

## Article 11A.

### Corrections Administrative Remedy Procedure.

#### **§ 148-118.1. Authority.**

The Division of Prisons of the Department of Adult Correction shall adopt an Administrative Remedy Procedure in compliance with 42 U.S.C. 1997, the "Civil Rights of Institutionalized Persons Act". The Administrative Remedy Procedure and any amendments or changes thereto shall be adopted only after prior consultation with the Grievance Resolution Board. (1987, c. 746, s. 2; 2011-145, s. 19.1(h); 2017-186, s. 2(ssssssss); 2021-180, s. 19C.9(p).)

#### **§ 148-118.2. Effect.**

(a) Upon approval of the Administrative Remedy Procedure by a federal court as authorized and required by 42 U.S.C. 1997(e)(a), and the implementation of the procedure, this procedure shall constitute the administrative remedies available to a prisoner for the purpose of preserving any cause of action under the purview of the Administrative Remedy Procedure, which a prisoner may claim to have against the State of North Carolina, the Division of Prisons of the Department of Adult Correction, or its employees.

(b) No State court shall entertain a prisoner's grievance or complaint which falls under the purview of the Administrative Remedy Procedure unless and until the prisoner shall have exhausted the remedies as provided in said procedure. If the prisoner has failed to pursue administrative remedies through this procedure, any petition or complaint he files shall be stayed for 90 days to allow the prisoner to file a grievance and for completion of the procedure. If at the end of 90 days the prisoner has failed to timely file his grievance, then the petition or complaint shall be dismissed. Provided, however, that the court can waive the exhaustion requirement if it finds such waiver to be in the interest of justice. (1987, c. 746, s. 2; 2011-145, s. 19.1(h); 2017-186, s. 2(tttttttt); 2021-180, s. 19C.9(p).)

#### **§ 148-118.3. Publication of procedure.**

The Administrative Remedy Procedure shall be published in the North Carolina Register. (1987, c. 746, s. 2.)

#### **§ 148-118.4. Definitions.**

For purposes of this Article, "prisoner" shall refer to all prisoners in the physical custody of the Division of Prisons of the Department of Adult Correction. (1987, c. 746, s. 2; 2011-145, s. 19.1(h); 2017-186, s. 2(uuuuuuuu); 2021-180, s. 19C.9(p).)

#### **§ 148-118.5. Records confidentiality.**

All reports, investigations, and like supporting documents prepared by the Division for purposes of responding to the prisoner's request for an administrative remedy shall be deemed to be confidential. All formal written responses to the prisoner's request shall be furnished to the prisoner as a matter of course as required by the procedure. The Grievance Resolution Board shall have access to all relevant records developed by the Division of Prisons of the Department of Adult Correction. (1987, c. 746, s. 2; 2011-145, s. 19.1(h); 2017-186, s. 2(vvvvvvvv); 2021-180, s. 19C.9(p).)

#### **§ 148-118.6. Grievance Resolution Board.**

The Grievance Resolution Board is established as a separate agency within the Department of Adult Correction. It shall consist of five members appointed by the Governor to serve four-year terms. Of the members so appointed, three shall be attorneys selected from a list of 10 persons recommended by the Council of the North Carolina State Bar. The remaining two members shall be persons of knowledge and experience in one or more fields under the jurisdiction of the Secretary of the Department of Adult Correction. In the event a vacancy occurs on the Board prior to the expiration of a member's term, the Governor shall appoint a new Board member to serve the unexpired term. If the vacancy occurs in one of the positions designated for an attorney, the Governor shall select another attorney from a list of five persons recommended by the Council of the North Carolina State Bar. The Board shall perform those functions assigned to it by the Governor and shall review the grievance procedure. The Grievance Resolution Board shall meet not less than quarterly to review summaries of grievances. All members of the Inmate Grievance Commission, appointed by the Governor pursuant to G.S. 148-101, may complete their terms as members of the Board. Each member of the Board shall receive per diem and travel expenses as authorized for members of State commissions and boards under G.S. 138-5. (1987, c. 746, s. 2; 2011-145, s. 19.1(h), (i); 2017-186, s. 2(wwwwwwwww); 2021-180, s. 19C.9(iiii).)

#### **§ 148-118.7. Removal of members.**

The Governor may remove any member of the Grievance Resolution Board for one or more of the following reasons:

- (1) Conviction of a crime involving moral turpitude or of any criminal offense the effect of which is to prevent or interfere with the performance of Board duties.
- (2) Failure to regularly attend meetings of the Board.
- (3) Failure to carry out duties assigned by the Board or its chairman.
- (4) Acceptance of another office or the conduct of other business conflicting with or tending to conflict with the performance of Board duties.
- (5) Any other ground that, under law, necessitates or justifies the removal of a State employee. (1987, c. 746, s. 2.)

#### **§ 148-118.8. Appointment, salary, and authority of Executive Director and inmate grievance examiners.**

(a) The Grievance Resolution Board, in consultation with the Secretary of the Department of Adult Correction, shall provide the Governor with at least three nominees, and the Governor shall appoint an Executive Director from those nominees. The Grievance Resolution Board shall appoint grievance examiners. The Executive Director shall manage the staff and perform such other functions as are assigned to the Director by the Grievance Resolution Board. The Executive Director shall serve at the pleasure of the Governor. The grievance examiners shall serve at the pleasure of the Grievance Resolution Board. The grievance examiners shall be subject to Article 2 of Chapter 126 of the North Carolina General Statutes for purposes of salary and leave. Support staff, equipment, and facilities for the Board shall be provided by the Department of Adult Correction.

(b) The inmate grievance examiners shall investigate inmate grievances pursuant to the procedures established by the Administrative Remedy Procedure. Examiners shall attempt to resolve grievances through mediation with all parties. Otherwise, the inmate grievance examiners shall either (i) order such relief as is appropriate; or (ii) deny the grievance. The decision of the grievance examiner shall be binding, unless the Secretary of the Department of Adult Correction

(i) finds that such relief is not appropriate, (ii) gives a written explanation for this finding, and (iii) makes an alternative order of relief or denies the grievance. (1987, c. 746, s. 2; 2011-145, s. 19.1(h), (i); 2013-382, s. 9.1(c); 2015-241, s. 16C.13B(a); 2017-186, s. 2(xxxxxxx); 2021-180, s. 19C.9(jjjj).)

**§ 148-118.9. Investigatory power of the Grievance Resolution Board.**

The Secretary of the Department of Adult Correction may request that the Grievance Resolution Board investigate matters involving broad policy concerns. The Grievance Resolution Board may convene a fact-finding hearing to consider the issues presented for investigation. A record of testimony presented at such hearing shall be maintained by the Board. The Board shall report the findings of its investigation to the Secretary within a reasonable time. In no event shall such a request on the part of the Secretary result in a delay of the resolution of an inmate's grievance beyond the 90 day period. (1987, c. 746, s. 2; 2011-145, s. 19.1(i); 2021-180, s. 19C.9(o).)