TITLE 455. MERIT PROTECTION COMMISSION
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

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SUBCHAPTER 1. GENERAL PROVISIONS

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455:10-1-1. Purpose

The rules in this Chapter are the administrative rules of the Oklahoma Merit Protection Commission (Commission) which govern appeals and associated processes before the Commission. These rules establish procedures and standards necessary for the Commission to perform its duties and functions. The Commission has adopted the rules in this Chapter. The Administrator of the Human Capital Management Division of the Office of Management and Enterprise Services has adopted the rules which are in OAC 260.

(1) Authority. The authority for these rules is Section 840-1.9 of Title 74 of the Oklahoma Statutes. The primary basis is the Oklahoma Personnel Act, Section 840-1.1 et seq. of Title 74 of the Oklahoma Statutes; Merit Protection Commission

(2) **Legal cites.** Some of these rules may restate language from statutes. Italic type means the language repeats language from statutes and the specific statutory reference will appear in brackets following the language in italics.

[**Source:** Amended at 13 Ok Reg 3025, eff 7-15-96; Amended at 33 Ok Reg 1756, eff 9-11-16]

455:10-1-2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Addendum decision" or **"Addendum order"** means a decision or order to add to a previously issued decision or order.

"Administrative Law Judge" means a person appointed by the Executive Director and empowered to preside over prehearing conferences and hearings with power to administer oaths, take testimony, rule on questions of evidence and make final and addendum decisions.

"Adverse action appeal" means an appeal by a permanent classified employee appealing a discharge, suspension without pay or involuntary demotion.

"Affidavit" means a sworn statement, made voluntarily, and taken before a person with authority to administer an oath or affirmation.

"Affidavit of service" means a written statement certifying that a motion, request or other document has been provided to other persons.

"Allegation" means the claims of a party.

"Allege" means to state, assert or charge; to make an allegation.

"Alleged violation appeal" means an appeal in which an allegation is made that a violation of law or rules over which the Commission has jurisdiction has occurred.

"Appeal" means, as a verb, the filing of a petition for appeal, or as a noun, the procedure that takes place after a petition for appeal is filed.

"Appellant" means a party who files a petition for appeal.

"Appellee" means a party against whom an appeal is filed or who is otherwise named or joined as a party.

"Burden of proof" means the obligation of a party to establish alleged fact(s) by a preponderance of evidence.

"Caucus" means a private meeting between an Alternative Dispute Resolution Program facilitator and a party for the purpose of assisting in the resolution of a dispute.

"Commission" means the Oklahoma Merit Protection Commission.

"Commissioners" means the members appointed to the Oklahoma Merit Protection Commission.

"Consolidation" means the combining of appeals containing the same or similar issues but filed by 2 or more appellants into a single appeal.

"Continuance" means a postponement of a matter scheduled by the Commission to a date certain.

"Cross-examination" means the questioning of a witness by a party other than the party calling the witness.

"Deny" means to refuse to grant or accept.

"Deposition" means a method where the sworn testimony of a person is taken. The person who answers the questions is said to be deposed.

"Determination of the Executive Director" means a document which states the issues, findings of fact, conclusions of law and disposition of an appeal.

"Direct-examination" means the questioning of a witness by the party calling the witness.

"Discovery" means to obtain relevant facts and information about the appeal from another party or person.
"Dismiss" means to close without further consideration.
"Employee" or **"State employee"** means *an elected or appointed officer or employee of an agency unless otherwise indicated* [74:840-1.3(2)].
"Evidence" means relevant documents or testimony offered to prove or disprove the existence or non-existence of a fact.
"Ex-parte communication" means communications by anyone with a presiding official on the merits of an appeal which could affect its outcome.
"Executive Director" means the appointing authority of the Oklahoma Merit Protection Commission [74:840-1.3(31)].
"Exhibit" means items offered as evidence.
"Expert" means a person knowledgeable in a specialized field, that knowledge being obtained from either education or personal experience.
"Filing" means posting on the on-line filing system, or the receipt of documents by the Commission.
"Final decision" means a determination made by a presiding official after considering the merits, testimony and evidence of an appeal. Final decision also refers to a determination made by the Executive Director to dismiss an appeal.
"Grant" means to give or permit.
"Hearing" means an open, formal proceeding conducted by an Administrative Law Judge, Executive Director or Commissioners to decide an appeal. The proceeding is to provide each party with an opportunity to present evidence in support of their side of the case. The hearing is governed by the Oklahoma Administrative Procedures Act, Sections 309 through 316 of Title 75 of the Oklahoma Statutes.
"Interrogatories" means written questions given to a party or witness. The answers are made in writing under oath.
"Intervenor" means a person or agency permitted to voluntarily enter an appeal as a party.
"Investigative report" means a written account of an investigation to assist the Executive Director in determining whether or not a violation within the Commission's jurisdiction may have occurred.
"Issue" means a disputed point or question on which the parties to an appeal seek a resolution.
"Joinder" means the combining of 2 or more appeals of one appellant.
"Jurisdiction" means the authority of the Commission to complete its duties and responsibilities.
"Jurisdictional limitations" means the statutory restrictions on the scope, time limits, and type of appeals which may be considered by the Commission.
"Merit Rules" or **"Merit Rules for Employment"** means the merit system of personnel administration rules. The merit rules include both the rules in this chapter as adopted by the Merit Protection Commission and the rules in OAC 260 as adopted by the Administrator of the Human Capital Management Division.
"Moot" means no longer in dispute because issues have already been decided or when rendered, a decision could not have any practical effect on the existing dispute.
"Motion" means a request for a ruling to be made by a presiding official or the Commissioners.
"Not sustain" means to deny a request; to deny an appeal.
"On-line Filing System" means a secure, paperless, electronic management filing tool utilized by the Commission for the processing of agency transactions designed to enhance agency operation by increasing availability, reliability, transparency and efficiency.
"Order" means a command or directive given by a presiding official, Executive Director or Commissioners.
"Party" means an Appellant, Appellee or Intervenor.
"Payroll claim protest" means a protest in which an employee challenges the decision that an overpayment or underpayment of salary has been made or a protest of the amount of the alleged overpayment or underpayment.
"Petition for Appeal" means the form adopted by the Commission for the filing of an appeal.
"Petition for Reconsideration, Rehearing or Reopening" means a document filed after the final decision on an appeal has been made requesting that the Commissioners rehear, reopen or reconsider the case based on specific grounds as outlined in Section 317 of Title 75 of the Oklahoma Statutes.
"Prehearing conference" means a proceeding conducted by an Administrative Law Judge or Executive Director with the parties to identify the issues, documents, witnesses and motions which will guide the Administrative Law Judge or Executive Director in the conduct of the hearing.

"Preponderance of evidence" means information or evidence which is more convincing or believable than the information or evidence offered in opposition.
"Presiding official" means the Executive Director or a person appointed by the Executive Director to serve the Commission in the capacity of Administrative Law Judge, mediator or other Alternative Dispute Resolution Program arbitrator or facilitator.
"Prima facie case" means a case which on its face is presumed to be true and will prevail until contradicted and overcome by other evidence.
"Protective order" means a directive issued to protect a party or witness from annoyance, embarrassment, oppression or undue burden or expense.
"Quash" means to annul or make void.
"Relevant" means directly related to the issue or issues being examined.
"Remedy" means corrective action sought by or afforded to a party.
"Representative" means the designated agent of record, identified in the petition for appeal or through an entry of appearance or other written means, acting on behalf of a party.
"Stipulation" means a voluntary admission of fact.
"Subpoena" means an order to appear at a certain time and place to give testimony.
"Subpoena Duces Tecum" means an order requiring the production of books, papers and other documents.
"Summary judgment" means a request or decision on issues where there is no dispute of material fact.
"Sustain" means to grant a request; to grant an appeal.
"Testimony" means statements given by a witness under oath or affirmation.
"Violation" means a breach of any law or rule over which the Commission has jurisdiction.
[**Source:** Amended at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]; Amended at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[2]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-93 (after the 7-14-93 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text as it existed prior to 1-1-93, and remained as such until amended again by permanent action on 7-15-96.*

EDITOR'S NOTE: *[2]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-1-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-1-3. Effect of amendments to rules and laws on appeals

(a) If a court of competent jurisdiction finds any rule or part of any rule in this chapter to be unenforceable, it shall not impair or invalidate the remaining rules and the remaining rules shall be valid and enforceable to the fullest extent allowed by law.
(b) Unless precluded by law, any appeal shall be completed in accordance with the procedural laws and rules in effect at the time the appeal was filed.
[**Source:** Amended at 13 Ok Reg 3025, eff 7-15-96

455:10-1-4. Severability clause [REVOKED]

[**Source:** Revoked at 13 Ok Reg 3025, eff 7-15-96]

455:10-1-5. Review of Commission records

(a) **Generally.** The Commission supports the public's right to know and be informed about their government. This right must be balanced with the rights of individuals to have adequate protection from clearly unwarranted invasions of personal privacy and assaults on their integrity. Records maintained by the Commission may be inspected and copied during normal business hours in accordance with state and federal laws and the rules in this chapter. Any person wishing to inspect, copy or reproduce records under the control of the Commission shall complete the Commission's Request for Access to Records form. Sufficient advanced notice shall be given so the essential functions of the Commission shall not be severely disrupted. Appointments are preferred.
(b) **Confidential records.** Access to confidential records shall be limited to officers and employees of state or federal government acting in their official capacities. The extent of access may be limited as determined to be appropriate by the Executive Director.
(1) The following Commission records shall be confidential:
(A) records which relate to internal personnel investigations, including examination and selection for employment, hiring, appointment, promotion, demotion, discipline or resignation. [51:24A.7(A)(1)].
(B) records received from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by law.

(C) records specifically required by law to be kept confidential, including records not discoverable under state law, such as material prepared in anticipation of lawsuit or trial, records protected by a state evidentiary privilege, [51:24A.5(1)(a)], records of what happened during executive session. [51:24A.5(1)(b)].

(D) other records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, such as employee evaluations, payroll deductions or employment applications of persons not hired. [51:24A.7(A)(2)].

(E) state employee home addresses, home telephone numbers, social security numbers, and information related to personal electronic communication devices of current and former state employees shall not be open to public inspection or disclosure without written permission from the current or former state employees or without an order from a court of competent jurisdiction. [74:840-2.11].

(F) see OAC 455:10-7-6 for access to Commission investigative files.

(2) The Executive Director may keep records confidential that are specifically permitted by law to be kept confidential.

(c) **Public records.** All personnel records that are not confidential shall be available for public inspection and copying. Any employee of the state of Oklahoma shall have a right of access to his or her own records on file with the Commission unless a law prohibits it. Public records include, but are not limited to, records of:

(1) employment application of a person who becomes a state official or employee; [51:24A.7(B)(1)]

(2) gross receipts of public funds; [51:24A.7(B)(2)]

(3) dates of employment, title or position; [51:24A.7(B)(3)]

(4) final disciplinary action resulting in loss of pay, suspension, demotion or discharge. [51:24A.7(B)(4)].

(d) **Appeal records.** The records of an active appeal shall be open to inspection only by a party to the appeal or the party's designated representative. The records of an inactive appeal shall be open to inspection in accordance with the Oklahoma Open Records Act and these rules.

(e) **Fees.** The Commission shall charge a reasonable fee for copies of Commission records, including a reasonable search fee to recover the direct costs of document searches if the request is solely for commercial purposes [51:24A.5(3)(a)] or clearly would cause excessive disruption of the Commission's essential functions. [51:24A.5(3)(b)].

[**Source:** Amended at 13 Ok Reg 3025, eff 7-15-96; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-15-96, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-1-6. Requests for declaratory rulings [EXPIRED]

[**Source:** Added at 10 Ok Reg 989, eff 2-4-93 through 7-14-93 (emergency)[1]]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-93 (after the 7-14-93 expiration of this emergency action), the text of Section 455:10-1-6 was no longer effective. For the official text of the emergency rule that was effective from 2-4-93 through 7-14-93, see 10 Ok Reg 989.*

455:10-1-7. Organization

(a) The Oklahoma Merit Protection Commission consists of nine members (Commissioners): two members appointed by the President Pro Tempore of the Senate; two members appointed by the Speaker of the House of Representatives; and five members appointed by the Governor. The appointing authority of the Commission is the Executive Director.

(b) The Commissioners and the Executive Director may take action to carry out the duties of the Commission and to accomplish the objectives of any program or activity within the Commission's jurisdiction and authority.

(c) Request submissions and other communications to the Commission can be accomplished by mail, email, fax, telephone, or personal visit, except where specified in rule or policy pertaining to the Commission's programs and processes.

(d) The normal business hours of the Commission are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08

through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-1-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-1-8. Request for promulgation, amendment or repeal of a rule

(a) Any person may request the Commission adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include an explanation to support the request. A request shall also include:

(1) the name, address and telephone number of the person making the request;

(2) the name, address and telephone number of the agency or organization the person represents, if any;

(3) the number used to identify the rule if the request is to amend or repeal an existing rule; and

(4) the proposed language if the request is to amend an existing rule or adopt a new rule.

(b) It is the Commission's policy to respond to such requests within 30 calendar days.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-1-9. Request for declaratory ruling

(a) Any person directly affected by a Commission final or addendum decision may file a request for a declaratory ruling to explain or clarify the order in relation to a particular situation. The Commission shall not entertain a request based on hypothetical or speculative situations.

(b) Any person may file a request for interpretation or applicability of any rule adopted by the Commission.

(c) A request for a declaratory ruling shall be made in writing and shall include the following information:

(1) the name, address and telephone number of the person making the request;

(2) the name, address and telephone number of the agency or organization the person represents, if any;

(3) a description of the problem or issue that is the basis for the request;

(4) a statement of the facts and questions the person may have; and

(5) the identification of the specific order or rule on which the declaratory ruling is being sought.

(d) A request for declaratory ruling submitted pursuant to this section shall not automatically stay enforcement of the final or addendum order or otherwise suspend any applicable time limits.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-1-10. Forms and instructions

Other chapters in this Title contain references to filing instructions that the Commission uses and requires. Persons may contact the Commission to request forms and general information about completing and submitting them.

[**Source:** Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-1-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

SUBCHAPTER 3. JURISDICTIONS, RIGHTS AND PROCESSES

Section	***Title***
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455:10-3-1.1	Time
455:10-3-2	Determining jurisdiction; "file" defined
455:10-3-3	Alleged violations of the Oklahoma Personnel Act or Merit Rules
455:10-3-3.1	Time [Expired]
455:10-3-3.2	Representatives [Expired]
455:10-3-3.3	No jurisdiction over designation of worksite
455:10-3-4	Statue of limitations [Expired]
455:10-3-4.1	Notice of appeal
455:10-3-5	Discrimination
455:10-3-6	Alleged violations of employee's freedom of expression
455:10-3-7	Appeal of demotion, suspension without pay or discharge
455:10-3-7.1	Settlement of appeals [Expired]
455:10-3-8	Notice of appeal rights
455:10-3-9	Petition for appeal
455:10-3-10	Processing of appeals
455:10-3-11	Consolidation and joinder of appeals
455:10-3-12	Settlement of appeals
455:10-3-13	Dismissal of appeals
455:10-3-14	Appeal record

455:10-3-15	Transcripts
455:10-3-16	Motions and requests
455:10-3-17	Continuances
455:10-3-18	Ex-parte communication
455:10-3-19	Sanctions
455:10-3-20	Petitions to rehear, reopen or reconsider cases
455:10-3-21	Stay of enforcement
455:10-3-22	Administrative fine

455:10-3-1. Location for information and for filing [EXPIRED]

[**Source:** Added at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-93 (after the 7-14-93 expiration of this emergency action), the text of Section 455:10-3-1 was no longer effective. For the official text of the emergency rule that was effective from 1-1-93 through 7-14-93, see 10 Ok Reg 657.*

455:10-3-1.1. Time

Time is jurisdictional.

(1) **Alleged violation appeal.** Unless otherwise provided for by statute or the rules in this chapter, an alleged violation appeal shall be filed within 20 calendar days after the alleged violation occurs. The Executive Director may extend this time limit if the appellant demonstrates that he or she filed within 20 calendar days after becoming aware of, or with due diligence, should have become aware of the alleged violation, or for other good cause shown. For information on filing an appeal after a formal grievance see OAC 455:10-19-46.

(2) **Adverse action appeal.** An appeal of a permanent classified employee appealing a discharge, suspension without pay or involuntary demotion shall be filed within 20 calendar days after receipt of the written notice of the action imposed, by certified mail or personal service. This is a statutory time limit and may not be extended. [74:840-6.5(C)].

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-1-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-3-2. Determining jurisdiction; "file" defined

(a) It is solely the authority of the Commissioners and Executive Director to determine whether or not matters being appealed are subject to the jurisdiction of the Commission. No request for appeal shall be accepted more than 12 months after the event causing the appeal, unless otherwise provided for by any statute. Unless otherwise defined in the rules in this chapter, "file" means receipt by the Commission.

(b) The file date of a document is the earliest date the Commission receives the document or the date it is postmarked. If the last day for filing is a Saturday, Sunday or legal holiday as proclaimed by the Governor, the file date shall be extended to the end of the next business day.

(c) The Executive Director is authorized to establish and maintain guidelines for the electronic filing of documents.

[**Source:** Amended at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]; Amended at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[2]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-93 (after the 7-14-93 expiration of the emergency action), the text of 455:10-3-2 reverted back to the permanent text as it existed prior to 1-1-93, and remained as such until amended by permanent action on 7-15-96.*

EDITOR'S NOTE: *[2]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-1-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-3-3. Alleged violations of the Oklahoma Personnel Act or Merit Rules

Any person who believes that his or her rights under any law or rule over which the Commission has jurisdiction have been violated may file a petition for appeal with the Commission within the time limits specified in OAC 455:10-3-1.1(1). Pursuant to OAC 455:10-19-35, the Commission shall accept appeals regarding promotional issues, pay movement mechanisms or compensation issues, discipline issues (except discharge, suspension without pay and involuntary demotion), leave issues and the employee service rating system issues only after such issues have been filed and addressed through the internal agency grievance procedure. For further

information on these specific issues and the internal agency grievance procedure see OAC 455:10-19. All other issues, including illegal discrimination (Merit Rule 455:10-3-5) and whistleblower (Merit Rule 455:10-3-6) may be filed directly with the Commission.
[**Source:** Revoked at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]; Amended at 13 Ok Reg 3025, eff 7-15-96; Amended at 17 Ok Reg 553, eff 11-30-99 (emergency); Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action revoking a Section, the last effective permanent text of the Section is reinstated. Therefore, on 7-15-93 (after the 7-14-93 expiration of the emergency action), the text of 455:10-3-3 reverted back to the permanent text as it existed prior to 1-1-93, and remained as such until amended by permanent action on 7-15-96.*

455:10-3-3.1. Time [EXPIRED]

[**Source:** Added at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-93 (after the 7-14-93 expiration of this emergency action), the text of Section 455:10-3-3.1 was no longer effective. For the official text of the emergency rule that was effective from 1-1-93 through 7-14-93, see 10 Ok Reg 657.*

455:10-3-3.2. Representatives [EXPIRED]

[**Source:** Added at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-93 (after the 7-14-93 expiration of this emergency action), the text of Section 455:10-3-3.2 was no longer effective. For the official text of the emergency rule that was effective from 1-1-93 through 7-14-93, see 10 Ok Reg 657.*

455:10-3-3.3. No jurisdiction over designation of worksite

A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have the jurisdiction to accept an appeal of an employee resulting from the employing agency transfer of an employee from one county or locality to another, changing the assigned duties of an employee, or relieving the employee from the performance of duty at a particular place and reassigning to an employee duties to be performed at another place, unless an employee asserts that:

(1) *The action resulted in a change in job classification or reduction of the base salary of the*

(2) *A violation of the provisions of Section 840-2.5 or 840-2.9 of* [Title 74] *may have occurred; or*

(3) *The action was taken clearly for disciplinary reasons and to deny the employee the right of appeal* [74:840-4.19].

[**Source:** Added at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Added at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-09 (after the 7-14-09 expiration of this emergency action), Section 455:10-3-3.3 was no longer effective, and remained as such until added again by permanent action on 7-25-09.*

455:10-3-4. Statute of limitations [EXPIRED]

[**Source:** Added at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-93 (after the 7-14-93 expiration of this emergency action), the text of Section 455:10-3-4 was no longer effective. For the official text of the emergency rule that was effective from 1-1-93 through 7-14-93, see 10 Ok Reg 657.*

455:10-3-4.1. Notice of appeal

Upon receipt of a petition for appeal, the Commission shall send a notice of appeal to the appointing authority or designated representative. The Executive Director may order a person or agency added as a party of record and that person or agency shall be sent a notice of appeal.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-15-96, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-3-5. Discrimination

(a) No person in the state service, whether subject to the provisions of the Merit System or in unclassified service, shall be appointed to, demoted or dismissed from any position in the state service, or in any way favored, harassed or discriminated against with respect to employment because of political or religious opinions or affiliations, race, creed, gender, color, ancestry, national origin or by physical handicap so long as the physical handicap does not make the person unable to do the work for which employed [74:840-2.9].

(b) No agency, department, institution, board or employee shall:

(1) separate or refuse to employ any person otherwise qualified on account of age, political or religious opinions or affiliations, race, creed, gender, color, ancestry, national origin or by handicap;

(2) discriminate for the same reasons in regard to tenure, terms or conditions of employment;

(3) deny promotion or increase in compensation solely for these reasons;

(4) publish an offer of employment based on such discrimination;

(5) adopt or enforce any rule or employment policy which so discriminates as to any employee;

(6) seek such information as to any applicant or employee [this does not preclude information sought in accordance with any other federal or state statute]; or

(7) discriminate in the selection of personnel for training solely on such basis [74:954].

(c) The Commission may use the guidelines for reviewing discrimination complaints as used by the Equal Employment Opportunity Commission (EEOC) and may review court decisions and federal statutes, to include but not limited to, such statutes as the Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA), Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act, as amended and the Civil Rights Act of 1991.

[**Source:** Amended at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]; Amended at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 33 Ok Reg 1756, eff 9-11-16]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-93 (after the 7-14-93 expiration of the emergency action), the text of 455:10-3-5 reverted back to the permanent text as it existed prior to 1-1-93, and remained as such until amended by permanent action on 7-15-96.*

455:10-3-6. Alleged violations of employee's freedom of expression

(a) **General.** For purposes of this section agency means any office, department, commission or institution of the state government [74:840-2.5(B)]. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service, for:

(1) Disclosing public information to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or a rule promulgated pursuant to law;

(2) Reporting a violation of the Oklahoma Constitution, state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;

(3) Discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature, the print or electronic media, or other persons in a position to investigate or initiate corrective action;

(4) Taking any of the above actions without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command. [74:840-2.5(B)].

(b) **Appeal rights.**

(1) Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Commission within 60 calendar days of the alleged disciplinary action [74:840-2.5(G)]. This is a statutory time limit and may not be extended.

(2) The appeal shall contain, as a minimum,:

(A) the name of the person(s) alleged to have violated this section;

(B) the disciplinary action taken and when such disciplinary action was taken;

(C) the public information disclosed, to whom it was disclosed, and when it was disclosed; or,

(D) the violation of the Oklahoma Constitution, state or federal law, rule or policy, mismanagement, gross waste of public funds, abuse of authority, or substantial and specific danger to public health or safety reported, to whom it was reported, and when it was reported, or;

(E) the operations and functions of the agency discussed, with whom such discussions were made, and when such discussions took place.

(3) Sufficient evidence or information shall be provided which causes the Executive Director to believe there is a causal connection between the alleged protected activity and the disciplinary action. For purposes of this section, causal connection means such evidence or information which shows that the disciplinary action was taken in relationship to the alleged protected activity.

(c) **Sanctions.** Section 840-2.5(H) of Title 74 of the Oklahoma Statutes sets out corrective actions and sanctions which may be taken for violation of this section.

(d) **Freedom of expression posting.** Each state agency, department, institution, board and commission in all branches of state government shall prominently post or publish a copy of Section 840-2.5 of Title 74 of the Oklahoma Statutes in locations where it can reasonably be expected to come to the attention of all employees [74:840-2.5(D)].

[**Source:** Amended at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]; Amended at 13 Ok Reg 3025, eff 7-15-96; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[2]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-93 (after the 7-14-93 expiration of the emergency action), the text of 455:10-3-6 reverted back to the permanent text as it existed prior to 1-1-93, and remained as such until amended again by permanent action on 7-15-96.*

EDITOR'S NOTE: *[2]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-1-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-3-7. Appeal of demotion, suspension without pay or discharge

Any permanent classified employee who is discharged, involuntarily demoted or suspended without pay may file a petition for appeal with the Commission within the time limits specified in OAC 455:10-3-1.1(2).

[**Source:** Revoked at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)[1]; Amended at 13 Ok Reg 3025, eff 7-15-96]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action revoking a section, the last effective permanent text is reinstated. Therefore, on 7-15-93 (after the 7-14-93 expiration of the emergency action), the text of 455:10-3-7 reverted back to the permanent text as it existed prior to 1-1-93, and remained as such until amended by permanent action on 7-15-96.*

455:10-3-7.1. Settlement of appeals [EXPIRED]

[**Source:** Added at 10 Ok Reg 657, eff 1-1-93 through 7-14-93 (emergency)]

EDITOR'S NOTE: *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-93 (after the 7-14-93 expiration of this emergency action), the text of Section 455:10-3-7.1 was no longer effective. For the official text of the emergency rule that was effective from 1-1-93 through 7-14-93, see 10 Ok Reg 657.*

455:10-3-8. Notice of appeal rights

When action is taken pursuant to any rule or statutory provision which requires notice of a right of appeal to the Oklahoma Merit Protection Commission, the employee or applicant shall be provided:

(1) notice of the right to file an appeal with the Commission, the time limits for receipt of the appeal and address of the Commission office;

(2) a citation of the statute or rule under which the action was taken; and,

(3) a copy of the Commission's petition for appeal form.

[**Source:** Amended and renumbered from 455:10-5-1 at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-9. Petition for appeal

(a) A petition for appeal shall contain the following information:

(1) the name, address and telephone number of the appellant. The appellant shall maintain a current address with the Commission throughout the appeal process. Failure to do so shall be cause for dismissal of the appeal.

(2) the name of the agency against whom the appeal is filed;

(3) the date of the action taken or not taken which the appellant believes violated his or her rights;

(4) the date notice was received of any discharge, suspension without pay or involuntary demotion and a copy of such notice shall be attached to the petition for appeal;

(5) the basis for the appeal stating who did what, when, where, how and why. Documentary evidence should be attached to the petition for appeal;

(6) a citation of the statute or rule the appellant believes has been violated;

(7) a statement of the remedy the appellant is seeking;

(8) the name, address and telephone number of the appellant's representative, if any;

(9) a description of any internal agency grievance or other complaint the appellant or anyone acting on the appellant's behalf has filed with any other agency regarding the same issues; and

(10) signature of the appellant and representative, if any.

(b) If asserting a continuing violation, the appellant shall demonstrate in the petition for appeal that the alleged acts are part of an ongoing pattern and at least one of the alleged acts occurred within the relevant jurisdictional time limits.
[**Source:** Amended and renumbered from 455:10-5-2 at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-10. Processing of appeals

(a) **Adverse action appeals.** Adverse action appeals shall be processed in accordance with Section 840-6.5 of Title 74 of the Oklahoma Statutes and the rules in this chapter.

(b) **Alleged violation appeals.** Alleged violation appeals shall be processed in accordance with Section 840-6.6 of Title 74 of the Oklahoma Statutes and the rules in this chapter. All appeals arising from employment in the unclassified service shall be processed in accordance with this section.

(c) **Payroll claim protests.** Payroll claim protests shall be processed in accordance with Section 840-2.19 of Title 74 of the Oklahoma Statutes and the rules in this chapter. The agency shall:

(1) if asserting the Office of Personnel Management detected the error(s) and the agency relied on the information from the Office of Personnel Management, provide the Commission copies of the Office of Personnel Management findings, results of the audit conference required by Section 840-2.19 of Title 74 of the Oklahoma Statutes, a summary of the findings of the agency investigation, a description of the investigation, a summary of the evidence obtained from the investigation and a description of corrective action taken. The agency shall include a certification from the appointing authority's authorized payroll agent of the method used in reaching any calculation and a certification that such calculations are correct.

(2) if determining that an overpayment occurred, provide the Commission a copy of any and all documents and information considered during the agency investigation, a list of documents, laws, rules or policy which were used in making the factual determination that an overpayment occurred, and the date the overpayment determination was made and the name of the person making the decision that an overpayment occurred. The agency shall include a certification from the appointing authority's authorized payroll agent of the method used in reaching any calculation and a certification that such calculations are correct.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-11. Consolidation and joinder of appeals

The Executive Director, on his or her own initiative or upon written request of a party, may order the consolidation or joinder of appeals if to do so will expedite the processing of the appeals and not adversely affect the interest of the parties.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-12. Settlement of appeals

Settlement discussions are appropriate and encouraged at any stage of the appeal process. The parties may elect to enter into settlement discussions on their own or through mediation. If settlement is reached and endorsement of the Commission is requested, the agreement shall be put into writing and signed by all parties or representatives. The agreement shall be filed with the Commission and shall be reviewed and approved before dismissal of the appeal will be entertained. If approved, the Commission shall retain jurisdiction to enforce the terms of the agreement over which the Commission has jurisdiction and the agreement shall become part of the record.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-3-13. Dismissal of appeals

(a) A petition for appeal, or an issue in a petition for appeal, may be dismissed if:

(1) it is moot or the appellant has not provided evidence to support the allegations;

(2) the appellant fails or refuses to appear for a scheduled meeting;

(3) the appellant refuses to accept a settlement offer which affords the relief he or she could reasonably expect if he or she prevailed in the appeal; or

(4) it is not timely filed or is not within the Commission's jurisdiction or authority.

(b) The Executive Director may order a person or agency dismissed as a party of record.
[**Source:** Amended and renumbered from 455:10-5-6 at 13 Ok Reg 3025, eff 7-15-96; Amended at 17 Ok Reg 2560, eff 6-26-00]

455:10-3-14. Appeal record

(a) **Content.** An appeal record shall include:

(1) the petition for appeal, notices and intermediate rulings;

(2) evidence considered in making a final decision;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and exceptions;

(6) any proposed or final orders issued by the Commission; and

(7) all other data submitted to a presiding official in connection with his or her consideration of the appeal.

(b) **Transmission to reviewing court:** Within 60 calendar days after proper service of a petition for review or equivalent process upon it, or within such further time as the reviewing court may allow, the Commission shall transmit to the reviewing court a certified copy of the appeal record under review.

[**Source:** Amended and renumbered from 455:10-5-8 at 13 Ok Reg 3025, eff 7-15-96; Amended at 33 Ok Reg 1756, eff 9-11-16]

455:10-3-15. Transcripts

(a) Hearings shall be recorded by digital recordings. The Commission's recording will serve as the official recording for purposes of creating an official written transcript. The Commission shall prepare a written transcript of the recording only upon written request and receipt of a deposit of cash or cashiers check in an amount determined to be appropriate to cover the costs associated with the transcription, except as prohibited by statute.

(b) Upon application, the Commission shall pay transcription costs on behalf of an indigent respondent, if the respondent establishes indigent condition through execution of an *in forma pauperis* affidavit upon a form approved by the Commission. Should the indigent respondent receive a financial recovery, the respondent shall reimburse the Commission from those proceeds. [74:840-1.21].

(c) Any party desiring to have a hearing or Alternative Dispute Resolution Program procedure recorded by a court reporter shall request approval of the presiding official before initiating such action. The party making the request shall bear the associated expenses and costs and shall provide a copy of the written transcript to the Commission at no cost.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-15-96, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-3-16. Motions and requests

Oral motions may be made during a prehearing conference, hearing or Alternative Dispute Resolution Program procedure. All other motions and requests shall be filed in writing, within established time frames, and shall state the reason for the motion or request and shall include an affidavit of service to all other parties. Unless otherwise specified, any response to a motion or request shall be filed within 10 calendar days of the file date of the motion or request. The Executive Director or presiding official may extend the time for filing a response upon a showing of good cause.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 17 Ok Reg 2560, eff 6-26-00]

455:10-3-17. Continuances

A request for continuance shall be filed in writing and shall include the cause for the request and a statement of agreement or disagreement by the other party(s). A prehearing conference, hearing or Alternative Dispute Resolution Program procedure may be continued or adjourned by the Executive Director or the presiding official for just cause at any time. A continuance shall be granted only in those instances where extraordinary circumstances exist and good cause has been shown. If granted, a continuance shall be made to a date certain.

(1) If granted on behalf of the Commission or an appellee, and the appellant is subsequently sustained in the appeal, back pay and other benefits shall be awarded for the entire judgment as determined appropriate by the presiding official.

(2) If granted on behalf of the appellant and he or she is subsequently sustained in the appeal, back pay and other benefits shall be awarded only for the period of time that the appellant did not delay the appeal as determined appropriate by the presiding official.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-15-96, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-3-18. Ex-parte communication

Ex-parte communications are those which involve the merits of an appeal. Ex-parte communications

are prohibited from the time an appeal is filed until a final decision is issued. This section shall not apply to Commission investigations or to other communications authorized or required by statute or the rules in this chapter.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-19. Sanctions

The Commissioners, Executive Director or a presiding official may assess sanctions for failure to comply with notice requirements, time schedules, directives or orders. Such sanctions may include, but are not limited to, dismissal of appeals, denial of relief, or costs of the action, as may be warranted.
[**Source:** Amended and renumbered from 455:10-5-7 at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-20. Petitions to rehear, reopen or reconsider cases

(a) **General.** A party adversely affected by the final decision of a presiding official or the Executive Director may petition the Commissioners to order rehearing, reopening or reconsideration of the decision.

(b) **Filing.** A petition to rehear, reopen or reconsider shall be filed within 10 calendar days after the issue date of the final decision and shall include an affidavit of service to all other parties. Any response to the petition shall be filed within 10 calendar days after the file date of the petition and shall include an affidavit of service to all other parties. The time limit for filing a petition is statutory (Section 317 of Title 75 of the Oklahoma Statutes) and may not be extended. The Executive Director may extend the time limit for filing a response for good cause shown.

(c) **Grounds.** A petition shall specify the grounds upon which the request is made as specified in Section 317 of Title 75 of the Oklahoma Statutes. Such grounds are:

(1) newly discovered or newly available evidence relevant to the issues. The request shall include the new evidence and verification that such evidence is true.

(2) need for additional evidence to adequately develop the facts essential to proper decision.

(3) probable error committed by the Commission in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order. The request shall identify the probable error committed.

(4) need for further consideration of the issues and the evidence in the public interest.

(5) a showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(d) **Rejection.** The Commission shall reject petitions and responses which are not timely filed.

(e) **Scheduling.** The matter shall be scheduled for consideration by the Commissioners on the earliest possible date and parties shall be notified of the date, time and location.

(f) **Commissioners action.** The Commissioners may permit oral arguments and may request information or ask questions of any party or other persons. The Commissioners shall rule on petitions by a majority vote of the Commissioners present at the meeting. If granted, the grounds shall be stated on the record and the Commissioners may order:

(1) the matter referred to any presiding official;

(2) the matter referred to the same presiding official for further consideration of the matter on those grounds upon which the petition was granted;

(3) the matter referred to the Executive Director for further action;

(4) the decision to be modified or amended; or

(5) any other relief the Commissioners determine just and appropriate.

(g) **Continuance.** A request for continuance shall be filed in accordance with OAC 455:10-3-17 and shall be ruled on by the Executive Director.

(h) **Judicial review.** Within 30 calendar days after exhausting all remedies under the Administrative Procedures Act, either party may appeal to a higher court. *The State of Oklahoma or any agency of the state shall not be allowed to appeal to the district court unless the employee is continued on full pay in the same status of employment existing prior to suspension or discharge* [74:840-6.5].
[**Source:** Amended and renumbered from 455:10-5-11 at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-21. Stay of enforcement

The filing of a petition to rehear, reopen or reconsider or a petition for judicial review shall not automatically stay enforcement of the original decision.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-3-22. Administrative fine

(a) Section 840-6.9 of Title 74 of the Oklahoma Statutes states that the Commissioners may levy an administrative fine not to exceed five thousand dollars against any person, whether subject to the provisions of the merit system or in unclassified service, who after proper notice fails or refuses,

within a reasonable period of time, to implement a written order of the Commission. Such fine shall be assessed against the person who violates the order and shall not be paid by any monies of the employing entity in which the person is employed or serves.

(b) The Executive Director may file a request with the Commissioners in accordance with this section after providing the person written notice of the actions the Executive Director may take. The party shall be afforded an opportunity to respond and provide additional evidence to support his or her position.

(c) For purposes of this section, "reasonable time" means, when the order does not fix a time for performance of the action, such time as is necessary, conveniently, to do what the order requires to be done, as soon as the circumstances will permit.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

SUBCHAPTER 7. INVESTIGATIONS

Section	***Title***
455:10-7-1	Preliminary investigation
455:10-7-2	Directed investigation
455:10-7-3	Fact finding conference
455:10-7-4	Investigative report
455:10-7-5	Standards
455:10-7-6	Investigative file
455:10-7-7	Agency required investigations

455:10-7-1. Preliminary investigation

(a) A preliminary investigation shall be conducted upon receipt of a petition for appeal to determine through review of any content in the petition for appeal and attachments: jurisdiction, issues of the appeal, parties to the appeal and whether or not there is evidence to support the allegations.

(b) Clarification of the appeal may be obtained through written questions, interviews or any other methods determined appropriate. Failure of the appellant to appear, respond or provide requested information shall be grounds to dismiss the appeal without further review.

(c) If jurisdictional requirements are not met or if the appellant has not provided evidence to support the allegations, the parties shall be sent a copy of the investigative report which shall describe why proposed dismissal action is being recommended. Any party may respond, in writing, and provide any additional information within the time limits established for receipt of such information. The time limit for response may be extended for good cause.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-7-2. Directed investigation

(a) **General.** Upon receipt of a petition for appeal or on its own initiative, the Commissioners or Executive Director may direct that an investigation of any agency's employment practices be conducted. The directed investigation is a method to assist in determining whether or not a violation within the Commission's jurisdiction may have occurred. In conducting investigations, the Commission may exercise any statutory authority and may use all powers not otherwise prohibited.

(b) **Extent.** The investigation shall be conducted to the extent necessary to determine whether or not there are reasonable grounds and evidence to believe whether or not the alleged violation(s) may have occurred.

(c) **Requests for information.** The Commission may request responses or information from any agency or person. Written responses and information may be required and may be obtained through written questions, interviews or any other methods determined appropriate. The time limit for submission of responses and information may be extended for good cause.

(1) Failure of an appointing authority, agency representative, or named person to appear, respond or provide requested information may be grounds to believe the alleged violation(s) may have occurred without further review.

(2) Failure of an appellant, or his or her designated representative, to appear, respond or provide requested information shall be grounds to dismiss the appeal without further review.

(d) **Interviews.** Parties and witnesses may be interviewed face-to-face or by telephone to obtain relevant facts and knowledge concerning the issues in dispute. Interviews may be conducted at the Commission office or any other location determined appropriate. A party or witness may have his or her representative in attendance at the interview to act in an advisory role only. The representative shall not have or take an active role in the investigation or interview process.

(1) The Commission may make a record of the interview session by digital recording. The person being interviewed may also tape record his or her interview session.

(2) Commission interview recordings shall be confidential pursuant to Section 24A.7(A)(1) of Title 51 of the Oklahoma Statutes. The person

interviewed may request a copy of the recording of his or her interview in accordance with OAC 455:10-1-5.

[**Source:** Amended and renumbered from 455:10-5-3 at 13 Ok Reg 3025, eff 7-15-96; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-15-96, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-7-3. Fact finding conference

The fact finding conference is an investigatory technique, not an adversarial proceeding. Its purpose is to aid in determining whether or not an alleged violation over which the Commission has jurisdiction may have occurred. It is not a hearing and is not subject to laws or rules governing hearings. Before the conference, each party may be requested to provide the names of persons who have relevant information about the issues in dispute. The conference shall be conducted by a Commission representative who shall have the authority to adapt the conference to the situation at hand.

(1) **Notice.** At least 7 calendar days before the conference, parties and witnesses shall be notified of the date, time and location. This notice shall contain the names of persons to be interviewed and any documented information to be brought to the conference.

(2) **Representation.** Each party may have a representative at the conference to act in an advisory role only and the representative shall not be permitted to examine or cross-examine witnesses. The appellant and any other named party shall speak for himself or herself; the appointing authority may name a spokesperson who has direct knowledge of the incidents involving the appeal.

(3) **Record of documents.** A Record of Documents shall be reviewed. This record shall list all relevant documents submitted before the conference and may be supplemented with additional relevant documents received at the conference. The Commission representative shall determine the relevance of documents.

(4) **Order of procedure.** The appellant shall present his or her case first describing in detail the incident(s) which allegedly violate his or her rights and specifically how each incident described is a violation. The appellee shall respond to the incidents and explain the appellee's position.

(5) **Testimony of witnesses.** Witnesses shall not be present during the fact finding conference except when giving testimony. The witness, after being identified, shall be asked to state in narrative his or her knowledge of the alleged incidents. Each party shall have the opportunity to ask the witness questions. The Commission representative shall decide whether or not questions are relevant and whether or not the witness is required to answer. The Commission representative may ask questions at any stage of the conference.

(6) **Closing.** The Commission representative shall close the conference after each party has presented his or her case and witnesses have been heard, unless sooner terminated as a result of settlement or other just cause. Each party shall be notified of the findings of the conference through the investigative report.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-7-4. Investigative report

An investigative report of the preliminary investigation, directed investigation or fact finding conference shall be issued and include a summary of the appeal, issues of the appeal, findings of fact and a recommendation for the disposition of the appeal. The report shall also include a reference to persons interviewed and documents used in making the findings of fact. The purpose of the report shall be to assist the Executive Director in determining whether or not a violation within the Commission's jurisdiction may have occurred.

(1) A copy of the investigative report shall be issued to each party and within 10 calendar days after the issue date of the report, any party may file a response and include any additional relevant information to be considered. The time limit for response may be extended for good cause.

(2) Any party filing a response or providing additional information should provide a copy to all other parties.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

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455:10-7-5. Standards

(a) The following standards of review shall be used and applied in investigations and in determining whether or not a violation within the Commission's jurisdiction may have occurred:

(1) the applicable or relevant law or statute;

(2) the applicable rule;

(3) the applicable agency rule, policy, procedure or practice; and

(4) review for consistent or uniform application, as appropriate.

(b) The Commission may also review higher court decisions, formal Attorney General opinions and past Commission cases.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-7-6. Investigative file

Documents obtained during the course of a directed investigation or fact finding conference shall be maintained in an investigative file. The investigative file shall be confidential pursuant to Section 24A.7(A)(1) of Title 51 of the Oklahoma Statutes and the rules in this chapter. A party to the appeal or his or her designated representative may review the documents in the investigative file and listen to a recording of his or her interview. This review shall be limited to the time between the issue date of the investigative report up to 10 calendar days after the issue date of the Determination of the Executive Director. See OAC 455:10-1-5 for information on access to Commission records.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

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455:10-7-7. Agency required investigations

The Commissioners or Executive Director may require an appointing authority to conduct an investigation within his or her agency of issues within the Commission's jurisdiction. When such a request is made, the appointing authority shall sign and send a report of the investigation to the Commission by the date established for receipt. If not received, the Commissioners or Executive Director may direct a Commission investigation or schedule the matter for hearing or the Alternative Dispute Resolution Program. The report of the investigation by the appointing authority shall include, as a minimum:

(1) the name of the person who conducted the investigation;

(2) a summary of the findings of the investigation;

(3) a description of how the investigation was conducted;

(4) a summary of evidence obtained from the investigation;

(5) a description of any corrective action taken or planned as a result of the investigation.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

SUBCHAPTER 9. HEARING PROCESS

Section	***Title***
455:10-9-1	Prehearing conference
455:10-9-2	Hearing
455:10-9-3	Methods of Testimony
455:10-9-4	Closing the record
455:10-9-5	Decisions

455:10-9-1. Prehearing conference

(a) **Purpose.** The Executive Director may schedule a prehearing conference on any appeal set for hearing. The conference provides an opportunity for the parties to clarify, isolate and dispose of procedural matters prior to the hearing.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. Prior to the prehearing conference each party shall file with the Commission and provide to each other party and the Administrative Law Judge a copy of:

(1) a brief statement of his or her respective case, to include a list of stipulations and requested remedy;

(2) a list of any witnesses who have direct knowledge of the facts surrounding the issues of the appeal and who are expected to be called at the hearing. The list shall include a brief statement of the testimony each witness will offer. The list may be amended, with the approval of the Administrative Law Judge, before the hearing date;

(3) a list of any documents and exhibits and the original or a copy of each document or exhibit to be offered into evidence at the hearing. The list may be amended, with the approval of the Administrative Law Judge, before the hearing date;

(4) a list of any witnesses for whom a subpoena is required. The list shall include each witness's name, address and a brief statement of the testimony to be offered by each witness. Subpoenas shall not be issued by the Commission without this information. The list may be amended, with the approval of the Administrative Law Judge, up to 10 calendar days before the hearing date; and

(5) any requirements or requests for discovery. Discovery shall be requested and completed in accordance with OAC 455:10-13-1.

(c) **Representation.** Each party to the appeal may have a representative to speak and act on his or her behalf.

(d) **Administrative Law Judge responsibility.** The Administrative Law Judge shall:

(1) consider, facilitate and rule on settlement;

(2) consider any matters which will aid in the fair and prompt resolution and disposition of the appeal;

(3) hear and rule on pending requests or motions;

(4) rule on whether or not witnesses have knowledge of the facts at issue;

(5) rule on whether or not documents and exhibits are relevant;

(6) rule on whether or not discovery requests and other motions and requests are relevant;

(7) strike or deny witnesses, documents, exhibits, discovery requests and other requests or motions which are cumulative, not relevant or not material; used as a means of harassment; unduly burdensome or not timely filed.

(e) **Conference.** The conference shall be informal, structured by the Administrative Law Judge and not open to the public. The Administrative Law Judge shall record the conference by digital recording.

(1) **Notice.** Each party shall be notified of the date, time and location at least 7 calendar days prior to the scheduled conference.

(2) **Location.** The conference shall be conducted at the Commission offices or any other location determined appropriate.

(3) **Witnesses.** Witnesses shall not appear or present evidence at the conference.

(4) **Continuance.** A request for continuance shall be filed in accordance with OAC 455:10-3-17 normally no less than 3 calendar days prior to the scheduled conference. A lesser period of time may be permitted for good cause shown. The Administrative Law Judge, or in his or her absence, the Executive Director, shall rule on the request and in no case shall a combination of continuances of the prehearing conference exceed a total of 30 calendar days except for good cause shown.

(f) **Conclusion.** The Administrative Law Judge shall end the conference when preparation for the hearing is complete, unless sooner terminated as a result of settlement or for other just cause.

[**Source:** Amended and renumbered from 455:10-5-4 at 13 Ok Reg 3025, eff 7-15-96; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

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455:10-9-2. Hearing

(a) **Purpose.** The hearing provides each party the opportunity to present witnesses and evidence in support of his or her respective case for decision by an Administrative Law Judge. Hearings shall be conducted in accordance with the Oklahoma Personnel Act, the Administrative Procedures Act and the rules in this chapter.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.

(c) **Representation.** Each party to the appeal may have a representative to speak and act on his or her behalf.

(d) **Administrative Law Judge responsibility.** The Administrative Law Judge shall rule on questions of admissibility of evidence, competency of witnesses and any other matters or questions of law.

(e) **Process.** The hearing shall be formal, structured by the Administrative Law Judge and open to the public. Parts of a hearing may be ordered closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons. The Administrative Law Judge shall record the hearing by digital recording and such recording shall constitute the official recording of the hearing.

(1) **Notice.** Each party shall be notified of the date, time and location at least 7 calendar days prior to the scheduled hearing.

(2) **Location.** The hearing shall be held at the Commission offices or any other location determined appropriate. At the prehearing conference any party may request the hearing be changed to a more convenient location. The Administrative Law Judge shall rule on the request and may change the location when to do so is in the best interests of the Commission and parties. The Administrative Law Judge shall be compensated for travel, per diem and other associated costs by the appointing authority if the location is changed at his or her request.

(3) **Witnesses.** Each party may call witnesses who have been approved by the Administrative Law Judge to offer testimony and evidence. The Administrative Law Judge shall administer an oath or affirmation to the witness and may question the witness at any stage of the hearing.

(4) **Continuance.** A request for continuance shall be filed in accordance with OAC 455:10-3-17 normally no less than 3 calendar days prior to the scheduled hearing. A lesser period of time may be permitted for good cause shown. The Administrative Law Judge shall rule on the request and in no case shall a combination of continuances of the hearing exceed a total of 30 calendar days except for good cause shown.

(f) **Burden of proof.** The following burdens of proof shall also apply to appeals heard through the Alternative Dispute Resolution Program as well as the hearing process.

(1) Adverse action appeal. The burden of proof shall be upon the appointing authority who must prove his or her case by a preponderance of the evidence.

(A) Upon a finding that just cause existed for the adverse action and the discipline imposed was just, a presiding official shall affirm the decision of the appointing authority.

(B) Upon a finding that just cause did not exist for the adverse action, a presiding official may order the reinstatement of the employee, with or without back pay and other benefits. A presiding official may also order that documentation of the adverse action be expunged from any and all of the employee's personnel records.

(C) Upon a finding that just cause existed for the adverse action, but did not justify the severity of the discipline imposed, a presiding official may order reduction of the discipline or other corrective action. A presiding official shall, as a minimum, consider the following circumstances in ordering the reduction of discipline: the seriousness of the conduct as it relates to the employee's duties and responsibilities; the consistency of action taken with respect to similar conduct by other employees of the agency; the previous employment and disciplinary records of the employee; and mitigating circumstances.

(D) A presiding official who orders reinstatement with back pay and other benefits under (B) or (C) above, may consider the deduction of any income the employee may have received for the period of time the employee was not performing his or her duties.

(2) **Alleged violation appeal.** The burden of proof shall be upon the appellant who must prove his or her case by a preponderance of the evidence. Upon a finding that a violation within the Commission's jurisdiction did occur, a presiding official may order the appointing authority to take the necessary corrective action or report the findings to any other appropriate authorities for further action. Corrective action shall be limited to issues submitted for decision, shall be consistent with applicable statutes and rules and shall be limited to action which makes the person harmed by the violation whole as if the violation had not occurred.

(3) **Payroll claim protest.** In payroll claim protests of overpayment, the burden of proof shall be upon the appointing authority who must prove his or her case by a preponderance of the evidence. In payroll claim protests of underpayment, the burden of proof shall be upon the appellant who must prove his or her case by a preponderance of the evidence. The presiding official may determine the amounts paid or not paid in error; determine dates of overpayments or underpayments; determine options available for repayment; affirm the protest of the appellant; affirm the decision of the appointing authority and order corrective action.

(g) **Order of procedure.** The party with the burden of proof shall present his or her case first and the opposing party may respond. A presiding official shall have the authority to alter the order of procedure. This order of procedure also applies to appeals heard through the Alternative Dispute Resolution Program.

(h) **Summary judgment.** The Administrative Law Judge may decide appeals based on summary judgment when there is no dispute as to either material fact or inferences to be drawn from

undisputed facts, or if only question of law is involved.

[**Source:** Amended and renumbered from 455:10-5-5 at 13 Ok Reg 3025, eff 7-15-96; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

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455:10-9-3. Methods of Testimony

(a) This section shall not limit the authority of the Commission to compel any witness to appear and offer testimony. Upon written request and approval by the Administrative Law Judge, an affidavit, video conference, electronic communication, and telephone communication may be used when a witness or party is unable to attend or testify because of age, illness, infirmity, imprisonment or other good reason.

(b) This section shall also apply to the taking of affidavits through the Alternative Dispute Resolution Program procedures.

(c) The parties to any action before the Merit Protection Commission are responsible for ensuring that the technology is available to all participants for conducting a video conference.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 33 Ok Reg 1756, eff 9-11-16]

455:10-9-4. Closing the record

The record shall be closed when each party has had an opportunity to be heard and present evidence. If the final decision is based on summary judgment or if the Administrative Law Judge requires the parties to submit briefs or additional information, the record shall be closed on the date established for the receipt of submissions. Once the record is closed, no additional evidence or arguments shall be considered. This section shall also apply to the closing of a record through the Alternative Dispute Resolution Program procedures.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-9-5. Decisions

The Administrative Law Judge shall file a final decision with the Commission within 10 calendar days after the record is closed. The final decision shall include findings of fact and conclusions of law, written in clear and concise language.

(1) The Executive Director shall issue the final decision to each party, by personal service or certified mail and by submission on the online filing system, within 5 calendar days after receipt.

(2) The decision of the Administrative Law Judge shall be final and conclusive except as provided in the Administrative Procedures Act and OAC 455:10-3-20.

[**Source:** Amended and renumbered from 455:10-5-9 at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 33 Ok Reg 1756, eff 9-11-16]

SUBCHAPTER 11. DISCIPLINE

Section	***Title***
455:10-11-1	General
455:10-11-2	Purpose
455:10-11-3	Definitions
455:10-11-4	Progressive discipline
455:10-11-5	Appointing authority responsibility
455:10-11-6	Supervisor responsibility
455:10-11-7	Employee responsibility
455:10-11-8	Records
455:10-11-9	Statistics
455-10-11-10	First phase-informal discipline
455:10-11-11	Second phase-formal discipline
455:10-11-12	[Reserved]
455:10-11-13	Written reprimand
455:10-11-14	Causes for discharge, suspension without pay or involuntary demotion
455:10-11-15	Suspension without pay
455:10-11-16	Involuntary demotion
455:10-11-17	Discharge
455:10-11-18	[Reserved]

455:10-11-1. General

Each appointing authority shall establish written policies and procedures for progressive discipline of employees according to the rules established by the Oklahoma Merit Protection Commission [74:840-6.3(A)]. Each appointing authority is responsible for developing and maintaining a safe and productive work environment. Each appointing authority and each supervisor is responsible for promptly applying discipline when necessary that is equitable and suitable for the offense considering the circumstances.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

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published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.

455:10-11-2. Purpose

The rules in this subchapter provide standards and guidelines for applying prompt, equitable and suitable discipline. These rules pertain to probationary and permanent classified employees unless otherwise specified by law or the rules in this subchapter.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-11-3. Definitions

In addition to words and terms defined in the Merit System of Personnel Administration Rules, the following words and terms shall have the following meaning unless the text clearly indicates otherwise.

"Discharge" means the act of terminating the employment relationship of a permanent classified employee who did not voluntarily resign or otherwise forfeit his or her position according to any other statutory provision. Discharge does not include separation due to reduction-in-force.

"Discipline" means informal or formal action to correct infractions of statute, rule, policy, practice or procedure regarding work performance or behavior.

"Involuntary Demotion" means the involuntary removal of a permanent employee in permanent status in a job family level to another job family level assigned a lower pay band [74:840-4.3(B)].

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 17 Ok Reg 553, eff 11-30-99 (emergency); Amended at 17 Ok Reg 2560, eff 6-26-00]

455:10-11-4. Progressive discipline

(a) *Progressive discipline is a system designed to ensure not only the consistency, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions. Typically, penalties range from verbal warning to discharge, with intermediate levels of a written warning, suspension or demotion. Absent mitigating circumstances, repetition of an offense is accompanied by a generally automatic progression to the next higher level of discipline* [74:840-6.3(B)].

(b) Based on relevant circumstances, a single incident may justify a higher step of discipline without proceeding through lower steps of discipline.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

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455:10-11-5. Appointing authority responsibility

(a) The appointing authority shall use the progressive discipline phases outlined in this subchapter and may adopt other progressive discipline steps which address the specific needs of his or her agency [74:840-6.3(A)]. The appointing authority shall file a copy of any adopted progressive discipline policy, including revisions, with the Commission. Any adopted progressive discipline policy shall include a general statement certifying that the policy contains minimum requirements which:

(1) ensure the consistency, evenhandedness and predictability of discipline; and

(2) ensure the flexibility to vary penalties if justified.

(b) The appointing authority shall furnish to each employee a copy of the progressive discipline policy, including revisions, used by the agency.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-11-6. Supervisor responsibility

Each supervisor shall:

(1) inform employees of the agency's progressive discipline policy;

(2) apply discipline when necessary that is corrective, progressive in nature, appropriate for the offense and equitable;

(3) consider relevant circumstances when determining the proper disciplinary action; and,

(4) use prompt, positive action to avoid more serious disciplinary actions.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-11-7. Employee responsibility

Each employee has a duty and responsibility to comply with, the agency's progressive discipline policy.

[**Source:** Reserved at 12 Ok Reg 2823, eff 7-13-95; Added at 17 Ok Reg 2560, eff 6-26-00]

455:10-11-8. Records

(a) The appointing authority shall maintain documentation of formal discipline in the employee's agency personnel record consistent with the General Records Schedule of the Oklahoma Department of Libraries, Office of Archives and Records.

(b) An employee shall be given a copy of any formal disciplinary document when it is placed in his or her agency personnel record.

(c) Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, Oklahoma Open Records Act, shall govern access to disciplinary documents.

(1) An employee shall have a right to review disciplinary documents in his or her agency personnel record.

(2) The Commission, because of statutory responsibility, shall have a right of access to disciplinary documents.

(d) The appointing authority may specify procedures in the agency's progressive discipline policy for the review and removal of disciplinary documents from the employee's agency personnel record. Any such procedures shall be applied consistently and uniformly.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-11-9. Statistics

(a) The appointing authority shall maintain statistical information about the number and nature of formal disciplinary actions.

(b) The appointing authority shall provide to the Commission, on a fiscal year basis, a discipline report containing the following information:

(1) the number of formal disciplinary actions taken, by type of discipline;

(2) the pay band, sex and race of each employee receiving formal discipline.

(c) The discipline report for the previous fiscal year shall be filed with the Commission no later than August 1 of each year.

(d) Appointing authorities shall submit a report even if no disciplinary actions occurred during the relevant time period.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-11-10. First phase-informal discipline

(a) The first phase of progressive discipline shall be informal discipline and may include steps of verbal warning, informal discussion, corrective interview and oral reprimand, etc. This phase shall serve to streamline the progressive discipline system and to bring potential problems to an employee's attention before they escalate. Documentation of informal discipline may be noted and maintained by the supervisor and employee.

(b) Informal discipline may be given to correct infractions of statute, rule, policy, practice or procedure regarding work performance or behavior. In administering informal discipline, an employee shall be told, as a minimum, of:

(1) the nature of the problem which is cause for the discipline and steps which must be taken to resolve the problem; and

(2) the consequences of repeated infractions or continuing deficient performance or behavior.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-11-11. Second phase-formal discipline

The second phase of progressive discipline shall be formal discipline and shall include written reprimand, suspension without pay, involuntary demotion and discharge. An employee may receive formal discipline to correct violations of statute, rule, policy, practice or procedure regarding work performance or behavior. Absent aggravating conditions, formal discipline is normally administered after informal discipline has failed to produce acceptable results. Formal discipline documentation shall include a citation of any other informal or formal discipline which was used in the decision to administer formal discipline.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-11-12. [RESERVED]

[**Source:** Reserved at 12 Ok Reg 2823, eff 7-13-95]

455:10-11-13. Written reprimand

(a) Supervisors may administer a written reprimand to correct violations of statute, rule, policy, practice or procedure regarding work performance or behavior. A written reprimand shall include, as a minimum:

(1) the date of the written reprimand;

(2) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated;

(3) a statement of the act or incident which is cause or reason for the written reprimand;

(4) steps which can be taken to resolve the problem;

(5) a citation of any other informal or formal discipline which was used in the decision to administer the written reprimand; and

(6) consequences of repeated infractions or continuing deficient performance or behavior.

(b) The employee shall be provided an opportunity to respond in writing to the written reprimand. Any response shall be attached to the written reprimand.

(c) The written reprimand and any response shall be filed in the employee's agency personnel record.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95

455:10-11-14. Causes for discharge, suspension without pay or involuntary demotion

Any employee in the classified service may be discharged, suspended without pay for not to exceed sixty (60) calendar days, or demoted by the agency, department, institution, or officer by whom employed, for misconduct, insubordination,

inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or of the rules prescribed by the Office of Personnel Management or by the Oklahoma Merit Protection Commission, conduct unbecoming a public employee, conviction of a crime involving moral turpitude, or any other just cause [74:840-6.5(C)].

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

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455:10-11-15. Suspension without pay

(a) **General.** A permanent classified employee may be suspended without pay for any of the reasons set forth in OAC 455:10-11-14.

(b) **Notice.** The employee shall be provided notice of the proposed suspension without pay, by personal service or certified or registered mail. Pending completion of the notice and response opportunity, an employee may be suspended with pay in accordance with rules adopted by the Administrator of the Human Capital Management Division. The notice shall include, as a minimum:

(1) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the proposed suspension without pay.

(2) the specific acts or omissions which are cause or reason for the proposed suspension without pay;

(3) an explanation of the evidence which justifies the proposed suspension without pay, and

(4) an opportunity, either in writing or orally, to present reasons why the proposed suspension without pay is improper.

(c) **Final action.** Within ten working days after the employee has had opportunity to respond to the proposed suspension without pay, he or she shall be provided written notice of the final action by personal service or certified or registered mail. If the decision made is to proceed with the suspension without pay, the written notice to the employee shall include as a minimum:

(1) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the suspension without pay;

(2) grounds for the action;

(3) a citation or the law or rule under which the action is being taken;

(4) effective date and inclusive dates of the suspension without pay;

(5) a citation of any other informal or formal discipline which was used in the decision to administer the suspension without pay; and

(6) a statement of the employee's right to file an appeal with the Commission, the 20 calendar day time limit for the Commission's receipt of the appeal and the address of the Commission; and

(7) a copy of the Commission's petition for appeal form.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 33 Ok Reg 1756, eff 9-11-16]

455:10-11-16. Involuntary demotion

(a) **General.** A permanent classified employee may be involuntarily demoted for any of the reasons set forth in OAC 455:10-11-14.

(b) **Notice.** The employee shall be provided notice of the proposed involuntary demotion, by personal service or certified or registered mail. Pending completion of the notice and response opportunity, an employee may be suspended with pay in accordance with rules adopted by the Administrator of the Human Capital Management Division. The notice shall include, as a minimum:

(1) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the proposed involuntary demotion;

(2) the specific acts or omissions which are cause or reason for the proposed involuntary demotion;

(3) an explanation of the evidence which justifies the proposed involuntary demotion, and

(4) an opportunity, either in writing or orally, to present reasons why the proposed involuntary demotion is improper.

(c) **Final action.** Within ten working days after the employee has had opportunity to respond to the proposed involuntary demotion, he or she shall be provided written notice of the final action by personal service or certified or registered mail. If the decision made is to proceed with the involuntary demotion, the written notice to the employee shall include as a minimum:

(1) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the involuntary demotion;

(2) grounds for the action;
(3) a citation or the law or rule under which the action is being taken;
(4) effective date of the involuntary demotion and the classification and grade to which demoted;
(5) a citation of any other informal or formal discipline which was used in the decision to administer the involuntary demotion; and
(6) a statement of the employee's right to file an appeal with the Commission, the 20 calendar day time limit for the Commission's receipt of the appeal and the address of the Commission; and
(7) a copy of the Commission's petition for appeal form.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 17 Ok Reg 553, eff 11-30-99 (emergency); Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 33 Ok Reg 1756, eff 9-11-16]

455:10-11-17. Discharge

(a) **General.** A permanent classified employee may be discharged for any of the reasons set forth in OAC 455:10-11-14.

(b) **Pretermination hearing.** Before any permanent classified employee may be terminated, the employee shall be afforded a pretermination hearing to be held before the appointing authority or his or her designee. A pretermination hearing shall not be required if the employee is being terminated as part of a reduction-in-force as provided for in Title 74 O.S., Section 840-2.27C.

(1) **Purpose.** The purpose of a pretermination hearing is to provide the appointing authority or his or her designee with information from which a determination may be made as to whether or not reasonable grounds exist to believe that the charges against the employee are true and whether or not the grounds support the proposed termination.

(2) **Notice.** Notice of the pretermination hearing shall be provided to the employee by personal service or certified or registered mail at least seven calendar days before the scheduled pretermination hearing. Pending completion of this notice and the pre-termination hearing, an employee may be suspended with pay in accordance with rules adopted by the Administrator of the Human Capital Management Division. The notice shall include, as a minimum:

(A) the statute, rule, policy, practice or procedure of work performance or behavior which was violated and cause for the proposed action;
(B) all grounds for the proposed action;
(C) a summary of evidence or physical evidence to support each of the stated grounds for the proposed action;
(D) a statement of the employee's right to be represented, by an attorney or other person of his or her choice, at the pre-termination hearing; and
(E) date, time and location of the pre-termination hearing.

(3) **Disciplinary certificate.** *The appointing authority shall file in the employee's official personnel file at least seventy-two (72) hours before each pretermination hearing, a certificate to be included in the record stating what disciplinary actions have been taken to comply with progressive discipline prior to the pretermination hearing and proposed termination and further certifying that all mandatory progressive discipline actions as required by statute or rule have been taken before pretermination hearing; provided, said certificate shall not be required where grounds for proposed termination are for commission of a criminal offense and/or acts involving moral turpitude* [74:840-6.4(B)(3)].

(4) **Hearing.** The pretermination hearing need not be a full evidentiary hearing and formal rules of evidence shall not apply. The pretermination hearing shall be recorded in its entirety. The employee shall be provided a copy of the recording, at no cost, if the employee appeals to the Commission and requests a copy. A copy shall be provided as soon as possible but no later than 14 calendar days after the request is made.

(5) **Legal review.** *Following the pretermination hearing, if recommendation for termination is made, recordings of the pretermination hearing and all evidence in support thereof, shall be reviewed for legal sufficiency by the appointing agency director or his or her designee before termination is final* [74:840-6.4(B)(7)].

(c) **Final action.** Within ten working days after the pretermination hearing the employee shall be provided written notice of the final action, by personal service or certified or registered mail. If the decision is made to proceed with the termination, the notice shall include, as a minimum:

(1) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the termination;
(2) all grounds for the termination;
(3) a citation of the law or rule under which the termination is being taken;
(4) effective date of the termination;

(5) a citation of any other informal or formal discipline which was used in the decision to administer the termination; and

(6) a statement of the employee's right to file an appeal with the Commission, the 20 calendar day time limit for the Commission's receipt of the appeal and the address of the Commission; and

(7) a copy of the Commission's petition for appeal form.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 6-26-00, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-11-18. [RESERVED]

[**Source:** Reserved at 12 Ok Reg 2823, eff 7-13-95]

SUBCHAPTER 13. DISCOVERY

Section	***Title***
455:10-13-1	Commission Discovery Code
455:10-13-2	Discovery methods, scope and limits
455:10-13-3	Signing and supplementation of requests, responses and objections
455:10-13-4	Discovery orders
455:10-13-5	Experts
455:10-13-6	Protective orders
455:10-13-7	Interrogatories (written questions)
455:10-13-8	Request for documents
455:10-13-9	Request for admission
455-10-13-10	Dispositions
455:10-13-11	Failure to make or cooperate in discovery

455:10-13-1. Commission Discovery Code

This section shall be known and cited as the Commission Discovery Code (Code). This Code shall govern the procedure for discovery in matters before the Commission to provide for the just, speedy and inexpensive determination of actions. A party requesting discovery shall show a reasonable need for the information requested. Each party shall participate in the discovery process, to the maximum extent possible, without intervention by the Commission. Any matter pertaining to discovery not defined or addressed by these rules shall be ruled on by the Executive Director or presiding official.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-2. Discovery methods, scope and limits

(a) Discovery may be requested and obtained by interrogatories (written questions); request for production of documents, requests for admissions and depositions. Discovery methods may be used in any sequence and the fact that a party is conducting discovery shall not operate to delay discovery by another party.

(b) Discovery may begin after an order is issued scheduling the appeal for hearing or the Alternative Dispute Resolution Program. Discovery shall be limited only to those issues to be heard by the Commission.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-3. Signing and supplementation of requests, responses and objections

A request, response or objection to discovery shall be signed by the party or his or her designated representative. A party responding to a request that was complete when it was made shall supplement the response when it is discovered the response was incorrect when made or the response is no longer true.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-4. Discovery orders

At the written request of a party, the Executive Director or presiding official may order discovery if the request includes a statement of the issues in dispute; a proposed plan and schedule for discovery; any proposed limitations; and a statement showing that a reasonable effort to reach agreement with the opposing party on the matters set forth in the request has been made. The request shall include an affidavit of service to all other parties by submission on the on-line filing system. A response may be filed within 10 calendar days after the request is filed with the Commission and shall include an affidavit of service to all other parties by submission on the on-line filing system. The presiding official may rule on discovery requests at the prehearing conference or preparation conference.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 33 Ok Reg 1756, eff 9-11-16]

455:10-13-5. Experts

Parties calling expert witnesses shall be required to state the subject matter on which the person is considered an expert and facts and opinions on which the expert witness will testify.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

5:10-13-6. Protective orders

The Executive Director or presiding official may issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including but not limited to the following:

(1) that discovery not be permitted;

(2) that discovery be permitted only on specific terms and conditions, including a designation of the time or place;

(3) that discovery be permitted only by a specific method;

(4) that certain matters not be inquired into, or that discovery be conducted with no one present except designated persons; and

(5) that privileged or confidential information not be disclosed or be disclosed only in a designated way.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-7. Interrogatories (written questions)

(a) **Availability and procedure.** A party may serve on any other party written questions not to exceed 20 in number. Each question shall be answered separately and fully in writing or shall be objected to by the person making the answer. If objected to, the reasons shall be stated. Answers or objections shall be made within 10 calendar days after service unless a shorter or longer time is ordered or agreed upon by the parties.

(b) **Scope and use.** Questions may relate to any relevant matter which is material to the issues in dispute. It is not a ground for objection that an answer relates to fact or the application of law to fact.

(c) **Option to produce records.** Where the answer to a question may be obtained from the records kept by a party, it is a sufficient answer to specify the records from which the answer may be obtained. The answer shall afford the party making the request an opportunity to examine, audit or inspect such records.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-8. Request for documents

(a) **Scope and procedure.** A party may serve on any other party a request to produce, inspect and copy any designated documents not confidential or privileged. A request shall describe the items to be inspected and a reasonable time, place and manner of making the inspection and performing the related acts.

(b) **Response.** A written response shall be made within 10 calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. If objected to, the reasons shall be stated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-9. Request for admission

(a) **General.** A party may serve on any other party a written request for admissions of the truth of any matters that relate to statements or opinions of fact or of the application of law to fact. This includes the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have otherwise been furnished or made available for inspection and copying. The number of requests for admissions shall be limited to 20 in number.

(b) **Response.** Each matter for which an admission is requested shall be answered separately. The answer shall admit or deny the matter or state why the answering party can not admit or deny the matter. A written response shall be made within 10 calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. If an objection is made the reasons shall be stated.

(c) **Effect of admission.** Any matter admitted is established unless withdrawal or amendment of the admission is permitted.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-10. Depositions

A party may ask questions of any other party or person, under oath, before a person authorized to administer such oath (depositions). A written transcript shall be made by the person seeking the deposition and that person shall provide a copy to the other party or person.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-13-11. Failure to make or cooperate in discovery

For purposes of this section an evasive or incomplete answer may be treated as a failure to answer. If a party or his or her designated representative knowingly fails to obey a Commission order to provide or permit discovery, the Commission may issue any other such orders which are just and may order the party or other person failing to act to pay the reasonable discovery fee costs, including attorney fees. Failure to act as

described in this section may not be excused on the ground that the discovery sought was objectionable.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

SUBCHAPTER 15. ATTORNEY FEES AND COSTS

Section	***Title***
455:10-15-1	Award
455:10-15-2	Reasonable costs
455:10-15-3	Reasonable attorney fees
455:10-15-4	Request
455:10-15-5	Addendum decision
455:10-15-6	Frivolous appeals

455:10-15-1. Award

(a) **General.** A presiding official of any hearing or Alternative Dispute Resolution Program procedure may order payment of reasonable attorney fees and costs to the prevailing party if the position of the nonprevailing party was without reasonable basis or was frivolous.

(b) **Burden of proof.** The prevailing party shall bear the burden of proof that he or she is entitled to an award of attorney fees and costs by a preponderance of the evidence.

(c) **Showing of proof.** To be entitled to an award of attorney fees and costs, the prevailing party shall be deemed to have prevailed if he or she received all or a significant part of the relief sought through the appeal. Attorney fees shall not be awardable for non-attorney pro-se representation. There shall be a finding that the nonprevailing party's position was without reasonable basis or was frivolous.

(d) **Standards.** The without reasonable basis or frivolous standard includes, but is not limited to:

(1) where the nonprevailing party's action was clearly without merit or was wholly unfounded;

(2) where the nonprevailing party initiated an action against the prevailing party in bad faith, including where the action was brought to harass or intimidate the prevailing party;

(3) where the nonprevailing party committed a gross procedural error which prolonged the proceeding or severely prejudiced the prevailing party; and

(4) where the nonprevailing party knew or should have known he or she would not prevail on the merits of the action taken.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-15-2. Reasonable costs

Reasonable costs shall be determined primarily through costs associated with the defense of the specific action before the Commission.
[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-15-3. Reasonable attorney fees

Reasonable attorney fees shall be determined primarily though the analysis of the number of hours devoted to the appeal multiplied by a reasonable hourly billing rate. Reasonable attorney fees may be determined by looking at fees awarded the attorney in the past.

(1) The prevailing community rate is considered a reasonable hourly rate.

(2) The fee agreement between an attorney and a party to the appeal or any organization, union or association representing a party, establishes a presumption that the amount agreed upon is the maximum reasonable amount.

(3) The actual rate of pay for a state attorney representing a party shall be a reasonable rate.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-15-4. Request

A request for the award of attorney fees or costs shall be filed with the Commission within 10 calendar days after the issue date of the final decision and shall include an affidavit of service to all other parties. This time limit is statutory and may not be extended [74:840-6.8(B)].

(1) **Grounds.** The request shall specifically state why an award of attorney fees or costs should be made and shall be supported by evidence to substantiate the request and evidence to determine whether or not the amount claimed is reasonable.

(2) **Evidence.** Evidence submitted with the request shall include, as a minimum:

(A) adequate time records so the reasonableness of the claimed fee can be ascertained;

(B) a copy of any fee agreement between the attorney and the client or any fee agreement between the attorney and any organization, union or association representing the client;

(C) the attorney's customary billing rate for similar work, provided the attorney has a billing practice to report;

(D) evidence of the prevailing community rate sufficient to establish a market value for the services rendered;

(E) specific evidence of the prevailing rate for similar work of attorneys of comparable experience and reputation; and

(F) specific detailed documentation identifying the actual costs associated with the request.

(3) **Response.** Any party may file a response in opposition to the request within 10 calendar days after the date the request is filed with the Commission. The response shall include an affidavit of service to all other parties. This time limit is statutory and may not be extended [74:840-6.8(B)].

(4) **Rejection.** Requests and responses which are not timely filed or do not meet the requirements of this section shall be rejected by the Commission.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-1-2 reverted back to the permanent text that became effective 7-15-96, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-15-5. Addendum decision

The presiding official shall file an addendum decision with the Commission within 20 calendar days after receipt of a request and any responses. The presiding official shall scrutinize with due care the hours and billing rates claimed. The addendum decision shall include findings of fact and conclusions of law written in clear and concise language. The Executive Director shall issue the addendum decision to the parties within 5 calendar days after the addendum decision is filed with the Commission. The addendum decision shall be final and conclusive except as provided for in the Administrative Procedures Act and OAC 455:10-3-20.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-15-6. Frivolous appeals

(a) Excluding appeals heard through the hearing or Alternative Dispute Resolution Program, any party may be assessed attorney fees and costs if the Commissioners determine an appeal is frivolous. A request for attorney fees and costs of processing an appeal shall comply with the provisions of this section.

(b) The Executive Director may file a request with the Commissioners in accordance with this section for reimbursement of any attorney fees and costs associated with processing an appeal. Such action shall be taken only after a party has been provided written notice of the actions the Executive Director may take. The party shall be afforded an opportunity to respond and provide additional evidence to support his or her position.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

SUBCHAPTER 17. ALTERNATIVE DISPUTE RESOLUTION

Section	***Title***
455:10-17-1	Purpose, use and scope of Alternative Dispute Resolution Program
455:10-17-2	Alternative Dispute Resolution advantages
455:10-17-3	Negotiation conference
455:10-17-4	Preparation conference]
455:10-17-5	Summary conference
455:10-17-6	Binding Arbitration conference
455:10-17-7	Non-binding arbitration conference
455:10-17-8	Oklahoma State Shared Mediation Program (OSSMP)

455:10-17-1. Purpose, use and scope of Alternative Dispute Resolution Program

(a) **General.** *The Oklahoma Merit Protection Commission shall establish and maintain a mandatory Alternative Dispute Resolution Program and shall adopt and promulgate such rules as may be necessary for the implementation and management of the program [74:840-6.1(A)] .*

(b) **Purpose.** *A purpose of the Alternative Dispute Resolution Program is to provide an economical means and access to effective alternative dispute resolution services to all state agencies and employees [74:840-6.1(B)] .* Alternative Dispute Resolution (ADR) gives state agencies, employees and applicants for state employment an alternate means to resolve appeals, disputes and conflicts. ADR affords the parties to an appeal the same equity and impartiality as the hearing process while offering faster, less costly and more flexible ways to resolve disputes. ADR is designed for lay-people (people who are not attorneys) to use.

(c) **Use.** *The Oklahoma Merit Protection Commission may require employees and agencies to utilize the Alternative Dispute Resolution Program to resolve disputes brought before the Commission pursuant to Sections 840-6.5 and 840-6.6 of Title 74 of the Oklahoma Statutes [74:840-6.1(C)].* The Executive Director shall determine if ADR is appropriate to resolve any appeal. In making the decision to use ADR, the types of issues to be decided, applicable laws and rules, time factors, the efficient and timely resolution of the appeal, Commission resources and costs and party interests shall be considered.

(d) **Processes.** The negotiation conference shall be considered an appropriate procedure to seek the resolution of any appeal. Thereafter, ADR shall:

(1) not automatically be considered for an adverse action appeal from a permanent classified employee of discharge, suspension without pay of 4 calendar days or more or involuntary demotion. If settlement is not reached at the negotiation conference, such appeals shall be set for prehearing conference and hearing before an Administrative Law Judge. This shall not preclude the employee or the agency from requesting the appeal be resolved through further ADR.

(2) not automatically be considered for an alleged violation appeal in which a determination has been made that a violation of Title 74 O.S., Section 840-2.5, commonly known as the "Whistleblower statute", may have occurred. If settlement is not reached at the negotiation conference, such appeals shall be set for prehearing conference and hearing before an Administrative Law Judge. This shall not preclude a party to the appeal from requesting the appeal be resolved through further ADR.

(3) be considered appropriate to resolve an adverse action appeal from a permanent classified employee of suspension without pay of 3 calendar days of less.

(4) be considered appropriate to resolve a payroll claim protest.

(5) be considered appropriate to resolve all other alleged violation appeals in which a determination has been made a violation within the Commission's jurisdiction may have occurred.

(e) **Party request.** Any party to an appeal may request the appeal be resolved through ADR and may also request a particular procedure be used. The decision as to the resolution method and which particular procedure shall be used rests with the Executive Director.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-17-2. Alternative Dispute Resolution advantages

There are many advantages to ADR. The advantages generally recognized are the economics of time and money; the expertise of a neutral facilitator; confidentiality; the opportunity for a "day in court"; the direct involvement of the parties involved and the preservation of working relationships.

(1) **Time and money.** The advantage of saving time and money is the most alluring. For example, resolving within weeks differences arising out of ordinary employment transactions, as opposed to months of legal litigation, obviously produces savings. Legal costs are reduced. The time necessary for an employee or agency to continually monitor the problem is eliminated and the aggravation flowing from unresolved problems is eliminated.

(2) **Facilitator.** The expertise of a neutral facilitator is an advantage that cannot be ignored. A facilitator has hands-on experience on the issues in dispute and has been trained by the Commission. The facilitator can get to and address the issues in dispute without legal perspectives.

(3) **Confidentiality.** The advantage of a confidential procedure is often overlooked. Problems of adverse publicity and the element of embarrassment over the dispute can be avoided.

(4) **Day in court.** ADR affords the parties an opportunity to tell their side of the dispute. The parties have their "day in court" which allows their anger and emotions to subside and the healing process to begin.

(5) **Direct involvement.** ADR allows agency supervisors and managers to become involved more quickly in settling disputes. Often the dispute is between employees, supervisors and managers who have an ongoing working relationship. The preservation of this relationship is beneficial to everyone and an early resolution of the dispute is highly desirable.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-17-3. Negotiation conference

(a) **General.** The negotiation conference provides an opportunity for the parties to present and discuss settlement with each other and a neutral Alternative Dispute Resolution Program (ADRP) facilitator in order to resolve the issues of an appeal. The parties may discuss, negotiate and settle any differences or issues in reaching a resolution of the appeal. The Executive Director may schedule a negotiation conference:

(1) on an alleged violation appeal, after a determination has been made a violation within the Commission's jurisdiction may have occurred;

(2) on a payroll claim protest, after a properly filed protest has been presented to the Commission; or

(3) on an adverse action appeal, after a determination has been made the appeal is timely filed and the Commission has jurisdiction.

(b) **Party responsibility.** Each party shall be present and on time. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. Each party is expected to negotiate in good faith, without time constraints, and put forth his or her best efforts with the intention to settle, if possible. Even if the parties do not reach a complete settlement, they may reach agreement on various issues.

(1) Each party to the appeal shall speak for himself or herself.

(2) The appointing authority may name a spokesperson to speak and act on behalf of the agency. The spokesperson shall have knowledge of the incidents surrounding the appeal and shall have settlement authority. The appointing authority shall not name a legal representative to act in this capacity unless the legal representative has knowledge of the incidents surrounding the appeal.

(c) **Party submissions.** At the conference each party shall provide to the ADRP facilitator a copy of a proposed settlement offer.

(d) **Representation.** Each party to the appeal may have a representative accompany him or her to the conference to act in an advisory role only. A representative shall not be allowed to interrogate or question any party and shall not otherwise have or take an active role in the conference.

(e) **Facilitator.** The ADRP facilitator shall:

(1) take an active role in the conference to aid the parties in the discussion of settlement and resolution of the appeal;

(2) have the flexibility to adapt the conference to the situation at hand;

(3) have the authority to require any party to produce documents for review at the conference if to do so will aid in the discussion of settlement and resolution of the appeal. Documents produced and reviewed at the conference shall not become part of the appeal record at that time; and

(4) terminate the conference because of the disruptive behavior or conduct of a party or representative and may order sanctions if appropriate.

(5) not be assigned to preside over any further ADR procedures on the same matter.

(f) **Conference.** The conference shall be informal, structured by the ADRP facilitator, and not open to the public. The conference shall be a confidential procedure and shall not be filmed or taped.

(1) **Notice.** At least 7 calendar days before the scheduled conference, the Commission shall notify the parties of the date, time and location of the conference.

(2) **Location.** The conference shall be held at the Commission office or any other location determined appropriate.

(3) **Witnesses.** Witnesses shall not appear or give testimony at the conference.

(4) **Caucus.** The ADRP facilitator may call a caucus at any stage of the conference.

(5) **Continuance.** A request for continuance shall normally be filed in writing no less than 3 calendar days before the scheduled negotiation conference date accordance with OCA 455:10-3-17. A less period of time may be permitted for good cause shown.

(A) The Executive Director shall rule on the request and shall grant a request only in those instances where extraordinary circumstances exist and good cause has been shown.

(B) A continuance shall be granted to a date certain and in no case shall a combination of continuances of the negotiation conference exceed a total of 30 calendar days except for good cause shown.

(g) **Agreement.** If agreement between the parties is reached, it shall be reduced to writing and signed by each party and the ADRP facilitator. The agreement shall be reviewed and approved by the Executive Director before dismissal of the appeal shall be entertained. If approved, the Commission shall retain jurisdiction to enforce the terms of the agreement over which the Commission has jurisdiction. The agreement shall become part of the appeal record.

(h) **Conclusion.** The ADRP facilitator shall end the negotiation conference when an agreement is reached and reduced to writing. If an agreement is not reached, the ADRP facilitator shall end the conference when he or she determines settlement is not possible, unless sooner terminated for just cause. If agreement is not reached:

(1) an adverse action appeal of a discharge, involuntary demotion or suspension without pay of 4 calendar days or more, shall continue on for a prehearing conference and hearing.

(2) an alleged violation appeal, payroll claim protest or adverse action appeal of a suspension without pay of 3 calendar days or less shall continue on for a preparation conference and further ADRP procedures.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-17-4. Preparation conference

(a) **General.** The Executive Director may schedule a preparation conference on any appeal set for Alternative Dispute Resolution. The preparation conference provides an opportunity for the parties to discuss and present their respective cases with each other and an Alternative Dispute Resolution Program (ADRP) facilitator in order to clarify, isolate and dispose of procedural issues before any further ADRP procedure. The Executive Director may schedule a preparation conference after a negotiation conference and before any other ADR procedure is used.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. Prior to the preparation conference each party shall file the original with the Commission and provide to the ADRP facilitator and each other party a copy of:

(1) a brief statement of his or her respective case, to include a list of what he or she will agree to and the remedy he or she is seeking;

(2) a list of witnesses who have direct knowledge of the facts surrounding the issues in dispute. The list shall include a brief statement of the testimony each witness has to offer;

(3) a list of those witnesses and the address for each witness for whom a subpoena is required;

(4) a list of documents associated with the issues in dispute. The original or a copy of each document shall be attached to the list; and

(5) any requirements for discovery.

(c) **Representation.** Each party to the appeal may have a representative accompany him or her to the conference to speak and act on his or her behalf.

(d) **Facilitator.** The ADRP facilitator shall:

(1) take an active role in the conference and maintain neutrality and impartiality at all time;

(2) have the flexibility to adapt the conference to the situation at hand;

(3) consider any matters which will aid in the fair and prompt resolution and disposition of the appeal, including settlement;

(4) rule on whether witnesses have direct knowledge of the issues in dispute;

(5) rule on whether documents are directly related to the issues in dispute;

(6) rule on whether discovery requests or other requests or motions are relevant;

(7) strike or deny witnesses, documents, discovery requests or any other requests or motions if they are:

(A) cumulative, not relevant or not material;

(B) used as a means of harassment;

(C) unduly burdensome; and

(D) not timely filed.

(8) terminate the conference for the disruptive behavior or conduct of a party or representative; and

(9) prepare a preparation conference order which shall record the actions taken and any agreements reached. The preparation conference order shall control the subsequent course of any further ADRP procedure.

(e) **Conference.** The preparation conference shall be informal, structured by the ADRP facilitator and not open to the public. The ADRP facilitator shall record the conference by audio tape recording.

(1) **Notice.** At least 7 calendar days before the scheduled conference, the Commission shall notify the parties of the date, time and location of the conference.

(2) **Location.** The conference shall be conducted at the Commission office or any other location determined appropriate.

(3) **Witnesses.** Witnesses shall not appear or give testimony at the conference.

(4) **Continuanc**e. A request for continuance shall normally be filed in writing no less than 3 calendar days before the scheduled conference date accordance with OAC 455:10-3-17. A lesser period of time may be permitted for good cause shown.

(A) The ADRP Facilitator shall rule on the request and shall grant a request only in those instances where extraordinary circumstances exist and good cause has been shown.

(B) A continuance shall be granted to a date certain and in no case shall a combination of continuances of the preparation conference exceed a total of 30 calendar days except for good cause shown.

(f) **Conclusion.**

(1) The ADRP facilitator shall end the preparation conference when preparation procedures are completed, unless sooner terminated for other just cause.

(2) The ADRP facilitator may provide the Executive Director any other relevant information to assist in the disposition of the case.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-17-5. Summary conference

(a) **General.** The summary conference provides an opportunity for each party to present oral argument (explanation) and offers of proof (documentation), in a limited amount of time, of his or her respective case for decision by an Alternative Dispute Resolution Program (ADRP) facilitator or a panel of ADRP facilitators. Proof is presented, but no formal rules of evidence apply. The Executive Director may schedule a summary conference after a preparation conference.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.

(c) **Representation.** Each party to the appeal may have a representative accompany him or her to the conference to speak and act on his or her behalf.

(d) **Facilitator.** The Executive Director may assign a single ADRP facilitator or a panel of three ADRP facilitators. If the Executive Director assigns a panel, he or she shall name a chair ADRP facilitator who shall be responsible for administrative matters. The ADRP facilitator(s) shall:

(1) take an active role in the conference to determine the facts and maintain neutrality and impartiality at all times;

(2) have the flexibility to adapt the conference to the situation at hand;

(3) consider any matters which will aid in the fair and prompt resolution and disposition of the appeal, including settlement;

(4) provide each party an opportunity to explain and present documents in support of his or her respective case;

(5) rule on the relevancy of evidence; and

(6) terminate the conference because of the disruptive behavior or conduct of a party or representative.

(e) **Conference.** The conference shall be informal, structured by the ADRP facilitator(s) and open to the public. The conference shall be recorded by audio tape recording.

(1) **Notice.** At least 7 calendar days before the scheduled conference, the Commission shall notify the parties of the date, time and location of the conference.

(2) **Location.** The conference shall be conducted at the Commission office or any other location determined appropriate.

(3) **Witnesses.** Witnesses shall not appear or give testimony at the conference.

(4) **Time.** Each party shall be limited to no more than 2 hours for the presentation of his or her case.

(5) **Record of documents.** The ADRP facilitator(s) shall maintain a record of documents to reflect all documents submitted at the conference as offers of proof (documentation).

(6) **Continuance.** A request for continuance shall normally be filed in writing no less than 3 calendar days before the scheduled summary conference date in accordance with OAC 455:10-3-17. A lesser period of time may be permitted for good cause shown.

(A) The ADRP facilitator(s), or in his or her absence, the Executive Director, shall rule on the request and shall grant a request only in those instances where extraordinary circumstances exist and good cause has been shown.

(B) A continuance shall be granted to a date certain and in no case shall a combination of continuances of the summary conference exceed a total of 30 calendar days except for good cause shown.

(7) **Closing.** The ADRP facilitator(s) shall close the conference after each party has presented his or her case, unless sooner terminated for other just cause.

(f) **Proposed order.** The ADRP facilitator(s) shall file a proposed order with the Commission within 10 calendar days after the conference is closed. The proposed order shall include findings of fact and conclusions of law. Findings of fact shall be written in clear and concise language.

(1) The Executive Director shall issue the proposed order to the parties within 5 calendar days after the proposed order is filed.

(2) Within 10 calendar days after the issue date of the proposed order, any party may file a response and include any additional relevant information for consideration by the ADRP

facilitator(s). The time limit may be extended for good cause.

(3) Any party filing a response or providing additional relevant information should provide a copy to all other parties.

(g) **Final order.** The ADRP facilitator(s) shall review the available relevant evidence, including but not limited to, the petition for appeal, oral arguments (explanations), offers of proof (documentation), the proposed order, any responses and additional relevant information filed in response to the proposed order, and applicable laws and rules.

(1) Within 10 calendar days after the time limit for receipt of responses to the proposed order, the ADRP facilitator(s) shall file a final order with the Commission. The final order shall include findings of fact and conclusions of law. Findings of fact shall be written in clear and concise language.

(2) The Executive Director shall issue the final order to the parties within 5 calendar days after the final order is filed.

(3) The final order shall be final and conclusive except as provided in the Administrative Procedures Act and this Chapter.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-17-6. Binding Arbitration conference

(a) **General.** The binding arbitration conference provides an opportunity for each party to present witnesses and evidence in support of his or her respective case for decision by an Alternative Dispute Resolution Program (ADRP) facilitator or a panel of ADRP facilitators. Proof is presented but no formal rules of evidence apply. The Executive Director may schedule a binding arbitration conference after a preparation conference.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.

(c) **Representation.** Each party to the appeal may have a representative accompany him or her to the conference to speak and act on his or her behalf.

(d) **Facilitator.** The Executive Director may assign a single ADRP facilitator or a panel of three ADRP facilitators. If the Executive Director assigns a panel, he or she shall name a chair ADRP facilitator who shall be responsible for administrative matters. The ADRP facilitator(s) shall:

(1) take an active role in the conference to determine the facts and maintain neutrality and impartiality at all times;

(2) have the flexibility to adapt the conference to the situation at hand;

(3) consider any matters which will aid in the fair and prompt resolution and disposition of the appeal, including settlement;

(4) provide each party an opportunity to present his or her case;

(5) rule on whether witnesses, documents, requests or motions are relevant; and

(6) terminate the conference because of the disruptive behavior or conduct of a party or representative.

(e) **Conference.** The conference shall be informal, structured by the ADRP facilitator(s) and open to the public. The conference shall be recorded by audio tape recording.

(1) **Notice.** At least 7 calendar days before the scheduled conference, the Commission shall notify the parties of the date, time and location of the conference.

(2) **Location.** The conference shall be held at the Commission office or any other location determined appropriate.

(3) **Witnesses.** Witnesses shall not be present during the conference except when giving testimony. The ADRP facilitator(s) shall put the witness under oath or affirmation and may ask questions of the witness at any point.

(4) **Record of documents.** The ADRP facilitator(s) shall maintain a record of documents to reflect all documents submitted at the conference as exhibits.

(5) **Record of witnesses.** The ADRP facilitator(s) shall maintain a record of witnesses to reflect all witnesses called and giving testimony at the conference.

(6) **Continuance.** A request for continuance shall normally be filed in writing no less than 5 calendar days before the scheduled binding arbitration conference date in accordance with OAC 455:10-3-17. A lesser period of time may be permitted for good cause shown.

(A) The ADRP facilitator(s), or in his or her absence, the Executive Director, shall rule on the request and shall grant a request only in those instances where extraordinary circumstances exist and good cause has been shown.

(B) A continuance shall be granted to a date certain and in no case shall a combination of continuances of the binding arbitration conference exceed a total of 30 calendar days except for good cause shown.

(7) **Closing.** The ADRP facilitator(s) shall close the conference after each party has presented his or her case, unless sooner terminated for other just cause.

(f) **Proposed order.** The ADRP facilitator(s) shall file a proposed order with the Commission within 10 calendar days after the conference is closed. The proposed order shall include findings of fact and conclusions of law. Findings of fact shall be written in clear and concise language.

(1) The Executive Director shall issue the proposed order to the parties within 5 calendar days after the proposed order is filed.

(2) Within 10 calendar days after the issue date of the proposed order, any party may file a response and include any additional relevant information for consideration by the facilitator. The time limit may be extended for good cause.

(3) Any party filing a response or providing additional relevant information should provide a copy to all other parties.

(g) **Final order.** The ADRP facilitator(s) shall review the available relevant evidence, including but not limited to, the petition for appeal, evidence submitted at the conference, the proposed order, any responses and additional relevant information filed in response to the proposed order, and applicable laws and rules.

(1) Within 10 calendar days after the time limit for receipt of responses to the proposed order, the ADRP facilitator(s) shall file a final order with the Commission. The final order shall include findings of fact and conclusions of law. Findings of fact shall be written in clear and concise language.

(2) The Executive Director shall issue the final order to the parties within 5 calendar days after the final order is filed.

(3) The final order shall be final and conclusive except as provided in the Administrative Procedures Act and this Chapter.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-17-7. Non-binding arbitration conference

(a) **General.** The non-binding arbitration conference provides an opportunity for each party to present witnesses and evidence in support of his or her respective case for decision by an Alternative Dispute Resolution Program (ADRP) facilitator or a panel of ADRP facilitators. Proof is presented but no formal rules of evidence apply. The Executive Director may schedule a non-binding arbitration conference after a preparation conference.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.

(1) Each party to the appeal shall speak for himself or herself.

(2) The appointing authority may name a spokesperson to speak and act on behalf of the agency. The spokesperson shall have direct knowledge of or involvement in the incidents surrounding the appeal. The appointing authority shall not name a legal representative to act in this capacity unless the legal representative has direct knowledge of or involvement in the incidents surrounding the appeal.

(c) **Representation.** Each party to the appeal may have a representative accompany him or her to the conference to act in an advisory role only. A representative shall not be allowed to interrogate or question any party or witness and shall not otherwise have or take an active role in the conference.

(d) **Facilitator.** The Executive Director may assign a single ADRP facilitator or a panel of three ADRP facilitators. If the Executive Director assigns a panel, he or she shall name a chair ADRP facilitator who shall be responsible for administrative matters. The ADRP facilitator(s) shall:

(1) take an active role in the conference to determine the facts and maintain neutrality and impartiality at all times;

(2) have the flexibility to adapt the conference to the situation at hand;

(3) consider any matters which will aid in the fair and prompt resolution and disposition of the appeal, including settlement;

(4) provide each party an opportunity to present his or her case;

(5) rule on whether witnesses, documents, requests or motions are relevant; and

(6) terminate the conference because of the disruptive behavior or conduct of a party or representative.

(e) **Conference.** The conference shall be informal, structured by the ADRP facilitator(s) and open to the public. The conference shall be recorded by audio tape recording. Court reporters

shall not normally be appropriate to record the conference.

(1) **Notice.** At least 7 calendar days before the scheduled conference, the Commission shall notify the parties of the date, time and location of the conference.

(2) **Location.** The conference shall be held at the Commission office or any other location determined appropriate.

(3) **Witnesses.** Witnesses shall not be present during the conference except when giving testimony. The ADRP facilitator(s) shall put the witness under oath or affirmation and may ask questions of the witness at any point.

(4) **Record of documents.** The ADRP facilitator(s) shall maintain a record of documents to reflect all documents submitted at the conference as exhibits.

(5) **Record of witnesses.** The ADRP facilitator(s) shall maintain a record of witnesses to reflect all witnesses and giving testimony at the conference.

(6) **Continuance.** A request for continuance shall normally be filed in writing no less than 3 calendar days before the scheduled non-binding arbitration conference date in accordance with OAC 455:10-3-17. A lesser period of time may be permitted for good cause shown.

(A) The ADRP facilitator(s), or in his or her absence, the Executive Director, shall rule on a request and shall grant a request only in those instances where extraordinary circumstances exist and good cause has been shown.

(B) A continuance shall be granted to a date certain and in no case shall a combination of continuances exceed a total of 30 calendar days except for good cause shown.

(7) **Closing.** The ADRP facilitator(s) shall close the conference after each party has presented his or her case, unless sooner terminated for other just cause.

(f) **Proposed order.** The ADRP facilitator(s) shall file a proposed order with the Commission within 10 calendar days after the conference is closed. The proposed order shall include findings of fact and conclusions of law. Findings of fact shall be written in clear and concise language.

(1) The Executive Director shall issue the proposed order to the parties within 5 calendar days after the proposed order is filed.

(2) Within 10 calendar days after the issue date of the proposed order, any party may file a response and include any additional relevant information for consideration by the ADRP facilitator(s). The time limit may be extended for good cause.

(3) Any party filing a response or providing additional relevant information should provide a copy to all other parties.

(g) **Final order.** The ADRP facilitator(s) shall review the available relevant evidence, including but not limited to, the petition for appeal, evidence submitted at the conference, the proposed order, any responses and additional relevant information filed in response to the proposed order, and applicable laws and rules.

(1) Within 10 calendar days after the time limit for the receipt of responses to the proposed order, the ADRP facilitator(s) shall file a final order with the Commission. The final order shall include findings of fact and conclusions of law. Findings of fact shall be written in clear and concise language.

(2) The Executive Director shall issue the final order to the parties within 5 calendar days after the final order is filed.

(3) The final order shall become final, conclusive and enforceable unless a rejection is filed in accordance with OAC 455:10-17-7(h) below.

(h) **Rejection of final order.** Within 10 calendar days after the issue date of the final order, any party may file a request for rejection and request the matter be heard through a hearing. The request for rejection shall include an affidavit of service to all other parties.

(1) Within 7 calendar days after receiving a timely filed request for rejection, the Executive Director shall schedule the matter for a prehearing conference and hearing.

(2) If after the hearing, the final decision to sustain or deny the appeal is the same as the final decision in the non-binding arbitration conference, or if the filing party fails to advance or gain in the decision, the party filing the request for rejection shall bear the costs of the hearing.

(i) **Costs.** For purposes of this section, costs of the hearing shall include costs to the Commission, costs of witnesses appearing at the hearing and reasonable attorney fees and costs. Reasonable costs and attorney fees shall be determined according to OAC 455:10-15-3 and OAC 455:10-15-4.

(1) Within 10 calendar days after the final decision is issued, a request for award of attorney

fees and costs associated with the hearing may be filed for decision by the Administrative Law Judge. The request shall be filed according to OAC 455:10-15-5.

(2) Within 10 calendar days after receipt of a request, the Administrative Law Judge shall file an addendum decision in accordance with OAC 455:10-15-6.

(3) The amount of award determined by the Administrative Law Judge shall be final and conclusive except as provided in the Administrative Procedures Act and this Chapter.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-17-8. Oklahoma State Shared Mediation Program (OSSMP)

(a) **General.** The Oklahoma State Shared Mediation Program (OSSMP) is a project of the Commission to provide mediation as an alternative means to resolve disputes in the state workplace. The purpose of the OSSMP is to resolve disputes at the earliest possible time to increase the quality of communication with the workforce, to maintain a productive work environment and to reduce the costs and time involved with formal processes. The Commission will establish guidelines for use of the OSSMP. The OSSMP provides an opportunity for agencies and employees to voluntarily settle appeals, grievances and other employment disputes and conflicts. It is not necessary for a petition for appeal or internal agency grievance to be filed before requesting or using the OSSMP.

(b) **Participant responsibility.** The participants shall be present and on time. Failure to do so may result in dismissal of the mediation session. Each participant shall mediate in good faith, without time constraints, and put forth their best efforts with the intention of reaching settlement, if possible. Even if the participants do not reach a complete settlement, they may reach agreement on various issues.

(1) Each participant shall speak for himself or herself.

(2) If the appointing authority is involved in the dispute or conflict, he or she may name a spokesperson to speak and act on behalf of the agency. The spokesperson shall have knowledge of the incidents surrounding the dispute and shall have settlement authority. The appointing authority shall not name a legal representative to act in this capacity unless the legal representative has knowledge of the incidents surrounding the dispute.

(c) **Representation.** Each participant may have a representative accompany him or her to the mediation session to act in an advisory role only. A representative shall not be allowed to interrogate or question any participant and shall not otherwise take or have an active role in the mediation session.

(1) Any participant at the mediation session without a representative must consent to allowing the attendance of a representative for any other participant.

(2) A representative shall be subject to the laws, rules, terms and conditions governing mediation, including but not limited to, confidentiality.

(3) A representative need not be an attorney.

(d) **Mediator.** The mediator shall be assigned by the Executive Director. The mediator shall:

(1) take an active role in the session and maintain neutrality and impartiality at all times;

(2) have the flexibility to adapt the session to the situation at hand;

(3) aid the participants in the discussion of settlement and resolution of the issues in dispute; and

(4) terminate the session because of the disruptive behavior or conduct of a participant or representative.

(e) **Time limits.** After acceptance of a request for mediation, any applicable time limits shall be tolled pending completion of the mediation process.

(f) **Referral.** In an effort to make mediation available to the widest possible audience, the Commission shall accept referrals from the Commission staff, Administrative Law Judges, appointing authorities, agency grievance managers, supervisors and individual employees.

(g) **Request.** A request for mediation shall include:

(1) the name, address and work telephone number of the person making the request and the names, addresses and work telephone numbers of those involved in the dispute or conflict;

(2) a description of any internal agency grievance or other complaint pending on the issues in dispute; and

(3) signature of the person making the request.

(A) submission of the Commission's Request for Mediation of Grievance or Request for Mediation Services shall satisfy this requirement;

(B) If mediation is requested by an agency grievance manager or decision maker in the

internal agency grievance process, the agency grievance manager shall notify the employee of the request; and

(C) If mediation is requested by an employee and an internal agency grievance is pending, the employee shall notify the agency grievance manager of the request.

(h) **Intake.**

(1) The Commission shall conduct an intake interview upon receipt of a request for mediation to determine if:

(A) the matter in dispute or conflict is appropriate for mediation;

(B) the persons involved in the dispute or conflict are correctly identified;

(C) the persons involved in the dispute or conflict are willing to mediate; and

(D) any person involved in the dispute or conflict will have a representative in attendance at the session.

(2) The Commission's Mediation Intake form shall be completed by the person conducting the intake with a recommendation to accept or reject the request. The Executive Director shall review the recommendation and accept or reject the request.

(A) If rejected, the person making the request and the persons involved in the dispute or conflict shall be contacted and notified.

(B) If accepted, the Executive Director shall assign a mediator.

(i) **Session.** The mediation session shall be informal, structured by the mediator and not open to the public. The session shall be a confidential procedure and shall not be filmed, taped or otherwise recorded. Participants and representatives shall respect and maintain the confidentiality of the session.

(1) **Notice.** At least 3 calendar days before the scheduled session, the Commission shall notify the parties of the date, time and location of the session.

(2) **Location.** The session shall be held at the Commission office or any other location determined appropriate.

(3) **Witnesses.** Witnesses shall not appear or give testimony at the session.

(4) **Agreement to mediate.** Before the session begins the participants and representatives shall sign the Commission's Agreement to Mediate form.

(5) **Caucus.** The mediator may call a caucus at any stage of the session.

(6) **Continuance.** A request for continuance shall normally be filed in writing no less than 3 calendar days before the scheduled voluntary mediation session date in accordance with OAC 455:10-3-17. A lesser period of time may be permitted for good cause shown.

(A) The Executive Director shall rule on the request and shall grant a request only in those instances where extraordinary circumstances exist and good cause has been shown.

(B) A continuance shall be granted to a date certain and no case shall a combination of continuances of voluntary mediation exceed a total of 30 calendar days except for good cause shown.

(j) **Agreement.** If an agreement is reached, it shall be reduced to writing and signed by each participant and the mediator. The agreement shall be reviewed and approved by the Executive Director before it can become final or before dismissal of an appeal shall be entertained.

(1) If an agreement is reached and approved by the Executive Director, the Commission shall conduct two follow-ups to determine the success of the voluntary mediation session.

(A) The first follow-up shall be conducted between 30 and 45 days after the agreement is approved.

(B) The second follow-up shall be conducted between 75 and 90 days after the agreement is approved.

(2) The Commission's Case Follow-Up Report form shall be used to record any complaints, concerns or compliments expressed by the participants during the follow-ups.

(k) **Conclusion.** The mediator shall end the session when an agreement is reached and reduced to writing. If an agreement is not reached, the mediator shall end the session when any participant elects to not continue or when in the judgment of the mediator, agreement is not possible, unless sooner terminated for the disruptive behavior or conduct of a participant or representative.

[**Source:** Added at 11 Ok Reg 1871, eff 5-12-94; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02]

SUBCHAPTER 19. INTERNAL AGENCY GRIEVANCE RESOLUTION PROCEDURES

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PART 1. GENERAL PROVISIONS

455:10-19-1. General

The Oklahoma Merit Protection Commission shall establish standard internal agency grievance resolution procedures for classified state employees [74:840-6.2(A)]. It is the Commission's policy to seek resolution of disputes at the lowest level possible The Commission will not normally intervene when the issues in dispute are being addressed through the internal agency grievance resolution procedure.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-19-1 reverted back to the permanent text that became effective 7-15-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-19-2. Purpose

(a) The rules in this subchapter provide standards and guidelines for the prompt and equitable resolution of employment disputes and grievances at the lowest possible level within the employing agency. These rules pertain to probationary and permanent classified employees.

(b) An appointing authority may elect to adopt these procedures, or other procedures, to address disputes of other employees. Any such procedures shall be separate and apart from the grievance procedure and shall not automatically give jurisdiction of the issues in dispute to the Commission.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-19-3. Definitions

In addition to words and terms defined in the Merit System of Personnel Administration Rules, the following words and terms, when used in this subchapter, shall have the following meaning unless the text clearly indicates otherwise.

"Accept" means a determination by an agency grievance manager that issue(s) meet jurisdictional requirements.

"Deny" means to refuse to grant a remedy requested, to determine an issue to be without merit or to end a grievance without further consideration.

"Grant" means to find an issue to have merit and to give an appropriate remedy.

"Grievance" means a request for relief in an employment matter made by an employee, or a group of employees, which affects them and which is subject to control of the appointing authority. For purposes of grievances, an employee may be a probationary or permanent classified employee.

"Jurisdiction" means the authority to decide an issue within the agency grievance procedure. The time limit to file a grievance, an employee's eligibility to use the agency grievance procedure and the

issues raised are general factors in determining agency jurisdiction.
"Reject" means a determination by an agency grievance manager that a grievance or an issue does not meet agency jurisdictional requirements.
"Remedy" means the corrective action(s) sought by an employee or offered by a decision-maker or appointing authority.
"Toll" means to temporarily stop or suspend applicable time limits.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-19-4. Records

(a) The appointing authority shall maintain a record of each formal grievance filed. Grievance records shall be maintained separate and apart from other individual employee personnel files [74:840-6.2(I)].
(b) Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, Oklahoma Open Records Act, shall govern access to grievance records.
(1) An employee or former employee shall have a right of access to the grievance record of grievances he or she filed after the agency grievance procedure has been completed [74:840-6.2(I)].
(2) The Commission, because of statutory responsibility, shall have a right of access to grievance records.
(c) Grievance records shall be maintained consistent with the General Records Disposition Schedule of the Oklahoma Department of Libraries, Office of Archives and Records.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-5. Statistics

(a) The appointing authority shall maintain summary and statistical information about the number, nature and outcome of all formal grievances filed [74:840-6.2(I)].
(b) The appointing authority shall provide to the Commission, on a fiscal year basis, a grievance report containing the following information:
(1) the number of grievances filed, resolution time for each grievance and the nature and outcome of each grievance; and
(2) the pay band, sex and race of each employee filing a grievance.
(c) The grievance report for the previous fiscal year shall be filed with the Commission no later than August 1 of each year.
(d) Appointing authorities shall submit a report even if no grievance actions occurred during the relevant time period.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-19-6. [RESERVED]

[**Source:** Reserved at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-7. Grievance notice

Each appointing authority shall prominently display a notice reflecting the name, address and telephone number of the employee(s) designated to receive and process formal grievances. Such notices shall be displayed in locations where they can reasonably be expected to come to the attention of employees.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-8. Retaliation - prohibited

(a) No employee shall be disciplined or otherwise prejudiced in his or her employment for exercising his or her rights under the internal agency grievance resolution procedure [74:840-6.2(C)].
(b) Any employee who believes this section has been violated may file a petition for appeal with the Commission. The petition for appeal shall identify the name of the person alleged to have violated this section and shall be specific as to who did what, when, where, how and why.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-9. Time

For purposes of the rules in this subchapter, time shall be counted in terms of calendar days. If the last day of the count is a Saturday, Sunday or legal holiday as proclaimed by the Governor, the period shall continue to the next business day.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

PART 3. RESPONSIBILITIES

455:10-19-20. Appointing authority responsibility

(a) The appointing authority shall use the internal agency grievance resolution steps established in Part 7 of this subchapter or adopt other grievance resolution procedures which address the specific needs of their agencies [74:840-6.2(A)]. The appointing authority shall file a copy of any adopted resolution procedures, including revisions, with the Commission. Any adopted grievance resolution procedure shall include a general statement certifying that the procedure contains minimum requirements which:
(1) encourage resolution of disputes within the agency quickly, informally and at the lowest possible level;
(2) require prompt resolution of grievances within established time periods; and

(3) guarantee the employee the right to be represented by a person of his or her own choosing at each step of the procedure, except the initial informal discussion with his or her immediate supervisor;
(4) reflect the name, address and telephone number of the person(s) designated to receive and process formal grievances.
(b) The appointing authority shall:
(1) furnish to each classified employee a copy of the internal agency grievance resolution procedure, including revisions, used by the agency [74:840-6.2(B)].
(2) designate an employee or employees within the agency to receive and process formal grievances [74:840-6.2(G)]. If the appointing authority does not designate such employee(s), the appointing authority shall be the grievance manager;
(3) within 30 calendar days after such designation, provide the Commission with the name, address, telephone number and designation date of such employee(s); and
(4) ensure employee(s) designated to receive and process formal grievances are scheduled to attend and notified of required Commission training and shall make time available for employees to complete training [74:840-6.2(H)].
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-21. Supervisor responsibility
Each supervisor shall:
(1) inform their employees of the internal agency grievance resolution procedure;
(2) be aware and informed of the names of employee(s) designated by the appointing authority to receive and process formal grievances;
(3) ensure that applicable time limits pertaining to supervisory responsibility within the grievance procedure are met;
(4) informally discuss, address and resolve disputes brought to their attention, when possible, at the lowest level possible.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-22. Internal agency grievance manager responsibility
Any employee designated to receive and process formal grievances by their appointing authority shall:
(1) within 6 months after designation to serve in this capacity, successfully complete the initial training programs required by the Commission;
(2) maintain proficiency by successfully completing continuing training programs required by the Commission;
(3) provide advice, assistance and technical direction to the appointing authority, supervisors and employees on the internal agency grievance resolution procedure;
(4) review formal grievances and accept or reject them;
(5) ensure that time limits which apply to the processing and resolution of formal grievances are met;
(6) facilitate the prompt, equitable and timely resolution of grievances at the lowest possible level; and
(7) ensure the formal grievance is reviewed and addressed by a person within the employing agency with authority to resolve the dispute.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-23. Employee responsibility
(a) Any employee who has reason to believe his or her employment has been directly affected by unfair treatment, unsafe working conditions or erroneous interpretation or application of agency policy, procedure, merit rule or law, has a duty and responsibility to attempt to resolve the dispute informally. Thereafter, the employee has the right to file a formal grievance.
(b) Any employee filing a formal grievance has a duty and responsibility to provide accurate, timely information to support his or her assertions and to make a good faith effort to resolve the dispute.
(c) Employees should refrain from idle talk and should treat information about formal grievances with discretion as required by rules adopted by the Administrator of the Office of Personnel Management regarding the conduct of classified employees.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

PART 5 GRIEVANCE PROVISIONS

455:10-19-35. Grievance
(a) **General.** The resolution of disputes is advocated within the agency before appeals are filed with the Commission.
(b) **Promotion.** Any employee who feels that he or she has not been treated fairly with regard to a promotional action has the right to file a formal grievance. The Commission will accept an appeal regarding a promotional issue only after such complaint has been reviewed in the formal grievance procedure [74:840-4.15(C)].

(c) **Classification.** *An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the class specification* [74:840-4.3(B)].

(1) *Employees shall be classified in accordance with the work they are assigned on a regular and consistent basis as an integral part of their normal work assignment and class specification* [74:840-4.3(B)]. Any employee who believes he or she is not classified in accordance with the work assigned on a regular and consistent basis as an integral part of his or her work assignment and job family descriptor, has the right to file a formal grievance.

(2) An employee is entitled to the compensation assigned to the job family descriptor for which duties were performed on a regular and consistent basis as determined by the Human Capital Management Division (HCM) [74:840-4.3(B)]. Any employee who believes he or she is entitled to compensation for having performed duties on a regular and consistent basis which do not conform to the job family descriptor for the position he or she occupies or occupied, has the right to file a formal grievance.

(3) The appointing authority and employee shall attempt to resolve these disputes through the formal grievance procedure.

(4) If the dispute can not be resolved, the resolution decision by the appointing authority shall be to advise the employee to complete an Human Capital Management Classification Dispute Review Request (HCM-70) pursuant to rules adopted by the Administrator of the Human Capital Management Division.

(5) *Agency classification and reclassification decisions shall not be subject to appeal to the Oklahoma Merit Protection Commission. However, the involuntary removal of a permanent employee in permanent status in a job family level to a lower level in the same job family or to another job family level assigned a lower pay band shall be considered a demotion. Such action may be appealed by the employee to the Oklahoma Merit Protection Commission* [74:840-4.3(B)]. An employee may allege a violation of law or rule over which the Commission has jurisdiction in the classification and reclassification process pursuant to OAC 455:10-3-3.

(d) **Discipline.** Any employee who has reason to believe that discipline imposed was not uniform, appropriate or in compliance with the agency progressive discipline policy, has the right to file a formal grievance. The Commission will accept an appeal regarding a discipline issue (except suspension without pay, involuntary demotion or discharge) only after such complaint has been reviewed in the formal grievance procedure.

(e) **Leave.** Any employee who feels that he or she has not been treated fairly with regard to annual, sick or any other leave accrual, accumulation, use or eligibility (including leave without pay and leave sharing), has the right to file a formal grievance. The Commission will accept an appeal regarding leave issues only after such complaint has been reviewed in the formal grievance procedure.

(f) **Employee service rating system.** Any employee who disagrees with his or her individual service rating has the right to file a formal grievance.

(1) The Commission will accept, for alternative dispute resolution only, a complaint involving disagreement with the individual service rating only after such complaint has been reviewed in the formal grievance procedure.

(2) The Commission will accept an appeal of alleged violation of the Oklahoma Personnel Act or Merit Rules in regard to the employee service rating system only after such complaint has been reviewed in the formal grievance procedure.

(3) Alleged violations of Title 74 O.S., Section 840-2.5 and Section 840-2.9 in regard to the employee service rating system may be appealed directly to the Commission.

(g) **Discrimination.** Complaints of illegal discrimination, including sexual harassment, are subject to the internal agency grievance resolution procedure. The appointing authority may adopt special procedures for addressing and resolving discrimination complaints. Any such procedures shall comply with federal laws and rules, the Oklahoma Personnel Act and the rules in this subchapter.

(h) **Pay movement mechanisms and other compensation issues.** Any employee who feels that a violation of law, rule, policy or practice has occurred with regard to pay movement mechanisms or other compensation issues, has the right to file a formal grievance. The Commission will accept an appeal regarding pay movement mechanisms and other compensation issues only after such complaint has been reviewed in the formal grievance procedure.

[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 17 Ok Reg 533, eff 11-30-99 (emergency); Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02; Amended at 26 Ok Reg 559, eff 3-1-08 through 7-14-09 (emergency)[1]; Amended at 26 Ok Reg 2690, eff 7-25-09; Amended at 33 Ok Reg 1756, eff 9-11-16]

EDITOR'S NOTE: *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-09 (after the 7-14-09 expiration of the emergency action), the text of 455:10-19-35 reverted back to the permanent text that became effective 7-1-02, as was last published in the 2006 Edition of the OAC, and remained as such until amended again by permanent action on 7-25-09.*

455:10-19-36. [RESERVED]
[**Source:** Reserved at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-37. Grievance preparation and processing
An employee may request approval from his or her supervisor for necessary and reasonable absence from work to gather information in preparation to file and process a formal grievance. The request for the time needed should be made in advance. The supervisor may approve such absence if the time away will not cause undue hardship or upset any employee's work place operation. Any approved absence shall not result in a loss of pay or leave.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-38. Leave and travel
(a) An employee who has filed a formal grievance, or witnesses whose attendance is required, shall not be charged leave to attend meetings held to decide the grievance.
(b) Approved travel and other expenses incurred to resolve a formal grievance shall be reimbursed by the employing agency in accordance with the State Travel Reimbursement Act.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-39. Employee representation
(a) An employee has the right to be represented by a person of his or her own choosing at each step of the internal agency grievance resolution procedure, except the initial informal discussion with his or her immediate supervisor.
(b) The representative must be willing and available to serve and have authority to negotiate settlement.
(c) The employee is responsible for all costs and expenses of his or her representation.
(d) A representative who is a state employee shall be on approved leave or leave without pay while working on the grievance.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-40. Group grievances
(a) Employees may file a formal grievance as a group, when the grievance issues and personal relief sought are the same or similar for each. The group shall name a spokesperson who shall speak and act on behalf of the group. The spokesperson shall be one of the employees of the group filing a formal grievance. The group is entitled to a representative as outlined in OAC 455:10-19-39.
(b) The appointing authority may consolidate formal grievances containing the same or similar issues filed by two or more employees when to do so will produce a more efficient, more economical or more timely processing and resolution of the grievances and will not adversely affect the interests of the employees filing the grievances.
(c) The appointing authority may join formal grievances filed by an employee when to do so will produce a more efficient, more economical or more timely processing and resolution of the grievances and will not adversely affect the interests of the employee.
(d) Other specific requirements for filing and resolving formal group grievances may be adopted in an appointing authority's internal agency grievance resolution procedure.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-41. [RESERVED]
[**Source:** Reserved at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-42. Filing time
(a) A formal grievance shall be filed:
(1) within 20 calendar days of the date of the act or incident; or
(2) within 20 calendar days of the date the employee becomes aware of or, with reasonable effort, should have become aware of a grievable issue.
(b) The appointing authority may extend the time limit for filing a formal grievance if the employee shows that he or she could not have otherwise timely filed or if the employee provides evidence that he or she was making a good faith effort to resolve the dispute informally or for other good cause shown. The decision to extend the filing time shall not automatically give jurisdiction of the issues in dispute to the Commission.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 17 Ok Reg 2560, eff 6-26-00; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-19-43. Form
(a) A formal grievance shall be filed with the agency grievance manager on the form prescribed by the Commission or on a form adopted by the appointing authority which addresses the specific needs of the agency.
(b) The formal grievance form shall include, as a minimum:

(1) the name, address and work telephone number of the employee;
(2) the classification of the employee;
(3) the work location, department, division or section of the employee;
(4) the name of the supervisor with whom the employee discussed the dispute and the date of the discussion;
(5) the date of the alleged act or incident which is cause for the formal grievance or the date the employee became aware of the grievable issue;
(6) a brief statement of the dispute citing such information as the reason for the grievance, persons involved, etc.
(7) any laws, merit rules, agency policy, practice or procedures the employee believes to have been violated;
(8) a requested remedy which the employee believes to be appropriate;
(9) the name, address and telephone number of the employee's representative, if any;
(10) the name, address and telephone number of the spokesperson if the grievance is from a group;
(11) the date and signature of the employee or the spokesperson; and
(12) a list of the names of the employees if a group grievance.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-44. Resolution time

(a) A formal grievance shall be resolved by the employing agency within 45 calendar days after the filing of the grievance.
(1) The appointing authority may extend the resolution time up to an additional 15 days for good cause. The extension shall be made in writing to the employee before the expiration of the 45 calendar day resolution time and include reasons for the extension
(2) The employee and the appointing authority may mutually extend the resolution time up to an additional 30 calendar days for good cause. Any extension shall be agreed to in writing and include reasons for the extension.
(3) In no case shall the resolution time of a formal grievance exceed 90 calendar days.
(b) Time limits for completion of resolution steps may be adopted in an appointing authority's internal agency grievance resolution procedure.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-45. Resolution decision

(a) Resolution decisions shall address the issues raised in the formal grievance.
(b) Resolution decisions shall be made in writing to the employee filing the formal grievance or if a group grievance, to the spokesperson. Resolution decisions shall be delivered personally or by mail.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-46. Filing an appeal after a formal grievance

(a) After filing a formal grievance, an employee may file an appeal with the Commission within 20 calendar days after:
(1) expiration of the resolution time, including any extension, and a resolution decision has not been received;
(2) receiving a resolution decision and the employee can provide evidence the resolution decision was not correct, did not address the issues of the grievance or that violations occurred during the processing of the formal grievance.
(b) An employee may file an appeal before the agency grievance procedure is concluded if the employee can provide evidence that violations of the agency grievance procedure are occurring or if the employee can provide evidence that the alleged violations are continuing.
(c) The issues of the appeal shall be limited to those raised in the formal grievance or discovered during the internal agency grievance process over which the Commission has jurisdiction.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-47. Grievance and appeal-separate filings

The filing of formal grievances with the employing agency and appeals with the Commission are separate actions. Each is the responsibility of the employee. The filing of one does not substitute for the filing of the other.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

PART 7. GRIEVANCE PROCEDURE

455:10-19-60. General

The internal agency grievance resolution procedure shall be a two step procedure.
(1) The first step shall be an informal discussion between the employee and the immediate supervisor.
(2) The second step shall be the formal grievance.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-61. Step one - informal discussion

(a) The purpose of the informal discussion shall be to provide the employee and his or her supervisor an opportunity to address and resolve concerns and complaints at the lowest level

possible. The effort to resolve disputes at this level may include, but is not limited to, the use of mediation.
(b) An employee who has a grievable issue shall promptly bring the dispute to the attention of his or her supervisor. The employee and the supervisor shall strive to informally resolve the dispute.
(c) If the supervisor is unable to resolve the dispute because it is not within his or her control or authority, the supervisor shall attempt to determine who can resolve the dispute and give that person an opportunity to resolve the dispute informally or advise the employee to proceed to Step 2.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-19-62. Step two-formal grievance
(a) If the dispute is not resolved informally, the employee may file a formal grievance within the time specified in OAC 455:10-19-42.
(b) Formal grievances shall promptly and impartially be addressed and resolved at the lowest level possible.
(c) A face-to-face meeting or telephone conversation is required between the resolution decision maker and the employee at this step.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-63. [RESERVED]
[**Source:** Reserved at 12 Ok Reg 2823, eff 7-13-95]

455:10-19-64. Use of voluntary mediation
(a) Employees, supervisors, appointing authorities and grievance managers are encouraged to use mediation as a means of resolution at any step of the internal agency grievance procedure.
(b) Applicable grievance time limits shall be tolled if a request for voluntary mediation is made. The tolling time shall begin as soon as mediation is requested and shall end:
(1) once it is determined the participants are not willing to use the voluntary mediation services; or
(2) upon conclusion of the voluntary mediation session or at such time that any participant withdraws from participating in the voluntary mediation session.
(c) The agency grievance manager shall be notified of the tolling time as soon as possible and practical.
[**Source:** Added at 12 Ok Reg 2823, eff 7-13-95; Amended at 19 Ok Reg 2376, eff 7-1-02]

SUBCHAPTER 21. PRESIDING OFFICIALS, REPRESENTATIVES, WITNESSES AND PARTIES

Section	***Title***
455:10-21-1	Administrative Law Judges
455:10-21-2	Alternative Dispute Resolution Program Facilitators
455:10-21-3	Representatives
455:10-21-4	Witnesses
455:10-21-5	Parties
455:10-21-6	Intervenors

455:10-21-1. Administrative Law Judges
(a) **General.** Administrative Law Judges shall be assigned by the Executive Director to preside over prehearing conferences and hearings. An Administrative Law Judge shall be fair and impartial and take all necessary action to avoid delay in the resolution and disposition of an appeal. An Administrative Law Judge shall have all powers necessary to that end which are not otherwise prohibited. An Administrative Law Judge shall be subject to the Commission Code of Conduct for Administrative Law Judges.
(b) **Withdrawal.** An Administrative Law Judge shall withdraw from any appeal in which he or she can not be fair and impartial. The Executive Director shall be immediately notified of the withdrawal and reason for such withdrawal.
(c) **Disqualification.** A party to an appeal may file a request seeking the disqualification of an Administrative Law Judge on the basis of inability to be fair or impartial. The request shall specifically state the reasons for such request and shall be filed as soon as the party making the request has reason to believe there is a basis for the disqualification and shall include an affidavit of service to all other parties. The Administrative Law Judge shall be provided an opportunity to respond. The Executive Director shall rule on the request and the decision is final and conclusive except as provided for the in the Administrative Procedures Act and OAC 455:10-3-20.
[**Source:** Amended and renumbered from 455:10-5-10 at 13 Ok Reg 3025, eff 7-15-96; Amended at 19 Ok Reg 2376, eff 7-1-02]

455:10-21-2. Alternative Dispute Resolution Program Facilitators
(a) **General.** Alternative Dispute Resolution Program (ADRP) Facilitators shall be assigned by the Executive Director to preside over ADRP procedures. An ADRP Facilitator shall be fair and impartial and take all necessary action to avoid delay in the resolution and disposition of an appeal. An ADRP Facilitator shall have all powers

necessary to that end which are not otherwise prohibited. An ADRP Facilitator shall be subject to the Commission Code of Conduct for ADRP Facilitators.

(b) **Withdrawal.** An ADRP Facilitator shall withdraw from any appeal in which he or she can not be fair and impartial. The Executive Director shall be immediately notified of the withdrawal and reason for such withdrawal.

(c) **Disqualification.** A party to an appeal may file a request seeking the disqualification of an ADRP Facilitator on the basis of inability to be fair or impartial. The request shall specifically state the reasons for such request and shall be filed as soon as the party making the request has reason to believe there is a basis for the disqualification and shall include an affidavit of service to all other parties. The ADRP Facilitator shall be provided an opportunity to respond. The Executive Director shall rule on the request and the decision is final and conclusive except as provided for the in the Administrative Procedures Act and OAC 455:10-3-20.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-21-3. Representatives

A person who voluntarily selects a representative is bound by the acts and omissions of the representative; therefore, careful consideration should be given to the selection of a representative. Unless otherwise required by statute or the rules in this chapter, a representative need not be an attorney.

(1) A representative shall have knowledge of the appeal and shall be willing and available to serve. A representative shall have the authority to negotiate and approve settlement.

(2) A representative shall be identified in the petition for appeal or through an entry of appearance or other written means.

(3) A representative shall be subject to any Code of Conduct for Representatives adopted by the Commission.

(4) The Commissioners, Executive Director or presiding official may disqualify or release a representative for conflict of interest or any other good cause. A request shall be submitted as soon as the person making the request becomes aware of a reason that justifies the request.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-21-4. Witnesses

(a) **General.** The Commissioners, Executive Director or presiding official may compel the attendance of persons as witnesses when their testimony will aid in establishing the facts of an appeal. The Commissioners, Executive Director or presiding official may ask the witness specific questions when to do so will aid in the resolution and disposition of an appeal. Employees appearing as witnesses shall be released from duty by the employing agency without loss of pay or time and without effect on their employee service ratings.

(1) Employees shall be reimbursed by the employing agency for expenses as provided for in the State Travel Reimbursement Act. The costs of securing witnesses who are not state employees, to include fees and mileage, shall be computed and paid by the party calling the witness.

(2) No person shall directly or indirectly use, or threaten to use, any official authority or other influence which would tend to discourage any other person from offering testimony.

(b) **Subpoenas.** The Commissioners, Executive Director or Administrative Hearing Officer may issue a subpoena to compel the attendance of a person to give testimony or for the production of books, records, accounts, papers and other instruments and tangible objects pursuant to any investigation, hearing or Alternative Dispute Resolution Program procedure. A subpoena duces tecum may direct that records be produced by the officer or employee responsible for them.

(1) **Service.** Service of a subpoena shall be the responsibility of the party requesting the subpoena. A subpoena may be served by any person 18 years of age or older. Service may be made by personal service or certified mail, but shall be made at least 3 calendar days before the person is required to appear. The person serving the subpoena shall provide a written statement showing the person served and the date and manner of service. This requirement may be satisfied by completion of the affidavit on the subpoena form. The attendance of a witness shall not be enforced unless the affidavit of service is on file with the Commission at the time of attendance.

(2) **Quashing or limiting.** The Commissioners, Executive Director or Administrative Hearing Officer may quash or limit a subpoena if: the subpoena was used primarily as a means of harassment; the testimony or documents sought are cumulative; the testimony or documents sought are not relevant or material; to respond to

the subpoena would be unduly burdensome; for other good reasons, basic fairness dictates that the subpoena not be enforced.

(3) **Failure to appear.** Any person who fails to appear in response to a subpoena, fails to answer any question or produce any books or papers, or who shall knowingly give false testimony therein upon conviction shall be subject to penalties pursuant to Section 840-6.9 of Title 74 of the Oklahoma Statutes.

(4) **Effect of continuances.** It shall be the responsibility of the party requesting the subpoena to notify the person subpoenaed of the specific time and date of a continuance and of the fact that the subpoena remains in effect. Subpoenas shall not normally be re-issued as a result of a continuance.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-21-5. Parties

Parties to an appeal shall be afforded all the rights they are entitled to. OAC 455:10-3-3 defines who a party is. The Executive Director may add or dismiss a party to an appeal when the evidence justifies such action be taken.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96]

455:10-21-6. Intervenors

Any person alleged to have committed a violation over which the Commission has jurisdiction or who may be directly affected by the outcome of an appeal, may request permission to intervene in the appeal. The request shall be made in writing at the earliest possible time and shall include a showing that the outcome of the appeal would directly affect the person making the request.

(1) Intervenors shall be considered parties and shall have the same rights and duties as an original party except that intervenors shall not have an independent right to a hearing. An intervenor may only participate on the issues affecting him or her as stated in the order granting intervention.

(2) The Executive Director, because of statutory responsibility, may intervene as a matter of right.

(3) The Administrator of the Human Capital Management Division may personally intervene at the earliest possible time he or she knew, or should have known, that the issues in the appeal would directly affect the authority or responsibility of the Human Capital Management Division of the Office of Management and Enterprise Services.

[**Source:** Added at 13 Ok Reg 3025, eff 7-15-96; Amended at 33 Ok Reg 1756, eff 9-11-16]