

Summary of Changes – January 1, 2025

The following is a brief description of the changes in the updated *Grievance Procedure Manual* (GPM) and *Rules for Conducting Grievance Hearings* (Rules), which are effective January 1, 2025. While numerous minor clarifications and syntax updates have been added to the documents, the following is a description of more significant changes.

GPM § 1.6 – Equal Employment Services

The section was updated to be consistent with the current practices of DHRM's Office of Workforce Engagement concerning complaints of unlawful discrimination and appeals.

GPM § 1.10 – Communications by Email

This section was added to ensure that all grievance participants are aware that email is an appropriate and preferred method of communication through the grievance process. This section also requires professional advocates to provide an email address to EDR to ensure timely and reliable communication, especially for purposes of hearings.

GPM § 4.1(b) – Actions Which May Qualify

Updates to this section were required to comply with various statutory changes enacted by the General Assembly in recent years regarding claims of discrimination.

GPM § 5.6 & Rules § IV(B) – Recording the Hearing

The hearing officer creates an audio recording of all grievance hearings. Updates to this section include language that prohibits all participants from making audio or video recording of grievance proceedings without the consent of the hearing participants.

GPM § 5.10 Exception for Hearings on Certain Qualified Grievances with the Departments of Corrections and Juvenile Justice

A very small number of cases (approximately one or two per year) in which an employee was terminated from DOC or DJJ for inmate/resident abuse are not heard by a grievance hearing officer, but rather proceed to a hearing at a circuit court. The update made here creates a step whereby the employee may seek records from their former employer (DOC or DJJ) pursuant to existing grievance procedure provisions prior to the case proceeding to court.

GPM § 7.2(a) – Requesting Administrative Review

Additions to this section reflect current EDR practices that permit both parties time beyond the short 15-day appeal period to supplement a request for administrative review with additional briefing. This practice is most routinely utilized by agencies.

GPM § 8.2 Documentation Relating to a Grievance

New language in this section requires attorneys who represent parties during the hearing process to attempt to resolve disputes over document requests between themselves before requesting the hearing officer or EDR to intervene. This practice is consistent with how most courts and administrative processes require parties to conduct themselves before involving the decisionmaker in a dispute over records (e.g., Va. Workers' Compensation Commission).

GPM § 8.12 – Reconsideration

This new section reflects current EDR practices that permit parties to seek reconsideration of an EDR ruling. Reconsideration allows EDR the opportunity to address a party's disagreement with a ruling and, in rare circumstances, correct mistakes that may have been made.

Rules § III(B) – Time

The changes to this section provide necessary clarity for the scheduling of hearings based on the availability of the parties, advocates, and hearing officer in the discretion of the hearing officer.

Rules § III(E) – Orders; § V(B) Adverse Inferences

These sections have been updated to reflect long-standing EDR practices that require agencies to make its current employees available for a hearing. Agencies cannot be held responsible if witnesses over whom they have no control decide not to appear for a hearing. As for all witnesses, whether they decide to testify when they appear is up to the individual witness. Section III(E) has also been updated to add concluding the hearing as a possible sanction for improper behavior during the hearing. A similar provision appears in Section IV(D).

Rules § VII(B) – Final Hearing Decisions

The language eliminated in this section addresses EDR's prior practice of returning hearing materials to the employing agency for storage, which will end. Hearing materials will still be returned to agencies if the case is appealed to circuit court, and agencies may request a copy if needed. However, for the future, especially with the utilization of more electronic records, EDR will maintain hearing records itself consistent with state retention schedules.