

**GRIEVANCE AND ALTERNATIVE
DISPUTE RESOLUTION PROCEDURES**

TABLE OF CONTENTS

	Page
Termination of a Permanent Employee Grievance Procedure.....	1
ADWS Internal Grievance Procedure for Permanent Employees	5
Grievance Form... ..	9
Reply to Employee Grievance (Immediate Supervisor)	10
Reply to Employee Grievance (Assistant Director).....	11
Reply to Employee Grievance (Director)	12
OPM Dispute Resolution Appeal Form.....	13
OPM SEGAP Hearing Witness List	14
OPM Transmittal For Grievance Determination	15
ADWS Alternative Dispute Resolution Mediation Fact Sheet.....	16
ADWS Mediation Confidentiality Agreement	18
Agreement To Mediate	19
ADWS Non-Settlement Mediation Decision.....	21
ADWS Mediation Settlement Agreement	22
ADWS Equal Opportunity Office.....	23
Sexual Harassment Policy	
Violence and Discrimination Policy (ADWS).....	25
ADWS Job Titles Exempt from Participation in the Uniform Grievance and Alternative Dispute Resolution Policy.....	28

Termination of a Permanent Employee-Grievance Procedure

Director's Level –ADWS

I. Purpose

The grievance procedure is provided to employees with a prompt review, impartial consideration and equitable disposition of their grievance. Any permanent employee who presents a grievance in good faith and in a reasonable manner shall be free from restraint, interference, discrimination, or reprisal.

II. Policy

Grievances involving allegations of unlawful discrimination, termination, suspension without pay, involuntary demotion and/or failure to award compensatory time shall commence at the ADWS Director's level.

In accordance with the ADWS Personnel Manual, Part V, Art. 3352.01, Pre-termination Notice and Opportunity to Respond, "The courts have held that classified civil service public employees have a protected property interest (employees who have attained permanent status) in their employment and, as such, are entitled to pre-termination notice and an opportunity to respond to the charge against them prior to removal for cause. This due process requirement is in addition to the post termination appeal rights of the employee through established grievance procedures and/or administrative hearing processes." (See the above reference of the ADWS Personnel Manual for detailed guidelines.)

Dismissed Permanent Employee

In accordance with the Arkansas Department of Workforce Services Personnel Manual, Part V, and Art. 3352.01, "A dismissed permanent employee retains the right to appeal the termination action in accordance with established grievance procedures."

III. Procedure

All grievances, complaints, and appeal procedures shall be processed through the EO Office. If the dismissed employee elects to utilize the grievance (fact-finding) procedure first, then he or she will not be allowed to utilize the ADWS mediation procedure. However, if the dismissed employee elects to utilize the ADWS mediation procedure and as a result there is no resolution, the dismissed employee can therefore begin the grievance procedure. The grievance procedure may be terminated by the grievant. Also, the ADWS Director may intervene in the grievance procedure if he or she decides that direct action is necessary to resolve the grievance.

Should any person within the department intentionally interfere with, hinder, block or otherwise impede the processing of a grievance, such employee shall be subject to disciplinary action. No person shall retaliate against a grievant or willfully attempt to delay the resolution or disposition of a grievance.

A. Definitions

- Administrative Record – The case file specific to each grievance assembled according to the OPM Administrative Record Rules.
- Administrative Review Hearing – An internal fact-finding hearing before a hearing officer(s).
- Adverse Action – To discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges.
- Appeal – A written request by an employee for nonbinding mediation or a review by the State Employee Grievance Appeal Panel of a final decision from the department director/chairperson/commissioner.
- Disciplinary Action – Termination, suspension, involuntary demotion, written reprimands, and non-new-hire probation.
- Dispute Resolution – A procedure that allows parties to manage conflicts constructively through grievances or mediation.
- Employee – A person regularly appointed or employed in a position of state service by the department for which he or she is compensated on a full-time basis or on a pro rata basis for whom a class title and pay grade are established in the appropriation act for the department in accordance with the Uniform Classification and Compensation Act. An employee on initial new-hire probationary status is not an employee for purposes of these rules and procedures. An employee does not include a supervisory employee.
- Grievance – A complaint by an employee regarding a disciplinary action, discrimination, harassment, or the approval/denial of compensatory time made by the supervisory employee, but not including compensation and conditions which are beyond the control of the department or are mandated by law.
- Grievance Officer – The person designated by the department as having the responsibility for acting as the liaison between the employee and the department. In the ADWS, this person shall be the EO Manager.
- Hearing Officer(s) – An impartial hearing officer appointed to review the facts of the grievance and make a recommendation for resolution to the department director.
- Mediation – A collaborative problem-solving and joint decision-making process between the employee and supervisory employee, through utilization of a third-party neutral (mediator).

- Party – The employee affected by a department decision or the department that made the decision at issue in the grievance.
- State Department – A department, board, commission, agency, division, or office of state government within the executive branch.
- State Employee Grievance Appeal Panel (“Panel”) – An impartial appeal panel established to review the facts of the grievance and issue a binding decision.
- Supervisory Employee – An individual having authority, in the interest of a state department, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the department; or if his or her exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature, the responsibility to direct other employees of the department by which he or she is employed.

B. Processes

Grievant

The grievant shall contact the EO Manager prior to the close of business within five (5) working days of being formally terminated.

Grievance Officer (EO Manager)

The EO Manager shall explain the ADWS grievance and internal mediation procedures to the grievant. If the grievant elects to utilize the grievance procedure, the manager shall explain to the employee that he or she has five (5) working days to prepare and submit his or her grievance package to the manager, with documentation, if any. Also, at this time the manager shall provide a copy of the Step 1(one) Grievance Form to the grievant. On the fifth (5th) workday, **prior to the close of business**, the grievant shall contact the manager to schedule an appointment the following day to submit his or her grievance package to the manager. Upon receipt of the package, the manager shall review the package for completeness with the grievant present. The manager is responsible for informing the ADWS Director of the forthcoming grievance.

Deadline for Completion of Grievance Procedure

The grievance procedure should be completed within thirty (30) working days commencing with the date of receipt by the ADWS Director; however, circumstances may require an extension of this guideline. If such an extension is required, the grievance procedure shall be completed as soon as practicable and without prejudicing the rights of the parties.

Director’s Level

The ADWS Director shall provide a written response or assign a hearing officer. If the director assigns a hearing officer, the hearing officer shall take testimony and accept all exhibits. The hearing shall be recorded. The hearing officer shall, upon request, provide the director and EO Manager a copy of the hearing with his or her recommendation. The director shall provide in writing, by certified mail to the grievant, his or her decision. (A copy of the director’s decision shall be provided to the EO Manager). The grievant shall notify the director, in writing, prior to the close of the 10th business day from the director’s response letter, of his or her decision to

accept or not accept the director's decision. The grievant shall be under the same time constraints to notify the director of his or her wish to refer the grievance to the State Employee Grievance Appeal Panel (SEGAP). The grievant's statement shall provide the reason(s) why he or she does not accept the director's decision.

Record Keeping

It shall be the responsibility of the EO Manager to maintain all grievances on file in the EO Office. All grievances shall be maintained for five (5) years and in such a manner as may be prescribed applicable by state and federal law. **No information relating to the employee's grievance shall become a part of the employee's permanent personnel record**

Arkansas Department of Workforce Services (ADWS) Internal Grievance Procedure for Permanent Employees

I. Purpose

The grievance procedure is provided to employees with a prompt review, impartial consideration and equitable disposition of their grievance. Any permanent employee who presents a grievance in good faith and in a reasonable manner shall be free from restraint, interference, discrimination, or reprisal.

II. Policy

It is the policy of the ADWS that all employees are given the opportunity through established procedures to resolve complaints or grievances which they believe adversely affect their employment or working conditions. It is also the policy of the ADWS that reasonable efforts be made to settle complaints or grievances as quickly as possible. Employees should submit only grievances or complaints made in good faith, expressed in reasonable terms, containing the reason for the grievance, corrective action desired, sufficient information upon which to base decisions and any available documentation.

Employees

Employees covered by the grievance policy include persons regularly appointed or employed in a position of state service by the department for which he or she is compensated on a full-time basis or on a pro rata basis for whom a class title and pay grade are established in the appropriation act for the department in accordance with the Uniform Classification and Compensation Act. An employee on initial new-hire probationary status is not an employee for purposes of these rules and procedures. An employee does not include a supervisory employee.

Intermittent Employee Grievance Procedure

If an intermittent employee believes he or she has been discriminated against on the basis of race, sex, sexual harassment or religion, he/she should report the incident(s) to the EO Manager. The manager shall conduct the investigation as outlined in these grievance procedures. Race, sex, sexual harassment and religious discrimination are the only grievable matters available to an intermittent employee. If upon separation, for any reason, the intermittent employee has not reported alleged race, sex, sexual harassment or religious discrimination, he or she will have ten (10) working days from the date of separation to do so. If not reported within ten (10) working days, the intermittent employee has waived any right to file a grievance with the EO Office. Intermittent employees shall not have the right to file an appeal with the State Employee Grievance Appeal Panel.

Grievances

Grievances include issues regarding disciplinary action, discrimination, harassment, or the approval/denial of compensatory time made by the supervisory employee, but not including compensation and conditions which are beyond the control of the department or are mandated by law.

Performance Evaluations

Performance evaluation complaints may be appealed in accordance with the ADWS Personnel Administration Manual, Article 3263. Performance evaluation complaints will not be reviewed by the State Employee Grievance Appeal Panel.

Reductions-in-Force

Reduction-in-force appeals shall be processed in accordance with the ADWS Personnel Administration Manual, and the Statewide Workforce Reduction Policy Procedure, Article 3153.01.

Non-Selection for Promotion or Lateral Transfer

Non-selection for promotion may be heard internally through the grievance procedure or mediation. Non-selection for promotion or lateral transfer will not be heard by the State Employee Grievance Appeal Panel, unless discrimination is the basis of the complaint.

III. Procedure

All grievances, complaints, and appeal procedures shall be processed through the EO Office. If the employee elects to first utilize the grievance procedure, the employee will not be allowed to utilize the mediation procedure. However, if the employee first elects to utilize mediation but there is no resolution, the employee can then initiate the grievance procedure.

The grievance procedure may be terminated at any step by the grievant. Also, the ADWS Director may intervene at any step in the grievance procedure if he or she determines that direct action is necessary to resolve the complaint. At that time, the director shall make every effort to resolve all matters involving allegations of discrimination, termination, suspension without pay, and involuntary demotion.

Should any person within the ADWS intentionally interfere with, hinder, block or otherwise impede the processing of a grievance, such employee shall be subject to disciplinary action. No person within the grievant's chain of command or other employee shall willfully attempt to delay the resolution, retaliate for, or interfere with the disposition of a grievance.

Deadline for Completion of Grievance Procedure

The internal grievance procedure should be completed within thirty (30) working days commencing from the date of receipt by the ADWS Director. However, if extenuating circumstances exist, the grievance procedure shall be completed as soon as practicable and without prejudicing the rights of the parties.

Grievant

The grievant shall contact the EO Manager within five (5) working days of the incident.

Grievance Officer (EO Manager)

The EO Manager shall explain the ADWS grievance and mediation procedures to the grievant. If the grievant elects to utilize the grievance procedure, the manager shall explain to the employee that he or she will have five (5) working days from the incident to submit his or her grievance package to the manager, with any appropriate documentation. Also, at that time the manager

shall provide the employee with Step 1 (one) Grievance Form. On the fifth (5th) workday, **prior to close of business**, the grievant shall schedule an appointment with the manager to submit his or her grievance package to the manager. Upon receipt of the grievant's package, the manager shall review the package for completeness with the grievant present.

The EO Manager is responsible for notifying the employee's chain-of-command of the forthcoming grievance. The manager shall notify each individual in the employee's chain of command of the suggested thirty (30) day (working days) deadline for completion of the routing as follows:

Employee's Chain of Command

The grievance package, with the chain of command response enclosed, must be submitted to the EO Manager prior to the close of business on the twenty-fifth (25th) work day. At that time, the manager will submit copies of the grievance to the ADWS Director and/or the ADWS Deputy Director, as appropriate. The manager will maintain the original package on file in the EO Office.

Chain of Command

The employee's chain of command has twenty-five (25) working days to route and provide its input to the employee's grievance. The last individual in the employee's chain of command shall submit the grievance package to the EO Office prior to the close of business on the twenty-fifth (25th) work day. If any individual in the grievant's chain of command needs additional time to provide his or her input to the employee's grievance, the additional time **will only** be granted by the ADWS Director and/or the ADWS Deputy Director, as appropriate. If additional time is granted by the director and/or the deputy director, the requestor shall notify the EO Manager of the authorized additional time (**no exceptions**). The director and/or the deputy director shall determine the amount of additional time allowed based on the reason for the request.

Chain of Command Steps (Procedure)

With each step in the employee's chain of command, the employee shall be allowed to review each response prior to submission to the next person(s) in the employee's chain of command, thus allowing the employee the opportunity to respond to each step by selecting one of the options located at the bottom of the step(s) sheet(s) as indicated in the Grievance and Alternative Dispute Resolution Procedures Manual. After each step (response), if the employee does not accept the response, the employee shall provide a written statement within one (1) working day. The employee will provide his or her statement to the individual who provided the response. This procedure shall continue throughout the employee's chain of command. The employee's statement(s), if any, shall be attached to each response and forwarded on to the next person in the employee's chain of command.

The last individual in the employee's chain of command shall submit the entire grievance package to the EO Office prior to close of business on the twenty-fifth (25th) working day, unless an extension is granted. In the event no explicit extension is granted, the EO Manager will submit the grievance no later than the following workday to the ADWS Director's office or ADWS Deputy Director's office, as appropriate.

Director's Level

Once the grievance package is at the ADWS Director's level, the director shall provide a written response or assign a hearing officer to the complaint. If the director's decision is to assign a hearing officer, the hearing officer shall take testimony and accept all relevant exhibits. The hearing shall be recorded. The hearing officer shall provide the director and the EO Manager a copy of the recording with his or her recommendation. The director shall provide his decision to the employee in writing.

If an employee is not satisfied with the decision reached by the director or deputy director, the grievant may appeal, using a form provided by OPM, and request nonbinding mediation or an appeal hearing before the State Employee Grievance Appeal Panel. If an employee chooses nonbinding mediation as the first appeal step, he or she does not waive his or her right to later request an appeal hearing before the panel; however, written reprimands, allegations of discrimination or harassment, and the denial of compensatory time are not eligible for nonbinding mediation.

A request for nonbinding mediation shall be filed with the department's EO Manager no later than fifteen (15) business days of receipt of the director's or deputy director's decision.

A request for an appeal hearing before the panel shall be filed with the department's EO Manager no later than ten (10) business days of receipt of the director's or deputy director's decision or ten (10) business days of the unsuccessful mediation.

It shall be the responsibility of the EO Manager to maintain all grievances on file in the EO Office. **Note: no information relating to the employee's grievance shall become a part of the employee's permanent personnel record, unless the items were part of the employee's personnel record prior to the grievance.**

STEP 1

Grievance Form

This form is to be used by the employee in filing a formal grievance. The form shall be filled in completely and will serve, without amendment, as the source document for the grievance process. All supporting documentation should be attached to this grievance form.

Employee's Name: _____ **Job Title:** _____

Immediate Supervisor's Name: _____

Employee's Work Location: _____

GRIEVANCE STATEMENT

In order for a formal grievance to be processed, the following four (4) elements must be addressed: (*Attach Additional Pages If Needed.*)

(1) What was the date of occurrence and what specific behavior, condition or violation of policy or procedure occurred which you consider constitutes a grievance?

(2) How have you been adversely affected by the situation leading to this grievance?

(3) What specific action have you taken to reconcile and improve this situation, including discussing it with your immediate supervisor? What has been the outcome of these efforts?

(4) What specific remedy do you request?

Employee's Signature: _____

Date: _____

STEP 2

REPLY TO EMPLOYEE GRIEVANCE

Immediate Supervisor

Supervisor's Signature: _____ **Date:** _____

Employee Response:

Note: Explain fully why you do not accept the above response/decision. (**Attach additional pages if needed.**)

_____ I accept the answer to my grievance.

_____ I do not accept the answer to my grievance and will refer it to the next step.

Grievant's Signature: _____

Date: _____

STEP 3

REPLY TO EMPLOYEE GRIEVANCE

Assistant Director

Assistant Director's Signature: _____ **Date:** _____

Employee Response

Note: Explain fully why you do not accept the above response/decision. (**Attach additional pages if needed.**)

_____ I accept the answer to my grievance.

_____ I do not accept the answer to my grievance and will refer it to the next step.

Grievant's Signature: _____

Date: _____

STEP 4

REPLY TO EMPLOYEE GRIEVANCE

Director

Director's Signature _____ **Date:** _____

Employee Response

Note: Explain fully why you do not accept the above response/decision. (**Attach additional pages if needed.**)

_____ I accept the answer to my grievance.

_____ I do not accept the answer to my grievance and will refer it to the next step.

_____ I do not accept the answer to my grievance and wish to refer my grievance to the State Employee Grievance Appeal Panel.

Grievant's Signature: _____

Date: _____



DEPARTMENT OF FINANCE AND ADMINISTRATION
Office of Personnel Management
Dispute Resolution Appeal Form

Print Form

Clear Form

Agency/Board/Commission

Employee's Name Job Title

Immediate Supervisor's/Charged Party's Name

Grievance Officer Phone Number

This form is to be used if and when the employee wishes to appeal the agency's decision on the disposition of a grievance. All questions must be answered. (Attach additional pages, if necessary)

(1) Why is the grievance decision being appealed?

(2) What specific remedy do you request on appeal?

(3) I request as my first appeal step: Mediation Appeal Hearing before SEGAP

Employee Signature

Date

OPM Dispute Resolution Appeal (07/01/2014)



DEPARTMENT OF FINANCE AND ADMINISTRATION
Office of Personnel Management
SEGAP Hearing Witness List

[Print Form](#)
[Clear Form](#)

To: Dispute Resolution Hearing Coordinator
 Office of Personnel Management

From:
 Grievance Officer Phone Number

Agency/Board/Commission Name

Address

Employee Name

Hearing Date

Re: Witnesses for Scheduled Hearing
 The following persons will be called as witnesses.

Witnesses for Employee:

Phone

1.	<input type="text"/>	<input type="text"/>
2.	<input type="text"/>	<input type="text"/>
3.	<input type="text"/>	<input type="text"/>
4.	<input type="text"/>	<input type="text"/>
5.	<input type="text"/>	<input type="text"/>
6.	<input type="text"/>	<input type="text"/>
7.	<input type="text"/>	<input type="text"/>
8.	<input type="text"/>	<input type="text"/>
9.	<input type="text"/>	<input type="text"/>
10.	<input type="text"/>	<input type="text"/>

Witnesses for Supervisor/Agency:

1.	<input type="text"/>	<input type="text"/>
2.	<input type="text"/>	<input type="text"/>
3.	<input type="text"/>	<input type="text"/>
4.	<input type="text"/>	<input type="text"/>
5.	<input type="text"/>	<input type="text"/>
6.	<input type="text"/>	<input type="text"/>
7.	<input type="text"/>	<input type="text"/>
8.	<input type="text"/>	<input type="text"/>
9.	<input type="text"/>	<input type="text"/>
10.	<input type="text"/>	<input type="text"/>

SEGAP Hearing Witness List (R 07/01/2014)



DEPARTMENT OF FINANCE AND ADMINISTRATION
Office of Personnel Management
Transmittal For Grievance Determination

Print Form

Clear Form

Agency, Board, Commission Date

Employee Name Job Title

Grievance Officer

Mailing Address

This form is to be used by the Grievance Officer when a decision cannot be reached internally as to the grievability of a particular problem. The form shall be filled in completely and forwarded to the Office of Personnel Management (OPM).

Grievance Statement

In order to determine the grievability of a matter a complete statement must include the following:
(Attach additional pages, if needed)

1. What was the date of alleged action?

2. What was the specific behavior, condition, or violation of policy or procedure which the employee considers constitutes a grievance?

3. How has the employee been adversely affected by this situation?

4. Why did you determine that this was not a grievable matter?

OPM Transmittal for Grievance Determination (R 07/01/2014)

ADWS
Alternative Dispute Resolution (ADR)
Mediation Fact Sheet

The ADWS uses an alternative means to resolve disputes arising within the department. The ADWS has adopted mediation as the preferred Alternative Dispute Resolution (ADR) method of the department.

Mediation

Mediation is a form of ADR that is offered by the ADWS as an alternative to the traditional grievance, investigative and litigation processes. Mediation is an informal process in which a mediator assists the parties to reach a negotiated resolution of a grievance or a charge of discrimination. The mediator does not decide who is right or wrong and has no authority to impose a settlement on the parties. Instead, the mediator helps the parties explore and reconcile their differences.

When Will Mediation Take Place

Mediation will be offered early in the process prior to an investigation of the charge. Offering mediation to the parties prior to the grievance procedure or investigation of a charge of discrimination saves the agency resources by avoiding the grievance procedure or the investigation of a charge of discrimination that might be appropriately resolved through mediation. In addition, mediation prevents the hardening of positions that can occur during a lengthy investigation or grievance procedure.

Voluntary Participation

The only grievances that will be mediated are those where both the grievant and respondent have agreed to resolve their dispute through mediation. Mediation will be scheduled as soon as possible after the filing date of the grievance and shall be held within ten (10) business days of both parties agreeing to mediate. A mediator is not required to be an attorney, but shall be certified by the Arkansas ADR Commission. The mediator shall not be employed by ADWS. If either party elects not to participate or if no resolution is reached, the grievance will be processed using the ADWS' normal grievance procedure.

Confidentiality

The EO Office maintains strict confidentiality in its mediation program. The mediator and the parties must sign agreements that they will keep everything that is revealed during the mediation confidential. Mediation is not a legal process, but rather an informal resolution process. Mediation sessions are not tape recorded or transcribed. Notes taken during the mediation are destroyed. Any records or other documents offered by either party during the mediation are also destroyed. The sole purpose of mediation is to discuss the dispute and resolve it to the mutual satisfaction of both parties. Information obtained during the mediation will not be made a part of the grievance process, no matter what the outcome.

High Probability of Settlement

ADR can provide an amicable resolution of the matter prior to the parties becoming fixed in adversarial positions. Mediation agreements do not constitute an admission by the respondent of

any violation of the disciplinary rules and procedures enforced by the ADWS. Mediation agreements result in the closure of grievances.

Reduction in Litigation and Expenses

Through mediation, grievances can be resolved early in the process, eliminating or reducing liability and expenses associated with responding to a grievance.

Enforceability

Any agreement reached during mediation can be enforced. If there is an allegation that an agreement has been breached, it should be brought to the attention of the mediator. The EO Manager will review and investigate the allegation to determine whether it will utilize the department's authority and resources to seek enforcement of the agreement.

Place of Mediation

After consulting with both parties, the mediator will arrange a time and place for the mediation with both parties. Mediation conducted by the EO Office will usually take place at the ADWS Central Office in space which has been reserved for the mediation.

Attendees

The charging party and the respondent must attend the mediation. If the respondent is unable to attend due to unforeseeable circumstances, a representative for the respondent, who is familiar with the facts of the charge and has the authority to settle the charge on behalf of the respondent, may be appointed to attend the mediation.

Length of Mediation Procedure

Mediation is an efficient process that saves time and money. Most mediation is completed in one (1) session. Successful mediation avoids time consuming procedures and achieves prompt resolution of charges.

Are All Grievances Eligible for Mediation

The ADWS Director or the ADWS Deputy Director, as appropriate, will evaluate each charge to determine whether it is appropriate for mediation, considering such factors as the nature of the grievance, the relationship of the parties and the relief sought by the grievant. Grievances that the director or the deputy director, as appropriate, determines to be without merit are not eligible for mediation.

A Grievance Not Resolved in Mediation

If a grievance is not resolved during the mediation process, the grievance is processed through the ADWS grievance procedure. Since the entire mediation process is strictly confidential, information revealed during the mediation session cannot be disclosed to anyone. Therefore, it cannot be used during the grievance procedure.

ADWS Mediation Confidentiality Agreement

Employee

Name _____

Job Title _____

Workforce Center Location _____

Respondent

Name _____

Job Title _____

Workforce Center Location _____

1. The parties agree to participate voluntarily in mediation in an effort to resolve the grievance filed with the ADWS EO Office.
2. The parties agree that all matters discussed during the mediation are confidential. However, matters that are admissible in a court of law or other administrative process continue to be admissible, if otherwise discoverable, even though brought up in a mediation session. Confidentiality will not extend to threats of imminent physical harm or incidents of actual violence that occur during the mediation.
3. All communications between the mediator and the parties are considered dispute resolution communications and shall be confidential.
4. The parties agree not to subpoena the mediator or compel the mediator to produce any documents provided by a party in any pending or future administrative or judicial proceeding. The mediator will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding. The parties further agree that the mediator will be held harmless for any claim arising from the mediation process.
5. Mediation sessions will not be tape recorded or transcribed by the mediator or any of the participants. All information or materials provided to or created by the mediator, including all notes, records or documents generated during the course of the mediation, shall be destroyed by the mediator after conclusion of the mediation. Parties or their representatives are not prohibited from retaining their own notes. However, the EO Office will not maintain any such notes or records as part of its record keeping procedures.
6. If a settlement is reached by all of the parties, the agreement shall be reduced to writing and when signed shall be binding upon all parties to the agreement. If the grievance is not resolved through mediation, it is understood by the parties that the grievance will be processed in accordance with the ADWS grievance procedure.

Grievant Date

Respondent Date

AGREEMENT TO MEDIATE – APPEAL MEDIATION

Department of _____

1. I understand that this is an agreement by the parties to attempt to resolve the following issues by submitting the matters to appeal mediation:

2. I understand that mediation is a dispute resolution process that is non-adversarial in nature and seeks to find reconciliation between disputing parties. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, timely, and is advantageous to both parties.

3. I understand that the Mediator is committed to treating this matter in a fair and unbiased way. The Mediators' role is to facilitate and help the parties themselves reach a mutually satisfactory resolution to the problem. The decision-making power rests with the parties, not the Mediator. **If the parties cannot agree on a resolution (known as a "Non-settlement, the Mediator will provide a suggested resolution to the Director of the Department of Finance and Administration.** If an impasse exists, either party or the Mediator may stop the proceedings.

4. I understand that the Mediator has no authority to make decisions or act as a judge or arbitrator. Although the Mediator may be an attorney, the Mediator will not act as an advocate for any party in the mediation. To the extent either the employee or the agency wishes to have a representative or legal counsel to consult with or assist at any stage in the mediation, the party is responsible for taking steps to obtain such a person.

5. I understand that mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. I agree not to subpoena or request the Mediator to serve as a witness or request or use as evidence any materials prepared by the Mediator for the mediation, with the exception of a Settlement Agreement signed by the parties. In no event will the Mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation, with the exception of the suggested resolution. **If the parties cannot agree on a resolution ("Non-settlement"), the Mediator is required by law to submit a suggested resolution to the Director of the Department of Finance and Administration.** I understand that matters that are admissible in a court of law or other administrative process continue to be admissible, if otherwise discoverable, even though brought up in a mediation session.

6. Mediation is private, confidential and privileged from discovery. To ensure confidentiality, any writings or notes made or taken during the mediation session by the Mediator, or either party and/or representatives shall be collected and destroyed by the Mediator, in the presence of all, prior to adjournment of the mediation.

7. I understand that no party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is

reached, the Mediator shall reduce the agreement to writing, and when signed and approved by the parties and/or appropriate authorities, the Settlement Agreement shall be legally binding upon all parties to the agreement.

8. In electing to use mediation, I understand that no external statutory deadlines are waived and that all external statutory deadlines must be adhered to.

9. The employee's rights to pursue external formal processes are not waived and will be protected during the mediation process. At the same time, the employee's responsibilities to comply with all requirements of any external administrative or court process, e.g., time limits, points of contact, ARE NOT WAIVED and must be followed.

10. I understand that in the event the mediation is terminated for any reason, the employee may continue to pursue the matter through the fact-finding process. The employee may also pursue the matter through any external formal resolution of the matter as he/she sees fit as long as they are within statutory time limits.

11. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this process.

12. I will sincerely attempt to resolve this matter; agree to cooperate with the Mediator assigned to this matter; and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. I will conduct myself in a courteous and non-hostile manner, use appropriate language, and allow the Mediator to interrupt the process if they feel a caucus or break is needed to facilitate the mediation process. I enter into this process in good faith.

13. The Mediator agrees to notify the parties, their representatives, and the appropriate management official of the status and results of the mediation process within one (1) business day of the conclusion or termination of the process. **If the parties cannot agree on a resolution ("Non-settlement"), the Mediator is required by law to issue a suggested resolution to the DFA Director within ten (10) business days of the mediation.**

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ,
UNDERSTAND, AND AGREE TO THIS AGREEMENT TO PARTICIPATE IN MEDIATION:

EMPLOYEE'S SIGNATURE _____ DATE _____

EMPLOYEE REPRESENTATIVE'S SIGNATURE (if appropriate) _____ DATE _____

MANAGEMENT OFFICIAL'S SIGNATURE _____ DATE _____

AGENCY REPRESENTATIVE'S SIGNATURE (if appropriate) _____ DATE _____

MEDIATOR'S SIGNATURE _____ DATE _____

ADWS Non-Settlement Mediation Decision

The parties have come to the decision that a satisfactory agreement to resolve the grievance cannot be reached through mediation.

By signing below, we acknowledge that we cannot reach a settlement or agreement in this matter. We further understand that all matters discussed and/or information provided during mediation shall be kept confidential.

Employee's Signature

Date

Respondent's Signature

Date

Mediator's Signature

Date

ADWS Mediation Settlement Agreement

This settlement agreement resolves a dispute between _____
Employee's Name

and _____ regarding _____
Respondent's Name Reason for dispute
Reason for dispute continued

This settlement agreement provides

When signed and agreed upon by the parties, this settlement agreement shall be binding upon all parties.

By signing below, I acknowledge that I have read, understand, and agree to this mediation settlement agreement. I further agree that any and all information received or provided shall be kept confidential.

Employee's Signature

Date

Respondent's Signature

Date

Mediator's Signature

Date

**Arkansas Department of Workforce Services’
Equal Opportunity Office
Guidance for Charging Parties under Title VII of the Civil Rights Act & the
Americans with Disabilities Act (ADA)**

1. To initiate a charge, the charging party shall provide a written statement with documentation, if any, to the EO Manager within thirty (30) working days of the incident(s).
2. The EO Manager shall inform all concerned parties within two (2) working days upon receipt of the charging party’s written statement.
3. A settlement may be made if the parties agree. Information obtained during this process may be used in making a decision on the merits of the charge if a settlement is successful.
4. A charge shall be processed immediately if the facts appear strongly to support a violation of Title VII of the Civil Rights Act and/or the Americans with Disabilities Act (ADA).
5. Charges in which the statement(s) is less strong will be assigned for follow up investigation.
6. Charges may be summarily dismissed by the EO Manager if, upon examination of the charges, it is apparent that there is no basis for the complaint under at least one of the following:
 - a. Title VII of the Civil Rights Act;
 - b. The Americans with Disabilities Act (ADA);
 - c. A violation of the agency’s Disciplinary Rules and Procedures; or
 - d. Other Federal or State discrimination laws.
7. A charge may be selected for resolution through the ADWS mediation program or this process may be offered to the charging party at the initial meeting with the EO Manager. Mediation is offered as an alternative to the often lengthy investigative process. Participation in the ADWS mediation program is voluntary. If the charging party and respondent(s) consent, a mediation session will be scheduled as soon as possible to help both come to an agreement to resolve the charge. If the mediation session is unsuccessful, the charge will be returned for normal charge processing through the EO Office.

Employee’s Responsibilities

Failure of the charging party to meet any of the following requirements can result in dismissal of the complaint. Accordingly, the charging party should:

- a. Cooperate in the investigation;
- b. Inform the EO Office of any prolonged absence(s), change of address, telephone number or change in place of employment;
- c. Claim any certified mail from the ADWS.

If no violation(s) are found under the department’s disciplinary rules and procedures, federal and or state laws with respect to the allegations in the charge, the employee will be given the opportunity to provide additional evidence. However, if the investigation is completed without finding evidence of any violation, a letter will be sent to the employee by certified mail advising you of such conclusion, and dismissing the complaint. The letter of dismissal does not prohibit

employees from availing themselves of remedies outside the department's procedures. Each employee retains the right to file a complaint with the Equal Employment Opportunity Commission or pursue other legal remedies. **No information relating to the employee's complaint shall become a part of the employee's personnel record. It shall be the responsibility of the EO Manager to maintain all complaints on file in the EO Office. All complaints shall be maintained in hard copy for five (5) years.**

Sexual Harassment Policy Violence and Discrimination Policy (ADWS)

Purpose

The sexual harassment policy of the department is intended to eliminate all sexual harassment and discrimination and to provide to employees a prompt review, impartial consideration and equitable disposition of grievances. Any permanent employee who presents a grievance in good faith and in a reasonable manner shall be free from restraint, interference, discrimination, or reprisal.

Policy

It is the policy of the ADWS to increase awareness and knowledge of sexual harassment. It is the policy of the ADWS that sexual harassment as defined in accordance with federal guidelines, CFR Title 29, Title VII, Part 1604, will not be tolerated. There will be **zero (0) tolerance**.

Federal Definition of Sexual Harassment

“Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

“With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.”

“An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.”

“Other Related Practices”

Where employment opportunities or benefits are granted because of an individual’s submission to the employer’s sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

Procedure

All complaints of sexual harassment shall be processed through the EO Office, utilizing one of the following ADWS procedures, (1) grievance procedure, (2) mediation procedure, or (3) a formal letter of complaint. If the employee elects to utilize items two (2) or three (3) and as a result there is no resolution, the employee can begin the grievance procedure.

Mediation, formal letter of complaint and grievance procedures may be terminated at any point for whatever reason during the process by the employee. The ADWS Director or the ADWS Deputy Director may intervene in either procedure if he or she decides that direct action is necessary to resolve the complaint. If the employee terminates the procedure for whatever reason, he or she shall provide a written statement containing the reason for terminating the procedure. The statement is to be addressed to the EO Manager. The manager shall provide the employee's chain of command copies of the employee's statement.

Investigative Procedure

The investigation/interview(s) shall be conducted **ONLY** by the EO Office. During the initial interview with the employee, the interviewer will obtain who, what, when, where and how of the complaint. The interviewer will provide a typed report of the information obtained during the initial interview with the employee. The interviewer's report shall contain at the top of the report, the date, the employee's name, workplace, job title, and supervisor's and or manager's name, name of the area operations chief (AOC) (if appropriate) and signature of the interviewer. The report shall be placed in the EO Office file. The employee will be asked to provide a written statement concerning his or her complaint. The employee's statement shall contain the names and job titles of all parties concerned; workplace location; and date(s) of incident(s). The employee's statement shall only contain information concerning the nature of his or her complaint and must be concise. The interview(s) will not be recorded by the interviewer or the interviewee. The interviewer shall explain to the interviewee(s) that he or she is required to cooperate and that retaliation against any employee for filing a complaint or participating in the investigation is prohibited. The interviewer shall explain to the interviewee(s) that the process involves interviewing a number of people and reviewing documents; that it may be necessary to conduct a follow up interview if new information comes to light; and that management will make the decision about necessary action after reviewing the investigation report. The interviewer shall explain to all concerned parties that information gathered will be kept confidential to the extent possible. The interviewer shall inform the interviewee not to discuss the investigation with others. The employee shall be informed by the interviewer that his or her chain of command will be notified of the forthcoming investigation.

Questions for the Investigation of Allegations of Harassment, Violence and Discrimination

1. Name, position and workforce location.
2. How long have you worked for state government and who is your immediate supervisor?
3. Are you aware of and been provided copies of the department's policies concerning (nature of complaint)?
4. Have you attended training on these issues? When? Is that training documented?
5. What happened?
6. When did it happen?
7. Where did it happen?
8. Has it ever happened before?
9. Has it happened to anyone else?
10. Who was present when it happened?
11. Have you talked with anyone about the incident(s)?
12. How did the behavior make you feel?
13. Was it conveyed to the alleged harasser that the behavior was unwelcome?

14. Is there any other information (documents, memos, e-mails, etc.) you may have that would substantiate the allegations(s)?
15. Did you report the incident(s) to your supervisor or office manager?

The interviewer shall remind participant(s) that retaliation against a complainant or investigation participant is prohibited; encourage the participant to report any additional information he or she become aware of to the investigators and to provide a written statement.

Complainant Responsibility

The complainant shall immediately inform his or her supervisor at the time of the incident. The department encourages solution(s) for complaints to be made at the lowest level of the chain of command, if possible. If at this level a solution is not found, then by the close of business on the fifth (5th) work day of the incident, the employee shall report the incident to the EO Office.

Equal Opportunity Manager or Staff

The EO Manager or a staff member in the EO Office shall explain the investigative and grievance procedures to the employee. If the employee elects to utilize the grievance, the manager or staff member shall explain the procedure as outlined in the ADWS internal grievance procedure for permanent employees or the grievance procedure for the ADWS intermittent employees, as appropriate.

Deadline for Completion of an Investigation

The investigation shall be completed within twenty-five (25) workdays. The twenty-five (25) work days shall commence on the following day after receipt of the employee's signed statement. The EO Manager shall notify the employee's chain of command of the forthcoming investigation. The manager shall contact all persons named in the employee's statement to schedule an appointment for an interview. Upon completion of the investigation, a report shall be written with the findings and a recommendation(s) or suggestion(s) to assist in solving the problem. Once the investigation has been completed, a copy of the report shall be submitted to the employee's chain of command.

Upon receipt of the report, the employee's manager or supervisor shall provide a written statement stating the immediate and appropriate corrective action he or she will take to avoid any future displays of sexual harassment, harassment, discrimination or violence in the workplace. The AOC and or department head shall review and sign off on the appropriate corrective action measure(s) prior to submission to the EO Office. The EO Manager shall submit the entire package to the director for his or her review. **Final approval or disapproval of appropriate corrective action(s) to be taken shall be made by the director. No information relating to the investigation shall become a part of the employee's personnel record, unless such information was part of the personnel record prior to or independent of the complaint process. It shall be the responsibility of the EO Office to maintain all investigation documentation(s) on file in the EO Office.**

Arkansas Department of Workforce Services

**Job Titles of positions exempt from participation in the Uniform Grievance and
Alternative Dispute Resolution policy**

<i>DWS Deputy Director</i>	<i>Agency Controller I</i>
<i>DWS Workforce Investment Director</i>	<i>Attorney Specialist</i>
<i>AR Appeals Tribunal Chairman</i>	<i>Human Resources Administrator</i>
<i>DWS Assistant Director</i>	<i>Information System Security Specialist</i>
<i>DWS ASST. DIR., Employment Assist.</i>	<i>Administrative Services Manager</i>
<i>DWS ASST. DIR., Financial Management</i>	<i>Assistant Controller</i>
<i>DWS ASST. DIR., Info and Technology</i>	<i>Attorney</i>
<i>DWS ASST. DIR., Unemployment Ins.</i>	<i>DWS Area Operations</i>
<i>DWS General Counsel</i>	<i>DWS Division Chief</i>
<i>DWS ASST. DIR., TANF</i>	<i>DWS Field Manager III</i>
<i>DWS ASST. DIR., Grants Resource Admin.</i>	<i>DWS Equal Opportunity Manager</i>
<i>Information Systems Manager</i>	<i>DWS Field Manager II</i>
<i>DWS DIR. Internal Audit and Security</i>	<i>Training Project Manager</i>
<i>DWS Program Administrator</i>	<i>DWS Field Manager I</i>
<i>Attorney Supervisors</i>	<i>Managing Attorneys</i>