

Part 4. Personnel Policies

Section V. Internal Grievance Procedures

A. Classified Employees Problem-Solving, Due Process, and Appeal Procedure (Updated 5/026/11/08)

1. General Information:

The Problem-Solving Track is available to any classified employee and deals with non-disciplinary matters [job related issues other than those defined as disciplinary under Idaho Code § 67-5315(2)]. It generally requires an employee to meet with his or her immediate supervisor to resolve the matter(s); file for problem solving if the matter(s) is/are not resolved; meet with upper-level management; and receive a final decision from the President respective Vice President. In the event the employee or the employee's department does not ordinarily report to a Vice President, the Vice President for Finance and Administration shall make the final decision.

The Due Process Track deals exclusively with the actions set forth in Idaho Code § 67-5315(2) - dismissals, suspensions, demotions, and involuntary transfers. This process generally requires the University to provide the affected employee with a notice of contemplated action and an opportunity to be heard before making any decision to impose disciplinary sanction(s) or involuntary transfers.

2. Problem-Solving Track Procedures:

Permanent, provisional, and entrance probationary classified employees are eligible to file under the Problem-Solving Track. Any job-related matters may be handled through the Problem-Solving Track, with the exception of the following: (1) compensation except as it applies to alleged inequities within a particular agency or department; (2) termination during entrance probationary period; and (3) the matters set forth in Idaho Code § 67-5315(2) (dismissals, demotions, suspensions and involuntary transfers).

The Problem-Solving Track is a chain-of-command process, which includes the following steps: (1) meeting with the immediate supervisor; (2) filing for problem-solving; (3) meeting with the Dean or Department Director; and (4) receiving a final decision from the President respective Vice President. Problem-Solving Request forms are available in the ISU Office of Human Resources. If an employee fails to meet any time limits of the problem-solving procedure, the problem will be considered resolved unless both sides agree upon an extension. The employee is entitled to be represented by a

person of his or her choosing at each step of the problem-solving procedure, except the initial informal discussion with the immediate supervisor.

Step 1: Meeting with Immediate Supervisor

Before actually filing for problem-solving, an eligible employee must first make a reasonable attempt to meet with and resolve the matter(s) with his or her immediate supervisor. Representatives are not permitted at the informal meeting with the immediate supervisor.

Employees and supervisors are strongly encouraged to engage in an informal problem-solving meeting in order to identify the precise matter(s) at issue, discuss ways to resolve the matter(s) and hopefully resolve the matter(s) at the lowest level possible.

If Step 1 did not result in resolution of the problem(s), an employee may proceed to Step 2 of this procedure. For Step 2, forms are available in the ISU Office of Human Resources.

Step 2: Filing for Problem-Solving

Eligible employees who choose to file are required to file for problem-solving in writing no later than five (5) working days after being notified or becoming aware of any matter which may be handled through the Problem-Solving Track. The time limit for filing shall be extended due to an employee's illness or other approved leave. If the filing alleges an ongoing pattern of harassment or illegal discrimination, it shall be referred to the EEO/Affirmative Action Director for review.

The employee must file the Problem-Solving Request Form with his or her immediate supervisor with a copy sent to the Dean or Department Director and the ISU Office of Human Resources. The employee's department may accept a late filing, but the employee loses any right of review by the Idaho Division of Human Resources and Personnel Commission (see 3., the Idaho Division of Human Resources and Personnel Commission Appeal Process, IDAPA 15.04.01.201) by not complying with the five (5) working day time limit (which begins when the employee is made aware of the problem).

Step 3: Meeting with the Dean or Department Director

The employee shall meet with the Dean or Department Director no later than five (5) working days after filing for problem-solving. The Dean or Department Director may consult with the employee's immediate supervisor to determine who may be best able to resolve the problem in this meeting with the employee. The Dean or Department Director may also take into account the employee's preference in deciding who should be present. Since the goal of this procedure is to resolve problems at the lowest level possible, the meeting may involve the immediate supervisor and any additional people who may be helpful in resolving the issue(s). The Dean or Department Director is responsible for scheduling the meeting.

The employee shall receive a written suggested solution from the Dean or Director no later than three (3) working days after the meeting. The Dean or Director will send a copy to the ISU Office of Human Resources.

If the employee is not satisfied with the suggested solution, she/he may request a review by the ~~President~~respective Vice President. The request for review by the respective Vice President (Form 3, Vice Presidential Review Request Form) shall be filed with the designated department no later than three (3) working days after receiving the Dean or Department Director's written suggested solution.

Step 4: Final Decision

The ~~President~~respective Vice President may consult with the employee, immediate supervisor, Dean or Department Director, and any others who participated in the Problem-Solving Procedure in order to determine how best to resolve the issue. The employee shall receive a final decision from the ~~President~~respective Vice President no later than three (3) working days after a request for review is submitted or a meeting is held as determined by the ~~President~~respective Vice President. This time period is based on work days at the University. If the ~~President~~respective Vice President is unavailable for an extended time period, the ~~President~~respective Vice President may designate a senior staff member to communicate the University's decision. ~~Both the President and the employee must agree in writing to the decision to use a senior staff member. A copy of this written agreement will be sent to the ISU Office of Human Resources.~~ Under certain conditions, the employee has the right to appeal the University's decision to the Idaho Division of Human Resources within thirty-five (35) days.

Optional Mediation Step

The department and employee may mutually agree in writing to engage in mediation during the Problem-Solving Procedure. If both sides agree, the other steps and time limitations (except for the initial five (5) working day filing requirement) of the Problem-Solving Procedure will suspend pending mediation. The department and employee must agree upon a mediator. The ISU Office of Human Resources can assist with providing mediator names. Mediation is not ~~possible~~available unless both the department and the employee agree. For further information on the Problem-Solving Process, including forms, please contact the ISU Office of Human Resources.

3. Due Process Track Procedures:

A permanent classified employee is entitled to due process before the University makes any decision to impose dismissal, suspension, demotion, or involuntary transfer. Due process requires the employee receive notice of contemplated action, evidence supporting the action, and an opportunity to be heard before a decision is made. Contact the ISU Office of Human Resources to assist with implementing the appropriate action.

Step 1: Notice of Contemplated Action

If Idaho State University is contemplating disciplinary action to or involuntary transfer of a permanent classified employee, the department must provide notice of the contemplated action in writing to the employee and the Idaho Division of Human Resources Administrator.

The Dean or Department Director will provide an explanation and a recommendation for action in writing to the ISU Office of Human Resources for review based on information from the immediate supervisor, if applicable. A notice of contemplated action will be prepared and signed by the Dean or Department Director in cooperation with the ISU Office of Human Resources. The employee and the Idaho Division of Human Resources Administrator will be provided with notice of the contemplated action(s).

Contents of the Notice of Contemplated Action must include:

- (1) Action contemplated (i.e., dismissal suspension, demotion, or involuntary transfer).
- (2) The legal basis (for-cause reason and corresponding legal citation) for this action or reason for this action. The “for cause” reasons are listed in Idaho Code § 67-5309 (n) and in the Idaho Division of Human Resources and Personnel Commission Rules at IDAPA 15.04.01.190.
- (3) An explanation of the information or evidence pertinent to the contemplated action.
- (4) The time frames for the response. The notice of contemplated action will be sent or delivered to the employee and to the Idaho Division of Human Resources Administrator by the ISU Office of Human Resources concurrently.

Step 2: Opportunity to Respond

A permanent classified employee who receives a notice of contemplated action is entitled to an opportunity to respond verbally or in writing. This step provides the employee an opportunity to respond to the notice and present his or her reason(s) why the contemplated action(s) should not be taken. The employee must accept the opportunity to respond within the time period indicated in the notice, otherwise the opportunity is deemed waived by the employee. The response, if any, shall be provided by the employee to the Dean or Department Director.

Time to Respond: The notice of contemplated action provides a set time period of five (5) working days within which an employee may respond after the receipt of notice. The Dean or Department Director may extend that time period for a response, but in no event may that time period exceed ten (10) working days after the employee has received notice unless both Dean or Department Director and employee agree to file an extension in writing (reference Extension Form).

Right to Representation: The law provides an employee with the right to be represented by a person of his or her choosing at each step of the procedure.

Step 3: University's Decision

The President or designee will notify the employee of the final decision no later than ~~three (3)~~ten (10) working days after the employee has responded, failed to respond, or otherwise waived his or her right to respond in writing. This time period is based on work days at the University. If the President or designee is unavailable for an extended time period, the President or designee may designate a senior staff member to communicate the University's decision. ~~Both the President and the employee must agree to this.~~ The University's final decision will be sent or delivered to the employee and the Division of Human Resources Administrator by the ISU Office of Human Resources concurrently. The Due Process Track is completed when the President or designee notifies the employee of the University's decision. The ISU Office of Human Resources will coordinate processing the University's final action. If a disciplinary sanction or involuntary transfer is imposed, it may be implemented immediately. The employee has the right to appeal the University's disciplinary decision to the Idaho Personnel Commission within thirty-five (35) days.

Optional Mediation Step:

The Dean or Department Director and employee may mutually agree to engage in mediation after notice of contemplated action has been sent during the Due Process Procedure. If both sides agree, the time limitations for the opportunity to respond and the department's decision will be suspended pending mediation. The Dean or Department Director and employee must also agree upon a mediator. Mediation is not possible/available unless either the Dean or Department Director and employee agree. The ISU Office of Human Resources can assist in identifying a mediator.

For further information on Due Process, including forms, contact the ISU Office of Human Resources.

4. Idaho Division of Human Resources and Personnel Commission Appeal Procedure, IDAPA 15.04.01.201

201. APPEAL PROCEDURE.

01. Idaho Rules Of Administrative Procedure. In addition to the following rules on appeals and petitions for review, the "Idaho Rules of Administrative Procedure of the Attorney General" on contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the Commission's statute or practice: IDAPA 04.11.01.055, 51.05, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 791, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Sections 270 and 271 of these rules. (3-30-01)

02. Filing Of Appeal And Appearances. Every appeal filed with the Commission shall be written. The appeal shall be filed at the office of the Commission, and shall state the decision that is being appealed and the action requested of the Commission. The

administrator shall serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by Deputy Attorneys General or members of law firms already representing a party in an appeal or petition for review. (7-1-87)

03. Time For Appeal. An appeal from a decision of an appointing authority shall be deemed to be timely filed if received or postmarked within thirty-five (35) calendar days after completion of the departmental due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority's decision shall constitute completion of the departmental due process procedure. An appeal of a decision or action of the administrator or staff must be filed within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. (3-30-01)

04. Setting Of Hearing. Within thirty (30) days after receiving the appeal from the Commission, the hearing officer shall consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. (7-1-87)

05. Filing Of Documents. Once an appeal is referred to the hearing officer, all documents relating thereto shall be filed directly with the hearing officer during the pendency of the appeal. Copies of all documents submitted shall be provided simultaneously to opposing counsel and unrepresented parties. (7-1-87)

06. Burden Of Proof. In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence. (7-1-87)

07. Open Hearing. Every hearing shall be public, unless the hearing officer closes the hearing for good cause. Individual parties may be represented by themselves or by an attorney. (7-1-87)

08. Protective Orders. The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing. (7-1-93)

09. Decision Of Hearing Officer. The hearing officer shall issue a decision in the form of a preliminary order pursuant to Section 67-5245, Idaho Code. The preliminary order shall explain the right to file a petition for review under Section 67-5317, Idaho Code. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted. (7-1-94)

10. Procedure For Award Of Attorney Fees And Costs. If the hearing officer finds in favor of the employee in whole or in part, the hearing officer shall make a finding as to whether or not the state agency acted without a reasonable basis in fact or law. If the employee is entitled to statutory attorney fees and costs, counsel for the employee shall file a memorandum of costs, including a supporting affidavit stating the basis and method

of computation of the amount claimed. The memorandum shall be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision. The state agency shall then have ten (10) working days to file objections. The hearing officer shall make written findings as to the basis and reasons for the award. A copy of the memorandum of costs shall be served on the parties and filed with the Commission. (7-1-94)

11. Factors Considered In Award Of Attorney Fees And Costs. The following factors shall be considered in the determination of an award of attorney fees and costs: (12-10-90)

- a. The time and labor required; (12-10-90)
- b. The experience and ability of the attorney; (12-10-90)
- c. The prevailing charges for like work; (12-10-90)
- d. The amount involved and the results obtained; (12-10-90)
- e. Awards in similar cases; and (12-10-90)
- f. Any other factor that appears pertinent to the award. (12-10-90)

[[Table of Contents](#)] [[Back to Part 4](#)] [[Back to Part 4 Section V](#)] [Previous Section] [[Next Section](#)]
