

Chapter 12 – EMPLOYEE GRIEVANCE

SECTION 1. POLICY

It is the policy of the Jicarilla Nation Government to assure that all tribal employees receive fair treatment in their employment and are provided a method of having their complaints heard if they feel they have been wronged or treated unfairly in their employment. This policy will be applied and used in a manner, which assures that an employee's complaints are heard fully and fairly. The grievance procedures or process, including a hearing before a Grievance Hearing Board, , and applied without regard to technicalities. The proceedings of the Grievance Hearing Board, the final step at which a grievance is heard, is an administrative hearing and not a court of law. Under the President or Trial Judge's approval, the length of time in any step of the hearing may be extended on a case by case basis.

A grievance is a complaint by an employee that some act or failure to act by a supervisor or Director, Executive Leadership or Court Administrator has adversely affected them in their employment. It is a formal process through which an employee may file or initiate a complaint about what an employment action that an employee considers to be wrongful or unfair treatment in the workplace. A Grievance does not include unsubstantiated general complaints or gossip about work, and/or personal disputes that do not violate employment rules, procedures or rights as an employee. Workplace disputes related to harassment, sexual harassment, or bullying in the workplace are handled through the process defined in Chapter 11, Section 7.

SECTION 2. SCOPE/COVERAGE OF THE GRIEVANCE POLICY

Classified or Court employees who have completed their new hire probationary period of the Jicarilla Nation Government may file a complaint or grievance for any action that includes the following:

- employment/personnel action that employee feels adversely or directly affects their status, benefits, or condition of employment,
- the Nation's refusal to act on an employment issues or demand that the employee feels affects their employment status, and
- a condition or action which an employee feels is contrary to personnel policy or which adversely affects the employee's position.

A Classified or Court employee who has completed their new hire probationary period may file a grievance when the employee feels there has been a violation relating to their employment. An employee may also file a grievance when the employee does not agree with an adverse action taken by a supervisor which may adversely affects his or her status, benefits, or conditions of employment. The adverse action must be based on "just or good

cause” meaning Nation policies, job description, program procedures, or applicable federal and the Jicarilla Apache Nation laws must support the action.

SECTION 3. GRIEVANCE PROCESS AND GRIEVANT’S RESPONSIBILITIES

A formal grievance by an employee must:

- be in writing
- give enough information about the nature and substance of the complaint, so that supervisory personnel and the Human Resource Office are able to know and understand the nature of the complaint and how it may violate applicable policies. state the relief the employee desires, including a specific remedy, solution, or outcome.
- Be given to the immediate supervisor within (5) working days of the date of the adverse employment action.

An employee may be asked to supplement a written grievance with additional information to clarify the nature of the grievance. An employee who withholds or falsifies information on grievance documents will be subject to immediate termination of employment. If an employee fails to file a grievance or take a required step within the time allowed by these rules, the employee gives up the right to a grievance. In computing time under these rules, the first day of the time allowed begins on the date after the act complained of, and excludes any Saturday, Sunday or holiday which falls on the last day of the time period.

Strict confidentiality shall be adhered to in the employee’s grievance process. There shall be no retaliation against any employee who files a grievance or participates in good faith in any aspect of the grievance process.

SECTION 4. HUMAN RESOURCES RESPONSIBILITIES

Human Resource Office is expected to assist Executive Leadership and Directors or the Court Administrator, and the Grievance Hearing Board. In addition, the Human Resource Office will assist and provide employees with information about grievance policy, steps, and provide instructions about completing grievance procedure forms. Further, the Human Resource Office will, throughout the grievance process, serve as facilitators to assure that this policy and procedures presented in this manual is applied, to assure a fair hearing, and to assure proper interpretation of any provision of this manual.

The Human Resource Office (Grievances) will verify or make certain that all administrative steps have been exhausted and followed prior to proceeding to a formal hearing. The Program Specialist may deny or terminate an employee’s or management’s grievance if they have not completed Steps outlined in this Section.

If the Human Resource Office identifies technicalities in the management position or the employee's grievance and/or appeal issues, the findings will be remanded back to the department for corrective action.

SECTION 5. GRIEVANCE STEPS

The following steps shall be applied in the grievance process:

STEP 1. Informal Meeting with Immediate Supervisor

- a. The employee must complete a grievance form and give to his or her immediate supervisor within five (5) working days of the date the action was filed.
- b. The supervisor must immediately hold an informal meeting with the employee to discuss the grievance and how it may be resolved.
- c. The supervisor must give the employee a written response on the grievance within three (3) working days after receiving it with copies provided to Human Resources.

If a supervisor fails to act within the time allowed or makes a decision which the employee feels is unfavorable, the employee may go on to the next step. In cases whereby the President or the Trial Judge is the immediate supervisor, the employee may go on to Step 3.

STEP 2. Informal Meeting with a Director, Executive Leadership or Court Administrator

- a. After receiving the supervisors' written response, the aggrieved employee must request a meeting with the department Director, Executive Leadership or Court Administrator using the grievance form within five (5) working days, if not satisfied with the results of the employee/supervisor meeting.
- b. The Director, Executive Leadership or Court Administrator must hold a meeting with the aggrieved employee, within three (3) working days, after receiving the employee's written request.
- c. Executive Leadership or Court Administrator must provide a written report on their findings within five (5) working days with copies provided to the employee and Human Resource Office.

If the Director, Executive Leadership or Court Administrator fails to act within the time allowed or makes a decision which the employee feels is unfavorable, the employee may go on to the next step.

STEP 3. Hearing before a Grievance Hearing Board

If employee is dissatisfied with a decision resulting from the previous steps, disagrees with findings or believe there is a failure to follow procedures and/or timelines, the employee may submit a written grievance/appeal to the Human Resource Office to request a hearing before a Grievance Hearing Board. Before processing a grievance hearing, the Human

Resource Office shall review all circumstances surrounding the grievance and/or appeal and determine if the employee is entitled to a formal grievance before a Grievance Hearing Board.

Following are the steps to request a hearing by this Board:

- a. The employee must submit the request to the Human Resource Office within five (5) working days, after receiving Executive Leadership or Court Administrator's written report of decision and/or findings.
- b. The Human Resource Office shall set a date for a hearing, which must be no later than seven (7) working days following the employee's hearing request.
- c. The Grievance Hearing Board, within five (5) working days of their hearing, shall make a written decision and/or recommend a remedy, which shall be enforceable.

In cases involving the termination of an employee, the Nation's President or Trial Judge, as appropriate must approve the actual termination, but will not participate in a grievance by the employee.

Mediation (Optional)

Before requesting a hearing or proceeding to a Grievance Hearing Board, the Human Resource Office will determine whether the use of mediation can be useful in resolving the grievance issues in question. This step will generally be reserved for severe or serious disputes. Mediation will be selected with the hope that it will be a fair and efficient way to help an employee solve disputes and in reaching an agreement.

Mediation as used here is an informal process in which a trained mediator assists the parties to reach a negotiated resolution of a complaint. The mediator does not decide who is right or wrong and has no authority to impose a settlement on the parties. The Mediator helps the parties to jointly explain and reconcile their differences.

If mediation is not an option, the grievance and appeals process may proceed.

SECTION 6. COMPOSITION OF THE GRIEVANCE HEARING BOARD

The Human Resource Office provides a list or roster of Classified or Court employees to the Nation President or Trial Judge, as appropriate, from which three (3) Classified or Court employees and one (1) alternate are selected to serve on a Grievance Hearing Board. A Classified or Court employee may not serve on the Grievance Hearing Board if the grievance is filed by a family member or relative.

SECTION 7. SUPPLEMENTAL GRIEVANCE PROCEDURES

This chapter on grievance contains policies, steps and general parameters, which governs the grievance process and proceedings of the Grievance Hearing Board. The Human Resource Office may develop and have approved supplemental and detailed procedures for the grievance process, particularly for those involving the Grievance Hearing Board. The

supplemental procedures may as a minimum, contain Board organization, defined authority, selection of presiding officer, and hearing procedures.

SECTION 8. LEGISLATIVE COUNCIL HEARING

The Grievant or the Nation dissatisfied with the decision of the Jicarilla Apache Nation President or Trial Judge may petition the Jicarilla Apache Legislative Council to hear their concerns. The employee may request a hearing through the Human Resource by filing a written request. The decision by the Legislative is final. The Legislative Council may choose to or choose not to hear the matter. In the event the Legislative Council chooses to hear the employee the Nation President and Trial Judge, as appropriate, will be full participants.

SECTION 9. PAY AND NON-PAY STATUS OF GRIEVANT

There are instances or times where an employee involved or affected by a grievance may be placed on leave without pay or leave with pay status, not to exceed thirty days (30). Circumstances or seriousness of the situation determines the type of leave. This type of action may become necessary in cases where there is reasonable threat to health and safety of one or more employees. The leave will be granted or may be required during the investigative process of a grievance.

SECTION 10. GRIEVANCE RECORDS

The Human Resource Office shall maintain records of grievance proceedings as confidential. The Office is responsible to maintain all records of grievances and to assure that grievance hearings are properly recorded.

All procedures under these rules being confidential, the Human Resource Office may take whatever steps are necessary to assure confidentiality by all the parties involved in each individual grievance case.