SUMMARY of REVISION/REVIEW

General – Updated applicable state statutes. Procedure I.A.4. – Added that the Director’s decision is final and constitutes exhaustion of administrative remedies through the grievance process. Procedure I.C. – Added clarifying language about Parole, Parole Board decisions and placement on grievance restriction. Procedure I.D. – Added clarifying language about grievance submissions. Procedure I.F. – Clarified that a grievance does not have to be filed by the inmate in order to file a Tort claim with the State Claims Board. Procedure I.H. – Added that if it is determined that an emergency grievance is not an emergency then the inmate may resubmit a grievance on an Informal Grievance form within three calendar days of receiving a response. Procedure I.J. – Clarified the process and timelines associated with appealing a petition decision. Procedure I.L. – Process clarified for determination, notice, appeal and monitoring for abuse of the grievance process. Procedure I.M. – Added new section on grievance restriction. Procedure III.A.1. – Added grievances shall not be available to employees not involved in the grievance process without good cause. Procedure III.B. – Added section on monitoring the grievance process at department and at the facility level. Other minor word changes and rephrasing throughout.

APPROVED:

Scott R. Frakes, Director
Nebraska Department of Correctional Services
PURPOSE

To establish procedures for the implementation of Chapter 2 of the Nebraska Department of Correctional Services (NDCS) Rules and Regulations, Nebraska Administrative Code, Title 68 (referred to as Chapter 2 throughout this policy), for the effective and equitable resolution of inmate grievances, and for the monitoring of the inmate grievance system to ensure compliance with Chapter 2 and this Policy.

GENERAL

Nebraska Statutes, Section 83-4,111, 83-4,112, 83-4,135, 83-4,136, 83-4,137, 83-4,138 to 83-4,139 and Chapter 2 established policy and procedures for the resolution of inmate grievances. This Policy expands upon those statutes and Chapter 2.

PROCEDURES

I. INMATE ORIENTATION

Institutions that receive newly admitted inmates shall ensure that each inmate receives a copy of the Nebraska Administrative Code, Title 68, including Chapter 2 regarding inmate grievances. Inmates shall sign a receipt for the book, and the receipt shall be maintained in the inmate’s file as evidence of the delivery of the rulebook. In addition to the delivery of the rulebook, inmates will receive an explanation of the grievance procedure during their orientation process (Attachment A). The explanation shall, at a minimum, include the following information:

A. General Information

1. A reference to Chapter 2, and a brief, verbal overview of the rule.
2. How to obtain an Informal, Step One and Step Two grievance form and a brief explanation of the three grievance levels.
3. An inmate may request staff assistance in completing and processing the form.
4. The decision of the Director/ Director’s Designee is final and constitutes exhaustion of all administrative remedies available to the inmate through the grievance process.

B. Grievable Issues

1. The type of matters which are grievable include:
   a. Policies and conditions of the Department or facility affecting the grievant.
   b. Actions by employees or other inmates, and
   c. Incidents in the facility affecting the grievant personally.
2. Examples should be given of the types of grievances the inmate may file. Appropriate examples include:
This Policy is to be made available in law libraries or other inmate resource centers

C. Non-Grievable Issues

The types of matters/issues considered non-grievable are:

1. Inmate disciplinary actions. Such actions may be appealed through the process prescribed in Nebraska Administrative Code, Title 68, Chapter 6.

2. Matters over which NDCS has no control. Examples of such matters are the terms of court orders, commitment orders, state statutes and Parole/Parole Board decisions.

3. Classification decisions, to include placement on grievance restriction. Such actions may be appealed to the next higher level of authority using the Classification Appeals Form.

D. Grievance Submissions

1. The inmate will state, as briefly and concisely as possible, the specific nature of the complaint, including all the persons, and dates involved.

2. The inmate will address only one issue on the form. If the grievance includes multiple issues, the form will be returned without review and/or consideration.

3. The inmate will not submit duplicate copies of the same grievance/incident.

4. Grievances must be submitted on a grievance form. Letters attached to the grievance form will not be reviewed and/or considered through the grievance process.

5. A grievance will be written legibly and without profane, abusive or threatening language. Language used in grievances is subject to Nebraska Administrative Code, Title 68, Chapters 5 and 6.

6. The grievance form will preferably be submitted to the inmate's assigned Unit staff. If that Unit staff is the subject of the grievance, the inmate may submit the grievance to another Unit staff.

7. If the inmate is filing a grievance appeal and includes unrelated issues, the appropriate level answering authority will return the form without review and/or consideration.
8. If the inmate combines grievances of separate, previous responses into a single grievance / appeal, the appropriate level answering authority may return the form without review and/or consideration.

9. Inmates are not permitted to file more than two Step-One grievances per week (Monday through Sunday), except for valid emergency grievances.

E. Time Limits

1. The inmate must be informed that the time limits (per Chapter 2) regarding the response from the Warden/Director may be extended only with the inmate’s written permission. If such written permission is not obtained and a deadline is missed, the inmate may appeal to the next level of the process without waiting further for a response.

F. Remedies Available

An explanation of remedies available through the grievance system. Appropriate examples include:

1. Change in NDCS policy or procedure.

2. Restoration of confiscated property.

3. Referral to the State Claims Board for possible award of monetary damages. A grievance does not have to be filed by the inmate in order to file a Tort claim with the State Claims Board.

4. Investigation of alleged employee misconduct to include sexual misconduct.

5. Referral for specialized medical care, change of medication or diet.

6. Any other relief within the authority of a Warden or the Director of NDCS.

G. Grievances of a Sensitive Nature

1. An explanation of the inmate’s right to send grievances of a sensitive nature to the Director without completing the institutional steps of the grievance process. The inmate must clearly explain the nature of the grievance and the reason for not following the regular grievance process.

   The inmate should be assured that no person who is the subject of a grievance will be in a decision-making position with respect to its resolution.

2. Grievances of a sensitive nature, as described in the paragraph above, may be submitted by the inmate to the Director via interoffice mail on a Step Two Grievance Form. Inmates shall be informed that grievances sent to the Director may be in sealed envelopes with a complete return address and clearly labeled as a grievance.
H. Emergency Grievances/Grievance Appeals

1. An explanation of procedure for handling emergency grievances or grievance appeals. Emergency grievances or grievance appeals are those matters which must be resolved quickly because if the standard grievance time limits were used, the inmate would be subjected to a substantial risk of personal injury or other serious and irreparable harm. Inmates should be encouraged to bring such matters to the direct attention of designated staff who may be able to provide immediate relief without the use of the written grievance or grievance appeal procedure.

2. If the inmate chooses to use the written procedure, the inmate should mark the grievance or grievance appeal “EMERGENCY.” It will then be forwarded immediately to the level of review at which corrective action may be taken. The Warden or his/her designee (or the Director or his/her designee if the grievance or grievance appeal is forwarded immediately to the Director) will review the grievance or grievance appeal on the date of its receipt (weekends and holidays excluded) and determine whether or not it is indeed an ‘emergency’ grievance or grievance appeal. If it is determined to be an emergency grievance or grievance appeal, investigation will proceed immediately and a determination of appropriate relief (if any) will be made within 24 hours after the grievance or grievance appeal was determined to be an emergency grievance or grievance appeal. If it is not determined to be an emergency grievance, a response is provided to the inmate with direction to re-submit through the non-emergency grievance process. The inmate may resubmit the grievance on an Informal Grievance form within three (3) calendar days of the non-emergency response being received.

3. An inmate may also file an emergency grievance if he or she feels there is a substantial risk of imminent sexual abuse. The emergency grievance will immediately be forwarded to the shift supervisor, who will take immediate corrective action. An initial response shall be provided within 24 hours and a final decision will be issued within five calendar days. The initial response and final decision will serve as documentation determining whether the inmate is at substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

4. If it is determined that the grievance was not an emergency, the inmate may not appeal the decision to return the grievance to him/her, but may pursue as a standard grievance issue.

I. Further Grievance Review Options

An explanation of how to obtain further review of grievances after the appeal to the Director has been exhausted is located in Attachment A. Specific reference should be made to Chapter 2, which sets out additional methods of obtaining review of grievances.

J. Petition Circulation

1. An explanation of the procedures, which an inmate may use to circulate petitions in order to solicit inmate input into the disposition of grievances challenging
general NDCS policies and practices. Specifically, inmates may petition the Warden or the Director of NDCS requesting specific relief concerning a grievance which challenges a policy or practice. Inmate circulation of a petition shall occur in such a manner that does not interfere with the operation of facility functions or activities.

2. A petition shall be attached to a Step-One Grievance Form and submitted to the Warden within the time limits for filing Step-One Grievances.

3. Any such petition must state:
   a. The nature of the proposed change to NDCS policy or procedure.
   b. The reason for the proposed change,
   c. The circulator’s full name and mailing address,
   d. And must contain the legible signatures, inmate I.D. number, mailing addresses, and dates of signatures of all others purporting to support the petition.

4. The Warden shall consider the petition when responding to the grievance that the petition concerns. A copy of the petition will be kept by the Warden or Director along with the record of the grievance that the petition concerns.

5. If the circulator wants to appeal the petition decision of the Warden, the inmate shall attach the petition, the Step-One Grievance Form and the Warden’s response to a Step-Two Grievance Form and submit it to the Director within the time limits established for grievance appeals.

6. The petition may be returned without review and/or consideration if not submitted according to the guidelines listed above.

K. Availability of Grievance Policy

All inmates in each institution will have ready access to written copies of this Policy, which will also be made available within the respective inmate law libraries. Any inmates with a limited comprehension of the English language will receive a copy of Chapter 2 and information included within this Policy in his or her native language. If a written translation is not readily available, the inmate will be provided with sufficient assistance to ensure that he or she comprehends the information in this regulation and in Chapter 2.

L. Abuse of Grievance Process

If an inmate files a large number of frivolous, nuisance or duplicative grievances at any level, unit staff may submit a recommendation to the Warden detailing the justification for grievance restriction. A classification hearing will be conducted to determine whether the inmate is abusing the grievance process. If a determination is made that the inmate is abusing the grievance process, a reasonable limitation may be placed on the number of grievances that may be filed by the inmate. This determination will be the result of a
reclassification action that will be reviewed by the Institutional Classification Committee and approved by the Director's Review Committee.

If an inmate is found to have abused the grievance process, a notice will be provided to him/her indicating such. The notice will include the specific reasons for the decision and that future grievances demonstrating a pattern of abuse will be returned without review and/or consideration. Grievance restriction notices are not subject to appeal through the grievance process, but may be appealed through the established classification appeal process.

Designated staff will log and return any future grievances demonstrating a continued pattern of abuse to the inmate without review and/or consideration with an explanation in the log, on the grievance and to the inmate's Unit Manager or designee.

M. Grievance Restriction

1. If it is determined abuse of the grievance process has occurred, an inmate:

   a. May be limited to not more than a designated number of active grievances that are pending decision at any level at any one time, not including emergency grievances.

   b. May be limited on his/her ability to file grievances for a specified amount of time.

II. STAFF ORIENTATION

All staff members having contact with inmates shall have ready access to Nebraska Administrative Code, Title 68, Chapter 2 and to this Policy. Each Warden shall designate a place where copies of the rule and this Policy may be reviewed by staff members and will permit staff to obtain their own copies of Chapter 2 and of this Policy as requested. New staff members will receive a verbal explanation of the grievance process during staff training. At a minimum, the verbal explanation will include the information set out in Procedure I. A. of this Policy. Staff members will also be informed that, although inmate grievances are considered to be confidential, those staff members participating in the investigation or disposition of a grievance shall have access to those records which are essential to the investigation and resolution of the grievance.

III. INSTITUTIONAL PROCEDURES

Grievance procedures used by NDCS institutions shall be consistent with the information provided to inmates and staff as set out in Procedure I.A. and B. of this Policy In addition, to ensure effective and equitable resolution of inmate grievances, the following procedures will be implemented:

A. Maintenance of Records

1. To ensure compliance with Chapter 2 and this Policy, each institution will maintain complete and accurate copies of all inmate grievances filed in that institution. Copies of such grievances shall be retained for at least three years after the final response was issued to the grievant by the Warden/Director.
Copies of the grievances filed at the institutional level, will be kept in the inmate’s master record along with copies of any appeals filed with the Central Office.

Inmate grievances shall be confidential. Only those individuals whose involvement is needed to complete the investigation of the grievance shall be made aware of the grievance. Individuals contacted during the investigation shall only be made aware of the information needed to allow them to contribute to the investigation. Consistent with ensuring confidentiality, staff that participates in the disposition of a grievance shall have access to records needed to respond to the grievance. Grievances shall not be available to employees not involved in the grievance process without good cause.

2. Copies of grievances filed at the Central Office level (whether appeals, sensitive nature grievances, or emergency grievances) will be kept in a Central Office file for a period of five years. Copies of grievances filed at the Central Office level, along with the Director’s response, will be sent to the Warden of each institution/program where the grievance was initiated, to facilitate record keeping.

3. Each institution and Central Office shall log all grievances utilizing the electronic Grievance Log located in NICaMS. This log will contain, at a minimum, the following information:
   a. Date grievance was receipted by staff member;
   b. Name and number of grievant;
   c. Brief statement of nature or type of grievance
   d. Date of response by Warden or Director (completed date).

B. Monitoring
   1. Designated facility staff monitors adherence to policy time lines and quality of answers from facility level. The Department Grievance Administrator monitors adherence to policy, time lines and quality of answers at the department level.

REFERENCE

I. ATTACHMENTS
   A. Nebraska Administrative Code, Title 68, (July 14, 2017 Chapter 2, Grievance Procedure)
   B. Informal Grievance Resolution Form-Unit Staff DCS-A-adm-016 (2-97)
   C. Grievance Form Step One-Chief Executive Officer DCS-A-adm-049 (4-97)
   D. Grievance Form Step Two-Central Office Appeal DCS-A-adm-037 (2-97)
   E. Continuance Form
   F. Investigative Instrument
II. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS


B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-4C-01, 4-ACRS-6B-03