USMA POLICY MEMORANDUM NUMBER 41-03

SUBJECT: Administrative Grievance System

1. PURPOSE: This Administrative Grievance System (AGS) implements the Department of Defense (DoD) AGS by creating an internal system for resolving employee grievances over certain matters under the control of United States Military Academy (USMA) management. It establishes policy, delegates authority, and assigns responsibilities for USMA management officials.

2. APPLICABILITY:

   a. This policy applies to all full-time, part-time, and temporary civilian employees (including intermittent and time-limited) in both the competitive and excepted service employed by USMA and serviced activities, who are paid from appropriated funds.

   b. **Excluded from coverage** are:

      (1) Employees in established bargaining units represented by the American Federation of Government Employees (AFGE), West Point Local 2367, and the International Association of Firefighters (IAFF), Local F-7. This AGS covers bargaining unit employees only when the matter grieved is not covered by the negotiated grievance procedure in the appropriate collective bargaining agreement.

      (2) Reinstatement and transfer eligibles who have applied for a position under a merit promotion program.

3. GENERAL:

   a. The AGS is intended to give employees the opportunity to receive a fair, objective, thorough and prompt review of dissatisfactions with their working conditions, working relationships, or employment status. Management officials will ensure that employees and their representative, if any, who present dissatisfactions in this forum are free from restraint, interference, coercion, discrimination and reprisal.

   b. Use of alternate dispute resolution (ADR) approaches, such as mediation, settlement conferences or other ADR techniques, should be used to resolve employee grievances as early as possible. Continued use of ADR techniques throughout the AGS is encouraged.

   c. **Personal Relief** means a specific remedy personal to the grievant and may not include a request for disciplinary action or other action affecting another employee.

   d. **Representation**

      (1) Employees are entitled to be represented by someone of their choosing in presenting their grievances. The choice of an individual as a representative may be disallowed when the choice would
result in a conflict of interest or position, conflict with mission priorities, or result in unreasonable costs to the Government.

(2) A grieving employee and his or her representative shall have full access to relevant information except that which is denied disclosure under the Privacy Act and/or the Freedom of Information Act.

(3) A reasonable amount of official duty time shall be permitted for the employee and his or her representative, if otherwise in a duty status, to prepare and present a grievance and to communicate with management and personnel officials.

e. The **Deciding Official**

(1) Normally, the deciding official is the Activity Director. The deciding official, however, must be assigned to an organizational level higher than any employee involved in the grievance or having a direct interest in the matter being grieved unless the deciding official is the Superintendent USMA, or tenant activity commander. The Superintendent USMA, or tenant activity commander, may forward the grievance to the next level when he/she feels it would aid in maintaining the integrity of the procedure.

(2) The deciding official may designate another official to accept grievances on their behalf.

(3) It is the responsibility of the deciding official to obtain official determinations from the appropriate Army proponent when the matter deals with foreign allowances, travel, transportation benefits, and interpretation of regulations and policies, and to provide a timely final decision to the grievant.

(4) The deciding official makes determinations on joining of grievances; whether to require an investigation and how it shall be conducted; whether to allow the grievant's requested representative; and how much official time shall be granted to the employee and employee's representative.

(5) The deciding official should try to resolve the grievance and determine which method to use in obtaining and assessing sufficient information on which to base a decision. The deciding official may designate an individual to investigate a grievance and, when authorized, to make recommendations concerning its disposition. The designated individual must not have been involved in the grievance or the matter being grieved or occupy a position subordinate to any official involved in the matter, unless the official involved is the head of the DoD Component. The deciding official may request the services of the Defense Civilian Personnel Service's Office of Complaint Investigations (OCI), on a cost reimbursement basis, to perform the investigation in his or her behalf. Among other options available are: conduct an inquiry himself/herself; contract out the fact-finding task; or designate an investigating officer under the provisions of AR 15-6.

(6) The deciding official's decision on the merits of the grievance is final and not subject to review.

f. Unless otherwise stated, "days" means calendar days. If a deadline falls on a Saturday, Sunday or a legal holiday, the time limit will expire at the end of the grievant's next scheduled workday.

g. The following matters may not be grieved:

(1) The content of established agency regulations and policy.

(2) Any matter covered by a negotiated grievance procedure or subject to formal review and adjudication by the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity
Commission (EEOC); or any matter that the employee files under another review or reconsideration procedure, or dispute resolution process within DoD.

(3) Nonselection for promotion from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion.

(4) Preliminary notice of an action that, if effected, would be covered under the grievance system or excluded from coverage under (2) above.

(5) The substance of an employee's performance elements, standards, or work objectives.

(6) Determinations concerning awards, additional step increases, recruiting or relocation bonuses, retention allowances, physicians comparability or additional pay allowances, supervisory differentials, critical position pay, or dual compensation waivers.

(7) Any action taken under a voluntary, formal agreement entered into by an employee involving geographic relocation or return from an overseas assignment.

(8) Termination of a probationer, return of an employee serving supervisory or managerial probation to a nonsupervisory or nonmanagerial position, or separation or termination of an employee during a trial period.

(9) Termination or expiration of a time-limited excepted appointment, a term or temporary appointment or promotion, on the date specified as a condition of employment at the time the appointment or promotion was made.

(10) The termination of a temporary or term promotion at a time other than in paragraph (9) above, provided the employee was informed in advance of the temporary nature of the appointment or promotion and the employee was returned to his or her former position from which temporarily promoted or to a different position of equivalent grade and pay.

(11) A separation or termination action except as provided in paragraph (h) below.

(12) Any additional exclusions as requested by a DoD Component and approved by the DoD.

h. Civilian Intelligence Personnel Management System (CIPMS) Employees. Non-preference eligible CIPMS employees, employed under 10 U.S.C. 1590 (reference (d)), may grieve their removal, suspension, reduction in grade or pay, or furlough for 30 days or less, if they have completed one year of current continuous service in the same or similar position in the DoD under other than a temporary appointment of 2 years or less except for terminations for national security reasons under Section 1590(e)(1) of Title 10, U.S. Code. An impartial hearing is possible for removal cases, and may be done on a reimbursable basis by OCI.

i. The following matters will be grieved utilizing Department of the Army (DA) procedures (see attached):

   (1) Rating, ranking, and referral under the DA career programs.

   (2) Alcohol Drug Abuse Prevention and Control Program (ADAPCP) certification.

   (3) Decisions made or matters controlled by DA activities other than USMA or tenant activity commander.
4. **POLICY:**

   **a. Problem Solving**

   (1) An employee may informally present a work-related problem to his or her immediate supervisor before filing a formal grievance. If the problem involves a matter or action directly involving that supervisor, and the employee has been unable to resolve the matter with that supervisor, the employee may present the matter to the next level supervisor, if any. The problem must be presented within **15 days** following the date of the act or event that the employee believes created the problem, or the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a matter of concern regarding a continuing practice or condition at any time.

   (2) A supervisor must consider the employee's problem and attempt to resolve it within **15 days**, and no later than **30 days**, from the date the problem is first brought to the supervisor's attention, even though it may not be covered by the administrative grievance procedure (see paragraph 3.g.). Where appropriate, the use of a neutral is encouraged. If the problem was not resolved, the supervisor shall inform the employee of the time limits for filing a grievance. If the supervisor believes the matter is not covered by the grievance process, the supervisor shall so inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

   (3) The above time limit for resolving the problem may be extended by mutual agreement to accommodate resolution of the dispute.

   (4) If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing the determination must be in writing.

   **b. Administrative Grievance Procedure**

   (1) An employee may file a formal, written grievance with the deciding official when a problem is not resolved during the problem-solving process described above. The grievance must be submitted no later than **15 days** from the conclusion of the problem-solving process. OR

   (2) Where the employee chooses to bypass that process and invoke the administrative grievance procedure, the grievance must be filed no later than **15 days** from the act or event, or the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a grievance regarding a continuing practice or condition at any time.

   (3) Employees shall be given the right to represent themselves or to be represented by an individual of their own choice in filing a grievance. The deciding official may disallow the choice of a representative if it would result in a conflict of interest or position, conflict with mission priorities, or result in unreasonable costs. The decision to disallow a choice of representative is final and not open for review.

   (4) An employee's grievance must be signed, dated and contain a sufficiently detailed statement of the specific issue(s) and the personal relief sought; copies of any documents in the employee's possession related to the grievance; and, the name, address, and telephone number of the employee's representative, if any. Issues raised by the employee in any other grievance, appeal, or complaint are not grievable under this procedure.

   (5) The deciding official shall fully and fairly consider the grievance (see paragraph 3.e.(4)) and issue a written decision, to include the basis for his or her decision. The decision shall be issued as soon
as possible but no later than 60 days from the filing of the grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where an outside fact-finder is used in the process). However, a grievance decision should be rendered no more than 90 days from the filing of the grievance absent mutual agreement to extend this time limit to accommodate resolution of the dispute. If the deciding official fails to render a decision within 90 days absent such mutual agreement, the grievant may request review by the next higher management level, if any, within DA.

(6) A grievance, or portion of a grievance, may be canceled or temporarily suspended at the grievant's request; if the grievant or grievance is excluded from coverage; if the grievant fails to comply with applicable time limits or procedural requirements or requests actions be taken against another employee; or the employee raises the matter under another formal dispute resolution process.

(7) A deciding official's decision on the merits of the grievance is final and not subject to review. However, an employee may request an individual at the next higher management level to review a decision by the deciding official to "cancel" a grievance. "Cancel" in this context means that a deciding official has determined that the grievance is either untimely or falls outside the scope of the grievance procedure. To provide for an objective review of the deciding official's cancellation, the next management level should coordinate the final decision with the civilian personnel director at the next level of command.

(8) The Civilian Personnel Office (CPO) shall establish and maintain a separate file for each written grievance filed under this AGS and will retain that file for 4 years in accordance with applicable laws, regulations, and records retention schedules. The file contains all documents or copies of documents related to the grievance.

5. REFERENCES:

a. 5 CFR Part 771, Agency Administrative Grievance System.

b. OSD memorandum dated 20 December 1995, subject: Labor Management Relations and Administrative Grievance System with attachment DoD 1400.25-M.

c. DAPE-CPL memorandum dated 13 February 1996, subject: DoD Administrative Grievance System

6. EXPIRATION: This policy memorandum supersedes USMA Policy Memo 41-96, dated 22 July 1996, and is effective until superseded or rescinded.

FOR THE SUPERINTENDENT:

/ Original signed /
GREGORY J. DYSON
COL, FA
Chief of Staff, USMA

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