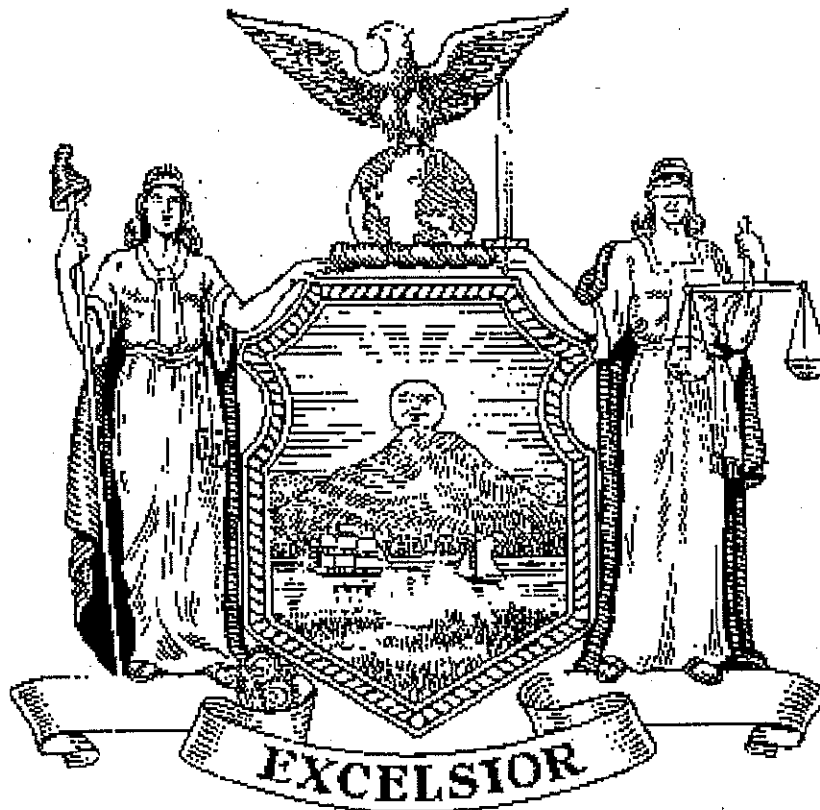


STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL  
SERVICES

# INMATE GRIEVANCE PROGRAM

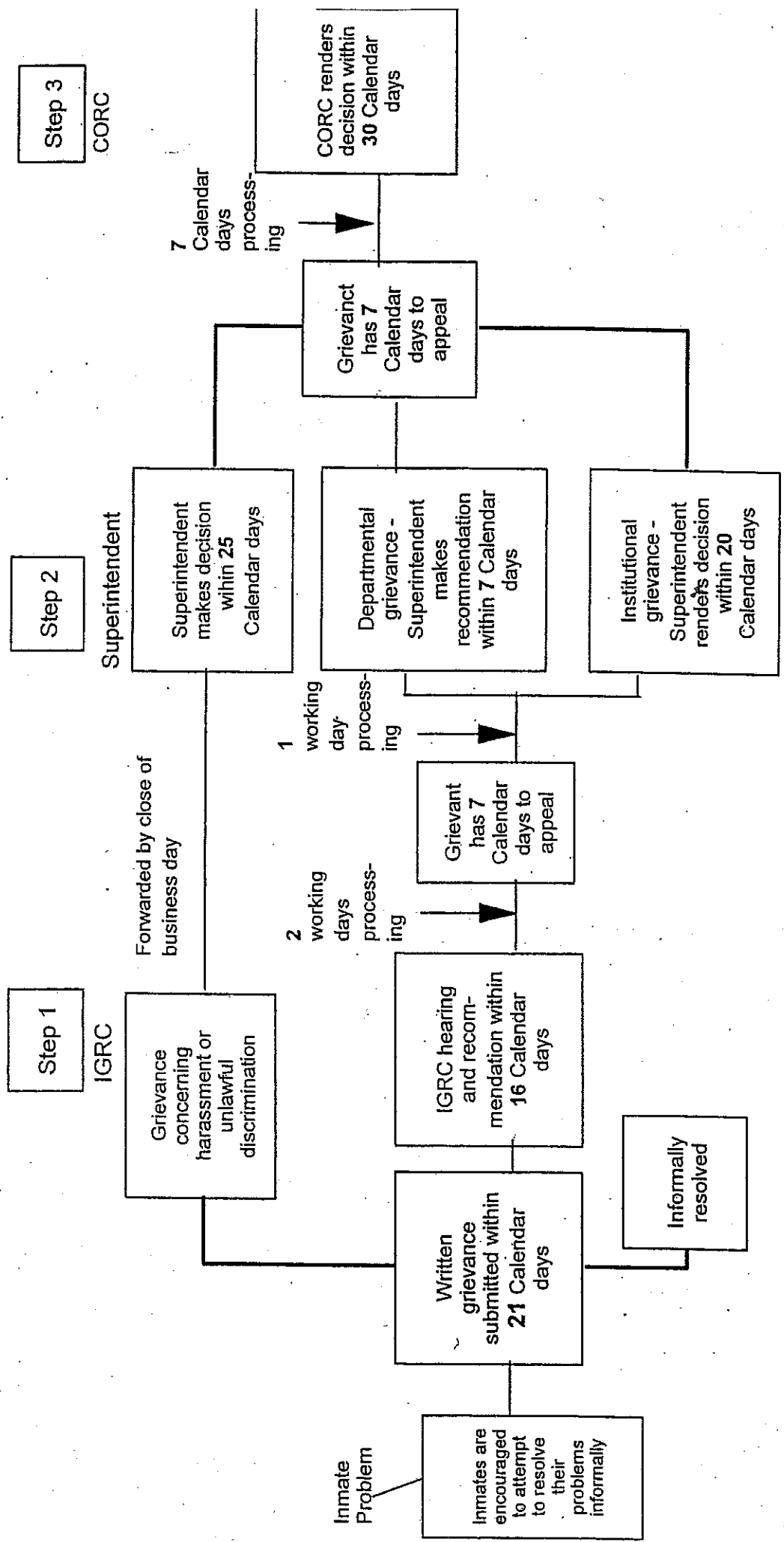


## SERGEANT'S TRAINING MANUAL

*Julie Davis*  
*(518) 457-1885*

# Inmate Grievance Program

Procedural Steps & Time Frames



## INVESTIGATION TECHNIQUES

### Fundamental 5 W's & H:

- WHO: Fully identify people involved in grievance and investigation.
- WHAT: Explain and clarify what happened.
- WHERE: Where did it happen?
- WHEN: When did it happen should include date and time at any act or acts.
- WHY: Why did incident occur if known?
- HOW: How did it happen should provide information which verifies, supplements or contradicts the incident provided by the grievant.

The investigation should stand on its own which should reduce the follow up request form CORC for information. A well written and documented investigation enhances the credibility of the Superintendent's response for anybody who may review it, i.e.: CORC members, Commissioner or Deputy Commissioners, Attorney General, etc.

### INVESTIGATIONS \* SHOULD BE:

Legible

Properly and completely filed out.

- identify investigator and title.
- identify employee interviewed with full name and title.

State the obvious (sometimes it is not so obvious).

Avoid slang and use proper terms (no profanity unless being quoted).

Use Complete and proper sentences.

Use language you normally use and avoid words if you are not sure of their meaning.

### REMEMBER:

Include copies of relevant memos and Facility Policy & Procedures.

Update investigations as new information is obtained and as necessary

### **\*\*\*\*HARASSMENT\*\*\*\***

1. Written Statement from Employee
2. Written Report confirming interview with grievant, witness and any direct party.
3. Copies of pertinent documentation i.e.: misbehavior report.
4. Written Report to indicate evidence of or lack of evidence exists.

## INMATE GRIEVANCE PROGRAM

- I. Statutory Mandate
  - A. Section 139 NYS Correction Law
  - B. N.Y.C.R.R., Title 7, Part 701
  - C. Department Directives 4040/4041
  
- II. Basic Principles of a Credible, Effective Grievance Mechanism
  - A. Participation by the involved individuals in designing and operating the mechanism.
  - B. Training & Orientation of the involved individuals.
  - C. Resolution of a grievance at the lowest possible level, by the people closest to the problem.
  - D. Written Responses with reasons for denial from each Review Level.
  - E. Time limits for the response from each Review Level.
  - F. Independent review from outside the facility.
  - G. A monitoring system to insure implementation of decisions - regular submission of reports & audits.
  
- III. Purpose - Advantages/Benefits
  - A. To solve problems.
  - B. Provide a visible & acceptable method for complaint resolution.
  - C. Ventilation.
  - D. Clarify/modify institutional/Departmental policy & procedures.
  - E. Ameliorate conditions/systematic improvements.
  - F. Staff education - recognition of inmate rights  
- liabilities of behavior.
  - G. Management tool
    - Monitor implementation of policy & procedure Central Office - Facility Superintendent/Executive Team - Staff.

Not an Adversary Procedure

  - Not to assign blame or punish staff
  
- IV. Structure - 3 levels
  1. IGRC - informal hearing - recommendation
  2. Superintendent
  3. CORC - Central Office Review Committee
  
- V. Litigation
  1. Paterson v. Smith - must exhaust IGP prior to submission of an Article 78
  2. Johnson v. Ward - limited de process hearing to transfer IGRC inmate representative.
  3. Hunyadi v. Smith - misbehavior report based solely upon an allegedly false statement made to grievance committee is improper & cannot stand (Filing a grievance is a First Amendemnt right.) If an inmate knew filing a grievance could be used in a disciplinary report, it would have a chilling effect upon his filing a grievance.
  4. Adorno v. Jones - says that the Grievance procedure is inapplicable to matters which already have a written appeal mechanism.
  
- VI. Federal Certification

In September of 1992, the United State Department of Justice certified the Inmate Grievance Program.



GLENN S. (GOOR)   
 COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL SERVICES  
THE HARRIMAN STATE CAMPUS  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

STEPHEN M.   
 DEPUTY COMMISSIONER   
 AND CHIEF

MEMORANDUM

TO: All Superintendents  
FROM: Stephen M. Bernardi, Deputy Commissioner *SMB*  
DATE: February 11, 1998  
SUBJ: Harassment/Unlawful Discrimination Grievances

Grievance allegations of harassment or unlawful discrimination are forwarded directly to the superintendent as outlined in Directive #4040, Section VIII and Section IX. It is important that the superintendent or his/her designee (limited to the first deputy superintendent or deputy superintendent level) review these complaints within 24 hours of receipt. This review is to determine the severity of the allegations, the area where the complaint originated, or ongoing trends which are indicative of potential problems requiring immediate executive attention.

The present system gives the superintendent the responsibility to monitor these grievances and designate appropriate staff to investigate the grievances and take appropriate or necessary corrective action. This should continue. The following guidelines should be used to help you and your supervisory staff whenever you conduct in-house investigations of harassment/unlawful discrimination grievances in accordance with the provisions of Directive #4040.

Investigations of such grievances should not be conducted by the Inmate Grievance Program Supervisor or staff representatives of the Inmate Grievance Review Committee (IGRC), and under no circumstance should inmate representatives of the IGRC be involved in conducting such investigations. In all such cases, higher ranking supervisory personnel should conduct these investigations, i.e., a sergeant investigates allegations against a correction officer; a lieutenant investigates allegations against a sergeant; a senior correction counselor investigates allegations against a counselor, etc. In assigning the investigations, discretion should be exercised in determining whether or not the immediate supervisor of the employee involved can satisfactorily and impartially respond to the allegation. A few facilities have this coordinated by an upper level supervisor to avoid duplication of investigations, i.e., inmate letters to the superintendent and grievances on the same topic.

An investigation must include, but not be limited to, a written report by the higher ranking supervisory personnel who evaluates the findings. This report must include:

- 1) A written statement from the employee against whom the grievance was filed offering his/her version of what occurred in response to the specific allegation. (This is for the employee's own protection because it eliminates any possibility of misinterpretation of his/her response to the allegation.);
- 2) A statement confirming an interview with the grievant, witness/witnesses and any party/parties directly involved in the incident;
- 3) Copies of any pertinent documentation in instances where a direct correlation is established between the grievance complaint and a disciplinary proceeding, and;
- 4) A statement from the supervisor concerning any evidence given or that no evidence exists to support the allegation.

Supervisors conducting such investigations should be made aware that their investigation is the basis for the superintendent's response to the harassment grievance and possibly, upon appeal, the basis for the CORC decision. It also establishes the credibility of the facility administration's and the Department's procedures for addressing such complaints. In all cases, the report of investigation which is submitted to the superintendent or designee becomes a matter of record that the superintendent may use as documentation for any further inquiries if litigation is pursued by the grievant.

In many cases, it may be found that the matter consists of an inmate's word against an employee's word, thus, the allegations cannot be substantiated by fact. In such cases, if properly documented investigations are conducted, the facility administration will have the ability to demonstrate that a good-faith effort was made and that a proper investigation was conducted.

Under no circumstances should investigation reports be accessible to inmates. These reports should be kept by the Inmate Grievance Program Supervisor in separate files from those used by inmate members of the IGRC. It is recommended that every precaution be taken to ensure the integrity and confidentiality of these files.

The expeditious investigation of and response to allegations is in the best interest of the employees involved and the good order of the facility. Consequently, you are encouraged to make every effort to comply with the 12-working-day time frame for your response. Employee leave and the complexity of some cases may preclude an appropriate response within 12 days; however, the majority of cases can be addressed within this time frame.

Copies of this memorandum are to be disseminated to all uniformed and non-uniformed supervisors.

Your cooperation is appreciated.

superintendent shall forward a recommendation, accompanied by a copy of the supervisor's report, to the Director of the IGP. The clerk will be suspended pending the Director's decision.

### § 701.5 Procedure.

Note: If an inmate is deaf or hard-of-hearing, any expression of difficulty in communicating or understanding shall be considered a request for assistance. Reasonable accommodations, (including assignment of a sign language interpreter, if needed, and a grievance clerk) will be made to ensure the inmate's full access to all steps in the grievance process.

#### (a) *Filing the complaint.*

(1) *Time limit for filing.* An inmate must submit a complaint to the clerk within twenty-one (21) calendar days of an alleged occurrence on an Inmate Grievance Complaint Form (Form #2131). If this form is not readily available, a complaint may be submitted on plain paper. The complaint may only be filed at the facility where the inmate is housed even if it pertains to another facility.

Note: Exceptions to this time limit or any appeal time limits may be approved by the IGP supervisor under section 701.6(g), below.

(2) *Contents.* In addition to the grievant's name, department identification number, housing unit, program assignment, etc., the grievance should contain a concise, specific description of the problem and the action requested and indicate what actions the grievant has taken to resolve the complaint, i.e., specific persons/areas contacted and responses received. The IGP supervisor shall review the grievance complaint and designate the grievance code and title. If the IGP supervisor determines that the grievance may be a harassment, discrimination or strip frisk/strip search grievance, it shall be processed in accordance with the respective expedited procedure (section 701.8,.9 or .10, below). The clerk shall consecutively number and log each grievance at the time of receipt.

(3) *Like grievances.* "Like grievances" may be consolidated at the option of the IGP supervisor or IGRC and assigned one grievance calendar number. The first complaint received will be given the next sequential grievance number in the clerk's log (Form #2136). The grievants shall select three or four spokespersons from their number to be grievants of record and to represent them at the hearing and to ensure expeditious processing of the cases. Any like complaint submitted at this time or during processing may be addressed under the same grievance calendar number. A list of the names of every inmate who submitted a complaint on the issue shall be included with the grievance materials and submitted with any appeal which may result. Every effort will be made to notify all of the grievants of the response at each level to which the grievance is appealed either by written response, posting on inmate bulletin boards or radio announcement. Not every complainant may receive an individual written response, but the three or four grievants of record will. If none of the grievants of record appeal to the next level, any inmate who submitted a complaint may continue the appeal. Any inmate on the list of those submitting the complaint will be given the number of the grievance of record to submit to the court in order to verify exhaustion of the IGP.

#### (b) *First Step, IGRC*

(1) *Informal resolution.* The representatives of the IGRC shall have up to sixteen (16) calendar days after a grievance is filed to resolve it informally. If the matter is resolved to the satisfaction of the grievant, the resolution and the grievant's consent must be entered on the Inmate Grievance Complaint Form.

#### (2) *IGRC hearing.*

(i) If there is no resolution, the full committee shall conduct a hearing to answer the grievance or make a recommendation to the superintendent.

(ii) The clerk, together with the staff, shall schedule the hearing to take place within sixteen (16) calendar days after receipt of the grievance, making certain that the grievant and all direct parties and witnesses, if any, are afforded an opportunity to appear (except as exempted in section 701.7(d), below).

(a) Any inmate whose confinement status precludes his/her attendance at an IGRC hearing and who will be released within thirty (30) calendar days shall be given the option of having the hearing held in his/her absence or postponed until release from confinement. The grievant's decision shall be obtained in writing. If the grievant is not scheduled for release from confinement within thirty (30) calendar days, the hearing shall be held in his/her absence. If any person elects not to appear, the clerk shall so inform the IGRC.

(b) If a grievant does not appear for the hearing without a legitimate reason (visit, parole hearing, program committee, sick call, keeplock, etc.), the IGRC will hold a hearing in absentia. The IGRC has the authority in this circumstance to dismiss and close the grievance by majority vote (3 of 4), or to make a recommendation on the action requested and forward same to the grievant.

(c) If a grievant misses three (3) scheduled hearings due to legitimate reasons, the IGRC shall act on the grievance at the third scheduled hearing.

(iii) The full IGRC shall conduct the hearing at the time and place set. The grievant or his/her advisor and any other direct party to the grievance may present relevant information, comments, or other evidence in furtherance of their respective positions. The IGRC shall be the judge of the relevance and materiality of the evidence offered.

(3) *Committee decision/recommendation.*

(i) After the chairperson closes the hearing, the committee shall deliberate in private session. Its decision must be communicated to the grievant and any direct party in writing with reasons stated, within two (2) working days. In its discretion, the IGRC may also communicate its decision to the grievant orally immediately after its deliberations.

(ii) Matters which neither require superintendent/Central Office action nor involve changes in policy may be resolved by agreement of the committee, the inmate, and the party directly affected. Committee decisions which do require superintendent or Central Office action, including, but not limited to, changes in institutional or Departmental policy or procedure, shall be written in the form of recommendations and referred to the superintendent. Any matter on which the committee cannot reach a decision by majority vote shall also be referred to the superintendent for action and response.

(4) *Dismissals.*

(i) The IGRC may dismiss and close a grievance after a hearing if it determines, by majority vote (3 of 4), that:

- (a) the grievant has made no effort to resolve the complaint through existing channels;
- (b) the grievant has not been or will not be personally affected by the issue in his/her complaint;
- (c) the grievant is seeking a decision or an appeal of a decision otherwise attainable through the established procedures for:

- (1) temporary release, family reunion and media review programs,
- (2) disciplinary and time allowance committee proceedings,
- (3) central monitoring (CMC), inmate claims, or records review (freedom of information requests, expunction) procedures, or
- (4) any other program or procedure having a written appeal mechanism which extends review to outside the facility (see section 701.3(e), above);

(d) the grievant is seeking action with respect to any policy, regulation, rule or action of an agency not under the supervision of the Commissioner of Correctional Services (see section 701.3(f), above); or

(e) the grievance is institutional in nature and only affects or no longer affects a grievant who has been released or paroled (see section 701.6(i), below).

(ii) In such cases, the IGRC shall clearly cite the portions of this section and of section 701.3(a), (b), (e) and (f), or section 701.6(i) which provide the basis for dismissal, and shall, where appropriate, refer the grievant to appropriate existing mechanisms.

(iii) If a grievant believes that a dismissal in his/her case is not authorized by this directive, he/she may apply directly to the facility IGP supervisor for review within seven (7) calendar days after receipt of the IGRC's decision to dismiss the grievance. If the supervisor determines that the grievance does not fall into one of the categories cited in this section, then the grievance will be returned to the IGRC for a hearing and recommendation. The supervisor's written response shall be forwarded to the grievant within seven (7) calendar days of receipt. An inmate may pursue a complaint that the IGP supervisor failed to reinstate an improperly dismissed grievance by filing a separate grievance.

(iv) If there is less than a majority vote to determine whether a complaint constitutes a grievable issue, the IGRC will hear the grievance and provide its recommendations with reasons stated on the specific requested action(s).

(c) *Second step, appeal to the superintendent.*

(1) *Filing an appeal.* If the grievant or any direct party wishes to appeal to the superintendent, he or she must complete and sign the appeal section on the IGRC response form (Form #2131) and submit it to the grievance clerk within seven (7) calendar days after receipt of the IGRC's written response. If no appeal is filed upon denial by the IGRC, it will be presumed that the grievant or direct party accepts the committee's recommendation. An exception to this appeal time limit may be approved by the IGP supervisor under section 701.6(g) below:

(2) *Referral to the superintendent.* In all cases where action by the superintendent is required, the grievance papers and all relevant supplemental data shall be transmitted to the superintendent. Such transmittal shall be within one (1) working day after receipt of an appeal.

(3) *Superintendent's action.* The superintendent's office shall date stamp all grievances forwarded showing when they were received. The superintendent or his designee shall determine if the grievance is Departmental in nature.

(i) *Departmental issue.* If a matter concerns an altering or revision of a Departmental policy/directive, the superintendent shall promptly forward the grievance papers and a recommendation regarding said policy to the IGP supervisor for forwarding to the CORC which shall render a decision in accordance with the third step. Such transmittal must be within seven (7) calendar days from the time the appeal was received. The grievant, the grievance clerk, and the direct party, if any, shall receive notice of said transmittal. Departmental issues which do not involve creation or revision of a Departmental policy or directive shall be answered by the superintendent within twenty (20) calendar days from the time the appeal was received.

(ii) *Institutional issue.* If a matter concerns an institutional issue, the superintendent shall render a decision on the grievance and transmit said decision, with reasons stated, to the grievant, the grievance clerk, and direct party, if any, within twenty (20) calendar days from the time the appeal was received.

(4) *Implementation of decisions.* The IGP supervisor or the superintendent must verify compliance with superintendents' responses that require some form of implementation. Documentation of compliance must be filed with the grievance record. If a decision is not implemented within 45 days, the grievant may appeal to CORC citing lack of implementation as a mitigating circumstance.

(d) *Third step, appeal to the Central Office Review Committee (CORC).*

(1) *Appeal.*

(i) If the grievant or any direct party wishes to appeal to the CORC, he or she must complete and sign Form #2133 and submit it to the grievance clerk within seven (7) calendar days after receipt of the superintendent's written response to the grievance. The superintendent's response form contains simple directions for appeal to the CORC. An exception to this appeal time limit may be approved by the IGP supervisor under section 701.6(g), below.

(ii) The grievance clerk shall transmit the signed appeal and the accompanying grievance papers to the IGP supervisor within one (1) working day after receipt of the signed appeal statement. The supervisor must forward appeals within seven (7) calendar days to the CORC.

(2) *The CORC.*

(i) The CORC shall consist of the Deputy Commissioner and counsel, Deputy Commissioner for correctional facilities, Deputy Commissioner for program services, Deputy Commissioner for administrative services, and the Deputy Commissioner and chief medical officer, or their designees expressly authorized to act for them. A representative of the office of diversity management will attend CORC hearings and have input on grievances alleging discrimination, but will not vote.

(ii) The CORC functions on behalf of the Commissioner and under his authority. CORC decisions have the effect of directives. Decisions requiring remedial action must be implemented by the facility and/or Departmental office to which they apply.

(iii) The Director, IGP, is not a voting member of the CORC. The Director will, however, be responsible for the administrative function of the IGP. The Director, IGP, as the Commissioner's designee, shall ensure implementation of CORC decisions.

(3) *CORC action.*

(i) The IGP Central Office staff shall date stamp all appeals showing when they were received and shall notify facility grievance staffs in writing as grievances are received. The facility IGP staff shall forward a copy of the written notice of receipt to the grievant of record. If a grievant does not receive a copy of the written notice of receipt within 45 days of filing an appeal, the grievant should contact the IGP supervisor in writing to confirm that the appeal was filed and transmitted to CORC.

(ii) The CORC shall review each appeal, render a decision on the grievance, and transmit its decision to the facility, with reasons stated, for the grievant, the grievance clerk, the superintendent, and any direct parties within thirty (30) calendar days from the time the appeal was received.

(4) *Implementation of decisions:* The Director, IGP, must obtain verification of compliance with CORC dispositions. Documentation of compliance must be filed in the Central Office and facility grievance records.

§ 701.6 Procedural Safeguards.

(a) *Advisors.* An inmate may present or appeal a grievance unaided, or may be advised or assisted by a staff member or another inmate of his/her choosing subject to the restrictions set forth in sections 701.2(h), above, and 701.7(c)(3), below. At the discretion of the superintendent, inmate advisors for keeplocked inmates may be limited to inmate clerks or inmate representatives on the IGRC and keeplocked inmates may be prohibited from serving as advisors to other inmates.

(b) *Reprisals prohibited.* No reprisals of any kind shall be taken against an inmate or employee for good faith utilization of this grievance procedure. An inmate may pursue a complaint that a reprisal occurred through the grievance mechanism. A grievant shall not receive a misbehavior report based solely upon an allegedly false statement made by the inmate to the grievance committee.

- (c) *Objection to IGRC representative* - No inmate will take part in the resolution of a grievance over a grievant's objection. If a grievant objects to both inmate representatives and both alternate inmate representatives, then the two staff representatives shall hold the hearing. An inmate representative may not function as a voting representative at a hearing on his/her grievance. An alternate inmate representative must be utilized. A staff representative may not function as a voting representative at a hearing on a grievance in which that staff person is a direct party. An alternate staff representative must be utilized.
- (d) *IGRC access/movement within the institution.*
- (1) A pass system (institutional or point to point) which permits inmate representatives, and grievance clerks to perform their IGP duties shall be developed in accordance with specifications established by the superintendent. Security restrictions will preclude inmates from entering certain areas of the facility.
  - (2) At any facility where a pass system is not feasible, the superintendent must develop a procedure to ensure that the IGRC can obtain necessary information, keep within established time frames and maintain confidentiality. This procedure must be in writing and approved by the Director, IGP.
  - (3) Upon written recommendation of the IGP supervisor and with the approval of the Director, IGP, the superintendent may restrict or remove a specific inmate's IGRC pass privileges.
- (e) *IGRC interviews of employees.*
- (1) Formal interviews with staff members, if necessary to an IGRC investigation, should be conducted jointly by an inmate and a staff representative whenever feasible. Employees should be questioned in a diplomatic and non-adversarial manner.
  - (2) If inmate representatives cannot accompany staff representatives on an investigation because of security restrictions, and if interviews cannot be conducted in the grievance office or through less formal means (e.g., by telephone), the inmate representatives shall provide the staff representatives with the questions they would like answered. The staff representatives shall make every effort to obtain answers for the inmate representatives.
- (f) *Code of ethics.*
- (1) A code of ethics (see section 701.11) for IGRC staff and inmate representatives, clerks, and chairpersons has been established to strengthen the credibility and effectiveness of the IGP. Violations of this code may result in removal from the IGP.
  - (2) Inmate representatives may be removed from the committee only in accordance with procedures set forth in section 701.4(c), above.
  - (3) The IGP supervisor is responsible for insuring that the full-time and alternate IGRC representatives have read, understand and received a copy of the code of ethics.
- (g) *Time limit exceptions and extensions.*
- (1) Time limit for filing a grievance or appeal:
    - (i) An inmate may request an exception to the time limit for filing a grievance, or for filing an appeal to the superintendent or to CORC. Such a request shall be in writing and shall be submitted to the grievance clerk with the grievance or appeal the inmate wishes to file.
      - (a) The IGP supervisor may grant an exception to the time limit for filing a grievance based on mitigating circumstances (e.g., timely attempts to resolve a complaint informally by the inmate, etc.). An exception to the time limit may not be granted more than 45 days after an alleged occurrence.
      - (b) The IGP supervisor may grant an exception to the time limit for filing an appeal of an IGRC or superintendent's decision based on mitigating circumstances (e.g., failure to implement action required by the IGRC or superintendent's decision within 45 days, etc.). An exception to the time

limit may not be granted more than 45 days after the date of the decision unless the late appeal asserts a failure to implement the decision.

(ii) An inmate may pursue a complaint that an exception to the time limit was denied by filing a separate grievance.

(2) Time limit for IGP action. Time limit extensions may be requested at any level of review (e.g., time limits for holding an IGRC hearing, answering a grievance or an appeal, etc.), but such extensions may be granted only with the written consent of the grievant. Absent such extension, matters not decided within the time limits may be appealed to the next step.

(h) *Processing grievances and appeals after transfer.*

(1) Any response to a grievance filed by an inmate who has been transferred shall be mailed directly to that inmate, via privileged correspondence, at his/her new facility or location.

(2) An inmate transferred to another facility may continue an appeal of any grievance. If the grievant wishes to appeal, he or she must mail the signed appeal form back to the IGP supervisor at the facility where the grievance was originally filed within seven (7) calendar days after receipt. The IGP supervisor will refer it to the facility grievance clerk for processing.

(i) *Processing grievances pending at release or parole.* A grievance pending at the time an inmate has been released or paroled shall be processed as follows:

(1) If the IGRC majority determines that the grievance affects other members of the facility population and encompasses an issue that has not been reviewed by CORC within a year, the IGRC shall provide a recommendation and forward the case to the superintendent for a determination. If the grievance affects only the grievant and encompasses an issue that has been reviewed by CORC within a year, it is subject to dismissal under section 701.5(b)(4), above.

(2) The superintendent shall answer any grievance received pursuant to paragraph 1 above and any appeal pending at the superintendent's level. The superintendent shall make a recommendation in the case of any Departmental grievance (as defined in section 701.5(b)(3)(ii)) and forward it to the IGP supervisor. The superintendent shall make a determination in all other cases.

(3) Upon receipt of the superintendent's response, the IGP supervisor shall forward all case materials to the CORC for a final disposition.

(j) *Procedures for transient inmates.* Each correctional facility housing a reception/ classification/transit inmate population must develop and implement a written procedure insuring all inmates access to the IGP. This procedure must be approved by the Director, IGP.

(k) *File maintenance/confidentiality.*

(1) Grievance files will be maintained in a specific area for use by the IGRC and the grievance clerk. No copies of grievance documents may go into the grievant's central file or facility file without the grievant's direct written consent. Likewise, no copies of grievance documents may go into an employee's file without the direct written consent of the employee. No grievance documents shall be disseminated to persons other than the grievant, a direct party, or an individual involved in the review process without the approval of the IGP supervisor. Any requests for grievance documents by the grievant or any direct party may be addressed through the freedom of information law (FOIL) as outlined in Directive #2010.

(2) The superintendent is responsible to ensure the confidentiality and maintenance of grievance records. Complete grievance records must include the original grievance, responses from each level of review, the investigation, referenced documentation and verification of implementation, when appropriate.

(3) Grievance files shall be preserved for the current calendar year plus the previous four calendar years.

(l) *IGRC reference materials.* The IGRC at each facility is responsible for maintaining 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 IGP monthly index of written opinions must also be maintained in the facility law library.

(m) *Emergencies.* The IGP supervisor shall refer any grievance of an emergency nature directly to the appropriate response level (superintendent or CORC) having authority to issue an immediate or expeditious and meaningful response. An emergency shall include, but is not limited to, a situation, action, or condition in which an inmate's or an employee's health, safety, or welfare is in serious threat or danger. The supervisor will determine if a grievance falls within this category.

§ 701.7 *Procedures for inmates in special housing units (SHU's).* The IGP supervisor shall monitor and ensure the proper functioning of the grievance procedure in SHU's. The following minimal standards shall be instituted to provide SHU inmates with access to the IGP:

(a) *Forms and envelopes.*

(1) A supply of inmate grievance complaint forms (Form #2131) will be maintained in all special housing areas and will be given to inmates requesting them. The area supervisor is responsible for ensuring that a supply of these forms is available at all times. Additional forms, when needed, will be obtained from the IGP supervisor's office.

(2) Envelopes will be given to inmates for use in forwarding their completed grievance forms to the IGP office. The sealed envelopes will assure the confidentiality of the inmate's complaint while enroute to the IGP office.

(3) Area supervisors will ensure that the completed grievance forms are placed in sealed envelopes, collected and forwarded to the IGP office.

(b) *IGP deposit boxes.* Where available, SHU inmates shall use centrally located IGP deposit boxes to send grievance forms and IGP correspondence to the IGP office. These boxes shall be kept locked at all times. The IGP supervisor and staff representatives (IGRC sergeant/officer) will have the only keys to these boxes and will collect their contents at least two (2) times per week. Broken boxes or locks will be reported to the IGP supervisor immediately, and he or she will arrange for their repair or replacement. In the interim, grievance forms shall be submitted as stated in paragraph (3) above.

(c) *Rounds, access to IGP members and advisors.*

(1) An IGRC staff member (sergeant, officer) or grievance supervisor shall make rounds of all special housing areas at a reasonable time at least once a week to allow inmates direct access to the program. These rounds will give inmates who are having communication problems or difficulty writing their complaints an opportunity to request and receive assistance. Staff noting problems or requests for assistance shall report them to the IGP supervisor. The IGP supervisor will work with the deputy superintendent(s) of programs and/or security to obtain necessary assistance.

(2) The superintendent, at his/her discretion, may grant direct access to the full IGRC, or to either an inmate member or a staff member of the IGP office for those inmates in certain special housing areas such as reception or transient units.

(3) Since there is a security interest in restricting confined inmates access to other inmates, the superintendent may prohibit any inmate in SHU from using another inmate as an advisor or from serving as an advisor to another inmate. Staff members from the IGRC or from the facility at large can serve this function. A staff member must be willing to accept this function.

(d) *Attendance at hearings.* A grievant confined to SHU who will be released within thirty (30) calendar days shall be given the option of having the hearing held in his/her absence or postponed until release from confinement. The grievant's decision shall be obtained in writing. If a grievant is not scheduled for release from confinement within thirty (30) calendar days, the hearing shall be held in his/her absence.

(e) *Time limits.* The time limits for processing of grievances as delineated in section 701.6(g), above, also apply to grievances submitted from special housing units.

§ 701.8 **Harassment.** Allegations of employee harassment are of particular concern to the administrators of department facilities. Therefore, the following expedited procedure for the review of grievances alleging harassment shall be followed.

(a) An inmate who wishes to file a grievance complaint that alleges employee harassment shall follow the procedures set forth in section 701.5(a), above.

Note: An inmate who feels that he/she has been the victim of harassment should report such occurrences to the immediate supervisor of that employee. However, this is not a prerequisite for filing a grievance with the IGP.

(b) A grievance alleging harassment shall be given a grievance calendar number and recorded in sequence with all other grievances on the grievance clerk's log (Form #2136). All documents submitted with the allegation must be forwarded to the superintendent by close of business that day.

(c) The superintendent or his/her designee shall promptly determine whether the grievance, if true, would represent a bona fide case of harassment as defined in section 701.2, above. If not, then it shall be returned to the IGP for normal processing.

(d) If it is determined that the grievance is a bona fide harassment issue, the superintendent shall:

- (1) initiate an in-house investigation by higher ranking supervisory personnel into the allegations contained in the grievance;
- (2) request an investigation by the inspector general's office; or
- (3) if the superintendent determines that criminal activity may be involved, request an investigation by the New York State Police, Bureau of Criminal Investigation.

(e) Once a grievance has been referred to the superintendent and determined to be an allegation of harassment, that grievance cannot be withdrawn. The superintendent must address the grievant's allegations.

(f) Within twenty-five (25) calendar days of receipt of the grievance, the superintendent will render a decision on the grievance and transmit said decision, with reasons stated to the grievant, the grievance clerk, and any direct party of interest. Time limit extensions may be requested, but such extensions may be granted only with the consent of the grievant.

(g) If the superintendent fails to respond within the required twenty-five (25) calendar day time limit the grievant may appeal his/her grievance to CORC. This is done by filing a Notice of Decision to Appeal (Form #2133) with the inmate grievance clerk.

(h) If the grievant wishes to appeal the superintendent's response to CORC, he/she must file a Notice of Decision to Appeal (Form #2133) with the inmate grievance clerk within seven (7) calendar days of receipt of that response.

(i) Unless otherwise stipulated in this section, all procedures, rights, and duties pertaining to the processing of any other grievance as set forth in section 701.5 above shall be followed.

§ 701.9 **Allegations of Unlawful Discrimination.** Allegations of 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, are of particular concern to the administrators of this department and its facilities. Therefore, the following expedited procedure for the review of grievances alleging unlawful discrimination shall be followed:

(a) An inmate who wishes to file a grievance complaint that alleges discrimination by an employee, program, policy or procedure shall follow the procedures set forth in section 701.5(a), above.

Note: An inmate who feels he/she is being unlawfully discriminated against by an employee, program, policy or procedure shall report such incident to the immediate supervisor of the employee or supervisor/administrator of such program. However, this is not a prerequisite for filing a grievance with the IGP.

- (b) A grievance alleging unlawful discriminatory acts, policies or procedures shall be given a grievance calendar number and recorded in sequence with all other grievances on the grievance clerk's log (Form #2136).
- (c) A grievance alleging unlawful discrimination, and its related documentation, shall be forwarded to the superintendent with a copy to the Office of Diversity Management, within twenty-four (24) hours.
- (d) The superintendent shall initiate an in-house investigation by higher ranking supervisory personnel and/or request the Office of Diversity Management to conduct an investigation.
- (e) Within twenty-five (25) calendar days of receipt of the grievance, the superintendent will render a decision on the grievance and transmit said decision, with reasons stated, to the grievant, the grievance clerk, the Office of Diversity Management, and any direct party of interest.
- (f) If the superintendent fails to respond within the required twenty-five (25) calendar day time limit the grievant may appeal the grievance to CORC. This is done by filing a Notice of Decision to Appeal (Form #2133) with the inmate grievance clerk.
- (g) If the grievant wishes to appeal the superintendent's response to CORC, he/she must file a Notice of Decision to Appeal (Form #2133) with the inmate grievance clerk within seven (7) calendar days of receipt of that response.
- (h) The Director, Office of Diversity Management, or his/her designee shall be present whenever CORC reviews grievance appeals regarding alleged unlawful discrimination.
- (i) Unless otherwise stipulated in this section, all procedures, rights, and duties pertaining to the processing of any other grievance as set forth in section 701.5 above shall be followed.
- § 701.10 Strip Search/Strip Frisk.** The following expedited procedure for the review of grievances alleging violation of department policy regarding strip searches or strip frisks shall be followed.
- (a) An inmate who wishes to file a grievance complaint that alleges violation of department policy regarding a strip search or strip frisk shall follow the procedures set forth in section 701.5(a), above.
- (b) A grievance alleging violation of department policy regarding strip searches or strip frisks shall be given a grievance calendar number and recorded in sequence with all other grievances on the grievance clerk's log (Form #2136). All documents submitted with the allegation must be forwarded to the superintendent by close of business that day.
- (c) The superintendent or his/her designee shall promptly determine whether the grievance, if true, would represent a bona fide violation of department policy regarding strip searches or strip frisks as defined in section 701.2(g), above. If not, then it shall be returned to the IGRC for normal processing.
- (d) If it is determined that the grievance is a bona fide strip search/strip-frisk issue, the superintendent shall initiate an in-house investigation by the correction captain or functional equivalent into the allegations contained in the grievance. This responsibility cannot be delegated. Where a deputy superintendent has authorized the grieved strip search or strip frisk, the superintendent will supervise the investigation with the assistance of the captain.
- (e) Once a grievance has been referred to the superintendent and determined to be a bona fide strip search/strip frisk issue, that grievance cannot be withdrawn. The superintendent must address the grievant's allegations.
- (f) Within twenty-five (25) calendar days of receipt of the grievance, the superintendent will render a decision on the grievance and transmit said decision, with reasons stated to the grievant, the grievance clerk, and any direct party of interest. Time limit extensions may be requested, but such extensions may be granted only with the consent of the grievant.
- (g) If the superintendent fails to respond within the required twenty-five (25) calendar day time limit the grievant may appeal his/her grievance to CORC. This is done by filing a Notice of Decision to Appeal (Form #2133) with the inmate grievance clerk.

(h) If the grievant wishes to appeal the superintendent's response to CORC, he/she must file a Notice of Decision to Appeal (Form #2133) with the inmate grievance clerk within seven (7) calendar days of receipt of that response.

(i) Unless otherwise stipulated in this section, all procedures, rights, and duties pertaining to the processing of any other grievance as set forth in section 701.5 above shall be followed.

§ 701.11 Code of ethics. A Code of ethics for IGRC staff and inmate representatives, clerks, and chairpersons has been established to strengthen the credibility and effectiveness of the IGP. Violations of this code may result in dismissal from participation in the IGP.

(a) No member shall obstruct an inmate from exercising his/her right to file a grievance nor ridicule an inmate or his/her grievance.

(b) A willing and tactful attitude is required in the performance of a member's duties.

(c) No member shall expect or receive preferential treatment because of his/her participation in the IGP.

(d) Particular duties, responsibilities, and assignments shall not be abused by any member.

(e) Members shall not disclose confidential medical information as defined in the DOCS Health Services Policy Manual, Item 4.10, or non-medical information of a confidential nature except where necessary in fulfilling their duties under the grievance mechanism.

(f) Members shall be responsible for safekeeping grievance files and ensuring against unauthorized use.

(g) No member of IGRC shall intentionally undermine the IGRC's operation or credibility.

(h) Members of the IGRC shall have a working knowledge of the IGP and their responsibilities as members.

(i) Members shall obey all institutional and Departmental rules and regulations.

RAN  
FYI

2001-exhaust or  
AG will move  
to dismiss

B.21  
FYI  
Jaxon

(Slip Opinion)

OCTOBER TERM, 2000

1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOOTH v. CHURNER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE THIRD CIRCUIT

No. 99-1964. Argued March 20, 2001—Decided May 29, 2001

The Prison Litigation Reform Act of 1995 amended 42 U. S. C. §1997e(a), which now requires a prisoner to exhaust "such administrative remedies as are available" before suing over prison conditions. Petitioner Booth was a Pennsylvania state prison inmate when he began this 42 U. S. C. §1983 action in Federal District Court, claiming that respondent corrections officers violated his Eighth Amendment right to be free from cruel and unusual punishment by assaulting him, using excessive force against him, and denying him medical attention to treat ensuing injuries. He sought various forms of injunctive relief and money damages. At the time, Pennsylvania provided an administrative grievance and appeals system, which addressed Booth's complaints but had no provision for recovery of money damages. Before resorting to federal court, Booth filed an administrative grievance, but did not seek administrative review after the prison authority denied relief. Booth's failure to appeal administratively led the District Court to dismiss the complaint without prejudice for failure to exhaust administrative remedies under §1997e(a). The Third Circuit affirmed, rejecting Booth's argument that the exhaustion requirement is inapposite to his case because the administrative process could not award him the monetary relief he sought (money then being the only relief still requested).

*Held:* Under 42 U. S. C. §1997e(a), an inmate seeking only money damages must complete any prison administrative process capable of addressing the inmate's complaint and providing some form of relief, even if the process does not make specific provision for monetary relief. The meaning of the phrase "administrative remedies . . . available" is the crux of the case. Neither the practical considerations urged by the parties nor their reliance on the dictionary meanings of

## Syllabus

the words "remedies" and "available" are conclusive in seeking congressional intent. Clearer clues are found in two considerations. First, the broader statutory context in which Congress referred to "available" "remedies" indicates that exhaustion is required regardless of the relief offered through administrative procedures. While the modifier "available" requires the possibility of some relief for the action complained of, the word "exhausted" has a decidedly procedural emphasis. It makes no sense, for instance, to demand that someone exhaust "such administrative [redress]" as is available; one "exhausts" processes, not forms of relief, and the statute provides that one must. Second, statutory history confirms the suggestion that Congress meant to require procedural exhaustion regardless of the fit between a prisoner's prayer for relief and the administrative remedies possible. Before §1997e(a) was amended by the 1995 Act, a court had discretion (though no obligation) to require a state inmate to exhaust "such . . . remedies as are available," but only if they were "plain, speedy, and effective." That scheme is now a thing of the past, for the amendments eliminated both the discretion to dispense with administrative exhaustion and the condition that the remedy be "plain, speedy, and effective" before exhaustion could be required. The significance of deleting that condition is apparent in light of *McCarthy v. Madigan*, 503 U.S. 140. In holding that the preamended version of §1997e(a) did not require exhaustion by those seeking only money damages when money was unavailable at the administrative level, *id.*, at 149-151, the *McCarthy* Court reasoned in part that only a procedure able to provide money damages would be "effective" within the statute's meaning, *id.*, at 150. It has to be significant that Congress removed the very term, "effective," the *McCarthy* Court had previously emphasized in reaching the result Booth now seeks, and the fair inference to be drawn is that Congress meant to preclude the *McCarthy* result. Congress's imposition of an obviously broader exhaustion requirement makes it highly implausible that it meant to give prisoners a strong inducement to skip the administrative process simply by limiting prayers for relief to money damages not offered through administrative grievance mechanisms. Pp. 3-9.

206 F. 3d 289, affirmed.

SOUTER, J., delivered the opinion for a unanimous Court.

2002 - must exhaust (to CORC)  
if want to litigate,  
regardless of issues

(Bench Opinion)

OCTOBER TERM, 2001

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PORTER ET AL. v. NUSSLE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT

No. 00-853. Argued January 14, 2002—Decided February 26, 2002

Without filing a grievance under applicable Connecticut Department of Correction procedures, plaintiff-respondent Nussle, a state prison inmate, commenced a federal court action under 42 U. S. C. §1988, charging that corrections officers, including defendant-petitioner Porter, had subjected him to a sustained pattern of harassment and intimidation and had singled him out for a severe beating in violation of the Eighth Amendment's ban on "cruel and unusual punishments." The District Court dismissed Nussle's suit, relying on a provision of the Prison Litigation Reform Act of 1995 (PLRA), 42 U. S. C. §1997e(a), that directs: "No action shall be brought with respect to prison conditions under section 1983 . . . or any other Federal law, by a prisoner . . . until such administrative remedies as are available are exhausted." The Second Circuit reversed, holding that exhaustion of administrative remedies is not required for a claim of the kind Nussle asserted. The appeals court concluded that §1997e(a)'s "prison conditions" phrase covers only conditions affecting prisoners generally, not single incidents that immediately affect only particular prisoners, such as corrections officers' use of excessive force. In support of its position, the court cited legislative history suggesting that the PLRA curtails frivolous suits, not actions seeking relief from corrections officer brutality; the court also referred to pre-PLRA decisions in which this Court distinguished, for proof of injury and *mens rea* purposes, between excessive force claims and conditions of confinement claims.

*Held:* The PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong. Cf. *Wilson v. Greiner*, 501 U. S. 294, 299; n. 1. Pp. 6-14.

## Opinion of the Court

\* \* \*

For the reasons stated, we hold that the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong. Cf. *Wilson*, 501 U. S., at 299, n. 1. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

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munications technology so that the prisoner need not be physically transferred to participate. Surely such arrangements would be appropriate in Nusale's case and others of its genre. But on what authority would these practical procedures rest if cases like Nusale's do not qualify as actions regarding "prison conditions"?



STATE OF NEW YORK  
 DEPARTMENT OF CORRECTIONAL SERVICES  
 THE HARRIMAN STATE CAMPUS  
 1220 WASHINGTON AVENUE  
 ALBANY, N.Y. 12226-2050

GLENN S. GOORD  
 COMMISSIONER

EDWARD J. McSWEENEY  
 ASSISTANT COMMISSIONER/  
 EXECUTIVE ASSISTANT

MEMORANDUM

TO: Superintendent Robert Woods, Upstate Correctional Facility  
 FROM: Thomas G. Eagen, Director, Inmate Grievance Program  
 DATE: March 15, 2006  
 SUBJ.: CORC Decision: UST-25839-06

*[Handwritten signature]*

The attached decision is forwarded to you for action.

CORC notes from the investigation that the grievant (Williams, 99A0052) was issued an advance to send a letter to Israel. CORC asserts that there is no provision in Directive #4422 to provide an advance for overseas postage. CORC requests that this matter be reviewed with appropriate staff, with notification to CORC of the action taken.

This decision requires a statement of compliance and/or remedial action by your office/administration. Attach copies of any relevant documentation (order, reports, etc.). Please reply within 30 days, unless otherwise indicated.

TGE/cs

Attachment

CC: Grievance File - UST-25839-06  
 Supervisor, IGP - L. Adams-Peary/C. Gregory, Upstate CF  
 Regional Coordinator - Sheryl Graubard, Central Office

-----  
 ENDORSEMENT:

The following specific action has been/is being taken:

\_\_\_\_\_  
 \_\_\_\_\_

See attached documentation implementing the CORC decision.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Superintendent/Division Head)

*address to inmate  
 FPT*



STATE OF NEW YORK  
DEPARTMENT OF  
CORRECTIONAL SERVICES

INMATE GRIEVANCE PROGRAM  
CENTRAL OFFICE REVIEW COMMITTEE

|  |                    |                       |
|--|--------------------|-----------------------|
| Grievance Number<br>UST-25839-06                         | Desig./Code<br>I/3 | Date Filed<br>1/12/06 |
| Facility<br>Upstate Correctional Facility                |                    |                       |
| Title of Grievance<br>'Act Up' Free Book, Religious Mail |                    |                       |
| Director's Signature<br><i>K. J. Mulaney, Asst.</i>      | Date<br>3/15/06    |                       |

3/15/06

**GRIEVANT'S REQUEST UNANIMOUSLY DENIED**

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied.

CORC concurs with the Superintendent that business mail must be submitted to the correspondence office unsealed, in accordance with Directive #4422. CORC notes that the grievant is requesting a free book, however, the correspondence office has not been provided with evidence that the book is freely offered to the public. It is incumbent upon the inmate to provide supporting documentation and, when he did not, his request was appropriately considered a solicitation.

CORC cites its prior decision in SPT-34337-05, dated 1/25/06, which states in part:

CORC cites Directive #4422, III., D., 4, which states, in part, i.e.:

Funds may be advanced for postage for one first class one-ounce letter per month under the following circumstances:

- a. the inmate has been confined to SHU for discipline or administrative segregation for 30 days or more, and has insufficient funds; or
- b. the inmate has been in keeplock status for 30 days or more, has lost telephone privileges, and has insufficient funds; or
- c. the inmate has lost telephone privileges, has a zero balance or insufficient funds, and has not refused to accept available program assignments.

CORC asserts that, after further review, there is no provision in the above Section of the directive to provide an advance for overseas postage.

CORC further notes that the grievant's concerns regarding mail to the "Village Voice" was the subject of UST-25567-05, which was answered by CORC on 2/15/06.

sg/cs

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STATE OF NEW YORK  
 DEPARTMENT OF CORRECTIONAL SERVICES  
 THE HARRIMAN STATE CAMPUS  
 1220 WASHINGTON AVENUE  
 ALBANY, N.Y. 12226-2050

GLENN S. GOORD  
 COMMISSIONER

EDWARD J. McSWEENEY  
 ASSISTANT COMMISSIONER/  
 EXECUTIVE ASSISTANT

MEMORANDUM

TO: Superintendent Israel Rivera, Coxsackie Correctional Facility  
 FROM: Thomas G. Eagen, Director, Inmate Grievance Program *TG Eagen*  
 DATE: March 15, 2006  
 SUBJ.: CORC Decision: CX-11374-06

The attached decision is forwarded to you for action.

CORC notes from addition investigation that at least 5 cells on F-3 Division have defective wall jacks and repair orders have been submitted. CORC requests notification of the date the wall jacks have been repaired.

This decision requires a statement of compliance and/or remedial action by your office/administration. Attach copies of any relevant documentation (order, reports, etc.). Please reply within 30 days, unless otherwise indicated.

TGE/je  
 Attachment  
 CC: Grievance File - CX-11374-06  
 Supervisor, IGP - Tom Carroll, Coxsackie CF  
 Regional Coordinator, Jeffery Hale - Central Office

-----  
 ENDORSEMENT:

The following specific action has been/is being taken:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

See attached documentation implementing the CORC decision.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Superintendent/Division Head)



STATE OF NEW YORK  
DEPARTMENT OF  
CORRECTIONAL SERVICES

INMATE GRIEVANCE PROGRAM  
CENTRAL OFFICE REVIEW COMMITTEE

|   |                     |                       |
|---|---------------------|-----------------------|
| Grievance Number<br>CX-11374-06             | Desig./Code<br>I/39 | Date Filed<br>1/13/06 |
| Facility<br>Coxsackie Correctional Facility |                     |                       |
| Title of Grievance<br>Wants Wall Jack Fixed |                     |                       |
| Director's Signature<br><i>J. J. Engler</i> |                     | Date<br>3/15/06       |

3/15/06

**GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART**

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that this matter has the attention of facility administration.

jd/je

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