
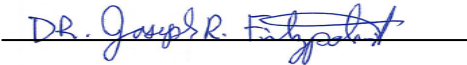


<b>POLICY TITLE: ADMINISTRATIVE AND PERSONNEL COMPLAINT INVESTIGATIONS</b>		<b>PAGE 1 of 9</b>
<b>POLICY NUMBER: 7.3</b>		
<b>CHAPTER: INVESTIGATIONS</b>		
	<b>STATE of MAINE DEPARTMENT OF CORRECTIONS</b>  <b>Approved by Commissioner:</b>  	<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VII</b>
<b>EFFECTIVE DATE:</b> <b>November 15, 2013</b>	<b>LATEST REVISION:</b> <b>March 11, 2016</b>	<b>CHECK ONLY IF APA [ ]</b>

## I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in Title 34-A M.R.S.A. Sections 1403 and 3011.

## II. APPLICABILITY

Entire Department of Corrections

## III. POLICY

It is the policy of the Department of Corrections to conduct administrative/personnel complaint investigations of misconduct of staff and others who are not prisoners or residents and to determine whether or not the allegations have a basis in fact. These investigations shall be conducted in a thorough, fair and timely manner. The process shall be consistent with collective bargaining agreements, state personnel policy, and state and federal law, as applicable.

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## V. ATTACHMENTS

None

## VI. PROCEDURES

### **Procedure A: Office of Professional Review, General**

1. The Department maintains an Office of Professional Review (OPR) under the

oversight of the Department's Manager of the Office of Professional Review.

2. The Department's Manager of the Office of Professional Review oversees or conducts investigations of all personnel complaints. A personnel complaint is defined as an allegation against an employee of the Department, which, if true, could result in disciplinary action up to and including termination, and which alleges one or more of the following:
  - a. an infraction of department rules or policies;
  - b. an illegal act; or
  - c. other misconduct or performance issue.
3. The Department's Manager of the Office of Professional Review, also oversees or conducts investigations of administrative complaints. An administrative complaint is defined as an allegation against a person providing services under contract or by agreement with the Department, a volunteer, or a student intern, which, if true, would impact directly on the administration of the Department. The administration of the Department includes, but is not limited to, the safety of persons in Department workplaces, security of Department facilities, and orderly operations of the Department.
4. The Department's Manager of the Office of Professional Review, under the authority of the Commissioner and the supervision of the Director of Operations, is responsible to oversee the acceptance of administrative/personnel complaints, determinations as to case status and the subsequent investigations should there be reasonable cause, as well as the procedures utilized during this process and the subsequent reporting of results.
5. Each organization that supervises a person providing services under contract or by agreement with the Department, a volunteer, or a student intern shall be notified by the Manager of the Office of Professional Review, or other designated staff, that if the organization receives or initiates a complaint that meets the definition of an administrative or personnel complaint, it is required that the Department be notified. If a complaint does not meet the definition of an administrative or personnel complaint, then no notification is necessary. If there is a question as to whether the definition is met, the Manager of the Office of Professional Review shall consult with the supervising organization for a determination as to how the situation will be handled going forward.
6. The process begins with the intake of an administrative/personnel complaint via the BlueTeam software, continues with downloading relevant materials into the IPro case management system, and concludes with a finding being made as to each allegation brought. Any discipline or other subsequent action is not considered a part of the OPR process.

#### **Procedure B: OPR Procedural Manual**

1. The OPR Procedural Manual is a standard operating procedural manual that

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outlines the investigative techniques and procedures that have been approved by the Department for use in administrative/personnel complaint investigations by those administrative/personnel complaint investigators trained and certified by the Manager of the Office of Professional Review.

2. The OPR Procedural Manual shall be available to and reviewed by Chief Administrative Officers, Regional Correctional Administrators, and their designees, Administrative/Personnel Complaint Investigators, and the Department's Director of Human Resources, and designees. The Manual shall be maintained in the Department's on-line document management system. The Manual shall be updated to reflect adjustments in the administrative/personnel complaint investigations process that are due to a change in policy, best practices, statutes, case law and/or collective bargaining agreements.
3. The OPR Procedural Manual and its contents are confidential. Neither the manual nor its contents are to be distributed or discussed except as authorized by the Manager of the Office of Professional Review, or designee.

**Procedure C: Administrative/Personnel Complaint Intake**

1. Administrative/personnel complaints shall be accepted from any source and in any form, be it received from an internal or external source, and whether made by a complainant wishing to be identified or remain anonymous.
2. Any Department employee who is not a supervisor and who receives an administrative/personnel complaint shall immediately refer the matter to a supervisor. If a supervisor is not immediately available, the employee shall advise the complainant on how to contact a supervisor. The employee shall report the complaint in writing, along with any additional relevant facts, and shall immediately forward the report to his or her supervisor.
3. Any person providing services under contract or by agreement with the Department, a volunteer, or a student intern who receives an administrative/personnel complaint shall immediately refer the complaint to any available on duty supervisor.
4. The intaking supervisor shall conduct a preliminary inquiry. A preliminary inquiry is not an investigation, but serves to determine if reasonable cause to investigate has been established or if the matter should be closed. The supervisor conducting the preliminary inquiry needs to identify those important pieces of the case that could be lost during the period prior to a formal investigation being initiated and take the appropriate action to preserve this evidence. This loss could be due to time, possible disturbance or destruction, deterioration of memory or a collaboration of witnesses. The preliminary inquiry may require copying documentation, identifying witnesses present, obtaining statements from those witnesses, copying video, taking photos, taking physical evidence into custody, searching areas where there is no expectation of privacy, etc.
5. The supervisor conducting the preliminary inquiry shall complete these steps as

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needed:

- a. interview the complainant(s) to ascertain the essence of the complaint(s) or concerns and obtain information needed to establish whether there is reasonable cause to conduct a formal investigation;
  - b. address inconsistencies in a complainant's or witness' statements in a respectful manner;
  - c. end the interview of the complainant once reasonable cause is established;
  - d. articulate the alleged behavior constituting the complaint in the written summary of preliminary inquiry report;
  - e. identify and document in the written report any policies that may have been violated by the behavior alleged;
  - f. when necessary, collect written reports from staff and others who might have been witnesses or otherwise have information (in the case of a witness who is a member of MSLEA, a written report shall not be collected unless collecting the report is a standard operating procedure required by policy);
  - g. written reports shall not be collected from an employee who is the subject of the complaint, unless collecting a written report from the subject employee is a standard operating procedure required by policy;
  - h. identify and list witnesses who may have relevant information and conduct preliminary interviews of any individuals who are not Department employees;
  - i. the supervisor shall not conduct an interview of employee witnesses, unless the employee is not a member of a union or, if a member of a union, waives notice and representation;
  - j. the supervisor shall not conduct an interview of the subject employee, but in the event that unsolicited statements are made by the employee, the supervisor shall document the statements;
  - k. take photographs of any evidence, and as necessary, of injuries or lack thereof to all parties involved, any damage to property, the scene of the incident, etc.;
  - l. identify, collect, copy or protect any documentation (either in hard copy or digital form) potentially relevant to the complaint that is immediately available and subject to destruction or tampering. This would include logs, forms, reports, pictures, video, physical evidence, etc.;
  - m. review all documentation; and
  - n. describe any immediate action taken to protect participants or evidence and to provide medical care if needed.
6. Once the required information is obtained and if the matter meets the definition of an administrative or personnel complaint, it shall be entered into the administrative/personnel complaint intake form via the BlueTeam software program utilized by the Department. When possible, this shall be accomplished before the end of the supervisor's shift.

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7. If the supervisor receiving a complaint is off-duty, the preliminary inquiry and entry into BlueTeam can be made upon the supervisor's return to work, if the delay would not adversely affect a subsequent investigation or unduly delay the provision of the Notice of Investigation to a subject employee. If there would be an adverse effect, the supervisor receiving the complaint shall turn the matter over to an appropriate on-duty supervisor. If this is not practical, the supervisor next in the chain of command shall be contacted for a determination on how to proceed.
8. Once an intake form is entered and submitted in BlueTeam, the intake supervisor shall print a hard copy of the submission, sign it and submit the copy, along with the summary of preliminary inquiry report, as soon as possible via the chain of command for review and to ensure that an appropriate preliminary inquiry was conducted and documented. If additional documents are later produced as a result of this supervisory review, they shall be emailed to the Manager of the Office of Professional Review, or designee, immediately.
9. If the matter does not meet the definition of an administrative or personnel complaint, the supervisor shall document the incident and his or her determination that the applicable definition is not met on a memorandum and shall forward the memorandum through the chain of command for review, approval and retention by the facility, regional office or Central Office.
10. If an incident was reviewed as a possible administrative complaint, but it has been determined that it does not meet the definition, the incident shall be reported to the subject's supervising organization, if any, and, in addition to maintaining the documentation, a copy shall be forwarded to the Manager of the Office of Professional Review. The Department shall make a reasonable effort to assist the supervising organization in any investigation as requested.

**Procedure D: Investigation of Administrative/Personnel Complaints**

1. The Manager of the Office of Professional Review, or designee, shall review the administrative/personnel complaint intake form submitted via BlueTeam software and, based on all the information included, shall determine if the criteria for an administrative or personnel complaint have been met and if reasonable cause to investigate has been established.
2. If a determination of reasonable cause to investigate cannot be made based on the information contained within the administrative/personnel complaint intake form, the Manager of the Office of Professional Review, or designee, may opt to return it to the originating supervisor or assign the case to another supervisor/investigator for additional preliminary inquiry. This decision shall be made after consultation with the Chief Administrative Officer, or designee, or Regional Correctional Administrator, or designee, when involving one of his or her assigned supervisors/investigators.
3. Once it has been determined that an adequate preliminary inquiry has been conducted, the Manager of the Office of Professional Review, or designee, shall

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decide whether the incident shall be:

- a. closed because no reasonable cause to investigate is found;
  - b. assigned as a formal investigation into the administrative/personnel complaint; or
  - c. returned to the Chief Administrative Officer, or designee, Regional Correctional Administrator, or designee, or Commissioner, or designee, as a performance issue to be dealt with on a more informal basis, if the subject is a Department employee.
4. Incidents that no reasonable cause was found to investigate shall be closed. The incident may be reopened if additional information is received that would establish reasonable cause. Notice to the subject shall be made as appropriate and in conformance with any applicable collective bargaining agreement.
  5. If the incident is assigned as a formal investigation, the Manager of the Office of Professional Review, or designee, shall be responsible to download the BlueTeam administrative/personnel complaint intake information into the IAPro Case Management system for utilization by the assigned investigator. The procedures for assigning a case number and investigator and providing notifications as outlined in the OPR Procedural Manual shall be adhered to by all staff members whose duties are described in the manual and shall conform to any applicable collective bargaining agreement(s).
  6. Staff shall not be assigned to conduct an investigation of a direct subordinate nor be assigned to conduct an investigation in any other situation in which there is a conflict of interest. If an assigned investigator has any concerns as to whether there is a conflict of interest, the investigator shall contact the Manager of the Office of Professional Review, who shall determine whether to assign another investigator.
  7. If the complaint is one of use of excessive force, the staff assigned to investigate shall be from outside the facility or community corrections region where the subject employee works.
  8. If the incident involved the use of deadly force, an investigator from the OPR shall be assigned to conduct the investigation, in consultation with the Investigation Division of the Attorney General's Office, as appropriate.
  9. Incidents returned to be dealt with as a performance issue shall be handled in a manner as outlined in the OPR Procedural Manual and in compliance with any applicable collective bargaining agreement. The results of the informal handling of the matter shall be reported by downloading the appropriate memorandum into the case file in IAPro.
  10. Department correctional investigative officers are never permitted to conduct administrative/personnel complaint investigations.
  11. Administrative/personnel complaint investigations shall only be investigated by

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staff members who have received sanctioned training and are certified in the OPR administrative/personnel complaint investigations process.

12. Staff who have not yet received the required training may act as a secondary investigator while under the guidance of a certified investigator. The assignment of a secondary investigator for training purposes shall be determined by the Chief Administrative Officer, or designee, Regional Correctional Administrator, or designee, or Commissioner, or designee, with notification made to the Manager of the Office of Professional Review, or designee. The primary investigator shall be responsible to ensure the investigation is in adherence to the OPR Procedural Manual and the process outlined.
13. While the Manager of the Office of Professional Review, or designee, oversees investigations, the investigators remain under the direct supervision of his or her regular supervisor, who shall be kept apprised of the investigator's performance and shall ensure he or she is held accountable for the satisfactory completion of the investigation.
14. All employees, persons providing services under contract or by agreement with the Department, volunteers, and student interns shall cooperate with, be truthful and forthcoming in all inquiries and investigations conducted as set forth in this policy. No such person shall interfere with, obstruct or hinder, nor advise any other person to interfere with, obstruct or hinder, in any manner, the inquiry into or investigation conducted as set forth in this policy.
15. An investigator shall commence an investigation by providing the subject with a Notice of Investigation outlining the alleged allegation(s).
16. If the subject admits culpability to any or all of those allegations, prior to any initial acceptance of the admission, every effort shall be made by the investigator to fully interview the complainant(s) in the case to ensure all the relative allegations have been identified. The investigator shall also interview the subject to determine what allegations the subject is actually admitting to and whether the admission is sufficient to justify a SUSTAINED finding or whether the investigation needs to be continued.
17. The Chief Administrative Officer, or designee, Regional Correctional Administrator, or designee, or Commissioner, or designee, in consultation with the investigator, may decline to accept the admission of the subject at this early stage of the investigation if he or she believe there may be the potential for an additional allegation not yet discovered, there are one or more allegations already made that the subject is not admitting to, or for any other reason.
18. If there is no admission of culpability or if the admission of culpability is not accepted, the investigator shall continue with the investigation.
19. If the subject is not a Department employee, an admission of culpability is accepted, and the matter meets the definition of an administrative complaint, there shall be no further investigation of that person, the subject's supervising

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organization, if any, shall be notified of the complaint, and that organization shall determine whether disciplinary action is appropriate. In addition, the subject shall be barred from Departmental facilities and offices, unless the Chief Administrative Officer, or designee, Regional Correctional Administrator, or designee, or Commissioner, or designee, determines that other action is appropriate.

20. If the subject is a Department employee and an admission of culpability is accepted, a non-precedent setting agreement may be reached as to the anticipated disciplinary action to be taken. The development of this agreement shall involve the Chief Administrative Officer, or designee, Regional Correctional Administrator, or designee, or Commissioner, or designee, with the advice of the Department's Director of Human Resources, or designee, and may not involve the investigator. If the employee is represented by a union, the agreement of a union representative is also required for the agreement to be binding.
21. If there is such an agreement, there shall be no further investigation of that employee. If there is no offer of anticipated disciplinary action or an employee declines the offer, the investigator shall continue with the investigation.
22. If prior to being interviewed, the employee offers to admit culpability in return for a non-precedent setting agreement, but no agreement is reached, the offer to admit culpability shall not be documented in the Summary of Investigation report, nor shall it be used in any manner to make a determination as to a finding on any allegation in the investigation.
23. If the investigation is continued, every effort shall be made to complete the administrative/personnel complaint investigation within thirty (30) days of the Investigator's assignment to the case. Investigators are to be diligent in their pursuit of the truth in a manner that is thorough, fair and timely. Investigations requiring more than thirty (30) days to be completed shall require an update sent via the routing system in IAPro as to the status of the case and explaining the reason for the delay in its conclusion.
24. A finding shall be made by the investigator for each allegation brought. The following options for those findings shall be utilized.
  - a. "Sustained" (i.e., sufficient evidence was found during the investigation to support the complaint);
  - b. "Not Sustained" (i.e., sufficient evidence was not found during the investigation to either prove or disprove the complaint);
  - c. "Unfounded" (i.e., the complaint has no factual basis); or
  - d. "Exonerated" (i.e., the complaint has a factual basis, but the conduct of the person who is the subject of the complaint was justified and proper).
25. Upon completion of the investigation and the making of the finding, the investigator shall submit the Summary of Investigation report as outlined in the OPR Procedural Manual.

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26. In the case of discrimination, harassment, and sexual misconduct complaints, including, but not limited to, workplace discrimination and harassment and sexual harassment and sexual misconduct in violation of PREA, the Manager of the Office of Professional Review shall contact the State's EEO Coordinator, or designee, to determine if that office will conduct the investigation jointly with an administrative/personnel complaint investigator. If the EEO Coordinator, or designee, will be assigning an EEO investigator, the Manager of the Office of Professional Review, or designee, shall assign an administrative/personnel complaint investigator to assist in the investigation. If the EEO Coordinator, or designee, will not be assigning an investigator, the Manager of the Office of Professional Review shall assign an investigator to conduct the investigation. Under no circumstances shall any allegations brought initially or subsequently discovered in the case go uninvestigated.
27. When there is a criminal investigation as well as an administrative/personnel complaint investigation being conducted, separate investigators shall be utilized. As early on as possible, the investigators assigned shall schedule a meeting with the Office of Employee Relations and/or the appropriate prosecutor to plan how the case will be handled going forward. The Garrity interview of an employee under investigation, and any information obtained as a result of that interview, shall never be shared with the criminal investigator.

**Procedure E: Conclusion of the Investigation of Administrative/Personnel Complaints**

1. Once the Summary of Investigation report is submitted by the investigator, the Manager of the Office of Professional Review, or designee, shall review the report, as well as any associated documentation in the case file. Should additional investigative steps be required or changes need to be made, the report shall be returned to the investigator, with a copy to the Chief Administrative Officer, or designee, Regional Correctional Administrator, or designee, or Commissioner, or designee, so that the appropriate action may be taken.
2. Once the Summary of Investigation report and case file in IAPro has been approved by the Manager of the Office of Professional Review, or designee, and subsequently by the Director of Operations, notifications shall be made by the Manager of the Office of Professional Review, or designee, to the appropriate persons.
3. Neither the Manager of the Office of Professional Review, or designee, nor the investigator shall have any role in the discipline of a Department employee.

**VII. PROFESSIONAL STANDARDS**

None

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