



Pueblo of Isleta

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**PUEBLO OF ISLETA
EMPLOYEE GRIEVANCE REVIEW PROCEDURES**

Section 1. Definitions

A. "Chain of Command Grievance Process" means Steps I and II of the grievance process provided by:

1. The Pueblo of Isleta Personnel Policies and Procedures Manual, as amended from time to time and as appropriate for the position in which the Grievant is employed.
2. The Isleta Pueblo Housing Authority Policies and Procedures, as amended from time to time and as appropriate for the position in which the Grievant is employed;
3. The Isleta Elementary School Policies and Procedures, as amended from time to time and as appropriate for the position in which the Grievant is employed; and
4. The Isleta Casino & Resort Employee Policies and Procedures, as amended from time to time and as appropriate for the position in which the Grievant is employed;

- B. "Ex Parte Communication" means any communication concerning a grievance appeal or potential appeal that involves only one party or potential party, the Grievant or Management, without the participation of the other.
- C. "Grievance Review Board" or "Board" means the Employee Grievance Review Board established pursuant to Section 2 of these Procedures.
- D. "Grievance Review Panel" or "Panel" means the three member panel composed of Grievance Review Board Members that shall be seated to conduct and decide a particular hearing pursuant to Section 2.F.
- E. "Grievant" means the person who has grieved the action taken by Respondent or Management against such person through the Chain of Command Review Process and has filed a timely petition for appeal pursuant to Section 4.
- F. "Management" means the supervisory employee who has taken the action grieved and each higher level of management hierarchy who has approved or sustained such action.
- G. "Immediate Family Member" means parent, grandparent, grandchild, sibling, child (biological or adoptive), aunt, uncle, niece, nephew, spouse, cohabitant, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- H. "Respondent" means the employee who has taken the action grieved and who may or may not be "Management" as defined in subsection F.
- I. "Human Resources Office" means the Human Resources Department of the Pueblo of Isleta, Isleta Pueblo Housing Authority, Isleta Elementary School, or Isleta Casino & Resort, as the case may be.

Section 2. Employee Grievance Review Board

- A. Establishment. The Tribal Council of the Pueblo of Isleta hereby establishes an Employee Grievance Review Board (the "Grievance Review Board") for the purposes and having such authority, powers and responsibilities as are described herein. The grievance review process shall apply to grievances of employees of

the Isleta Pueblo Housing Authority, the Isleta Casino & Resort (except grievances of gaming license suspension and revocation), Isleta Elementary School, and to all other tribal employees of the Pueblo of Isleta.

- B. Qualifications of Board Members. The Members of the Employee Grievance Review Board shall be familiar with the Pueblo of Isleta Personnel Policies and Procedures Manual, the Isleta Pueblo Housing Authority Personnel Policies and Procedures, the Isleta Elementary School Policies and Procedures, the Isleta Casino & Resort Employee Policies and Procedures and the portions of the Regulations of the Pueblo of Isleta Gaming Regulatory Agency dealing with personnel administration, and shall be of such character and temperament to be able to impartially hear disputes regarding the application of such rules and to issue a decision resolving such disputes. Any member serving on such Board must have a High School Diploma or GED and shall attend appropriate training seminars as deemed necessary. No Member of the Grievance Review Board shall be an employee of the Isleta Elementary School, be an employee of the Isleta Casino & Resort, an employee of the Pueblo of Isleta, or a member of the Tribal Council, Governor or a Lieutenant Governor of the Pueblo of Isleta, or a member of another Pueblo of Isleta Board or Commission, or of the Pueblo of Isleta Judiciary while serving on the Grievance Review Board.
- C. Appointment of Board Members. The Tribal Council shall appoint five (5) Members to the Employee Grievance Review Board. Initially, the Tribal Council will designate two (2) Members for a one-year term and three (3) Members for a two-year term. Thereafter, each Member appointed to the Board shall serve for a five (5) year term or until another Member is appointed by Tribal Council. Notwithstanding the foregoing, no Member shall serve on the Employee Grievance Review Board for more than two (2) consecutive terms. The Members shall select among themselves a Chairperson, Vice-Chairperson and a Secretary.
- D. Compensation of Board Members. Each member of the Employee Grievance Review Board shall receive a stipend of \$25.00 an hour for each Employee Grievance Review Board hearing that he or she attends, not to exceed \$100 per hearing. Stipends and stipend amounts shall be subject to change by Tribal Council. The Board as a body shall be responsible for compiling and drafting the written decision for each hearing. Compensation shall include time utilized at a hearing and time reasonably necessary to render a decision. Each Board Member

shall document and submit an invoice of time worked to the Governor's Office for approval and payment. Payment shall not be unreasonably withheld.

- E. No Conflicts: Code of Conduct. No Board Member of the Employee Grievance Review Board shall serve on a panel which hears any grievance in which any of the parties in interest, either the Grievant, Management, or Respondent involved in the action that is subject of the grievance, is an Immediate Family Member of such Board Member as defined in Section 1 of these Procedures. A Board Member shall recuse him or herself from any panel that is to hear a matter that would pose a conflict of interest due to immediate family relationship, financial interest or otherwise. The Grievant, Respondent or Management may move to recuse any Board Member from a panel on the grounds of conflict of interest. If any Board Member does not recuse himself, the merits of the motion to recuse shall be determined by the remaining Board Members and they shall issue an order granting or denying such recusal. If a Member of a Panel is recused, the other Board Member shall be chosen to replace him. If any Board Member refuses to recuse himself notwithstanding a clear conflict of interest, the remaining Board Members shall be required to report such event to the Tribal Council.
- F. Board Composition. All hearings must be conducted by a Panel composed of three (3) Board Members being present to hear the appeal. No Panel shall be composed of the same Board Members as the previous hearing. In the event a Board Member is unable to hear a particular hearing for any reason, the remaining Board Member shall serve on the Panel. In the event two Board Members are unable to hear a particular hearing for any reason, the remaining Board Member shall serve on the Panel and Tribal Council shall designate an individual to serve on the Panel for that particular hearing. Such individual shall be qualified as described in Section 2.B and shall adhere to the Procedures.
- G. Quarterly Meetings. The Employee Grievance Review Board will meet quarterly to conduct any administrative and other duties as authorized or required by these Procedures. Board Members will be compensated for each meeting hour actually attended and shall document and submit an invoice of time worked to the Governor's Office for approval and payment. Payment shall not be unreasonably withheld.

- H. Quarterly Report To Tribal Council. The Chairperson of the Board shall submit a written quarterly report to the Tribal Council and Governor describing the number of cases heard, and the outcome of the cases. The Employee Grievance Review Board shall inform the Tribal Council and Governor whether the Human Resources Department for the Pueblo, the Isleta Elementary School, the Isleta Casino and Resort and the Pueblo of Isleta Housing Authority are complying with the terms of these Procedures.

Section 3. Jurisdiction of the Employee Grievance Review Board

- A. The Employee Grievance Review Board shall have jurisdiction to hear appeals of only those employee grievances that:

- (1) have completed each step of the Chain of Command Grievance Process and for which a decision has been rendered in the final stage of the process; and
- (2) have been appealed by the employee by petition filed with the Human Resources Office within seven (7) business days, excluding federal holidays and tribal religious days upon which the written decision rendered in the final step of the Chain of Command process has been delivered to the employee.

Section 4. Petition For Appeal Hearing

- A. Notice of Appeal. Any employee exercising his or her right to appeal any grievance decision that is appealable under the terms of Section 3 shall file a Petition with the Human Resources Office within seven (7) business days, excluding federal holidays and tribal religious days, from the day of receipt by the employee of a written decision at Step II of the Chain of Command Grievance Process. The Petition for review by the Employee Grievance Review Board that shall contain:

- (1) The name and position of the Grievant;
- (2) The name of the Respondent that the grievance is against;

- (3) The specific incident about which the grievance is filed;
- (4) The date upon which the incident occurred;
- (5) The specific personnel policy or policies allegedly violated that resulted in the filing of the grievance;
- (6) The facts and other pertinent information that the Grievant or Respondent has presented or offered in the Chain of Command Grievance process to support the grievance (the Grievant or Respondent may not introduce new evidence or arguments not presented or offered for presentation in the Chain of Command Grievance Review Process);
- (7) The remedial action sought;
- (8) The reason(s) that the Grievant believes that the decision at the last step of the Chain of Command Grievance Review Process was unjust;
- (9) Copies of all written grievance petitions or submissions made by the Grievant in the Chain of Command Grievance Review Process, any written backup materials submitted by Grievant in the process and the written decisions received by Grievant from such process; and
- (10) If the Grievant or Respondent is represented, each party shall identify the name, phone number and address of his attorney or advocate, as stated in Section 6 D(1) of these Procedures.

B. The Petition shall be filed at the Human Resources Office. The Human Resources Office shall forward three (3) copies of the Petition and all appended materials to the Grievance Review Board within five (5) business days after receiving the Petition, excluding federal holidays and tribal religious days.

Section 5. Scope and Standard of Review

A. The Employee Grievance Review Board shall conduct a de novo review of the facts and applicable policies or law with respect to each Respondent or Management action grieved from. The Employee Grievance Review Board is not required to accord the Respondent or Management action any deference or presumption of validity. The Employee Grievance Review Board may overturn the action of Respondent or Management and provide to the appellant any of the remedies permitted under Section 6 of these Procedures only if they find that the action at issue was:

- (1) arbitrary, capricious or an abuse of Respondent or Management's discretion;
- (2) not supported by substantial evidence as presented by Respondent or Management to the Employee Grievance Review Panel;
- (3) contrary to the Pueblo of Isleta Personnel Policies and Procedures Manual, Isleta Pueblo Housing Authority Policies and Procedures, Isleta Elementary School Policies and Procedures, Isleta Casino & Resort Personnel Policies and Procedures or Operations Manuals, or other established work rules, as applicable; or
- (4) Otherwise not in accordance with laws of the Pueblo of Isleta.

B. The Employee Grievance Review Board is independent of the Governors of the Pueblo of Isleta. The Employee Grievance Review Board is empowered to overturn employment decisions made by the Governor and Lt. Governors of the Pueblo consistent with the authority given to the Employee Grievance Review Board herein. Notwithstanding the foregoing, the Employee Grievance Review Board shall not overturn a decision to terminate an employee based on the at-will policy in existence at the time of the termination. The Governor, Lt. Governors, Tribal Council, and tribal programs or agencies shall not influence or interfere with the hearings and decisions of the Employee Grievance Review Board.

Section 6. Hearing Rules and Procedures

- A. Time of Appeals Hearing. The Employee Grievance Review Panel shall conduct the appeal hearing within fifteen (15) business days, excluding federal holidays and tribal religious days, after the appeal petition is filed.
- B. Representation By Attorney or Advocate. Parties appearing before the Employee Grievance Review Panel shall have the right to legal representation by an attorney or representation by a non-attorney advocate (“advocate”) at their own expense. In no event shall the Grievant be entitled to representation by an attorney or advocate that is an elected or appointed official of the Pueblo of Isleta at the time of the hearing. Any attorney appearing before the Employee Grievance Review Panel must submit evidence to the Panel that he or she been admitted by the Isleta Tribal Court to practice law within the jurisdiction of the Pueblo of Isleta.
- C. Representation of Respondent or Management. At any hearing, an attorney or advocate may represent Management only if an attorney or advocate represents the Grievant. If the Grievant is not represented, then the Management shall not be allowed to have legal representation. This provision does not prohibit or otherwise limit the right of any party to consult with an attorney or advocate prior to any hearings.
- D. Discovery. Discovery shall be conducted by the parties as follows:
- (1) Each party is allowed witnesses to support their respective positions in a given grievance. The parties shall exchange a list of persons that each party intends to call as witnesses no later than five (5) business days, excluding federal holidays and tribal religious days, before the scheduled appeals hearing. Each witness shall be identified by name, and if known, the position and business address of the witness. If no business address is available, a home address for the witness shall be provided. A summary of the nature and relevance of the testimony of each witness shall be delivered to the other party for cross examination. Any witness not so identified and the scope of any testimony not

so summarized shall be excluded from presentation at the appeals hearing.

(2) The parties shall exchange a copy of all documents and items that they intend to offer as evidence in support of the party's case in chief. This exchange shall be made with the opposing counsel no later than five (5) days before a scheduled appeals hearing. Any document or item not so provided to the other party shall be excluded from presentation at the appeals hearing.

(3) Upon written request, the applicable Human Resources Office shall provide to the Grievant copies of all applicable and relevant policies and procedures. Also, if requested in writing and within five (5) business days of receiving the written request, the applicable Human Resources Office shall provide the Grievant a copy of the documents in the Grievant's file that are not protected by law.

E. Subpoenas. The Employee Grievance Review Panel has the authority and discretion to issue subpoenas upon motion of either or both parties or upon its own initiative. Subpoenas may be issued only to compel any person to appear at a hearing before the Employee Grievance Review Panel to give oral testimony or to produce documents or other tangible evidence.

F. Ex Parte Communication Prohibited. The members of the Employee Grievance Review Board shall not engage in ex parte communication with any person, including any elected or appointed official of the Pueblo of Isleta, regarding any pending grievance appeal or matter that may become a grievance appeal. If any Member of the Employee Grievance Review Board receives any such ex parte communication, he or she shall notify the other party and the other Employee Grievance Review Board Members immediately. The Board shall then conduct a hearing to consider what, if any, sanction permitted by Subsection G is an appropriate response to such violation.

G. Sanctions for Violations of Hearing Rules and Procedures. In the event any person fails to comply with any provision of these Procedures,

including without limitation any violation of the prohibition against ex parte communication or rules of discovery, the Employee Grievance Review Panel upon motion of a party or upon its own initiative, may in its discretion impose upon the violator or such party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just from among the following:

- (1) An order prohibiting the use of any witness, document or tangible evidence which should have been disclosed, produced, exhibited or exchanged pursuant to these Procedures;
- (2) An order that designated facts shall be taken as established;
- (3) An order that the disobedient party may not support or oppose designated claims or defenses;
- (4) An order dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party; or
- (5) A finding against the disobedient party or person.

H. Protection of Proprietary Information. If any testimony offered or documentary evidence proposed to be introduced is proprietary to the Pueblo of Isleta, Isleta Elementary School, Isleta Casino & Resort, or the Isleta Pueblo Housing Authority the disclosure of such information would in any manner be detrimental to the Pueblo of Isleta, the Isleta Elementary School, the Isleta Casino & Resort, or Isleta Pueblo Housing Authority, upon motion or at the initiative of the Employee Grievance Review Panel, shall take appropriate measures to protect the proprietary nature of such information. If the Grievant requests disclosure of such information, the Employee Grievance Review Panel shall consult with the Tribal Council or an attorney affiliated with the Pueblo of Isleta not involved in the hearing, to determine whether disclosure is necessary for a proper defense to be made by a Grievant.

I. Conduct of Appeals Hearing.

- (1) Any party to the hearing may call and examine witnesses subject to proper discovery disclosure as stated in D(1) above. The Employee Grievance Review Panel shall exercise its discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.
- (2) The Employee Grievance Review Panel shall have the authority to remove, from the hearing, any person who is disruptive, disorderly, or who shows a lack of proper respect for the Employee Grievance Review Panel or the nature of the proceedings.
- (3) Any party to the hearing, with permission of the Employee Grievance Review Panel may conduct cross-examinations reasonably required for a full and true disclosure of the facts. No testimonial evidence may be offered against a Grievant or by Grievant in his or her defense, except by personal testimony of the witness subject to cross-examination. In no event shall testimonial evidence be admitted, if there has been no opportunity for cross-examination.
- (4) All hearings held under these Procedures shall be closed to the public.
- (5) At all hearings, each witness other than the person(s) filing an appeal, shall remain out of the hearing room except at such time as they are called to testify under oath.
- (6) Anyone participating in a hearing of the Grievance Review Panel is required to take oath and sign the Statement of Confidentiality. A representative from the applicable Human Resources Office shall be in attendance to clarify the applicable Personnel Policies and Procedures and to assist the Panel as needed. In the event the Grievance Review Panel intends to call a representative from the applicable Human Resources Office as a witness, the Grievance Review Panel shall provide written notice to such representative within five (5) business days of the hearing.

J. Evidence.

- (1) In appeal hearings governed by these Procedures, the Employee Grievance Review Panel shall not be bound by formal evidentiary rules applicable in any court system. The Employee Grievance Review Panel shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Employee Grievance Review Panel shall give effect to the rules of privilege unless privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact.
- (2) Each party shall be afforded the opportunity to rebut or offer countervailing evidence.
- (3) The Employee Grievance Review Panel may take official notice of any generally recognized fact or established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, or the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.
- (4) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

K. Transcript of Proceedings. The Employee Grievance Review Panel shall properly record the proceedings of any hearing through audio tape recording or court reporter. Upon written request and after a decision has been rendered, the Panel shall provide a transcript of the hearing to any party of the proceeding. Such written request will include the specific reason for the request and shall include a covenant that the party will utilize the transcript only for the reason request and will not disclose the transcript to any third party. Any portion of the proceeding sealed, pursuant to Subsection H, shall not be provided by transcript, but said party shall have the opportunity to inspect or listen to the sealed portion at

a secure location with an Employee Grievance Review Board Member in attendance.

- L. Decision on Appeal. The Employee Grievance Review Panel shall render a decision in writing within ten (10) days of the conclusion of the grievance appeal hearing. The Employee Grievance Review Panel shall state its findings of fact and conclusions of law in the written decision. If the Employee Grievance Review Panel does not sustain Respondent or Management's action that is the subject of the appeal, it shall clearly describe the remedy ordered consistent with the provisions of these Procedures. The applicable Human Resources Office will proceed to implement the judgment findings by the Employee Grievance Review Board within ten (10) business days excluding federal holidays and Tribal religious days, and provide written notification to the Employee Grievance Review Board when these actions are finalized.
- M. Maintenance of Files. Each Member of the Employee Grievance Review Board has a duty to maintain in confidence all documents given to the Board Member for a particular appeal hearing. Each Member of the Board has the duty to return all documents, including notebooks, electronic files, and filings to the Board immediately upon resignation, expiration of term, or removal from the Board. The Employee Grievance Review Board shall submit closed files to the Pueblo of Isleta Records Management within two years after the file is closed, subject to appropriate safeguards of confidentiality existing at Records Management.

Section 7. Remedies

- A. The Employee Grievance Review Panel is limited to providing the following relief to the Grievant if it determines that, upon application of the standard stated at Section 5, the action of Respondent or Management should be overturned:

- (1) an order of reinstatement if the Grievant has been terminated;
- (2) lost back pay not to exceed one month including health care premiums and benefits (minus any compensation, including

unemployment benefits, that the employee received or should have received if he or she had exercised reasonable diligence to mitigate his or her damages during the period of suspension or between the period of termination and the decision of the Employee Grievance Review Panel). Any back pay and benefits so awarded shall be paid from the budget of the Department in which the Grievant is or was employed; and

- (3) An order granting non-monetary relief requiring Respondent or Management to follow the applicable Personnel Policies and/or other binding law or work rules that the Employee Grievance Review Board determines Respondent or Management has violated.

Section 8. Finality of the Employee Grievance Review Panel Decision

- A. Pursuant to Article V, Section 2(j) and Article IX, Section 6 of The Pueblo of Isleta Tribal Constitution, the Tribal Council has by these Procedures delegated its authority to hear any and all grievance appeals to the Employee Grievance Review Board. The decision of the Employee Grievance Review Board shall be final. The Governors of the Pueblo or the Tribal Council shall honor and enforce decisions made by the Employee Grievance Review Board within ten (10) business days excluding federal holidays and tribal religious days of the grievance decision. These Procedures provide the exclusive review process and available remedies for any employee grievance involving the Pueblo of Isleta, the Isleta Elementary School, the Isleta Casino & Resort, and the Pueblo of Isleta Housing Authority.
- B. The decisions of the Employee Grievance Review Board are final and cannot be nullified or amended by the Pueblo of Isleta governing body, departments or agencies.

Section 9. Miscellaneous

- A. Policies and Procedures. The Employee Grievance Review Board may submit recommendations to the Tribal Council for the adoption of any such additional policies and procedures consistent with these Procedures as it may determine necessary to carry out the purposes of these Procedures. Such policies and procedures shall become effective when adopted by the Tribal Council.
- B. Severability. In the event that any provision of these Procedures is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions shall not be affected and shall remain in full force and effect.
- C. Sovereign Immunity. The sovereign immunity of the Pueblo of Isleta shall not be waived by these Procedures; except that any decision and order of the Employee Grievance Review Board rendered in accordance herewith may be docketed with and enforced by process issued by the Pueblo of Isleta Tribal Court.
- D. Employment At Will Not Affected. Notwithstanding the establishment of these Procedures to provide an opportunity for review of Respondent or Management action for fairness and consistency with established policies and procedures, nothing contained herein shall negate or restrict the employment at will relationship between each employee and either the Pueblo of Isleta, the Isleta Elementary School, the Isleta Casino & Resort and the Isleta Pueblo Housing Authority. As at will employees, each employee is subject to termination with or without cause at any time.
- E. Applicability. These Procedures do not apply to any Tribal Official appointed by the Tribal Council. These Procedures do not apply to any contract employee. The Procedures do not apply to any elected Tribal Official.