

BALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED
5120 REHABILITATION AND CORRECTION DEPARTMENT
CHAPTER 5120-9. INMATE CONTROL AND DISCIPLINE
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Rules are current through April 30, 2006;
Appendices are current through March 31, 2004

5120-9-31 The inmate grievance procedure

(A) The department of rehabilitation and correction shall provide inmates with access to an inmate grievance procedure. This procedure is designed to address inmate complaints related to any aspect of institutional life that directly and personally affects the grievant. This may include complaints regarding policies, procedures, conditions of confinement, or the actions of institutional staff.

(B) The inmate grievance procedure will not serve as an additional or substitute appeal process for hearing officer decisions, rules infraction board decisions or those issues or actions which already include an appeal mechanism beyond the institutional level or where a final decision has been rendered by central office staff. Other matters that are not grievable include complaints unrelated to institutional life, such as legislative actions, policies and decisions of the adult parole authority, judicial proceedings and sentencing or complaints whose subject matter is exclusively within the jurisdiction of the courts or other agencies. Complaints which present allegations which fall, in part, within the scope of paragraph (A) of this rule and in part within this paragraph will be considered to the extent they are not excluded under this paragraph.

(C) A written explanation of and instructions for the use of the inmate grievance procedure shall be readily available to both staff and inmates. Newly hired staff, and newly incarcerated inmates at reception shall receive a written and oral description of the procedure. Inmates shall also receive information regarding the inmate grievance procedures during orientation at their parent institution. Appropriate provisions shall be made as necessary for inmates not fluent in English, persons with disabilities and those with low literacy levels. All materials used to provide information and training on the inmate grievance procedure to staff and inmates shall be prepared or approved by the office of the chief inspector.

(D) Inmates may utilize the inmate grievance procedure regardless of any disciplinary status, or other administrative or legislative decision to which the inmate may be subject. Appropriate provisions shall be made to ensure access to the inmate grievance procedure by inmates not fluent in English, persons with disabilities, and those with low literacy levels. Each institution shall maintain locked institutional mailboxes for inmates to mail kites, informal complaints, grievances and other institutional correspondence to staff.

(E) Limited restrictions may be imposed, only with the approval of the chief inspector,

based upon an inmate's abuse or misuse of the inmate grievance procedure. Such a restriction shall be for a stated period of time not to exceed ninety days and subject to extension by the chief inspector if the inmate has not substantially complied with the restriction requirements. Provisions shall be made to ensure that the inmate can pursue issues that could present a substantial risk of physical injury, such as medical concerns, through the inmate grievance procedure. Any inmate subject to a restriction shall be notified in writing. Such notice shall include a clear explanation of the nature of the restriction, and the length of time of the restriction, (conditional upon their compliance). The notice shall also include an explanation of how they may pursue issues that could present a substantial risk of harm while on restriction.

(F) An inmate may be subject to disciplinary action for disrespectful, threatening or otherwise inappropriate comments made in an informal complaint, grievance or grievance appeal. Only the inspector of institutional services, with the approval of the chief inspector or designee, may initiate disciplinary action based upon the contents of an informal complaint, grievance or grievance appeal.

(G) Failure of the inmate to substantiate their grievance allegations shall not, by itself, be used as grounds to initiate disciplinary action. If it is found that an inmate has intentionally falsified information in an informal complaint, a grievance, or grievance appeal, only the inspector of institutional services, with the approval of the chief inspector or designee, has the authority to initiate disciplinary action against the inmate.

(H) Retaliation or the threat of retaliation for the use of the inmate grievance procedure is strictly prohibited. Any alleged or threatened retaliation may be pursued through the inmate grievance procedure. Appropriate disciplinary action shall be taken against any employee found to be in violation of this section.

(I) Grievance records are considered confidential and shall be maintained by the inspector of institutional services in a secure manner. No grievance records shall be placed in any inmate file which is available to the adult parole authority, except when the record is the basis of disciplinary action initiated by the inspector and authorized by the chief inspector.

(J) The inmate grievance procedure shall be comprised of three consecutive steps fully described below. Whenever feasible, inmate complaints should be resolved at the lowest step possible. There is a specific form designated by the chief inspector to use for each step. Only forms designated by the chief inspector may be used in this process. Such forms shall be reasonably available to inmates regardless of their disciplinary status or classification. Inmates shall not be required to advise a staff member, other than the inspector of institutional services, of the reason the form is being requested.

(1) The filing of an informal complaint - step one:

Within fourteen calendar days of the date of the event giving rise to the complaint, the

inmate shall file an informal complaint to the direct supervisor of the staff member, or department most directly responsible for the particular subject matter of the complaint. Staff shall respond in writing within seven calendar days of receipt of the informal complaint. If the inmate has not received a written response from the staff member within a reasonable time, the inmate should immediately contact the inspector of institutional services either in writing or during regular open office hours. The inspector of institutional services shall take prompt action to ensure that a written response is provided to the informal complaint within four calendar days. If a response is not provided by the end of the fourth day, the informal complaint step is automatically waived. Informal complaint responses should reflect an understanding of the inmate's complaint, be responsive to the issue, cite any relevant departmental or institutional rules or policies and specify the action taken, if any. The inspector of institutional services shall monitor staff compliance with the informal complaint process. Any pattern of non-compliance by staff shall be reported to the warden for appropriate action. The filing of an informal complaint may be waived if it is determined by the inspector of institutional services that there is a substantial risk of physical injury to the grievant, the complaint is filed pursuant to [rule 5120-9-03](#) or [5120-9-04 of the Administrative Code, paragraph \(H\)](#) of this rule, or for other good cause.

(2) The filing of the notification of grievance - step two:

If the inmate is dissatisfied with the informal complaint response, or the informal complaint process has been waived, the inmate may obtain a notification of grievance form from the inspector of institutional services. All inmate grievances must be filed by the inmate no later than fourteen calendar days from the date of the informal complaint response or waiver of the informal complaint step. The inspector of institutional services may also waive the timeframe for the filing of the notification of grievance, for good cause. The inspector of institutional services shall provide a written response to the grievance within fourteen calendar days of receipt. The written response shall summarize the inmate's complaint, describe what steps were taken to investigate the complaint and the inspector of institutional service's findings and decision. The inspector of institutional services may extend the time in which to respond, for good cause, with notice to the inmate. The chief inspector or designee shall be notified of all extensions. Any extension exceeding twenty-eight calendar days from the date the response was due must be approved by the chief inspector or designee. Expedited responses shall be made to those grievances that, as determined by the inspector of institutional services, present a substantial risk of physical injury to the grievant or for other good cause.

(3) The filing of an appeal of the disposition of grievance - step three:

If the inmate is dissatisfied with the disposition of grievance, the inmate may request an appeal form from the inspector of institutional services. The appeal must then be filed to the office of the chief inspector within fourteen calendar days of the date of the disposition of grievance. For good cause the chief inspector or designee(s) may waive such time limits. The chief inspector or designee(s) shall provide a written response

within thirty calendar days of receipt of the appeal. The chief inspector or designee(s) may extend the time in which to respond for good cause, with notice to the inmate. The decision of the chief inspector or designee is final. Grievance appeals concerning medical diagnosis or a specific course of treatment shall be investigated and responded to by a health care professional.

(K) Appropriate remedies for valid grievances shall be provided. Potential remedies may include, but are not limited to: changes to institutional policies or procedures, the implementation of new policies or procedures, and/or corrective action specific to the inmate's complaint. (For example, a correction to the inmate's account, locating lost property, etc.) If the resolution of a grievance or portion thereof, is not within the scope of authority of the inspector of institutional services, the inspector of institutional services shall submit the findings and recommendations concerning the grievance to the warden for the warden's approval, modification or disapproval. The warden shall respond to the inspector of institutional services within fourteen calendar days. The inspector of institutional services shall provide to the office of the chief inspector the report to the warden, that includes the warden's decision.

(L) Grievances against the warden or inspector of institutional services must be filed directly to the office of the chief inspector within thirty calendar days of the event giving rise to the complaint. Such grievances must show that the warden or inspector of institutional services was personally and knowingly involved in a violation of law, rule or policy, or personally and knowingly approved or condoned such a violation. The chief inspector or designee(s) shall respond within thirty calendar days of receipt of the grievance. The chief inspector or designee(s) may extend the time in which to respond for good cause, with notice to the inmate. The decision of the chief inspector or designee is final.

HISTORY: 2005-06 OMR pam. #7 (A), eff. 1-20-06; 2004-05 OMR pam. #7 (RRD); 2004-05 OMR pam. #1 (A), eff. 8-1-04; 2001-02 OMR 1596 (R-E), eff. 1-1-02; 2000-2001 OMR 1182 (RRD); 2000-2001 OMR 494 (RRD); 1999-2000 OMR 1213 (RRD); 1986-87 OMR 1251 (A), eff. 6-1-87; 1979-80 OMR 4-1028 (A), eff. 7-10-80; 1977-78 OMR 3-1028 (A), eff. 2-20-78; prior rule 845(b)

[RC 119.032](#) rule review date(s): 1-12-10; 1-12-05; 10-12-01; 10-12-00; 1-12-00

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

CROSS REFERENCES

[RC 5120.01](#), Director is executive head of department; powers and duties

[RC 5120.06](#), Divisions of rehabilitation and correction department

[RC 5120.42](#), Rules; estimates

LIBRARY REFERENCES

OJur 3d: 29C, Criminal Law § 3870

NOTES OF DECISIONS

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[1](#). Exhaustion of administrative remedies requirement

Inmate failed to meet burden of proving he exhausted his administrative remedies before bringing suit against prison officials, where he failed to file an affidavit with original complaint and a copy of written decision on his grievance, and appeal denial letter he attached to amended complaint did not include a substantial analysis of merits of his complaint. [Hamilton v. Wilkinson, 2004, 2004-Ohio-6982, 2004 WL 2944154](#), Unreported. Convicts ↪ 6

Administrative grievance procedure available to inmates constituted adequate legal remedy which inmate had to exhaust prior to instituting mandamus action to compel Ohio Penal Industries (OPI) to pay him additional compensation. [State ex rel. Humphrey v. Jago, 1996, 660 N.E.2d 1206, 74 Ohio St.3d 675, 1996-Ohio-94](#). Mandamus ↪ 73(1)

Former inmate failed to exhaust administrative remedies as prerequisite to bringing 1983 action against state Department of Rehabilitation and Correction, correctional facility, warden and correctional officers, alleging cruel and unusual punishment due to alleged assault by fellow inmates; inmate filed an informal complaint which was rejected, he then filed formal complaints with institutional inspector, which was also denied, and he failed to file appeal. [Player v. Ohio Dept. of Rehabilitation and Corrections, 2002, 2002 WL 1578773](#), Unreported. Civil Rights ↪ 1319

Inmate's failure to protect claim against corrections officer was, on the facts, closely

intertwined with excessive force claim against another officer and arose in the context of that claim, so that the failure to protect claim was not so distinct from the assault claim against latter officer as to require the filing of a separate and independent administrative grievance, to substantially comply with the administrative exhaustion requirement of the Prison Litigation Reform Act, as to events occurring prior to passage of the Act. [Wolff v. Moore, 1999, 199 F.3d 324](#). Convicts ↪ 6

Prisoner exhausted administrative remedies by filing with chief inspector his grievance against warden, was not required to file second form, and, therefore, could bring 1983 action; inspector found no violation of law or policy and thus decided case on merits. [Hattie v. Hallock, 1998, 8 F.Supp.2d 685](#), amended [16 F.Supp.2d 834](#). Civil Rights ↪ 1319

Under Ohio law, to begin grievance proceedings, inmate must first attempt to resolve the grievance by contacting the appropriate institutional department or staff member before notifying the inspector of institutional services; if inmate is not satisfied by the inspector's resolution of the grievance, he may appeal to the chief inspector. [Mack v. DeWitt, 2002, 40 Fed.Appx. 36, 2002 WL 847991](#), Unreported. Prisons ↪ 13(7.1)

Jewish inmate who alleged that state prison officials illegally refused to accommodate his religious beliefs failed timely to file informal complaint, as required to maintain claim under Prison Litigation Reform Act; inmate was required to file within fourteen calendar days of date of event giving rise to complaint, but nineteen days elapsed between time inmate was informed that religious accommodation request was denied and filing of complaint. [Wallace v. Burbury, 2003, 305 F.Supp.2d 801](#). Civil Rights ↪ 1319

Jewish inmate who alleged that prison officials illegally refused to accommodate his religious beliefs failed to exhaust available administrative remedies, as required to maintain claim under Prison Litigation Reform Act; Ohio Department of Rehabilitation and Correction (ODRC) policy mandated specific procedure regarding requests for religious accommodation, inmate erroneously used general grievance procedure, and inmate failed to refile once aware of correct procedure. [Wallace v. Burbury, 2003, 305 F.Supp.2d 801](#). Civil Rights ↪ 1319

2. Appeal

Court of Appeals affords leniency to pro se prisoner litigants in attempting to discern whether their arguments have merit, reviewing record to determine whether there was any manifest error that reasonably can be said to have been raised by litigant. [Akbar-el v. Muhammed, 1995, 663 N.E.2d 703, 105 Ohio App.3d 81](#), dismissed, jurisdictional motion overruled [656 N.E.2d 950, 74 Ohio St.3d 1456](#). Appeal And Error ↪ 761

3. In forma pauperis, resources report

Record established that plaintiff inmate seeking to proceed in forma pauperis had provided requested information regarding his financial resources and, thus, inmate's complaint was improperly dismissed for failure to comply with order requiring such information; affidavit section of application to proceed in forma pauperis provided complete answers to all applicable questions, including inmate's \$17 monthly prison income, and authorized officer of correctional institution completed and certified section pertaining to inmate's prison account. [Wilson v. Ohio Dept. of Rehab. & Corr., 1996, 676 N.E.2d 962, 111 Ohio App.3d 605.](#) Costs ↪ 132(4)

4. Grievance appeals


Prisoners' appeal of discipline for allegedly possessing contraband did not estop them from filing grievance for alleged action of warden, correctional officers, librarian, and others in violating their First Amendment right of access to the courts. [Hattie v. Hallock, 1998, 8 F.Supp.2d 685,](#) amended [16 F.Supp.2d 834.](#) Prisons ↪ 13(6)

State prison grievance procedure provided a mechanism for exhausting prisoner's claims that his disciplinary convictions had resulted in violations of his constitutional rights, which prisoner was required to exhaust before bringing 1983 action based on alleged constitutional violations, where his disciplinary convictions had since been vacated, so that a grievance would not be barred as an additional or substitute appeal under Ohio law. [Muhammad v. Wilkinson, 2001, 22 Fed.Appx. 373, 2001 WL 1298943,](#) Unreported. Civil Rights ↪ 1319

5. ---- Cruel and unusual punishment, constitutional issues

Even assuming that time for filing an appeal was tolled from date former inmate filed claim alleging violations of the Eighth Amendment's protection against cruel and unusual punishment, until date when the Court dismissed that suit, his claim was untimely, and thus inmate failed to exhaust his prison administrative grievance remedies. [Player v. Ohio Dept. of Rehabilitation and Corrections, 2002, 2002 WL 1578773,](#) Unreported. Civil Rights ↪ 1319

Inmate substantially complied with the administrative exhaustion requirement of the Prison Litigation Reform Act, as to events occurring before passage of the Act, despite failure to file a formal grievance against defendant corrections officer for use of excessive force, pursuant to the standard inmate grievance procedure, where inmate participated in the investigations into officer's actions conducted pursuant to the use of force procedure set forth in the Ohio Administrative Code, leading to conclusion that officer had in fact assaulted inmate in violation of his Eighth Amendment rights, and essentially the same

process would have occurred had inmate filed a formal grievance. [Wolff v. Moore, 1999, 199 F.3d 324](#). Convicts  6

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