

Department of Finance and Administration

**Policy Title: Grievance and Dispute Resolution
Rules and Procedures**

Policy Number: 3.5

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

I. Purpose

The purpose of these rules and procedures is to establish a Dispute Resolution process for the Arkansas Department of Finance and Administration (DFA) pursuant to Arkansas Code Annotated §§ 21-1-701 *et seq.*, for the prompt review, impartial consideration, and equitable disposition of Arkansas state employee grievances.

These rules and procedures also encourage alternative means of discussion and resolution among supervisory employees and their employees.

II. Definitions

Administrative Record – The case file specific to each grievance assembled according to the Office of Personnel Management (“OPM”) Administrative Record Rules.

Administrative Review Hearing – An internal fact-finding hearing before a Hearing Officer or the DFA Secretary or his designee.

Adverse Action – To discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges.

Appeal – A written request by a party to OPM for a review by the State Employee Grievance Appeal Panel of a final decision from the DFA Secretary or his designee.

Communicating in good faith – Making a verbal or written report at a time and in a manner that gives DFA reasonable notice of the need to correct a waste or violation.

Disciplinary Action – Termination or suspension of a DFA Employee.

Dispute Resolution – A procedure that allows parties to constructively manage conflicts through grievances.

Employee – A person regularly appointed or employed in a position of state service by the state agency for which he or she is compensated on a full-time basis or on a pro rata basis for whom a class title and pay grade are established in the appropriation act for the state agency in accordance with the Uniform Classification and Compensation Act. An employee new to DFA who is on initial 6 month or extended new-hire probationary status will not have access to the grievance process. To clarify, an employee who transfers, promotes, or voluntarily or involuntarily demotes within an agency is typically placed in a probationary period; however, the employee is not prohibited from accessing the grievance process during this time.

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The following classifications have been designated as “Exempt” from the Grievance and Dispute Resolution Rules and Procedures. This list is not to be considered as all inclusive or all exclusive, as each submission will be reviewed individually to determine eligibility pursuant to Arkansas Code Annotated §§ 21-1-701:

- All Unclassified positions
- All Non-Classified positions
- DFA Assistant Administrators
- DFA Managers, Supervisors, and Team Leaders who supervise 2 or more employees
- Attorneys
- Attorney Specialists
- Attorney Supervisors
- Managing Attorneys
- DFA Problem Resolution Officers
- DFA Revenue Security Coordinators
- Agency Controllers I & II

Grievance - A complaint by an employee regarding a Disciplinary Action resulting in termination or suspension of the employee.

No other forms of discipline including discrimination, harassment, or the approval/denial of compensatory time made by the supervisory employee are grievable. In addition, performance evaluations and Performance Improvement Plans are not grievable.

Grievance Officer – The person designated by the state agency as having the responsibility for acting as the liaison between the employee and the state agency.

Hearing Officer(s) – An impartial person (Division Administrator) appointed to review the facts of the grievance and make a recommendation for resolution to the DFA Secretary or his designee.

Party – The employee filing the grievance or the supervisory employee against whom the grievance has been filed.

State agency – Department of Finance and Administration (DFA).

State Employee Grievance Appeal Panel (“Panel”) – An impartial Appeal panel established to review the facts of the grievance and issue a binding 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.

Violation – An infraction or a breach which is not of a merely technical or minimal nature of a state statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.

Waste – A public employer's conduct or omissions which result in substantial abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or de-ri-ved from state or local political subdivision's resources.

Whistle-blower – means a person who witnesses or has evidence of a waste or violation while employed with DFA and who Communicates in Good Faith or testifies to the waste or violation, verbally or in writing, to one of the Employee's superiors, to an agent of DFA, or to an appropriate authority, provided that the communication is made prior to any Adverse Action by DFA.

III. Policy

Employees shall be given the opportunity to resolve complaints or grievances resulting in termination or suspension through the established Dispute Resolution process of DFA to ensure fair resolution of their complaint or grievance within a reasonable period of time.

DFA and the employee shall take all reasonable efforts to settle a complaint or grievance as quickly as possible. Informal discussion between a supervisory employee and employee is encouraged.

Participation in the Dispute Resolution process is voluntary. The Dispute Resolution process may be terminated by the employee at any stage if an agreement between the parties is reached.

A party may be represented by an attorney or representative at each step of the Dispute Resolution process except during informal discussions between the employee and supervisory employee held prior to the filing of a grievance. Attorney's fees shall not be awarded.

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These procedures established herein recognize the employment-at-will doctrine and its exceptions as defined by the Arkansas Supreme Court and do not confer a property right in employment, either expressed or implied.

Access to any of these procedures does not prohibit an employee from utilizing remedies outside these procedures. An employee reserves the right to file a complaint with a federal entity or pursue the matter in court.

IV. Procedure

The employee has five (5) business days from the date of the termination or suspension to submit the Dispute Resolution Form to the DFA Grievance Officer. An employee shall complete the Dispute Resolution Form completely and provide sufficient information detailing the nature of the disputed action. Incomplete forms will not be accepted.

If the complaint is not resolved by informal discussion with the supervisory employee, the employee may contact the DFA Grievance Officer, or his or her designee, who shall assist the employee in initiating the formal Dispute Resolution process.

An employee shall not be subject to Adverse Action for utilizing the Dispute Resolution process.

All grievances shall be processed through the DFA Grievance Officer and shall be handled as follows:

1. The DFA Grievance Officer shall determine whether the complaint is grievable because it is based on either a termination or suspension of the employee. .
2. The DFA Grievance Officer shall be responsible for assembling the Administrative Record pursuant to OPM's Administrative Record Rules.

a. Administrative Review Hearing

The DFA Grievance Officer shall coordinate and schedule within three (3) business days a hearing to be held within ten (10) business days of receipt of the employee's request. The Grievance Officer may grant an extension under extenuating circumstances.

The DFA Grievance Officer shall be responsible for assembling the Administrative Record and providing copies to the parties and the Hearing Officer.

The hearing shall be recorded and may be transcribed at the discretion of the Hearing Officer and become a part of the Administrative Record.

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A party may have any persons having knowledge of matters relevant to the grievance present at the hearing to provide testimony. The DFA Grievance Officer is responsible for notifying any DFA witnesses. The employee is responsible for notifying any witness that is not an employee of DFA. The Hearing Officer may request to hear testimony from any persons having knowledge of matters relevant to the grievance that are not already requested to be present.

A party or the Hearing Officer may “Invoke the Rule,” excluding all non-party witnesses from the hearing room unless they are testifying.

A party may present additional evidence. If accepted by the Hearing Officer, the evidence shall become a part of the Administrative Record as an exhibit.

Within five (5) business days of the conclusion of the hearing, the Hearing Officer shall issue a typewritten decision summarizing the hearing and explaining in detail the basis for his or her decision. The Hearing Officer shall provide a copy to the DFA Secretary or his designee, the parties, and the DFA Grievance Officer. The decision shall become a part of the Administrative Record.

If an employee is not satisfied with the decision reached by the Division Administrator, the employee may Appeal within three business (3) days to the DFA Secretary or his designee, who may conduct a hearing or issue a final decision based on the facts already established. If the termination is issued directly by the Division Administrator, the hearing will be conducted by the DFA Secretary or his designee.

If the DFA Secretary or his designee conducts a hearing, the hearing shall be recorded, and the recording shall be transcribed and become a part of the Administrative Record.

A party may have any persons having knowledge of matters relevant to the grievance present at the hearing to provide testimony. The DFA Grievance Officer is responsible for notifying any DFA witnesses. The employee is responsible for notifying any witness that is not an employee of DFA. The DFA Secretary or his designee may request to hear testimony from any persons having knowledge of matters relevant to the grievance that are not already requested to be present.

A party or the DFA Secretary or his designee may “Invoke the Rule,” excluding all non-party witnesses from the hearing room unless they are testifying.

A party may present additional evidence. If accepted by the DFA Secretary or his designee, the evidence shall become a part of the Administrative Record as an exhibit.

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The DFA Secretary or his designee shall issue the final decision within ten (10) business days and this decision shall become a part of the Administrative Record.

b. Appeal to OPM

If an employee is not satisfied with the decision reached by the DFA Secretary or his designee, he or she may Appeal using a form provided by OPM and request an Appeal hearing.

A request for an Appeal hearing before the Panel shall be filed with the DFA Grievance Officer no later than ten (10) business days from receipt of the DFA Secretary's or his designee's decision.

V. Whistle-Blower Hearing

An Employee may Appeal to the Panel using a form provided by OPM if he/she has been terminated by DFA for the following:

1. Communicating in Good Faith to an appropriate authority:
 - a. The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or
 - b. A violation or suspended violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;
2. Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; or
3. Objecting or refusing to carry out a directive that 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.