

CR 81-140

CERTIFICATE

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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

AUG 25 1982  
405  
Revisor of Statutes  
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department, do hereby certify that the annexed rules relating to the complaint procedure for youth in correctional institutions or under aftercare supervision were duly approved and adopted by this department on August 24, 1982.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 24th day of August, A.D. 1982.



Donald E. Percy, Secretary  
Department of Health and Social Services

SEAL:

12-1-82



ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
ADOPTING RULES

RECEIVED

AUG 25 1982

Revisor of Statutes  
Bureau

To create HSS 340, relating to the complaint procedure for youth in correctional institutions or under aftercare supervision.

Analysis Prepared by the Department of Health and Social Services

These rules establish procedures for resolution of the complaints of youths who are held at correctional institutions for youths or who are on aftercare. They provide means for both informally and formally handling complaints made by youths about living conditions in institutions and decisions by institution staff or field staff.

Pursuant to the authority vested in the Department of Health and Social Services by s. 227.014(2), Stats., the Department hereby adopts rules interpreting s. 46.03(1) and (6) and ch. 48, Stats., as follows:

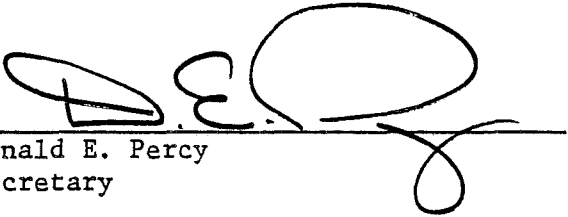
SECTION 1. Chapter HSS 340 of the Wisconsin Administrative Code is adopted to read:

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Dated: 8-24-82

Department of Health and Social Services

By:

  
Donald E. Percy  
Secretary

SEAL:

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF CORRECTIONS

Administrative Rules  
Chapter HSS 340

Youth Complaint Procedure

August, 1982

## Chapter HSS 340

### YOUTH COMPLAINT PROCEDURE

HSS 340.01 Purpose

HSS 340.02 Applicability

HSS 340.03 Definitions

HSS 340.04 Procedure for filing a grievance

HSS 340.05 Confidentiality

HSS 340.06 Reprisals prohibited

HSS 340.07 Grievance mediators

HSS 340.08 Publicity

HSS 340.01 PURPOSE.

- (1) Grievances of every youth in the department's legal custody or under its supervision shall be investigated thoroughly and decided fairly.
- (2) The objectives of the grievance process are:
  - (a) To individualize treatment for youth by affording them the opportunity to raise questions about correctional policy that affects them;
  - (b) To encourage communication between youth and staff;
  - (c) To develop a sense of involvement in and responsibility for the correctional process on the part of youth and staff;
  - (d) To correct errors in correctional policy through the exchange of ideas;
  - (e) To allow those youth who believe they have been treated unfairly to challenge the staff decision, process or policy;
  - (f) To reduce frustration among youth that could develop because of an inability to express complaints about conditions; and
  - (g) To process grievances more expeditiously than is allowed by the time limits stated in this chapter where, in the judgment of the

mediator, the lack of quick resolution would have serious adverse effects on a party to a grievance.

NOTE: The youth grievance procedure encourages the use of informal resolution of grievances as the first step in the process. (See: HSS 340.04(4)(a)). It is only after mediation fails that the additional procedures provided in this chapter will be used.

The process guarantees that complaints by a youth will be heard. This helps to reduce tensions that might otherwise result in misbehavior. The National Advisory Commission on Criminal Justice Standards and Goals recognized the importance of providing the opportunity for expression in the following conclusion: "Peaceful avenues for redress of grievances are a prerequisite if violent means are to be avoided. Thus, all correctional agencies have not only a responsibility but an institutional interest in maintaining procedures that are, and appear to be, designed to resolve complaints fairly." National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1967), p. 57.

For a general discussion of the benefits of a grievance mechanism see: American Bar Association, Tentative Draft of Standards Relating to the Legal Status of Prisoners (1977); Institute of Judicial Administration- American Bar Association, Juvenile Justice Standards Project, Standards Relating to Corrections Administrations, (1980) (hereinafter IJA-ABA Standards); and Krantz, et. al., Model Rules and Regulations on Prisoners Rights and Responsibilities (1973). The provisions of this chapter substantially conform to American Correctional Association, Manual of Standards for Juvenile Training Schools and Services (1979), standard 9336.



HSS 340.02 APPLICABILITY.

- (1) This chapter applies to the department of health and social services and to all youth under its legal custody for correctional purposes. It interprets ch. 48, Stats.
- (2) The youth grievance procedure applies to every youth in the custody or under the supervision of the division of corrections including youth in security or other restricted living units. A grievance may be initiated regarding residential programs, application of rules, division policies, personnel, conditions, procedures, or other matters or incidents, except as provided in sub. (3).
- (3) The grievance procedure shall not be used for complaints about factual disputes or decisions in the disciplinary process under ch. HSS 333, Wis. Adm. Code, matters over which the department has no authority, decisions of the juvenile offender review program (JORP), court-imposed conditions, specific placement decisions, a decision not to deliver mail, suspension of visiting privileges, or matters related to the revocation process.
- (4) The filing of a grievance under this chapter does not suspend the applicability of any rule of the division to any youth.

NOTE: HSS 340.02 guarantees unrestricted access to the grievance procedure for any complaint except those in subsection (3).

HSS 340.03 DEFINITIONS.

- (1) "Administrator" means the administrator of the division of corrections or designee.
- (2) "Department" means the department of health and social services
- (3) "Division" means the department of health and social services, division of corrections.
- (4) "Grievance" means a complaint by a youth or group of youth using the administrative procedures outlined in this chapter which may concern residential programs, division policies, personnel, conditions, procedures, or other matters or incidents in accordance with s. HSS 340.02.
- (5) "Grievance mediator" or "mediator" means a staff person not a party to the incident or situation from which the grievance arose who is designated by the superintendent or regional administrator to receive grievances and perform the duties under s. HSS 340.07 and other provisions of this chapter.
- (6) "Grievant" means a youth or group of youth who initiate a grievance either orally or in writing to the grievance mediator or, in some cases, the grievance coordinator.
- (7) "JORP" means the department of health and social services, juvenile offender review program as defined under s. HSS 331.03, Wis. Adm. Code.

- (8) "Regional chief" means the chief of a division of corrections bureau of community corrections region or designee.
  
- (9) "Superintendent" means the superintendent of a youth correctional institution of the division of corrections or designee.
  
- (10) "Youth" means persons under the age of 19 who have been committed by a court under s. 48.34(4m), Stats., to the division.

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HSS 340.04 PROCEDURE FOR FILING A GRIEVANCE.

- (1) (a) Before using the grievance procedure, youth are encouraged to discuss perceived problems with staff. All grievances, except those in par. (b), shall be initiated orally or in writing with the grievance mediator. Grievances initiated by youth who are not in an institution shall be initiated with the designated mediators for the area in which they are under field supervision.
  - (b) Youth may initiate grievances directly with the superintendent or regional chief in matters related to breach of confidentiality or alleged reprisals.
  - (c) Where a youth chooses to submit a grievance in writing, staff shall assist the youth in preparing the written grievance, if the youth requests assistance.
- (2) A grievance shall be initiated within 14 days from the date on which an incident occurred. The mediator may waive this requirement if the time lapse does not adversely affect the investigation and should do so when possible.
- (3) (a) All written grievances shall include the following information:
    1. A statement of the nature of the complaint with facts upon which the complaint is based;
    2. A statement explaining how the complaint affects the grievant personally; and

3. A request for relief, stating what the grievant believes would be a satisfactory resolution.

(b) Only one grievance may be included on a grievance form and common grievants may use the same form. Decisions on common grievances shall be posted in a manner that is accessible to all the grievants. Persons affected by a common grievance may request to have their name attached in a group grievance by using the same form and signing their names to that form. A common grievant waives the confidentiality provisions of this chapter. When a common grievance is received, the following procedure applies:

1. The grievance mediator shall determine whether all the persons signing the form are personally affected. If it is determined that the grievants do not have a common grievance, the reasons for that determination shall be posted. This determination may be appealed in accordance with subs. (5), (6), and (7). The mediator should liberally construe complaints in which there may be a common grievance. Rejection of a common grievance under this subdivision does not prohibit an individual from filing a new grievance as an individual.

2. If the grievance mediator determines that a common grievance does exist, it shall be processed under this chapter and all grievants shall be informed of the result.

3. Any grievant in a common grievance who is adversely affected by the superintendent's or regional chief's decision may appeal the decision as provided under this chapter.
- (c) There shall be no limit as to the number of grievances initiated by a grievant. If a grievant has a grievance pending, subsequent grievances may be treated as time permits, except that grievances concerning health and safety shall have priority.
- (4) (a) Upon receipt of a grievance, the mediator shall attempt to resolve controversies and misunderstandings through discussion. The mediator shall, when appropriate, resolve the grievance informally to the satisfaction of the grievant. If a grievance is resolved informally by the mediator, the mediator shall reduce the grievance to writing, using the appropriate form, giving a concise statement of the grievance and the resolution. This form shall be signed by the grievant if the grievant is satisfied with the resolution. The resolution shall be approved by the division staff with authority to make a decision in that area. The time limit for completing informal mediation shall be 5 working days from the receipt of the grievance, unless waived in writing by the grievant.
- (b) If the grievant is not satisfied with the results of the mediation effort, the grievant, with assistance from the mediator, shall write out the grievance, using the appropriate form, if the grievant has not already done so.

- (c) The grievance mediator shall investigate the grievance, and as part of the investigation shall provide the grievant and other parties to the grievance an opportunity to state their position concerning the grievance and to present any information relevant to the decision and file a written report with the department head at the institution or the unit supervisor if it is a grievance in the field. Within 12 working days of receipt of the complaint in proper written form, the department head or unit supervisor shall decide what, if any, action to take. If no decision is made or if the youth appeals an adverse decision, the report shall be forwarded to the superintendent or regional chief.
- (5) (a) Within 5 working days of receipt of the mediator's report, the superintendent or regional chief shall make a written decision. This decision shall include the reasons for the decision and the facts upon which the decision was based. If no decision is made within 5 working days the prior decision of the department head or unit supervisor is affirmed, unless the grievant is notified under par. (c).
- (b) Copies of the superintendent's or regional chief's decision shall be delivered to the grievant. The date of delivery shall be noted on the decision.
- (c) If the superintendent or regional chief is unable to render a decision within 5 working days, the grievant shall be notified and assured that the grievance is receiving proper attention.

- (6) A grievant may appeal to the administrator within 5 working days of receipt of the decision of the superintendent or regional chief.
  
- (7) The division administrator or designee shall issue a written decision within 14 working days of receipt of the decision of the superintendent or regional chief, with reasons and facts upon which the decision was based. If unusual circumstances prevent a decision from being rendered within 14 days, a written explanation from the administrator's office shall be sent to the grievant within the fourteen day period and the administrator shall have an automatic extension of 5 working days.
  
- (8) If a decision granting the relief requested or if a resolution agreed upon has not been implemented within 10 working days of the decision, the grievant may contact the division administrator directly by sealed mail. The administrator shall investigate and has power to take all necessary steps to insure implementation. The grievant shall be notified of this provision in writing with each decision.

NOTE: HSS 340.03 outlines the procedure for initiating a grievance. The procedure is a multi-step process involving mediation, decision, appeal, and a final decision by the administrator of the division of corrections or designee.

Subsection (2) requires the grievance to be initiated within 14 days from the day of the incident which is the subject of the grievance unless the mediator waives the time limit. This 14 day time limit was selected to allow the grievant sufficient time to gather facts and witnesses, seek legal advice and decide whether or not to make a complaint, while not allowing too much time to expire following an incident so that evidence becomes stale. If a complaint



is not based on evidence that has become stale and an adequate investigation can be completed at a later time, the mediator may waive the 14 day limitation.

All complaints, except those related to breach of confidentiality or reprisals, are initiated orally or in writing with a grievance mediator. The mediator must investigate the alleged grievance. HSS 340.07 provides that the superintendent or regional chief must give the mediator full access to persons, facilities and records of the division for the purposes of conducting the investigations. The mediator must keep the identity of the youth and the nature of the grievance confidential except as necessary for investigation.

The mediator will first seek an informal resolution of the grievance under subsection HSS 340.04(4)(a). If this is not possible the mediator must assist the grievant in writing the grievance, if the grievant has not already done so. This assistance by the mediator is especially critical in a procedure for youth since rules may be difficult to understand. The mediator should explain the appeal process to the youth at this time.

Under subsection (4)(c), the mediator files a written investigative report with the head of the department in an institution that the grievance pertains to if the youth is in an institution or with the unit supervisor if the youth is under field supervision. The department head or unit supervisor must decide what, if any, action to take within 12 days unless additional time is required. Notice of this decision is sent to the grievant. The grievant may grant more time for the decision.

The requirements of subsection (5) are in conformity with IJA/ABA Standards, standard 9.2(c)(9), which recognizes the importance of a written response, short time limits, and recourse for the youth in the absence of a response. Time limits are built into the entire procedure.

Within 5 days of receipt of the decision of the superintendent or regional chief any youth directly affected by the decision may appeal to the division administrator, under subsection (6).

Under subsection (7) the administrator of the division of corrections or designee has 14 days from receipt of the superintendent or regional chief's decision to send the youth a decision or an explanation of why unusual circumstances prevent a decision. If unusual circumstances prevent a decision, the administrator or designee gets an extension of 5 working days to send the youth a decision.

Subsection (8) allows 10 days for implementation of a decision granting the relief requested in the grievant's complaint. After this period, if the decision is not yet implemented, the division administrator is to do whatever is necessary to implement the decision. The grievant shall be notified of implementation requirements with each decision. Implementation is a vital step in the process. Without assurance that decisions will be implemented, youth and staff would have no confidence in the system. Guaranteed implementation promotes the sense of fairness that is one of the purposes of the system.

HSS 340.05 CONFIDENTIALITY.

(1) (a) Persons working in the youth grievance procedure shall keep the identity of the grievant and the subject matter of the grievance confidential except to the extent that discussion with others is necessary for investigation.

(b) Notwithstanding par. (1)(a), a grievant may make public any aspect of the grievance at any time.

(2) Entries shall not be made in a youth's chronological case file about use of the grievance procedure.

NOTE: Respecting the confidentiality of the grievant to the greatest possible extent is essential to the operation of a successful grievance procedure. Without a confidentiality limitation, a youth may be reluctant to use the grievance procedure because of a fear of reprisals.

This section does not require absolute confidentiality. A total confidentiality requirement would unduly inhibit investigation. Oftentimes, a complaint may involve only one person. In the absence of other facts or witnesses, that person may need to be questioned and the identity of the youth and subject matter of the complaint may have to be revealed to conduct an adequate investigation. In these cases, the youth is offered protection by HSS 340.06 prohibiting reprisals.

Confidentiality should be maintained whenever possible, however, and an investigatory technique that does not require disclosure is encouraged.

Prohibition against entries documenting use of the grievance procedure in the chronological case file offers protection against reprisals by anyone having access to the file and guarantees that the filing of grievances will not be a factor in institution program review, JPRC, and JORP decisions.

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HSS 340.06 REPRISALS PROHIBITED.

- (1) No staff or youth may take any reprisal action against a youth for filing a grievance. This subsection does not limit the application of s. HSS 340.07.
- (2) Complaints alleging reprisals shall be initiated directly with the superintendent or regional administrator.
- (3) Under ch. HSS 333, Wis. Admin. Code, disciplinary action may be taken against a youth who knowingly files a false grievance if the filing of the false grievance affects the safety, security, or integrity of the institution or correctional program.

NOTE: HSS 340.06 makes it a violation of these rules for anyone, whether staff or youth, to take any action against a youth who has filed a grievance. This is essential for protection of the youth and to maintain the integrity of the grievance procedure.

Reprisals for use of the grievance procedures are antithetical to the purpose of this chapter. A youth must have confidence that he or she can make a complaint without fear of suffering because of it. The confidentiality provisions of HSS 340.05 and the prohibition against reprisals contained in this section should remove fear of filing legitimate complaints.

The specific provisions prohibiting reprisals is in substantial conformity with IJA-ABA Standards, standard 9.2(c)12.

HSS 340.07 GRIEVANCE MEDIATORS.

Grievance mediators shall be designated for institutions and regions by superintendents and regional chiefs. They shall receive training in grievance procedures and mediator skills. Their primary responsibility shall be to receive, investigate, mediate, and process grievances. Each superintendent and regional chief shall provide the mediator with full access to the youth, staff, facilities, and records of the institution and division. Required activities of the grievance mediator include, but are not limited to, the following:

- (1) The grievance mediator, in cooperation with the superintendent and regional chief, shall provide the youth population and staff with written information about the youth grievance procedure and any modifications of the youth grievance procedure.
- (2) The grievance mediator shall assign a grievance file number and shall personally screen all grievances within 24 hours upon receipt of a grievance. Priority shall be given to grievances concerning health and personal safety. The grievance mediator shall record the date and time each grievance is received.
- (3) The grievance mediator shall investigate grievances and shall keep a written record of relevant information relied upon. No mediator may investigate or decide cases involving persons under his or her supervision or the supervision of an immediate subordinate.

- (4) (a) The grievance mediator shall try to informally resolve grievances through mediation.
- (b) When informal resolution is not possible, the grievance mediator shall assist the youth in writing the grievance and the appeal, if necessary.
- (5) The grievance mediator shall determine whether all persons signing a common grievance are personally affected and inform all the grievants in writing if it is determined that no common grievance exists. The notice denying a common grievance shall contain the reasons for the determination.
- (6) Each institution and region shall submit a quarterly report to the administrator concerning the quantity, type and disposition of grievances. This information shall also include the following information to comply with title VI of the civil rights act (42 CFR 2000d):
  - (a) The number of grievances filed per month by minority youth; and
  - (b) The number of grievances alleging discrimination on the basis of race, sex, religion, or age initiated against individual staff persons and the dispositions.

- (7) The grievance mediator shall transmit all necessary materials to each level in the appeal process and to the grievant. The mediator shall keep the youth informed of all decisions or non-action by any party in the process under this chapter.

NOTE: This section requires that persons be designated as grievance mediators for institutions and regions. The same persons may be designated to serve institutions and regions or several people may be so designated for each institution or region.

The role of the mediator is fundamental to the entire grievance procedure since it is the mediator with whom the youth will have direct contact throughout the process. Subsection (4)(a) and HSS 340.04(4)(a) and (b) require the mediator to attempt informal resolution of grievances. If informal resolution is not possible, the mediator must assist the youth in writing the complaint in the proper form and with the appeal process if the youth decides to appeal a decision.

The mediator is not an advocate for the youth, but does provide assistance throughout the process. It is essential that the youth trust the mediator for the grievance procedure to work. The rule encouraging the mediator to keep grievances confidential (HSS 340.05) provides a basis for a youth to trust this person.



HSS 340.08 PUBLICITY.

- (1) A copy of this chapter and a verbal explanation of the youth grievance procedure shall be given to all youth upon commitment. Each institution shall establish and post specific policies and procedures explaining the grievance procedure in simplified language.
- (2) Grievance forms and appeal forms shall be freely available to youth at all times.
- (3) The grievance mediators, in cooperation with the superintendent or regional chief, shall provide youth and staff with written information relative to any modifications of the youth grievance procedure.
- (4) Changes in the grievance procedure affecting the general youth population shall be posted or distributed prior to the time the changes take effect. An oral explanation of changes should be provided.

NOTE: It is very important that youth have access to copies of this chapter so they have an immediate reference source to determine their rights under them. A verbal explanation is especially critical since some youths have reading disabilities and a reading disability could render the rules meaningless.