

# 6.2 Grievance System

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard protects a resident's rights and ensures that all residents are treated fairly by providing a procedure for them to file both informal and formal grievances, which will receive timely responses relating to any aspect of their residency, including medical care.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. In their daily interaction, staff and residents mutually will resolve most complaints and grievances orally and informally.
2. Residents will be able to file formal grievances, including medical grievances, and will receive written responses, including the basis for the decision, in a timely manner.
3. Residents will be able to file emergency grievances for incidents that involve an immediate threat to health, safety, or welfare, and will receive written responses, including the basis for the decision, in a timely manner.
4. Residents will be able to appeal initial decisions on grievances through the established process up to and including appealing to the Center Administrator. Centers will allow any ICE/Enforcement and Removal Operations (ERO) resident dissatisfied with the Center's response to a grievance or those fearing retaliation to be able to appeal or communicate directly with ICE/ERO.

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5. Accurate records will be maintained for filed grievances and their resolution in a grievance log and the resident's file.
6. No resident will be harassed, disciplined, punished, or otherwise retaliated against for filing a complaint or grievance.
7. The Center will accommodate the special assistance needs of residents in preparing and pursuing a grievance.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Grievance System* dated 12/21/2007.

### Expected Practices

#### A. Written Procedures Required

Each Center will have written policy and procedures for a resident grievance system that:

- Establish a procedure for any resident to file an informal or formal grievance;
- Establish a procedure to track or log all resident grievances;
- Establish reasonable time limits for:
  - Receiving, delivering, processing, investigating, and responding to grievances;
  - Convening a grievance committee (or actions of a single designated grievance staff member) to review formal complaints; and
  - Providing written responses to residents who filed formal grievances, including the basis for the decision.
- Ensure a procedure in which all medical grievances are received by the Center's Health Services Administrator (HSA) within 24 hours or the next business day, with a response from medical staff within 5 working days, where practicable;
- 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 medical personnel;
- Establish a special procedure for the delivery and review of sensitive grievances;
- Ensure each grievance receives appropriate review;
- Provide at least one level of independent appeal that excludes individuals previously involved in the decision-making process for the same grievance;
- Include guarantees against reprisal;
- Ensure information, advice, and directions are provided to residents in a language or manner they can understand, or that interpretation/translation services are used; and

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- Provide for assistance to residents with impairments or disabilities, translation services for residents who have limited English proficiency, and assistance for residents with limited literacy when filing both informal and formal grievances.

### B. Informing Residents about Grievance Procedures

The Center will provide each resident, upon admission, a copy of the resident handbook and local supplement (see also the ICE Family Residential Standard on *Resident Handbook*), in which the grievance section provides notice of the following:

- The right to file a grievance, including medical grievances, both informally and formally;
- The expectation that, to the greatest extent possible, complaints and grievances will be handled orally and informally by staff in their daily interaction with residents (at all times, the resident will retain the right to file a formal grievance and pursue the formal grievance process);
- The process for filing emergency or sensitive 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 resident disagrees with the lower decisions;
- The procedures for contacting the Field Office Director (FOD) to appeal a grievance decision;
- The policy prohibiting staff from harassing, disciplining, punishing, or otherwise retaliating against any resident for filing a grievance or contacting the U.S. Department of Homeland Security (DHS)/Office of the Inspector General (OIG); and
- The opportunity at any point to file a complaint directly to the 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:

U.S. Department of Homeland Security

245 Murray Drive, S.E., Building 410

Washington, DC 20538

Attn: Office of Inspector General

Email to: [DHSOIGHOTLINE@DHS.GOV](mailto:DHSOIGHOTLINE@DHS.GOV)

### C. Grievance Types

#### 1. Informal Grievances

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

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The Center Administrator or designee will establish written procedures for residents to present their issue of concern orally and informally (as addressed in the ICE Family Residential Standard on *Staff-Resident Communication*). Center staff is encouraged to provide assistance if a resident cannot communicate their concern properly.

A resident 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, then the employee need not provide the resident written confirmation of the outcome, but will document the result for the record in the resident's file and in any logs or data systems the Center has established to track such actions.

Staff members who receive a resident's informal complaint or grievance will:

- Attempt to resolve the issue informally, if the issue is within his/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 resident to initiate a written grievance.

If the issue cannot be resolved to the resident's satisfaction, then the supervisor will advise the resident to initiate a written grievance.

### 2. Emergency Grievances

Each Center will implement procedures for identifying and processing time-sensitive emergency grievances that involve an immediate threat to a resident's safety or welfare. The resident may elect to present his/her emergency grievance to any Center or ICE/ERO staff. Once the receiving staff member who is approached by a resident determines that he/she is, in fact, raising an issue requiring urgent attention, emergency grievance procedures will apply.

The emergency grievance procedures will instruct the staff member to bring the matter to the Center Administrator and ICE/ERO, even if it is determined later that the issue is not a true emergency (and the grievance subsequently is routed through normal, non-emergency channels). All emergency grievances will receive immediate attention, and will, at a minimum, be reviewed by the Center Administrator. Responsibility for these reviews will not be delegated.

All staff will be trained to respond appropriately and in an expeditious manner to emergency grievances.

When emergency grievances are presented orally, a report of the grievance, including the nature of the complaint, the name of the resident, and the action taken to resolve the issue will be prepared in written form and forwarded to the Center Administrator and ICE/ERO.

All emergency grievance reports, to include the circumstances of the grievance and the resolution, will be placed in the resident's file and documented in the Center's grievance log. Emergency medical grievance documentation will be placed solely in the resident's medical file and documented in the Center's grievance log.

Emergency medical grievances will be brought to the immediate attention of the Center HSA or Clinical Medical Authority (CMA) for further assessment and resolution. A copy will be provided

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simultaneously to the Center Administrator. If it is determined that it is not a medical emergency, then standard grievance procedures will apply.

### 3. Formal Written Grievances

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

A supply of grievance forms will be available in each living and activity area, along with a locked box where residents may deposit grievances. The Center's Grievance Services Manager (GSM) will collect grievances on a daily basis.

Each Center will establish three levels of formal grievance review. These reviews will consist of:

- GSM review;
- Grievance appeals panel (GAP) review; and
- Appellate review. ICE will issue guidance on the designation of representatives and additional guidelines for conducting hearings.

**Grievance Procedure Guidelines.** Staff will advise residents that a grievance form may cover a single complaint, or a cluster of closely related issues that fall under a single subject. Each form should state clearly the resident's issues of concern; otherwise, the form will be returned to the resident for clarification.

To prepare a grievance, a resident may obtain assistance from another resident, the housing staff member or other Center staff, family members, or legal representatives. Staff will take reasonable steps to expedite requests for assistance from these other parties.

Residents may not submit a grievance on another resident's behalf, except for a parent/guardian on behalf of his/her child.

Each grievance form will be delivered to the GSM within 24 hours by authorized Center personnel (not residents) without being read, altered, or delayed.

### 4. Medical Grievances

Formal written grievances regarding medical care will follow the same procedures per the Formal Written Grievances section in this standard, and will be submitted directly to the Center's HSA. Medical grievances may be submitted in a sealed envelope clearly marked "MEDICALLY SENSITIVE."

The HSA will act on the grievance within five working days of receipt and provide the resident a written response of the decision and the rationale. This record will be maintained per the Recordkeeping and File Maintenance section in this standard.

The HSA will adjudicate medical grievances within five working days of receipt and provide the resident a written response of the decision and rationale. Residents may file an appeal of the medical grievance decision to the GAP. All medical grievances and decisions will be reported to the FOD and Juvenile and Family Residential Management Unit (JFRMU) Chief.

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### 5. Sensitive Grievances

Centers will develop a method for processing sensitive grievances that allow the resident to bypass normal levels of review. If the resident claims that the issue is sensitive or that his/her safety or well-being may be jeopardized if others in the Center learn of the grievance, then the resident will:

- Complete the form as required;
- Describe in the grievance the reason for circumventing standard procedures; and
- Seal the grievance in an envelope clearly marked by the resident as “SENSITIVE” or “MEDICALLY SENSITIVE,” as appropriate and place the envelope in the box.

Upon receipt of an envelope marked sensitive, the GSM will log, identify as sensitive, and deliver the grievance to the Center Administrator or HSA/CMA as appropriate for resolution within the normal grievance response timeframe.

### D. Grievance Process

**GSM Review.** The designated GSM will conduct the initial adjudication of a formal or informal grievance. The GSM will provide the resident an oral and written response within five days of grievance receipt. The GSM or designee will note the following information in the grievance log:

- Date the grievance was filed;
- Name of the resident who filed the grievance;
- The name of the GSM who conducted the initial adjudication;
- Nature of the grievance;
- Date the decision was provided to the resident; and
- Outcome of the adjudication.

**GAP Review.** Centers will inform residents of their option to file an appeal with a GAP if they are dissatisfied with a GSM decision. The JFRMU Onsite Coordinator or other ICE/ERO designee will chair the GAP.

The designated members of the GAP, as determined by the FOD, will review and provide a decision on the grievance within five days of receipt of the appeal. The GAP will not include any individuals named in the grievance.

The GAP will issue a written decision to the resident in all cases. The GAP will note the following information in the grievance log:

- Date the appeal was filed;
- Name of the resident who filed the grievance;
- Nature of the grievance;
- Name of the GSM who conducted the initial adjudication;
- Date the decision was provided to the resident; and

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- Outcome of the adjudication.

Officials previously involved in adjudicating the grievance will not participate on the GAP. If the grievance involves a medical issue, then at least one member of the GAP will be a member of the Center's medical team.

If the outcome of the appeal is unfavorable to the resident, then the GAP will forward the grievance and all supporting documentation to the Center Administrator within 24 hours of issuing a decision.

**Appellate Review.** Centers will inform residents of their option to file an appeal if they are dissatisfied with a GAP decision. The Center Administrator, in some cases in conjunction with the FOD and JFRMU Chief, will review the grievance appeal and issue a decision within five days of receipt of the appeal. A written decision will be issued to the resident in all cases and forwarded to the FOD and JFRMU Chief.

The appellate reviewer will note the following information in the grievance log:

- Date the appeal was received;
- Name of the resident who filed the grievance;
- Nature of the grievance;
- Basis of the GAP decision;
- Date the decision was provided to the resident; and
- Outcome of the adjudication.

Centers will allow any ICE/ERO resident dissatisfied with the Center's response to a grievance or those fearing retaliation to be able to appeal or communicate directly with ICE/ERO.

For GAP decisions related to a medical grievance, the Center Administrator will consult with an independent medical authority prior to rendering a decision.

### E. Special Provisions for Sexual Abuse and Assault Grievances

The Center will permit a resident to file a formal grievance related to sexual abuse and/or assault (SAA) at any time during, after, or in lieu of lodging an informal grievance or complaint.

The Center will not impose a time limit on when a resident may submit a grievance regarding an allegation of SAA.

The Center will implement written procedures for identifying and handling time-sensitive grievances that involve an immediate threat to resident health, safety, or welfare related to SAA. The Center will issue a decision on the grievance within 5 calendar days of receipt and will respond to an appeal of the grievance decision within 30 calendar days. Centers will send all grievances related to SAA and the Center's decisions with respect to such grievances to the appropriate FOD at the end of the grievance process.

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To prepare a grievance, a resident may obtain assistance from another resident, the housing staff or other Center staff, family members, or legal representatives. Staff shall take reasonable steps to expedite requests for assistance from these other parties.

### F. Recordkeeping and File Maintenance

Each Center will maintain a resident grievance log that will be subject to regular inspection by the FOD and ICE headquarters staff. The logs will be maintained for three years. Documentation will include the following information:

- Date the grievance was filed;
- Name of the resident who filed the grievance;
- Nature of the grievance;
- Relevant ICE Family Residential Standard;
- Date the decision was provided to the resident; and
- Outcome of the adjudication.

Medical grievances will be maintained in the resident's medical file.

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

- The log entry number and the resident grievance number must match;
- The log will include the receipt date and the disposition date; and
- Nuisance or petty grievances and grievances rejected or denied also must be logged with the appropriate notation and justification (e.g., "petty").

A copy of the grievance disposition will be placed in the resident's file and provided to the resident in his/her native language within five days.

ICE may audit grievance logs and individual cases quarterly to ensure compliance with the established grievance procedures and to assess the implementation of decisions within the Center. The ICE Office of Professional Responsibility (OPR) may conduct trend analyses to determine the nature of grievances being filed across ICE Centers, resources expended on their resolution, and outcomes.

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

If a resident establishes a pattern of filing nuisance complaints or is otherwise abusing the grievance system, then the Center Administrator may identify that person, in writing, as one for whom not all subsequent complaints must be fully processed. However, feedback will be provided to the resident, and records will be maintained of rejected grievances.



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For a resident so identified by the Center Administrator:

- Staff will continue to attempt to resolve all informal oral grievances at the lowest level possible, as described in this section;
- If designated staff at the Center'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, then they will forward the grievance to the next grievance level;
- If staff at that level concurs that the grievance is frivolous, then the grievance will be logged in the resident grievance log showing the disposition (*e.g.*, "rejected"), and a copy of the grievance will be placed in the resident's file;
- The Center's written policy and procedures also may require that each rejected grievance be forwarded to the Center Administrator for review or concurrence;
- The designated final authority may decide to return the grievance to a lower level for full processing;
- Written notification will be provided to the resident no more than five days after the Center Administrator's decision; and
- The JFRMU Onsite Coordinator must receive a copy of every rejected grievance.

If the GSM designated to receive grievances believes the grievance is one that should not be processed fully, then he/she will document that determination and refer the grievance to the GAP for second-level review. If the GAP concurs, then the grievance will be logged in the resident grievance log with "rejected" as the disposition, and a copy of the grievance will be placed in the resident's file.

Centers will send all grievances related to SAA and the Center's decisions with respect to such grievances to the appropriate FOD at the end of the grievance process.

### H. Allegations of Staff Misconduct

Upon receipt, Center staff must forward all resident grievances containing allegations of staff misconduct to a supervisor or higher-level official in the chain of command, and the JFRMU Onsite Coordinator. While such grievances are to be processed through the Center's established grievance system, Centers also must forward a copy of any grievances alleging staff misconduct to ICE/ERO in a timely manner with a copy going to ICE's OPR Joint Intake Center and/or local OPR office for appropriate action.

Staff, ICE/ERO, and contracting staff must comply with all DHS and ICE requirements to report allegations of staff misconduct to a supervisor in his/her chain of command, and/or to ICE/ERO OPR, and/or to OIG.

Staff, ICE/ERO, and contracting staff also must comply with all Federal, State, and local requirements for reporting allegations of child abuse. All allegations also will be reported immediately to the JFRMU Onsite Coordinator.

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### I. Retaliation Prohibited

Staff will not harass, discipline, punish, or otherwise retaliate against a resident who files a complaint or grievance or who contacts the DHS/OIG.

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 Center.

Immediately following any indication or allegation of retaliation, the Center and ICE/ERO will conduct an investigation of alleged acts of retaliation, and take all steps necessary to stop and remedy any retaliation determined to have occurred.

### J. Review of Resident Grievances

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

Any Center noncompliance will be reported to the JFRMU Chief.

## References

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Staff-Resident Communication