

ICE/DRO DETENTION STANDARD

GRIEVANCE SYSTEM

I. PURPOSE AND SCOPE. This Detention Standard protects detainees' rights and ensures they are treated fairly by providing a procedure by which they may file formal grievances and receive timely responses relating to any aspect of his/her detention, including medical care.

It applies to the following types of facilities housing ICE/DRO detainees:

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

Procedures in italics are specifically required for SPCs and CDFs. IGSAs must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Some terms used in this document may be defined in the separate **Definitions** Standard.

II. EXPECTED OUTCOMES. The expected outcomes of this Detention Standard are:

1. Detainees will be informed about the facility's informal and formal grievance system in a language or manner he or she understands.
2. Staff and detainees will mutually resolve most complaints and grievances orally and informally in their daily interaction.
3. Detainees will be able to file formal grievances, including medical grievances, and receive written responses, including the basis for the decision, in a timely manner.
4. Detainees will be able to file emergency grievances that involve an immediate threat to their safety or welfare and receive written responses, including the basis for the decision, in a timely manner.
5. Detainees will be able to appeal initial decisions on grievances to at least one higher level of review.
6. Accurate records will be maintained on grievances filed and their resolution.
7. No detainee will be harassed, disciplined, punished, or otherwise retaliated against for filing a complaint or grievance.
8. The applicable contents and procedures in this standard will be communicated in a language or manner which the detainee can understand.

III. DIRECTIVES AFFECTED. This Detention Standard replaces **Detainee Grievance Procedures** dated 9/12/2008.

IV. REFERENCES

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

ICE/DRO Detention Standard on **Correspondence and Other Mail**.

V. EXPECTED PRACTICES

A. Written Procedures Required

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

- Establishes a procedure for any detainee to file a formal grievance;
- Establishes a procedure to track or log all formal grievances;
- Establishes reasonable time limits for:
 - Processing, investigating, and responding to grievances, including medical grievances;
 - Convening a grievance committee (or actions of a single designated grievance officer) to review formal complaints; and
 - Providing written responses to detainees who filed formal grievances, including the basis for the decision.
- Ensures a procedure in which all medical grievances are received by the administrative health authority within 24 hours or the next business day;
- Establishes a special procedure for time-sensitive, emergency grievances;
- Ensures each grievance receives supervisory review;
- Provides at least one level of appeal;
- Includes guarantees against reprisal; and
- Ensures 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 / local supplement, in which the grievance section provides notice of:

- The expectation that, to the greatest extent possible, complaints and grievances should be handled orally and informally by staff in their daily interaction with

detrainees. Nevertheless, the detainee always has the right to file a formal grievance and pursue the formal grievance process.

- The right to file a grievance, including medical grievances, both informal and formal.
- The process for filing emergency grievances.
- The procedures for filing and resolving a grievance, including the availability of assistance in preparing a grievance.
- 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.
- The procedures for contacting ICE/DRO to appeal a decision in a CDF or IGSA facility.
- The policy prohibiting staff from harassing, disciplining, punishing, or otherwise retaliating against any detainee for filing a grievance or contacting the Inspector General.
- The opportunity to file a complaint about staff misconduct, physical or sexual abuse, or civil rights violations at any point directly to the Department of Homeland Security Inspector General by calling (800) 323-8603 or by writing to:

Department of Homeland Security
Washington, DC 20528
Attn: Office of the Inspector General

C. Grievance Procedures

1. Informal Oral Grievances

Informal grievance resolution offers a detainee the opportunity to expediently resolve his or 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 present the issue of concern informally (as addressed in the Staff-Detainee Communication Detention Standard). Illiterate, disabled, or non-English speaking detainees shall be provided additional assistance, upon request.

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 oral 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.

In SPCs and CDFs, Staff who receive a detainee's oral complaint or grievance shall:

- *Attempt to resolve the issue informally if the issue is within his or her scope of responsibility, or*

- *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 person who resolved the issue shall document the circumstances and resolution in the detainee's Detention File.

2. Emergency Grievances

Each facility shall implement written procedures for identifying and handling a time-sensitive emergency grievance that involves an immediate threat to a detainee's health, safety or welfare. All staff will be trained to appropriately respond to emergency grievances in an expeditious matter. Once the receiving employee approached by a detainee determines that he or she is in fact raising an issue requiring urgent attention, emergency grievance procedures shall apply. Translation services will be available upon request.

The protocol for emergency grievance procedures shall bring the matter to the immediate attention of the facility administrator, even if it is later determined that it is not a true emergency and the grievance is subsequently routed through normal, non-emergency channels.

In SPCs and CDFs, the detainee may elect to present his or her emergency grievance directly to the shift supervisor or contract equivalent.

If the shift supervisor concurs that the grievance represents an emergency, it shall receive the immediate attention of the facility administrator.

If the matter is resolved at the shift level, the supervisor involved shall prepare a report for the facility administrator, or designee, describing the problem and its resolution. Emergency grievances not resolved at the shift level shall be sent up the chain of command in a timely manner until the matter is resolved.

If the shift supervisor or contract equivalent determines the matter is not an emergency, standard procedures shall apply.

3. Formal Written Grievances

The facility administrator, or designee, shall allow a detainee to submit a formal, written grievance to a single designated grievance officer or the facility's grievance committee and shall be given the opportunity to obtain preparation assistance from another detainee or facility staff. Illiterate, disabled, or non-English speaking detainees shall be provided additional assistance, upon request. Formal written grievances regarding medical care shall be submitted directly to medical personnel designated to receive and respond to medical grievances at the facility.

The detainee may file a formal grievance within a reasonable timeframe after the event or unsuccessful conclusion of an informal grievance or after deciding to forego the informal grievance procedure. The facility administrator or designee shall ensure procedures accommodate the special assistance needs of detainees who are disabled, illiterate, or limited in English in preparing and pursuing a grievance.

Staff shall advise the detainee that the grievance form may cover a single complaint or a cluster of closely related issues; however, each form should clearly state the detainee's issues of concern, or the form shall be returned to the detainee for clarification.

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.

1. To prepare a grievance, a detainee may obtain assistance from another detainee in the same housing unit, the housing officer or other facility staff, family members, or legal representatives. Staff will take reasonable steps to expedite requests for assistance.
2. A detainee may not submit a grievance on another detainee's behalf. However, a detainee may assist another detainee in preparing a grievance.
 - a. If the detainee claims that the issue is sensitive or the detainee's safety or well-being would be jeopardized if others in the facility learned of the grievance, the detainee:
 - Must describe in the grievance the reason for circumventing the chain of command, and
 - Has 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 personnel (not detainees) without reading, altering, or delaying.
 - c. Grievance forms concerning medical care shall be delivered directly to medical staff designated to receive and respond to medical grievances at the facility. 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 should be maintained per Section E "Record-Keeping and File Maintenance."
 - d. The shift supervisor or other employee designated to receive grievances shall accept the grievance form signed and dated by the detainee and (except for sealed grievances) officially meet with the detainee to attempt to resolve the issue in a timely manner.
 - e. If the grievance cannot be resolved to the satisfaction of the detainee, the supervisor shall so annotate in detail the reasons on the grievance form and refer the written grievance to the next level of supervision in his or her chain of command or to the appropriate department head within five working days of receipt.
 - f. That person shall act on the grievance within five working days of receipt. The responsible department head shall provide the detainee a written response of the decision and the rationale. When the detainee is illiterate, disabled or non-English speaking, the decision shall be read to

him or her in a language that he or she understands, or translation/interpretation shall be provided as needed.

D. Appeal

Every facility shall implement procedures that provide detainees at least one level of appeal and ensure that they receive written decisions about their appeals within reasonable and specified time limits.

In the case of medical grievances, each facility shall establish procedures for appeal of a denial by medical personnel. An additional level of appeal by medical personnel shall be available to the detainee. All appeals of formal medical grievances and responses shall be reported to ICE/DRO.

1. Appeal to the Grievance Officer or Detainee Grievance Committee

In SPCs and CDFs, the Grievance Officer (GO) or Detainee Grievance Committee (DGC) is the first level of appeal of a formal written grievance for a detainee who does not accept the resolution attempted by a shift supervisor, department head, or other staff, as detailed above in the section on Formal Written Grievances.

If the detainee does not accept the resolution, he or she may appeal to the facility's GO or DGC.

- *Within five days of receipt, the GO or DGC shall address the matter.*
- *In an SPC, the assistant chief of security shall chair the DGC, along with two department heads or their representatives.*

Personnel named in any grievance or involved either in attempts to resolve the grievance or assistance in preparing the grievance may not decide the matter in subsequent appeals.

The GO or DGC may call witnesses, inspect evidence or otherwise gather facts essential to an impartial decision and shall offer the detainee the opportunity to appear before the GO or DGC in person or telephonically to present his or her case, answer questions, and respond to conflicting evidence or testimony.

Within five working days of reaching a decision, the GO or DGC shall provide the detainee, in writing, the decision and the rationale.

Ordinarily, the GO or DGC shall provide the written decision no later than fifteen working days after receipt of the detainee's appeal. If that time frame is exceeded, the GO or DGC shall include in the written decision an explanation for the delay. If a detainee does not receive a written response within that 15-day time frame, he or she may appeal the grievance directly to the facility administrator.

2. Appeal to the Facility Administrator (or designee)

The facility's established grievance system protocol must provide for at least one level of appeal but may establish more than one. In all instances detainees must receive written decisions about their appeals within reasonable and specified time limits. When the detainee is illiterate, disabled or non-English speaking, the decision shall be read to him or her in a language that he or she understands, or translation/interpretation shall be provided as needed. CDFs and IGSA facilities

must also allow any ICE/DRO detainee dissatisfied with the facility's response to communicate directly with ICE/DRO. Also, the Detention Standard on **Correspondence and Other Mail** provides for detainees to send Special Correspondence to many representatives and government officials.

In SPCs and CDFs, if the detainee disagrees with the GO or DGC decision, he or she may appeal it to the facility administrator, or designee. After reviewing the finding of the GO or DGC, the facility administrator, or designee, may uphold, modify or reverse it.

- *The facility administrator, or designee, shall provide the detainee a written decision within five days of receiving the appeal.*
- *The written decision shall include a discussion of the decision and the facts upon which it is based.*
- *The facility administrator, or designee, shall use the normal routing system of the facility to send the written decision to the detainee.*

Within the facility's grievance system, the decision of the facility administrator (or designee) is final and cannot be further appealed. Depending on the nature of the grievance, however, the facility administrator may choose to forward the grievance file to the Field Office Director for notification and review.

E. Record-Keeping and File Maintenance

Each facility shall devise a method for documenting detainee grievances, at a minimum, a Detainee Grievance Log. The documentation shall include the date of the grievance, nature of the grievance in detail, and the date the grievance was resolved. Medical grievances are maintained in the detainee's medical file.

In SPCs and CDFs, 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:

- *The log entry number and the detainee grievance number must match.*
- *The log shall include the receipt date and the date and disposition.*
- *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.

F. 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 have to be fully processed. However, feedback will be provided to the detainee, and records will be maintained of grievances "rejected."

For a detainee so identified by the facility administrator:

- Staff shall continue to attempt to resolve informal oral grievances at the lowest level possible, as described above.
- 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, they shall forward the grievance to the next grievance level.
- If staff at that level concurs that the grievance is frivolous, the grievance shall be logged in the Detainee Grievance Log showing the disposition (for example, "Rejected"), and a copy of the grievance shall be placed in the detainee's detention file.
- The facility's written policy and procedures may also require that each rejected grievance be forwarded to the facility administrator for review or concurrence.
- The designated final authority may decide to return the grievance to a lower level for full processing.

In SPCs and CDFs, if the shift supervisor or other employee 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 GO or DGC. If the GO or DGC 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. The facility's written policy and procedures may also require that each rejected grievance be forwarded to the facility administrator for review or concurrence.

G. Allegations of Staff Misconduct

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/DRO.

All ICE/DRO staff are reminded of the requirement of Administrative Manual 5.5.201, **Reporting and Resolving Allegations of Employee Misconduct**. All ICE employees are responsible for immediately reporting either orally or in writing any allegation of misconduct to their supervisor or a higher-level ICE official in their chain of command or directly to the ICE Office of Professional Responsibility or the DHS Inspector General. This reporting requirement applies without exception to all detainee allegations of officer misconduct, whether formally or informally submitted.

H. Retaliation Prohibited

Staff shall not harass, discipline, punish, or otherwise retaliate against a detainee who files a complaint or grievance or who contacts the Inspector General or the Office for Civil Rights and Civil Liberties.

Standard Approved:

James T. Hayes, Jr. /s/

12/5/2008

**James T. Hayes, Jr
Director
Office of Detention and Removal Operations**

Date