

 <p style="text-align: center;">Massachusetts Department Of Correction <b>POLICY</b></p>	Effective Date 10/29/2020	Responsible Division Deputy Commissioner, Administration		
	Annual Review Date 9/15/2020			
Policy Name  103 DOC 270 LABOR RELATIONS - EMPLOYEE GRIEVANCE PROCEDURES	M.G.L. Reference: M.G.L. c. 124 §§ 1 (c) and (q)			
	DOC Policy Reference: <a href="#">Click here to enter text.</a>			
	ACA/PREA Standards: 2-CO-1C-02			
<table border="0" style="width: 100%;"> <tr> <td style="text-align: center;">Attachments Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></td> <td style="text-align: center;">Inmate Library Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Attachments Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Inmate Library Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Applicability: Staff	
Attachments Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Inmate Library Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
<table border="0" style="width: 100%;"> <tr> <td style="text-align: center;">Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Location: Department's Central Policy File Each Institution's Policy File Department's Personnel Policy Manual		
Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				
<p><b>PURPOSE:</b> To establish Department of Correction ("Department") policy concerning employee grievance procedures.</p> <p><b>RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:</b> Director of Employee Relations Assistant Deputy Commissioners Superintendents Division Heads</p> <p><b>CANCELLATION:</b> 103 DOC 270 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules or regulations regarding employee grievance procedures which are not consistent with this policy.</p> <p><b>SEVERABILITY CLAUSE:</b> If any part of 103 DOC 270 is, for any reason held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.</p>				

## **TABLE OF CONTENTS**

270.01	Definitions	3
270.02	Grievance Procedure	3
270.03	Time Limits in Grievance Procedures	6
270.04	Management and Confidential Employees	6

## **ATTACHMENTS**

Attachment #1	MOU ADR with SEIU/NAGE	8
Attachment #2	MOU ADR with SEIU Local 509	11

## **270.01            DEFINITIONS**

**Bargaining Unit Employee:** An employee of the Commonwealth in a job title in a statewide bargaining unit, as certified by the Division Labor Relations (DLR), who is covered by an applicable collective bargaining agreement (CBA).

**Collective Bargaining Unit:** One of eleven (11) statewide units, established by the Commonwealth's Labor Relations Commissioner, unto which state employees with similar work responsibilities/related job functions represented by a union are grouped for purposes of collective bargaining.

**Confidential Employee:** A non-managerial employee whose position has been designated confidential by the Chief Human Resources Officer of the Commonwealth's Human Resources Division (HRD), and who directly assists a manager and acts in a "confidential" capacity to a managerial or other category of employee excluded from coverage under M.G.L. c. 150E.

**Management Employee:** An employee so designated in accordance with the provisions of M.G.L., c. 150E who (a) participates to a substantial degree in formulating or determining policy, or (b) assists to a substantial degree in preparation for the conduct of collective bargaining, or (c) has substantial responsibility, not initially in effect, in the administration of CBA or in Personnel Administration. A management employee is not included in a bargaining unit.

## **270.02            GRIEVANCE PROCEDURE**

Note: In the case of bargaining unit employees, always consult the relevant CBA for changes that may have occurred since the last revision of this policy.

1. A bargaining unit employee and/or the employee's union may file a grievance in accordance with the following four (4) step procedure:
  - a. **Step I: Superintendent/Division Head** - An employee and/or the union shall submit a grievance in writing or to the person designated by the agency head for such purpose not later than twenty-one calendar days after the date on which the alleged act or omission giving rise to the grievance occurred or after the date on which there was a reasonable basis for knowledge of the occurrence. The person so designated by the agency head shall reply in writing by the end of ten (10) calendar days following the date of submission. In the case of bargaining units 1, 2, 3, 4, 4A, 6, 8 and 10, the designated person shall reply in writing by the end of twenty-one (21) calendar days following the date of submission of the grievance, if a meeting is held to review the grievance. In the case of bargaining units 1, 3 and 6, a meeting will be held upon request by either party or matter will be waived to Step II.
  - b. **Step II: Commissioner of Correction or a Designee** - In the event the employee or the union wishes to appeal an unsatisfactory decision at Step I, the appeal shall be

presented in writing to the person designated by the agency head for such purpose within ten (10) calendar days or in the case of bargaining unit 8 and 10 employees ~~and~~ ten (10) business days following the receipt of the Step I decision. In the case of bargaining unit 1, 2, 3, 6, 8, and 10 employees the designee shall issue a decision within thirty (30) calendar days following the day on which the appeal was filed or, if a meeting was held to review the grievance within twenty-one (21) days of the meeting. In the case of bargaining unit 4, 4A, 7 and 9 employees, the designee shall meet with the employee and/or union for review of the grievance and shall issue a written decision within fourteen (14) calendar days following the day on which the appeal was filed. In the case of bargaining unit 1, 3 and 6 employees, a meeting will be held upon the request of either party.

- c. Step III: Human Resources Division - In the event the employee or the union wishes to appeal an unsatisfactory decision at Step II, the appeal must be presented to the HRD within seven (7) calendar days of the receipt of the unsatisfactory decision in the case of bargaining unit 4 and 9 employees, or within ten (10) calendar days of the receipt of the unsatisfactory decision in the case of bargaining unit 1, 2, 3, 4A, 6 and 7 employees, or within ten (10) business days of the receipt of the unsatisfactory decision in the case of bargaining unit 8 or 10 employees. The HRD shall issue a written reply by the end of twenty-one (21) calendar days following the day on which the appeal was filed in the case of bargaining unit 4 and 9 employees, or thirty (30) calendar days following the day on which the appeal was filed in the case of bargaining unit 1, 2, 3, 4A, 6, 7, 8 and 10 employees. If a conference is held, HRD shall reply by the end of fourteen (14) working days following the close of the conference in the case of bargaining unit 4 and 9 employees, or by the end of twenty-one (21) calendar days following the close of the conference in the case of bargaining unit 1, 2, 3, 4A, 6, 7, 8 and 10 employees.

**NOTE:** The Commonwealth has agreed to Memoranda of Understanding on Alternative Dispute Resolution for the processing of grievances at Step III or to arbitration with the National Association of Government Employees (“NAGE”) for bargaining units 1, 3 and 6 and the Service Employees International Union, Local 509 (“SEIU”) for bargaining units 8 and 10. Those Memoranda can be found at Attachment A and Attachment B, respectively.

- d. Step IV: Arbitration - Grievances unresolved at Step III may be brought to arbitration solely by the union by filing a completed Request for Arbitration Form with the HRD within fourteen (14) calendar days in the case of bargaining unit 9 employees; or within thirty calendar(30) days in the case of bargaining unit 1, 2, 3, 4, 4A, 6, 7, 8 and 10 employees.

**NOTE:** A bargaining unit 1, 3 or 6 employee and/or the employee's union filing a grievance at the Step I, II or III level shall submit said grievance on the grievance form in Appendix B of the applicable CBA between the NAGE and the Commonwealth. A bargaining unit 1, 2, 3, 4A, 6, 8 or 10 employee and/or the

employee's union filing a grievance at the Step I, II, or III level shall submit said grievance on the grievance form in the Appendix of their respective CBA.

2. Appeals of Disciplinary Action

- I. Any bargaining unit 1, 3, 4A, 6, 8, 9 or 10 employee who has completed a nine (9) month probationary period, (three (3) years for teachers) who is discharged, suspended or demoted for disciplinary reasons may file a grievance as follows:
  - a. In the event that the employee was not given a Departmental hearing prior to the imposition of discipline or discharge, then a grievance shall be submitted in writing by the aggrieved employee to the Commissioner within eight (8) working days of the date such action was taken in the case of a bargaining unit 1, 3, 4A or 6 employee or within ten (10) working days of the date such action was taken in the case of a bargaining unit 2, 8, 9 or 10 employee, and said grievance shall be treated as a Step II grievance.
  - b. In the event that the employee was given a departmental hearing prior to the imposition of discipline or discharge, then a grievance shall be submitted in writing by the aggrieved employee to the Commissioner of Correction within ten (10) working days of the date such action was taken. Upon receipt of the grievance at Step II, the Commissioner or a designee shall review the actions taken at the lower level and shall either:
    - i. Hold a full Step II conference and the provisions of the grievance procedure shall apply.
    - ii. Issue a written decision to waive the grievance to Step III and the provisions of the grievance procedure shall apply.

**NOTE:** The Waiver of the Right to Appeal Disciplinary Action on the applicable grievance form shall be signed by both the employee and the Union as a condition precedent to submitting a disciplinary grievance.

2. Any bargaining unit 4 employee who has completed a six (6) month probationary period (nine (9) months for entry level correction officers) who is discharged, suspended or demoted for disciplinary reasons may file a grievance within eight (8) working days of the date such action was taken. Any bargaining unit 2, 7 or 9 employee who has completed a nine (9) month probationary period who is discharged, suspended or demoted for disciplinary reasons may file a grievance within ten (10) working days of the date such action was taken. In the event that the employee was not given a prior Departmental hearing, the grievance shall be submitted to the Commissioner and it will be treated as a Step II grievance as described in Subsection 1 (b). If a prior Departmental hearing was held, the grievance shall be submitted to the HRD, and it shall be treated as a Step III grievance as described in subsection 1 (c).

3. If the bargaining unit employee holds permanent civil service status, he/she may appeal the disciplinary action taken against him/her to the Civil Service Commission (CSC) in accordance with the provisions of M.G.L., c. 31, § 43.
4. An employee may not appeal under both the contractual grievance and to the CSC. If he/she chooses to appeal under the grievance procedure, then he/she must waive any and all rights to appeal the disciplinary action to any other forum.

**270.03**                    **TIME LIMITS IN GRIEVANCE PROCEDURE**

1. If a decision satisfactory to the union at any level of the grievance procedure other than Step IV, is not implemented within a reasonable time, the union may re-institute the original grievance at the next step of the grievance procedure. A resolution of a grievance at either Step I or II shall not constitute a precedent.
2. If the employer exceeds any time limits prescribed at any step in the grievance procedure, the grievant and/or the union may assume that the grievance is denied and invoke the next step of the procedure; except, however, that only the union may request impartial arbitration. No deadline shall be binding on the grievant and/or the union until a required response is given.
3. Any step or steps in the grievance procedure, as well as time limits prescribed at each step of this grievance procedure, may be waived by mutual agreement of the parties in writing.

**270.04**                    **MANAGEMENT AND CONFIDENTIAL EMPLOYEES**

Management and confidential employees are not included in any bargaining unit and thus are not afforded the protection of the aforementioned contractual grievance procedure; however, there shall be an informal grievance procedure for all management and confidential employees, consisting of the following:

1. If any management or confidential employee has a grievance relative to the general conditions of his/her employment, he/she shall submit a description of said grievance in writing to his/her immediate supervisor. This supervisor shall schedule an informal meeting with said employee in order to discuss and resolve the grievance. Said supervisor shall respond to the employee within a reasonable time period.
2. If an employee is dissatisfied with the discussion and resolution recommended by his/her immediate supervisor, he/she may then submit a description of said grievance in writing to the superintendent (for institution employees) or the Commissioner (for all central office and/or major division employees). The superintendent and/or the Commissioner may take whatever action he/she deems

appropriate to discuss and resolve said grievance. (For example; he/she may: a) agree with the decision of the employee's immediate supervisor and decline from making his/her own separate recommendations, b) schedule an informal meeting with the employee to discuss the grievance, c) hold a formal meeting or investigation to resolve said grievance, etc.). All such institutional employees may, in the same way, re-submit their grievances for final consideration to the Commissioner, who shall have the same options outlined above.

3. There is a separate and distinct informal grievance procedure for all management and confidential employees, established in M.G.L., c. 30, § 53 and the Commonwealth rules and regulations pursuant to said statute, for any grievance “...relating to classification, hours of employment, vacation, sick leave, or other forms of leaves of absences, overtime, denial of step-rate increase, and other matters relating to conditions of employment...” This procedure provides for an appeal and hearing process on such matters to the State Personnel Administrator and the CSC. However, no grievance relative to disciplinary action taken against an employee shall be accepted by said offices under this statute.
4. If a management or confidential employee holds permanent civil service status, he/she may appeal the disciplinary action taken against him/her to the CSC in accordance with the provisions of M.G.L., c. 31, § 43.

Memorandum of Understanding

Between the

Commonwealth of Massachusetts

And the

SEIU/NAGE

Concerning Alternative Dispute Resolution

The Commonwealth and SEIU/NAGE hereby agree that the following Alternative Dispute Resolution (ADR) process may be used to resolve grievances at Step III of the grievance procedure or Arbitration for Bargaining Units 1, 3 and 6:

1. At or following the Step III stage of the grievance procedure, the Union may file an Alternative Dispute Resolution (ADR) Request Form to request a hearing before a Neutral.
2. The ADR hearing before the Neutral shall be held in lieu of a Step III grievance hearing or in lieu of formal Arbitration.
3. All cases presented to and decided by the Neutral are final and binding on the parties and may not be subject of further grievances and/or arbitration.\* 1
4. ADR hearing decisions are non-precedent setting and may not be introduced as evidence in any grievance hearing and/or arbitration or any other forum except to enforce its terms.
5. The Neutral who presides at ADR hearings shall be a jointly selected by the parties.
6. Fees charged by the Neutral shall be paid equally by the Commonwealth and the Union.
7. The Union's request for ADR shall be on the attached form.
8. Termination cases or cases that have statewide impact shall be excluded from ADR consideration.
9. Grievances that are limited to Step III by the collective bargaining agreement and as such ineligible for arbitration shall also be excluded from the ADR process.

---

• Decisions are subject to Judicial Review in accordance with Chapter 150C.



10. In attendance at the conference, there will be one person to make the presentation of Department/Agency along with up to one representative of the facility or subdivision involved and one person to make the presentation of the Union along with the grievant and the union steward/officer from the effected facility or subdivision. Management or the Union may request the attendance of another person(s) if necessary and relevant. Such request shall not be unreasonably denied.
11. Either at the hearing or in advance, the Union and/or Management may present the Neutral with a written statement of their position. A copy of such statement must also be copied to the other party at or about the same time that it is provided to the Neutral.
12. ADR hearings shall be conducted similar to a Step III grievance hearing in that:
  - A. There are no formal rules of evidence;
  - B. There shall be no cross examination of the parties, however either side may ask questions of clarification through the Neutral; and,
  - C. The Neutral may ask questions that he/she deems relevant and necessary in the decision making process.
13. There shall be no post-hearing briefs.
14. On the day of the hearing, the Neutral may, prior to, during or following each presentation, meet with the parties informally to discuss matters relevant to the grievance including mediation and/or settlement recommendations. The Neutral may not compel a settlement.
15. The Neutral shall have no power to issue any decision or award inconsistent with the Collective Bargaining Agreement.
16. Both parties shall have at the hearing or immediately available, a decision making authority in the event a settlement is proposed.
17. Each session shall take up to ninety (90) minutes: thirty (30) minutes per presentation with five (5) minute responses and twenty (20) minutes for deliberation. Time frames may be extended by mutual agreement of the parties.
18. The decision, which shall be not less than one paragraph in length, shall be mailed out by the next day unless otherwise agreed to by the parties.
19. While only the Union may request ADR for a filed grievance, nothing shall prohibit the Commonwealth from suggesting that a particular case may be appropriate for ADR.
20. The Office of Employee Relations (OER) shall notify the Union in writing, within ten (10) calendar days of receipt of a request for ADR, if OER agrees to have a hearing

scheduled pursuant to this ADR procedure. If OER denies the grievance for ADR the notice shall include an explanation for the denial. If OER denies a case for ADR the case may be scheduled for a Step III hearing or filed directly for arbitration, at the option of the Union. At the request of either the Union or OER the parties shall meet to review cases that OER had denied for ADR.

21. This agreement shall be effective upon its execution and shall be co-terminus with the CBA.

For the Commonwealth

For SEIU/NAGE Unit 1

Date

Date

For SEIU/NAGE Unit 3

For SEIU/NAGE Unit 6

Date

Date

For SEIU/NAGE Unit 6

For SEIU/NAGE Unit 6

Date

Date

Memorandum of Understanding

Between the

Commonwealth of Massachusetts

And the

SEIU Local 509

Concerning Alternative Dispute Resolution

The Commonwealth and the Alliance hereby agree that the following Alternative Dispute Resolution (ADR) process may be used to resolve grievances at Step III of the grievance procedure or Arbitration for Bargaining Unit 8 and 10 members:

1. At or following the Step III stage of the grievance procedure, the Union may file an Alternative Dispute Resolution (ADR) Request Form to request a hearing before a Neutral.
2. The ADR hearing before the Neutral shall be held in lieu of a Step III grievance hearing or in lieu of formal Arbitration.
3. All cases presented to and decided by the Neutral are final and binding on the parties and may not be subject of further grievances and/or arbitration.
4. ADR hearing decisions are non-precedent setting and may not be introduced as evidence in any grievance hearing and/or arbitration.
5. The Neutral who presides at ADR hearings shall be a jointly selected by the parties.
6. Fees charged by the Neutral shall be paid equally by the Commonwealth and the Union.
7. The Union's request for ADR shall be on a form agreed to by the parties.
8. Termination cases shall be excluded from ADR consideration.
9. Grievances that are limited to Step III by the collective bargaining agreement, and as such ineligible for arbitration, shall also be excluded from the ADR process.
10. In attendance at the conference, there will be on person to make the presentation of Department/Agency along with one representative of the office, facility or subdivision involved and one person to make the presentation of the Union along

with the grievant and the union steward/officer from the effected office, facility or subdivision. Management or the Union may request of the Neutral the attendance of one other person if necessary and relevant. Such request shall not be unreasonably denied.

11. Either at the hearing or in advance, the Union and/or Management may present the Neutral with a written statement of their position. A copy of such statement must also be copied to the other party at or about the same time that it is provided to the Neutral.
12. ADR hearings shall be conducted similar to a Step III grievance hearing in that:
  - A. There are no formal rules of evidence;
  - B. There shall be no cross examination of the parties, however either side may ask questions of clarification through the Neutral; and,
  - C. The Neutral may ask questions that he/she deems relevant and necessary in the decision making process.
13. There shall be no post-hearing briefs.
14. On the day of the hearing, the Neutral may, prior to during or following each presentation, meet with the parties informally to discuss matters relevant to the grievance including mediation and/or settlement recommendations. The Neutral may not compel a settlement.
15. Both parties shall have at the hearing or immediately available, a decision making authority in the event a settlement is proposed.
16. Each session shall take sixty-five (65) minutes: twenty (20) minutes per presentation with five (5) minute responses and fifteen (15) minutes for deliberation. Time frames may be extended by mutual agreement of the parties.
17. The decision, which shall be not less than one paragraph in length, shall be mailed out by the next day unless otherwise agreed to by the parties.
18. While only the Union may request ADR for a filed grievance, nothing shall prohibit the Commonwealth from suggesting that a particular case may be appropriate for ADR.
19. The Office of Employee Relations (OER) shall notify the Union in writing, within ten (10) days of receipt of a request for ADR, if OER agrees to have a hearing scheduled pursuant to this ADR procedure. If OER denies the grievance for ADR the notice shall include an explanation for the denial.
20. At the request of either the Union or OER the parties shall meet to review cases that OER had denied for ADR.

21. This agreement shall be in effect ~~from March 1, 2014 to February 29, 2016~~ through December, 2019.

For the Commonwealth

For the Union

Date

Date