. Representative: An individual, whether or not that individual is a Department employee, selected by a grievant to accompany or otherwise assist the grievant in connection with a grievance brought pursuant to this policy.
- G. Resolution: An expeditious and mutually satisfactory conclusion of an employment-related grievance initiated according to this policy by means of a written or oral communication without resort to more formalized processes such as judicial proceedings or administrative proceedings conducted by an agency other than the NMCD.
- H. Respondent: The person against whom the grievant has brought a grievance.
- I. Secretary: Cabinet level official who has general responsibility for the NMCD.

POLICY:

- A. Employee grievance procedures may be invoked by all Department employees against any other Department employee except that these procedures are not intended to and shall not be used in lieu of appeals to the State Personnel Board (SPB) from formal disciplinary actions. [2-CI-6D-1]
- B. The employee grievance procedure is not intended to and shall not be used to report unlawful discrimination and sexual harassment. All reports of unlawful discrimination and sexual harassment shall be made in accordance with policy and procedure CD-033200.
- C. All reasonable efforts will be made by the Department and its employees to resolve employee grievances in a timely, mutually satisfactory manner.
- D. Efforts will be made to resolve employee grievances at the lowest possible level, utilizing the processes outlined in the following procedure.
- E. Resolution of a grievance at the lowest, most informal level is always encouraged.
- F. Any grievant, representative, witness (es) or other person who participates in the grievance procedure in any way will not be subject to retaliation for such participation. Any action taken to threaten, intimidate or coerce an individual for that person's involvement in a grievance is strictly prohibited and may result in disciplinary action.

- G.** Upon completion of a grievance, the case folder containing historical, investigatory or background materials will be maintained by the respondent.
- H.** Upon completion of a grievance, the respondent shall take a copy of the case file (containing historical, investigatory and/or background materials) along with copies of all grievance forms, appeals and responses to the applicable Human Resources (HR) manager or supervisor. The HR manager or supervisor shall maintain a complete file on each grievance.



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AUTHORITY:
CD-032000

PROCEDURES: [2-CI-6D-1] [2-CO-1C-02]

A. A grievant is required to complete all levels of the grievance procedures that follow, unless there is an exception authorizing a grievant to bypass a certain level.

B. Informal Resolution Level:

1. Except as provided in the following paragraph, a grievant shall initially seek to informally resolve any grievance with the respondent involved, including supervisors or co-workers, by verbally discussing the subject of the grievance and by attempting to reach a mutually satisfactory resolution thereof. If no attempt is made first to resolve the problem informally, the grievance will not be heard at any other level unless the grievant can justify bypassing the informal level. The grievant shall attempt to informally resolve the matter by meeting with the respondent within ten working days from the date of the incident giving rise to the grievance.
2. A grievant shall not be required to initially attempt to informally resolve a grievance by initiating a verbal discussion with the respondent in circumstances where the grievant can justify bypassing the informal level. Examples of such situations are where the employee justifiably believes his/her physical safety may be jeopardized by initiating such contact or when the grievant is so intimidated by the respondent that he/she cannot make such contact. If the grievant wishes to bypass the informal level, the grievant must state in writing their justification for seeking to bypass the informal level. The person responding to the grievance shall determine whether the stated justification is adequate and document that determination in the response to the grievance. A determination that the justification is not adequate is appealable to the next level.
3. The respondent shall meet with the grievant, discuss the subject of the grievance verbally and attempt to resolve the grievance at the informal level.
4. If, after meeting informally, the parties are able to resolve the grievance at this level, the parties may, but are not required to, document the resolution reached.

C. Level One:

1. If the grievant attempts to resolve the matter at the informal resolution level, but is unable to satisfactorily resolve the grievance at the informal level, the grievant may pursue the formal grievance into Level One by delivering completed copies of the **Grievance form** (*CD-032001.1*) and a blank copy of the **Level One Response** form (*CD-032001.2*) to the respondent within ten (10) working days from the date the informal level is completed.
2. If the grievant can justify bypassing the informal resolution level, the grievant may pursue a formal grievance at level one by delivering completed copies of the **Grievance Form** (*CD-032001.1*) and a blank copy of the **Level One Response** form (*CD-032001.2*) to the respondent within ten (10) working days from the date of the incident giving rise to the grievance.
3. The respondent receiving the completed grievance form shall note the date and time received and provides a written response on the **Level One Response** form (*CD-032001.2*) within ten (10) working days from the date of receipt, attaching additional information or explanation as necessary, and shall then immediately return the completed form with his or her response to the grievant.
4. If the respondent is the Secretary, the grievance procedure will be deemed final at the completion of Level One.

D. Level Two:

1. If the grievant determines that the response made at Level One of this procedures is unsatisfactory, the grievant may appeal the response made at Level One to Level Two by delivering, within ten (10) working days of receipt of the decision made at Level One, completed copies of the **Grievance** form (*CD-0321001.1*), the **Level One Response** form (*CD-032001.2*) and a blank copy of the **Grievant Appeal to Level Two** form (*CD-032001.3*) with the top half completed by the grievant, to the upper level supervisor of the respondent as follows:
 - a. To the warden of the prison facility that employs the respondent, if the respondent is employed in a position at a prison facility.
 - b. To the Bureau Chief of the bureau that employs the respondent, if the respondent is employed in a non-custody/non-security position at a prison facility (e.g., mental health staff, education staff).
 - c. To the Regional Manager of the region that employs the respondent, if the respondent is employed in the Probation and Parole Division.
 - d. To the Deputy Director of the Corrections Industries Division, if the respondent is employed in the Corrections Industries Division.

- e. To the Section Chief of the section that employs the respondent, if the respondent is employed in the Training Academy Division.
 - f. To the Bureau Chief of the bureau that employs the respondent, if the respondent is employed in the Administrative Services Division.
2. The upper level supervisor receiving the completed grievance form shall note the date and time received, notify the person(s) involved, investigate the grievance, and provide a written decision on the **Grievant Appeal to Level Two** form (*CD-032001.3*) within ten working days from the date of receipt, attaching additional information or explanation as necessary, and shall then immediately return the completed form with his/her decision to the grievant and the respondent.
 3. The grievant may skip Level Two and proceed to Level Three if the respondent is one of the upper level supervisors set out in paragraph D(1)(a) through (f) above.
 4. The grievant may skip Levels Two and Three and proceed to Level Four if the respondent is a Division Director.

E. Level Three:

If the grievant determines that the response made at Level Two of this procedure is unsatisfactory, the grievant may appeal the decision made at Level Two to Level Three by delivering, within ten (10) working days of receipt of the decision made at Level Two, completed copies of (*CD-032001.1*), (*CD-032001.2*), (*CD-032001.3*) and a copy of the **Grievant Appeal to Level Three** Form (*CD-032001.4*), with the top half completed by the grievant, to the Division Director of the division that employs the respondent.

1. The Division Director shall note the time and date of receipt of the appeal and shall provide a written determination on the appeal to the grievant within ten (10) working days from the date of receipt. The Division Director shall note his or her decision on the **Grievant Appeal to Level Three** form (*CD-032001.4*) and may attach additional information or explanation as necessary and shall then immediately return the completed form with his or her determination to the grievant and to the respondent.
2. The grievant may skip Level Three and proceed to Level Four if the respondent is a Division Director.

F. Level Four:

1. If the grievant is not satisfied with the determination made upon appeal at Level Three, he/she may appeal the decision made at Level Three to Level Four of the grievance procedure by delivering completed copies of (*CD-032001.1*), (*CD-032001.2*), (*CD-032001.3*), (*CD-032001.4*) and a copy of the **Grievant Appeal to Level Four** form (*CD-032001.5*), with the top half completed by the grievant, within ten (10) working days from receipt of the determination to the Office of the Secretary.

2. The Office of the Secretary shall note the time and date of receipt of the grievance appeal and the Secretary or designee shall investigate and respond within twenty (20) working days with a final determination unless the time for review is waived by the grievant. The final determination shall be provided to the grievant and the respondent and shall indicate the Department's decision and its reasons.

G. Time Limits:

1. With the written consent of the grievant on the **Waiver of Time Limit** Attachment (*CD-032001.B*), the time limitations for review of a grievance at any level may be extended for a reasonable time to enable a complete investigation of the grievance.
2. If the responsible individuals at each level fail to respond within the designated time limits, the grievance should be deemed denied and the grievant may appeal to the next level.
3. If the grievant fails to proceed to the next level, the grievance is deemed resolved upon the last response or decision provided to the grievant.

H. General Provisions:

1. Grievants and their representatives, if the representatives are Department employees, shall obtain advance written approval from their respective immediate supervisors prior to using their duty time to draft or otherwise work on employee grievances. Discretion shall be reserved to supervisors to impose reasonable restrictions or to deny requests to use duty time to work on grievances and to require that grievances be prepared on the grievant's personal, off-duty time.
2. Grievants are entitled to use a minimally reasonable amount of State of New Mexico and Department resources to pursue grievances, such as minimal use of photocopying equipment and materials and non-long distance telephone usage, postage, couriers, etc. in furtherance of their grievances.
3. To the extent applicable, grievants shall specify, at all grievance stages, any specific policy violations that constitute the basis of their grievances.
4. It is the responsibility of the grievant to route his or her grievance to the next level within the time limits. HR or Labor Relations staff is not to be used for this purpose.
5. At all grievance stages, supervisors retain the discretion to deny a grievance if the grievant's allegations are (a) not reasonably related to the grievant's work conditions, (b) meritless, (c) submitted to vex or harass, or (d) the remedy sought is unreasonable or requires administrative or judicial adjudication.
6. The grievance procedure shall not be used in lieu of a career employee's appeal to the SPB from the imposition of a formal disciplinary action. Matters which are or which

may reasonably be anticipated to be the subject of a formal disciplinary action are not grievable pursuant to this policy or its procedures.

7. The grievance procedure shall not be used in lieu of the procedure outlined in *CD-033200, Unlawful Discrimination / Sexual Harassment*, to report allegations of unlawful discrimination or sexual harassment. Matters which are or which may reasonably be anticipated to be the subject of unlawful discrimination / sexual harassment are not grievable pursuant to this policy or its procedures.
8. The grievance procedure is intended to encourage open and timely presentation of grievances with the goal of resolving such grievances in an expedient and satisfactory manner. Therefore, grievants, their representatives and respondents are prohibited from tape-recording telephone or other discussions held during the grievance procedure without the consent of the person being recorded. In the event that a grievant attempts to use, at any level of this grievance procedure, a tape-recorded conversation which was obtained without the consent of the person being recorded, such tape recordings will be disallowed at all levels contemplated by this policy. Any grievant who attempts to use such a tape recording may be subject to disciplinary action.
9. At the various levels of the grievance procedure, the respondent will be notified of the supervisor's determination.
10. If the Secretary or designee, or appropriate Division Director determines that a fact-finding hearing or informal meeting may be helpful in resolving a grievance at any level, the Secretary or his or her designee or Division Director may grant administrative leave to the grievant, the respondent and any witnesses deemed necessary to attend such a meeting or hearing, if necessary or appropriate.

NEW MEXICO CORRECTIONS DEPARTMENT
GRIEVANCE FORM

Employee Name: _____

Facility/Division: _____ Job Title: _____

Name of Immediate Supervisor: _____

Name of person against whom this grievance is being filed: _____

Relevant policy, procedure or Rule: _____

Facts that constitute this grievance: _____

Relief Requested: _____

Signature of Grievant

Date

Signature of Respondent

Date

NEW MEXICO CORRECTIONS DEPARTMENT
LEVEL ONE RESPONSE

Name of Respondent: _____ Title: _____
(Person against whom grievance is filed.)

Response to Grievance Filed by: _____

Level One Response (Attach additional pages if necessary): _____

Respondent's Signature

Date

Date Returned to Grievant: _____ Time: _____ : _____ A.M./P.M.

Grievant Signature: _____
(Acknowledging Receipt)

NEW MEXICO CORRECTIONS DEPARTMENT
GRIEVANT APPEAL TO LEVEL TWO AND
UPPER LEVEL SUPERVISOR'S DETERMINATION

Grievant Name: _____

Grievant reply to Level One Response, if any: _____

Name of respondent's Upper Level Supervisor: _____

Title of respondent's Upper Level Supervisor: _____

Grievant Signature

Date

Signature of respondent's Upper Level Supervisor
(Acknowledging receipt)

Date received: _____ TIME: _____: _____ A.M. /P.M.

Respondent's Upper Level Supervisor's Final Determination: _____

Signature of respondent's Upper Level Supervisor

Date returned to grievant: _____ TIME: _____: _____ A.M. /P.M.

Grievant Signature
(Acknowledging receipt)

Date delivered to respondent: _____ TIME: _____: _____ A.M. /P.M.

Respondent's signature
(Acknowledging receipt)

NEW MEXICO CORRECTIONS DEPARTMENT

**GRIEVANT APPEAL TO LEVEL THREE AND
DIVISION DIRECTOR'S DETERMINATION**

Grievant Name: _____

Grievant grounds for appeal to Level Three: _____

Name of respondent's Division Director: _____

Division: _____

Grievant Signature

Date

Division Director's signature
(Acknowledging receipt)

Date received: _____ TIME: _____ : _____ A.M./P.M.

Division Director's final Determination: _____

Division Director's signature

Date returned to grievant: _____ TIME: _____ : _____ A.M. /P.M

Grievant signature
(Acknowledging receipt)

Date delivered to respondent: _____ TIME: _____ : _____ A.M./P.M.

Respondent's signature
(Acknowledging receipt)

NEW MEXICO CORRECTIONS DEPARTMENT

**GRIEVANT APPEAL TO LEVEL FOUR AND
SECRETARY OR DESIGNEE'S RESPONSE**

Grievant Name: _____

Grievant grounds for appeal to Level Four: _____

Delivered to: _____ in the office of the Secretary.

Grievant Signature

Date

Name of Secretary or designee responding to grievance: _____

Designee's Title: _____

Date received: _____ TIME: _____ : _____ A.M./P.M.

Signature of Secretary or designee

Secretary or designee's final determination (Attach additional documents if necessary): _____

Signature of Secretary or designee

Date returned to grievant: _____ TIME: _____ : _____ A.M. /P.M

Grievant signature
(Acknowledging receipt)

Date delivered to respondent: _____ TIME: _____ : _____ A.M./P.M.

Respondent's signature
(Acknowledging receipt)

NEW MEXICO CORRECTIONS DEPARTMENT

WAIVER OF TIME LIMIT

I, _____, hereby waive the time for receiving a response to Level _____ of
the grievance filed by me on (Date) _____, regarding _____

in order to allow the reviewing supervisor additional time to review my grievance. The response
may be postponed for a reasonable time or until (Date): _____

Signature of Grievant

Date

Signature of Respondent

Date