



# Department of Defense Education Activity REGULATION

NUMBER 5771.09

DATE **AUG 19 2011**

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HUMAN RESOURCES DIRECTORATE

SUBJECT: DoDEA Administrative Grievance System

- References:
- (a) DS Regulation 5771.9, "Administrative Grievance Procedure," October 15, 1992 (hereby canceled)
  - (b) Parts 8 and 771 of title 5, Code of Federal Regulations
  - (c) DoD Instruction 1400.25, "DoD Civilian Personnel Management System," Subchapter 771, Administrative Grievance System, December 1996
  - (d) Section 2105 of title 5, United States Code
  - (e) Section 2164 of title 10, United States Code

1. PURPOSE. This Regulation reissues Reference (a) to update policy and responsibilities for the Department of Defense Education Activity (DoDEA) Administrative Grievance System (AGS) in accordance with References (b) and (c).

2. APPLICABILITY. This Regulation:

a. Applies to appropriated fund civilian employees, as defined by Reference (d), within the Office of the Director, DoDEA; the Director, Domestic Dependent Elementary and Secondary Schools, and Department of Defense Dependents Schools, Cuba (DDESS/DoDDS-Cuba); the Director, Department of Defense Dependents Schools, Europe (DoDDS-E); the Director, Department of Defense Dependents Schools, Pacific, and Domestic Dependent Elementary and Secondary Schools, Guam (DoDDS-P/DDESS-Guam); and all DoDEA Area and District Superintendents, and School Administrators.

b. Applies to former DoDEA employees with respect to matters arising during their previous employment with DoDEA, providing that a remedy is available and consistent with applicable law and regulation.

c. Does not apply to:

- (1) An applicant for employment.
- (2) A non-citizen local national employee employed in foreign areas.

(3) Matters covered by a negotiated agreement between DoDEA, DoDDS, or DDESS and the labor organization that has exclusive recognition.

3. DEFINITIONS. See Glossary.

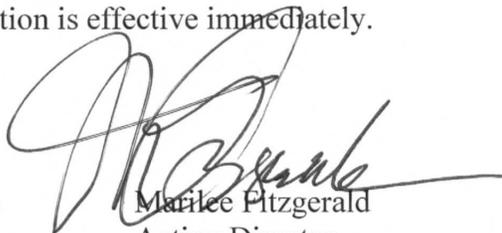
4. POLICY. It is DoDEA policy that:

a. Grievances presented by employees, under this process, will be considered expeditiously, fairly, and impartially; and will be resolved promptly and at the lowest supervisory level possible.

b. All persons involved in the dispute resolution process shall be free from restraint, interference, coercion, discrimination, and reprisal.

5. RESPONSIBILITIES. See Enclosure 1.

6. EFFECTIVE DATE. This Regulation is effective immediately.



Marilee Fitzgerald  
Acting Director

Enclosures

1. Responsibilities
  2. Grievance Coverage and Exclusions
  3. Rights of Grievant
  4. Informal Grievance Process
  5. Formal Grievance Process
  6. Sample Designation of Representation
- Glossary

ENCLOSURE 1

RESPONSIBILITIES

1. DIRECTOR OF HUMAN RESOURCES DIRECTORATE, DODEA (DIRECTOR, HRD, DODEA). The Director, HRD, DoDEA, under the authority, direction and control of the Principal Deputy Director, DoDEA; shall develop and administer the DoDEA AGS in compliance with the Office of Personnel Management and DoD guidance and regulations.

2. DECIDING OFFICIAL. The deciding official shall:

a. Determine whether to:

(1) Join similar or identical grievances. The employee shall be notified in writing of his or her decision.

(2) Accept all or parts of a grievance.

(3) Temporarily suspend or cancel all or parts of a grievance if:

(a) It is at the employee's written request.

(b) The grievant or grievance is excluded from coverage.

(c) The grievant fails to provide sufficient detail to identify clearly the matter being grieved or specify the personal relief requested.

(d) The grievant fails to comply with applicable time limits or procedural requirements or requests actions to be taken against another employee(s).

(e) The grievant raises the same matters under another formal dispute resolution process.

b. Articulate in writing the reason(s) for suspending or canceling all or parts of a grievance.

c. Determine how much official work time shall be granted to employees, if otherwise in a duty status, concerning the grievance disposition.

d. Determine whether to disallow a grievant's choice of an individual as a representative for reasons as follows:

(1) Results in a conflict or apparent conflict of interest or position.

(2) Conflicts with the priority needs of the activity.

- (3) Will cause an unreasonable cost to the Federal government.
- e. Present in writing the reason(s) for disallowing a grievant's choice of representative.
- f. Allow time frames to be extended when warranted by special circumstances.
- g. Determine whether to appoint an investigator or examiner, to analyze, conduct inquiries, and make recommendations concerning the disposition of a grievance.
- h. Be fair when considering the grievance and issue a final decision in writing on the merits within the prescribed time limits.

ENCLOSURE 2

GRIEVANCE COVERAGE AND EXCLUSIONS

This Regulation applies to any matter of concern relating to the employment of a non-bargaining unit employee, which is subject to the control of DoDEA management. The following are excluded from coverage:

1. The content of published DoDEA regulations and policy.
2. Any matter covered by a negotiated grievance procedure or filed before and/or subject to formal review and adjudication by the Merit Systems Protection Board, OPM, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, or any matter that the employee files under another review or reconsideration procedure (e.g., a prior grievance under the Administrative Grievance Procedure), or dispute resolution process (e.g., classification appeal) within the Department of Defense.
3. Non-selection for promotion from a group of properly ranked and certified candidates; or failure to receive a noncompetitive promotion.
4. Preliminary notice of an action that, if effected, would be covered under this grievance process.
5. The substance of an employee's performance elements, standards, or work objectives.
6. Determinations concerning awards, additional step increases, recruitment or relocation bonuses, retention allowances, physician's comparability or additional pay allowances, supervisory differentials, critical position pay, or dual compensation waivers.
7. Any action taken under a voluntary, formal agreement entered into by an employee involving geographic relocation or return from an overseas assignment.
8. Termination of a probationer, return of an employee serving a supervisory or managerial probation to a non-supervisory or non-managerial position, or separation or termination of an employee during a trial period or termination of a reemployed annuitant.

9. For Senior Executive Service (SES) employees, performance evaluations and awards including meritorious or distinguished executive rank awards, reassignment following receipt of an unsatisfactory rating, return to another pay system during the 1-year period of probation, or for less than fully successful executive performance, or for failure to be recertified, conditional recertification, or termination during probation for unacceptable performance.

10. Termination or expiration of a time-limited excepted appointment, a term or temporary appointment or promotion, or an SES limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made.

11. Termination of a temporary or term promotion at a time other than in the preceding subparagraph, provided the employee was informed in advance of the temporary nature of the appointment or promotion and the employee was returned to his or her former position from which temporarily promoted, or to a different position of equivalent grade and pay.

12. SES pay rate changes.

13. Oral admonishments and letters of caution.

ENCLOSURE 3

RIGHTS OF GRIEVANT

1. DoDEA employees are entitled under this Regulation to present informal and formal grievances and to communicate with supervisors and managers. A grievant may seek advice from his or her servicing Human Resources Labor Management Employee Relations (LMER) representative regarding any aspect of the grievance process. The LMER representative will offer guidance on the grievance process but will not serve as an advisor on the substance of the grievance.
  
2. Grievants have the right to present a grievance without representation, or to seek a representative of their choosing at any stage of the grievance process. If a grievant elects to have a representative, he or she must designate the representative in writing to the deciding official within a reasonable period of time and provide written notification of any subsequent change. The designation may be included in the written grievance or submitted on a Designation of Representation form. (Enclosure 6)
  
3. The deciding official receiving the grievance may disallow the grievant's choice of an individual as a representative if his or her duties as representative would result in a conflict of interest, conflict with DoDEA's mission, or result in unreasonable cost to the Government. If a grievant's choice of representative is disallowed, the reasons for the decision will be presented in writing to the grievant.
  
4. Grievants and their representatives shall have access to relevant information and shall be given copies of such information unless to do so would be unduly burdensome or contrary to law or regulation.
  
5. Grievants and their representatives are entitled to a reasonable amount of official duty time, if otherwise in a duty status, as determined by the deciding official, to prepare, and/or present a grievance, and to communicate with management and personnel.

ENCLOSURE 4

INFORMAL GRIEVANCE PROCESS

1. An employee may present a work-related problem, either orally or in writing, to his or her immediate supervisor before filing a formal written grievance. If the problem involves a matter or action directly involving that supervisor, the employee may present it to the next level supervisor.
2. The work-related problem must be presented within 15 calendar days following the date of the act or event giving rise to the grievance, or the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a matter of concern regarding a continuing practice or condition at any time.
3. A supervisor must consider the employee's problem and attempt to resolve it within 15 calendar days, and no later than 30 calendar days, from the date the problem is first brought to the supervisor's attention.
4. Where appropriate, use DoDEA's ADR program or use of a neutral person acting in the capacity as a facilitator or mediator is encouraged.
5. If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing, the determination must be in writing.
6. If the supervisor believes the matter is not covered by the grievance process, the supervisor will inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.
7. The time limit for resolving the problem may be extended by mutual agreement to accommodate resolution of the dispute.
8. The use of the informal problem-solving process does not modify the time limits in filing a formal written grievance. If the employee used the problem-solving process, and the grievance is not resolved, the grievant must file a formal grievance, in writing, no later than 15 calendar days from conclusion of this problem-solving process.

9. The servicing LMER representative is available to provide expert advice and assistance and should be contacted for help whenever appropriate.

10. Alternative Dispute Resolution (ADR) techniques may be used to resolve disputes consistent with the requirements of this Regulation.

a. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, the problem-solving process, facilitation, and mediation.

b. DoDEA's ADR program is governed by separate guide or issuance.

ENCLOSURE 5

FORMAL GRIEVANCE PROCESS

An employee may file a formal, written grievance with the designated deciding official (or any official designated to accept grievances on behalf of the deciding official) when a problem is not resolved during the informal grievance process.

1. If the employee used the problem-solving process, the employee must file a grievance no later than 15 calendar days from the conclusion of that process.
  
2. Where the employee does not use the problem-solving process, i.e. informal grievance process, but raises the matter initially as a formal grievance, the employee must present the grievance within 15 calendar days following the date of the act or event that gave rise to the grievance, or within 15 calendar days following the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a grievance regarding a continuing practice or condition at any time.
  
3. The employee's grievance should be signed, dated, and contain a sufficiently detailed statement of the specific issue(s) and the specific remedy sought. The remedy must be personal to the employee and may not include a request for disciplinary or other action affecting another employee.
  
4. The employee's grievance must include copies of any documents in his or her possession related to the grievance; and the name, address, and phone number of his or her representative, if any.
  
5. An employee may not grieve the same matter raised in any other grievance, complaint, appeal or other dispute resolution process.
  
6. The deciding official shall determine whether to join similar or identical grievances; whether to require, and how to conduct an investigation; whether to allow the grievant's requested representative; and how much official work time shall be granted to the employee and his or her representative.
  
7. The deciding official may also designate an impartial individual to examine a grievance and, when authorized, to make recommendations concerning its disposition.

8. The deciding official shall fully and fairly consider the grievance and issue a written decision with supporting rationale for the decision.

9. The deciding official shall issue the decision as soon as possible but normally no later than 60 calendar days from the filing of the grievance. The deciding official may extend time frames when warranted by special circumstances (i.e., when those involved are geographically dispersed or where a fact-finder is used in the process). However, a grievance decision shall be rendered no more than 90 calendar days from the filing of the grievance absent mutual agreement to extend the time limit to accommodate resolution of the dispute.

10. If the deciding official fails to render a decision within 90 calendar days, absent such mutual agreement, the grievant may request review by the next higher management level, if any, within DoDEA.

11. Whenever possible, the deciding official should rule on the merits of a grievance. However, the deciding official may cancel or temporarily suspend a grievance, or the appropriate portion of a grievance, if:

- a. The grievant requests such action.
- b. The grievant or grievance is excluded from coverage.
- c. The grievant fails to provide sufficient detail to identify clearly the matter being grieved or specify the personal relief requested.
- d. The grievant fails to comply with applicable time limits or procedural requirements or requests actions to be taken against another employee.
- e. The grievant raises the same matters under another formal dispute resolution process.

12. When employees have similar or identical grievances, the deciding official shall determine whether to join the grievances. The employees will be so notified and required to designate a common representative.

13. A deciding official's decision on the merits of the grievance is final and not subject to further review. However, an employee may request that an individual at the next higher management level within DoDEA, if any, review a decision to cancel a grievance. The grievant's request for review of a deciding official's decision to cancel a grievance must be submitted in writing within 10 calendar days of the date of receipt of the decision to cancel the grievance.

14. If an allegation of discrimination based on race, age, sex, color, national origin, religion, disability, or reprisal is identified in the formal grievance process, the deciding official will inform the grievant in writing that introduction of the allegation will serve to terminate processing of the matter under this Regulation. The grievant must be given the opportunity to withdraw the allegation and continue under the administrative grievance procedure or proceed under the discrimination complaint procedure commencing with the counseling stage. The grievant's decision must be documented in writing and made part of the grievance file. If the grievant decides to pursue the matter under the discrimination complaint procedure, that portion of the grievance shall be canceled. Notification will be provided to the grievant in writing concerning which portions of the grievance have been canceled. If there are no matters remaining in the grievance, the entire grievance shall be canceled, the grievant will be notified in writing, and the grievance file forwarded to the servicing LMER representative. The filing of an administrative grievance does not affect the requirement that a complainant must contact an Equal Employment Opportunity counselor within 45 calendar days of the date that the complainant knew or should have known of the alleged discrimination.

15. ADR techniques may be used to resolve disputes consistent with the requirements of this Regulation.

a. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, problem solving techniques, facilitation, and mediation.

b. ADR is governed by separate guide or regulation.

ENCLOSURE 6

SAMPLE DESIGNATION OF REPRESENTATION

MEMORANDUM FOR (NAME OF DECIDING OFFICIAL)

SUBJECT: Grievance

This provides notice that I have designated (NAME) of (ORGANIZATION) (TELEPHONE NUMBER) to represent me with regard to any and all matters relating to my grievance, which was submitted on (DATE).

I further authorize the above-named individual full and complete access to any and all records concerning myself that may be held by DoDEA management.

(GRIEVANT'S SIGNATURE AND DATE)

copy to:

Representative

Servicing Human Resources Labor Management Employee Relation Representative

Chief of Headquarters Labor Relations Section

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
AGS	Administrative Grievance System
DoDEA	Department of Defense Education Activity
LMER	Labor Management Employee Relations
OPM	Office of Personnel Management
SES	Senior Executive Service

PART II. DEFINITIONS

ADR. A variety of techniques, methods, or processes involving a neutral third party, which are used as alternatives to the traditional dispute resolution processes. ADR includes, but is not limited to, the following ADR techniques: problem solving, facilitation, and mediation.

deciding official. The official designated to make decisions on grievances. The deciding official must be at a higher organizational level than any employee involved in the grievance, except when the Director, DoDEA, has been involved. The deciding official's decision on the merits of the grievance is final and not subject to further review.

employee. An individual who is currently, or was formerly, employed in an appropriated position by DoDEA for whom a remedy can be provided.

examiner. An individual authorized by the deciding official who is designated to examine a grievance and, when authorized, to make recommendations concerning the disposition.

facilitation. A form of ADR. Facilitation involves the use of techniques to improve the sharing of information in a meeting between parties to a dispute. Facilitation focuses on providing procedural assistance to the parties to assist them in resolving a dispute.

facilitator. A person trained in facilitation techniques who serves as a neutral third party.

grievance. A request by an employee or a group of employees, who submitted a written request under formal procedures for personal relief in a matter of concern or dissatisfaction, not excluded by this Regulation, which is subject to the control of DoDEA management and relates to the employment of the employee(s). This includes any matter on which an employee(s) alleges that coercion, reprisal, or retaliation has been practiced against him or her for filing a grievance.

grievance file. A separate file, which contains all documents related to the grievance. It includes but is not limited to, the written grievance filed by the employee(s); any statements of witnesses, and records or copies thereof; the report of the fact finder or other alternative dispute technique used; statements made by the parties to the grievance; and the agency decision. The grievance file must be maintained by the servicing Human Resources Office of DoDEA for 4 calendar years after the case is closed.

investigator. An individual authorized by the deciding official to analyze grievances, conduct inquiries or investigations, and make recommendations concerning the disposition of a grievance.

mediation. A form of ADR. Mediation is an informal process in which a trained mediator assists the parties to reach a negotiated resolution of a dispute.

mediator. A person trained in mediation technique, who serves as a neutral third party and facilitates open discussions between the parties and assists them in negotiating a mutually acceptable resolution. The mediator does not have the authority to impose a decision or resolution on the parties.

personal relief. The specific remedy personally benefiting the grievant(s), which may not include disciplinary or other actions affecting another employee.

problem-solving process. An informal work-related problem presented by the employee to his or her supervisor, before filing a formal grievance. This process in itself is not a grievance.

time limit. When calculating time limits under the AGS, the day of an action or receipt of a document is not counted. The last day of the time limit is counted unless it is a Saturday, Sunday, or a legal holiday, or a day on which the employee is not regularly scheduled to work. In those cases, the last day of the time limit shall be moved to the next regularly scheduled work day. All time limits are counted in calendar days.

When the U.S. postal system is used, the postmark date will be used to determine whether participants in the grievance process have met their responsibilities for timeliness. When the U.S. postal system or a postmark is not used, the date of receipt will be used to determine whether participants in the grievance process have met their responsibilities for timeliness. The date of receipt for a grievance will also be recorded at each step.