



RULES OF THE STATE PERSONNEL BOARD

478-1-.20 Employee Complaint Resolution Procedure

(1) Introduction:

The State is committed to creating and maintaining a positive work environment in which employees are treated with professionalism, civility and respect. When workplace issues arise due to problems, misunderstandings, or frustrations, it is the State's intent to be responsive to employees and their concerns.

While many situations pose potential workplace issues, incidents of sexual harassment present unique challenges which warrant special emphasis and implementation of a particularized approach to the prevention, detection, and elimination of sexual harassment from the state workplace. Therefore, in accordance with Executive Order 01.14.19.02, Executive Branch agencies shall receive, process, and investigate complaints and reports of sexual harassment and connected retaliation based on the procedures provided in the Statewide Sexual Harassment Policy. Please refer to the Statewide Policy for specific information regarding the reporting and handling of sexual harassment complaints and reports.

To encourage effective operations and a productive workforce, each agency will implement a complaint resolution program to address employee concerns that are unrelated to sexual harassment.

- (a) To ensure that employees have access to fair and timely consideration of their concerns, agencies must make available, as a minimum part of their complaint resolution program, the Employee Complaint Resolution Procedure outlined in this Rule.
- (b) Employees and their respective supervisors are encouraged to make reasonable efforts to resolve concerns prior to utilizing the formal Employee Complaint Resolution Procedure.
- (c) No employee will be penalized, formally or informally, for voicing a complaint in a reasonable, businesslike manner, or for participating in an established complaint resolution process. Anyone who intentionally supplies false or misleading information in connection with a complaint or anyone who attempts to or actually harasses, intimidates, or retaliates against an employee for using the Employee Complaint Resolution Procedure or for providing information in connection with a complaint will be subject to disciplinary action, up to and including termination of employment.

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(2) Applicability:

This Rule applies to Executive Branch employers, local departments of Public Health, and Community Service Boards. It does not apply to other public corporations, Authorities, or the Board of Regents of the University System of Georgia.

(3) Definitions:

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02 (Terms and Definitions):

- (a) "Agency Complaint Resolution Coordinator" means the person, designated to be responsible for receiving complaints, determining eligibility for the Employee Complaint Resolution Procedure, and tracking the processing of complaints.
- (b) "Agency Complaint Review Official" means an impartial individual designated by the agency to conduct complaint reviews.
- (c) "Filing" means the act of an employee submitting a complaint to the Agency Complaint Resolution Coordinator.
- (d) "Complaint" means a claim filed by an eligible employee that the employee's personal employment has been affected by unfavorable employment decisions or conditions due to unfair treatment.
- (e) "Complaint Form" means a form provided by the agency for the filing of employee complaints.
- (f) "Harassment" means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her race, color, national origin, religion, age, disability, genetic information, sex (which does not meet the definition of sexual harassment set forth in Section (3) of this Rule), political affiliation, protected uniformed service, or legally protected category other than sex.
- (g) "Receipt" means the date and time at which a document is delivered to the addressee by mail, electronic transmission, or personal delivery.
- (h) "Retaliation" means an act or omission intended to, or having the reasonably foreseeable effect of, punishing or otherwise impacting an individual for submitting (or assisting with submitting) a complaint or reporting discrimination or harassment,

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for participating in a discrimination or harassment investigation or proceeding, or for otherwise opposing discrimination or harassment.

(i) "Sexual harassment" means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her sex. Therefore, for purposes of this Rule, "sexual harassment" includes physical, verbal, or non-verbal/visual conduct constituting

1. unwanted sexual attention, sexual advances, requests for sexual favors, sexually explicit comments, and other conduct of an expressed or obviously implied sexual nature, by an individual who knows, or reasonably should know, that such conduct is unwanted or offensive; and

2. conduct that is hostile, threatening, derogatory, demeaning, or abusive or intended to insult, embarrass, belittle, or humiliate an individual *because of his or her sex*, regardless of whether the underlying reason for the conduct is apparent.

(j) "Workday" means a Monday through Friday business day exclusive of state holidays.

(4) Notice Requirement:

Each state agency is responsible for facilitating employee awareness of the Employee Complaint Resolution Procedure. Information about the procedure including deadlines for filing a formal complaint and who to contact for assistance must be provided in one or more formats through which employee information is typically communicated.

(5) Eligible Employees:

(a) Any employee may use the Employee Complaint Resolution Procedure for timely-filed, eligible issues, except an employee who

1. has been notified of separation from employment or
2. is seeking relief on the same matter through other administrative or judicial procedures.

(b) A complaint filed by an eligible employee prior to becoming ineligible will cease to be processed through this procedure upon the employee's separation from employment or upon the employee's filing for relief on the same matter through another administrative process or a judicial process.

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(6) Eligible Issues:

An employee may use the Employee Complaint Resolution Procedure to address a complaint related to any

- (a) allegation of unlawful discrimination based on race, color, national origin, religion, age, disability, genetic information, sex (which does not meet the definition of sexual harassment set forth in Section (3) of this Rule), political affiliation, protected uniformed service, or other legally protected category;
- (b) allegation of unlawful harassment other than sexual harassment;
- (c) retaliation for participating in the Employee Complaint Resolution Procedure;
- (d) retaliation or intimidation for exercising any right under the Rules of the State Personnel Board or policies of the agency;
- (e) erroneous, arbitrary, or capricious interpretation or application of policies, procedures, rules, regulations, ordinances, or statutes;
- (f) unsafe or unhealthy working condition(s);
- (g) any matter specifically included as eligible by an agency's policies or procedures; or
- (h) for classified employees only, written reprimand or written confirmation of an oral reprimand.

(7) Ineligible Issues:

An employee cannot use the Employee Complaint Resolution Procedure to address a complaint of or related to

- (a) sexual harassment or related retaliation (which shall be handled under the procedures provided in the Statewide Sexual Harassment Prevention Policy);
- (b) unlawful discrimination containing allegations of sexual harassment (such complaints will be handled under the procedures provided in the Statewide Sexual Harassment Prevention Policy);

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- (c) suspension, demotion, salary reduction, or separation from employment that is not retaliatory;
- (d) issues that are pending or have been adjudicated by the State Personnel Board, the Georgia Commission on Equal Opportunity, or through other state or federal administrative or judicial procedures;
- (e) issues that are subject to appeal, review, or relief as provided for in other agency policies and procedures;
- (f) performance expectations and evaluations;
- (g) actions implementing a reduction in force or furlough plan;
- (h) selection of an individual to fill a position, unless an allegation is made that the selection violates an applicable law, regulation, State Personnel Board Rule, or agency policy;
- (i) permanent changes in work hours or duties and responsibilities, unless a change is unsafe or unlawful;
- (j) temporary work assignments that do not exceed 90 days;
- (k) budget and organizational structure, including the number or assignment of positions in any organizational unit;
- (l) relocation of employees, unless the relocation qualifies for reimbursement under Office of Planning and Budget regulations;
- (m) internal security practices established by the agency;
- (n) for unclassified employees only, written reprimand or confirmation of an oral reprimand, or
- (o) any matter that is not within the jurisdiction or control of the agency.

(8) Filing a Complaint:

- (a) An employee accesses the Employee Complaint Resolution Procedure by timely filing a complaint with the Agency Complaint Resolution Coordinator.

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- (b) The complaint must be filed in a format acceptable to the agency, which may be on a designated agency complaint form.
- (c) A complaint is considered received on the day it is delivered to the Agency Complaint Resolution Coordinator by mail, electronic transmission, or personal delivery.
- (d) The complaint must identify at a minimum
 1. the eligible issue(s) involved;
 2. the parties involved;
 3. the date(s) the incident(s) or violation(s) occurred (if known);
 4. how the employee was unfavorably affected or treated;
 5. the relief sought; and
 6. any policy, procedure, rule, regulation, ordinance, or statute at issue and how it was erroneously interpreted or applied.
- (e) Time Limit for Filing a Complaint

A complaint must be filed within 10 workdays of the occurrence of the subject of the complaint or within 10 workdays of the date the employee becomes aware or should have reasonably been aware of the problem. The Agency Complaint Resolution Coordinator has the discretion to grant a waiver or extend the filing deadline.

(9) Processing a Complaint:

(a) Initial Eligibility Determination

Within 10 workdays of receiving a complaint, the Agency Complaint Resolution Coordinator will review the complaint to determine the timeliness and eligibility of the issue(s) and provide a written determination to the complaining employee.

1. If the issue is not eligible to proceed through the Employee Complaint Resolution Procedure, the written determination will include the specific reasons for the

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determination and notice that the formal complaint process is being terminated (or if the complaint is related to sexual harassment, notice will be given to explain that the complaint will be handled under the Statewide Sexual Harassment Prevention Policy).

2. If the issue is eligible, the written determination will specify the manner in which the complaint will be processed (i.e., through the Employee Complaint Resolution Procedure or through a separate agency procedure for addressing allegations of unlawful discrimination and/or harassment). A copy of the determination will be provided to the first level of supervision having the authority to grant the requested relief.

(b) Options for Processing Unlawful Discrimination/Harassment Complaints

When a complaint involves allegations of unlawful discrimination and/or harassment based on race, color, national origin, religion, age, disability, sex (which does not meet the definition of sexual harassment set forth in Section (2) of this Rule), genetic information, political affiliation, protected uniformed service, or other legally protected category, the Agency Complaint Resolution Coordinator will process the complaint in one of three ways:

1. Allow the complaint to proceed as set forth in this Rule.
2. Investigate the complaint according to an agency procedure specifically designed to address an unlawful discrimination and/or harassment complaint (other than a complaint of sexual harassment or related retaliation). The time limit for determining eligibility and processing a complaint through such procedure must not exceed 120 calendar days.
3. Advise the employee in writing that the agency has concluded processing the complaint and that the employee may present the matter to the Georgia Commission on Equal Opportunity or the Equal Employment Opportunity Commission.

(c) Complaint Review Process

1. Each state entity will appoint an Agency Complaint Review Official to review the complaint.

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2. Within 15 workdays of appointment, the Agency Complaint Review Official will conduct a review of the complaint.
3. The Agency Complaint Review Official has discretion regarding how to conduct the review and may do any of the following:
 - (i) base the review solely on written statements and documents provided;
 - (ii) interview the employee, witnesses, and others;
 - (iii) meet with the parties to facilitate an agreement;
 - (iv) clarify and/or interpret relevant law, rule, policy, procedure, etc.; or
 - (v) explore alternative resolutions.
4. If the parties resolve the issue(s) during the complaint review process, the Agency Complaint Resolution Coordinator will provide written notice to the complaining employee and supervisor confirming resolution and the conclusion of the Employee Complaint Resolution Procedure.
5. If the parties do not resolve the issue(s) during the complaint review process, the Agency Complaint Review Official will issue written findings and recommendations to the Agency Head or designee. The Agency Head or designee will then issue a written decision regarding the complaint and requested relief. Such decision will be final and will conclude the Employee Complaint Resolution Procedure.
6. The maximum time for determining eligibility and processing a complaint through the Employee Complaint Resolution Procedure is 90 calendar days. Agencies in their discretion may adopt more specific time frames within this 90-day period. This time frame is extended to 120 calendar days when a complaint is processed through an agency unlawful discrimination/harassment procedure. Complaints of sexual harassment or related retaliation shall be investigated in accordance with the time frames and procedures referenced in the Statewide Policy.

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(10) Extension of Time Limits:

Upon the agreement of all parties to a complaint, any time limit specified in this Rule may be extended. The Agency Complaint Resolution Coordinator or Agency Complaint Review Official may unilaterally extend any time limit specified in this Rule due to emergency, medical disability, legally mandated absence on the part of a relevant party involved with the complaint issues or review process, or due to operational necessity. The employee shall be immediately notified of the period of extension and the reasons therefor.

(11) Preparation Time:

- (a) An employee utilizing the Employee Complaint Resolution Procedure will be excused from duty for up to four hours during regular work hours, as approved by the supervisor, to prepare a complaint. Such preparation time is without loss of pay or leave credits. Preparation time includes time spent reviewing the employee's personnel file, preparing a complaint, and meeting with witnesses. Meetings with the Agency Complaint Review Official are considered work time and do not count as preparation time.
- (b) No more than 12 hours of regular work hours per employee per calendar year will be permitted for preparation time associated with complaints.
- (c) Employees using the Employee Complaint Resolution Procedure must obtain supervisory approval before using preparation time during regular work hours. A request to prepare during a particular time may be denied due to operational or other business needs.
- (d) The Agency Complaint Resolution Coordinator has the authority to resolve any dispute regarding the determination of reasonable and necessary time for preparing a complaint and participating in the process.

(12) Group Complaints:

Employees having a common complaint may sign and submit one group complaint, identifying up to two of the employees as selected spokespersons for the group. Employees who choose to file a group complaint waive their individual rights to file separate complaints on the same subject.

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(13) Consolidating Complaints:

- (a) The Agency Complaint Resolution Coordinator may consolidate multiple complaints filed by an employee into a single complaint.
- (b) The Agency Complaint Resolution Coordinator may consolidate separate complaints filed by two or more employees regarding the same issue(s) into a group complaint.

(14) Assistance:

An employee who needs assistance in filing or processing a complaint may contact the Agency Complaint Resolution Coordinator or other agency-designated official. In no case shall the staff assigned to assist an employee be a party or respondent to the employee's complaint. Any complaint that the agency determines to fall within the definition of "sexual harassment" outlined in Section (3) of this Rule must be processed in accordance with the Statewide Sexual Harassment Prevention Policy.

(15) Withdrawal of Complaint:

An employee may voluntarily withdraw his/her complaint at any point during the process by submitting a request in writing to the Agency Complaint Resolution Coordinator. A complaint that is withdrawn may not be re-filed.

(16) Appeal Rights for Classified Employees:

- (a) Upon receipt of the agency's final decision on a complaint and provided remedy is not available through the Georgia Commission on Equal Opportunity, a classified employee may file an appeal in writing with the Office of State Administrative Hearings if
 1. the employee is not satisfied with the agency's final decision on the merit of a complaint alleging violation of the Rules of the State Personnel Board; or,
 2. the employee is not satisfied with the agency's final decision on a complaint related to relocation, alleged unlawful discrimination, or alleged unjust coercion or reprisal because of an appeal or internal complaint proceeding; or,
 3. the employee believes the agency violated the procedure outlined in Rule 20, Employee Complaint Resolution Procedure, while processing the complaint.

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- (b) The appeal must be filed or postmarked within 10 calendar days of receipt of the agency's final decision on the complaint. Untimely appeals will not be processed.
- (c) The appeal must include the specific provision(s) of the Rules alleged to have been violated and any documentation that would support the allegation.

(17) Recordkeeping and Reporting Requirements:

- (a) Agencies must maintain a record of each complaint filed through the Employee Complaint Resolution Procedure, including the nature and disposition of the complaint, for a minimum of four years for complaints alleging discrimination or harassment based on race and for two years for all other complaints.
- (b) Each agency shall file an annual report with the Department of Administrative Services (DOAS) reflecting the number, nature, and disposition of complaints filed through the Employee Complaint Resolution Procedure. DOAS shall establish further reporting guidance to facilitate the intent of this Section.

Authority:

O.C.G.A. §§. 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board)

State Law Reference:

O.C.G.A. §§ 45-20-8 and 45-20-9 (classified service appeals)

Other References:

Ga. Exec. Order No. 01.14.19.02 (Jan. 14, 2019),
https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/01.14.19.02.pdf

Statewide Sexual Harassment Prevention Policy effective March 1, 2019
<http://doas.ga.gov/assets/Human%20Resources%20Administration/Sexual%20Harassment%20Prevention%20Policy/Statewide%20Sexual%20Harassment%20Prevention%20Policy%20FINAL.pdf>