

HUMAN RESOURCES POLICY
Fauquier County, Virginia

Policy Title: Grievance Procedure
Section No.: 41

Effective Date: 3/14/19
Supersedes Policy: 12/16/02

I. Purpose

It is the objective of the Board of Supervisors to provide eligible employees with an expeditious and impartial method for the resolution of employee grievances.

II. Scope

This policy applies to permanent full-time and permanent part-time employees.

III. Definitions

Grievance: A grievance is defined as a complaint or dispute by an employee relating to his/her employment, including, but not necessarily limited to:

1. disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
2. the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters related to the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
3. discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and
4. acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of this clause there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

IV. Procedures

- A. Coverage of Personnel

1. All nonprobationary full-time and part-time permanent employees occupying authorized positions, as approved by the Board of Supervisors, are eligible to file grievances under this procedure with the following exceptions:
 - a. Appointees of elected groups or individuals;
 - b. Officials and employees who serve at the will or pleasure of an appointing authority;
 - c. Deputy and Assistant County Administrators;
 - d. Constitutional Officers, Department Heads, Agency Heads or chief executive officers of any County department, division, agency or office;
 - e. Employees whose terms of employment are limited by law; and
 - f. Temporary, limited term and seasonal employees.

2. The County Administrator, or his/her designee, shall determine the officers and employees (by position title) excluded from this grievance procedure and shall maintain in the Human Resources Department a list of such excluded positions.

B. County Management Rights and Prerogatives

The County reserves the exclusive right to manage the affairs and operations of the County government. Accordingly, complaints involving the following management rights and prerogatives are not grievable:

1. Establishment and revision of wages or salaries, position classification or general benefits;
2. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content;
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
4. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
5. The hiring, promotion, transfer, assignment and retention of employees within Fauquier County Government;
6. The relief of employees from duties of Fauquier County Government in emergencies; and

7. The methods, means and personnel by which work activities are to be carried on;
 - i. except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of lack of work reduction in work force, or job abolition.
 - ii. In any grievance brought under the exception above, the action shall be upheld upon a showing by the County that:
 1. there was a valid business reason for the action and
 2. the employee was notified of the reason in writing prior to the effective date of the action.

C. Grievability and Access

1. Determinations of Grievability and Access
 - a. Determinations of grievability and access shall be made by the County Administrator, or his/her designee.
 - b. Only after the County Administrator, or his/her designee, has determined that a complaint is grievable may a grievance be advanced through Steps 3 and 4 of this procedure.
 - c. When the question of grievability or access arises at the department (Step 2) level, the grievant or Department Head/Constitutional Officer may request a ruling by the County Administrator, or his/her designee.
 - d. The County Administrator, or his/her designee, shall render a decision within ten (10) calendar days of receipt of the request and shall send a copy of the decision to the grievant, the affected Department Head/Constitutional Officer, and the Human Resources Director.
2. Grievability and Access Determination Appeals
 - a. Decisions regarding grievability and/or access to this procedure may be appealed to the Circuit Court of Fauquier County.
 - b. The grievant shall make such appeal by filing a notice of appeal with the County Administrator within ten (10) calendar days from the date the grievant received the decision. The grievant shall forward a copy of the notice of appeal to the affected Department Head/Constitutional Officer and the Human Resources Director.

- c. Within ten (10) calendar days after the filing of the notice of appeal, the County Administrator shall transmit to the Clerk of the Circuit Court a copy of the County Administrator's decision on grievability or access to the procedure, a copy of the notice of appeal, and copies of all exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant.
- d. The appeal shall be heard by the Court as provided by law. The decision of the Court is final and is not appealable.

D. Grievance Procedure Process

1. Step 1 – Oral Presentation

- a. An employee who believes he/she has a grievance shall verbally and in person identify the issue in a face-to-face meeting with his/her immediate supervisor within twenty (20) calendar days of the incident giving rise to the grievance or within twenty (20) calendar days following the time when the employee reasonably should have gained knowledge of its occurrence.
- b. At this time the grievance is considered informal and need not be submitted or resolved in writing. A formal hearing is not required.
- c. A decision regarding resolution of the grievance by the immediate supervisor shall be reached and communicated, in writing, to the grievant within ten (10) calendar days.

2. Step 2 – Department Head/Constitutional Officer Hearing

- a. If the grievant is not satisfied with and does not accept the Step 1 response, or if the immediate supervisor fails to respond within the required time frame, the grievant may advance to Step 2 of this procedure.
- b. The grievant advances to Step 2 by reducing the grievance to writing on a "Request for Grievance Hearing" form and filing the completed form with his/her immediate supervisor within ten (10) calendar days of receipt of the supervisor's response or the deadline for that response, whichever occurs first.
- c. The grievant must specify the actual and specific relief that he/she is seeking through the use of this grievance procedure.
- d. In no event shall the grievant be allowed to modify their grievance form, other than to request to proceed to Step 3 or 4, or

change their request for actual and specific relief once the “Request for Grievance Hearing” form is submitted to his/her immediate supervisor.

- e. The immediate supervisor shall forward a copy of the completed request form immediately to the affected Department Head/Constitutional Officer with a copy to the Human Resources Director.
- f. The Department Head/Constitutional Officer, or designee, shall meet face-to-face with the grievant within ten (10) calendar days of receipt of the “Request for Grievance Hearing” form. The only persons who may be present at the meeting shall be the Department Head/Constitutional Officer, or designee; the grievant; and any appropriate witnesses. Witnesses may only be present while actually providing testimony.
- g. The Department Head/Constitutional Officer, or designee, shall render a written response to the grievance within ten (10) calendar days following receipt of the “Request for Grievance Hearing” form. A copy of the response shall be forwarded to the Human Resources Director.

3. Step 3 – County Administrator Hearing

- a. If the grievant is not satisfied with and does not accept the Step 2 written response, or if Department Head/Constitutional Officer, or designee, fails to respond within the required time frame, the grievant may advance to Step 3 of this procedure.
- b. The grievant advances to Step 3 by completing the Step 3 section of the “Request for Grievance Hearing” form and forwarding the completed form to the Human Resources Department within ten (10) calendar days of receipt of the Step 2 response or the deadline for that response, whichever occurs first.
- c. If the County Administrator, or his/her designee, determines, or has previously determined, that the complaint is grievable, he/she, or his/her designee, shall meet face-to-face with the grievant along with a representative of the affected department, a representative of the Human Resources Department, appropriate witnesses for each side, and such other persons as he/she deems necessary and appropriate. Witnesses may only be present while actually providing testimony.
- d. The County Administrator, or designee, shall render a written response to the grievance within ten (10) calendar days following receipt of the “Request for Grievance Hearing” form from the

Human Resources Department.

4. Step 4 – Hearing Officer

- a. If the grievant is not satisfied with and does not accept the Step 3 written response, or if the County Administrator, or designee, fails to respond within the required time frame, the grievant may advance to Step 4 of this procedure.
- b. The grievant advances to Step 4 by completing the Step 4 section of the “Request for Grievance Hearing” form and forwarding the completed form to the Human Resources Department within ten (10) calendar days of receipt of the Step 3 response or the deadline for that response, whichever occurs first.

E. Rules Governing the Conduct of Grievance Hearings

Except as otherwise noted, the following rules apply to all levels of grievance hearings.

1. Role of the Human Resources Director

- a. The Human Resources Director, or designee, shall advise both employees and supervisors in matters concerning this grievance procedure.
- b. Where a grievant appeals to Step 3 or Step 4, the Human Resources Director, or designee, shall transmit the grievance record to the hearing officer at the next higher level.
- c. During Step 3 and Step 4 hearings, the Human Resources Director, or designee, shall serve the hearing officer as facilitator and advisor on personnel-related matters.
- d. Neither the Human Resources Director or his/her designee shall be present during the hearing officer’s private deliberations and decision-making process.
- e. Neither the Human Resources Director nor any member of the Human Resources Department shall serve as a hearing officer for Step 3 or Step 4 hearings.

2. Timelines, Deadlines, and Hours for Holding Grievances

- a. Time intervals specified in Steps 1 through 4 may be extended by mutual consent of the parties.
- b. When a deadline falls on Saturday, Sunday, or a County holiday,

the next calendar day that is not a Saturday, Sunday, or a County holiday shall be considered the last calendar day.

- c. As far as practical, all grievance hearings shall be held during normal County working hours as defined by the Fauquier County Human Resources Policy manual.

3. Participants in the Process

- a. At the Step 3 hearing, the grievant, at his/her option, may have present a representative of his/her choice. If the grievant is represented by legal counsel, the County likewise has the option of being represented by legal counsel.
- b. County employees who are necessary participants at grievance hearings shall not lose pay for time lost from their jobs and shall not be charged leave because of attendance at such hearings.
- c. At Steps 3 and 4, attendance at the hearing shall be limited to those who have a direct interest in the hearing. However, witnesses may only be present while actually providing testimony.

4. Recording Devices

- a. The use of recording devices or a court reporter is not permitted at Step 1, 2, or 3 hearings.
- b. Only Step 4 hearings may be recorded.
- c. Where a Step 4 hearing is recorded, it shall be the responsibility of the Human Resources Director, or designee, to make the recording. There shall be no other recording permitted.
- d. If the grievant desires a transcript of the hearing, he/she shall bear the costs thereof.

5. Hearing Protocol

- a. Hearings are not intended to be conducted like proceedings in court and the rules of evidence do not necessarily apply.
- b. Step 3 and Step 4 hearings shall be private.
- c. The grievant shall present his/her evidence first and bears the burden of proof of their claim.

- d. The hearing officer shall determine the propriety of and the weight to be given the evidence submitted.
- e. Both the grievant and the County may call appropriate witnesses. All witnesses including the grievant shall be subject to examination and cross-examination.
- f. Witnesses shall be present only while actually giving testimony.

6. Relief

- a. The grievant shall not be entitled to recover more than that which he/she requested on their “Request for Grievance Hearing” form at the time it was filed with his/her immediate supervisor and in any event no more than that which he/she has lost.
- b. Where a grievant has obtained partial relief at one level of this grievance procedure but decides to appeal to the next higher level, the filing of a “Request for Grievance Hearing” form to the next higher level shall constitute a rejection and relinquishment of any claim to any and all relief granted at the previous level.
- c. The grievant shall not be entitled to recover damages or attorney’s fees or other costs associated with filing the grievance.
- d. A Hearing Officer at Step 4 shall not have the authority to promote or order transfer of an employee to another position, department or work site.

7. Expenses

Each party shall bear the costs and expenses, if any, of his/her legal counsel or representative.

F. Rules Governing the Conduct of Hearing Officer and Hearings

1. Selection of Hearing Officer

- a. Within ten (10) calendar days of receipt of the Step 4 portion of the “Request for Grievance Hearing” form, the County Administrator, or designee, shall request that a hearing officer be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to *Code of Virginia* § 2.2-4024 and shall be

made from the appropriate geographical region on a rotating basis.

2. Eligibility to Serve as a Hearing Officer

The individual serving as a Hearing Officer shall not have any direct involvement with the grievance being heard or with the complaint or dispute giving rise to the grievance. A Hearing Officer shall not serve if he/she, or an individual residing in their household, has a personal interest in the outcome of the grievance. A Hearing Officer shall be disqualified if:

(a) He/She has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) He/She served as a lawyer in the matter in controversy, or a lawyer with whom he/she previously practiced law served during such association as a lawyer concerning the matter, or he/she has been a material witness concerning it;

(c) He/She knows that he/she, individually or as a fiduciary, or the his/her spouse, parent, or child wherever residing, or any other individual residing in his/her household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has more than a de minimis interest that could be substantially affected by the proceeding;

(d) He/She or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is involved or likely to be involved in the proceeding in any way whatsoever; or

(ii) is known to have a more than de minimis interest that could be substantially affected by the proceeding.

G. Hearing Protocol

1. Hearing Date, Time, and Location

The hearing officer shall promptly set the date, time, and location for hearing the grievance and shall notify the parties.

2. Grievance Record and Associated Documentation

a. The Human Resources Director shall provide the hearing officer with copies of the grievance record prior to the hearing, and shall provide the grievant with a list of the documents furnished to the hearing officer.

b. At the request of the grievant, at least ten (10) calendar days prior to the scheduled hearing, the grievant and

his/her attorney shall be allowed access to and copies of all relevant files intended by the County to be used by it at the hearing.

- c. The grievant shall furnish to the County copies of all documents, exhibits, and a list of witnesses that he/she intends to use at the hearing seven (7) calendar days in advance of the hearing. Three calendar (3) days after receiving these items from the grievant, the County shall furnish to the grievant copies of the same.

3. Representation

Both the grievant and the County may be represented by legal counsel or other representative at the hearing. Such representative may examine, cross-examine, question, and present evidence on behalf of the grievant or the County before the panel without being in violation of the provisions of *Code of Virginia* § 54.1-3904.

4. Evidence

- a. The hearing officer shall have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as full and equal opportunity is afforded to all parties of the presentation of their evidence.
- b. All evidence shall be presented in the presence of the hearing officer and the parties except by mutual consent of the parties.

5. Authority to Award

- a. The hearing officer shall have the authority, if it finds based on the greater weight of the evidence that the grievant has been denied a benefit or wrongly disciplined without just cause (where such cause is required), to reverse, reduce, or otherwise modify such action and, where appropriate, to order the reinstatement of such employee to his/her former position with back pay.
- b. Back pay shall not exceed pay for time actually lost due to such suspension or discharge.
- c. Any award of back pay shall be offset by interim earnings the grievant earned during the period of separation.

- d. The hearing officer has the authority to sustain the County's action or increase the severity of disciplinary action taken.

6. Award Limitations

- a. The hearing officer shall not have authority to do any of the following:
 - 1. formulate policies or procedures;
 - 2. alter existing policies or procedures;
 - 3. circumscribe or modify the rights of the County as outlined in this procedure;
 - 4. exonerate an employee from all discipline when the guilt of the employee is admitted or is beyond question in the view of the hearing officer; or
 - 5. grant relief greater than that which the grievant has requested in the "Request for Grievance Hearing" form as it existed at the time it was submitted to the grievant's immediate supervisor.

7. Decision

- a. The decision of the hearing officer should be rendered in writing as soon as possible, but in any case, mailed by first-class mail to the parties not later than ten (10) calendar days following the conclusion of the hearing.
- b. The decision of the hearing officer, acting within the scope of his/her authority, shall be final and binding, subject to existing policies, procedures and law.
- c. The question of whether the relief granted by a hearing officer is consistent with written policy shall be determined by the County Administrator or his/her designee except if he/she has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney for the County of Fauquier.
- d. Either party may petition the Circuit Court of Fauquier County for an order requiring implementation of the hearing officer's decision.

8. Expenses

- a. The reasonable costs and expenses, if any, of the hearing officer shall be paid by the County.

H. Compliance

1. After the initial filing of a “Request for Grievance Hearing” form, failure of either party to comply with all substantial procedural requirements of this procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within ten (10) calendar days of receipt of written notification by the other party of the noncompliance.
2. Such written notification by the grievant shall be made to the County Administrator or his/her designee.
3. The County Administrator or his/her designee shall determine compliance issues. The County Administrator or his/her designee, at his/her option, may require a written explanation of the basis for just cause extension or exceptions.
4. Compliance determinations made by the County Administrator or his/her designee shall be subject to judicial review which shall be initiated by the grievant filing a petition with the Circuit Court of Fauquier within thirty (30) calendar days of the compliance determination.

I. Voluntary Mediation

1. Voluntary mediation is offered as an alternative means to addressing and resolving workplace disputes. Mediation is available to all County government employees, including those in probationary status, and is independent of any grievance rights an employee may have.
2. The Employee Mediation Program is a means by which a neutral third party assists employees and management experiencing conflict in discussing issues in an open, honest and confidential forum to arrive at a mutually satisfactory agreement.
3. The Human Resources Director, or his/her designee, functions as the Program Coordinator and oversees the County’s Employee Mediation Program. All requests for mediation must be referred to the Program Coordinator.