

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-30 (rev. 7), “EMPLOYEE GRIEVANCE PROCEDURES”
NOVEMBER 1, 2009

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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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October 1, 2007

EXECUTIVE DIRECTIVE

SUBJECT: EMPLOYEE GRIEVANCE PROCEDURES

AUTHORITY: Texas Government Code §§ 493.007 and 617.005

Reference: American Correctional Association (ACA) Standard: 4-4048 and 4-4068

APPLICABILITY: All non-contract employees of the Texas Department of Criminal Justice (TDCJ). However, except for dismissal, a warden, director, or manager (salary group B22 or C6 and above) may not submit a grievance on any employment-related matter occurring while in such a position.

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

The TDCJ promotes equal employment opportunity through a process designed to provide responses to employee grievances without regard to race, color, religion, sex (gender), national origin, age (40 or above), disability, genetic information, or Uniformed Services status. The TDCJ has zero tolerance for all forms of employment discrimination in the employee grievance process. No employee shall be subjected to harassment or retaliation for opposing or reporting employment discrimination in the employee grievance process.

Employees of the TDCJ shall be treated fairly and equitably. Employees who believe they have not been treated fairly and equitably in regard to employment-related matters have a right to submit a grievance to the appropriate TDCJ officials for prompt consideration and an equitable decision in accordance with the procedures within this directive. The application of procedures shall assure a fair opportunity for presenting and resolving employee grievances, and TDCJ officials shall liberally construe this directive for fundamental fairness, equity, and justice when making decisions affecting employees.

Employees and employees' representatives or witnesses shall not be subjected to harassment, retaliation, intimidation, or coercion for pursuing a grievance or acting as a representative or witness in the grievance process.

DEFINITIONS:

“Adverse Effect” is unreasonable interference with an employee’s ability to perform the employee’s job or with other employment-related matters.

“Common-Use Area” is an area in a unit/department accessible to all employees who are assigned to the unit/department and accessible to employees during each shift where employees are working at the unit/department (e.g., break room, lobby area).

“Employment-Related Matter,” for the purpose of this directive, includes, but is not limited to, issues regarding promotions, leave requests, performance evaluations, disciplinary actions, transfers, benefits, working environment, shift or duty assignment, harassment, and retaliation that is not based on race, color, sex (gender), religion, national origin, age (40 or above), disability, or genetic information. Whether or not a matter is employment-related, other than the examples given, shall be determined on a case-by-case basis by an intake officer.

“Equal Employment Opportunity (EEO) Rule Violation” is a violation of one of the following TDCJ Employee General Rules of Conduct (as published and described in PD-22, General Rules of Conduct and Disciplinary Action Guidelines for Employees, Attachment A, Listing of Employee’s General Rules of Conduct and Disciplinary Violations): (a) Rule No. 14b, Use of Slurs/Hostile Epithets; (b) Rule No. 21, Discrimination/Harassment against Persons of a Protected Class/Retaliation; (c) Rule No. 50, Discourteous Conduct of a Sexual Nature; and (d) Rule No. 53, Failure to Report Alleged Acts of Discrimination/Harassment against Persons of a Protected Class, Discourteous Conduct of a Sexual Nature or Retaliation.

“Grievance” is a formal written complaint filed by an employee in accordance with this directive and submitted on a PERS 155, Employee Grievance Form (Attachment A) regarding an employment-related matter.

“Grievance Meeting” is a meeting between a grievant, the grievant’s designated representative (if designated), and a TDCJ official to discuss the grievance.

“Grievant” is an employee who pursues a grievance under the procedures set forth in this directive.

“Intake Officer” is a specialist located within Employee Relations, Human Resources Headquarters, who receives, evaluates, and processes complaints, advises employees, and managers of the available options to resolve employment-related complaints, grievances, or any other employment-related dispute and informs employees of filing rights with state and federal enforcement agencies (i.e., the Texas Workforce Commission - Civil Rights Division [TWC-CRD] and the Equal Employment Opportunity Commission [EEOC]).

“Offender” is an individual under the supervision, custody, or incarceration of the TDCJ, including a TDCJ offender housed in privately-operated, federal, county, or other states’ facilities. These individuals include, but are not limited to, parolees, individuals under mandatory supervision, incarcerated individuals, and individuals housed in county jails who have been sentenced to the TDCJ but are not yet in TDCJ custody.

“Representative” is a person who represents a grievant in a grievance meeting.

“Reprimanding Authority” is a TDCJ official who has been designated to perform certain duties relating to the employee disciplinary process in accordance with the procedures in PD-22, “General Rules of Conduct and Disciplinary Action Guidelines for Employees.”

“Responding Authority” is the TDCJ official who responds to a grievance.

“State Resources,” for the purpose of this directive, includes First class or certified mail postage or overnight delivery service paid or supplied by the state, TDCJ mail service (hand-delivery courier or truck mail), state equipment, state premises (does not exclude an employee from being on state property when submitting the grievance), state supplies, and state time (working hours).

“Strike” is a work stoppage by a body of workers to enforce compliance with demands made by the body of workers or the workers’ representatives.

“Support Documentation” is all written material submitted to and used by a responding authority in arriving at the findings in an employee grievance case.

“Unit/Department Grievance Contact” is the employee designated by the warden/department head to coordinate the grievance process at the unit/department level.

“Witness” is a person who has first-hand knowledge pertinent to the issue under review.

DISCUSSION:

- I. Normal day-to-day discussions between an employee and a supervisor regarding working conditions and employment-related matters are the most constructive and expeditious means of developing and enhancing favorable and effective work relationships. The TDCJ encourages employees and supervisors to attempt resolution of a situation by using informal problem-solving techniques before filing a formal grievance. However, when a matter is not resolved to the satisfaction of the employee, the employee may seek resolution by submitting a grievance.

- II. Submission of a grievance by an employee shall not be construed as reflecting unfavorably on an employee's good standing, performance, or loyalty to the TDCJ. Similarly, the occurrence of occasional grievances shall not be construed as reflecting unfavorably on the quality of supervision or on the general management of the TDCJ.
- III. If an employee's grievance pertains to another employee, both employees may be required to participate in dispute resolution in accordance with PD-35, "Independent Dismissal Mediation and Dispute Resolution." If an employee grievance is not resolved, the employee may consider other courses of action in the matter.

PROCEDURES:

I. Dissemination

All newly-hired employees shall receive a copy of this directive without attachments in the Direct-Hire Packet, which is provided to employees during the Direct-Hire Session. In addition, this directive shall be published in the *Personnel Manual*, which is available on the TDCJ's mainframe report system known as INFOPAC and on the TDCJ website at www.tdcj.state.tx.us.

Human resources representatives shall ensure a copy of this directive in its entirety and several copies of the current PERS 155, Employee Grievance Form are available in employee common-use areas.

II. Submission of a Grievance

A. General Provisions

1. Compliance with Procedures

It is a grievant's responsibility to be knowledgeable of and seek clarification of procedures for submitting a grievance and rejecting a grievance response. A submitted grievance shall not be accepted if it is not in compliance with the procedures established by this directive. Being unaware of the existence of or not having a clear understanding of these procedures is not a defense for failure to comply with these procedures.

2. Employee Grievance Form

All grievances shall be submitted on the current PERS 155, Employee Grievance Form. An employee may obtain a copy of the current form from the unit/department common-use area, request a copy from the human resources representative, or print the form from the Internet version of this directive. The grievant shall submit the complete original PERS 155 form (pages 1, 2, 3, and 4) with support documentation at each step of the grievance process.

3. Grievant Requirements

- a. A grievance may be submitted by only one employee. A grievance submitted by a group of employees shall not be accepted.
- b. An employee who is adversely affected by an employment-related matter may submit a grievance. A grievance submitted by an employee or individual on behalf of another employee shall not be accepted.

4. Use of State Resources

A grievant shall not use state resources to prepare or submit a grievance.

B. Grievable and Non-Grievable Issues

1. An employee may submit a grievance on any matter of concern or dissatisfaction related to the employee's employment, wages, hours, or any other employment-related matter.
2. Issues that are not grievable include, but are not limited to:
 - a. Voluntary resignation;
 - b. Administrative separation;
 - c. Reduction-in-force (RIF);
 - d. Reclassification;
 - e. An agreement reached through mediation;
 - f. A final decision of the sick leave pool administrator regarding the denial of sick leave pool; or
 - g. Issues mandated by legislative action, law, or court ordered reform.
3. Complaints alleging discrimination in the workplace because of race, color, sex (gender), religion, national origin, age (40 or above), disability, genetic information, or retaliation shall be submitted in accordance with PD-31, "Discrimination in the Workplace." Complaints alleging sexual misconduct shall be submitted in accordance with PD-13, "Sexual Harassment and Discourteous Conduct of a Sexual Nature."

An employee may contact the Employee Relations Intake Office, Human Resources Division, during normal business hours (Monday through Friday, 8 a.m. to 5 p.m.) to confidentially discuss any questions regarding whether a complaint is a grievable issue or a discrimination complaint. The Employee Relations Intake phone number may be obtained through the unit/department Human Resources office, the warden/department head's office or the TDCJ's website at www.tdcj.state.tx.us.

C. Representation

A grievant may choose to have a representative assist in the preparation of a written grievance and attend a grievance meeting along with the grievant.

1. Limitations

A grievant's representative shall not:

- a. Claim the right to strike; or
- b. Be an offender.

2. Designating a Representative

- a. A grievant may designate a representative by writing the representative's name in the space indicated on page 1 of the PERS 155, Employee Grievance Form. The grievant may designate a representative when initially submitting the grievance or when submitting a rejection to a Step One or Step Two response. Once the grievant has identified a representative on the PERS 155 form, the grievant shall not identify a different representative at a later step in the grievance process.
- b. A representative shall be allowed to attend a grievance meeting only if the representative was identified on the PERS 155, Employee Grievance Form when the grievance was submitted for response to the responding authority or designee holding the meeting.

3. General Provisions

- a. Any meetings between a grievant and the grievant's representative relating to the preparation of a grievance shall not occur on state time (during working hours).

- b. A representative, whether a TDCJ employee or other individual, shall not use state resources for the preparation of a grievance or at any time during the grievance process.
- c. The grievant is required to sign and submit the grievance. The TDCJ shall not accept a grievance signed and submitted by a representative on behalf of an employee. All communications by the TDCJ in regard to the grievance shall be with the grievant and not the representative.

D. Witnesses Presented by the Grievant

A grievant may present witnesses on the grievant's behalf. The witnesses shall be limited to individuals who have first-hand knowledge of the events being grieved. A grievant who anticipates relying on the testimony of one or more witnesses to support the grievance shall:

1. Write the name of each witness in the space indicated on page 1 of the PERS 155, Employee Grievance Form; and
2. Attach a written statement from each witness to the PERS 155, Employee Grievance Form when the grievance is initially submitted.

The grievant may ask a witness for a witness statement on state time (during working hours), and the TDCJ encourages witnesses with first-hand knowledge of the events being grieved to provide a witness statement for the grievant. However, a witness shall not use state resources to prepare a statement requested by the grievant.

E. Essential Elements of a Grievance

The essential elements of a grievance include the specific complaint, the adverse effect, and the requested relief. The essential elements of a grievance shall be summarized, clearly stated, and typed or legibly written on page 1 of the PERS 155, Employee Grievance Form or on a separate attachment. If the essential elements are stated throughout the grievance form instead of the specific space indicated for each essential element, the grievance shall be rejected. If the essential elements are on a separate attachment, the grievant shall write "see attachment" in the appropriate space on page 1 of the PERS 155 form.

1. Complaint

The grievance shall include a specific complaint regarding one incident or one employment-related matter affecting the employee.

- a. The complaint shall be a grievable issue.
- b. The complaint shall not be in relation to an incident that has not yet occurred (e.g., a write-up that could result in disciplinary action).
- c. The complaint shall be about only one individual. If an employee is complaining about more than one individual, the employee shall submit a separate grievance for each individual and provide the full name of each individual.
- d. Only one employment-related matter may be identified in the complaint. A grievance identifying multiple employment-related matters or employment-related matters already addressed in a grievance previously submitted by the same grievant shall be rejected.

2. Adverse Effect

The grievance shall contain an explanation of how the action or issue complained about adversely affected or unreasonably interfered with an employment-related matter.

3. Corrective Action or Requested Relief

The corrective action or requested relief shall:

- a. Be within the authority of the TDCJ to grant; and
- b. Not include a request for another employee to be disciplined. The inclusion of a request for discipline in a grievance is grounds for rejection of the grievance.

F. Initial Submission of Grievance

1. Relating to Dismissal

The grievant shall complete, sign, and submit the original PERS 155, Employee Grievance Form in accordance with the written instructions the grievant received when provided a copy of the approved PERS 186, Dismissal Recommendation/Action form or the approved PERS 502, Trainee Dismissal Recommendation/Action form.

2. All Other Grievances

A grievant shall complete, sign, and submit the original PERS 155, Employee Grievance Form to the unit/department grievance contact (designated by the warden/department head). If the grievant is a dual-supervised employee assigned to a unit, the grievant shall submit the PERS 155 form to the unit grievance contact. The name, title, and location of the unit/department grievance contact shall be identified on a prominent notice posted on the common-use area bulletin board.

NOTE: If a grievance is submitted directly to Employee Relations Intake, Human Resources Division, without being submitted through the unit/department grievance contact, the grievance shall be returned without action to the grievant. The time the grievance is in the possession of Employee Relations Intake shall not count against any applicable submission time limit.

G. Submission Time Limits

The PERS 155, Employee Grievance Form and any support documentation for the grievance shall be considered as being submitted on the date the documents are given to the unit/department grievance contact or the date the documents are postmarked to the address of the unit/department grievance contact.

1. Grievances Relating to a One-Time Incident

If possible, a grievant shall submit a grievance when first becoming aware of the incident. However, if this is not possible, the latest date on which a grievance relating to a one-time incident may be submitted is 21 calendar days after the date the incident occurred, unless the executive director, deputy executive director, or the appropriate division director allows an exception to this time limit.

The first day of the 21-calendar day period shall be the day after the incident occurs. For example, if the incident occurs on Monday, or the grievant becomes aware of the incident on Monday, Tuesday shall be the first day of the 21-calendar day period.

If the 21st calendar day falls on a day the unit/department administrative offices are closed or on a day the U.S. Post Office is closed, the 21-calendar day period shall be extended by the number of calendar days the administrative offices or the U.S. Post Office are closed.

2. Grievances Relating to a Dismissal Recommendation

A grievance regarding any issue relating to a grievant's dismissal recommendation shall not be accepted until the executive director, deputy executive director, or appropriate division director has made a final decision regarding the dismissal in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." The grievance shall be submitted within 21 calendar days after the date the employee receives a copy of the approved PERS 186, Dismissal Recommendation/Action form or the approved PERS 502, Trainee Dismissal Recommendation/Action form.

3. Grievances Relating to Continuing Conditions

A grievance relating to continuing conditions may be submitted at any time.

H. Grievance Review Process

1. Unit/Department Grievance Contact's Responsibilities

The unit/department grievance contact shall:

- a. Date-stamp the original PERS 155, Employee Grievance Form immediately upon receipt;
- b. Fax, hand deliver, or send a copy of the PERS 155, Employee Grievance Form via overnight mail to Employee Relations Intake, Human Resources Division within 24 hours;
- c. Maintain the original PERS 155, Employee Grievance Form at the unit/department pending receipt of a response from an intake officer of the grievance status; and
- d. Use the PERS 586, Grievance Tracking Log (Attachment E).-

2. Review by an Intake Officer

Upon receipt of a grievance from the unit/department grievance contact, an intake officer shall assign a number to the grievance. After a number has been assigned, the intake officer shall review the grievance to determine whether the grievance includes an EEO-related complaint.

- a. If it is determined that a grievance includes an EEO-related complaint, the intake officer shall reject the complaint as a grievance and advise the grievant in writing:
 - (1) The reason the complaint was not accepted as a grievance; and
 - (2) The complaint shall be processed in accordance with procedures in PD-13, "Sexual Harassment and Discourteous Conduct of a Sexual Nature" or PD-31, "Discrimination in the Workplace."

- b. If the grievance does not include an EEO-related complaint, the intake officer shall:
 - (1) Audit the grievance documentation to verify the grievance meets the requirements as set forth in this directive, to include the following:
 - (a) The grievance is on the current PERS 155, Employee Grievance Form;
 - (b) The essential elements are summarized and clearly stated; and
 - (c) The requested relief is within the TDCJ's authority to grant.
 - (2) Identify any discrepancies (e.g., complaint was not clearly stated).

- c. In order to expedite the grievance process, only one grievance from the same grievant regarding a single issue or related issues shall be processed. If multiple grievances are received from the same grievant with similar issues, the intake officer shall combine the grievances into one grievance and administratively close the other grievances. The intake officer shall advise the responding authority of the issues identified in the other grievances and instruct the responding authority to address all of these issues in the response to the remaining grievance.

I. Grievance Not Accepted

1. Intake Officer's Responsibilities

- a. If the intake officer does not accept a grievance due to an error or oversight that may be corrected by the grievant (e.g., the grievant failed to identify the requested relief) and there is sufficient time remaining within the initial 21-calendar day submission period or the grievance relates to a continuing condition, the intake officer shall notify the unit/department grievance contact to return the original grievance to the grievant for correction and resubmission.

If the corrections are not received within the time periods specified in Section II.J of this directive, the grievance shall be closed by the intake officer with no further action taken. The intake officer shall notify the unit/department grievance contact by e-mail of the grievance status and the reason the grievance was not accepted.

- b. If the intake officer does not accept the grievance for any other reason, the intake officer shall close the grievance with no further action taken and notify the unit/department grievance contact by e-mail that the grievance was not accepted.

2. Unit/Department Grievance Contact's Responsibilities

Upon receipt of an e-mail from the intake officer advising that the grievance was not accepted, the unit/department grievance contact shall return the original PERS 155, Employee Grievance Form to the grievant with a copy of the e-mail and enter the rejection information on the PERS 586, Grievance Tracking Log.

J. Grievant's Responsibilities for Resubmission

If the grievance is returned to the grievant for correction or proper submission through the unit/department grievance contact, the grievant shall:

1. Make necessary corrections; and
2. Resubmit the grievance to the unit/department grievance contact.
 - a. The grievant is required to resubmit the grievance to the unit/department grievance contact:
 - (1) Within the original 21-calendar day period after the date the single incident occurred or the grievant obtains knowledge of the incident; or

(2) Within 21 calendar days of the date the grievance was initially submitted if the grievance is related to a continuing condition.

- b. The day the grievant receives the grievance for correction and resubmission shall count toward the 21-calendar day period. The amount of time the originally submitted grievance was in the review process shall not count against the 21-calendar day period.

For example, a grievant submits a grievance to the unit/department grievance contact on the 10th calendar day after the specific incident being grieved. The grievance is in the review process for five calendar days, and it is determined the grievance needs to be corrected and resubmitted. The grievant shall have 11 calendar days from the date the grievant received the grievance for correction to resubmit the grievance to the unit/department grievance contact.

- c. When the intake officer receives the resubmitted grievance, the grievance shall receive a new number and be processed as a new grievance.

K. Grievance Accepted

1. If the intake officer determines the grievance meets the requirements as set forth in this directive, the intake officer shall submit an e-mail to the grievant's unit/department grievance contact. The e-mail shall include notification that the grievance has been accepted for processing and identify the grievance number. The unit/department grievance contact shall enter the acceptance information on the PERS 586, Grievance Tracking Log.
2. If a grievance is accepted in error, the grievance shall not be processed beyond the point the error is discovered. The intake officer shall follow the procedures in Section II.I of this directive relating to notifying the grievant.

III. Grievance Steps for Accepted Grievances

A. General Provisions

There are three steps in the grievance process. The unit/department grievance contact shall use the PERS 586, Grievance Tracking Log for Step One and Step Two, if applicable, of each grievance received.

1. Responding Authority

The positions authorized to act as a responding authority for each of the three steps are identified as follows. If the grievant is a dual-supervised employee, the nature of the complaint and requested relief shall determine whether the responding authority represents the administrative or technical line of supervision.

a. Step One

The responding authority for a Step One grievance shall be the lowest level of management with the authority to grant the requested relief up to and including the appropriate warden/department head.

b. Step Two

The responding authority for a Step Two grievance shall be the appropriate deputy director, regional director, manager (salary group B22 or C6 and above), or designee.

c. Step Three

(1) If the grievance relates to a disciplinary action for an EEO rule violation, the responding authority shall be a TDCJ official designated by the executive director to impose discipline for EEO rule violations (EEO reprimanding authority). The responding authority shall not be the EEO reprimanding authority who recommended the disciplinary action.

(2) For all other Step Three grievances, the responding authority shall be the executive director, deputy executive director, or the appropriate division director.

2. Availability of Three Steps

Although there are three steps in the grievance process, a grievance shall only be responded to by a responding authority who has the authority to grant the requested relief. Therefore, in some instances not all three steps are available because a Step One or Step Two responding authority may not have the authority to grant the requested relief.

The decision that a Step One or Step Two responding authority does not have the authority to grant the requested relief may be determined by the intake officer or by a Step One or Step Two responding authority. When this occurs, the grievance shall be forwarded for response at the next step and shall only be responded to at a step the responding authority has the authority to grant the requested relief.

- a. A grievance relating to a TDCJ-wide policy or division-wide policy shall only be responded to by the executive director, deputy executive director, or appropriate division director (proponent of the policy) at Step Three.
- b. A grievance relating to disciplinary action imposed for an EEO rule violation shall only be responded to by an appropriate responding authority at Step Three.
- c. A grievance relating to dismissal shall only be responded to by the executive director, deputy executive director, or appropriate division director at Step Three.
- d. There may be other instances when the intake officer determines that only a Step Two or Step Three responding authority has the authority to grant the requested relief. In addition, a Step One or Step Two responding authority may determine upon receipt of a grievance that only a responding authority at a higher step has the authority to grant the requested relief. When this occurs, the grievance shall be forwarded to the appropriate responding authority at a higher step for response.

3. Circumventing the Three-Step Process

A grievant shall not circumvent the procedures of this directive by forwarding a PERS 155, Employee Grievance Form to the next step until it has been addressed at the previous step. If a grievant forwards a grievance to the next step before it has been addressed at the previous step, the grievance shall be rejected and returned to the grievant.

4. Grievant's Election to Have Grievance Returned

If at any step the grievant elects to have the grievance returned before a response at that step is rendered, the grievant shall submit a written request to the level of management responding to the grievance. The grievance shall be returned to the grievant, and the grievance shall be closed with no further action taken.

5. Witnesses Presented by the Responding Authority

Witnesses shall be limited to individuals who have first-hand knowledge of the events being grieved. Employees who have first-hand knowledge of the events being grieved may serve as witnesses and provide statements when requested to do so by an appropriate authority (any manager or supervisor). Neither the grievant nor the grievant's representative are considered appropriate authorities.

When an employee who has first-hand knowledge of the events being grieved is requested by an appropriate authority to provide a statement, the employee may use state resources to prepare and provide the statement.

B. Processing Accepted Grievances

1. Step One

Upon notification by e-mail from an intake officer that a grievance has been accepted for processing, the unit/department grievance contact shall provide the grievant with a copy of the e-mail and forward the original grievance to the appropriate Step One responding authority.

2. Step Two or Step Three

A Step Two or Step Three responding authority shall notify the appropriate intake officer by e-mail when:

- a. A grievance has been received from the grievant; or
- b. A grievance and a PERS 329, Grievance Referral Form (Attachment B) have been received from a lower step responding authority.

3. Grievance Referral (Step One or Step Two)

- a. The recipient responding authority shall complete a PERS 329, Grievance Referral Form if:
 - (1) The issues raised in the grievance are outside the authority and responsibility of the recipient responding authority and require a response from a responding authority at a higher step; or
 - (2) The recipient responding authority is referring the grievance to a designee for a response.
- b. If the Step One or Step Two responding authority refers the grievance to another responding authority or designee, the unit/department grievance contact shall:
 - (1) Attach a copy of PERS 329, Grievance Referral Form to the copy of the grievance being retained in the unit/department grievance file if the grievance is being referred by a Step One responding authority;
 - (2) Forward the original grievance and the PERS 329, Grievance Referral Form to the responding authority identified on the PERS 329 form;
 - (3) Fax one copy of the completed PERS 329, Grievance Referral Form to the appropriate intake officer; and
 - (4) Provide a copy of the completed PERS 329, Grievance Referral Form to the grievant in person or mail a copy of the form to the grievant via certified mail, return receipt requested, at the address listed on the PERS 155, Employee Grievance Form. Documentation of the grievant's receipt of the PERS 329 form shall include either the grievant's signature and date or certified mail receipt.

C. Requirement to Hold a Grievance Meeting

1. Step One

A grievance meeting is not required at Step One; however, after reviewing the grievance, the Step One responding authority may conclude that a Step One grievance meeting may expedite resolution of the grievance.

2. Step Two

If a grievance is being responded to at Step Two, the Step Two responding authority shall schedule a grievance meeting regardless of whether a meeting was held at Step One.

3. Step Three

a. If the grievance was responded to by a Step Two responding authority, the Step Three responding authority may choose to:

(1) Review the grievance and respond in writing to the grievant's appeal based upon the available information without holding a meeting; or

(2) Schedule an additional grievance meeting.

b. If the grievance is only being responded to by the Step Three responding authority (e.g., a grievance for dismissal that shall be initially responded to at Step Three), the Step Three responding authority shall schedule a Step Three grievance meeting.

D. Scheduling a Grievance Meeting and Notifying Employee

1. General Provisions

a. A grievance meeting shall be scheduled in accordance with the guidelines within this section and for a date and time that provides all parties a reasonable opportunity to be present.

b. The responding authority or designee shall determine the method of conducting the grievance meeting (i.e., in person or telephonically).

c. If it is anticipated that an employee out on sick leave or workers' compensation is not returning to work during the period the grievance meeting should be held, the employee shall not be asked to travel to the unit/department for a grievance meeting. The grievance meeting shall be delayed until the employee returns to work. The employee shall be responsible for contacting the responding authority immediately upon returning to work. Failure to do so could result in the grievance being administratively closed.

NOTE: Responding authorities are encouraged to contact the intake officer for guidance when this situation occurs.

2. Scheduling Time Frames and Notification

Whenever a responding authority or designee schedules a grievance meeting, a PERS 491, Notification of Employee Grievance Meeting (Attachment C) shall be completed. Scheduling of the grievance meeting shall be completed within 14 calendar days after the responding authority receives the grievance. The meeting shall be scheduled to take place no earlier than 24 hours and no later than 14 calendar days after the grievant receives the notification in person or via certified mail, return receipt requested (allow three calendar days for delivery).

E. Notifying the Grievant's Representative of a Grievance Meeting

It is the responsibility of the grievant to notify the grievant's representative regarding the date and time of any grievance meeting.

F. Conducting a Grievance Meeting

A grievance meeting shall be conducted in accordance with the guidelines included on page 2 of PERS 491, Notification of Employee Grievance Meeting.

G. Grievant's Failure to Appear at a Grievance Meeting

1. Step One

If a grievant fails to appear at a scheduled Step One grievance meeting, the responding authority may elect to respond to the grievance without conducting a grievance meeting or may elect to reschedule the grievance meeting. When making this determination, the responding authority should consider whether there were mitigating circumstances that prevented the grievant's appearance (e.g., illness, death in the family).

If the responding authority reschedules the grievance meeting, the responding authority shall notify the grievant in writing of the rescheduled meeting. If the grievant fails to appear at the rescheduled meeting, the responding authority shall respond to the grievance without conducting a Step One grievance meeting.

2. Step Two or Step Three

If a grievant fails to appear at a scheduled Step Two or Step Three grievance meeting, the responding authority shall determine if the failure to appear was due to mitigating circumstances (e.g., illness, death in the family).

- a. If the failure to appear was due to mitigating circumstances, a second meeting shall be scheduled. The responding authority shall notify the grievant in writing of the rescheduled meeting. If the grievant fails to appear at the rescheduled meeting, the responding authority shall administratively close the grievance.
- b. If the failure to appear was not due to the mitigating circumstances, the responding authority may:
 - (1) Provide a response based on information submitted; or
 - (2) Administratively close the grievance.

H. Grievance Response

1. Response Time Limits

If a responding authority fails to respond within the following established time limits or within an extended time limit, the responding authority may be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." The failure shall not be grounds for granting the grievant's requested relief.

- a. If a grievance meeting was not scheduled, the responding authority shall submit a written response to the grievance as follows:
 - (1) Within seven calendar days of receipt for Step One; or
 - (2) Within 14 calendar days of receipt for Step Three.
- b. If a grievance meeting was scheduled or rescheduled, the responding authority shall submit a written response to the grievant within 14 calendar days after the date of the scheduled or rescheduled meeting unless the grievance was administratively closed due the grievant's failure to appear.

2. Response Time Limit Extensions

If the responding authority is unable to respond to the grievance within the required time limits (e.g., due to travel or illness), the responding authority or unit/department grievance contact shall complete a PERS 328, Time Limit Extension (Attachment D). The PERS 328 shall be provided to the grievant in person or via certified mail, return receipt requested, at the address listed on the PERS 155, Employee Grievance Form.

Documentation of the grievant's receipt of the PERS 328 shall include either the grievant's signature and date or certified mail receipt.

If, after providing the grievant with a time limit extension, the responding authority is unable to provide the response on time, the responding authority shall provide an explanation of why the response was late when providing the grievance response.

3. Identification of Next Step Responding Authority

The responding authority at Step One or Step Two shall, on the PERS 155, Employee Grievance Form, list the name and address of the TDCJ official to whom the grievance shall be submitted at the next step if the grievant is not satisfied with the response.

4. Distribution of Grievance Response

When the responding authority has responded to a grievance, the complete original PERS 155, Employee Grievance Form, along with the original support documentation, shall be returned to the grievant in person or via certified mail, return receipt requested, to the address listed on the PERS 155 form. Documentation of the grievant's receipt of the response shall include either the grievant's signature and date or certified mail receipt.

If the grievant designated a representative on the original PERS 155 form, the grievant shall be provided with an extra copy of the response for the representative (does not need to include copies of support documentation). Nothing in these procedures requires the TDCJ to send its written responses to the grievant's representative instead of to the grievant.

A copy of the complete original PERS 155, along with support documentation, shall be provided to the appropriate intake officer via fax or hand carried within seven calendar days of the response date. If the response is a Step One response, a copy of the fax cover page shall be attached to the unit/department copy of the grievance and retained in the unit/department grievance file.

IV. Grievant's Acceptance or Rejection of Response

A. Step One or Step Two Response

Upon receipt of a Step One or Step Two grievance response, the grievant shall decide whether to accept or reject the response.

1. Response Accepted

If the grievant accepts the response, the grievant is not required to take any further action. However, the grievant may provide written notification to the grievant's unit/department grievance contact or appropriate intake officer that the response has been accepted.

NOTE: Providing such written notification of acceptance allows the intake officer to expedite closing the grievance.

2. Response Rejected

a. If the grievant rejects the response and proceeds to the next step, the grievant shall:

(1) Indicate the reason for the rejection on the original PERS 155, Employee Grievance Form (shall not include the addition of new issues not directly related to the initial complaint); and

(2) Submit the original PERS 155, Employee Grievance Form, with support documentation, to the appropriate next step responding authority.

b. The time limit for submitting a rejection to a Step One or Step Two response is 21 calendar days after the grievant receives the response. The grievant may submit a written request (i.e., e-mail or IOC) for a time limit extension to the appropriate responding authority identified in the grievance response. The request shall be submitted before the end of the 21-calendar day rejection period. The grievant's representative may not request a time limit extension on behalf of the grievant.

c. If the grievant does not reject the Step One or Step Two response within the 21-calendar day response period or within a requested time limit extension mutually agreed upon, the grievance response shall be considered to have been accepted by the grievant. In addition, the grievance shall be closed.

B. Step Three Response

The decision of the Step Three responding authority is final, and the grievance process is complete once the grievant receives a Step Three response.

V. Separation from Employment when Grievance is in Process

When a grievant is voluntarily or involuntarily separated from employment, the separated employee's grievance shall continue to be processed in accordance with the procedures within this directive if the requested relief can be granted. If the requested relief can not be granted because of the grievant's separation from employment, the appropriate responding authority shall immediately:

- A. Close the grievance with no action taken;
- B. Return the grievance to the grievant via certified mail, return receipt requested, at the address listed on the PERS 155, Employee Grievance Form; and
- C. Notify the appropriate intake officer via e-mail that the grievance has been closed with no action taken.

Brad Livingston
Executive Director

**Texas Department of Criminal Justice
EMPLOYEE GRIEVANCE FORM**

NOTE: Do not use state resources to prepare or submit a grievance. State resources may only be used to prepare for a grievance meeting after you have been notified that a meeting has been scheduled.

FOR OFFICIAL USE ONLY	
Date Received by Unit/Department Grievance Contact:	Grievance Number Assigned by Intake Officer:
	Date Grievance Number Assigned:

GRIEVANT INFORMATION: Date: _____ Month/Day of Birth: _____
(mm/dd)

Name: _____ Payroll Job Title: _____

Unit/Department: _____ Work Shift: _____ Schedule Card: _____

Home Mailing Address: _____
City State Zip

Home Phone: _____ (Area Code) Work Phone: _____ (Area Code)

Name of Representative (You may elect to identify a representative when the grievance is initially submitted or when submitting a rejection to a Step One or Step Two response. If you fail to identify a representative when this form is submitted, a representative shall not be allowed to attend a grievance meeting. Once you have identified a representative, you shall not be allowed to identify a different representative.) _____

Names of Witnesses who have first hand knowledge of the events being grieved (if employee elects to present a witness or testimony from such a witness or witnesses): _____

The complete original document (pages 1, 2, 3, and 4) shall be submitted at each step. The complaint, adverse effect, and requested relief shall be summarized, clearly stated, and legibly written or typed in the appropriate spaces below or on an attached separate page(s). If you describe the complaint, adverse effect or requested relief on a separate attachment, write "see attachment" in each appropriate space below. Use reverse side if needed.

Complaint: Be specific (e.g., include full name, date, place, rules, regulations). The complaint shall be in relation to an incident that has already occurred and shall be about only one individual. Do not reference multiple employment-related matters or employment-related matters already addressed in a grievance you previously submitted.
Adverse Effect: Explain how the action or issue adversely affected or interfered with an employment-related matter.
Requested Relief: State the specific corrective action or relief you are requesting. The corrective action or requested relief shall be within the authority of the TDCJ to grant and shall not include a request for another employee to be disciplined.

Instructions: Submit complete grievance form along with any support documentation to the unit/department grievance contact.

Grievant's Signature Date

<p>Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.</p>

FOR OFFICIAL USE ONLY:
Grievance Number _____

STEP ONE:

WARDEN, DEPARTMENT HEAD OR A LOWER LEVEL OF MANAGEMENT WHO CAN GRANT THE REQUESTED RELIEF: (Reminder: If you believe a grievant's request for restoration of time should be granted, the response should advise the grievant that the restoration of the grievant's time is being requested subject to the division director's recommendation and executive director's approval.)

Name: _____ Title: _____

Date Grievance Received: _____ Step One Grievance Meeting Date: _____
(if applicable; meeting is not required)

RESPONSE:

Step One Responding Authority's Signature

Date

If you reject this response, the Step Two responding authority shall be:

Verification of Grievant's Receipt of Response:

Name and Title

Certified Mail Receipt No. or
Grievant's Signature and Date

Mailing Address City State Zip

STEP TWO:

A. GRIEVANT'S ANSWER: (If you elect to reject the Step One response and proceed to Step Two, you must submit the complete original PERS 155, Employee Grievance Form [pages 1, 2, 3, and 4], with any support documentation, to the appropriate Step Two responding authority identified in the Step One Response. Your rejection must be submitted within 21 calendar days after receiving the Step One response, unless a time limit extension is approved in accordance with the procedures in PD-30, "Employee Grievance Procedures." Your rejection must not include the addition of new issues that are not directly related to the initial complaint. If you have not already designated a representative on page 1 of this form, you may do so now.)

I am rejecting the Step One response. My reasons are listed below.

Grievant's Signature

Date

FOR OFFICIAL USE ONLY:
Grievance Number _____

B. DEPUTY DIRECTOR’S, REGIONAL DIRECTOR’S, ASSISTANT DIRECTOR’S OR DESIGNEE’S RESPONSE:

(Reminder: If you believe a grievant’s request for restoration of time should be granted, the response should advise the grievant that the restoration of the grievant’s time is being requested subject to the division director’s recommendation and executive director’s approval.)

Name: _____ Title: _____

Date Grievance Received: _____ Step Two Grievance Meeting Date: _____
(mandatory)

RESPONSE:

Step Two Responding Authority’s Signature Date

If you reject this response, the Step Three responding authority shall be: Verification of Grievant’s Receipt of Response:

Name and Title Certified Mail Receipt No. or
Grievant’s Signature and Date

Mailing Address City State Zip

STEP THREE:

A. GRIEVANT’S ANSWER: (If you elect to reject the Step Two response and proceed to Step Three, you must submit the complete original PERS 155, Employee Grievance Form (pages 1, 2, 3, and 4), with support documentation, to the appropriate Step Three responding authority identified in the Step Two response. Your rejection must be submitted within 21 calendar days after receiving the Step Two response, unless a time limit extension is approved in accordance with the procedures in PD-30, “Employee Grievance Procedures.” Your rejection must not include the addition of new issues that are not directly related to the initial complaint. If you have not already designated a representative on page 1 of this form, you may do so now.)

I am rejecting the Step Two response. My reasons are listed below.

Grievant’s Signature Date

FOR OFFICIAL USE ONLY:

Grievance Number _____

B. EXECUTIVE DIRECTOR'S, DEPUTY EXECUTIVE DIRECTOR'S OR DIVISION DIRECTOR'S RESPONSE:

(Reminder: When the deputy executive director or a division director believes a grievant's request for restoration of time should be granted, the response should advise the grievant that restoration of the grievant's time is being recommended subject to the executive director's approval.)

Name: _____ Title: _____

Date Grievance Received: _____ Step Three Grievance Meeting Date: _____
(if applicable)

RESPONSE:

Step Three Responding Authority's Signature

The decision of the Step Three responding authority is final, and the grievance process is complete once the grievant has received a Step Three response.

Date

Verification of Grievant's Receipt of Response:

Certified Mail Receipt No. or
Grievant's Signature and Date

**Texas Department of Criminal Justice
GRIEVANCE REFERRAL FORM**

TO: _____
Appropriate Responding Authority Date _____

Title Unit/Department _____

RE: _____
Grievance Number

The attached grievance has been received in my office and is being forwarded to you for a response for the following reason(s):

- Grievance concerns or issues not within my authority.
- Grievance concerns a TDCJ-wide policy.
- To respond as my designee.

FROM:

Referring Official Job Title _____

Signature Unit/Department _____

Attachment

c: Intake Officer
Grievant, if applicable, Certified Mail Receipt No.: _____ or Grievant's Signature: _____
Date

Texas Department of Criminal Justice
NOTIFICATION OF EMPLOYEE GRIEVANCE MEETING

EMPLOYEE (GRIEVANT) INFORMATION	
Name: _____ Last First MI	Grievance Number: _____
Mailing Address: _____	
City, State, and Zip Code: _____	

This notification serves as a written confirmation that you are scheduled for a Step One Step Two or Step Three grievance meeting. The meeting shall be held: Telephonically In Person at _____ (a.m./p.m.) on _____ at _____ (Location) . (mm/dd/yyyy)

The responding authority meeting with you is:
Name _____ Title _____

The responding authority's designee meeting with you on behalf of the responding authority is:
Name _____ Title _____

The following representative whom you designated on the PERS 155, Employee Grievance Form may attend this meeting.

Name: _____
Last First MI

The following witnesses whom you designated on the PERS 155, Employee Grievance Form may attend this meeting.

Name: _____ Name: _____
Last First MI Last First MI

Guidelines relating to the preparation for and participation in this meeting are listed on page 2 of this form. If you have any questions, please contact me at the phone number listed below.

Name (Please Print) Job Title

Phone Number Signature Date

DISTRIBUTION:
Original: Grievant (Certified Mail Receipt No. or Grievant's Signature and Date): _____
Copy: Responding Authority
Copy: Intake Officer
Copy: Grievant's Human Resources Representative
PERS 491 (11/09) Page 1 of 2

Texas Department of Criminal Justice
NOTIFICATION OF EMPLOYEE GRIEVANCE MEETING

1. Preparation and Participation by Grievant:
 - a. Grievant on TDCJ Payroll: If you have not been separated from employment, you may make use of state resources to prepare for the scheduled grievance meeting. However, if you have restricted access to your unit/department because you are in a suspension without pay status, you may not access your unit/department for the purpose of using state resources to prepare for the grievance meeting.

Your appearance at the grievance meeting shall be considered official business if you are on the TDCJ payroll at the time of the meeting, and your appearance shall be on paid time. Whenever you require the use of state time to attend the scheduled grievance meeting, you shall give your supervisor sufficient advance notice in order to allow management to ensure adequate staffing. Any reasonable and necessary expenses in connection with attendance at the grievance meeting shall be reimbursed in accordance with state travel regulations and TDCJ travel guidelines.
 - b. Grievant not on TDCJ Payroll: If you have separated from employment prior to the time of the grievance meeting, you shall not be paid for your time or expenses in connection with preparation for or participation in the meeting unless you are reinstated as a TDCJ employee as a result of the grievance, in which case provisions for a grievant on the TDCJ payroll shall apply.
2. Participation by a Representative: The representative you identified on the PERS 155, Employee Grievance Form when you submitted your grievance may assist in the presentation of the grievance at the grievance meeting. The representative, whether a TDCJ employee or other individual, may not make use of state resources during any point of the grievance process. Whenever an employee who is acting as a representative spends time preparing for a grievance meeting, this time shall not be considered paid time. It is your responsibility to notify your representative regarding the date and time of any grievance meeting.

There is no authority for the TDCJ to pay compensation to or reimburse the expenses of a representative, whether a state employee or someone from outside state service. Appearance as a representative at a grievance meeting shall not be considered official business. If an employee acting as a representative attends a grievance meeting held during working hours, the employee shall obtain prior approval to take accrued leave or, if accrued leave is not available, leave without pay to attend the grievance meeting.
3. Participation by Witnesses: The witness(es) you identified on the PERS 155, Employee Grievance Form when you initially submitted the grievance may appear at the grievance meeting to provide testimony. No act of reprisal shall be taken against any employee who testifies in a grievance meeting.

Service as a witness shall be considered official business, for which the employee shall be released by the supervisor on paid time during working hours. An employee who participates as a witness in a grievance meeting shall give the employee's supervisor sufficient advance notice to provide adequate staffing. Any reasonable and necessary expenses in connection with attendance at the grievance meeting shall be reimbursed in accordance with state travel regulations and TDCJ travel guidelines. The TDCJ shall not pay for the time or travel of a witness who is not a TDCJ employee at the time of the grievance proceeding.

It is your responsibility to arrange for your witnesses to be present at the meeting. In lieu of an actual appearance at the grievance meeting by a witness, you may obtain a statement from the witness prior to the meeting for presentation on your behalf. Witnesses appearing in person at the grievance meeting may be questioned. However, the TDCJ is under no obligation to interview character witnesses or witnesses with "hearsay" information.
4. Conduct by Participants: All participants in a grievance meeting shall conduct themselves in a professional manner. The failure to do so shall be grounds to terminate the grievance meeting, in which case the grievance shall be decided on the basis of the written grievance and the information obtained prior to the termination of the grievance meeting. Misconduct by yourself, your representative, or a witness shall also be grounds to disqualify the offending individual from participating in future grievance meetings.
5. Recording of a Grievance Meeting: The steps of the grievance procedure are intended to be a problem-solving process for addressing grievances. The use of recording devices at a grievance meeting held at any step creates a formal and adversarial atmosphere that is in direct conflict with the purpose of the problem-solving approach. Therefore, audio taping, video taping, or written recording of a grievance meeting shall not be permitted; however, informal note taking shall be allowed. As reasonable accommodation for a physical disability, a hearing-impaired employee involved in the grievance process may use a qualified interpreter or a recording device.

**Texas Department of Criminal Justice
TIME LIMIT EXTENSION**

Date

Grievance Number

TO:

Grievant's Name

Job Title

Unit/Department

An extension of _____ calendar days from _____, the date your grievance response was originally due, is required to further investigate your grievance.

The new response due date is _____. Please sign below and return this form to my office by _____.

FROM:

Responding Authority's Name

Job Title

Signature

Unit/Department

c: Intake Officer

(If applicable, Certified Mail Receipt Number: _____)

Grievant's Signature

Date

Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.

**Texas Department of Criminal Justice
GRIEVANCE TRACKING LOG**

Unit/Department: _____

DATE REC'D	EMPLOYEE NAME	DATE SENT TO INTAKE	INTAKE OFFICER'S NAME	GRIEVANCE NUMBER	DATE REJECTED GRIEVANCE SENT TO EMPLOYEE	DATE ACCEPTED GRIEVANCE SENT TO STEP 1,2, OR 3	STEP NUMBER	EXTENSION REQUEST DATE	DATE REFERRED	COMMENTS

Distribution: Original – Unit/Department Grievance Coordinator