



## Department of Shared Administrative Services Office of Personnel Management

**Policy Title:** Dispute Resolution (Grievance)

**Policy Number:** 63

**Authority:** Ark. Code Ann. § 21-1-701 *et seq.*

**Revised:** April 9, 2020

The Office of Personnel Management (OPM) is charged with establishing a statewide dispute resolution (grievance) process, including developing procedures for filing and adjudicating grievances and procedures to follow for appeals.

**Administrative Record:** The case file specific to each grievance assembled by the Grievance Officer following OPM's guidelines.

**Administrative Review:** The fact-finding process conducted at the state agency by a Hearing Officer or Committee.

**Appeal:** A written request by a Party to OPM for a review of a final decision from the state agency's internal grievance process, either for a final determination or a SEGAP hearing.

**Employee:** A person regularly appointed or employed in a position of a state service by a state agency for which he or she is compensated on a full-time basis or on a pro rata basis; and a class title and pay grade are established in the appropriation act for the agency or institution in accordance with the Uniform Classification and Compensation Act. Employee does not include a Supervisory Employee. Employee does not include individuals who are on initial new-hire probationary status.

**Grievance:** An Employee's complaint resulting from a termination or suspension.

**Grievance Officer:** The person designated by the state agency as having the responsibility for acting as the case coordinator liaison between the Employee and the state agency.

**Hearing Officer/Committee:** An impartial person or committee appointed by the agency director to preside over the administrative review hearing and make a recommendation to the agency director.

**Mediation:** A collaborative, problem-solving, and joint decision-making process between the Employee and department with the help of a mediator.

**Party:** The Employee affected by a state agency decision or the state agency that made the decision at issue in the grievance.

**State Employee Grievance Appeal Panel (SEGAP):** An impartial appeal panel established to review the facts of the grievance and issue a decision.



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**Supervisory Employee:** An individual having authority in the interest of a state agency to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other Employees of the state agency; or if his or her exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature, the responsibility to direct other Employees of the state agency by which he or she is employed.

### Whistle-Blower Hearing

Act 791 of 2017 establishes an additional step to those listed below. If an Employee has been terminated and is alleging the termination is adverse action for one of the following protected activities:

- (a) Communicating in good faith to an appropriate authority the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;
- (b) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review;
- (c) Objecting or refusing to carry out a directive the Employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state; or
- (d) Reporting a loss of public funds under Ark. Code Ann. § 25-1-124.

The Employee may request a hearing by submitting the appropriate filing documentation to the agency's grievance officer who will then notify OPM of the request for a hearing. Along with the filing documentation, the Employee must include evidence that he or she committed one of the above protected activities prior to the termination. If the Employee fails to provide the evidence or provides insufficient evidence, OPM can deny the request for a hearing.

If the Employee provides sufficient evidence, OPM will schedule the hearing to be held within fifteen (15) business days of the request. The hearing will take place prior to any steps pursuant to the agency's internal procedures and will be conducted by SEGAP. If the Employee can show that a reasonable person would conclude that the agency terminated the Employee as a result of the Employee's activities under the Whistle-Blower law, SEGAP will order that the Employee either be 1) reinstated to his or her position until the conclusion of the grievance; or 2) reinstated and placed on administrative leave until the conclusion of the grievance.



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An Employee who files an appeal under this step does not waive the right to file a claim under the Arkansas Whistle-Blower Act. For more information about Whistle-Blower Protection, see Policy #22.

### Agency Procedures

Each state agency shall develop dispute resolution rules and procedure regarding the filing, hearing, adjudication, and appeal of grievances and submit their rules to OPM for approval and implementation. State agency includes a board, commission, department, division, or office of state government within the executive branch. State agency does not include an institution of higher education, a public-school district, the Arkansas Department of Transportation, and the Arkansas State Game and Fish Commission.

Each state agency must provide a copy of the approved policy to each of its Employees and any revisions. The procedure must, at a minimum, contain the following steps:

1. A state Employee must submit the grievance paperwork to the agency's Grievance Officer within five (5) business days of receiving or becoming aware of a disciplinary action.
2. The Grievance Officer determines whether the complaint meets the eligibility requirements to proceed through the agency's grievance procedure. If the Grievance Officer determines it does not meet the requirements and is not grievable, the Employee must be notified in writing of the determination and the right to request a final decision to be made by SEGAP.
3. If the Grievance Officer determines the complaint meets the requirements and is eligible to proceed, the Employee may choose Mediation or an Administrative Review as the first step. If the Employee chooses Mediation, this must be the first step of the agency's procedure. An Employee cannot request Mediation after the Administrative Review.
4. If Mediation results in a settlement agreement, the decision is final and the case is considered closed. If Mediation results in a non-settlement, the Employee may request an Administrative Review.
5. The Administrative Review will either have a Hearing Officer or Committee serve as the factfinder who will issue a recommendation to the Department Secretary, or designee. During the Administrative Review, a Party may request to have witnesses testify and a Party may present documentation that, if accepted, will become part of the Administrative Record.
6. The Department Secretary, or designee, will issue a final written decision in a timely manner (typically no longer than ten (10) business days).



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7. If the Employee is unsatisfied with the final decision, they may request an appeal to OPM and must submit the appeal documentation to the Grievance Officer. The appeal steps and timeframes are listed below.

An Employee should contact their human resources office for specific information about the agency's grievance procedure.

### Appeal Hearing

An Employee may file a request for an appeal hearing before SEGAP with the Grievance Officer no later than ten (10) business days after receiving the final decision.

SEGAP will consist of three (3) state Employees selected by OPM. No member of SEGAP will be an Employee of the agency that is a Party to the grievance. One member shall be an attorney, licensed to practice law in Arkansas. The other two members shall be current state Employees having knowledge in the area of employment law.

A Party may request that the SEGAP hearing be conducted on the record which means no Party will be allowed to present any testimony or additional evidence. If a Party objects to the matter being decided on the record, then an appeal hearing will occur.

The SEGAP hearing should be conducted within twenty-five (25) business days of OPM's notification of the appeal request. A SEGAP hearing will not be postponed or delayed unless a Party presents compelling circumstances justifying postponing.

A Party's failure to appear for an appeal hearing will result in a default decision in favor of the opposing Party, provided that the Party has not given notice of his or her non-appearance due to compelling circumstances.

A Party may be represented by an attorney or other representative at the SEGAP hearing. Each Party shall be given one and a half (1 1/2) hours to present their case. SEGAP has the discretion to grant additional time during the hearing.

Arkansas Rules of Evidence will be applied informally. A Party is allowed to present witnesses at the SEGAP hearing; however, their testimony is limited to new or clarifying information.

SEGAP's standard of review is whether the department followed its disciplinary policy.



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In all cases before SEGAP, the department will proceed first. The Employee is then given the opportunity to refute, contradict, or discredit the state agency's case.

SEGAP hearings are audio recorded and a Party may request a copy of the recording.

The grievance may be terminated at any stage or the parties may reach an agreement. An Employee shall not be subject to adverse action for utilizing the dispute resolution procedures.

A Party may request within five (5) business days of receiving SEGAP's decision an appeal to the Secretary of the Department of Shared Administrative Services (SAS) for a final decision. The opposing Party may file a response within five (5) business of receipt of the appeal. A hearing will not be conducted and the SAS Secretary will only review the Administrative Record and appeal statements.

OPM will maintain a copy of all Administrative Records.