

ARTICLE II GRIEVANCE PROCEDURE

Section 1 Definition

A. A grievance shall be a written complaint alleging a violation involving the application and interpretation of the provisions of this Agreement.

B. A grievance shall contain a statement of the grievance by indicating the issue(s) involved, the relief sought, the date the incident(s) or violation(s) took place, if known, and the specific Section or Sections of the Agreement involved. The grievance shall be presented to the Appointing Authority or his/her designee, or the District Director or his/her designee for CBC, on forms mutually agreed upon and furnished by the Union, and signed and dated by the Union. The grievance form

will state the name of the employee(s) authorizing the filing of the grievance. An aggrieved employee shall have the right to a Union representative appointed

by the Union. If a grievance form lacks any of the information required by this subsection, the grievance shall be returned to the Local Union Steward who filed the grievance with a copy to the Union and the Local

Union with an explanation. The Local Union Steward will have seven (7) calendar days from the date of the read receipt to resubmit the original grievance with the required information.

C. Any bargaining unit employee shall have the right to meet and adjust his/her individual complaint with the Employer.

D. The arbitration provisions of this Agreement may only be invoked with the approval of the Union and, in the case of an employee's grievance, only with the approval of the employee.

E. All grievances must be presented promptly and no later than fourteen (14) calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable diligence, the cause of such grievance; however, under no circumstances shall a grievance be considered timely after six (6) months from the date of occurrence.

Section 2 Grievance Steps

(Board of Regents, see Appendix C; Community Based Corrections, see Appendix D)

A. Step 1

Within fourteen (14) calendar days of receipt of the written grievance from the employee or his/her Union representative, the Appointing Authority or his/her designee, or the District Director or his/her designee for CBC, will meet with the appropriate Union representative at a mutually agreed upon time and date (with or without the aggrieved employee) and attempt to resolve the grievance. A written answer will be placed on the grievance following the meeting by the Appointing Authority or his/her designee, or the District Director or his/her designee for CBC, and returned to the employee and the Union representative within fourteen (14) calendar days from receipt of the written grievance submitted to the Appointing Authority. Settlements at this step will be non- precedent setting unless designated otherwise.

B. Step 2

If dissatisfied with the Employer's answer in Step 1, to be considered further, the grievance must be appealed by facsimile transmission, regular U.S. mail, local mail (institutional, departmental or interdepartmental) or hand-delivered to the Chief Operating Officer of DAS-HRE or the Officer's designee, or the District Director or his/her designee for CBC, within fourteen (14) calendar days from receipt of the answer in Step 1. Within forty-five (45) calendar days after the receipt of the appeal at Step 2, the designee of the Chief Operating Officer of DAS-HRE, or the District Director or his/her designee for CBC, will meet with the appropriate Union representative (with or without the aggrieved employee) and attempt to reach resolution of the grievance. On grievances which do not involve discipline or discharge, the parties will, where practicable and feasible, meet via a telephone conference. Within thirty (30) calendar days following this meeting, a written answer will be issued and attached to the grievance by the Chief Operating Officer of DAS-HRE or the Chief Operating Officer's designee, or the District Director or his/her designee for CBC, and returned to the grievant and the Union representative. Step 2 answers shall be sent by facsimile transmission, regular U.S. mail, local mail (institutional, departmental or interdepartmental), hand-delivered, or e-mail (if the grievant provides an e-mail address).

E-mails will be considered confidential personnel documents in accordance with Iowa Code Section 22.7. (Board of Regents, see Appendix M; Community Based Corrections, see Appendix S)

Note: Grievances filed under Article IV, Section 9 will be eligible to proceed to GRIP. All other grievances will be eligible to proceed to arbitration.

C. Step 3 – Grievance Resolution Improvement Process (GRIP):

Disciplinary grievances which have not been settled under the foregoing procedures are eligible to be heard by the Grievance Resolution Panel. To be considered further, the grievance must be placed on the Grievance Resolution Panel docket within thirty (30) calendar days from receipt

of the answer in Step 2 by the keeper of the docket. The issue as stated in Step 2 shall constitute the sole and entire subject matter to be heard by the Grievance Resolution Panel, unless the parties mutually agree to modify the scope of the grievance.

The procedures to be used by the Grievance Resolution Panel will be governed by the "Rules of Procedure for the Grievance Resolution Improvement Process." The Rules of Procedure are set forth in Section 14 of Article IV of the Agreement. The parties may, however, agree to a more detailed set of rules of procedure outside of this Agreement. Before rules of procedure not contained within this Agreement take effect and become enforceable they must be signed

by both the President of AFSCME Iowa Council 61 and the Director of DAS. Any rule of procedure that is in conflict with this Agreement or the law is unenforceable.

D. Step 4 – Arbitration

Grievances which have not been settled under the foregoing procedure are eligible for arbitration. The issue as stated in Step 2 shall constitute the sole and entire subject matter to be heard by the arbitrator, unless the parties mutually agree to modify the scope of the hearing. If an unresolved grievance is not arbitrated, it shall be considered terminated on the basis of the Step 2 answer without prejudice or precedent in the resolution of future grievances.

For the purpose of selecting an impartial arbitrator, the parties will meet upon request and if unable to agree on an impartial arbitrator, the parties or party, acting jointly or separately, shall request PERB to submit a five (5) member panel of arbitrators. If the panel submitted by PERB is unacceptable to either party, the parties shall request a second panel of arbitrators from PERB. The AFSCME representative and the DAS-HRE representative will contact the arbitrator and set a date for the arbitration hearing. After the date for the arbitration hearing is established, the AFSCME representative and the DAS-HRE representative will schedule a meeting, not less than one (1) week prior to the grievance arbitration hearing date, to exchange all evidence relevant to the grievance that is available to them at that time through the exercise of reasonable diligence. If not provided at the pre-arbitration meeting, evidence cannot be offered at the arbitration hearing unless the party can prove that the evidence was not available to the party through the exercise of reasonable diligence.

Where two (2) or more grievances are appealed to arbitration, an effort will be made by the parties to agree upon the grievances to be heard by any one (1) arbitrator. On the grievances where agreement is not reached, a separate arbitrator shall be appointed for each grievance. The cost of the arbitrator and expenses of the hearing will be shared equally by the parties; however, the costs of transcripts shall be borne by the requesting party without having to furnish a copy to the other party, unless the parties mutually agree to share the entire cost. Except as provided in Section 8 of this Article, each of the parties shall bear the cost of their own witnesses, including any lost wages that may be incurred. The parties agree to share any cancellation fees for arbitration hearings canceled or postponed by mutual agreement. The party that is solely responsible for the cancellation or postponement of an arbitration hearing without the mutual consent of the other party shall pay the entire cancellation fee.

The arbitrator shall only have authority to determine the compliance with the provisions of this Agreement. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and shall not make any award which in effect would grant the Union or the Employer any matters which were not obtained in the negotiation process.

The decision of the arbitrator shall be final and binding on both parties to this Agreement provided any such decision does not exceed the arbitrator's jurisdiction or authority as set forth above.

Section 3 Time Limits

Grievances not appealed within the designated time limits in any step of the grievance procedure may be denied by the Employer on the basis of timeliness. The Union reserves the right to submit such grievances to arbitration. The parties agree, however, that in grievances where timeliness is an issue, the grievance may be resubmitted by the Union to the next higher step through the date the grievance answer should have been issued in order to allow the parties to attempt to resolve it.

Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure may be appealed to the next step within fourteen (14) calendar days of the date the grievance answer should have been issued. In order to be considered timely, a grievance must be scheduled for an arbitration hearing no later than nine (9) months from the date the grievance was answered by the Employer

at Step 2. In order to be considered timely, a discharge grievance must be scheduled for an arbitration hearing no later than one hundred twenty (120) days from the date the grievance was answered by the Employer at Step 2. The Union may, at its option, seek to schedule an arbitration hearing any time after the Step 2 was due in the event the Employer fails to timely provide

the response. Authority to schedule a hearing rests with the arbitrator should the parties disagree. The parties may, however, mutually agree in writing to extend the time limits in any step of the grievance procedure.

In the event the U.S. mail is used, the mailing of the grievance or response thereto shall be considered timely if postmarked within the time limits.

Section 4 Retroactivity

Settlement of a grievance may or may not be retroactive as the equities of particular cases may demand. In any case, where it is determined that the award should be applied retroactively, the maximum period of retroactivity allowed shall be a date not earlier than six (6) months prior to the date of initiation of the written grievance in Step 1.

Section 5 Exclusive Procedure

The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement.

Section 6 Names of Stewards and Management Representatives

For informational purposes only, the Union shall provide DAS-HRE with a written list setting forth the names and jurisdictional areas of Union representatives. The Employer shall supply the Local Union with a list of Management representatives to contact on grievance matters.

Section 7 Representation

An employee may consult with a local Union representative during working hours relative to a grievance matter by first contacting the employee's supervisor. The employee's supervisor shall arrange a meeting to take place as soon as possible for the employee with a Union representative through the Union representative's supervisor.

Section 8 Processing Grievances

Union representatives who are members of Judicial Branch or Executive Branch bargaining units and grievants will be permitted a reasonable amount of time to process grievances during their regularly scheduled hours of employment. Processing grievances shall be defined as investigating, filing, and attending any step meeting and/or hearing regarding grievances. However, only one (1) local Union representative will be in pay status for any one (1) grievance. Whenever possible,

the Union representatives will provide twenty-four (24) hours notice to their supervisor(s).

Further, in a group grievance, up to three percent (3%), but not less than one (1) nor more than ten (10) of the grievants shall be in pay status as spokesperson(s) for the group. Group grievances are defined as, and limited to, those grievances which cover more than one (1)) employee and which involve like circumstances and facts for the grievants involved.

The Employer is not responsible for any compensation of employees or Union representatives for time spent processing grievances outside their regularly scheduled hours of employment. The Employer is not responsible for any travel or subsistence expenses incurred by grievants or Union representatives in the processing of grievances.

Notwithstanding the foregoing provisions of this Section, the Employer agrees to conduct all grievance meetings involving third shift employees either during that shift or at a time which is contiguous to the employee's shift. The Employer is not responsible for any compensation of third shift employees for such

grievance meetings unless the Employer specifically requests, or if the parties mutually agree, that the grievant attend the hearing, in which case the grievant shall be compensated for the actual time spent in such hearing at his/her regular hourly rate and shall not be counted as hours worked for purposes of computing overtime.

Section 9 Discipline and Discharge

The parties recognize the authority of the Employer to suspend, discharge or take other appropriate disciplinary action against employees for just cause. The employee who alleges that such action was not based upon just cause may appeal a suspension or discharge taken by the Employer beginning with Step 2

of the grievance procedure. All other disciplinary action shall begin with Step 1 of the grievance procedure. Any disciplinary action or measure imposed upon an employee may be processed as a grievance through the grievance procedure. The Employer shall not discipline an employee without just cause, recognizing and considering progressive discipline where applicable. (See Appendix K for discipline related to attendance) Written reprimands, clarifications of expectations, or other similar memoranda shall be removed from the employee's personnel file after one (1) year provided no further disciplinary action has been taken against the employee.

The Employer shall provide written notification to affected employees prior to beginning an investigation into allegations of child abuse pursuant to Chapter 235A of the Code of Iowa and allegations of dependent adult abuse pursuant to Chapter 235B of the Code of Iowa and at the conclusion of such investigation.

Whenever the Employer determines that an employee must be removed from a current work assignment pending the completion of an investigation by the Employer to determine if disciplinary action is warranted, the Employer may:

1. Reassign the employee to another work assignment at their current rate of pay for up to twenty-one (21) calendar days, or
2. Suspend the employee from work for up to twenty-one (21) calendar days.

If the employee is suspended under number two (2) above, the employee shall be in pay status at their current rate of pay. If the investigation has not been completed within twenty-one (21) calendar days, the Employer will provide the steward who was involved in the investigation (if applicable) and the local Union President with a report regarding the status of the investigation. Additional reports will be provided on a periodic twenty-one (21) day basis thereafter. If, at the completion of the investigation, the Employer decides that suspension or discharge is warranted, the Employer shall have the right to recover the pay provided during the period of suspension under number two (2) above, consistent with the disciplinary action.

The Union shall receive written notice of any disciplinary action or measure imposed upon an employee within three (3) working days of the time such action is taken. Written notice of the disciplinary action or measure imposed may be provided to the Union by electronic communication with a read receipt. The Local Union and Management may agree upon processes for distributing written notices. If the Local Union and Management have a procedure for distributing written notices that is currently in place, this procedure will continue unless the Local Union and Management mutually agree to change the procedure.

Section 10 Exclusion of Probationary Employees Notwithstanding Section 9 above, nor any other provision(s) of this Agreement, the release of probationary employees shall not be subject to the grievance procedure.

Section 11 Exclusion of Grievant

The aggrieved employee is entitled to be present at all steps of the grievance procedure. Should the employee be excused by either party, the grievance shall be processed in the absence of the aggrieved employee and the Union will be allowed a maximum of two (2) representatives in pay status.

Section 12 Exchange of Information for Processing Grievances

A. The Union and the Employer agree that it is incumbent upon the parties to share all information available regarding grievances involving the Union, employees, and the Employer.

B. Weingarten principles (the right of an employee who reasonably believes that they may be subject to discipline to have, upon the employee's request, a Union representative present during the investigatory interview) shall apply during investigatory interviews of an employee.

C. Upon request from the Union representative, the Employer will provide that Union representative with written statements of witnesses, if they exist.

D. Upon request from the Employer's representative, the Union will provide the Employer's representative with statements of witnesses, if they exist.

E. Employees who receive witness statements must comply with the State's policy that witness statements and the information contained in the statements will not be redisseminated to any person not directly involved with the processing of the grievance. Employees who violate the State's policy on redissemination will be subject to disciplinary action.

F. When a grievance is scheduled for arbitration, if the representative of either party desires to interview a witness prior to the arbitration hearing and the witness has been interviewed by the Employer or the Union in the course of a grievance investigation, the interview shall be conducted in the presence of a representative from DAS-HRE. Witnesses are not required to grant the interview, however, such interviews, when conducted, shall be limited to the witness, an AFSCME Iowa Council 61 staff representative or attorney, and the representative from DAS-HRE.

Section 13 Resolution of Timeliness Arbitrability Issues

Where an issue exists as to the timeliness arbitrability of a particular grievance, the Chief Operating Officer of DAS-HRE or the Chief Operating Officer's designee shall give written notice to the Union. Following written notice, the timeliness dispute shall be submitted to an arbitrator, other than the arbitrator selected to determine the merits of the grievance, upon written submissions and by telephone hearing only.

Where the timeliness of a particular grievance is submitted to arbitration, the date for such arbitration shall be scheduled within thirty (30) days following the date that DAS-HRE provided notice to the Union, and a decision rendered within thirty (30) days following the date of the timeliness arbitrability hearing.

The party that does not prevail in the timeliness dispute must pay the cost of that hearing.

Section 14 Grievance Resolution Improvement Process (GRIP)

The Department of Administrative Services – Human Resources Enterprise Chief Operating Officer or General Counsel and the President of AFSCME Iowa Council 61 will establish a regular meeting schedule

to discuss how the Grievance Resolution Improvement Process (GRIP) is working, determine if there are problems that need to be resolved, and develop a plan for resolution of the issues.

A. The parties agree to utilize GRIP for all departments. GRIP will be limited to twenty (20) disciplinary cases per month.

B. Operation of Panel

1. Rules of Procedure

The Panel shall consist of four (4) representatives: two (2) representatives from AFSCME Iowa Council 61 and two (2) representatives from the State. The operation

of the Panel shall be in accordance with these Rules

of Procedure and such other rules as may from time to time be adopted by mutual agreement between the parties and signed by both the President of AFSCME Iowa Council 61 and the Director of DAS.

2. Order of Cases

Every attempt will be made to hear docketed discharge cases during the time period scheduled for the case. Cases may be deadlocked in advance of the hearing.

3. Hearings

The Panel will hear presentation from each party to the grievance. Each party will be permitted a maximum of twenty (20) minutes [thirty (30) minutes for disciplinary terminations] for its presentation. Witness statements and supporting documentation may be provided. Any information not presented at Step 2 of the grievance procedure that is to be used by either presenter will be exchanged between the parties at least seven (7) days prior to the meeting of the Panel. Exception will be allowed for evidence or witness statements submitted up to forty-eight (48) hours in advance of the meeting, if the information is mutually agreed upon. Information allowed under this exclusion must be of such significant nature as to potentially alter a reasonable decision on the grievance. If the party not submitting the documentation can make a justified argument that the party submitting the information had knowledge of the evidence or statements prior to the seven (7) day rule, such late evidence or statements will not be allowed.

During the presentation, only Panel members, the parties presenting the case and those directly involved in the specific case being heard shall be allowed to sit in the immediate area where the case is being conducted. Other members of the Panel observing the case shall not participate in the presentation, the discussion or the questioning.

The Employer will present first. Each party shall have twenty (20) minutes [thirty (30) minutes for disciplinary terminations] to present its case in chief. Each party shall declare, prior to the presentation of its case whether there will be a co-presenter on any respective case. The number of presenters shall be limited to two (2) individuals. Any co-presenter shall only supplement the presentation of the case in chief.

Both sides will have an opportunity to summarize and rebut; however no co-presenter may respond during the summation and rebuttal portion of the hearing. Summation and rebuttal shall not extend beyond five (5) minutes [ten (10) minutes for disciplinary terminations].

The AFSCME Iowa Council 61 Representative or the designated AFSCME steward will normally handle the Union presentation. The Department Director or his/her representative will normally handle the presentation for the Employer.

After each party has submitted its case and rebuttal, the panel members will be free to ask questions of the parties. After such questioning, the Panel will retire to executive session and will vote, and thereby render its decision. Voting by a show of hands will be sufficient. When the Panel goes into executive session, all others must retire from the room. After a decision has been reached by a majority vote of the Panel, the decision shall be reduced to writing and provided to the parties in a manner agreed upon by the Panel. The Panel has the authority to support, reject or modify any action taken. Decisions of the Panel are final and binding and may or may not be precedent setting as the Panel determines. Failure to reach a majority vote will create a deadlock or tied vote and such shall be recorded as the outcome. In the event of a deadlock, the grievance may proceed to arbitration as outlined in Step 4 of Section 2(D).

(The Rules of Procedure, and any additional agreed upon rules, shall be posted on the DAS's website.)