

## 6.2 Grievance System

### I. Purpose and Scope

This detention standard protects a detainee’s rights and ensures that all detainees are treated fairly by providing a procedure for them to file both informal and formal grievances, which shall receive timely responses relating to any aspect of their detention, including medical care.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”):

1. Detainees shall be informed about the facility’s informal and formal grievance system in a language or manner they understand.
2. In their daily interaction, staff and detainees shall mutually resolve most complaints and grievances orally and informally.
3. Detainees shall be able to file formal grievances,

including medical grievances, and shall receive written responses, including the basis for the decision, in a timely manner.

4. Detainees shall be able to file emergency grievances for incidents that involve an immediate threat to health, safety, or welfare, and shall receive written responses, including the basis for the decision, in a timely manner.
5. Detainees shall be able to appeal initial decisions on grievances to at least one higher level of review.
6. Facilities shall allow any ICE/ERO detainee dissatisfied with the facility’s response to a grievance or those fearing retaliation to be able to appeal or communicate directly with ICE/ERO.
7. Accurate records shall be maintained for filed grievances and their resolution in a grievance log and the detainee’s detention file.
8. No detainee shall be harassed, disciplined, punished or otherwise retaliated against for filing a complaint or grievance.
9. The facility shall assist detainees with disabilities and other special needs in preparing and pursuing a grievance, including those with serious mental illness, known intellectual or developmental disabilities, or who are blind or have low vision.
10. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance,

including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate. **III. Standards Affected**

This detention standard replaces “Detainee Grievance Procedures” dated 12/2/2008.

## IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-2A-27, 6A-07, 6B-01.

ICE/ERO *Performance-based National Detention Standards 2011*:

- “2.13 Staff-Detainee Communication”
- “5.1 Correspondence and Other Mail.”

“*Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*,” 79 Fed. Reg. 13100 (Mar. 7, 2014).

## V. Expected Practices

### A. Written Procedures Required

Each facility shall have written policy and procedures for a detainee grievance system that:

1. establish a procedure for any detainee to file an informal or formal grievance;
2. establish a procedure to track or log all ICE detainee grievances separately from other facility

populations;

3. establish reasonable time limits for:
  - a. processing, investigating and responding to grievances;
  - b. convening a grievance committee (or actions of a single designated grievance officer) to review formal complaints; and
  - c. providing written responses to detainees who filed formal grievances, including the basis for the decision;
4. ensure a procedure in which all medical grievances are received by the administrative health authority within 24 hours or the next business day, with a response from medical staff within five working days, where practicable;
5. establish a special procedure for time-sensitive, emergency grievances, including having a mechanism by which emergency medical grievances are screened as soon as practicable by appropriate personnel;
6. ensure each grievance receives appropriate review;
7. provide at least one level of independent appeal that excludes individuals previously involved in the decision making process for the same grievance;
8. include guarantees against reprisal; and
9. ensure information, advice and directions are provided to detainees in a language or manner they can understand, or that interpretation/translation services are utilized.

### B. Informing Detainees about Grievance Procedures

The facility shall provide each detainee, upon admittance, a copy of the detainee handbook and local supplement (see also standard “6.1 Detainee Handbook”), in which the grievance section provides notice of the following:

1. The expectation that, to the greatest extent possible, complaints and grievances shall be handled orally and informally by staff in their daily interaction with detainees (at all times, the detainee shall be granted the right to file a formal grievance and pursue the formal grievance process);
2. The right to file a grievance, including medical grievances, both informal and formal;
3. The process for filing emergency grievances;
4. The procedures for filing and resolving a grievance, including the availability of assistance in preparing a grievance (assistance for detainees with impairments or disabilities, interpretation/translation services for detainees with limited English proficiency (LEP) and assistance for detainees with limited literacy);
5. The procedures for filing and resolving an appeal, including the right to appeal to specified higher levels if the detainee disagrees with the lower decisions;
6. The procedures for contacting ICE/ERO to appeal a decision;
7. The policy prohibiting staff from harassing, disciplining, punishing or otherwise retaliating against any detainee for filing a grievance or contacting the Office of the Inspector General (OIG); and
8. The opportunity at any point to file a complaint directly to the Department of Homeland Security (DHS) OIG about staff misconduct, physical or sexual abuse or civil rights violations; complaints may be filed by calling the DHS OIG Hotline at 800-323-8603 or by writing to: Department of Homeland Security Attn: Office of the Inspector General Washington, DC 20528

## C. Grievance Procedures

### 1. Informal Grievances

Informal grievance resolution offers a detainee the

opportunity to expediently resolve his/her cause for complaint before resorting to the more time-consuming written formal procedure. Staff at every facility shall make every effort to resolve a detainee's complaint or grievance at the lowest level possible, in an orderly and timely manner.

The facility administrator, or designee, shall establish written procedures for detainees to orally and informally present the issue of concern (as addressed in standard "2.13 Staff-Detainee Communication"). Upon request, additional assistance will be provided for detainees with impairments or disabilities, interpretation/translation services for detainees who are LEP, and assistance for detainees with limited literacy. Detention facility staff is encouraged to provide assistance if a detainee cannot properly communicate their concern.

A detainee is free to bypass or terminate the informal grievance process at any point and proceed directly to the formal grievance stage.

If an informal grievance is resolved, the employee need not provide the detainee written confirmation of the outcome, but shall document the result for the record in the detainee's detention file and in any logs or data systems the facility has established to track such actions.

Staff members who receive a detainee's informal complaint or grievance shall:

- a. attempt to resolve the issue informally, if the issue is within his/her scope of responsibility; or
- b. notify the appropriate supervisor of the grievance as soon as practical.

The supervisor may try to resolve the matter or advise the detainee to initiate a written grievance.

If the grievance is resolved at this informal level, the individual who resolved the issue shall document the circumstances and resolution in the detainee's detention file and in the facility's grievance log.

### 2. Emergency Grievances

Each facility shall implement written procedures for identifying and handling a time-sensitive emergency grievance that involves an immediate threat to health, safety or welfare. Written procedures shall also cover urgent access to legal counsel and the law library. All staff shall be trained to respond appropriately and in an expeditious manner to emergency grievances. Once the receiving employee determines that the detainee is raising an issue requiring urgent attention, emergency grievance procedures shall apply. Translation and interpretation services shall be made available to those who need it.

Emergency grievances may be brought by a detainee to a designated grievance officer (GO) or directly to the facility administrator or their designee. If these personnel are not available, a shift supervisor may be informed of the complaint.

A report of the grievance, including the nature of the complaint, the name of the detainee and the action taken to resolve the issue, shall be prepared in written form and forwarded to the facility administrator, or designee.

If the facility administrator determines that the grievance is not an emergency, standard grievance procedures shall apply.

All emergency grievance reports, to include the circumstances of the grievance and the resolution, shall be placed in the detainee's detention file and documented in the facility's grievance log.

Medical emergencies shall be brought to the immediate attention of proper medical personnel for further assessment. If it is determined that it is not a medical emergency, standard grievance procedures shall apply.

### **3. Formal Written Grievances**

The detainee may file a formal grievance at any time during, after, or in lieu of lodging an informal complaint. The facility may not impose a time limit on when a detainee may submit a formal grievance.

In preparing and pursuing a grievance, the facility administrator, or designee, shall ensure procedures are in place to provide the assistance to detainees with impairments or disabilities, interpretation/translation services for detainees who are LEP, and assistance for detainees with limited literacy.

Facility grievance procedures shall be communicated to a detainee in a language or manner the detainee can understand. All written materials provided to detainees shall be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Staff shall provide the number of forms and envelopes requested by the detainee. Within reason, detainees are not limited in the number of forms and envelopes they may request.

Each facility shall establish three levels of formal grievance review. These reviews shall consist of: 1) GO review; 2) grievance appeals board (GAB) review; and 3) appellate review. ICE will issue guidance on the designation of representatives and additional guidelines for conducting hearings.

#### **a. Grievance Procedure Guidelines**

- 1) To prepare a grievance, a detainee may obtain assistance from another detainee, the housing officer or other facility staff, family members or legal representatives. Staff shall take reasonable steps to expedite requests for assistance from these other parties.
- 2) Another detainee, facility staff, family member, legal representative or non-governmental organization may assist in the preparation of a grievance with a detainee's consent.
  - a) If the detainee claims that the issue is sensitive or that his/her safety or well-being may be jeopardized if others in the facility learn of the grievance, the detainee

must:

- describe in the grievance the reason for circumventing standard procedures; and
- be given the right to seal the grievance in an envelope clearly marked “sensitive” or “medically sensitive,” and submit it directly to the facility administrator, administrative health authority or designee.

b) Each grievance form shall be delivered by authorized facility personnel (not detainees) without being read, altered or delayed.

## b. Grievance Process

### 1) GO review

- a) Designated GO shall conduct the initial adjudication of a formal or informal grievance.
- b) Detainee shall be provided with a written or oral response within five days of receipt of the grievance.
- c) GO or designee shall note the grievance log with the following information:
  - date grievance filed;
  - name of detainee that filed grievance;
  - nature of the grievance;
  - date decision provided to detainee; and
  - outcome of the adjudication.

### 2) GAB review

- a) The detainee shall have the option to file an appeal if the detainee is dissatisfied with a GO decision, and shall be informed of that option.
- b) The designated members of the GAB shall review and provide a decision on the grievance within five days of receipt of the

appeal. The GAB shall not include any individuals named in the grievance.

- c) The GAB shall issue a written decision to the detainee in all cases.
  - d) The GAB shall note the grievance log with the following information:
    - date appeal filed;
    - name of detainee that filed grievance;
    - nature of the grievance;
    - name of the GO that conducted the initial adjudication;
    - date decision provided to detainee; and
    - outcome of the adjudication.
  - e) Officials previously involved in adjudicating the grievance shall not participate on the GAB.
  - f) If the grievance involves a medical issue, at least one member of the GAB shall be a medical professional.
  - g) If the outcome of the appeal is unfavorable to the detainee, the GAB shall forward the grievance and all supporting documentation to the facility administrator within 24 hours of issuing a decision.
- ### 3) Appellate Review
- a) The detainee shall have the option to file an appeal if the detainee is dissatisfied with a GAB decision, and shall be informed of that option.
  - b) The facility administrator, in some cases in conjunction with the Field Office Director, shall review the grievance appeal and issue a decision within five days of receipt of the appeal. A written decision shall be issued to the detainee in all cases and forwarded to the Field Office Director.
  - c) The appellate reviewer shall note the

grievance log with the following information:

- date appeal received;
  - name of detainee that filed grievance;
  - nature of the grievance;
  - basis of the GAB decision;
  - date decision provided to detainee; and
  - outcome of the adjudication.
- d) Facilities shall allow any ICE/ERO detainee dissatisfied with the facility's response to a grievance or those fearing retaliation to be able to appeal or communicate directly with ICE/ERO.

#### 4. Medical Grievances

Formal written grievances regarding medical care shall follow the same procedures per section "3. Formal Written Grievances" above, and shall be submitted directly to medical personnel designated to receive and respond to medical grievances at the facility. Medical grievances may be submitted in a sealed envelope clearly marked "medically sensitive."

Designated medical staff shall act on the grievance within five working days of receipt and provide the detainee a written response of the decision and the rationale. This record shall be maintained per the following section "D. Record-Keeping and File Maintenance."

#### D. Record-Keeping and File Maintenance

Each facility shall maintain a detainee grievance log that shall be subject to regular inspection by the Field Office Director and ICE headquarters staff. Documentation shall include the following information:

- date grievance filed;
- name of detainee that filed grievance;

- nature of the grievance;
- date decision provided to detainee; and
- outcome of the adjudication.

Medical grievances shall be maintained in the detainee's medical file.

Facility staff shall assign each grievance a log number, enter it in the space provided on the detainee grievance form, and record it in the detainee grievance log in chronological order, according to the following stipulations:

1. the log entry number and the detainee grievance number must match;
2. the log shall include the receipt date and the disposition date; and
3. nuisance or petty grievances and grievances rejected or denied must also be logged with the appropriate notation and justification (for example, "petty").

A copy of the grievance disposition shall be placed in the detainee's detention file and provided to the detainee within five days.

ICE may audit grievance logs and individual cases as often as necessary to ensure compliance with the established grievance procedures and to assess the implementation of decisions within the facility. The ICE Office of Professional Responsibility may conduct trend analysis to determine the nature of grievances being filed across ICE facilities, resources expended on their resolution and outcomes.

#### E. Established Pattern of Abuse of the Grievance System

If a detainee establishes a pattern of filing nuisance complaints or otherwise abusing the grievance system, the facility administrator may identify that person, in writing, as one for whom not all subsequent complaints must be fully processed. However, feedback shall be provided to the detainee, and records shall be maintained of grievances

“rejected.”

For a detainee so identified by the facility administrator:

1. staff shall continue to attempt to resolve all informal oral grievances at the lowest level possible, as described above;
2. if designated staff at the facility’s first grievance system level make the initial determination that the grievance is one that should not be fully processed due to its frivolous nature, they shall forward the grievance to the next grievance level;
3. if staff at that level concurs that the grievance is frivolous, the grievance shall be logged in the detainee grievance log showing the disposition (e.g., “rejected”), and a copy of the grievance shall be placed in the detainee’s detention file;
4. the facility’s written policy and procedures may also require that each rejected grievance be forwarded to the facility administrator for review or concurrence; and
5. the designated final authority may decide to return the grievance to a lower level for full processing.

If the GO designated to receive grievances believes the grievance is one that should not be fully processed, he or she shall document that determination and refer the grievance to the GAB for second-level review. If the GAB concurs, the grievance shall be logged in the detainee grievance log with “rejected” as the disposition, and a copy of the grievance shall be placed in the detainee’s detention file.

### **F. Allegations of Staff Misconduct**

Upon receipt, facility staff must forward all detainee grievances containing allegations of staff misconduct to a supervisor or higher-level official in the chain of

command. While such grievances are to be processed through the facility’s established grievance system, CDFs and IGSA facilities must also forward a copy of any grievances alleging staff misconduct to ICE/ERO in a timely manner with a copy going to ICE’s Office of Professional Responsibility (OPR) Joint Intake Center and/or local OPR office for appropriate action.

Facilities shall send all grievances related to sexual abuse and assault and the facility’s decisions with respect to such grievances to the appropriate Field Office Director at the end of the grievance process.

### **G. Retaliation Prohibited**

Staff shall not harass, discipline, punish or otherwise retaliate against a detainee who files a complaint or grievance or who contacts the DHS Office of the Inspector General.

Actions are considered retaliatory if they are in response to an informal or formal grievance that has been filed and the action has an adverse effect on the resident’s life in the facility.

Immediately following any indication or allegation of retaliation, the facility and ICE/ERO shall conduct an investigation of alleged acts of retaliation in a timely manner, and take all steps necessary to remedy any retaliation determined to have occurred.

### **H. Review of Detainee Grievances**

The ICE Office of Detention Oversight may review on a periodic basis a statistical sampling of grievances at a facility to evaluate compliance with this grievance standard and the associated grievance procedures; to assess the reasonableness of final decisions; and to generate data showing trends in the types of grievances, time frames for resolution and outcomes at various facilities. Detainee grievances will also be reviewed during ICE/ERO-initiated facility inspections.