

IDAHO STATE UNIVERSITY
POLICIES AND PROCEDURES (ISUPP)
Classified Employees Problem-Solving,
Due Process, and Appeal Procedure
ISUPP 3160

POLICY INFORMATION

Policy Section: *Human Resources*

Policy Title: *Classified Employees Problem-Solving, Due Process, and Appeal Procedure*

Responsible Executive (RE): *Human Resources Director*

Sponsoring Organization (SO): *Office of Human Resources*

Dates: Effective Date: *October 8, 2015*

Revised:

I. INTRODUCTION

This policy is intended to be a guide and reference to employees and management regarding the State of Idaho's Problem-Solving Track, Due Process Track and Appeal Procedure for classified employees.

Management and classified staff should review and familiarize themselves with this policy.

II. POLICY STATEMENT

It is the policy of Idaho State University (ISU or University) to provide classified employees access to the State's Problem-Solving Track and Due Process Track in accordance with Idaho Code § 67-5315 and Idaho Division of Human Resources Rule IDAPA 15.04.01.200.06.

III. AUTHORITY AND RESPONSIBILITIES

A. The Office of Human Resources is responsible for maintaining this policy and assisting classified employees and managers with the process of problem solving and due process.

B. Permanent, provisional, and entrance probationary classified employees are eligible to file under the Problem-Solving Track, and they are responsible for contacting the Office of Human Resources to initiate the process. It is the responsibility of classified employees to review and familiarize themselves with this policy.

C. Supervisors, Dean or Department Directors, and Vice Presidents will participate in the process as required. It is the responsibility of Supervisors, Dean or Department Directors, and Vice Presidents to review this policy and contact the Office of Human Resources if they need assistance with the Problem-Solving or Due Process Track.

IV. DEFINITIONS

A. Appeal: any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Idaho Personnel Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest.

1. Appellant: An employee, appointing authority, or applicant filing an appeal or a petition for review with the Idaho Personnel Commission.

2. Respondent: The party whose interests are adverse to those of the appellant.

B. Classified Employees:

1. Entrance probation: The probationary service required of an employee at the time of his or her original appointment or any subsequent appointment to State classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited State service unless otherwise extended in accordance with applicable DHR Rule.

2. Classified Employee: Any person appointed to or holding a position at ISU whose position is subject to the provision of the merit examination, selection, retention, promotion, and dismissal requirements of the Idaho Division of Human Resources as provided under Chapter 53, Title 67, Idaho Code.

3. Permanent Status: An employee in classified service who has successfully completed entrance probation.

4. Promotional probation: The probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited State service.

5. Provisional appointment: The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position.

C. Disciplinary Action: considered to be a decision made by management to impose dismissal, suspension, demotion, or involuntary transfer on a classified employee who holds permanent status.

1. Dismissal: the separation of an employee from classified service with cause assigned by the appointing authority.

2. Suspension: an enforced period of absence, without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee.
 3. Demotions: reductions in pay within the same, or a different pay grade for disciplinary purposes.
 4. Involuntary transfer: a significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer.
- D. Due Process Track: deals exclusively with the actions set forth in Idaho Code § 67-5315(2) – dismissals, suspensions, demotions, and involuntary transfers.
- E. Idaho Personnel Commission: comprised of 5 commissioners appointed by the Governor. Idaho Code authorizes the Commission to hear appeals of non-probationary, classified employees who, after completing departmental due process, appeal a disciplinary dismissal, demotion or suspension.
- F. Problem-Solving Track: 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)].

V. PROCEDURES TO IMPLEMENT

A. Problem-Solving Track Procedures

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 respective Vice President. Problem-Solving Request forms are available in the 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.

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) and hopefully resolve the matter(s) at the lowest level possible.

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. 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 Office of Human Resources.

If the filing alleges an ongoing pattern of harassment or illegal discrimination, it shall be referred to the Director of Equal Opportunity/Affirmative Action & Diversity for review.

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 best be 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 Department Director no later than three (3) working days after the meeting. The Dean or Department Director will send a copy to the Office of Human Resources.

If the employee is not satisfied with the suggested solution, she/he may request a review by the respective Vice President. The request for review by the respective Vice President 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.

4. Final Decision

The 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 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 respective Vice President. This time period is based on work days at the University. If the respective Vice President is unavailable for an extended time period, the respective Vice President may designate a senior staff member to communicate the University's decision.

5. 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 Office of Human Resources can assist with providing mediator names. Mediation is not available unless both the department and the employee agree. For further information on the Problem-Solving Process, including forms, please contact the Office of Human Resources.

B. Due Process Track Procedures

A permanent classified employee, as a result of Disciplinary Action, 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. Managers should contact the Office of Human Resources to assist with implementing the appropriate action.

1. Notice of Contemplated Action

If ISU is contemplating disciplinary action 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 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 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:

- a. Action contemplated (i.e., dismissal, suspension, demotion, or involuntary transfer).
- b. 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.
- c. An explanation of the information or evidence pertinent to the contemplated action.
- d. 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 Office of Human Resources concurrently.

2. Opportunity to Respond

- a. 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.

- b. 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.
- c. Right to Representation: An employee has the right to be represented by a person of his or her choosing at each step of the procedure.

3. University's Decision

- a. The President or his/her designee will notify the employee of the final decision no later than 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 his/her designee is unavailable for an extended time period, the President or his/her designee may designate a senior staff member to communicate the University's decision. The University's final decision will be sent or delivered to the employee and the Division of Human Resources Administrator by the Office of Human Resources concurrently. The Due Process Track is completed when the President or his/her designee notifies the employee of the University's decision. The 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 in accordance with Section V.C.

Optional Mediation Step:

- a. 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 available unless either the Dean or Department Director and employee agree. The Office of Human Resources can assist in identifying a mediator.

C. Idaho Division of Human Resources and Personnel Commission Appeal Procedure, IDAPA 15.04.01.201. Employees and managers wishing to

exercise their rights under these appeal procedures are encouraged to contact the Idaho Division of Human Resources.

Appeal Procedure:

1. 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)
2. 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)
3. 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)
4. 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)
5. 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)
6. 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)

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

VI. RELATED FORMS

Available on the Office of Human Resources website.

VII. RELATED LAWS, RULES AND POLICIES

- A. IDAPA 15.04.01, Rules of the Division of Human Resources and Idaho Personnel Commission
- B. Idaho Code Title 67 State Government and State Affairs, Chapter 53, Personnel System
- C. ISU Policies and Procedures, Human Resources, Categories of Employees, Policy #3050

PRESIDENTIAL CERTIFICATION

Approved by Arthur C. Vailas
President, Idaho State University

Date: _____