

**C****OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW  
YORK****TITLE 7. DEPARTMENT OF CORRECTIONAL SERVICES  
CHAPTER VIII. INSTITUTIONAL PROGRAMS  
PART 701. INMATE GRIEVANCE PROGRAM**

Text is current through December 31, 2005.

Section 701.3 Policy.

(a) An inmate should seek assistance in resolving a complaint through a guidance unit, program area directly affected, or other existing channels, informal or formal, prior to submitting a formal grievance. However, a facility may not require the use of a "pre-exhaustion" procedure as a condition for filing a grievance. The failure of an inmate to attempt to resolve a problem on his/her own must not preclude the initial submission of the grievance. An inmate should be encouraged to attempt to resolve a problem on his/her own. Failure to do so may result in the dismissal and closing of the grievance at the IGRC hearing.

(b) An inmate must be personally affected by the policy or issue he/she is grieving, or must show that he/she will be personally affected by the policy or issue unless some relief is granted or changes made. All grievances must be filed in an individual capacity.

(c) Visitor complaints shall be processed through the Office of Affirmative Action.

(d) Although there are issues which affect a class of people, such issues are not grievable as class actions. Class actions are not to be instituted through the grievance procedure. Grievances which are raised in terms of class actions should be referred to the inmate liaison committee. However, individuals personally affected by a matter which affects a class of inmates may file a grievance on their own behalf to effect a change with regard to the written or unwritten policy, regulation, procedure or rule.

(e) Nongrievable matters. Some grievances request actions that are not obtainable through the IGP. These cases, although initially accepted as grievances, may be dismissed at the IGRC hearing. In such cases the grievant shall be directed to the appropriate mechanism whereby he/she can seek the solution requested.

(1) The individual decisions or dispositions of any current or subsequent program or procedure having a written appeal mechanism which extends review to outside the facility shall be considered nongrievable.

(2) The policies, rules and procedures of any such nongrievable programs or procedures, however, may be the subject of a grievance.

(f) Outside agencies excluded. Any policy, regulation, or rule of any outside agency not under the supervision of the commissioner, or any action taken by such agency, is not

within the jurisdiction of the IGP.

(g) IGRC access/movement within facility.

(1) A pass system (institutional or point-to-point), which permits inmate representatives and IGP clerks to perform their specified duties shall be established by the superintendent. Mandatory security restrictions will preclude inmates from entering certain areas of the facility.

(2) At any facility where either an institutional or point-to-point pass system is not feasible, the superintendent must develop a procedure ensuring the IGRC a realistic method of obtaining information necessary to address grievances within established time frames while maintaining confidentiality. This procedure must be in writing and approved by the director of the IGP.

(3) Upon written recommendation of the IGP supervisor and with the approval of the director of the IGP, the superintendent may restrict or remove IGRC pass privileges from a specific inmate.

(h) Reasonable accommodations. The IGP supervisor will ensure that disabled inmates are provided the necessary assistance to facilitate their access to and utilization of the Grievance Program. Reasonable accommodations shall include, but not be limited to, meetings with inmates at accessible sites and the provision of qualified sign language interpreters for those deaf and hard of hearing inmates who use sign language to communicate. Copies of all grievance decisions concerning reasonable accommodations for deaf or hard of hearing inmates shall be forwarded to the ADA Coordinator Central Office.

(i) Translators. Translators will be used to facilitate access to the IGP for those inmates who do not speak English.

(j) IGRC staff interviews.

(1) Formal interviews with staff members, if necessary for obtaining data to be used by the IGRC, should be conducted jointly by an inmate and staff representative whenever feasible. Mandatory security restrictions may preclude inmates from entering certain areas of the facility.

(2) Certain situations, due to their sensitive nature, are best investigated only by an IGP staff member. In such situations inmate representatives shall submit questions they would like answered to IGP staff representatives who shall make every effort to obtain the answers to these questions. In the alternative staff interviews may be held in the IGRC office.

(k) Appeal after transfer.

(1) An inmate transferred to another facility may continue an appeal of a departmental

grievance.

(2) An institutional grievance brought by an inmate who was transferred, released, or paroled must be investigated and brought to an IGRC hearing.

(i) If the IGRC majority determines that the grievance is moot because it only affects the specific grievant or the issue being grieved has been decided by the central office review committee (CORC) within a year from the date the instant grievance was filed, the IGRC shall dismiss and close the grievance. A copy of the CORC decision relied upon shall be filed with the dismissed grievance and cited within the IGRC decision.

(ii) If the grievance does affect other members of the facility population and has not been reviewed by the CORC within the past year, the IGRC shall provide a recommendation on how to resolve the matter and forward the case to the superintendent for a determination.

(3) Upon receipt of the superintendent's decision, the IGP supervisor shall prepare a case history and record and forward all case materials to the CORC for a final disposition.

(4) An institutional grievance brought by an inmate who is thereafter transferred, released or paroled which is pending at the superintendent's level, is to be processed according to the provisions of subparagraph (2)(ii) of this subdivision.

#### Historical Note

Sec. filed: May 8, 1986 as emergency measure, expired 60 days after filing; Aug. 22, 1986; amd. filed: Feb. 26, 1988; Aug. 10, 1990 as emergency measure; Oct. 16, 1990; Oct. 27, 1992; repealed, new filed April 18, 1994; amd. filed July 2, 1998 eff. July 22, 1998. Amended (h).

<General Materials (GM) - References, Annotations, or Tables>

#### 1. Purpose

##### CASE NOTES:

While inmate grievance procedure cannot be used to challenge decision in particular disciplinary proceeding which results in a sanction, it may be used to challenge manner in which sanction is imposed. [Johnson v. Ricks \(3 Dept. 2000\) 717 N.Y.S.2d 413, 278 A.D.2d 559](#), leave to appeal denied [751 N.E.2d 944, 727 N.Y.S.2d 696, 96 N.Y.2d 710](#)

## 2. Exhaustion of administrative remedies

### CASE NOTES:

Complaint alleged facts, if true, that sufficed to justify prisoner's failure to file ordinary, separate, formal grievance to exhaust available administrative remedies before filing suit on allegedly retaliatory behavior of prison officials during disciplinary proceeding, where prisoner reasonably believed that direct appeal of his disciplinary conviction, in which he included references to alleged retaliatory conduct of which he complained, was his only available remedy, and there was significant chance that state would have sought to bar him from pursuing grievance mechanism that it said was once available to him. [Giano v. Goord, C.A.2 \(N.Y.\)2004, 380 F.3d 670](#)

### CASE NOTES:

State inmate's failure to pursue internal grievance procedures after he allegedly was denied lower bunk permit to accommodate his back injury compelled dismissal, pursuant to Prison Litigation Reform Act (PLRA), of inmate's § 1983 action asserting claim for Eighth Amendment violation against correctional facility doctor, despite contention that inmate could not obtain money damages which he sought under such procedures, inasmuch as administrative procedure could have provided inmate with desired lower bunk permit. [Cole v. Mirafior, 2002, 195 F.Supp.2d 496](#)

### CASE NOTES:

Prisoner failed to exhaust an administrative remedies when he failed to pursue grievance procedure to address his complaint that his keeplock status did not justify special housing unit (SHU) confinement, and thus he was barred from pursuing judicial relief to compel prison officials to release him from SHU confinement. [Johnson v. Ricks \(3 Dept. 2000\) 717 N.Y.S.2d 413, 278 A.D.2d 559, leave to appeal denied 751 N.E.2d 944, 727 N.Y.S.2d 696, 96 N.Y.2d 710](#)

**7 NY ADC 701.3**

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