

Chapter 15

INMATE GRIEVANCE PROCEDURES*

A. Introduction

If you have a complaint concerning your treatment at a state correctional facility, you must consult the state's formal inmate grievance procedures. According to the Prison Litigation Reform Act ("PLRA"), you must "exhaust" (use up) all of the available grievance procedures before you can take your complaint to court.¹ Before filing any type of lawsuit, you should carefully read *JLM*, Chapter 14, "The Prison Litigation Reform Act." In New York, for example, state law and the New York Inmate Grievance Program ("IGP") require the Commissioner of the Department of Correctional Services and Community Supervision ("DOCCS") to establish a committee in each correctional facility. These committees address inmate grievances (complaints about the way the Department of Corrections applies a policy and how it negatively affects you).² The purpose of the IGP is to "provide[] each inmate an orderly, fair, simple, and expeditious method for resolving grievances," and "to promote mediation and conflict reduction in the resolution of grievances."³ The details of this program appear in DOCCS Directives 4040 and 4041,⁴ and in Title 7 of the Codes, Rules, and Regulations of the State of New York.⁵ Directive 4002 describes the Inmate Liaison Committee ("ILC"), which is concerned with the general welfare of incarcerated people.⁶

This *JLM* Chapter will help you make an informed decision about how to proceed with your grievance, using New York's IGP as an example. Part B discusses the PLRA requirement that you go through the entire complaint process in your prison before taking your claim to federal court. Part C defines the term "grievance," discusses what kinds of claims are "non-grievable" (meaning that you cannot use the IGP), and provides you with an overview on how to write your grievance. Part D describes the basic structure of the New York IGP. Part E looks closely at the relevant New York DOCCS directives, explaining specific steps to follow when filing a grievance through the New York

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1. 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.")

2. See N.Y. CORRECT. LAW § 139(1) (McKinney 2014) ("The commissioner shall establish, in each correctional institution under his jurisdiction, grievance resolution committees to resolve grievances of persons within such correctional institution."). This law was enacted in response to the 1971 Attica Prison uprising. The McKay Commission looked into the cause of that uprising and recommended procedures to resolve prison issues through an administrative process. See also *Patterson v. Smith*, 53 N.Y.2d 98, 101, 423 N.E.2d 23, 25, 440 N.Y.S.2d 600, 602 (1981).

3. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.1(a)–(b) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.1(a)–(b) (2016). New York Department of Corrections and Community Supervision directives can be found at <http://www.doccs.ny.gov/Directives/directives.html>. (last visited Nov. 19, 2019). Directives related to inmate grievances can be found under "facility management." Directive 4040 reprints the regulations found in § 701, and Directive 4041 reprints the regulations found in § 702. The rest of the footnotes in this document will cite directly to both the regulations and Directive 4040 or Directive 4041.

4. See Chapter 7 of the *JLM*, "Freedom of Information," to learn how to obtain a copy of these directives through the state Freedom of Information Law ("FOIL") and the federal Freedom of Information Act ("FOIA"). In addition, ask the librarian if your prison law library has copies of these directives.

5. N.Y. COMP. CODES R. & REGS. tit. 7, § 701–702 (2012). Ask the librarian if your prison law library has this code.

6. State of New York, Department of Corrections and Community Supervision, Directive No. 4002, Inmate Liaison Committee (ILC) (2019). See *JLM*, Chapter 7 to learn how to obtain a copy of this directive through the state Freedom of Information Law ("FOIL") and the federal Freedom of Information Act ("FOIA"). In addition, ask the librarian if your prison law library has a copy of the directive.

IGP. Part F discusses the publication of rules for other states' inmate grievance procedures and how to find these rules.

If you are a foreign national (not a U.S. citizen) and are having problems with prison conditions, or need to contact someone in your home country, you may want to contact your consulate. Consult the *JLM Immigration and Consular Access Supplement* for more information on how to raise these claims.

B. Exhausting Your Administrative Remedies

The PLRA requires you to go through your prison's entire complaint process before you can bring a federal court claim under 42 U.S.C. § 1983 (a federal law that deals with incarcerated people's complaints).⁷ Therefore, even if you believe that the grievance system in your prison is unfair or pointless, you still have to go through all of the steps of the process to try to resolve your grievance *before* you file a lawsuit.⁸ In New York, for example, the IGP is not considered exhausted until you receive a final decision on your complaint from the highest grievance committee, such as New York's Central Office Review Committee ("CORC"). If you bring a complaint in federal court under 42 U.S.C. § 1983 without first exhausting administrative remedies, your case will be dismissed, and you might be barred from bringing a future case.⁹ Dismissal for non-exhausted claims is supposed to be "without prejudice," which means that you will be able to come back to court after you have fully pursued your prison's grievance procedures. However, some judges might dismiss a case with prejudice. Dismissal "with prejudice" means that you cannot take that particular issue back to court.

In addition to filing your grievance under federal law, some states allow you to file your grievance under state law, too. In New York, for example, you may challenge the CORC's decision under Article 78 of the New York Civil Practice Law and Rules.¹⁰ Just like the federal grievance procedures, you may not bring an Article 78 proceeding until you first pursue all administrative remedies available through the IGP.¹¹ Even if the Inmate Grievance Resolution Committee ("IGRC") denies your

7. 42 U.S.C. § 1997e(a). Note that the PLRA exhaustion requirement applies only to cases filed on or after April 26, 1996 (the effective date of the PLRA), including cases where the actions complained of occurred before the enactment. It does not apply to actions or appeals filed *before* its passage. *See Jones v. Bock*, 549 U.S. 199, 216, 127 S. Ct. 910, 921, 166 L.Ed. 2d 798, 813 (2007) (holding that while incarcerated person's claims can be dismissed because they have not yet been exhausted, there is no requirement that exhaustion be demonstrated in the incarcerated person's pleading); *Ancrum v. St. Barnabas Hosp.*, 301 A.D.2d 474, 475, 755 N.Y.S.2d 28, 31 (1st Dept. 2003) (holding that the PLRA exhaustion requirement applies to all incarcerated people who sue while they are incarcerated—including formerly incarcerated people who are released before a ruling on their suit is issued). *See* Chapter 16 of the *JLM*, "Using 42 U.S.C. 1983 to Obtain Relief From Violations of Federal Law," for more information on 42 U.S.C. § 1983 actions.

8. If you receive a satisfactory remedy from the IGP, then you will not need to go to court. If you are unsatisfied with the result of the IGP, you may then file a lawsuit in federal court.

9. *See Wendell v. Asher*, 162 F.3d 887, 892 (5th Cir. 1998) (finding that while incarcerated person's Section 1983 claim was properly dismissed for failure to exhaust administrative remedies, the incarcerated person can still refile his action in district court once he has exhausted his administrative remedies); *Wright v. Morris*, 111 F.3d 414, 417 n.3 (6th Cir. 1997) (noting that where alleged violations occurred after PLRA's enactment and incarcerated people have both notice that exhaustion is required and a reasonable opportunity to file administrative complaints, the exhaustion requirement is mandatory). However, if the statute of limitations has run on your claim before you return to court, your claim may be permanently barred. *See, e.g., Dorsey v. Pa. Dep't of Corr.*, CIV NO. 1:16-CV-588, 2016 U.S. Dist. LEXIS 166728 (M.D. Pa. Nov. 30, 2016) (*unpublished*) (holding that, where plaintiff "knew or should reasonably have known that she has been injured and that her injury has been caused by another party's conduct" for the duration of the two-year statute of limitations, her PLRA claim was time-barred). In addition, if you are able to bring your claim back to court, you will probably have to pay another filing fee to refile your claim in court.

10. *See* Chapter 22 of the *JLM* on Article 78 proceedings. Article 78 proceedings allow you to challenge decisions made by New York administrative bodies or officers, like the Central Office Review Committee.

11. *See Patterson v. Smith*, 53 N.Y.2d 98, 100–101, 423 N.E.2d 23, 24–25, 440 N.Y.S.2d 600, 601–602 (1981) (dismissing incarcerated person's Article 78 claim because he failed to exhaust prison's grievance procedures); *Roberts v. Coughlin*, 165 A.D.2d 964, 966, 561 N.Y.S.2d 852, 854 (3d Dept. 1990) (finding Article 78 petition should have been dismissed for failure to exhaust all administrative remedies).

grievance, you still may not bring an Article 78 proceeding until you exhaust *all* of your administrative remedies.¹² In New York, this means you first have to appeal the IGRC's denial to your prison's superintendent. If your grievance is again denied, you must appeal to the CORC. If the CORC also denies your grievance, only then are you allowed to bring a lawsuit in state court under Article 78. This is because the CORC is the committee designated to provide final review of your claim under the state administrative grievance procedures.¹³

As you go through the inmate grievance procedures, it is important to bring up, from the very beginning, any issues you think you might want to raise in a later lawsuit. If you fail to state a particular claim in your original grievance, a court may later consider this claim "unexhausted." As a result, the court may dismiss this unexhausted claim and hear only the claims that you brought up in your original grievance. Courts are required to hear your exhausted claims and are no longer allowed to dismiss the entire action if only some of the claims are unexhausted.¹⁴ Keep in mind that in order to exhaust all of your claims, you may have to use more than one administrative procedure. For example, you may have to go through one review process for one of your claims and a different review process for another of your claims.¹⁵

If you have exhausted your administrative remedies and wish to file a complaint in federal court, make sure that your complaint states that you have already exhausted all other remedies. Even though the Supreme Court held that plaintiffs are not required to include this in their complaints, stating that you have exhausted all other remedies will help prevent issues down the line.¹⁶

C. Grievances in New York

1. What Grievances Can Be Raised?

A grievance is defined by the New York State DOCCS as "a complaint ... about the substance or application of any written or unwritten policy, regulation, procedure or rule of the Department of Correctional Services or any of its program units, or the lack of a policy, regulation, procedure or rule."¹⁷ You may raise a grievance only if it relates to a situation that affects or will affect you personally.¹⁸ Examples of grievable issues include: prison official retaliation, inadequate medical care, and assignment of prison jobs.¹⁹

12. See *People ex rel. Chapman v. Sullivan*, 135 A.D.2d 675, 676, 522 N.Y.S.2d 249, 250 (2d Dept. 1987) (holding that petitioners are not entitled to an Article 78 hearing until they have exhausted all administrative remedies); *Joyce v. Mann*, 190 A.D.2d 922, 922, 593 N.Y.S.2d 579, 579 (3d Dept. 1993) (holding petitioner not entitled to Article 78 relief because he failed to exhaust all administrative remedies).

13. See section D(1)(c) of this chapter for more information about CORC.

14. See *Jones v. Bock*, 549 U.S. 199, 202–203, 127 S. Ct. 910, 914, 166 L. Ed. 2d 798 (2007) (holding that judicial screening of incarcerated people's complaints requiring total exhaustion is not permitted under the PLRA).

15. For example, in New York, there is a separate claims review process for inmate personal property claims. You need to exhaust this procedure before bringing a personal property claim in court. See N.Y. COMP. CODES R. & REGS. tit. 7, § 1700 (2012).

16. *Jones v. Bock*, 549 U.S. 199, 202–203, 127 S. Ct. 910, 914, 166 L. Ed. 2d 798 (2007).

17. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(a) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(a) (2016) ("a letter addressed to facility or Central Office staff is not a grievance,").

18. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(b) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(b) (2016). For example, a proper grievance could be a complaint about how a new prison policy negatively affects your day-to-day life. An improper grievance would be a complaint about something that may make you angry or upset, but does not actually affect your day-to-day life.

19. Examples of grievable issues in cases where the courts have required incarcerated people to exhaust administrative remedies include the following: *Underwood v. Wilson*, 151 F.3d 292, 296 (5th Cir. 1998) (incarcerated person brought Section 1983 suit against prison officials alleging they assigned him to jobs that forced him to perform work beyond his physical capabilities and medical work restrictions); *White v. McGinnis*, 131 F.3d 593, 594–595 (6th Cir. 1997) (incarcerated person alleged that prison officials retaliated against him

2. Non-Grievable Issues²⁰

An issue is “non-grievable” when the grievance system has no remedy (fix) for it. In other words, the grievance system cannot be used to resolve that type of issue. The PLRA requires that you exhaust the IGP if *any* remedy is available to you.²¹ This means that you must still go through the IGP even if it cannot give you the exact remedy you want. If no remedy is available through the IGP, you are not required to exhaust the grievance system.²² However, if there is some other administrative remedy for your claim, you will be required to pursue that remedy. For example, although an appeal of a temporary release ruling may be considered non-grievable by the IGP, you will still be required to pursue your appeal using the procedures for the temporary release program.²³

A grievance committee may dismiss and close your grievance as non-grievable if:²⁴

- (1) you have made no effort to resolve the complaint through procedures and officials at your prison;
- (2) you are not or will not be personally affected by the issue you are complaining about;
- (3) your grievance is about the decision of a program with already established procedures, including temporary release programs,²⁵ family reunion programs,²⁶ or media review²⁷ programs, disciplinary proceedings or time allowance committee proceedings,²⁸ central

after he filed a lawsuit against another prison official); *Barry v. Ratelle*, 985 F. Supp. 1235, 1238 (S.D. Cal. 1997) (incarcerated person brought civil rights action against prison officers claiming deliberate indifference to his serious medical needs in violation of his 8th and 14th Amendment rights).

20. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(e) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(e) (2016).

21. *See Booth v. Churner*, 532 U.S. 731, 733–734, 121 S. Ct. 1819, 1821, 149 L. Ed. 2d 958, 962 (2001) (holding that the PLRA requires incarcerated people to exhaust any administrative remedies that are available before suing over prison conditions, even if the available remedy is not what you are seeking); *see also Alexander v. Hawk*, 159 F.3d 1321, 1326–1327 (11th Cir. 1998) (holding that an incarcerated person was required to submit his claims to the available prison grievance program even if the relief offered by that program was not necessarily plain, speedy, and effective in comparison to the federal court system); *Sallee v. Joyner*, 40 F. Supp. 2d 766, 770 (E.D. Va. 1999) (holding that an incarcerated person must bring confinement-related grievances to the Administrative Remedy Program even if he seeks money damages, which are not available through the Administrative Remedy Program).

22. *See Davis v. Frazier*, No. 98 Civ. 2658 (HB), 1999 U.S. Dist. LEXIS 8911, at *9–10 (S.D.N.Y. June 15, 1999) (*unpublished*) (citing State of New York, Department of Correction Services, Directive No. 4040, Directive No. 3375R, which states that complaints about alleged assaults or verbal harassment and matters under investigation by the Inspector General are non-grievable); *Kearsey v. Williams*, No. 99 Civ. 8646, 2004 U.S. Dist. LEXIS 18727, at *9–10 (S.D.N.Y. Sept. 20, 2004) (*unpublished*) (finding that an incarcerated person was informed by a written decision that, under State of New York, Department of Corrections and Community Supervision, Directive No. 3375R, his complaint was non-grievable, which is why the incarcerated person sued in court); *see also Marcello v. Dept. of Corr.*, No. 07 Civ. 9665, 2008 U.S. Dist. LEXIS 60895, at *9 (S.D.N.Y. July 30, 2008) (*unpublished*) (“[Incarcerated people] may overcome the exhaustion requirement only if they are able to show either (1) that administrative remedies were not actually ‘available’ to them; (2) that defendant should be estopped from raising plaintiffs’ failure to exhaust as an affirmative defense; or (3) that special circumstances exist that excuse plaintiffs’ non-compliance with official procedural requirements.”).

23. N.Y. COMP. CODES R. & REGS. tit. 7, § 1900.6 (2012).

24. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(4)(i) (2016).

25. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(a)–(c) (2012).

26. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(c)(1) (2012).

27. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(c)(1) (2012).

28. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(c)(2) (2012).

monitoring,²⁹ inmate claims, or records review procedures,³⁰ or any other program or procedure involving a written appeal which extends review outside of the facility;³¹

- (4) your grievance involves issues outside DOCCS' supervision; or
- (5) your grievance relates only to an individual no longer in your facility.

If a majority of the committee (three out of four members) votes that your grievance falls into one of these categories, your grievance will be dismissed as non-grievable.³² If there is less than a majority, the committee will hear your grievance.³³ If you believe that your grievance was improperly dismissed as non-grievable, you can apply for review directly to the IGP supervisor. You must do so within seven calendar days after receiving the committee's decision to dismiss the grievance.³⁴

You cannot use the IGP for complaints concerning the decisions of other committees such as those relating to disciplinary proceedings and records review as listed above.³⁵ But you can use the IGP to file a grievance concerning the IGP's general policies, rules, and procedures.³⁶ However, complaints you may have against any policy, regulation, or rule of an outside agency, or action taken by an outside agency, are non-grievable under the New York IGP.³⁷ Outside agencies are those not under the supervision of the DOCCS Commissioner, including the Division of Parole, Citizenship and Immigration Services,³⁸ and the Office of Mental Health.³⁹ Note that New York City DOC Directive 3376, Inmate Grievance Resolution Program, sets out non-grievable issues specific to New York City jails (as opposed to New York prisons).⁴⁰

29. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(c)(3) (2012).

30. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(c)(3) (2012). Records review includes freedom of information (FOI) requests and expunction (erasing a record). See Chapter 7 of the *JLM*, "Freedom of Information," for information about FOI requests and appeals.

31. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(e)(1) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(e)(1) (2016).

32. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(4)(i) (2016).

33. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(iv) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(4)(iv) (2016).

34. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(iii) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(4)(iii) (2016).

35. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(e)(2) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(e)(2) (2016); *see, e.g.*, *Harris v. Coughlin*, 143 A.D.2d 1018, 1018, 533 N.Y.S.2d 604, 605 (2d Dept. 1988) (holding that where administrators deny an incarcerated person's temporary release application and also his only chance at administrative appeal, the incarcerated person can then seek judicial review).

36. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(e)(3) (202); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(e)(3) (2016). An example of a rule that could be challenged using the IGP is the rule governing membership of the Temporary Release Committee. *See*

Cintron v. Coughlin, 141 A.D.2d 1006, 1007, 531 N.Y.S.2d 46, 47 (3d Dept. 1988) (allowing incarcerated person to challenge his rejection for release by the Temporary Release Committee by arguing that a parole officer should not be allowed on the committee). Note that this decision is pre-PLRA, but it serves as an example of the grievable rules of the committees listed in DOCCS Directive 4040.

37. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(d) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(4)(i)(d) (2016).

38. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(f) (2012). The U.S. Citizenship and Immigration Services is a bureau of the Department of Homeland Security and was formerly referred to as Immigration and Naturalization Services.

39. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(f) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(f) (2016).

40. New York City Department of Correction, Directive No. 3376, Inmate Grievance and Request Program § IV(B)(2) (2012), *available at* https://www1.nyc.gov/assets/doc/downloads/directives/Directive_3376_Inmate_Grievance_Request_Program.pdf

Finally, if you are filing a claim for loss of or damage to personal property, the New York State Court of Claims requires you to first exhaust the administrative procedures available for paying back incarcerated people, and then file your claim within 120 days of doing so.⁴¹ The IGP cannot be used to do this. See Chapter 17 of the *JLM*, “The State’s Duty to Protect You and Your Property: Tort Actions,” for more information about property claims.

If you are unsure whether an issue is grievable under the IGP, you should file a grievance, and the committee will decide through the grievance process in Section 701.5 of DOCCS Directive 4040.⁴²

3. How to Write an Effective Grievance

When using the IGP, you should follow several guidelines to increase your chances of obtaining relief (help). First, if you file a formal grievance with a grievance resolution committee, write out your grievance in detail and list exactly what attempts you made to resolve the problem.⁴³ If you do not try to resolve the problem on your own, your grievance may be dismissed and closed at the grievance committee hearing.⁴⁴

Second, your complaint must show that you are personally affected by the policy or issue that you are filing a grievance against.⁴⁵ If that is not the case, your complaint must show that you will be affected at some point in the future unless relief is granted and changes are made.⁴⁶ Grievances submitted by third parties will be sent to the Inmate’s Grievance Coordinator and Inmate Grievance Resolution Program Director. The Grievance Coordinator will speak to the corresponding incarcerated person to determine if the incarcerated person wishes to pursue the formal grievance process. If the corresponding incarcerated person declines to pursue this process, the grievance will not be addressed.

Third, you should state the problem accurately and precisely. Using inflammatory, disrespectful, or offensive language (such as curse words) in your complaint will reduce your chances of success.

Fourth, the more specific you are about the relief you are seeking, the more likely you are to receive it. You should list in detail every aspect of relief that you seek because the Inmate Grievance Resolution Committee may not consider types of relief that you do not specifically request. For example, explain the conditions or policies you want changed.

Finally, you should keep copies of all papers filed and received. For a more detailed discussion of what information you must include in your grievance, see Part E(1)(b)(i) of this chapter.

(last visited Nov. 4, 2019). This city jail grievance directive lists the following issues as non-grievable: matters under investigation by the Inspector General; complaints pertaining to an alleged assault or harassment; complaints where the remedy involves the removal of a staff person from an assignment, or the censure, discipline, or termination of a staff person; matters outside the jurisdiction of the Department of Correction; and complaints involving any program or procedure having its own administrative or investigative process, such as requests for accommodation based on disability or claims for discrimination based on disability, or Freedom of Information Law requests.

41. N.Y. CT. CL. ACT § 10(9) (McKinney 2009).

42. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(e) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(e) (2016). The committee has 16 days to decide the issue informally. If the grievant is not satisfied with the informal solution, the committee will schedule a full hearing. The full hearing must be within 16 days of the receipt of the grievance. After the full hearing, the committee will deliberate in private session. The committee must issue its decision in writing to the grievant within two days.

43. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(a)(2); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(a)(2) (2016).

44. N.Y. COMP. CODES R. & REGS. tit. 7, §§ 701.3(a), 701.5(b)(4)(i)(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program §§ 701.3(a), 701.5(b)(4)(i)(a) (2016).

45. N.Y. COMP. CODES R. & REGS. tit. 7, §§ 701.3(b), 701.5(b)(4)(i)(b); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program §§ 701.3(b), 701.5(b)(4)(i)(b) (2016).

46. N.Y. COMP. CODES R. & REGS. tit. 7, §§ 701.3(b), 701.5(b)(4)(i)(b); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program §§ 701.3(b), 701.5(b)(4)(i)(b) (2016).

D. The Basic Structure of the New York IGP

1. Levels of Authority

The IGP has three levels of authority. Higher levels of authority supervise lower levels of authority. The three levels, starting with the lowest, are: the Inmate Grievance Resolution Committee (“IGRC”), the Superintendent, and the Central Office Review Committee (“CORC”).⁴⁷

(a) The Inmate Grievance Resolution Committee (“IGRC”)

Each correctional institution must have an IGRC.⁴⁸ The IGRC must be a five-person group, made up of two voting incarcerated people, two voting staff members, and a non-voting chairperson.⁴⁹ The incarcerated IGRC representatives are elected by their peers for a term of six months and ordinarily serve full-time.⁵⁰ An incarcerated representative may not be removed from his position without a limited due process hearing.⁵¹

(b) The Role of the Superintendent and Staff

The superintendent selects staff IGRC representatives from a list of personnel who successfully complete a training course designed for individuals who want to serve as IGRC representatives.⁵² The Superintendent must ensure that the IGP staff is trained and available.⁵³ Chairpersons for IGRC hearings are selected by the IGP Supervisor from a list submitted by the IGRC representatives.⁵⁴ The chairperson may be an incarcerated person, staff member, or a volunteer associated with the facility’s program. Incarcerated people may communicate with the Superintendent when appealing a decision by the IGRC. Incarcerated people may also communicate with the Superintendent when the Superintendent issues a decision regarding a grievance. Incarcerated people may also interact with the Superintendent when he conducts an investigation.

(c) The Central Office Review Committee (“CORC”)

CORC consists of Deputy Commissioners and staff members.⁵⁵ It functions on behalf of and under the authority of the Commissioner of Correctional Services.⁵⁶ An Office of Diversity Management representative attends CORC hearings and may offer input on grievances alleging discrimination, but cannot vote.⁵⁷ Incarcerated people may communicate directly with CORC when appealing a decision of the Superintendent.

47. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.1(c); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.1(c) (2016).

48. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.1(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.1(a) (2016).

49. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.4(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.4(a) (2016).

50. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.4(b)(2),(4); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.4(b)(2),(4) (2016).

51. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.4(c)(1); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.4(c)(1) (2016).

52. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.4(d); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.4(d) (2016).

53. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.4(d); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.4(d) (2016).

54. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.4(f); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.4(f) (2016).

55. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(2)(i); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(2)(i) (2016).

56. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(2)(ii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(2)(ii) (2016).

57. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(2)(i); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(2)(i) (2016).

CORC decisions have the effect of directives. CORC decisions requiring corrective action are implemented by the appropriate facility and/or departmental office.⁵⁸ Although the Director of the IGP is not a voting member of the CORC, he is responsible for the administrative function of the IGP and for ensuring that the appropriate facility and/or departmental office carry out CORC decisions.⁵⁹

E. The New York IGP Rules

Understanding how the IGP works will help you use the program effectively. The rules are in two DOCCS directives. Directive 4040 contains the rules for the general program, while Directive 4041 contains alternative rules for special facilities. The policies, rules, and procedures contained in Directives 4040 and 4041 are also in Title 7 of the Codes, Rules, and Regulations of the State of New York.⁶⁰ Also, Directive 4002 establishes the Inmate Liaison Committee (“ILC”), which is concerned with the general welfare of incarcerated people.

1. Directive 4040: The Inmate Grievance Program

(a) General Procedures

IGP procedures work along three levels of authority, in order from lowest to highest: the IGRC, the Superintendent, and the CORC. As noted earlier, before filing a complaint with the IGRC, you should try to resolve the complaint on your own through existing formal or informal methods.

(b) The IGRC

(i) Filing the Complaint⁶¹

You must submit your complaint to the Grievance Clerk, using the Inmate Grievance Complaint Form 2131, within twenty-one calendar days of the incident described in your complaint.⁶² In some cases, the IGP supervisor can approve exceptions to this time limit if you attempt to resolve the situation on your own or if your complaint is referred back to the IGP by the courts.⁶³ If for some reason a Grievance Form is not available, you should submit your complaint to the clerk on a piece of paper. Your Grievance Form must include:

- Your name;
- Department Identification Number;
- Housing unit, program assignment, and other identifying information;
- A short, specific description of the problem and the remedies you are requesting; and
- Details of the actions you have already taken to try to resolve the complaint, including people you have contacted and responses you have received.

If you submit your complaint on a plain piece of paper, be sure to include the same information.

(ii) IGRC Hearing⁶⁴

If there is no immediate resolution after you file your complaint, the full IGRC will consider your complaint. If a hearing is necessary, it must be held within sixteen calendar days after your complaint

58. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(2)(ii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(2)(ii) (2016).

59. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(2)(iii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(2)(iii) (2016).

60. N.Y. COMP. CODES R. & REGS. tit. 7, §§ 701–702.

61. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(a) (2016).

62. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(a)(1); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(a)(1) (2016).

63. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(g); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(g) (2016).

64. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(2); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(2) (2016).

is received.⁶⁵ The IGRC will conduct the hearing at a set time and place. At the hearing, you, your advisor, anyone the grievance directly affects, or any witnesses, can offer evidence. The IGRC will judge the relevance and importance of the evidence offered.⁶⁶

You can miss your IGRC hearing twice before the committee will rule in your absence, but only if you miss your hearing for a legitimate reason, such as a visit, parole hearing, program committee, sick call, keeplock (confinement to cell), etc.⁶⁷ However, at the third scheduled hearing, it will rule in your absence, even if you have a good excuse. You should make every effort to be at the hearing so you can explain your evidence.

If your confinement status prevents you from appearing within sixteen days and you will be released within thirty calendar days, you can have the hearing postponed until your release or have the hearing held in your absence.⁶⁸ But if you will not be released within thirty days, the hearing will be held without you.⁶⁹

(iii) Committee Decision/Recommendation⁷⁰

After the hearing, the IGRC will discuss the complaint privately. When it has reached a decision, the IGRC may choose to tell you its decision orally. Within two working days of the hearing, the Committee must inform you of its decision and reasons in writing.⁷¹ If the decision requires action by the Superintendent or Central Office, the IGRC will make recommendations for the Superintendent to respond and take action. If a majority of the committee cannot agree on a decision, your complaint will be sent to the Superintendent for a response.⁷²

(iv) Dismissals⁷³

As discussed in Part C, the IGRC may dismiss and close your grievance if it decides: (1) you have made no effort to resolve the complaint on your own “through existing channels,” (2) you are not or will not be personally affected by the issue you raise, (3) you seek a remedy that is available through other DOCCS programs, (4) your grievance involves issues outside the supervision of DOCCS, or (5) the grievance is institutional and the only person affected by the grievance has been released or paroled.⁷⁴

65. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(2)(ii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(2)(ii) (2016).

66. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(2)(ii)–(iii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(2)(ii)–(iii) (2016).

67. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(2)(ii)(b)–(c); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(2)(ii)(b)–(c) (2016).

68. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(2)(ii)(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(2)(ii)(a) (2016).

69. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(2)(ii)(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(2)(ii)(a) (2016).

70. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(3); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(3) (2016).

71. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(3)(i); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(3)(i) (2016).

72. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(3)(ii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(3)(ii) (2016).

73. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(4) (2016).

74. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(b)(4)(i)(a)–(e); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(b)(4)(i)(a)–(e) (2016).

(c) Appealing to the Superintendent

(i) Filing an Appeal⁷⁵

Within seven calendar days of receiving the Committee's written response to your grievance, you may appeal the decision to the Superintendent by filing an appeal (Form 2131) with the Grievance Clerk. If you want to appeal the decision, it is important that you file on time. If you do not file within seven calendar days, it will be presumed that you have accepted the IGRC's decision.⁷⁶

(ii) Superintendent's Action⁷⁷

The Superintendent's response to your appeal will depend on whether the issue involved is departmental or institutional. A Departmental Grievance is one that affects you during your confinement at any of the many facilities in the Department.⁷⁸ An Institutional Grievance is one affecting you only as long as you remain a resident of the facility in which you filed the grievance.⁷⁹

If the matter concerns changing or revising a Departmental policy or directive, then the Superintendent will forward the grievance papers and a recommendation to the CORC for further review—and notify you that he has done so—within seven calendar days of the appeal. But if the matter does not concern changing or revising a Departmental policy directive, then the Superintendent will answer your appeal within 20 calendar days.⁸⁰

In all institutional matters, the Superintendent will make a decision and notify you of it, with reasons stated, within 20 calendar days of the appeal.⁸¹

(d) Appeal to the CORC

(i) Filing an Appeal⁸²

If you are not satisfied with the Superintendent's decision, you may appeal the Superintendent's action to the CORC. To do so, you must file an appeal (Form 2133) with the Grievance Clerk within seven calendar days of receiving the Superintendent's written response to your grievance.⁸³

75. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(c)(1); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(c)(1) (2016).

76. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(c)(1); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(c)(1) (2016).

77. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(c)(3); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(c)(3) (2016).

78. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(b); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(b) (2016).

79. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(c); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(c) (2016).

80. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(c)(3)(i); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(c)(3)(i) (2016).

81. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(c)(3)(ii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(c)(3)(ii) (2016).

82. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(1); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(1) (2016).

83. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(1)(i); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(1)(i) (2016).

(ii) CORC Action

The CORC will review the appeal, make a decision, and inform you of its decision, with reasons for its decision, within 30 calendar days from the time it receives the appeal.⁸⁴ It may take the CORC up to seven calendar days to actually receive your appeal. However, if you have not received notice of receipt or a decision within 45 days of filing your appeal, you should send a letter to the IGP supervisor to confirm that your appeal was filed and sent to the CORC.⁸⁵

(e) Procedural Safeguards for Fair Consideration of Grievances

(i) Advisors⁸⁶

During the grievance process, you may present the grievance yourself without help, or you may receive advice or assistance from a staff member who is willing to serve as an advisor. You may also receive assistance from another incarcerated person. An advisor is not a direct party to a grievance.⁸⁷ A direct party is a person who is so affected by the grievance that he is given the opportunity to provide input before the decision, and he can also appeal the decision afterward.⁸⁸

If you are incarcerated in the Special Housing Unit, you will have restricted access to other incarcerated people and may be prohibited from using another incarcerated person as an advisor. In that case, you may also be prohibited from serving as an advisor to another incarcerated person. In this situation, a willing staff member can serve as your advisor.⁸⁹

(ii) Reprisals Prohibited⁹⁰

Reprisal means “any action or threat of action against anyone for the good faith use of ... the grievance procedure.”⁹¹ The reprisal rule forbids anyone from retaliating against you if you use the IGP to file a grievance about an issue you believe is appropriate for the grievance process. If such retaliation occurs, you can respond by filing a complaint. You also cannot receive a misbehavior report only for making a supposedly false statement to the IGP.⁹²

(iii) Objection to IGRC Representatives⁹³

If you object to any of the incarcerated representatives on the IGRC, that incarcerated representative will not take part in the resolution of your grievance and will be replaced by one of the

84. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(3)(ii); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(3)(ii) (2016). It is important to note that some versions of the New York regulations have an error and does not have § 701.5(d)(3) in between § 701.5(d)(2) and § 701.5(d)(4). Instead, it lists § 701.5(d)(2) twice. The *JLM* cites to § 701.5(d)(3) when it refers to the second § 701.5(d)(2) that is listed. However, you should cite to § 701.5(d)(2) if you are using this provision in written documents.

85. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.5(d)(3)(i); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.5(d)(3)(i) (2016).

86. N.Y. COMP. CODES R. & REGS. tit. 7, §§ 701.2(h), 701.6(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program §§ 701.2(h), 701.6(a) (2016).

87. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(h); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(h) (2016).

88. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(i); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(i) (2016).

89. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7(c)(3); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.7(c)(3) (2016).

90. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(b); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(b) (2016).

91. 28 C.F.R. § 40.9 (2016).

92. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(b); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(b) (2016).

93. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(c); State of New York, Department of Corrections and

alternates. If you object to all of the incarcerated representatives and the alternates, the committee staff members will make the decision on their own, without any incarcerated representatives. In addition, a staff representative who is a party to your grievance cannot vote on the matter. In some especially sensitive circumstances, only staff members will conduct the investigation, even if you do not object to the incarcerated representatives.⁹⁴ If that happens, the incarcerated representatives will still vote.

(iv) Code of Ethics⁹⁵

A Code of Ethics for IGRC staff and incarcerated representatives, clerks, and chairpersons has been established to strengthen the credibility and effectiveness of the IGP.⁹⁶ For example, the Code of Ethics prohibits IGRC members from preventing an incarcerated person from filing a grievance⁹⁷ or improperly disclosing confidential information (including confidential medical information).⁹⁸ Under the Code of Ethics, a member must have a willing, tactful attitude, a working knowledge of the IGP, and awareness of his responsibilities under the IGP.⁹⁹

(v) Time Limits¹⁰⁰

The IRGC may only get an extension on the time limit for review if you consent in writing. Otherwise, if the IGRC does not decide a matter within the time limit, you may appeal to the next level.¹⁰¹

(vi) File Maintenance/Confidentiality¹⁰²

Grievance files are maintained in a specific area to be used by the IGRC and the clerk. Unless you consent in writing, no copies of documents may be placed in your central file or facility file. None of the grievance materials will be given to anyone other than you, a direct party, or someone involved in the review process without the IGP supervisor's approval.¹⁰³ The superintendent is responsible for assuring the confidentiality and maintenance of grievance records. Grievance files are kept for at least four years following their conclusion.¹⁰⁴

Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(c) (2016).

94. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(e)(2); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(e)(2) (2016).

95. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(f); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(f) (2016). The Code of Ethics can be found in N.Y. COMP. CODES R. & REGS. tit. 7, § 701.11 and in the State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.11 (2016).

96. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(f)(1); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(f)(1) (2016).

97. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.11(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.11(a) (2016).

98. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.11(e); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.11(e) (2016).

99. N.Y. COMP. CODES R. & REGS. tit. 7, §§ 701.11(b), (h); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program §§ 701.11(b), (h) (2016).

100. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(g)(2); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(g)(2) (2016).

101. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(g)(2); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(g)(2) (2016).

102. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(k); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(k) (2016).

103. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(k); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(k) (2016).

104. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(k)(3); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(k)(3) (2016).

(vii) IGRC Reference Materials¹⁰⁵

The IGRC at each facility is responsible for keeping an up-to-date set of code “A B” departmental directives and a set of the IGP monthly index of written opinions. A copy of the index must also be kept in the prison law library.

(viii) Emergencies¹⁰⁶

If your grievance is an emergency, it will be referred directly to the superintendent or the CORC, depending on who has the authority to ensure a quick and meaningful response. Emergencies include situations in which your health, safety, or welfare is in danger.

(f) Procedures for Incarcerated People in Special Housing Units¹⁰⁷

If you are living in a Special Housing Unit (“SHU”), your access to the IGRC may be more restricted than that of incarcerated people living with the general population. Facilities must follow slightly different procedures to help you file a grievance.

The area supervisor must make inmate grievance complaint forms (Form 2131) available to you at all times.¹⁰⁸ You will be given envelopes so you may forward your grievance confidentially to the Inmate Grievance Office.¹⁰⁹ Your facility may also use an inmate grievance deposit box. This box must be kept locked. Only the IGP supervisor and IGRC staff representatives should have keys to it, and they should collect any inmate grievances at least twice a week.¹¹⁰ You should also be able to directly speak to IGRC staff members, who must make rounds to all SHUs at least once a week to “give inmates who are having communication problems or difficulty writing their complaints an opportunity to request and receive assistance.”¹¹¹ For security reasons, you may have to use a staff member, rather than another incarcerated person, as your advisor.¹¹²

The IGP supervisor is responsible for monitoring the grievance procedure in SHUs and for making sure that all of the requirements are met.¹¹³ If the procedures are not being followed, for example if there are never any envelopes or Inmate Grievance boxes, you should tell the IGP supervisor.

(g) Employee Harassment¹¹⁴

There are faster procedures for grievances concerning employee harassment. Employee harassment is defined as “employee misconduct meant to annoy, intimidate or harm an inmate.”¹¹⁵ For example, if a Corrections officer made sexually suggestive comments towards you or assaulted

105. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(l); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(l) (2016).

106. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.6(m); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.6(m) (2016).

107. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7; State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.7 (2016).

108. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7(a)(1) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.7(a)(1) (2016).

109. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7(a)(2) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.7(a)(2) (2016).

110. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7(b) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.7(b) (2016).

111. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7(c)(1) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.7(c)(1) (2016).

112. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7(c)(3); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.7(c)(3) (2016).

113. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.7 (2019).

114. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8 (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8 (2016).

115. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(e) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(e) (2016).

you, that would be “employee harassment.”¹¹⁶ If this happens to you, you should first report the problem to the harassing employee’s immediate supervisor; but you can still file a complaint in the IGP if you choose not to report the employer to his supervisor.¹¹⁷

In order to make a stronger case, you should write down and keep a record of every incident of harassment. Your records should include the time, date, nature of the harassment, who was involved, and if there were any other witnesses. You should also keep a record of anything that happened after the harassment, like a conversation you had with someone else about the incident.

In cases of harassment, your grievance and supporting documents should be forwarded directly to the superintendent by the end of the day.¹¹⁸ If the superintendent concludes that the issue does not relate to harassment, then the grievance will be returned to the IGRC for normal processing.¹¹⁹ If the superintendent determines that the issue *does* relate to harassment, he must investigate further. If the superintendent investigates further, you will not be allowed to withdraw your complaint.¹²⁰ The superintendent will then make a decision within 25 calendar days and inform you of the decision, with reasons stated.¹²¹ That time limit can be extended only with your consent. If the superintendent does not respond within 25 days, you may appeal to the CORC by filing a Form 2133 with the inmate grievance clerk.¹²² If you receive a decision from the superintendent and you want to appeal, you must file your appeal with the inmate grievance clerk within seven calendar days.¹²³

(h) Unlawful Discrimination¹²⁴

There is also a faster grievance process if you suffer unlawful discrimination. Unlawful discrimination includes “acts or policies which adversely affect individuals based on race, religion, national origin, sex, sexual orientation, age, disabling condition(s) or political belief, except as provided by law.”¹²⁵ You may only file a grievance if you are personally and directly affected by the act or policy.¹²⁶ If you are being unlawfully discriminated against by an employee, program, policy, or procedure, you should report the incident to the immediate supervisor of the offending employee or the administrator of the policy. However, this is not required before filing a complaint in the IGP.¹²⁷ This grievance will be forwarded to the superintendent, and a copy sent to the office of diversity

116. *See Morris v. Eversley*, 205 F. Supp. 2d 234, 240 (S.D.N.Y. 2002) (finding that sexually suggestive comments, forcible restraint, and sexual assault by a corrections officer were “employee harassment”).

117. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8(a) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8(a) (2016).

118. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8(b) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8(b) (2016).

119. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8(c) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8(c) (2016).

120. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8(d)–(e) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8(d)–(e) (2016).

121. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8(f) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8(f) (2016).

122. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8(g) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8(g) (2016).

123. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.8(h) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.8(h) (2016).

124. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.9 (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.9 (2016).

125. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(f) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(f) (2016).

126. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.3(b) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.3(b) (2016).

127. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.9(a); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.9(a) (2016).

management within 24 hours.¹²⁸ Either a high-ranking supervisor or the office of diversity management will investigate your grievance.¹²⁹

After supervising an investigation, the superintendent will give a decision within 25 calendar days of the grievance and inform you of the decision, with reasons stated.¹³⁰ If the superintendent does not respond within 25 days, you may appeal to the CORC by filing a Form 2133.¹³¹ If you receive a decision from the superintendent and want to appeal, you must file Form 2133 with the clerk within seven calendar days.¹³²

Directive 4041: The Inmate Grievance Program Modification Plan

(a) Application of the IGP Modification Plan

It may be difficult for some incarcerated people to participate in regular IGP procedures. For example, if you are involved in a temporary release program, you may spend many hours each day looking for a job or education, and you may have weekend furloughs (leaves of absences) and daily family visits. In cases like these, the IGP Modification Plan is used to allow you the same opportunity to file a grievance.¹³³

(b) Procedures

The procedures for filing a grievance under the Modification Plan are found in N.Y. Comp. Codes R. & Regs. tit. 7, § 702.4 and in DOCCS Directive 4041 § 702.4(a)–(c). First, you must request a grievance form, and the facility's duty office will provide you with one within 24 hours of your request. You can ask for help in filling out the form from any incarcerated person or staff member. A designated staff member will try to resolve your grievance informally within 16 days. If resolution is not possible in that time period, the staff member must request an IGRC hearing.¹³⁴ The IGRC members will include two staff representatives and a non-voting chairperson the superintendent chooses, and two incarcerated people you choose. After the hearing, the IGRC will make a recommendation about your claim and send it to you in writing.

If you disagree with the IGRC's recommendation, you can appeal to the superintendent within seven days of receiving the written recommendation from the IGRC.¹³⁵ The appeal will follow the procedure described in Part E(1)(c) of this Chapter. If you do not file an appeal within seven days, you are presumed to have accepted the recommendation.¹³⁶

128. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.9(c) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.9(c) (2016).

129. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.9(d) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.9(d) (2016).

130. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.9(e) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.9(e) (2016).

131. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.9(f) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.9(f) (2016).

132. N.Y. COMP. CODES R. & REGS. tit. 7, § 701.9(g) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.9(g) (2016).

133. N.Y. COMP. CODES R. & REGS. tit. 7, § 702.2(a) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4041, Inmate Grievance Program Modification Plan § 702.2(a) (2011) (*as revised* Apr. 30, 2015).

134. N.Y. COMP. CODES R. & REGS. tit. 7, § 702.4(a)(4) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4041, Inmate Grievance Program Modification Plan § 702.4(a)(4) (2011) (*as revised* Apr. 30, 2015).

135. N.Y. COMP. CODES R. & REGS. tit. 7, § 702.4(b)(1) (2019).

136. N.Y. COMP. CODES R. & REGS. tit. 7, § 702.4(b)(1) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4041, Inmate Grievance Program Modification Plan § 702.4(b)(1) (2011) (*as revised* Apr. 30, 2015).

Within seven calendar days of receiving the Superintendent's response, you can appeal to the CORC.¹³⁷ The appeal will follow the procedure described in Part E(1)(d) of this chapter.

2. Directive 4002: The Inmate Liaison Committee

The superintendent in your facility must establish an Inmate Liaison Committee ("ILC").¹³⁸ This committee's goal is to provide effective communication between incarcerated people and the administration, and to promote the accurate distribution and exchange of information. The ILC must discuss the incarcerated people's general welfare with prison officials. This includes, for example, suggestions from incarcerated people on facility operations. These discussions may not relate to specific problems of individual incarcerated people. The superintendent and Facility Executive Team will meet with the ILC monthly, and informal discussions should occur consistently.

The ILC is made up of a group of incarcerated people chosen by the general population. Representatives are elected by secret ballot for a term of six months and may serve for two terms in a row. The ILC will elect officers and an executive committee who can serve for one six-month term per year. The superintendent can deny membership to incarcerated people with recent or ongoing disciplinary problems.¹³⁹

The ILC must have a room with facilities, including a typewriter, desks, supplies, and stationery.¹⁴⁰ The ILC will be governed by a Constitution and By-Laws, which it will prepare with the help of a staff member. A suggested format for the Constitution and By-Laws is attached to Directive 4002.¹⁴¹

F. Rules for Inmate Grievance Procedures in Other States

In 1979, Congress set out minimum standards for formal inmate grievance procedures to help reduce the large number of civil rights cases by incarcerated people that were waiting to be heard in courts.¹⁴² States with grievance procedures that meet these standards are certified by the Attorney General.¹⁴³ Remember, you must exhaust all available administrative procedures before you can file a claim under 42 U.S.C. § 1983.¹⁴⁴

In order for an inmate grievance procedure to be certified, the state must meet certain federal minimum standards for the communication of those procedures to all incarcerated people.¹⁴⁵ A certified inmate grievance procedure must be readily available to all incarcerated people and employees of the institution. Every incarcerated person and employee must receive written notification and verbal explanation of the procedure when they get to the institution. You should also have the opportunity to ask questions about the procedure when it is explained to you. The procedure must be

137. N.Y. COMP. CODES R. & REGS. tit. 7, § 702.4(c)(1) (2019); State of New York, Department of Corrections and Community Supervision, Directive No. 4041, Inmate Grievance Program Modification Plan § 702.4(c)(1) (2011) (*as revised* Apr. 30, 2015).

138. State of New York, Department of Corrections and Community Supervision, Directive No. 4002, Inmate Liaison Committee § II(A)(1) (2017) (*as revised* Aug. 16, 2019). Note, however, that some facilities may be exempt from this requirement.

139. State of New York, Department of Corrections and Community Supervision, Directive No. 4002, Inmate Liaison Committee § II(B) (2017) (*as revised* Aug. 16, 2019).

140. State of New York, Department of Corrections and Community Supervision, Directive No. 4002, Inmate Liaison Committee § II(E) (2017) (*as revised* Aug. 16, 2019).

141. State of New York, Department of Corrections and Community Supervision, Directive No. 4002, Inmate Liaison Committee § II(F) (2017) (*as revised* Aug. 16, 2019).

142. Civil Rights of Institutionalized Persons Act, S. Rep. No. 96-416, at 34 (1979), *as reprinted in* 1980 U.S.C.C.A.N. 787, 816. The minimum standards for inmate grievance procedures can be found at 28 C.F.R. §§ 40.1–40.10 (2019).

143. The procedures for obtaining certification of a grievance procedure can be found at 28 C.F.R. §§ 40.11–40.22 (2019).

144. 42 U.S.C. § 1997e(a); See Chapter 16 of the *JLM*, "Using 42 U.S.C. § 1983 to Obtain Relief From Violations of Federal Law," for more information on § 1983 claims.

145. 28 C.F.R. § 40.11(b) (2019).

written in any language that is spoken by a significant portion of the prison population, and there must be appropriate assistance for incarcerated people who speak other languages, or have disabilities.¹⁴⁶

In general, you should be able to find guidelines and procedures for filing a grievance in your prison law library. Ask your librarian if you need help finding them. It is important for you to understand these rules before filing your grievance to make the best use of the grievance procedure.

G. Conclusion

If you have a grievance, you must go through your state's inmate grievance program before going to court. Once you receive a final decision from the IGP, and have appealed it to the Superintendent and the CORC, you may file a complaint in court. If you fail to exhaust your remedies, your case will be dismissed. Even if you feel that the grievance system in your prison is unfair, inefficient, or pointless, you must exhaust it. Though all of the requirements under the PLRA may seem complicated and intimidating, you should try your best to properly exhaust your grievance. If you make an honest, good faith effort to comply with the requirements, the courts are more likely to excuse mistakes. For example, if you miss a deadline, you should not give up. Continue to pursue your grievance and request to be excused from the rule you failed to follow, or ask to be able to re-file your grievance and start over.

146. 28 C.F.R. § 40.3 (2019).