

	P - §34	Policy Name: Grievance	Current Version Approved:
	Prepared By: Human Resources		Adopted: January 3, 2007
	Amended:		

A. PURPOSE

The purpose of this policy is to provide a prompt and impartial method for resolving employment complaints filed by Albemarle County employees.

B. DEFINITIONS

Grievance – formal employment-related complaint or dispute filed by an eligible covered employee.

Grievant – employee who submits a grievance for resolution.

Hearing Officer – Third party arbitrator for the final step in the grievance resolution process. The Executive Secretary of the Supreme Court, in accordance with [Virginia Code § 2.2-4024](#) maintains a list of attorneys who serve as “hearing officers” authorized to preside over formal hearings conducted in accordance with [Virginia Code § 2.2-4020](#).

Permanent Employee- Employee filling a Board- approved permanent, year round position.

C. ROLES AND RESPONSIBILITIES

Director of Human Resources -

1. serving as the designee of the County Executive, shall determine the officers and employees by position that are excluded from the grievance procedure, and shall maintain a list of such excluded positions;
2. the Director or designee serves, as an impartial administrator of the grievance process, to include recordkeeping and scheduling.

Grievant – endeavors to resolve the complaint or dispute in accordance with the requirements and timelines outlined in the grievance process.

Hearing Officer – in the final step of the process, determines whether a grievance filed by an employee is substantiated by facts and recommends an appropriate remedy, as applicable.

D.POLICY

1. Grievance Eligibility

Covered Employees

- a. The employment action grievances described in this policy apply to all full-time and part-time permanent employees in covered departments and agencies:
 - i. All local government departments, including Social Services;
 - ii. Employees of constitutional officers as required in Virginia Code;
 - iii. Partner agency employees, if defined as County employees by agreement
- b. Employees in the following positions are not covered by the provisions outlined in this policy:
 - i. Appointees of the Board of Supervisors;
 - ii. Officials and employees who by law serve at the will or pleasure of the Board of Supervisors or the County Executive;
 - iii. Deputies and Assistants to the County Executive;
 - iv. Employees whose terms of employment are limited by law;
 - v. Employees in temporary, on-call, or seasonal positions;
 - vi. Probationary employees
 - vii. Law-enforcement officers who have elected to proceed pursuant to § 9.1500 of the Virginia Code, the Law Enforcement Officers Procedural Guarantees Act, in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

Covered Employment Actions

- a. Disciplinary actions, including demotions, suspensions, and dismissals, provided that such action results from a determination of unsatisfactory job performance or behavior
- b. The application of personnel policies, procedures, rules, and regulations, and the application of ordinances and statutes
- c. Acts of retaliation in reaction to
 - i. reporting of violation of federal or state law to a regulatory agency;
 - ii. reporting of County ordinance or policy violation to organizational management or leadership;

- iii. the use of or the participation in the grievance procedure;
- d. Discrimination based on race, color, religion, sex, gender identity, sexual orientation, pregnancy, marital status, parental status, national origin, age, disability (physical or mental), family medical history or genetic information, political affiliation, military service, or any non-merit factors
- e. Other, similar topics.

Exempt Employment Actions

The County has the exclusive right to manage the affairs and operations of County government. For that reason, complaints involving the following employer rights are not subject to this policy:

- a. Establishment and revision of wages or salaries, position classification, or general benefits;
- b. Duties accepted by the employee as a condition of employment, or duties that may reasonably be expected to be a part of the job;
- c. The contents of ordinances, statutes, policies, procedures, rules, and regulations;
- d. The methods, means, and personnel by which duties are to be performed, including:
 - i. The provision of equipment, tools, and facilities.
 - ii. The scheduling and distribution of personnel.
 - iii. Training and career development.
 - iv. The hiring, promotion, transfer, assignment, and retention of employees.
 - v. Failure to promote, except where the employee can show that established promotional policies or procedures were not followed or applied consistently with law and County policy.
 - vi. The relief of employees from duties, or the assignment of a duty, during an emergency.
 - vii. Evaluation of employee performance.
 - viii. Termination, layoff, demotion, or suspension from duties because of lack of work, reduction in force, or job abolition, except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of an earlier grievance. In any grievance brought under this six-month exception, the County's action will be upheld if:
 - There was a valid business reason for the action, and
 - the employee was notified of the reason in writing prior to the effective date of the action.

2. Pursuance of Grievance

A grievant must be personally and directly affected by an occurrence or condition before they shall be permitted to pursue a grievance. Thus, for example, no employee may grieve another employee's job performance unless such job performance directly and adversely affects the grievant's own employment.

3. Consolidation of Grievances

If more than one grievance arises from the same factual circumstances then, at any time before one of the grievances reaches a Step 4 hearing, the County Executive may consolidate those grievances. In that case, all time limits set forth in this procedure will, from that point on, be calculated from the date of the most recently begun grievance. The grievances will then be treated as a single grievance.

4. Grievance Resolution Process

Step 1. Immediate Supervisor Notification-

The grievant must discuss, and attempt to resolve, his complaint informally with his immediate supervisor within 20 business days of the incident being grieved, or within 20 business days of the time when the employee reasonably should have known of the incident. The supervisor must respond to the grievance, either orally or in writing, within 10 business days. If the grievance alleges discrimination or retaliation by the immediate supervisor, then the grievant may present the grievance instead to the supervisor's supervisor.

Step 2. Formal Written Grievance & Department Notification-

If the grievant does not accept the Step 1 response, or if a response is not provided within the required time, then the grievant may complete and submit a Grievance Form. The Grievance Form must be delivered to the department head within 10 business days of receiving the supervisor's response or the deadline by which the supervisor was required to respond, whichever comes first. The grievant must specify the relief he/she is requesting (reinstatement, back pay, etc.). The department head must provide a copy of the documented grievance to Human Resources and meet with the grievant within 5 business days of written notification from the employee. The only people who may attend that meeting are the department head, the grievant, and witnesses. The department head must provide a written response to the grievant within 10 business days of the meeting, with a copy to the County Executive and Department of Human Resources.

If the Step 1 grievance was presented to a department head, then Step 2 is skipped.

Step 3. Organizational Leadership Review-

If the grievant does not accept the Step 2 response, or if a response is not provided within the required time, then the grievant may complete and submit Step 3 of the Grievance Form. The Grievance Form must be delivered to the County Executive within 10 business days of receiving the department head's response or the deadline by which the department head was required to respond, whichever comes first. The grievant must specify the relief he/she is requesting (reinstatement, back pay, etc.). The County Executive must meet with the grievant within 5 business days after receipt of the Grievance Form. The only persons who may attend that meeting are the County Executive, an individual selected by the County Executive (if any), the grievant, an individual selected by the grievant (if any), and witnesses. The County Executive must provide a written response to the grievant within 10 business days of the meeting.

Step 4. Grievance Hearing-

If the grievant does not accept the Step 3 response, or if a response is not provided within the required time, then the grievant may complete and submit Step 4 of the Grievance Form. The Grievance Form must be delivered to the Director of Human Resources within 10 business days of receiving the County Executive's response or the deadline by which the County Executive was required to respond, whichever comes first. Within 10 business days, the County must request a hearing officer to be appointed by the Executive Secretary of the Supreme Court of Virginia, as provided for in Va. Code § 15.2-1507. The timing of the hearing date is within the discretion of the hearing officer.

1. Presentation of Facts
 - A. The County must provide the hearing officer, as well as the grievant, with all records upon which it intends to rely at least 10 business days before the hearing.
 - B. The hearing officer may determine the order and admissibility of evidence. All evidence must be presented to the hearing officer in the presence of both parties, unless both parties consent otherwise.
 - C. Both parties must exchange a list of all documents, exhibits, and witnesses that each intends to rely on at least 2 business days before the hearing
 - D. The hearing officer may exclude witnesses and may end the hearing at the request of both parties.

2. Grievance Decision
 - A. The hearing officer does not formulate or alter existing policies or procedures.
 - B. The decision may either uphold or reverse the County Executive's action, or may impose a lesser disciplinary sanction than that determined by the County Executive.
 - C. The decision may not award attorney's fees to a grievant.

- D. The hearing officer's decision is final, subject to compliance with County policy and law, and must be provided to both parties within 20 business days of the hearing. The decision must summarize the grievance, make specific findings of fact, and state the reasons for the decision and the remedy granted.
- E. The County Executive may, within 10 business days, notify the hearing officer and the grievant that the decision is not consistent with County policy or law and that the County will not implement the decision.

5. Petition to Circuit Court

Either party may petition the Circuit Court of Albemarle County for an order directing the implementation of the decision. The Circuit Court's review is limited to determining whether the hearing officer's decision is consistent with County policy and law.

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