

COMMENT DUE DATE: May 19, 2022

Date: May 9, 2022

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It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to *STO.LegalServices.Policy@okdhs.org.

SUBJECT:

OKDHS Chapter 2. ADMINISTRATIVE COMPONENTS

Subchapter 1. Human Resource Management

Part 4. Grievance and Mediation Programs

OKDHS:2-1-150 [REVOKED]

OKDHS:2-1-151 [REVOKED]

OKDHS:2-1-152 [REVOKED]

OKDHS:2-1-153 [REVOKED]

OKDHS:2-1-155 [REVOKED]

OKDHS:2-1-156 [REVOKED]

OKDHS:2-1-157 [REVOKED]

OKDHS:2-1-158 [REVOKED]

OKDHS:2-1-159 [REVOKED]

OKDHS:2-1-160 [REVOKED]

OKDHS:2-1-161 [REVOKED]

OKDHS:2-1-163 [REVOKED]

(Reference WF 22-E)

SUMMARY:

Effective January 1, 2022, grievances regarding formal disciplinary actions are now filed as employee complaints with the Civil Service Division at Oklahoma Management and Enterprise Services, Human Capital Management. Separate Oklahoma Human Services procedures are neither desired nor required.

CHAPTER 2. INTERNAL HUMAN RESOURCES.

PART 4. GRIEVANCE AND MEDIATION PROGRAMS

OKDHS:2-1-150. General provisions and scope of grievance procedure [REVOKED]

Revised 6-15-11

(a) **General.** ~~As prescribed by the Oklahoma Merit Protection Commission [Merit Rule OAC 455:10-19 et seq.], the Oklahoma Department of Human Services (OKDHS) Grievance Program procedures contain minimum requirements which:~~

- ~~(1) encourage resolution of disputes quickly, informally, and at the lowest possible level; and~~
- ~~(2) require prompt resolution of grievances within established time periods;~~
- ~~(3) guarantee that an employee has the right to be represented by a person of his or her choice at each step of the procedure, except the initial informal discussion with the immediate supervisor; and~~
- ~~(4) reflect the name, address, and telephone number of the person(s) designated to receive and process formal grievances.~~

(b) **Scope.** ~~The OKDHS Grievance Program is available to all probationary and permanent classified and unclassified employees. Temporary employees are excluded.~~

(c) **Retaliation.**

- ~~(1) An employee is not disciplined or otherwise prejudiced in his or her employment for exercising his or her rights under the OKDHS Grievance Program.~~
- ~~(2) An employee who believes retaliation has occurred may file a petition for appeal with the Oklahoma Merit Protection Commission.~~

OKDHS:2-1-151. Definitions [REVOKED]

Revised 6-15-11

~~The words or terms when used in this Part shall have the following meanings, unless the context clearly indicates otherwise:~~

~~"Accept" means a determination by the Oklahoma Department of Human Services (OKDHS) grievance manager or OKDHS assistant grievance manager that an issue(s) meets jurisdictional requirements.~~

~~"Deny" means to refuse to grant a remedy requested, to determine an issue to be without merit, or to end a grievance without further consideration.~~

~~"Formal grievance" means filing Form 11PE011E, OKDHS Grievance Form, with supporting documentary evidence, with the OKDHS grievance manager.~~

~~"Grant" means to find an issue to have merit and to give an appropriate remedy.~~

~~"Grievance" means a request for relief in an employment matter made by an employee, or a group of employees, which affects them and which is subject to control of the OKDHS Director.~~

~~"Jurisdiction" means the authority to decide an issue within the grievance procedure. The time limit to file a grievance, an employee's eligibility to use the grievance procedure, and the issue raised are general factors in making this determination.~~

"Reject" means a determination by the OKDHS grievance manager that a grievance or an issue does not meet jurisdictional requirements.

"Remedy" means the corrective action(s) sought by an employee or offered by a decision maker or the OKDHS Director.

"Toll" means to temporarily stop or suspend applicable time limits.

OKDHS:2-1-152. Grievance procedure steps [REVOKED]

Revised 6-15-11

~~(a) **Mediation as an alternative to the grievance process.** Employees, supervisors, and persons with authority to resolve the dispute are encouraged to use mediation as a means of resolution at any step of the grievance process. The grievance time limits are tolled when a request is made for mediation. See OKDHS:2-1-168 through OKDHS:2-1-169 for information on the Mediation Program.~~

~~(b) **Step one – informal discussion.**~~

~~(1) The purpose of the informal discussion is to provide the employee and the immediate supervisor, reviewing supervisor, or other person with authority to resolve the dispute the opportunity to address and resolve concerns and complaints at the lowest possible level. The effort to resolve disputes at this level may include, but is not limited to, the use of mediation. [OKDHS:2-1-168 through OKDHS:2-1-169]~~

~~(2) An employee who has a grievable issue promptly brings the dispute to the attention of the immediate supervisor, reviewing supervisor, or other person who has authority to resolve the dispute and all parties strive to resolve the dispute.~~

~~(3) If the supervisor is unable to resolve the dispute because it is not within his or her control or authority, the supervisor attempts to determine who can resolve the dispute and gives that person an opportunity to resolve the dispute informally or advises the grievant to proceed with filing the formal grievance, Form 11PE011E, OKDHS Grievance Form.~~

~~(c) **Step two – formal grievance.**~~

~~(1) When filing a formal grievance, the employee documents on Form 11PE011E, all efforts to resolve the dispute at the informal level, including who the employee discussed the grievance with prior to filing the formal grievance, when the discussion(s) occurred, and the results. Failure to attempt informal resolution or failure to document the attempt could result in the formal grievance being rejected by the Oklahoma Department of Human Services (OKDHS) grievance manager.~~

~~(2) When the dispute is not resolved through the informal discussion, the employee may file a formal grievance within the time specified in OKDHS:2-1-153(b).~~

~~(3) The OKDHS grievance manager refers accepted grievances to a step two decision maker who has 20 calendar days to issue a written final decision to the grievant. Upon written request of the step two decision maker, for good cause shown, the OKDHS grievance manager or the OKDHS assistant grievance manager has the discretion to extend this time limit.~~

~~(4) A face-to-face meeting or telephone conversation is required between the resolution decision maker and the grievant.~~

~~(d) **Decision.** The resolution decision:~~

~~(1) addresses all the issues raised in the formal grievance with a decision to grant or deny each issue and remedy;~~

- (2) is made in writing to the employee filing the formal grievance, or if a group grievance, to the spokesperson; and
- (3) is delivered personally or by mail.

(e) ~~End of grievance procedure.~~ The grievance procedure ends when:

- (1) the employee withdraws the grievance in writing or by electronic mail;
- (2) an OKDHS official with the authority to obligate OKDHS accepts in writing the resolution proposed by the grievant on Form 11PE011E;
- (3) resolution is reached at any step during the process;
- (4) the step two decision maker issues a final decision which addresses all issues raised in the grievance;
- (5) full relief has been granted or offered the grievant and further concessions are unreasonable. For the purpose of this Section, full relief is defined as the remedy the grievant could reasonably expect to receive if the grievance were to be granted;
- (6) the grievance was resolved during mediation; or
- (7) the grievant has not provided a current, valid mailing address.

OKDHS:2-1-153. Grievance time frames [REVOKED]

Revised: 6-15-11

(a) ~~Time.~~ For the purposes of the Oklahoma Department of Human Services (OKDHS) Grievance Program procedure, time is calculated in terms of calendar days. If the last day of the count is a Saturday, Sunday, or legal holiday as proclaimed by the Governor, the period continues to the next business day.

(b) ~~Filing a formal grievance.~~

(1) A formal grievance, Form 11PE011E, OKDHS Grievance Form, must be filed within 20 calendar days of the date:

- (A) of the act or incident; or
- (B) the employee becomes aware of, or with reasonable effort, should have become aware of a grievable issue.

(2) The OKDHS grievance manager may extend the time limit for filing a formal grievance if the employee:

- (A) shows that he or she could not otherwise timely file;
- (B) provides evidence that he or she is making a good faith effort to resolve the dispute informally; or
- (C) shows other good cause.

(3) Form 11PE011E with supporting documentary evidence, is filed by mail or in person with the OKDHS grievance manager or the assistant OKDHS grievance manager.

- (A) The mailing address is P.O. Box 25352, Oklahoma City, OK 73125-9975.
- (B) The physical location is the first floor of the Sequoyah Building.
- (C) The phone number is 405-522-2089 or 405-522-0992.

(4) The grievant is responsible for providing copies of the grievance to the immediate supervisor, the local office or facility administrator, and any other person named as a party in the grievance.

(c) ~~Resolution.~~ A formal grievance is resolved within 45 days after the filing of the formal grievance, Form 11PE011E. The OKDHS Director has delegated to the OKDHS grievance manager the authority to extend the resolution time frames.

~~(1) The OKDHS grievance manager may extend the resolution time up to an additional 15 days for good cause. The extension is made in writing to the grievant before the expiration of the 45-calendar day resolution time and includes the reason for the extension.~~

~~(2) The grievant and the OKDHS grievance manager may mutually extend the resolution time up to an additional 30-calendar days for good cause. Any extension is agreed to in writing or via electronic mail. Written notice is given to the grievant which includes reasons for the extension.~~

~~(3) In no case does the resolution time of a formal grievance exceed 90-calendar days.~~

OKDHS:2-1-155. Grievance management responsibilities [REVOKED]

~~Revised 6-15-11~~

~~(a) **Grievance manager responsibility.** The Oklahoma Department of Human Services (OKDHS) grievance manager is designated by the OKDHS Director to receive and process formal grievances using Form 11PE011E, OKDHS Grievance Form. The OKDHS grievance manager:~~

~~(1) provides advice, assistance, and technical direction such as the Employee Grievance Handbook and the Employee Grievance Procedure E-training to the OKDHS Director, supervisors, and employees on the grievance resolution procedure;~~

~~(2) reviews formal grievances and accepts or rejects them;~~

~~(3) ensures time limits that apply to the processing and resolution of formal grievances are met;~~

~~(4) facilitates the prompt, equitable, and timely resolution of the formal grievance at the lowest possible level;~~

~~(5) ensures the formal grievance is reviewed and addressed by a person with authority to resolve the dispute;~~

~~(6) ensures formal grievances are filed in accordance with the OKDHS grievance regulations and instructions for Form 11PE011E; and~~

~~(7) in consultation with the county director or office administrator, selects and provides periodic training to local grievance facilitators to provide technical assistance and information on the OKDHS grievance process to employees. Local grievance facilitators do not accept grievances for filing and do not participate in the resolution of grievance disputes.~~

~~(b) **Supervisor responsibility.** Supervisors:~~

~~(1) make available to employees either a written copy of the OKDHS Grievance Program regulations or access to the online policy;~~

~~(2) are aware and informed of the name of the OKDHS grievance manager; and~~

~~(3) informally discuss, address, and resolve disputes brought to their attention, when possible, at the lowest possible level.~~

~~(c) **Employee responsibility.**~~

~~(1) An employee who has reason to believe his or her employment has been directly affected by unfair treatment, unsafe working conditions, or erroneous interpretation or application of OKDHS policy, procedure, Merit rule, or law, has a duty and responsibility to attempt to resolve the dispute informally. Thereafter, the employee~~

has a right to file a formal grievance using Form 11PE011E, with the OKDHS grievance manager.

(2) An employee filing a formal grievance has a duty and responsibility to provide accurate, timely information to support his or her assertions and to make a good faith effort to resolve the dispute.

(3) An employee refrains from idle talk and treats information about a formal grievance with discretion.

OKDHS:2-1-156. Grievance records [REVOKED]

Revised: ~~09-09-05~~

(a) ~~Grievance records are maintained separate and apart from other individual employee personnel files.~~

(b) ~~An employee or former employee has a right of access to the grievance record of grievances filed by that employee after the grievance procedure has been completed.~~

OKDHS:2-1-157. Employee representation [REVOKED]

Revised ~~9-9-05~~

(a) ~~An employee has the right to be represented by a person of his or her choice only after the informal discussion.~~

(b) ~~The representative must be willing and available to serve and have authority to negotiate settlement.~~

(c) ~~The employee is responsible for all costs and expenses incurred by his or her representative.~~

(d) ~~A representative who is an Oklahoma Department of Human Services (OKDHS) employee must be on approved leave or leave without pay while working on the formal grievance.~~

OKDHS:2-1-158. Grievance preparation and processing [REVOKED]

Revised ~~6-15-11~~

(a) ~~An employee may request approval from his or her supervisor for necessary and reasonable absence from work to gather information in preparation to file and process a formal grievance using Form 11PE011E, OKDHS Grievance Form.~~

(1) ~~The request for the time needed away from work is made in advance.~~

(2) ~~The supervisor may approve such absence if the time away will not cause undue hardship or upset any employee's workplace operation.~~

(3) ~~Any approved absence does not result in a loss of pay or leave.~~

(4) ~~An employee using the Oklahoma Department of Human Services (OKDHS) Grievance Program procedures is give reasonable access to OKDHS equipment, such as copiers, facsimile machines, and telephones to process a grievance.~~

(b) ~~Approved leave must be taken for absences to file a formal grievance with the OKDHS grievance manager.~~

OKDHS:2-1-159. Leave and travel [REVOKED]

Revised ~~6-15-11~~

(a) ~~An employee who has filed a formal grievance using Form 11PE011E, OKDHS Grievance Form, or employees whose attendance is required at meetings held to~~

~~decide the grievance is not charged leave. The employee gives prior notice to the supervisor concerning time away from his or her work location.~~

~~(b) Approved travel and other expenses incurred to resolve a formal grievance are reimbursed by the Oklahoma Department of Human Services (OKDHS) per OAC 340:2-11-119.~~

OKDHS:2-1-160. Group grievances [REVOKED]

~~Revised 6-15-11~~

~~(a) Employees may file a formal grievance, Form 11PE011E, OKDHS Grievance Form, as a group, when the grievance issues and personal relief sought are the same or similar for each employee. Employees who file a group grievance forfeit their right to file individual grievances on the same complaint. The group:~~

~~(1) names a spokesperson who speaks for and acts on behalf of the group. The spokesperson is one of the employees of the group filing the formal grievance and signs Form 11PE011E;~~

~~(2) is entitled to have a representative per Merit Rule OAC 455:10-19-39 and 455:10-19-40(a); and~~

~~(3) submits a letter signed by all members of the group. The letter includes:~~

~~(A) the names of all of the group members;~~

~~(B) a statement of the group members' desire to file a group grievance;~~

~~(C) a statement the members understand that if they file a group grievance, they forfeit their rights to file individual grievances on the same issue(s);~~

~~(D) the name of the spokesperson chosen by the members;~~

~~(E) a statement that the group members want the spokesperson to act for them throughout the formal grievance process;~~

~~(F) if a representative is chosen, a statement that the representative is the choice of all group members; and~~

~~(G) a statement that each group member has read and understands the information in the letter and on Form 11PE011E.~~

~~(b) The Oklahoma Department of Human Services (OKDHS) grievance manager may consolidate formal grievances containing the same or similar issues filed by two or more employees when consolidation will produce a more efficient, economical, or timely processing and resolution of the grievances and will not adversely affect the interests of the grievants per Merit Rule OAC 455:10-19-40(b). Individuals included in a consolidated grievance retain the rights to speak and act in their own behalf and to individual representation.~~

~~(c) The OKDHS grievance manager may join two or more formal grievances filed by the same employee when combining the grievances produces a more efficient, economical, or timely processing and resolution of the grievances and does not adversely affect the interests of the grievant per Merit Rule OAC 455:10-19-40(c).~~

OKDHS:2-1-161. Grievance provisions [REVOKED]

~~Revised 9-09-05~~

~~(a) **General.** The resolution of disputes is advocated within the Oklahoma Department of Human Services (OKDHS) before appeals are filed with the Oklahoma Merit~~

Protection Commission. Filing a formal grievance, Form P-11, OKDHS Grievance Form, does not delay or stop any management action.

(b) **Promotion.** An employee who feels that he or she has not been treated fairly with regard to a promotional action has the right to file a formal grievance.

(c) **Classification and compensation.**

(1) If an employee believes he or she is or was not classified or compensated in accordance with duties assigned and performed on a regular and consistent basis as an integral part of his or her work assignment and job family descriptor (JFD) or level of the position he or she occupies or occupied, the employee has a right to file a formal grievance after first seeking resolution at the step one informal level through the use of the Office of Personnel Management (OPM) Form OPM-39, Position Description Questionnaire.

(2) If an employee's position allocation to a JFD or level by use of Form OPM-39 results in a dispute regarding duties or the final allocation, the employee may then file a formal grievance.

(3) After a formal grievance is filed and accepted by the OKDHS grievance manager, the grievant completes OPM Form OPM-70, Personnel Management Classification Dispute Review Request, and submits the form through the grievant's chain of command to the OKDHS grievance manager. The OKDHS grievance manager forwards Form OPM-70 to the OKDHS Human Resources Management Division, Classification and Compensation Unit, for audit of the position. The results of the position audit are provided to the final step two decision maker and are considered in making the final decision.

(4) The JFD or level allocation step two decision may be appealed by the grievant by requesting an audit of the position by OPM. The written request for an OPM audit is submitted to the OKDHS grievance manager within 20 days of the grievant's receipt of the step two decision.

(d) **Discipline.** An employee who has reason to believe that discipline imposed was not uniform, appropriate, or in compliance with OKDHS progressive discipline regulations, has the right to file a formal grievance. [DHS:2-1-7]

(e) **Leave.** An employee who feels that he or she has not been treated fairly with regard to annual, sick, or any other leave accrual, accumulation, use, or eligibility (including leave without pay and leave sharing), has the right to file a formal grievance.

(f) **Employee performance evaluation.** An employee who disagrees with his or her performance evaluation has the right to file a formal grievance.

(g) **Discrimination.** Complaints of illegal discrimination, including sexual harassment, are especially serious and an employee may seek relief through any or all of the following: the OKDHS Grievance Program, the OKDHS Office for Civil Rights, the Equal Employment Opportunity Commission, or the Oklahoma Merit Protection Commission.

(1) A formal grievance alleging discrimination must describe an adverse employment condition or action which, the employee believes, occurred due to the employee's political or religious opinions or affiliations, race, creed, gender, color, age, national origin, or disability.

(2) When the grievance is accepted by the OKDHS grievance manager, it is referred to a state-certified discrimination investigator for investigation of the allegations.

~~(3) The investigation must be completed within 20 days of assignment. The time period may be extended by request of the investigator.~~

~~(4) The OKDHS grievance manager forwards the investigator's report to the step two decision maker who uses the investigator's findings to complete the grievance process.~~

~~(h) **Pay movement mechanisms and other compensation issues.** An employee who feels that a violation of law, rule, policy, or practice has occurred with regard to pay movement mechanisms or other compensation issues, has the right to file a formal grievance.~~

OKDHS:2-1-163. Filing an appeal after a formal grievance [REVOKED]

~~Revised 9-09-05~~

~~(a) After filing a formal grievance, an employee may file an appeal with the Merit Protection Commission within 20 calendar days after:~~

~~(1) expiration of the resolution time, including any extension, and a resolution decision has not been received; or~~

~~(2) receipt of a resolution decision and the employee can provide evidence the resolution decision was not correct, did not address the issues of the grievance or that violations occurred during the processing of the grievance.~~

~~(b) An employee may file an appeal with the Merit Protection Commission before the Oklahoma Department of Human Services (OKDHS) grievance procedure is concluded if the employee can provide evidence that violations:~~

~~(1) of the grievance procedure are occurring; or~~

~~(2) alleged in the grievance are continuing.~~

~~(c) The filing of formal grievances with the OKDHS grievance manager and appeals with the Merit Protection Commission are separate actions. The filing of one does not substitute for the filing of the other and the employee is responsible for the filing of each.~~