

## **DHHS Directive Number III-9**

**Title:** Performance Rating Dispute Process  
**Effective Date:** January 12, 2009  
**Revision History:** September 5, 2007; January 1, 2002; August 5, 2008  
**Authority:** G.S. 143B-10, 126

### **Purpose**

The purpose of this directive is to establish department policy and procedures for reviewing and resolving employee disputes concerning job performance ratings in accordance with the requirements and guidelines established by the State Personnel Commission.

### **Policy**

1. An employee shall be informed in writing of the availability of the department's performance rating dispute process, and the time limit for filing a complaint thereunder, when he/she is given written notice of an overall performance rating of less than outstanding for a completed work plan cycle.
2. An employee may file a written complaint under this process if he/she disputes the fairness of his/her overall rating for a completed work plan cycle.
3. The Secretary of North Carolina Department of Health and Human Services (NC DHHS) shall appoint department management, supervisory and non-supervisory employees to a pool from which five (5) member Performance Review Boards will be selected to review and make recommendations to the Secretary on employee performance rating disputes that are not resolved by unit management.
4. Definitions

For purposes of this process, the following terms shall have the meanings stated below:

- A. Employee: A person whose employment is subject to the provisions of NCGS Chapter 126-7 and who has satisfactorily completed a prescribed initial probationary period in a permanent position in the department or who entered department employment with permanent status.
  - B. Unit: A division, institution, office or other major organizational entity of the department.
  - C. Unit Supervisor/Director: The top management official/director of a division, institution, office or other major organizational entity of the department.
  - D. Final Agency Decision: A written decision on a performance rating dispute by the Secretary of DHHS.
5. Procedures

**Step 1: Review by the Unit Supervisor/Director**

- A. An employee who is given written notice of the availability of the dispute process in a performance rating decision shall have 15 calendar days from receipt of the notice to present a complaint hereunder.
  - 1. The complaint shall be presented in writing to the unit human resource manager using DHHS Performance Rating Dispute Process Complaint Filing Form PRD-1 (see Attachment 1). A complaint received by the unit human resource manager beyond the 15 day filing deadline shall be considered late-filed and will not be processed.
  - 2. The unit Human Resource Manager shall forward timely-filed valid complaints to the unit supervisor/director for action.
- B. The unit supervisor/director shall issue a decision in writing to the employee within 15 calendar days of the date the complaint was received by the unit Human Resource Manager. If for good reason the complaint cannot be answered within the 15 day period, the unit supervisor/director shall notify the employee in writing of the cause(s) for delay. In no case, however, shall a complaint remain unanswered for more than 60 calendar days from its initial receipt.
  - 1. Before rendering a decision, the unit supervisor/director, or designee, shall separately discuss the complaint with the employee and the employee's immediate supervisor in person or by telephone. He/she also may request additional information from the employee and/or unit management in considering the complaint. An employee who fails to comply with such a request shall be deemed to have abandoned his/her complaint and it will not be processed further.

2. The unit supervisor/director's decision shall include notice of the employee's right to a further review hereunder. The decision shall be issued in a form that provides certification of the date it is received by the employee.

### **Step 2: Review by a Department Performance Review Board**

- A. An employee who is not satisfied with the unit supervisor/director's decision may advance his/her complaint for review by a department Performance Review Board.
  1. The complaint shall be presented in writing to the unit human resource manager using DHHS Performance Rating Dispute Complaint Filing Form PRD-1 (See Attachment 1).
  2. The complaint must be received by the unit human resource manager within 15 calendar days from the date the employee received the unit supervisor/director's Step 1 decision. A complaint received beyond the 15 day limit shall be considered late-filed and will not be processed further.
- B. The unit human resource manager shall inform unit management of the receipt of a timely-filed valid Step 2 complaint. Within 10 calendar days of its receipt, the human resource manager shall forward the complaint to the Director of the Division of Human Resources, together with unit management's response, using the DHHS Performance Rating Dispute Management Response Form PRD-2 (see Attachment 2). The unit Human Resource Manager shall give the employee a copy of management's response.
- C. Upon receipt of a timely-filed valid Step 2 complaint, the Director of the Division of Human Resources, or designee, shall select a five (5) member Performance Review Board to review the complaint and make a recommendation thereon to the Secretary of Health and Human Services. Two (2) of the five (5) board members shall be non-supervisory employees. No employee of the filing employee's unit shall serve on the board. The employee who filed the complaint may disqualify up to two (2) employees from the pool from which boards are selected. The Division of Human Resources shall provide administrative support to the board.
- D. The complaint review shall be held within reasonable geographic proximity to the employee's work site. Any reasonable travel time required of the employee to appear before the board shall be considered paid work time and any reasonable travel expenses incurred shall be reimbursed under existing budget guidelines.
- E. The employee may appear before the board to address the board and to present information. The employee's appearance is not required. Should

the employee choose to appear, unit management shall assign one management representative to be present and present information. All board members shall be allowed to ask questions of the employee and management representative. If the employee chooses not to appear, the complaint shall be considered by the board through a review of the relevant documents.

- F. Employees and management representatives shall not discuss individual complaints or related board proceedings with board members prior to the commencement or following the adjournment of the review proceedings.
- G. The employee has the burden of showing, by clear and convincing evidence, that management abused its discretion in appraising the employee's performance. This burden will be carried by showing that the employee's performance was at a level higher than rated. The review shall focus on the employee's individual work plan and management's written appraisal of the employee's performance. Comparisons with the work plans and appraisals of other employees shall not be introduced or considered.
- H. A majority vote shall decide the board's recommendation to the Secretary. The recommendation shall be in writing. It shall be submitted to the Secretary within 15 calendar days from the date of the review and in a form set by the Secretary.
- I. The board shall either recommend 1) that the overall performance rating not be changed or 2) what the rating should be increased to and why.

### **Step 3: Final Decision by the Secretary of Health and Human Services**

- A. The Secretary of DHHS shall have the authority to accept or modify the board's recommendation or to adopt a different decision. If the Secretary decides not to accept the board's recommendation, the reason(s) should be stated in the Secretary's written decision to the employee.
  - 1. The Secretary or his/her designee may meet or confer by telephone with the employee and/or unit management before making a final decision on the complaint.
- B. The Secretary shall issue a final decision in writing to the employee within a reasonable period of time. Except in unusual situations, the final decision will be issued within 30 calendar days from the date the board's recommendation is received in the Secretary's office.
- C. The Secretary's decision is the final agency decision and is not subject to further administrative or judicial review or appeal within or outside the department.

APPROVED

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Lanier M. Cansler, Secretary  
Department of Health and Human Services

Attachments

North Carolina Department of Health and Human Services  
**PERFORMANCE RATING DISPUTE PROCESS**  
**COMPLAINT FILING FORM**

Check *ONE* only:  Step 1 Complaint  Step 2 Complaint (see 14 below)

1. Name (first, middle, last): \_\_\_\_\_

2. Sex: \_\_\_\_ 3. Race: \_\_\_\_\_ 4. Date of Birth: \_\_\_\_\_ 5. Personnel No.: \_\_\_\_\_

6. Business Telephone: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

7. Work Address (include zip code): \_\_\_\_\_

8. Classification and Salary Grade: \_\_\_\_\_

9. Division/Institution: \_\_\_\_\_

10. Period covered by work cycle: From (month/year) \_\_\_\_\_ To (month/year) \_\_\_\_\_

11. Statement of issues and facts on which complaint is based. *Be specific.* Attach additional sheet if necessary.

12. Statement of relief desired (attach additional sheet if necessary): \_\_\_\_\_

13. Attach copy of the following:

- a. Your completed work plan for the cycle, including interim review and overall performance summary rating.
- b. The written notice that generated this complaint. If a Step 2 complaint, include copy of the Step 1 decision letter.
- c. Other documents you consider relevant to this complaint, including a list of such documents.

14. Step 2 Only: (check one only):

- I want to appear before the Performance Review Board and speak on my behalf.
- I want the Board to consider my complaint through a review of documents only.

15. Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***The Following to be Completed by Unit Human Resource Manager***

- 1. Received by (Name and Title): \_\_\_\_\_ 2. Date Received: \_\_\_\_\_
- 3. Complaint is timely filed:  Yes  No, If No, give reason(s): \_\_\_\_\_

North Carolina Department of Health and Human Services  
**PERFORMANCE RATING DISPUTE PROCESS  
MANAGEMENT RESPONSE FORM**

(Submit to Director of Division of Human Resources within  
10 days of receipt of Step 2 Complaint; attach complaint filing form)

1. Employee Name: \_\_\_\_\_

2. Personnel No.: \_\_\_\_\_

3. Division/Facility/School: \_\_\_\_\_

4. Response to employee's statement of issues and facts on which complaint is based. *Be specific.* Attach additional sheet(s) if necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Attach to this form copies of any relevant documents you wish the Board to consider, in addition to those submitted by the employee. *Include a list of such documents.*

6. If employee will appear before the Board, enter the name of management representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Work Location: \_\_\_\_\_

Business Telephone Number: (\_\_\_\_\_) \_\_\_\_\_

7. Agency Director's Signature: \_\_\_\_\_

8. Date: \_\_\_\_\_