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DEPARTMENT OF CORRECTIONS

DIVISION 109

INMATE COMMUNICATION AND GRIEVANCE REVIEW SYSTEM

291-109-0100

Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish department policy and procedures for inmate communication with staff and the administration of the department's internal grievance review and appeal system for inmates confined in Department of Corrections facilities.

(3) Policy:

(a) It is the policy of the Department of Corrections to encourage inmates to address their concerns informally with appropriate staff and managers through either dialog or by utilizing inmate communication forms. Inmates having information or concerns regarding the conduct or behavior of staff that may directly threaten the life, health, and safety of staff or inmates are also encouraged to communicate their information and concerns to the department using such other systems as the department may develop, for example, the Inspector General's hotline.

(b) Recognizing that due to the complex nature of the correctional setting some issues or disputes between staff and inmates may not be readily resolved at an informal level, it is the policy of the Department of Corrections to permit and encourage inmates to seek resolution of issues or disputes using the department's internal inmate grievance review and appeal system established in these rules.

(c) Within the inherent limitations of resources and the need for facility security, safety, health and good order, it is the policy of the Department of Corrections that all inmates be treated fairly and equitably, and that staff actions and decisions be consistent with the rules, policies and procedures of the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0110

Definitions

(1) Administrative Directive: A term used to describe in general a Department of Corrections rule or policy signed by the Director or Deputy Director.

(2) Communication: A process by which information is exchanged between individuals, usually through verbal or written message.

(3) Contractor: Any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department sanctioned assignment to provide services or support to department programs.

(4) Department of Corrections (DOC) Employee: Any person employed full-time, part-time, or

under temporary appointment by the Department of Corrections.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports either to the Director, an Assistant Director, or an administrator and has responsibility for the delivery of program services or the coordination of program operations.

(6) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post prison supervision status.

(7) Inmate Communication Form: An official Department of Corrections form (CD 214) commonly referred to as a "kyte or kite." The form is designed for inmate use in communicating with employees, volunteers, or contractors and allows employees, volunteers, or contractors to respond in writing, when appropriate, to the inmate.

(8) Inspector General's Hotline: A phone number, maintained and paid for by the department, where inmates may report misconduct by other inmates and abuse of lawful authority or criminal activity of department staff in order to protect the life, health, and safety of both staff and inmates.

(9) Oregon Corrections Enterprises: A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(10) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises.

(11) Volunteer: An approved person who donates time, knowledge, skills and effort to enhance the mission, activities and programs of the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 3-1979, f. 1-18-79, ef. 1-25-79; CD 34-1981(Temp), f. & ef. 8-7-81; CD 5-1982, f. & ef. 1-29-82; CD 39-1983(Temp), f. & ef. 10-14-83; CD 6-1984, f. & ef. 4-9-84; CD 53-1985, f. & ef. 8-16-85; CD 56-1986, f. & ef. 12-5-86; CD 13-1992, f. 6-15-92, cert. ef. 6-26-92; DOC 29-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 17-2000, f. & cert. ef. 6-19-00; Renumbered from 291-109-0010, DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0120

Inmate-Staff Communications (General Principles)

(1) Proper and effective communication between inmates and staff is essential to the safe, secure, and orderly operation of Department of Corrections facilities and to the successful completion of the inmate's corrections plans.

(a) Inmates and staff communicate with each other not only with their choice of words (oral or written), but also non-verbally through their manner, tone, and approach (commonly referred to as "body language").

(b) Inmates and staff are jointly responsible for ensuring their choice of words, manner, tone and approach are appropriate to properly and effectively convey their intended information and ideas to one another.

(2) Inmates shall communicate with staff in a civil and respectful tone and manner.

(3) Staff shall communicate with inmates in a professional manner that fosters respect and confidence. Staff orders directed to inmates should be clear and concise.

(4) Staff shall make every effort to respond to an inmate communication form within seven days of receipt.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0125

Methods of Reporting Sexual Contact

(1) Inmates should immediately report incidents of information regarding sexual contact between staff and an inmate to a trusted staff or use the Inspector General's hotline number or both.

(2) Inmates with information or concerns regarding sexual contact between staff and an inmate

may also use the inmate grievance review system.

(3) The Inspector General's hotline number is posted throughout Department of Corrections facilities.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; Suspended by DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

291-109-0140

Grievance Review System

(1) General Requirements:

(a) If an inmate is unable to resolve an issue through informal communications, the department encourages the inmate to seek resolution of the issue by submitting a written grievance using the department's approved inmate grievance form (CD 117) in accordance with these rules. As with informal communications, inmates should use a civil and respectful tone and manner in their written grievances to attempt to resolve the issue or concern.

(b) An inmate grievance must include a complete description of the incident, action, or application of the rule being grieved, including date and approximate time.

(A) Only supporting documentation that directly relates to the issue being grieved, such as program failures, inmate communications, etc., should be attached and submitted with the grievance.

(B) Inmate grievances and supporting attachments that directly relate to the issue being grieved meet the standard for photocopying detailed in the rule on Legal Affairs, OAR 291-139-0040 (Supplies, Photocopying, Mailing, and Notary Services). However, library coordinators may limit photocopying of irrelevant or excessive amounts of supporting attachments.

(c) An inmate who attempts to grieve an issue by use of an inmate communication form or any written communication other than the department's approved inmate grievance form shall have his/her communication returned to him/her with instruction that the inmate resubmit the grievance on the department's approved inmate grievance form.

(d) An inmate grievance may request review of just one matter, action or incident per inmate grievance form.

(2) An inmate may file a single grievance concerning any of the following matters:

(a) The misapplication of any administrative directive or operational procedure;

(b) The lack of an administrative directive or operational procedure;

(c) Any unprofessional behavior or action which may be directed toward an inmate by an employee, contractor, or volunteer of the Department of Corrections or the Oregon Corrections Enterprises;

(d) Any oversight or error affecting an inmate;

(e) A program failure as defined in the DOC rule on Performance Recognition and Award System (Inmate), OAR 291-077-0020, unless the program failure is a direct result of a misconduct report where the inmate was found in violation;

(f) The loss or destruction of property as designated in the DOC rule on Personal Property (Inmate), OAR 291-117-0130(3); or

(g) Sexual contact, solicitation or coercion between an employee or contractor and an inmate.

(3) An inmate cannot grieve the following:

(a) Grievances relating to actions or decisions not within the jurisdiction of the department (for example, actions by the Board of Parole and Post Prison Supervision);

(b) Incident(s) or action(s) for which there exists a separate internal department appeal or review process; for example, rejection or confiscation of mail, visiting, discrimination complaints, classification issues, etc.;

(c) Daily fails as defined in the DOC rule on Performance Recognition and Award System (Inmate), OAR 291-077-0020;

(d) Conduct orders, investigations leading to a conduct order, or conduct order sanction(s);

- (e) Misconduct reports, investigations leading to or arising from misconduct reports, or disciplinary hearings, findings and sanctions;
 - (f) Incident(s) or problem(s) to which an inmate was not a party;
 - (g) The action or decision of more than one DOC or OCE employee, volunteer or contractor on a single grievance form;
 - (h) Claims or issues for which the inmate has filed a Notice of Tort with the Oregon Department of Administrative Services, Risk Management Division;
 - (i) Claims or issues that the inmate is pursuing in pending litigation in state or federal courts; or
 - (j) Group grievances representing other inmates, or acts where an inmate is a spokesperson for other inmates.
- (4) An inmate may submit only his/her signature on a single grievance form.
- (5) An inmate may not file more than one grievance regarding a single incident or issue.
- (6) An inmate may file a grievance regarding the same issue as a previously filed grievance provided there is another incident and new information is available about the issue.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0150

How and When a Grievance is Filed

- (1) Inmate grievances must be submitted to the functional unit grievance coordinator on the department's approved inmate grievance form (CD117). Instructions for filing a grievance are found on form CD117a (Inmate Grievance Instructions).
- (2) To obtain a grievance review, the functional unit grievance coordinator must receive an inmate's grievance within 30 calendar days of the date of the incident giving rise to the grievance. The grievance coordinator shall date stamp and log the grievance form upon receipt.
- (3) If an inmate cannot complete the grievance form due to language, physical, or competency and capacity barriers, another person may complete the form. However, the inmate submitting the grievance must sign the grievance form. Translation services or other assistance for submission of a grievance form for non-English speaking inmates or inmates that have difficulty with reading and writing will be made available upon request.
- (4) Functional unit managers or designees shall ensure the approved inmate grievance forms are readily available to inmates in DOC correctional facilities.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(3), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0160

Processing of Inmate Grievances

- (1) Upon receiving an inmate grievance, the grievance coordinator will assign the grievance a number and record its receipt in an inmate grievance log.
 - (a) After the inmate grievance has been logged, the grievance coordinator will send a grievance receipt to the inmate.
 - (b) The grievance coordinator will coordinate with the appropriate staff or, if deemed more suitable, the appropriate manager by sending the grievance and a grievance response form (CD 117b) to the staff or manager respondent for reply.
 - (c) The respondent will complete the form and submit it to his/her manager for review and signature. The response shall be returned to the grievance coordinator for processing within 21 calendar days.
- (2) After recording, the grievance coordinator will send the inmate grievance and employee's, contractor's, or volunteer's response to the inmate and retain copies for the file.

(a) The grievance coordinator will complete processing of the grievance within 45 days from the date the grievance was received from the inmate, unless further investigation is necessary.

(b) If the grievance is not processed within this timeframe, the grievance coordinator will make an effort to notify the inmate of the status of the grievance. If the inmate does not receive a response within the allotted time frame, he/she may contact the grievance coordinator.

(3) Grievance responses may be consolidated.

(4) If at anytime the grievance coordinator determines the inmate has pursued his/her issue through state or federal courts, or has filed a notice of tort claim, the grievance process will cease and the grievance will be returned to the inmate. The grievance coordinator will retain a copy of the inmate's grievance and document the date and reason for return of the grievance.

(5) A grievance that has been returned to the inmate by the grievance coordinator for procedural reasons cannot be appealed. The inmate may elect to resubmit the grievance to the grievance coordinator within 14 calendar days from the date the grievance was sent back to the inmate if the procedural errors can be corrected.

(6) Once an inmate is released from the custody of the Department of Corrections, any pending grievances or pending appeal responses will be completed and held on file unless other arrangements have been made with the grievance coordinator. No further appeals will be accepted for processing once the inmate is released from the custody of the Department of Corrections.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(4), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0170

Grievance Appeals

(1) Appeals of the Initial Grievance (First Appeal Process):

(a) An inmate may appeal the initial grievance response using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments and staff response(s).

(A) The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance was filed and the information is directly related to the alleged issue being grieved.

(B) After the appeal has been date stamped and logged, the inmate will be issued a return receipt, and the grievance appeal will be forwarded to the functional unit manager having authority to review and resolve the issue.

(b) Appeal Timelines: The grievance coordinator must receive an appeal within 14 calendar days from the date that the grievance response was sent to the inmate from the grievance coordinator.

(c) The functional unit manager shall respond to the inmate's grievance appeal within 30 calendar days from the date the appeal was received by the functional unit manager. The functional unit manager will return the grievance appeal and the response back to the grievance coordinator.

(2) Appeal of the Functional Unit Manager Decision (FINAL Appeal Process):

(a) An inmate may appeal the functional unit manager's decision using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments, staff responses and documentation related to the first grievance appeal.

(A) The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance or first-level appeal was filed and the information is directly related to the alleged issue being grieved.

(B) After the appeal has been date stamped and logged, the inmate will be issued a return receipt. The grievance appeal will be forwarded to the Assistant Director having authority to review and resolve the issue.

(b) The Assistant Director or designee shall review the final grievance appeal. If the Assistant Director determines additional facts should have been gathered or additional witnesses interviewed, the grievance appeal will be referred back to the functional unit grievance

coordinator. Upon completion of the investigation, the Assistant Director shall complete the review.

(c) Final Appeal Timelines: The grievance coordinator must receive the final appeal within 14 calendar days from the date that the first grievance appeal response was sent to the inmate from the grievance coordinator. The Assistant Director or designee shall respond to the inmate's grievance appeal within 30 calendar days from the date the appeal was received by the Assistant Director.

(d) The Assistant Director's or designee's decision on an inmate's grievance appeal is final, and is not subject to further review.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(5), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0180

Abuse of Grievance Review System

(1) An inmate shall submit no more than two inmate grievances in any one week or six in any calendar month. This will not apply to grievances regarding allegations of sexual abuse. A week is defined as Sunday through Saturday. Grievances submitted in excess of two grievances in any one-week or six in any calendar month will be denied and returned to the inmate, noting that he/she has abused the grievance review system.

(2) If a life, health or safety situation arises whereby there is valid reason to submit more than two grievances in one week or six in a calendar month, the inmate must clearly state in writing the reason for submission of the grievance above the number allowed. If the grievance coordinator determines that these reasons are not clear, concise or valid for submission of an additional grievance, the grievance will be returned to the inmate denied.

(3) Actions taken against an inmate who has abused the grievance review system under these rules are not grievable.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(6), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

291-109-0190

Retention and Filing of Inmate Grievances

(1) The grievance coordinator will retain a file copy of grievances with pertinent documents, including appeals, in accordance with the department's approved retention schedule for these records.

(2) Inmate grievances will not be filed in the inmate's working file.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(7), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0200

Grievance Regarding Allegations of Sexual Abuse

(1) For purposes of this rule sexual abuse is defined as sexual abuse of an inmate by another inmate and sexual abuse of an inmate by a staff member.

(a) Sexual abuse of an inmate by another inmate includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) Contact between the mouth and the penis, vulva, or anus;

(C) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and

(D) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(b) Sexual abuse of an inmate by a staff member, contractor or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) Contact between the mouth and the penis, vulva, or anus;

(C) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire;

(D) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks that is unrelated to the official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire;

(F) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described by paragraphs (A)–(E) of this section;

(G) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

(H) Voyeurism by a staff member, contractor, or volunteer. Voyeurism by a staff member, contractor or volunteer means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

(2) Grievances alleging sexual abuse must be submitted to the functional unit grievance coordinator on the departments approved inmate grievance form (CD117). The grievance should have the words "sexual abuse grievance" clearly written on the top of the grievance form.

(3) There is no time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(4) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(a) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(b) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(5) The grievance coordinator may not refer a grievance alleging sexual abuse to a staff member who is the subject of the grievance. The grievance coordinator will coordinate with the appropriate manager by sending the grievance and a grievance response form (CD 117b) to the manager respondent for reply.

(6) An inmate may appeal the initial grievance response using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments and manager's response.

(7) The department shall issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(a) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(b) The department may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The department shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(c) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial of the allegations made by the inmate at that level.

(8) An inmate who alleges that he or she is subject to a substantial risk of imminent sexual abuse may provide the grievance directly to the officer-in-charge (OIC) or the OIC's designee.

(a) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the OIC or the OIC's designee shall immediately review and take immediate corrective action as necessary to mitigate the risk of sexual assault.

(b) The OIC or the OIC's designee shall provide the emergency grievance and the initial response to the inmate and the grievance coordinator within 48 hours of the submission of the grievance.

(c) The grievance coordinator will issue to the inmate a final response to the emergency grievance within five days of the submission of the emergency grievance,

(d) The initial and final responses shall document the department's determination whether the inmate is in substantial risk of imminent sexual abuse and any action, if necessary, taken in response to the emergency grievance.

Stat Auth: ORS 179.040, 423.020, 423.030 and 423.075

Stat Impl: ORS 179.040, 423.020, 423.030 and 423.075

Hist.: DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

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