have been made in the compliance procedures. Among the changes are a new requirement that the ALJ provide findings to all parties, not just the CAO, an added provision for filing exceptions to an ALJ’s recommended decision, a delineation of the authorities of the ALJ, and a clarification of the responsibility for supervising compliance with the final agency decision between the Responsible Official and the CAO.

The Department also received some comments on the appropriateness of providing for an appeal by either the complainant or respondent. Some commenters objected to allowing a respondent to obtain an administrative appeal because it could delay remedying discrimination. On the other hand, an impartial adjudicatory mechanism would require that opportunity is provided for both sides to appeal. For this reason, the Department finds it necessary and appropriate for both complainant and respondent to have the right to an administrative appeal.

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

Subpart A—Minimum Standards for Inmate Grievance Procedures

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AUTHORITY: 42 U.S.C. 1997e.

SOURCE: Order No. 957–81, 46 FR 48186, Oct. 1, 1981, unless otherwise noted.

Subpart A—Minimum Standards for Inmate Grievance Procedures

§ 40.1 Definitions.

For the purposes of this part—


(b) Applicant means a state or political subdivision of a state that submits to the Attorney General a request for certification of a grievance procedure.

(c) Attorney General means the Attorney General of the United States or the Attorney General’s designees.

(d) Grievance means a written complaint by an inmate on the inmate’s own behalf regarding a policy applicable within an institution, a condition in an institution, an action involving an inmate of an institution, or an incident occurring within an institution. The term “grievance” does not include a complaint relating to a parole decision.

(e) Inmate means an individual confined in an institution for adults, who has been convicted of a crime.

(f) Institution means a jail, prison, or other correctional facility, or pretrial detention facility that houses adult inmates and is owned, operated, or managed by or provides services on behalf of a State or political subdivision of a State.

(g) State means a State of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) Substantial compliance means that there is no omission of any essential part from compliance, that any omission consists only of an unimportant defect or omission, and that there has been a firm effort to comply fully with the standards.

§ 40.2 Adoption of procedures.

Each applicant seeking certification of its grievance procedure for purposes of the Act shall adopt a written grievance procedure. Inmates and employees shall be afforded an advisory role in the formulation and implementation of a grievance procedure adopted after the effective date of these regulations, and
§ 40.3 Communication of procedures.

The written grievance procedure shall be readily available to all employees and inmates of the institution. Additionally, each inmate and employee shall, upon arrival at the institution, receive written notification and an oral explanation of the procedure, including the opportunity to have questions regarding the procedure answered orally. The written procedure shall be available in any language spoken by a significant portion of the institution’s population, and appropriate provisions shall be made for those not speaking those languages, as well as for the impaired and the handicapped.

§ 40.4 Accessibility.

Each inmate shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification, or other administrative or legislative decision to which the inmate may be subject. The institution shall ensure that the procedure is accessible to impaired and handicapped inmates.

§ 40.5 Applicability.

The grievance procedure shall be applicable to a broad range of complaints and shall state specifically the types of complaints covered and excluded. At a minimum, the grievance procedure shall permit complaints by inmates regarding policies and conditions within the jurisdiction of the institution or the correctional agency that affect them personally, as well as actions by employees and inmates, and incidents occurring within the institution that affect them personally. The grievance procedure shall not be used as a disciplinary procedure.

§ 40.6 Remedies.

The grievance procedure shall afford a successful grievant a meaningful remedy. Although available remedies may vary among institutions, a reasonable range of meaningful remedies in each institution is necessary.

§ 40.7 Operation and decision.

(a) Initiation. The institution may require an inmate to attempt informal resolution before the inmate files a grievance under this procedure. The procedure for initiating a grievance shall be simple and include the use of a standard form. Necessary materials shall be freely available to all inmates and assistance shall be readily available for inmates who cannot complete the forms themselves. Forms shall not demand unnecessary technical compliance with formal structure or detail, but shall encourage a simple and straightforward statement of the inmate’s grievance.

(b) Inmate and employee participation. The institution shall provide for an advisory role for employees and inmates in the operation of the grievance system. In-person hearings and committees consisting of either inmates or employees or both are not required by this paragraph, but they are permitted so long as no inmate participates in the resolution of any other inmate’s grievance over the objection of the grievant.

(c) Investigation and consideration. No inmate or employee who appears to be involved in the matter shall participate in any capacity in the resolution of the grievance.

(d) Reasoned, written responses. Each grievance shall be answered in writing at each level of decision and review. The response shall state the reasons for the decision reached and shall include a statement that the inmate is entitled to further review, if such is available, and shall contain simple directions for obtaining such review.

(e) Fixed time limits. Responses shall be made within fixed time limits at each level of decision. Time limits may vary between institutions, but expeditious processing of grievances at each level of decision is essential to prevent grievance from becoming moot. Unless the grievant has been notified of an extension of time for a response, expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process. In all instances grievances must be processed from initiation to final disposition within 180 days, inclusive of any extensions.
§ 40.11 Submissions by applicant.

(a) Written statement. An application for certification of a grievance procedure under the Act shall be submitted to the Office of the Attorney General, U.S. Department of Justice, Main Justice Building, Washington, DC 20530, and shall include a written statement describing the grievance procedure, a brief description of the institution or institutions covered by the procedure, and accompanying plans for or evidence of implementation in each institution.

(b) Evidence of compliance with established standards. An applicant seeking certification of a grievance procedure as being in substantial compliance with the standards promulgated herein should submit evidence of compliance with those standards, including the following information:

(1) Instructional materials. A copy of the instructional materials for inmates and employees regarding use of the grievance procedure together with a description of the manner in which such materials are distributed, a description of the oral explanation of the grievance procedure, including the circumstances under which it is delivered, and a description of the training, if
§ 40.12 Notice of intent to apply for certification.

The applicant shall post notice of its intent to request certification in prominent places in each institution to be covered by the procedure and shall provide similar written notice to the U.S. District Court(s) having jurisdiction over each institution to be covered by the procedure. The notices shall invite comments regarding the grievance procedure and direct them to the Attorney General.

§ 40.13 Review by the Attorney General.

The Attorney General shall review and respond to each application as promptly as the circumstances, including the need for independent investigation and consideration of the comments of agencies, and interested groups and persons, permit.

§ 40.14 Conditional certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence less than one year is at the time of application in substantial compliance with the standards promulgated herein or is otherwise fair and effective, the Attorney General shall grant conditional certification for one year or until the applicant satisfies the requirements of § 40.15, whichever period is shorter.

§ 40.15 Full certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence longer than one year at the time of application is in substantial compliance with the standards promulgated herein or is otherwise fair and effective, the Attorney General shall grant full certification. Such certification shall remain in effect unless and until the Attorney General finds reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the standards promulgated herein.
§ 40.16 Denial of certification.

If the Attorney General finds that the grievance procedure is not in substantial compliance with the standards promulgated herein or is no longer fair and effective, the Attorney General shall deny certification and inform the applicant in writing of the area or areas in which the grievance procedure or the application is deemed inadequate.

§ 40.17 Reapplication after denial of certification.

An applicant denied certification may resubmit an application for certification at any time after the inadequacy in the application or the grievance procedure is corrected.

§ 40.18 Suspension of certification.

(a) Reasonable belief of non-compliance. If the Attorney General has reasonable grounds to believe that a previously certified grievance procedure may no longer be in substantial compliance with the minimum standards or may no longer be fair and effective, the Attorney General shall suspend certification. The suspension shall continue until such time as the deficiency is corrected, in which case certification shall be reinstated, or until the Attorney General determines that substantial compliance no longer exists or that the procedure is no longer fair and effective, in which case certification shall be suspended pursuant to §40.19 of this part.

(b) Defect may be readily remedied; good faith effort. If the Attorney General determines that a grievance procedure is no longer in substantial compliance with the minimum standards or is no longer fair and effective, but has reason to believe that the defect may be readily corrected and that good faith efforts are underway to correct it, the Attorney General may suspend certification pursuant to §40.19 of this part.

§ 40.19 Withdrawal of certification.

(a) Finding of non-compliance. If the Attorney General finds that a grievance procedure is no longer in substantial compliance with the minimum standards or is no longer otherwise fair and effective, the Attorney General shall suspend certification, unless the Attorney General concludes that suspension of certification under §40.19(b) of this part is appropriate.

(b) Notification in writing of withdrawal of certification. The Attorney General shall notify an applicant in writing that certification has been suspended and state the reasons for the action.

(c) Recertification after withdrawal. An applicant whose certification has been withdrawn and who wishes to receive recertification shall submit a new application for certification.

§ 40.20 Contemplated change in certified procedure.

A proposed change in a certified procedure must be submitted to the Attorney General thirty days in advance of its proposed effective date. The Attorney General shall review such proposed change and notify the applicant in writing before the effective date of the proposed change if such change will result in suspension or withdrawal of the certification of the grievance procedure.

§ 40.21 Notification of court.

The Attorney General shall notify in writing the Chief Judges of the U.S. Court of Appeals and of the U.S. District Court(s) within whose jurisdiction the applicant is located of the certification, suspension of certification, withdrawal of certification and recertification of the applicant’s grievance procedure. The Attorney General shall also notify the court of the certification status of any grievance procedure at the request of the court or any party in an action by an adult inmate pursuant to 42 U.S.C. 1983.

§ 40.22 Significance of certification.

Certification of a grievance procedure by the Attorney General shall signify only that on the basis of the information submitted, the Attorney General believes the grievance procedure is in substantial compliance with the minimum standards or is otherwise fair and effective. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

(Order No. 1955–95, 60 FR 13904, Mar. 15, 1995)

PART 41—IMPLEMENTATION OF EXECUTIVE ORDER 12250, NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

Subpart A—Federal Agency Responsibilities

§ 41.1 Purpose.

The purpose of this part is to implement Executive Order 12250, which requires the Department of Justice to coordinate the implementation of section 504 of the Rehabilitation Act of 1973.


§ 41.2 Application.

This part applies to each Federal department and agency that is empowered to extend Federal financial assistance.