

**TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 130. CIVIL SERVICE AND HUMAN CAPITAL MODERNIZATION RULES**

SUBCHAPTER 1. GENERAL PROVISIONS

260:130-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning:

"Act" means the Oklahoma Civil Service and Human Capital Modernization Act.

"Action" or **"disciplinary action"** means issuing a written reprimand, punitively transferring an employee, suspending an employee without pay, involuntarily demoting an employee, or terminating an employee. The action is taken by providing a document in person that specifically states the type of action taken against the employee. In the event the Appointing Authority is unable to provide the document to the employee in person, the Appointing Authority may utilize acceptable electronic means, and the action will be complete upon receipt by the employee.

"Action occurred" means the date the action was taken.

"Administrative Law Judge" or **"ALJ"** means a person appointed by the Civil Service Division and empowered to preside over prehearing conferences and hearings with power to administer oaths, take testimony, rule on questions of evidence and make final decisions. All ALJs shall be licensed to practice law in the State of Oklahoma and in good standing with the Oklahoma Bar Association.

"Administrative Procedures Act" or **"APA"** means the Oklahoma Administrative Procedures Act set forth at Section 250 et seq. of Title 75 of the Oklahoma Statutes.

"Administrator" means the Director of the Office of Management and Enterprise Services. As the term is used in the Civil Service and Human Capital Modernization Rules, the term includes employees and the Administrator of Human Capital Management of the Office of Management and Enterprise Services to whom the Administrator has lawfully delegated authority to act on his or her behalf.

"Affidavit" means a sworn written statement, made voluntarily, and taken before a person with authority to administer an oath or affirmation.

"Affidavit of service" means a sworn written statement certifying that a motion, request or other document has been provided to other persons.

"Agency" means any office, department, board, commission or institution of the executive branch of state government.

"Allegation" means the claims of a party.

"Allege" means to state, assert or charge; to make an allegation.

"Allocation" or **"Position allocation"** means the process by which a position is assigned to an established job profile. A position is allocated on the basis of duties, authority, responsibilities, and other appropriate factors.

"Appointing Authority" means the chief administrative officer of an agency. As the term is used in the Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Burden of proof" means the obligation of a party to establish alleged fact(s) by a preponderance of evidence.

"Civil Service Division" means the division within Human Capital Management that is responsible for receiving and hearing complaints as described in the Civil Service and Human Capital Modernization Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes.

"Civil Service Division Director" means the person designated by Human Capital Management to take action on behalf of the Civil Service Division.

"Complainant" means the state employee filing the complaint.

"Complaint" means, as a verb, the filing of a complaint petition, or as a noun, the procedure that takes place after a complaint petition is filed.

"Consolidation" means the combining of complaints containing the same or similar issues but filed by two (2) or more complainants into a single complaint.

"Continuance" means a postponement of a matter scheduled by Human Capital Management or the mediator to a date certain.

"Demotion" means the reduction in salary of an employee with or without a change in job profile. Demotion may be voluntary or involuntary.

"Deny" means to refuse to grant or accept.

"Disciplinary file" means the record of all disciplinary actions leading up to a written reprimand, punitive transfer, suspension without pay, demotion, or termination, the final action taken, and all relevant supporting documents.

"Dismiss" means to close without further consideration.

"Evidence" means relevant documents or testimony offered to prove or disprove the existence or non-existence of a fact.

"Exempted employee" means an employee to whom the provisions of the Act do not apply. Exempted employees are:

(A) Persons employed by the Governor, Lieutenant Governor, Oklahoma House of Representatives, Oklahoma State Senate, Legislative Service Bureau, or the Legislative Office of Fiscal Transparency;

(B) Elected officials;

(C) Political appointees;

(D) District attorneys, assistant district attorneys or other employees of the district attorney's office;

(E) The state judiciary or persons employed by the state judiciary; ~~or~~

(F) Not more than five percent (5%) of an agency's employees designated as executive management as determined by the agency director. The number of employees shall be determined by the number of active position identification numbers an agency has;

(G) Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period;

(H) Seasonal employees employed to work less than one thousand six hundred (1,600) hours in any twelve-month period;

(I) Employees in a trial period; or

(G) State employees whose employment status is otherwise provided by law.

Exempted employees must be designated in the central system of record by the employing executive branch agency.

"Exhibit" means items offered as evidence.

"Ex-parte communication" means communications by anyone with an ALJ or the Civil Service Division Director on the merits of a complaint which could affect its outcome.

"File" or **"Filing"** means submitting a complaint or other documents on the Civil Service Division's on-line filing system, or any acceptable means determined the Civil Service Division or the receipt of documents by the Civil Service Division.

"Grant" means to give or permit.

"Hearing" means an open, formal proceeding conducted by an ALJ. The proceeding is to provide each party with an opportunity to present evidence in support of their side of the case. The hearing is governed by the Oklahoma Administrative Procedures Act, Sections 309 through 316 of Title 75 of the Oklahoma Statutes.

"Human Capital Management" or **"HCM"** means Human Capital Management of the Office of Management and Enterprise Services.

"Initial appointment" or **"original appointment"** means the act of an Appointing Authority hiring a person for the first time as a state employee.

"Job code" means an identifying code that:

(A) corresponds to a job profile, including, but not limited to, the basic purpose, typical functions performed, and the knowledge, skills, abilities, education, and experience required, and

(B) does not include FLSA status or pay rate type, and

(C) identifies the suggested pay range.

"Job family" means:

(A) jobs which require similar core skills and involve similar work, and

(B) a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills, abilities, education, and experience required.

"Job level" or **"level"** means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience.

"Job profile" means a level in a job family.

"Joinder" means the combining of two (2) or more complaints of one complainant.

"Jurisdiction" means the authority of the Civil Service Division to complete its duties and responsibilities.

"Jurisdictional limitations" means the statutory restrictions on the scope, time limits, and type of appeals which may be considered by the Civil Service Division.

"Mediator" means a person who assists and facilitates the parties involved in a complaint to come to a resolution.

"Minimum qualifications" means the requirements of education, training, experience and other basic qualifications for a job.

"Moot" means no longer in dispute because issues have already been decided or when rendered, a decision could not have any practical effect on the existing dispute.

"Motion" means a request for a ruling to be made by a ALJ or the Civil Service Division Director.

"New position" means a position not previously existing.

"Office of Management and Enterprise Services" means the Human Capital Management Division of the Office of Management and Enterprise Services.

"Order" means a command or directive given by an ALJ or the Civil Service Division Director.

"Party" means a complainant or respondent.

"Position" means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary, occupied or vacant.

"Prehearing conference" means a proceeding conducted by an ALJ with the parties to identify the issues, documents, witnesses and motions which will guide the ALJ in the conduct of the hearing.

"Preponderance of evidence" means information or evidence which is more convincing or believable than the information or evidence offered in opposition.

"Punitive transfer" means a transfer that is directed at and affects only one employee employed by the Appointing Authority. A punitive transfer must relocate the affected employee to a new worksite that is fifty (50) or more miles from the employee's previous worksite. A transfer that results from a closure of a worksite location or building or affects two or more employees does not qualify as a punitive transfer.

"Reallocation" or **"Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job profile to another.

"Reassignment" means the process of changing an employee from one job family to another job family or from one job level to another job level in the same job family, resulting in a change in the employee's assigned job profile.

"Regular and consistent" means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) month period are not considered regular and consistent.

"Reinstatement" means the reappointment of a former employee and does not trigger the trial period.

"Relevant" means directly related to the issue or issues being examined.

"Remedy" means corrective action sought by or afforded to a party.

"Representative" means the designated attorney of record, who shall be licensed to practice law in the state of Oklahoma identified in the complaint petition or through an entry of appearance or other written means, acting on behalf of a party. An individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator or ALJ.

"Resignation" means an employee's voluntary termination of his or her employment with the state.

"Respondent" or **"Responding agency"** means the state agency which the complaint has been filed against.

"Rules" means the Civil Service and Human Capital Modernization Rules.

"State employee" or **"employee"** means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] in state service afforded the protections under the Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes and these Rules.

"Stipulation" means a voluntary admission of fact.

"Subpoena" means an order to appear at a certain time and place to give testimony.

"Subpoena Duces Tecum" means an order requiring the production of books, papers and other documents.

"Supervisor" means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] who has been assigned authority and responsibility for evaluating the performance of other state employees.

"Sustain" means to grant a request; to grant a complaint.

"Testimony" means statements given by a witness under oath or affirmation.

"Trial period" means a working test period lasting for a period of one year following the initial hiring of a state employee into state service, the hiring of an employee who is transferring from one state agency to another state agency, or the hiring of an employee returning to state service following a break in service. The Appointing Authority has the authority to waive the trial period at any time at their discretion.

"Veteran" means any person who served the full obligation for active duty, reserves or National Guard service in the military, or received an early discharge for a medical condition, hardship or reduction in force; and has been separated or discharged from such service honorably or under honorable conditions.

SUBCHAPTER 3. STATE EMPLOYEE DISPUTE RESOLUTION PROGRAM

260:130-3-1. Purpose, use and scope of State Employee Dispute Resolution Program

(a) **General.** The Civil Service Division shall establish and maintain a State Employee Dispute Resolution Program, which may include mediation, to provide dispute resolution services to state agencies and state employees [62:34.301(B)(1)]. When the Civil Service Division is contracted

with the Early Settlement Mediation Program through the Administrative Office of the Courts, the State Employee Dispute Resolution Program is subject to the laws and protections of the Dispute Resolution Act found at Title 12, Sections 1801-1813 of the Oklahoma Statutes.

(b) **Purpose.** The purpose of the State Employee Dispute Resolution Program is to provide an economical means and access to effective alternative dispute resolution services to all state agencies and state employees. The State Employee Dispute Resolution Program affords the parties to a complaint the same equity and impartiality as the hearing process while offering faster, less costly and more flexible ways to resolve disputes.

(c) **Use and Scope.** Complaints relating to written reprimands shall only be administered through mediation. Complaints relating to punitive transfer must first go through mediation before proceeding to a hearing if the mediation is unsuccessful. Mediation may also be available for suspensions without pay, involuntary demotions, and terminations.

260:130-3-2. Mediation

(a) **General.** Mediation provides an opportunity for the parties to present and discuss settlement with each other and a mediator in order to resolve the issues of a complaint. The parties may discuss, negotiate and settle any differences or issues to reach a resolution to the complaint. The Civil Service Division will assign a mediator to the complaint as set forth in 260:130-3-4.

(b) **Party responsibility.** Each party shall be present and on time. Complainant's failure to do so may result in dismissal of the complaint unless good cause is shown. Each party is expected to negotiate in good faith, without time constraints, and put forth his or her best efforts with the intention to settle, if possible. Even if the parties do not reach a complete settlement, they may reach agreement on various issues.

(1) The complainant shall speak for himself or herself or with the assistance of a Representative.

(2) The Appointing Authority shall send one person to speak and act on behalf of the Appointing Authority with full settlement authority and a Representative.

(3) Each party attending mediation shall have first-hand knowledge of the facts around the action. The Appointing Authority must be able to produce the disciplinary file if needed at mediation. The Complainant must be able to produce all documents surrounding the disciplinary action at issue provided by the Appointing Authority and any documents the Complainant submitted in response to those documents.

(c) **Party submissions.** At the mediation, each party shall provide to the mediator a copy of a mediation statement, which shall may include a proposed settlement offer.

(d) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, accompany him or her to the mediation. Representatives will be expected to take an active role in mediation, but will not be allowed to interrogate or question any party. As set forth above in 260:130-1-1, an individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator or ALJ.

(e) **Mediator.** The mediator shall:

(1) take an active role in the mediation to aid the parties in the discussion of settlement and resolution of the complaint;

(2) have the flexibility to adapt the mediation to the situation at hand;

(3) have the authority to require any party to produce documents, limited to the disciplinary file as defined within these Rules, for review at the mediation if to do so will aid in the discussion of settlement and resolution of the complaint. Documents produced and reviewed at the mediation shall not become part of the complaint record at that time; and

(4) terminate the mediation because of the disruptive behavior or conduct of a party or representative.

(f) **Mediation.** The mediation shall be informal, structured by the mediator, and not open to the public. The mediation shall be a confidential procedure and shall not be filmed or taped.

Documents and contact information may be shared between the parties if consent is given and the mediator approves.

(1) **Notice.** At least seven (7) calendar days before the scheduled mediation, the mediator shall notify the parties of the date, time and location of the mediation.

(2) **Location.** The mediation shall be held at the appointing authority office or any other location determined appropriate by the mediator.

(3) **Witnesses.** Witnesses shall not appear or give testimony at the mediation.

(4) **Caucus.** The mediator may call a caucus at any stage of the mediation.

(5) **Continuance.** A request for continuance shall be submitted to the mediator in writing no less than three (3) calendar days before the mediation date. The mediator shall follow the requirements of OAC 260:130-5-13 and shall reschedule the mediation ensuring the timing requirements of OAC 260:130-5-13 are followed.

(g) **Agreement.** If agreement between the parties is reached, it shall be reduced to writing and signed by each party and the mediator. The agreement shall be reviewed and approved by the Civil Service Division Director or his or her designee for complaints arising from termination, suspension without pay, involuntary demotion, or punitive transfer before dismissal of the complaint shall be entertained. The agreement shall become part of the complaint record. All mediation agreements are enforceable by a court of competent jurisdiction.

(h) **Conclusion.** The mediator shall end the mediation when an agreement is reached and reduced to writing. If an agreement is not reached, the mediator shall end the mediation when he or she determines settlement is not possible, unless sooner terminated for just cause. If agreement is not reached:

(1) a complaint arising from termination, suspension without pay, involuntary demotion, or punitive transfer shall continue on for a prehearing conference and hearing.

(2) a complaint arising from written reprimand will be considered closed and the agency's action will stand.

260:130-3-3. State Employee Dispute Resolution Program Mediators

The Civil Service Division shall be responsible for offering mediation training and certifying all mediators available through the State Employee Dispute Resolution Program. The Civil Service Division will maintain a list of all available mediators. Mediators will be state employees who have completed the Civil Service Division-approved program and applied to the Civil Service Division to be mediators within this program. State employees will not receive additional compensation for working as mediators. Serving as a mediator will be included within the employees' job duties. An employee must have had satisfactory performance ratings, must obtain written approval from his or her supervisor before applying to be a mediator, and submit such approval with his or her application. In the event the Civil Service Division does not have an adequate pool of mediators to assign to complaints and ensure the complaints are mediated within enough time to either resolve the complaint or have the hearing take place within the ~~twenty-five (25)~~ thirty (30) business day requirement set forth in 62 O.S. Section 34.301, the Civil Service Division may utilize other methods of obtaining mediators.

260:130-3-4. Assignment of mediators

The Civil Service Division will assign a mediator to every complaint regarding written reprimand and punitive transfer. The Civil Service Division will assign a mediator to complaints regarding termination, suspension without pay, and involuntary demotion if mediation is requested by the complainant in the complaint. A mediator that is a current or former employee of the employing agency named in the complaint will not be assigned. The Civil Service Division may approve a mediator who is a former employee of the employing agency if the former employee has not worked for the employing agency for a period of twenty (20) years and has no knowledge of or relationship to the parties involved in the complaint.

SUBCHAPTER 5. JURISDICTION, RIGHTS AND PROCESSES

260:130-5-2. Time

Complaints shall be filed with the Civil Service Division within ~~five (5)~~ ten (10) business days of the date of when the termination, suspension without pay, involuntary demotion, written reprimand, or punitive transfer occurred. The action occurs when the employee receives the written notice of the disciplinary action either in person or via acceptable electronic means.

260:130-5-8. Settlement of complaints

Settlement discussions are appropriate and encouraged at any stage of the complaint process. The parties may elect to enter into settlement discussions on their own. ~~The~~ Any settlement agreement shall be submitted ~~with~~ to the Civil Service Division and shall be reviewed and approved before dismissal of the complaint will be entertained. All settlement agreements are enforceable by a court of competent jurisdiction. All settlement agreements will be treated as confidential.

260:130-5-12. Motions and requests

Oral motions may be made during a prehearing conference or hearing. All other motions and requests shall be filed in writing and shall state the reason for the motion or request and shall include an affidavit of service to all other parties. Any response to a motion or request shall be filed within the time frame set by the ALJ at the prehearing conference. The ALJ shall ensure that the time frame set for the filing of motions, requests, and responses does not extend past the ~~twenty-five (25)~~ thirty (30) business day limit as set forth in Section 62 O.S. Section 34.301(C).

260:130-5-13. Continuances

A request for continuance shall be filed in writing and shall include the cause for the request and a statement of agreement or disagreement by the other party(s). A prehearing conference or hearing may be continued or adjourned by the Civil Service Division or the ALJ. A continuance shall be granted only in those instances where extraordinary circumstances exist and ~~has~~ have been shown. If granted, a continuance shall be made to a date certain. A request for continuance that extends the hearing or mediation past the ~~twenty-five (25)~~ thirty (30) business day limit as set forth in 62 O.S. Section 34.301(C) will not be granted.

(1) If granted on behalf of the Civil Service Division or the responding agency, and the complainant is subsequently sustained in the complaint, back pay and other benefits shall be awarded for the entire judgment as determined appropriate by the ALJ.

(2) If granted on behalf of the complainant and he or she is subsequently sustained in the complaint, back pay and other benefits shall be awarded only for the period of time that the complainant did not delay the complaint as determined appropriate by the ALJ.

SUBCHAPTER 7. HEARING PROCESS

260:130-7-2. Furnishing of information, attendance of witnesses and production of books, records, etc. and issuing subpoenas [REVOKED]

~~The Civil Service Division or the ALJ, by and through the Civil Service Division, shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for~~

~~purposes of the proceeding as allowed by 75 O.S. Section 315 of the Administrative Procedures Act. The Civil Service Division or the ALJ, by and through the Civil Service Division, shall issue subpoenas for witnesses, issue subpoenas duces tecum, and quash subpoenas or subpoenas duces tecum so issued as allowed by and in accordance with 75 O.S. Section 315 of the Administrative Procedures Act.~~

260:130-7-3. Taking of depositions [REVOKED]

~~Either party to the complaint may take depositions of witnesses which shall be admissible at the hearing in accordance with 75 O.S. Section 315 of the Administrative Procedures Act.~~

260:130-7-4. Hearing

(a) **Purpose.** The hearing provides each party the opportunity to present witnesses and evidence as allowed by these Rules in support of his or her respective case for decision by an ALJ. Hearings shall be conducted in accordance with the Act, the Administrative Procedures Act and the Rules in this chapter.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Complainant's failure to do so may result in dismissal of the complaint unless extraordinary circumstances exist and are shown.

(c) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, to speak and act on his or her behalf.

(d) **ALJ responsibility.** The ALJ shall rule on questions of admissibility of evidence, competency of witnesses and any other matters or questions of law.

(e) **Process.** The hearing shall be formal, structured by the ALJ and open to the public. Parts of a hearing may be ordered closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons. The ALJ shall record the hearing by digital recording and such recording shall constitute the official recording of the hearing.

(1) **Notice.** Each party shall be notified of the date, time and location at least seven (7) calendar days prior to the scheduled hearing.

(2) **Location.** The hearing shall be held at the Civil Service Division offices or any other location determined appropriate. At the prehearing conference any party may request the hearing be changed to a more convenient location. The ALJ shall rule on the request and may change the location when to do so is in the best interests of the Civil Service Division and parties.

(3) **Witnesses.** The ALJ shall administer an oath or affirmation to each witness.

(4) **Continuance.** A request for continuance shall be filed in accordance with OAC 260:130-5-13 no less than three (3) calendar days prior to the scheduled hearing. The ALJ, or in his or her absence, the Civil Service Division, shall rule on the request in accordance with OAC 260:130-5-13.

(f) **Witnesses allowed at the hearing.** The witnesses allowed at the hearing shall be limited to

(1) the Human Resources Director or designee;

(2) the supervisor;

(3) the employee bringing the complaint;

(4) additional witnesses approved by the ALJ;

(g) **Documents allowed at the hearing.** The documents allowed at the hearing shall be limited to the documents contained in the disciplinary file.

~~(h) The ALJ has the discretion to approve the request to provide additional witnesses and documents as necessary.~~

(i) **Burden of proof.** The following burden of proof shall apply to all hearings under the jurisdiction of the Civil Service Division (termination, involuntary demotion, suspension without pay, or punitive transfer). The burden of proof shall be upon the complainant who must prove his

~~or her case by a preponderance of the evidence, that there was no reasonable basis for the disciplinary action by the state agency.~~

~~(1) Upon a finding that a reasonable basis existed for the action taken, an ALJ shall dismiss the complaint. If the Complainant fails to prove that there was no reasonable basis for the disciplinary action by the state agency, the ALJ shall dismiss the complaint;~~

~~(2) Upon a finding that a reasonable basis did not exist for the action taken, an ALJ may order the reinstatement of the employee, with or without back pay and other benefits. If the Complainant proves that there was no reasonable basis for the disciplinary action by the state agency, an ALJ may order the reinstatement of the employee, with or without back pay and other benefits. An ALJ may also order that documentation of the disciplinary action be expunged from any and all of the employee's personnel records and disciplinary file.~~

~~(3) An ALJ who orders reinstatement with back pay and other benefits under (B) (2) above, may consider the deduction of any income the employee may have received for the period of time the employee was not performing his or her duties.~~

260:130-7-5. Methods of testimony

(a) This section shall not limit the authority of the Civil Service Division to compel ~~any witness witnesses allowed by these Rules~~ to appear and offer testimony. Upon written request and approval by the ALJ, an affidavit, video conference, electronic communication, and telephone communication may be used when a witness or party is unable to attend or testify because of good reason.

(b) The parties to any action before the Civil Service Division are responsible for ensuring that the technology is available to all participants for conducting a video conference.

260:130-7-7. Decisions

~~The ALJ shall file a proposed order with the Civil Service Division within ten (10) calendar days after the record is closed. The proposed order shall include findings of fact and conclusions of law, written in clear and concise language. The Civil Service Division delegates the authority to issue the final order to the ALJ. The ALJ shall prepare the final order and submit it to the Civil Service Division within ten (10) calendar days after the record is closed. The final order shall include findings of fact and conclusions of law, written in clear and concise language.~~

~~(1) The Civil Service Division shall issue the final decision order to each party, by personal service or certified mail and by submission on the online filing system, within ~~fifteen (15)~~ five (5) calendar days after receipt of the proposed order by the ALJ.~~

~~(2) The determination of the ALJ and decision by the Civil Service Division shall be final and conclusive except as provided in the Administrative Procedures Act.~~

SUBCHAPTER 9. ATTORNEY FEES AND COSTS

260:130-9-1. Award

(a) **General.** The ALJ of any hearing may order payment of reasonable attorney fees and costs to the prevailing party if the position of the non-prevailing party was without reasonable basis or was frivolous.

(b) **Burden of proof.** The prevailing party shall bear the burden of proof that he or she is entitled to an award of attorney fees and costs by a preponderance of the evidence.

(c) **Showing of proof.** To be entitled to an award of attorney fees and costs, the prevailing party shall be deemed to have prevailed if he or she received all or a significant part of the relief sought through the complaint. Attorney fees shall not be awardable for non-attorney pro-se representation. ~~There shall be a finding that the non-prevailing party's position was without reasonable basis or was frivolous.~~

- (d) **Standards.** The without reasonable basis or frivolous standard includes, but is not limited to:
- (1) where the non-prevailing party's action was clearly without merit or was wholly unfounded;
 - (2) where the non-prevailing party initiated an action against the prevailing party in bad faith, including where the action was brought to harass or intimidate the prevailing party; and
 - (3) where the non-prevailing party committed a gross procedural error which prolonged the proceeding or severely prejudiced the prevailing party; ~~and.~~
- (e) The decision to award attorney fees is solely within the discretion of the ALJ.

260:130-9-5. Frivolous appeals complaints

Any party may be assessed attorney fees and costs if the Civil Service Division or the ALJ determines a complaint is frivolous. A request for attorney fees and costs of processing a complaint shall comply with the provisions of this section.

SUBCHAPTER 21. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS

PART 11. CERTIFIED PUBLIC MANAGER PROGRAM

260:130-21-111. Definitions

In addition to words and terms defined in OAC 260:130-1-2, the following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise.

"Organizations" means municipalities, counties, Indian Nations, and the federal government.

"Program" means the Certified Public Manager Program®.

"~~Training section~~ cohort" means a group of participants who complete the program in the same period of time.

260:130-21-112. Program description

(a) **Eligibility.** Employees of state agencies in all branches of state government who are nominated by the Appointing Authority or designee may apply to participate in the Program. ~~Additionally, employees of organizations who are nominated by the chief administrative officer or designee may participate in the Program.~~

(b) **Nomination procedure.** ~~The nomination process and/or criteria will be determined by each agency. The Certified Public Manager Program® nomination form and information booklet are available from the Human Capital Management Division. Within the process of administration of the program by the Office of Management and Enterprise Services, each agency or organization can determine their nominees.~~ The nomination form solicits information about the nominee and the nominating agency or organization and shall be signed submitted by ~~the nominee,~~ the nominee's supervisor, ~~and~~ or the agency's Appointing Authority or designee or the organization's chief administrative officer or designee. The information booklet provides information about the nomination process, a description of the Program, ~~courses~~ competencies required to complete the Program, and the role of Higher Education in the Program. The agency or organization may nominate an employee for participation in the Program during designated enrollment periods by ~~forwarding~~ submitting a completed nomination form to the Certified Public Manager Program® at the Human Capital Management Division prior to the end of the enrollment period.

(c) **Enrollment in the Program.** The Administrator shall enroll an employee in the Certified Public Manager Program® ~~who has been nominated by his or her agency or organization in the first available~~ training section who has successfully completed the enrollment process, outlined in the information booklet.

(d) **Communication with the Human Capital Management Division.** Interested persons may direct communications to the attention of the Oklahoma Certified Public Manager Program®.

(e) **Experience credit.** Graduation from the Program as a "Certified Public Manager®" shall substitute for one (1) year of professional experience in business or public administration on any job class requiring such experience as part of the minimum qualifications.

260:130-21-113. Program requirements for candidates

(a) **Graduation requirements.** To graduate from the Program as a "Certified Public Manager®", a candidate shall complete all of the following graduation requirements offered during the ~~eighteen (18) month training section~~ twelve (12) month training cohort:

(1) ~~Attend~~ Complete all scheduled courses, project sessions, and learning events prescribed by the Human Capital Management Division and specified in the information packet.

(2) The remaining hours shall be in program pre-work requirements and other assignments.

(3) ~~Attend at least 75 percent of the scheduled class dates.~~ Make-up work will be provided for all in-person classes. Candidates should not consistently be more than twenty-five (25) percent overdue at any time within the program. Even if all makeup work is completed, but the candidate has failed to attend at least seventy-five (75) percent of the required scheduled sessions, they are eligible to be removed from the ~~training section~~ cohort.

(4) Pay the Program fees described in 260:130-21-115 in full before graduation. The Human Capital Management Division will establish the payment schedule for the fees and publish it on the OMES CPM website.

(b) ~~Removal of a candidate~~ Withdrawal from the Program. The candidate, nominating agency, or organization and the Administrator shall have the right to remove a candidate from the Program. ~~Any candidate who fails to complete a training section will be given the greater of two (2) additional training section cycles or three years to re-enroll in another training section without being charged. Hours earned for sessions attended or work completed in a previous training section are not transferable to another training section. An acknowledgement from the candidate, agency representative, and CPM administrators will be completed for any candidate withdrawal from the program, including removal from the program.~~

260:130-21-114. Program requirements for nominating agency or organization

The nominating agency or organization shall:

(1) Provide time for the candidate, during his or her work day, to attend training courses, including the Capstone, prepare class assignments, study for examinations, and work on Program projects.

(2) Allow candidates to use agency or organization ~~issues~~ challenges for classroom, project, and portfolio assignments; Provide financial support to agency candidates, as required by the Program.

(3) Review and approve employee absences for scheduled cohort dates prior to sending the nomination to HCM.

(4) Allow managers to participate in the employee's involvement in the program for activities such as attending project presentations, answering survey questions or providing employee assessments.

SUBCHAPTER 23. OFFICE OF VETERANS PLACEMENT

260:130-23-1. Office of Veterans Placement

The Office of Veterans Placement is created within Human Capital Management of the Office of Management and Enterprise Services. Services of the Office of Veterans Placement shall include employment counseling, assistance in identifying transferable military skills, qualifications and career assessment, assistance in drafting competitive resumes, instruction in developing

comprehensive job search strategies and job placement assistance. Veterans who utilize the Office of Veterans Placement shall be guaranteed a reasonable offer of an interview for qualifying state service positions. Questions regarding reasonable interview offers will be reviewed by the Office of Veterans Placement. Such veterans will only be granted an interview for those jobs that the Office of Veterans Placement have determined to be an appropriate match for each veteran. The veteran will be required to present a letter from Oklahoma's Office of Veterans Placement to the hiring agency evidencing this requirement. Program eligible veteran complaints regarding an agency's hiring practices will be sent to that agency's Cabinet Secretary for review. This section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in this section.