

STATE OF WEST VIRGINIA

DIVISION OF CORRECTIONS

POLICY DIRECTIVE

NUMBER: 335.00

DATE: 01 August 2013

SUBJECT: Inmate Grievance Procedures

RECEIVED

SEP - 5 2013

WVDOC  
LEGAL DIVISION

**AUTHORITY:** 42 U.S.C. §1997e(a); Booth v. Churner, 532 U.S. 731 (2001); Porter v. Nussle, 534 U.S. 516 (2002); Woodford v. Ngo, 548 U.S. 81, 93 and 103 (2006); State ex rel. Fields v. McBride, 216 W.Va. 623, 609 S.E.2d 884 (2004); WV Code 62-13-4 and W.Va. Code § 25-1A-2; ACA Standard 4-4284; PREA Standard 115.52

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- I. **POLICY:** It is the policy of the West Virginia Division of Corrections (WVDOC) to maintain a mechanism that ensures the promulgation of uniform procedures concerning the formal review of issues relating to any aspect of confinement for inmates confined in its institutions/facilities/centers. It is also the policy of the West Virginia Division of Corrections that all inmates be required to fully and properly utilize these procedures to the fullest extent required under any forum for which the inmate would otherwise seek judicial redress within.
- II. **CANCELLATION:** Policy Directive 335.00, dated 01 March 2013.
- III. **DEFINITIONS:**
1. "Accept" shall mean the act of formally receiving the grievance for a review of the grievance on the merits.
  2. "Commissioner" shall mean the Commissioner of Corrections. Any task to be completed by the Commissioner herein may be completed by his/her designee.
  3. "Days" shall mean working days exclusive of weekends or state holidays.
  4. "Exhaustion" shall mean submitting an accepted grievance and properly appealing an accepted grievance fully and receiving a final response thereto by the Commissioner. Rejections do not constitute exhaustion. Remands are not final responses unless expressly stated in the decision.
  5. "Grievance" shall mean the formal process by which an inmate seeks redress over any matter concerning prison life, whether it involves general circumstances or particular episodes. The term "grievance" shall be considered the administrative remedy for inmates unless this policy specifically sets forth another administrative procedure.
  6. "Grievance Number" shall be a number affixed at the inmate's place of incarceration or point of receiving the grievance which shall be set by a two digit number for the year in which the grievance is filed (ex. 07) separated by a hyphen, the second part of the number shall be the institution/facility/center designation which are the following:

ACC Anthony Correctional Center  
 BCC Beckley Correctional Center  
 CWRC Charleston Work Release Center  
 DCC Denmar Correctional Center  
 HCC Huttonsville Correctional Center  
 HWCC Huttonsville Work Camp  
 HWRC Huntington Work Release Center  
 LCC Lakin Correctional Center  
 PBCC Parkersburg Correctional Center

MCC Martinsburg Correctional Center  
 MDC McDowell/Stevens Correctional Center  
 MOCC Mount Olive Correctional Complex  
 NCC Northern Correctional Center  
 OCC Ohio County Correctional Center  
 PCC Pruntytown Correctional Center  
 SMCC St. Marys Correctional Center  
 SWC Slayton Work Camp

- a. After the institution/facility/center designation and a hyphen, the institution/facility/center shall assign a distinct sequential number which shall be utilized for tracking the grievance and for reference. The number shall be set forth by the inmate's unit designation and a sequential number separated by a hyphen. For the purpose of tracking the grievances, the Unit Manager of each unit shall maintain a log of grievances. This grievance log shall conform to Attachment #1 and sequential numbers shall be assigned from the beginning of each calendar year. An example is below:

### Grievance Log

Facility: Mocc

Unit: Elm

Calendar Year: 2010

Seq.#	Doc #	Inmate	Date Filed	Issue	Resp. Date
1	12345-3	Horwitz, Harry Moses	01-08-10	Wants popcorn	01-12-10
2	23456-3	Feinberg, Louis	01-09-10	housing assignment	01-12-10
3	34567-3	Horwitz, Jerome	01-11-10	needs medication adjusted	

Based on the example: The grievance numbers would be assigned as follows:

Horwitz, Harry Moses: 10-Mocc-Elm-01

Feinberg, Louis: 10-Mocc-Elm 02

Horwitz, Jerome: 10-Mocc-Elm-03

7. "Inmate" shall mean an inmate either presently at the institution/facility/center or having previously been incarcerated at the institution/facility/center.
8. "Investigate" refers to a process, whether formal or informal, by which information necessary to compile a response is provided. It can be as simple as a verbal inquiry or can involve a more detailed investigation.
9. "Reject" shall mean a refusal to review a grievance on the merits due to a failure of the inmate to follow the procedural requirements for filing such grievance. Except in cases filed under Section V, E or V, F of this Policy Directive, grounds for rejection shall include but not be limited to failure to file the grievance in a timely manner; filing a grievance on a matter that has been previously submitted in a prior grievance; attaching excessive pages; submitting writing on multiple sides of a page; submitting a grievance appeal out of conformity with this policy (for example; including more than one

grievance in a mailing or any other matter that would be out at variance with this policy).

10. "Remand" means to return a grievance to a lower level for further action. When a grievance is remanded, unless the decision specifies otherwise, it is expected that a new decision will be issued at the level to which the grievance is remanded and the process continues at that level in the same manner as if it were originally filed/appealed to that level. Unless other times are specified, action on a remand shall occur within ten (10) days of its receipt.
11. Sexual abuse: Encompasses (a) inmate-on-inmate sexual abuse, (b) inmate-on-inmate sexual harassment, (c) staff-on-inmate sexual abuse, and (d) staff-on-inmate sexual harassment.
  - a. Inmate-on-inmate sexual abuse: Encompasses all incidents of inmate-on-inmate sexually abusive contact and inmate-on-inmate sexually abusive penetration.
    - 1) Inmate-on-inmate sexually abusive contact: Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by an inmate of another inmate without the latter's consent, or of an inmate who is coerced into sexual contact by threats of violence, or of an inmate who is unable to consent or refuse.
    - 2) Inmate-on-inmate sexually abusive penetration: Penetration by an inmate of another inmate without the latter's consent, or of an inmate who is coerced into sexually abusive penetration by threats of violence, or of an inmate who is unable to consent or refuse. The sexual acts included are:
      - a) Contact between the penis and the vagina or the anus.
      - b) Contact between the mouth and the penis, vagina, or anus.
      - c) Penetration of the anal or genital opening of another person by a hand, finger, or other object.
  - b. Inmate-on-inmate sexual harassment: Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, or gestures or actions of a derogatory or offensive sexual nature by one inmate directed toward another.
  - c. Staff-on-inmate sexual abuse: Encompasses all occurrences of staff-on-inmate sexually abusive contact, staff-on-inmate sexually abusive penetration, staff-on-inmate indecent exposure, and staff-on-inmate voyeurism. Staff solicitations of inmates to engage in sexual contact or penetration constitute attempted staff-on-inmate sexual abuse.
    - 1) Staff-on-inmate sexually abusive contact: Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks by a staff member of an

inmate with or without the latter's consent that is unrelated to official duties.

- 2) Staff-on-inmate sexually abusive penetration: Penetration by a staff member of an inmate with or without the latter's consent. The sexual acts included are:
    - a) Contact between the penis and the vagina or the anus.
    - b) Contact between the mouth and the penis, vagina, or anus;
    - c) Penetration of the anal or genital opening of another person by a hand, finger, or other object.
  - 3) Staff-on-inmate indecent exposure: The display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.
  - 4) Staff-on-inmate voyeurism: An invasion of an inmate's privacy by staff for reasons unrelated to official duties or when otherwise not necessary for safety and security reasons, such as peering at an inmate who is using a toilet in his or her cell; 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 and distributing or publishing them.
- d. Staff-on-inmate sexual harassment: Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member. Such statements include demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
12. "Unit Manager" shall refer to the Unit Manager of the housing unit to which the inmate is assigned. In any housing unit that does not have a Unit Manager, the person occupying the position of Unit Manager for purposes of this policy shall be the commanding officer of such unit.
13. "Warden/Administrator" shall refer to the Chief Executive Officer (CEO) of the institution/facility/center in which the inmate is confined and shall also include Work Release Administrators. All tasks designated to a Warden/Administrator in this policy may be completed by a designee.
- IV. APPLICABILITY:** All units within the Division of Corrections for all matters except classification which shall follow administrative remedies set forth in Policy Directives 401.01 and 326.01 and inmate discipline which shall follow administrative remedies set forth in Policy Directive 325.00.

**V. PROCEDURES:****A. General Provisions**

1. Nothing in this Policy Directive shall be construed to provide an inmate with any additional liberty interest that would not otherwise exist if this Policy Directive did not exist.
2. Copies of all inmate grievances, appeals, and responses at Unit Manager and Warden/Administrator's level shall be maintained at the institution/facility/center. Once appealed to the Commissioner, the grievance shall be filed within the inmate's central office file. Only the grievance filed within the central office shall be indicative of whether the inmate has exhausted administrative remedies.
3. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing request for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such request on behalf of inmates.
4. Except for allegations brought under Sections V, E or V, F of this Policy Directive, an inmate may not use the Inmate Grievance Procedure to submit a grievance or appeal on behalf of another inmate or for any matter that does not directly affect the inmate filing the grievance.
5. Any inmate who fails to fully and properly comply with the provisions set forth in this Policy Directive shall not be considered to have taken full advantage of administrative remedies afforded him/her and therefor has not exhausted administrative remedies.
6. The Warden/Administrator shall maintain a searchable record of all grievances. The record shall be searchable in the following manners: name or DOC number of inmate; grievance number; type of grievance; and the date of filing.
7. This Policy Directive represents the general administrative remedy procedures for the Division of Corrections. Staff shall be instructed that this Policy Directive will apply to any issue advanced by an inmate that does not have a specific administrative remedy identified by this policy. Inmates should, as a general guideline, not to be told that an issue is not "grievable." If an issue is not properly presented under this Policy Directive, the inmate should be instructed as to the proper policy and procedure for seeking an administrative remedy. However, being able to grieve an issue does not equate to being entitled to the relief sought.

**B. Unit Manager Level:**

1. Any inmate may file a grievance utilizing a grievance form within fifteen (15) days of any occurrence that would cause him/her to file a grievance

(Attachment #2). These forms shall be made available to members of the inmate population at all institutions/facilities/centers. At a minimum, grievance forms shall be available in all inmate housing units and the law libraries.

2. An inmate may grieve only one (1) issue or complaint per form and, except for grievances pursuant to Sections V, E or V, F of this Policy Directive, the issue must directly pertain to the inmate filing the grievance.
3. The grievance form shall initially be submitted by the inmate to his/her Unit Manager. Upon receipt of the grievance form, the Unit Manager shall log the grievance and assign it a number in conformity with the procedure set forth in Section III of this Policy Directive.
4. Prior to responding to the grievance, the Unit Manager shall inspect the grievance to determine whether the grievance was filed in a timely manner; whether the grievance contains excessive pages; whether the grievance is otherwise not submitted within the proper format; or whether the grievance seeks to discuss matters previously addressed in a prior grievance. If the grievance is not filed within a proper time frame, contains excessive pages, is not within the proper format or seeks to present an issue previously addressed, the Unit Manager shall reject the grievance, providing a brief explanation of the grounds for rejection, and return the grievance to the inmate, noting the rejection on the log. **Except for grievances rejected due to having been previously addressed in a grievance or those filed beyond the time limits to file a grievance,** the inmate shall have five (5) days to correct the defect and re-file a new grievance. An inmate may appeal a rejection in the same manner as a decision, but the scope of the appeal is limited only to the propriety of the rejection and not to the merits such that appeal the rejection to the commissioner does not exhaust administrative remedies on the issue presented in the defective grievance.
5. It shall be the responsibility of the Unit Manager to ensure that an answer to the grievance is provided back to the inmate within five (5) days. The response should be clear, concise, complete, and professional. The Unit Manager is not required to personally answer the grievance, so long as he/she ensures that the grievance ultimately received is timely addressed and, if accepted, answered. *Provided* that the Unit Manager shall ensure that the staff member to which the grievance pertains shall not be responsible for answering the grievance. In the case of accepted grievances addressing questions of health care, the Unit Manager shall route the grievance to the institution's/facility's/center's health care administrator to review and provide the inmate an answer. However, the Unit Manager, while not reading the grievance response from the medical unit, shall ensure that a response has been completed and provided to the inmate, logging the same.
6. The inmate shall be provided a copy of his/her grievance form prior to

submission at each level for the inmate's records. The inmate may attach to the grievance only one (1) 8.5 x 11 inch page with writing on a single side. Only one staple may be used to affix the pages together. The inmate may not tear, fold, or affix tape to the forms, except that the forms may be folded and placed into a number 10 envelope.

7. If the Unit Manager fails to answer or reject the grievance within the time frame noted in Section V, B, 5 of this Policy Directive, the inmate may treat the non-response as a denial of his/her grievance. The inmate shall indicate on the form that the grievance that was set forth in the form to the Warden/Administrator was previously filed without a response to the Unit Manager. The Warden/Administrator shall investigate such allegation. If it is determined that the inmate had submitted a grievance without response, the Warden/Administrator shall require an immediate response from the Unit Manager. If it is determined by the Warden/Administrator that the inmate had either not filed the form with the Unit Manager or had been given a timely response, the Warden/Administrator shall initiate appropriate disciplinary action under Policy Directive 325.00.

C. Appeals to the Warden/Administrator:

1. Should the response at the Unit Manager level not resolve the issue, the inmate may appeal to the Warden/Administrator within five (5) days from delivery of the response to his/her grievance. The inmate shall use the same form as was submitted to the Unit Manager and signing in the appropriate location. Only the grievance form and Unit Manager's response shall be submitted. Submission of any additional materials beyond the initial grievance and response shall be grounds to reject the appeal, except in the case of grievances submitted pursuant to Sections V, E or V, F of this Policy Directive.
2. As with the initial level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Warden/Administrator for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager, if any] and the Unit Manager response is to be copied.
3. Prior to responding to the appeal, the Warden/Administrator shall review the grievance to determine whether any grounds for rejection exists in the same manner as Sections V, B, 4 or V, C, 1. If such exists, the grievance shall be rejected in the same manner as provided in Section V, B, 4.
4. The Warden/Administrator shall respond to the appeal, using the grievance form, within five (5) days. The Warden/Administrator shall consider the statement of the grievance, as presented at the initial level, together with the Unit Manager's response to determine whether the response is appropriate and in furtherance with the mission of the Division of Corrections and consistent with the orderly operation of the institution/facility/center. After a review of the grievance, the

Warden/Administrator may: affirm the Unit Manager and deny the grievance; deny the grievance for reasons other than that which is addressed by the Unit Manager; grant the grievance; or remand the grievance back to the Unit Manager for further action. In reviewing the grievance, the Warden/Administrator should place the expectation upon the Unit Manager that the grievance will be fully addressed at his/her level such that additional investigation should rarely be necessary and that a decision can be rendered from a review of the grievance document. If a grievance has not been properly submitted through any level by an inmate, it shall be rejected.

D. Appeals to the Commissioner

1. Should the inmate believe that the Warden/Administrator's response does not resolve his/her grievance or the Warden/Administrator fails to respond in the time frames set forth in Section V, C, 4 of this Policy Directive, the inmate may submit an appeal to the Commissioner of the Division of Corrections within five (5) days after he/she receives the Warden/Administrator's response or the time for the response has passed. The appeal shall be submitted using the same form as was submitted to the Unit Manager and signing the appropriate location. Only the grievance form together with the Unit Manager and Warden/Administrator's response shall be submitted. Each grievance appealed to the Commissioner shall be mailed to the Commissioner by first class mail. **Only one (1) grievance per envelope shall be permitted.** Except for grievances filed pursuant to Section V, E, submission of multiple grievances or submission of grievances bound with tape or more than one staple or by any other means shall be grounds for rejection of the entire mailing in addition to all other grounds. The inmate may not tear or fold the forms, except that the forms may be folded to place it in a number 10 envelope. The grievances shall be appealed to the Commissioner by mailing only the grievance form and a single 8.5 inch page attachment, together with any response from the unit level and Warden/Administrator to the Commissioner at the following address:

W.V. Division of Corrections  
Commissioner's Office  
Attention: Inmate Grievance Review  
1409 Greenbrier Street  
Charleston, WV 25311

2. As with the initial level and Warden/Administrator's level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Commissioner for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager, if any] and responses are to be copied.
3. Prior to responding to the appeal, the Commissioner shall review the grievance to determine whether any grounds for rejection exists in the



same manner as Sections V, B, 4; V, C, 1; V, D, 1; or any other provision of this Policy Directive. If such exists, the grievance shall be rejected in the same manner as provided in Section V, B, 4 of this Policy Directive.

4. The Commissioner shall respond to the appeal, in writing, within ten (10) days. The Commissioner shall consider the statement of the grievance, as presented at the initial level, together with the Warden/Administrator and Unit Manager's response to determine whether the response is appropriate and in furtherance with the mission of the Division of Corrections and with the orderly operation of the institution/facility/center. Upon review of the grievance, the Commissioner may: affirm the Warden/Administrator and deny the grievance; deny the grievance for reasons other than that which is addressed by the Warden/Administrator and Unit Manager; grant the grievance; or remand the grievance back to the Warden/Administrator or Unit Manager for further action. In reviewing the grievance, an expectation is placed upon the Warden/Administrator and Unit Manager that the grievance will be fully addressed at their levels and additional investigation should rarely be necessary. A decision should be able to be rendered from a review of the grievance document. If a grievance has not been properly submitted through any level by an inmate, it shall be rejected. A rejected grievance does not exhaust the grievance process or that step of the process.

E. Special Procedures for Sexual Abuse:

1. In cases where an inmate alleges he/she has been sexually abused as defined in this Policy Directive, he/she shall follow the process provided in Section V, E of this Policy Directive.
  - a. An inmate may file a grievance at any time concerning sexual abuse, and the grievances shall not be rejected at the Unit Manager's level.
  - b. In any case where an inmate would be required to submit his/her grievance to a staff member he/she is alleging engaged in the sexual abuse, the inmate shall submit the grievance to the Warden/Administrator (or if the Warden/Administrator is the individual alleged to be the individual sexually abusing the inmate, to the Commissioner). The Warden/Administrator and/or the Commissioner, as the case may be, shall assign appropriate staff to respond to the grievance.
2. The time frames for processing the grievance and for appeals shall be the same as for ordinary grievances which requires completion of the process within sixty (60) days.
3. Reports and correspondence not initially filed as a grievance.
  - a. Whenever a staff member is notified either verbally or in writing of

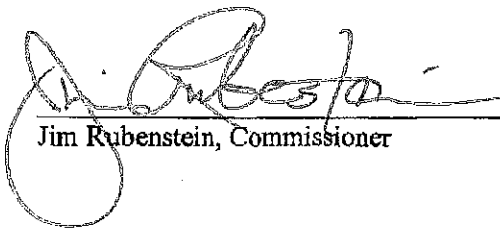
an allegation that an inmate has been sexually abused, including notification from another inmate, the staff member shall transmit a copy of this information to the Warden/Administrator, who shall forthwith transmit the same to the Director of the Corrections' Investigation Division and to the Inmate's Unit Manager. In the event the Warden/Administrator is the one accused of committing the sexual abuse, the copy shall be directly sent to the Director of the Corrections' Investigation Division and Unit Manager by the staff member. The Unit Manager shall consider such notification as a grievance submitted on behalf of the inmate and shall assign the information a grievance number. The Unit Manager shall ensure that all verbal reports are reduced to writing. A grievance or an appeal thereof relating to sexual abuse shall not be rejected due to defects in the form of the grievance or for any other reason for rejection as noted above.

- b. The Unit Manager or assigned staff member shall inform the inmate allegedly sexually abused that a grievance has been submitted on his/her behalf and shall process it under the above-stated procedures. The Unit Manager shall also request the inmate to complete a grievance form, but the inmate is not required to do so. If the inmate expressly request that it not be processed, the Unit Manager shall document any such request and close the grievance. Provided, however, that the Unit Manager shall remain responsible for ensuring the information was reported to the Corrections Investigation Division.
- c. After the Unit Manager's initial actions, the inmate will be responsible for personally pursuing any subsequent steps in the grievance process through exhaustion.

F. Emergency Procedures:

1. An inmate alleging that he/she is subject to a substantial risk of imminent sexual abuse may file a grievance directly to his/her Warden/Administrator who shall in turn cause an immediate review of the inmate's allegations and circumstances to determine whether such substantial risk of imminent sexual abuse exists. Such review can be in conjunction with an application for special management under Policy Directive 326.00. The scope of the Warden/Administrator's review shall be limited to whether the inmate is at substantial risk of imminent sexual abuse.
2. As soon as possible, but no longer than within forty-eight (48) hours, the Warden/Administrator shall make an initial response determining whether the inmate's allegations that he/she is at substantial risk of imminent sexual abuse was substantiated; and, if so, the Warden/Administrator shall take all necessary corrective action. Within five (5) calendar days, the Warden/Administrator shall issue a final written response setting forth reasons supporting the decision and any action taken.

3. If no emergency exists, the Warden/Administrator shall return the grievance to the inmate and require the inmate to follow the normal grievance procedures.
4. The Warden/Administrator shall provide a written explanation of why the grievance does not qualify as an emergency.
5. Any inmate found to have intentionally filed an emergency grievance where no emergency exists and in bad faith shall be subject to disciplinary action under appropriate WVDOC Policy.



Jim Rubenstein, Commissioner

August 1, 2013  
Date



W.Va. Division of Corrections Inmate Grievance Form

Grievance No. \_\_\_\_\_

Inmate Name \_\_\_\_\_

DOC # \_\_\_\_\_

Date of Grievance \_\_\_\_\_

State Nature of Grievance / Issue to be addressed (Note 1 issue per grievance be concise file with Unit Manager NO WRITING ON BACK):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Relief Sought (state what you want): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(The inmate may attach 1 8.5 x 11 sheet if necessary at this level only)

Inmate's Signature

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Unit Manager's Response (attach additional sheet if needed)

Accepted \_\_\_\_\_ Rejected \_\_\_\_\_ Reason for rejection: \_\_\_\_\_ Date: \_\_\_\_\_

Response on Merits if accepted:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature

\*\*\*\*\*

Appealed: \_\_\_\_\_ (if so initial and give copy to unit manager) Appealed to Warden/Administrator \_\_\_\_\_ (initial) Date: \_\_\_\_\_

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00

Inmate's Signature

Date

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Action by Warden/Administrator:

Accepted \_\_\_\_\_ Rejected \_\_\_\_\_ Reason for rejection: \_\_\_\_\_ Date: \_\_\_\_\_

Response on Merits if accepted: \_\_\_ Remand to Unit for further action \_\_\_ Affirm unit and/or deny grievance \_\_\_ Grant the Grievance as specified

Comments \_\_\_\_\_  
\_\_\_\_\_

(Attach additional sheet if necessary)

Warden/Administrator's Signature

Date

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Resolved: \_\_\_\_\_ (if so initial and give copy to unit manager) Appealed to Commissioner \_\_\_\_\_ (initial)

If no response at Warden/Administrator's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00

Inmate's Signature

Date

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Signature by Commissioner:

Accepted \_\_\_\_\_ Rejected \_\_\_\_\_ Reason for rejection: \_\_\_\_\_ Date: \_\_\_\_\_

Response on Merits if accepted: \_\_\_ Affirm Warden/Administrator and deny grievance (Affix final stamp) \_\_\_ Other, memo attached.