

Chapter DOC 380

COMPLAINT PROCEDURE FOR YOUTH IN TYPE 1 SECURED CORRECTIONAL FACILITIES

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Note: Chapter HSS 340 as it existed on June 30, 2000 was repealed and a new Chapter DOC 380 was created, Register, June, 2000, No. 534, effective July 1, 2000.

DOC 380.01 Authority and purpose. (1) This chapter is promulgated under the authority of ss. 227.11 (2) and 938.48 (16), Stats., to provide rules to assure that complaints from youth placed in a type 1 secured correctional facility are investigated thoroughly and decided fairly.

(2) The objectives of the complaint process are all of the following:

- (a) To afford youth the opportunity to raise questions about correctional policies that directly affect them.
- (b) To encourage communication between youth and staff.
- (c) To develop a sense of involvement in the correctional process by youth and staff.
- (d) To correct errors in correctional policy through the exchange of ideas.
- (e) To allow youth who believe they have been treated unfairly to challenge staff decisions, process or policy.
- (f) To reduce frustration among youth about conditions at the institution in which they reside.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 380.02 Applicability. (1) This chapter applies to all youth placed in an institution, and complaints filed by those youth regarding residential programs, application of rules, division policies, conditions, procedures or other matters or incidents, except that a youth may not use the complaint procedure for complaints about any of the following:

- (a) Factual disputes or decisions in the disciplinary process under ch. DOC 373, except that the complaint procedure may be used to challenge procedural errors in accordance with sub. (2).
- (b) Matters over which the department has no authority.
- (c) Court-imposed conditions.
- (d) Decisions of OJOR.
- (e) A decision to place a youth at a specific institution.
- (f) A decision not to deliver mail, except under s. DOC 379.04 (9).
- (g) Suspension of visiting privileges.
- (h) Matters related to the revocation process.
- (i) Matters that do not directly affect the complainant.
- (j) An administrative rule of the department.
- (k) An issue which a youth may appeal under a department rule or a decision issued by the department in response to an appeal filed by a youth under a department rule.

(2) Youth may use the complaint procedure to challenge the procedure used by hearing officers under ss. DOC 373.72, 373.73 and 373.76 to 373.78.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (1) (f) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534.

DOC 380.03 Definitions. (1) “Administrator” means the administrator of the department’s division of juvenile corrections or that person’s designee.

(2) “Complaint” means a complaint by one or more youth using the administrative procedures in this chapter.

(3) “Complaint mediator” means a staff person not a party to the incident or situation from which the complaint arose who is designated by the superintendent to receive complaints and perform duties under this chapter.

(4) “Department” means the department of corrections.

(5) “Division” means the department’s division of juvenile corrections.

(6) “Institution” means a type 1 secured correctional facility.

(7) “OJOR” means the division’s office of juvenile offender review.

(8) “Superintendent” means the superintendent of an institution or that person’s designee.

(9) “Staff” means an employee of the department.

(10) “Type 1 secured correctional facility” has the meaning given in s. 938.02 (19), Stats.

(11) “Youth” means a person under the supervision of the department within the meaning of s. 938.505 (1), Stats., or pursuant to s. 48.366, Stats., or a person subject to a criminal penalty who is placed in an institution under s. 973.013 (3m), Stats., regardless of age.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (11) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543.

DOC 380.04 Complaint procedure. (1) NOTICE OF PROCEDURE. An institution shall give a copy of this chapter and an oral explanation of the complaint procedure to a youth as part of the orientation process that occurs when a youth is placed in an institution. An institution shall establish specific policies and procedures relating to the complaint procedure and shall inform a youth of those policies and procedures in simplified written language.

(2) FORMS. An institution shall make complaint and appeal forms readily available to youth.

(3) CHANGES IN PROCEDURE. An institution shall orally explain to a youth and post or distribute changes in the complaint procedure affecting a youth, prior to the time the changes take effect.

(4) INITIATION. (a) Before using the complaint procedure, a youth shall discuss problems with a social worker or youth counselor. All complaints shall be in writing and, except for complaints under par. (b), shall be filed with the complaint mediator.

(b) A youth may file a complaint directly with the superintendent in matters related to breach of confidentiality, retaliation, abuse or regarding matters under s. DOC 380.02 (2).

(c) If a youth is unable to write a complaint, a social worker, youth counselor, or psychologist shall refer the youth to the complaint mediator who shall assist the youth to write a complaint when possible. If the complaint mediator is not able to assist the youth in a timely fashion, the mediator shall request another staff member to assist the youth. If the youth requests assistance from someone other than the mediator or designee, that individual may assist the youth.

(d) A youth shall file a complaint with the complaint mediator or superintendent within 5 days from the day on which an incident occurred. The complaint mediator or superintendent under par. (b) may waive this requirement if the delay does not adversely affect the investigation.

(e) A complaint meets the time limitations in par. (d) if it is filed within 5 days of an incident, but does not include all of the information required by par. (f).

(f) A complaint 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 youth personally.

3. A statement identifying the staff that the youth has discussed the problem with, as required by par. (a) and a statement indicating the outcome of that discussion.

4. A request for relief, stating what the youth believes would be a satisfactory resolution.

(g) If a complaint does not include all of the information required by par. (f), the youth shall be given 2 additional days to provide the information. If the youth does not provide the information after the additional time period, the complaint mediator shall process the complaint under this chapter based on the information provided.

(5) **GROUP COMPLAINTS.** (a) A youth may include only one complaint on a complaint form. Group complaints may be on one form and the complainants may sign their names on the form or a sheet of paper attached to the form. A youth who is a party to a group complaint waives the confidentiality provision in s. DOC 380.08.

(b) The complaint mediator shall determine whether all the youth signing a form are personally affected and whether a legitimate group complaint exists. The group complaint is a valid complaint only as to those youth who are personally affected. The complaint mediator shall liberally construe complaints when determining if there is a group complaint.

(6) **NUMBER OF COMPLAINTS.** There is no limit to the number of complaints that may be filed by a youth. If a youth has a complaint pending, the complaint mediator shall process subsequent complaints as time permits, except that complaints concerning health and safety shall have priority.

(7) **RECORD OF COMPLAINTS.** An institution shall maintain a record of each complaint, including the name and identifying number of each complaint, the subject of the complaint and the disposition for at least 3 years after the final decision is issued. The record of complaints shall be maintained separately from a youth's case file.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 380.05 Designation, training and activities of complaint mediator. All of the following procedures apply to complaint mediators and institutions:

(1) A superintendent shall designate complaint mediators. The complaint mediators may be staff with other responsibilities, but they shall receive, investigate, mediate and process complaints in accordance with the procedures and time limits estab-

lished in this chapter. A superintendent shall provide the complaint mediator with full access to youth, staff, facilities and records of the institution.

(2) The department shall provide complaint mediators with training in complaint procedures and mediation skills.

(3) A complaint mediator, in cooperation with the superintendent, shall provide youth and staff with written information about the complaint procedure and any modifications of the procedure.

(4) An institution shall assign a complaint file number and screen all complaints within 24 hours of receipt, excluding weekends and holidays. Priority shall be given to complaints concerning health and safety. The institution shall record the date and time each complaint is received.

(5) A complaint mediator shall mediate and investigate complaints and keep a written record of information obtained in an investigation.

(6) A supervisor responsible for a living unit or program may be designated as mediator for complaints that arise within the area of supervisory responsibility, except that no complaint mediator may investigate or decide a case involving a complaint that relates to decisions or actions that involved the complaint mediator.

(7) A complaint mediator who has a conflict of interest under sub. (6) shall inform the superintendent, who shall appoint an alternate complaint mediator. If a youth believes a complaint mediator has a conflict of interest, the youth may file a complaint under this chapter with the superintendent.

(8) A complaint mediator shall promptly transmit all necessary documents to each person involved in the complaint process. A complaint mediator shall keep the complainant informed orally or in writing of all decisions or non-action by any person involved in the complaint process under this chapter.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 380.06 Complaint resolution procedure. (1) INFORMAL RESOLUTION. The complaint mediator shall conduct all of the following procedures:

(a) Upon receipt of a complaint, the complaint mediator shall attempt to informally resolve the issues raised by the complainant.

(b) If a complaint is resolved informally, the complaint mediator shall reduce the outcome to writing, using the appropriate informal complaint resolution form, and shall provide a concise statement of the complaint and the resolution. The youth shall sign the informal complaint resolution form to acknowledge his or her agreement with the resolution of the complaint.

(c) The superintendent shall review the informal complaint resolution form signed by the youth under par. (b) and approve the informal resolution or require a formal resolution under sub. (2).

(d) Informal mediation shall be completed in 5 days from the receipt of the complaint, unless waived in writing by the complainant.

(2) **FORMAL RESOLUTION.** If an informal resolution cannot be obtained under sub. (1), or the superintendent requires a formal resolution, the mediator shall do all of the following:

(a) The complaint mediator shall investigate the complaint and as part of the investigation shall provide the complainant an opportunity to state his or her position and to present any information relevant to the decision.

(b) The complaint mediator shall file a written report, using the complaint mediator's report form, with the superintendent

stating a proposed resolution within 14 days of receipt of the complaint. The complainant may waive the time limit in writing to permit the complaint mediator to complete a proper investigation.

(c) The complaint mediator's report shall state the youth's complaint, the facts upon which the proposed resolution is based, the proposed resolution and the reasons for the proposed resolution.

(d) The complaint mediator may propose that a complaint be dismissed if it is frivolous, if it is beyond the scope of the complaint process as provided in s. DOC 380.02 or if the complaint mediator believes, after investigation, that the complaint is without merit.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 380.07 Decision and appeal procedure. (1) SUPERINTENDENT'S DECISION. Within 7 days of receipt of the complaint mediator's report or receipt of a direct complaint, the superintendent shall issue a written decision and provide a copy to each complainant. The decision shall state the issue, the facts upon which the decision is based, the decision, the reasons for the decision and the notice required by sub. (4). If no decision is issued within 7 days, the recommendation of the complaint mediator is affirmed. If the youth filed complaint directly with the superintendent, a written [decision] must be issued.

(2) SUPERINTENDENT'S OPTIONS. If the superintendent affirms a complaint under s. DOC 380.02 (2) challenging the procedure used by a hearing officer under ss. DOC 373.72, 373.73 and 373.76 to 373.78, the superintendent may do one of the following:

(a) Affirm the hearing officer's decision if the error in procedure did not deny the youth a fair hearing.

(b) Affirm the hearing officer's decision, but reduce the discipline.

(c) Reverse the hearing officer's decision and remove all records of the decision from the youth's files. A record of the decision may be kept for statistical purposes only.

(d) Remand the case to the hearing officer for further consideration.

(3) APPEAL TO THE ADMINISTRATOR. (a) A youth may appeal to the administrator in writing, using the appeal of complaint form, either a decision or a failure to issue a decision under sub. (1) to the administrator within 5 days of receipt of the decision or the failure to issue a decision.

(b) The administrator shall issue a written decision within 7 days of receipt of the appeal, which is the final decision of the department and states the reasons and facts upon which the decision

is based. If no decision is issued, the decision of the superintendent is affirmed.

(4) FAILURE TO IMPLEMENT DECISION PROMPTLY. The complaint decision under sub. (1) shall inform the youth who filed the complaint of the right to write the administrator directly if the relief requested or a resolution agreed upon has not been implemented within 14 days of the decision or agreement. The administrator shall investigate and take all necessary steps to enforce prompt implementation.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (3) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534.

DOC 380.08 Confidentiality. (1) (a) Staff shall keep the identity of the complainant and the subject matter of the complaint confidential, except to the extent that discussion with others is necessary for investigation. Any staff with whom a complaint is discussed shall maintain confidentiality.

(b) A complainant may publicize any aspect of a complaint at any time.

(2) Staff shall not make entries in a youth's case file about use of the complaint procedure.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 380.09 Retaliation prohibited. (1) Neither staff nor a youth may retaliate against a youth for filing a complaint.

(2) A youth may send a complaint, using a complaint form, alleging retaliation directly to the superintendent, who shall issue a written decision within 7 days. A copy of the decision, stating information required in s. DOC 380.07 (1) shall be given to the complainant.

(3) A complainant may appeal the decision of the superintendent under sub. (2), or a failure of the superintendent to issue a timely decision, in writing using the appeal of complaint decision form, to the administrator within 7 days of receipt of the appeal. If the administrator does not issue a written decision within 7 days of receipt of the appeal, the decision of the superintendent is affirmed.

(4) Disciplinary action may be taken against a youth under s. DOC 373.32 for knowingly filing a false complaint.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 380.10 Report required. An institution shall submit an annual report to the administrator concerning the quantity, type and disposition of complaints. To be in compliance with Title VI of the Civil Rights Act (42 C.R.R. 2000d), the report must include the number of complaints filed per month by minority youth; and the number of complaints alleging discrimination on the basis of race, sex, religion or age initiated against individual staff persons and the dispositions.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.