

# Montana State Parks AmeriCorps



## Grievance Procedures

### **A. Purpose**

In accordance with 42 U.S.C. 12636 and implementing regulations at 45 C.F.R. 2540.230, the following grievance procedures have been established by the AmeriCorps program to deal with grievances from participants, labor organizations, and other interested individuals. In general, disputes must pertain to service related issues such as a proposed service assignment or a mid-term or end of term evaluation; or a member's suspension or dismissal. A dispute also may concern an applicant protesting the reason he/she was not selected as an AmeriCorps member; or a labor union's claim that a member is displacing its union members.

All AmeriCorps members must file complaints in accordance with the following procedures set forth below.

### **B. Pre-Complaint Process**

In general, all aggrieved parties such as members, applicants, or any other interested parties should attempt to resolve any problems or disputes with the other party on a one-to-one basis.

The issues should be clearly stated and understood by both parties. If this process does not resolve the matter, the aggrieved party may request that the program provide an Alternative Dispute Resolution process (ADR) such as mediation or facilitation to resolve the dispute. The program may provide this alternative dispute process to the aggrieved party. ADR proceedings must be initiated within 45 calendar days from the date of the alleged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

If an ADR is used and the matter is not resolved within 30 calendar days from the date the dispute resolution process began, the neutral party mediating or facilitating the process must again notify the aggrieved party of his/her right to file a formal complaint. In the event an aggrieving party files a grievance, the neutral party may not participate in the formal complaint process. In addition, no communications or proceedings of the information dispute resolution process may be referred to or introduced into evidence at

the grievance and arbitration hearing. Any decision by the neutral party is advisory and not binding unless both parties agree.

### **C. Formal Complaint Process**

A member may request a grievance hearing without participating in ADR or if the ADR process fails to facilitate a mutually agreeable resolution. The member should make a written request for a hearing to the Program Coordinator. Except for a grievance that alleges fraud or criminal activity, a request for a grievance hearing must be made within one year after the date of the alleged occurrence. It is preferred that they be filed no later than 60 days after the date of the alleged occurrence. At the time a request for a hearing is made, the program should make available to the member information that it relied upon in its disciplinary decision.

The AmeriCorps Program Director will conduct the grievance hearing. The person conducting the hearing may not have participated in any previous decisions concerning the issue in dispute. A hearing must be held no later than 30 calendar days after the filing of the grievance, and a written decision must be made no later than 60 calendar days after filing.

Allegations of fraud or criminal activity must be reported immediately to the Corporation for National and Community Service's Inspector General. If the grievance pertains to discrimination on the basis of race, color, national origin, gender, age, or disability the member will be immediately notified in writing of his/her right to file a discrimination complaint with the Corporation's Equal Opportunity Office. (In general, the member has 180 days after the alleged discrimination to file a complaint with the Corporation.)

### **D. Arbitration**

If the AmeriCorps Program Director's decision is adverse to the aggrieved party who filed the grievance or 60 calendar days after filing of a grievance no decision has been reached, the filing party may submit the grievance to binding arbitration before a qualified arbitrator. The disputing parties will jointly select the arbitrator. The arbitrator must be independent of the disputing parties.

If the parties cannot agree on an arbitrator within 15 calendar days after receiving a request from one of the disputing parties, the Corporation for National and Community Service's Chief Executive Officer (CEO) will appoint an arbitrator from a list of qualified arbitrators.

An arbitration proceeding must be held no later than 45 calendar days after the request for arbitration. If the CEO, however, selects the arbitrator, the proceeding must occur no later than 30 calendar days after the arbitrator's appointment.

*Arbitrator's Decision:* A decision must be made by the arbitrator no later than 30 calendar days after the date the arbitration proceeding begins.

*Cost:* The cost of the arbitration proceeding must be divided evenly between the parties to the arbitration. If, however, the aggrieved party prevails in the binding arbitration proceeding, the program must pay the total cost of the proceeding and the prevailing parties' attorney fees.

*Remedies:* Remedies for a grievance filed under a procedure established by a recipient of Corporation assistance may include:

- a. Prohibition of a placement of a participant;
- b. Reinstatement in good standing of a member wrongfully suspended or dismissed. If reinstatement of the member results in the member not being able to fully complete their hours within the term of service, arrangements may be made to allow the member reasonable opportunity to complete the hours;
- c. In grievance cases where there is a violation of nonduplication or nondisplacement requirements and the employer of the displaced employee is the recipient of Corporation assistance:
  - i. Reinstatement of the employee to the position he or she held prior to the displacement;
  - ii. Payment of lost wages and benefits;
  - iii. Re-establishment of other relevant terms, conditions and privileges of employment; and
  - iv. Any other equitable relief that is necessary to correct any violation of the nonduplication or nondisplacement requirements or to make the displaced employee whole.

*Effect of noncompliance with arbitration:* A suit to enforce arbitration awards may be brought in any Federal district court having jurisdiction over the parties without regard to the amount in controversy or the parties' citizenship.