



DEPARTMENT OF DEFENSE
OFFICE OF DEPENDENTS SCHOOLS
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DS REGULATION 5771.9

PERSONNEL

OCT 15 1992

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS
ADMINISTRATIVE GRIEVANCE PROCEDURE

Reference: (a) Part 771 of Title 5 of the Code of Federal Regulations (5 CFR 771)
(b) Federal Personnel Manual Chapter 771 (FPM 771)

A. PURPOSE.

To implement the provisions of references (a) and (b) and establish a system through which a covered Department of Defense Dependents School (DoDDS) employee or group of employees may file a grievance and receive a prompt decision.

B. POLICY.

This grievance system is based on the premise that employee dissatisfaction generally reduces productivity. The prevailing policy incorporated in this regulation is that employee grievances will be resolved promptly and at the lowest possible level. Observance of this policy will enhance productivity and promote the well being of the work force. Supervisors, other management officials, and employees will make a maximum effort to achieve informal settlement of grievances. The final decision on a grievance should be issued within 90 days after initiation of the informal stage. If circumstances prevent time frames from being met, extensions may be requested from the deciding official.

C. TABLE OF CONTENTS.

The table of contents for this regulation is at enclosure 1.

D. CANCELLATION.

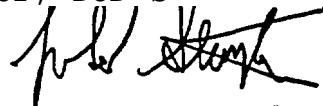
DS Regulation 5771.2 of March 17, 1977, is hereby canceled.

E. APPLICABILITY.

This regulation applies to all DoDDS employees who are U.S. citizens and are paid from appropriated funds. Excluded from coverage are: 1) non-U.S. citizens employed in foreign areas (except local nationals in Panama), and 2) matters covered by a negotiated agreement between DoDDS and a labor organization having exclusive recognition.

F. EFFECTIVE DATE AND IMPLEMENTATION.

This regulation is effective immediately for the Directorate of Education employees assigned to the Washington Area Headquarters and 60 days from publication for all other employees. It may not be amended or changed without prior written approval of the Director, DoD S



John L. Stremple
Director

Distribution: X

Cancelled

ENCLOSURE 1

INDEX

A. Purpose	1
B. Policy	1
c. Index	Encl 1
D. Cancellation	1
E. Applicability	1
F. Effective Date and Implementation	2
G. Definitions	Encl 2
H. Grievance Coverage and Exclusions	Encl 3
I. Rights of Grievants	Encl 4
J. Informal Grievance Procedure	Encl 5
K. Formal Grievance Procedures	Encl 6
L. Sample Designation of Representative Form	Encl 7
M. Chart of Grievance Process	Encl 8

ENCLOSURE 2

DEFINITIONS

1. Day. Calendar day, unless otherwise stated.
2. Deciding Official. The management official who has the authority to make final decisions on grievances. The deciding official must be at a higher organizational level than any employee involved in any phase of the grievance, except when the Director, DoDDS, has been involved.
3. Employee. A present or former employee of DoDDS for whom a remedy can be provided.
4. Fact-Finder. An individual appointed by the deciding official to conduct an investigation into an issue(s) raised in a grievance. The fact-finder must be a person who has not been involved in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved. Fact-finding guidelines are available from the ODS Personnel Office and from the District Superintendent Offices.
5. Grievance. A written request by an employee or group of employees for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of DoDDS management.
6. Grievance File. A file established by the deciding official for each grievance which contains, as a minimum:
 - a. the employee's written grievance;
 - b. the written designation of representative, if any;
 - c. in the case of fact-finding or an investigation, the written designation of the management representative;
 - d. the report of findings and recommendations of the fact-finder or investigation, if any;
 - e. the grievant and/or the representative's written comments on the contents of the grievance file, if any; and
 - f. the decision issued by the deciding official with supporting statements, if any.
7. Grievant. An employee who files a grievance.

8. Investigator. A civilian employee from within DoD authorized by the deciding official to analyze grievances, conduct inquiries, and make recommendations concerning case disposition.

Cancelled

ENCLOSURE 3

GRIEVANCE COVERAGE AND EXCLUSIONS

This regulation applies to any matter of concern and/or dissatisfaction relating to the employment of an employee(s) which is subject to the control of DoDDS management. Excluded from coverage are the following:

1. The content of published DoDDS policy;
2. A decision which is appealable to the Merit Systems Board (MSPB) or subject to final administrative review by the Office of Personnel Management (OPM) or the Equal Employment Opportunity Commission (EEOC) under law or regulations of the MSPB, OPM, or EEOC (e.g., removal, suspension for more than 14 days, furlough without pay, reduction in grade or pay);
3. Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion;
4. A preliminary warning notice of an action which, if effected, would be covered under this regulation or excluded from coverage by paragraph 2 above;
5. An action which terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;
6. An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay;
7. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of Subchapter I of Chapter 43 of Title 5, United States Code;
8. The granting of or failure to grant an employee performance award or the amount of the award, or an honorary award;

9. The adoption of or failure to adopt an employee suggestion or invention;

10. The granting of or failure to grant an award of the rank of meritorious or distinguished executive;

11. The receipt of or failure to receive a quality step increase;

12. The termination of the initial appointment of a probationer for unsatisfactory performance or misconduct;

13. Return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period;

14. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which assigns the employee from one geographical location to another or returns the employee from an overseas assignment;

15. A separation action not otherwise excluded above and not appealable to the MSPB or subject to the final administrative review by OPM or EEOC under law or the regulations of OPM or EEOC;

16. Oral admonishments, letters of caution, letters of counseling or caution and requirement;

17. A matter covered under a negotiated grievance procedure and the employee is a member of the unit covered by the agreement;

18. An allegation or complaint of discrimination as a result of an employee's race, color, religion, sex, age, marital status, national origin, or physical or mental handicap;

19. Position classification decisions and any resulting actions covered by the Position Classification Appeals process;

20. A matter where no form of personal relief to the employee is appropriate (These involve matters not personal to the employee or the employee's well-being or career, such as a complaint or allegation against third parties.); or

21. A matter not subject to the direct control of DoDDS management.

ENCLOSURE 4

RIGHTS OF GRIEVANTS

1. In addition to referring to this regulation, grievants may seek advice from ODS Personnel Division regarding any aspect of the grievance procedure.

2. A grievant has the right to present a grievance without representation. In doing so, he/she must submit a request for the use of official time to the immediate supervisor. A grievant also has the right to be accompanied, represented, and advised by a representative of his or her own choosing at any stage of the proceeding. The representative may be another employee in the Federal Service or may be from outside the Federal Service. If the employee is in the Federal Service he/she must receive permission from his/her supervisor to use official time to present a grievance.

3. Arrangements for obtaining the services of a representative must be made by the grievant. A person chosen as a representative must be willing to represent the grievant. In addition, the representative must be free to do so, i.e., have supervisor's permission.

4. If a grievant elects to have a representative, he/she must designate the representative in writing to the deciding official within a reasonable period of time and to provide prompt written notification of any subsequent change. This designation may be included in the written grievance or submitted separately as illustrated in Enclosure 1.

5. The deciding official may disallow the choice of an individual as representative if it would result in a conflict or an apparent conflict of interest or position, conflict with the priority needs of DoDDS, or give rise to an unreasonable cost to the Government. If a grievant's choice of representative is disallowed, that decision may be grieved in writing to the Director, DoDDS, within 10 days after receipt of the initial decision. The decision rendered by the Director, DoDDS, is final and is not subject to further review. Processing of the initial grievance will be suspended pending resolution of the choice of representative.

a. Conflict of position refers to an incompatibility between the representation function and an employee's official duties. One example would be for the Personnel Director to serve as the grievant's representative in a case concerning a personnel action.

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b. Conflict of interest can take many forms. One example would be for a supervisor to be represented by an official of a labor organization that represents employees under the control of the supervisor.

6. Grievants and their representatives are assured:

a. Freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance;

b. A reasonable amount of official time, as determined by the deciding official, to present the grievance if he/she is an employee of DoDDS and is otherwise in a duty status. Official time for preparation, travel expenses, and per diem are not authorized.

Cancelled

ENCLOSURE 5

INFORMAL GRIEVANCE PROCEDURE

1. An employee may present a grievance concerning a continuing practice or condition at any time. A grievance concerning a particular act or occurrence must be presented within 15 days of the date of that act of occurrence or the date the employee first became aware of it. Unless otherwise authorized by statute, relief will only be granted retroactively to the date the grievance was filed.

2. An employee may present a grievance in writing to his or her immediate supervisor. The employee must inform the immediate supervisor that the presentation is the first step of the grievance procedure.

3. The supervisor will give full consideration to the issue(s) and the remedy requested and conduct such inquiry as warranted by the circumstances. The immediate supervisor will make a substantive effort to resolve the problem informally and will provide the employee a written answer within 10 days of receipt of the informal grievance.

4. An employee must use the informal procedure prior to seeking resolution of a grievance under the formal procedure, except as listed in paragraph 5 below.

5. Exceptions to Informal Procedure.

a. An employee grieving a merit staffing action shall present the written grievance directly to the Head, ODS Staffing Branch;

b. An employee who files a grievance based upon a performance rating shall first file informally with the immediate supervisor and then, if necessary, file formally with the person who served as the approving official in the evaluation process. The responsibility for proving the rating requested exceeds the rating assigned remains at all times with the grievant;

c* An employee who has received a letter of reprimand or a decision to suspend for 14 days or less shall file the grievance with the management official one administrative level higher than the individual who issued the decision on the action.

ENCLOSURE 6

FORMAL GRIEVANCE PROCEDURES

1. If the grievance is not resolved to the satisfaction of the grievant at the informal step, the grievant may submit the grievance in writing through the immediate supervisor to the management official who has the authority to resolve the grievance within 5 days after receipt of the informal decision. The management official at this level is referred to as the deciding official. If submitted, the grievance must:

a. be in writing to the deciding official with a copy to the Chief, Productivity Section, ODS Personnel Center.

b. contain sufficient detail to identify and clarify the basis for the grievance; and

c. specify the personal relief requested by the grievant. Personal relief is a specific remedy directly benefiting the grievant(s) which may not include a request for disciplinary or other action affecting another employee or apologies. A copy of the informal reply should be submitted with the grievance.

At this stage, the deciding official can overrule the determination made by the management official involved in the informal stage. The deciding official may decide to render a decision based upon a complete review of the grievance file, appoint a fact-finder from agency resources, or request an investigator from within DoD to prepare a report of findings and, if requested, recommendations. When the individual who has the authority to do so decides to grant or deny the personal relief to the grievant, the immediate supervisor, the representative, if any, and ODS Personnel Office will be informed by written decision.

2. Combining Grievances. When several employees have an identical grievance, the grievances will be considered as an individual complaint of one employee and will be processed as a single grievance in the name of one employee designated by the others to act for them. All employees joining in the grievance must be identified and must sign the grievance at the stage it is put in writing. There will be only one representative for the group. The final grievance decision will apply to all members of the group.

3. Time Limits In Processing Grievances.

a. Every reasonable effort will be made to issue a final decision on a grievance within 90 days after its initiation by an employee. This is an extremely difficult requirement to meet when a grievance progresses into the formal stage. Resolution of the grievance in the informal stage is most desirable. Employees who receive full, honest explanations as to why they cannot receive the relief sought will often withdraw their grievance in the informal stage. Decisions on grievances should be made at the lowest level possible, and management officials should not pass their responsibilities to higher levels.

b. When the postal system is used, the post mark date will be used to determine whether participants in the grievance process have met their responsibilities for timeliness. When the postal system or a post mark are 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.

4. Allegation(s) of Discrimination. If an allegation(s) of discrimination of race, color, national origin, sex, religion, or handicap (physical or mental) is raised at any point in the processing of a grievance under this regulation, the deciding official must inform the grievant(s) and/or the representative, if any, in writing that introduction of the allegation(s) of discrimination will terminate processing of the issue(s) under the administrative grievance procedure. That notice will inform the grievant(s) of the options of (1) withdrawing the allegation(s) of discrimination and continuing under the administrative grievance procedure or (2) proceeding under the discrimination complaint procedure commencing with the counseling stage. The grievant(s) will be given a reasonable period of time to submit a written election (normally not more than three days) and that election must be made a part of the grievance file. The processing of the grievance will be suspended pending receipt of the written election. If the grievant(s) elects the discrimination complaints procedure, the deciding official shall cancel the grievance, notify the grievant(s) and his/her representative, if applicable. Time limits under the EEO procedure must be met.

5. Cancellation of Grievance.

a. A grievance will be canceled:

(1) At the employee's written request or on notification that the full remedy has been granted whether or not the employee requests cancellation;

(2) When the grievant's employment terminates,

unless the relief sought can be granted after termination of his/her employment;

(3) for failure to prosecute the grievance. When a grievance is canceled, all parties must be notified promptly and in writing and given the reason(s) for the cancellation.

6. Grievance Acceptance/Rejection.

a. To be accepted, a written grievance filed with the deciding official must meet the following requirements. Failure to meet this criteria, may result in the rejection of the grievance. The grievance must:

(1) be submitted within the time frame cited under paragraph 1;

(2) contain sufficient factual detail to clearly identify the issue(s) being grieved; and

(3) specify a personal relief which is within the control of DoDDS management. Examples of requests which do not constitute personal relief are:

(a) request for disciplinary action against another individual;

(b) request for adverse action against another individual;

(c) request for apologies from another individual;

(d) request for adoption of a suggestion or proposal.

b. Rejection of a grievance is a serious matter. The questions posed by the grievant will remain unresolved and the grievant may remain dissatisfied. Moreover, the grievant may seek other avenues of relief in which management is denied the opportunity to thoroughly research and give full consideration to the complaint. All rejections must be in writing and contain a full explanation for the denial.

c. A grievance will be rejected if it:

(1) is not personal to the grievant;

(2) involves a matter excluded from coverage; or

(3) the act or condition being grieved is identical or basically the same as that in a previous grievance submitted by the grievant and the initial grievance is in process or has been adjudicated.

(4) is untimely; or

(5) involves an employee excluded from coverage under this regulation.

7. Review of Rejection Decision.

When a grievance is rejected, the grievant may request a review of the determination from the next administrative level. The notice of rejection will inform the grievant of this right and the mailing address to which the request for review must be submitted. The grievant must submit the request for review within 5 days after receiving the notice of rejection. The review decision will represent a final DoD decision and it is not subject to further administrative review. A decision to accept the grievance at this level will also include a decision on the merits.

J. Final Decisions.

All decisions made by the Director, DoDDS, or other appropriate DoDDS deciding officials are final. Final decisions are not subject to further review within the Department of Defense.

ENCLOSURE 7

DESIGNATION OF REPRESENTATIVE

SAMPLE FORMAT

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 DoDDS management.

(Grievant's Signature and Date)

copy to:
Representative
ODS, Personnel Division

ENCLOSURE 8

CHART OF GRIEVANCE PROCESS

GRIEVABLE ACT OR OCCURRENCE

