

# State of California Office of Administrative Law

In re:  
Department of Corrections and  
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3481, 3482, 3483, 3483.5,  
3485

Amend sections: 3369.9, 3392, 3392.1,  
3392.3, 3392.5, 3392.8,  
3392.9, 3450, 3480, 3484,  
3486, 3486.1, 3486.2,  
3486.3

Repeal sections: 3481, 3482, 3483, 3485

NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE

Government Code Sections 11349.1 and  
11349.6(d)

OAL Matter Number: 2025-1208-03

OAL Matter Type: Certificate of Compliance  
Resub (CR)

This certificate of compliance pursuant to Government Code section 11346.1(e) makes permanent, with amendments, changes adopted by the California Department of Corrections and Rehabilitation (CDCR) in Office of Administrative Law regulatory action numbers 2024-1206-02EON, 2025-0522-02EON, and 2025-0822-01EE, which revised the existing procedures by which CDCR receives and reviews grievances and requests for reasonable accommodation as well as the procedures regarding requests to inspect and to amend CDCR records containing personal information. This regulatory action is a resubmittal of the CDCR certificate of compliance identified as regulatory action number 2025-1016-04C, which CDCR withdrew from Office of Administrative Law review on November 17, 2025.

OAL approves this regulatory action pursuant to Government Code section 11349.6(d).

Date: January 22, 2026

  
\_\_\_\_\_  
Timothy Findley  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Jeffrey Macomber, Secretary  
Copy: Josh Jugum

# CERT RESUBMITTAL

For use by Secretary of State only

STD. 400 (REV. 10/2019)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2025-1208-03</b>	EMERGENCY NUMBER <b>CR</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

**ENDORSED - FILED**  
 in the office of the Secretary of State  
 of the State of California

**JAN 22 2026**

*2:03 pm*  
*[Signature]*

OFFICE OF ADMIN. LAW  
 2025 DEC 8 PM 4:06

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 24-27
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**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1 SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3 NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4 AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER <b>2025, 16-2</b>	PUBLICATION DATE <b>4/18/25</b>	

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a SUBJECT OF REGULATION(S) Staff Misconduct, Employee Discipline, and Administrative Remedies	1b ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2024-1206-02, 2025-0522-02, 2025-0822-01
2 SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) <b>2025-1016-04C</b>	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT See attachment
	AMEND See attachment
TITLE(S) 15	REPEAL See attachment

**1/21/2026  
 PER AGENCY  
 REQUEST  
 TDF**

3 TYPE OF FILING		
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____
		<input type="checkbox"/> Changes Without Regulatory Effect (Cal Code Regs., title 1, §100)
		<input type="checkbox"/> Print Only

**1/21/2026  
 PER AGENCY  
 REQUEST  
 TDF**

4 ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal Code Regs title 1 §44 and Gov Code §11347.1)  
 July 25, 2025 through August 11, 2025 September 8, 2025 through September 24, 2025 November 19 through December 4, 2025

5 EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d), Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6 CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7 CONTACT PERSON Joshua Jugum	TELEPHONE NUMBER (916) 798-1484	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov
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8 I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Jennifer Barretto</i>	DocuSigned by: <b>Jennifer Barretto</b>	DATE 12/8/2025
TYPED NAME AND TITLE OF SIGNATORY JENNIFER BARRETTO, Undersecretary, Administration		

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**JAN 22 2026**

**Office of Administrative Law**

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S)

**Title: 15**

**SECTION(S) AFFECTED:**

<u>ADOPT</u>	<u>AMEND</u>	<u>REPEAL</u>
3481	3369.9	3481
3482	3392	3482
3483	3392.1	3483
3483.5	3392.3	3485
3485	3392.5	
	3392.8	
	3392.9	
	3450	
	3480	
	3484	
	3486	
	3486.1	
	3486.2	
	3486.3	

## TEXT OF ADOPTED REGULATIONS

In the following text, underline indicates newly added text and ~~strikethrough~~ indicated newly deleted text.

### California Code of Regulations

#### Title 15. Crime Prevention and Corrections

#### Division 3. Adult Institutions, Programs and Parole

#### Chapter 1. Rules and Regulations of Adult Operations and Programs

#### Subchapter 4. General Institution Regulations

#### Article 9.1 Developmental Disability Program

#### Section 3369.9. Identification of Developmental Disability Program Incarcerated Persons within the Existing Population.

(a) Referrals.

(1) Incarcerated persons may be referred for consideration of placement into the Developmental Disability Program (DDP) at any time even if they were not included in the DDP during the initial screening process. Any staff member may submit a referral to the Mental Health Program by submitting a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, incorporated by reference. Incarcerated persons may also self-refer by notifying staff or submitting a CDCR Form 602-1/1824 (Rev. 09/17 01/25), Grievance/Reasonable Accommodation Request, which is incorporated by reference.

**Subsection 3369.9(a)(2) is unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

#### Subchapter 5. Personnel

#### Article 2. Employees

#### Section 3392. Employee Discipline.

(a) Definitions -- The definitions in this section apply to Subchapter 5, Article 2, sections 3391 and 3392 through 3392.10.

(1) 5/8/40 Work Schedule -- A fixed work schedule consisting of five 8-hour days during a workweek.

(2) Administrative Time Off -- A form of paid leave initiated by a Hiring Authority when it is determined that an employee should not come to work as set forth in section 3392.9.

(3) Adverse Action -- A punitive action taken by a Hiring Authority to discipline an employee as set forth in section 3392.3.

(4) Appointing Power -- The Secretary of the CDCR.

(5) Bargaining Unit Agreement (also known as a Memorandum of Understanding) -- An agreement entered into between the State of California and an employee representative organization certified by the Public Employee Relations Board as the exclusive representative for an employee bargaining unit.

(6) Corrective Action -- A non-punitive action taken by a supervisor to assist an employee to improve work performance, or correct behavior or conduct as set forth in section 3392.2.

- (7) Designated Case -- An employee discipline case assigned to a vertical advocate.
- (8) Employee Disciplinary Matrix -- The department's Employee Disciplinary Matrix set forth in section 3392.5, utilized by all hiring authorities to identify misconduct allegations and determine the penalty to be imposed when an allegation(s) of misconduct is sustained.
- (9) Employee Relations Officer -- The department employee responsible for coordinating the administrative process for designated cases, and representing the department in non-designated cases during the disciplinary process and at any administrative hearings.
- (10) Hiring Authority -- The appointing power may act, or delegate the power to act, as the Hiring Authority. The Hiring Authority has the power to hire, initiate the investigation process by submitting a confidential request for internal affairs investigation or approval for direct adverse action, discipline, and dismiss staff. The power to act as a Hiring Authority may be delegated to the following classifications: Undersecretary; Assistant Secretary; General Counsel; Chief Deputy General Counsel; Executive Officer; Chief Information Officer; Director; Deputy Director; Associate Director; Assistant Deputy Director; Chief, Office of Correctional Safety; Chief, Office of Labor Relations; Warden; Superintendent; Health Care Chief Executive Officer; Regional Health Care Administrator; Regional Parole Administrator; Parole Administrator; Superintendent of Education; Assistant Superintendent of Education; Administrator at the Richard A. McGee Correctional Training Center for Correctional Officer Cadets; or any other person authorized by the appointing power.
- (11) Job Steward -- A recognized union representative for a state bargaining unit.
- (12) Letter of Intent -- Written notification to a peace officer employee that an investigation has been completed, adverse action will be taken, and the proposed penalty.
- (13) Manager -- An employee in a managerial classification having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.
- (14) Monitored Case -- An employee discipline case monitored by the Office of the Inspector General.
- (15) Non-Designated Case -- An employee discipline case assigned to an employee relations officer.
- (16) Notice of Adverse Action -- A written notice of punitive action to an employee including the penalty, effective date of the action, causes for discipline, factual allegations of misconduct, pre-deprivation (*Skelly*) rights, and the right to appeal the action to the State Personnel Board.
- (17) Office of Internal Affairs -- The entity with authority to investigate allegations of employee misconduct.
- (18) Official Personnel File -- A file for a department employee containing records maintained by the department including records relating to the employee's performance or any grievances filed by the employee.
- (19) Preponderance of Evidence -- The standard of proof necessary to establish that it is more likely than not that the alleged misconduct occurred.
- (20) Progressive Discipline -- Written preventative, corrective, or disciplinary action, providing an employee with notice of departmental expectations, an opportunity to learn from prior mistakes, and correct and improve future work performance.
- (21) Qualifying Pay Period -- Eleven or more qualifying workdays of service in a monthly pay period.
- (22) Qualifying Work Day -- An employee's regularly scheduled workday, excluding regular-days-off, sick leave, holidays, vacation, annual leave, or other periods of approved leave.
- (23) *Skelly* Hearing -- A hearing, normally held prior to the effective date of an adverse action, which provides the employee with an opportunity to respond to the allegations of misconduct set forth in the notice of adverse action.
- (24) *Skelly* Letter -- A letter notifying the employee of the Hiring Authority's final decision regarding the imposition of a disciplinary penalty.

(25) *Skelly* Officer -- An employee, normally a manager assigned to conduct a *Skelly* Hearing and make a recommendation to the Hiring Authority as set forth in section 3392.8.

(26) *Skelly* Package -- All documents and materials relied upon by the Hiring Authority to impose adverse action.

(27) Vertical Advocate -- An Employment Advocacy and Prosecution Team attorney who provides legal advice to the department during investigations and the employee discipline process for designated cases, and represents the department at administrative hearings and during any subsequent writ or appellate proceedings.

(28) Work Week -- Any seven consecutive days, starting with the same calendar day each week beginning at any hour on any day, so long as it is fixed and regularly occurring.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054, 5058.4 and 6053, Penal Code; Sections 3304(d)(1), 3513, 19570 and 19574, Government Code; Section 115, Evidence Code; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194; *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995); and *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW, *Madrid v. Woodford*, Special Masters Final Report Re: Department Of Corrections Post Powers Investigations And Employee Discipline; Case No. C90-3094-T.E.H. and *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

### **Section 3392.1. Investigation Findings.**

(a) Upon receipt and review of an investigation report, the Hiring Authority shall render a determination for each allegation for each subject. The findings and their explanations are as follows:

#### **Subsections 3392.1(a)(1) through (a)(5) are unchanged.**

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5058.4, Penal Code, *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW, *Madrid v. Woodford*, Special Masters Final Report Re: Department Of Corrections Post Powers Investigations And Employee Discipline; Case No. C90-3094-T.E.H. and *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

### **Section 3392.3. Adverse Action.**

#### **Subsections 3392.3(a) through 3392.3(c) are unchanged. Subsection 3392.3(d) is amended.**

(d) Adverse action for off-duty misconduct requires a nexus between the employee's behavior and their employment.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 18524, 19571 and 19572, Government Code; Section 115, Evidence Code; and Sections 5054 and 5058.4, Penal Code; *Yancey v. State Personnel Board* (1985) 167 Cal.App.3d.478; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW, *Madrid v. Woodford*, Special Masters Final Report Re: Department Of Corrections Post Powers Investigations And Employee Discipline; Case No. C90-3094-T.E.H. and *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

### **3392.5 Employee Disciplinary Matrix.**

**Subsections 3392.5(a) and (b) are unchanged. Subsection 3392.5(c) is amended.**

(c) Applying the Employee Disciplinary Matrix.

(1) The Employee Disciplinary Matrix shall be used for all disciplinary actions to identify the applicable matrix misconduct allegation(s) and determine the appropriate penalty.

(2) Prior to assessing a disciplinary penalty, the Hiring Authority must find the investigation sufficient to make investigation findings, which must be documented on CDCR Form 402 (Rev. 01/22), Hiring Authority Review of Investigation, which is incorporated by reference. If the Hiring Authority finds the investigation insufficient to make investigation findings, the Hiring Authority shall document that finding in the department's information technology system and refer the case to OIA for investigation.

**Subsections 3392.5(c)(3) through 3392.5(c)(13) are unchanged.**

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code; Section 19572, Government Code; *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995.); *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW, *Madrid v. Woodford*, Special Masters Final Report Re: Department Of Corrections Post Powers Investigations And Employee Discipline; Case No. C90-3094-T.E.H. and *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

### **Section 3392.8. Skelly Hearing.**

**Subsections 3392.8(a) through 3392.8(e) are unchanged. Subsection 3392.8(f) is amended.**

(f) Unless waived by the employee, the *Skelly* Officer shall be a manager at an organizational level above the employee's supervisor, who did not request a confidential internal affairs investigation, sign the employee's notice of adverse action, or participate in the decision to take adverse action.

**Subsections 3392.8(g) through 3392.8(k)(4) are unchanged.**

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5058.4, Penal Code; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194; Section 19590, Government Code; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department Of Corrections Post Powers Investigations And Employee Discipline; Case No. C90-3094-T.E.H., *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action and CCR, Title 2, Section 52.6.

### **Section 3392.9. Use of Administrative Time Off.**

**Subsections 3392.9(a) through 3392.9(a)(3) are unchanged. Subsection 3392.9(a)(4) is amended.**

(4) The employee's continued presence in the workplace during the investigation or discipline process would undermine the department's ability to conduct a fair and complete investigation or discipline process.

### **Subsection 3392.9(a)(5) is unchanged.**

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW, *Madrid v. Woodford*, Special Masters Final Report Re: Department Of Corrections Post Powers Investigations And Employee Discipline; Case No. C90-3094-T.E.H. and *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

### **Section 3450. Personal Information Record Access and Amendment.**

(a) Pursuant to the Information Practices Act, any person on whom the department maintains a record or file containing personal information has the right to inspect their record or authorize any person to inspect such records on their behalf and to request amendment to correct outdated, inaccurate, or incomplete information.

(1) In order to identify the individual requesting access to a record or file, and to determine who the contents of a record or file shall be disclosed to, all requests to inspect a record or file shall be submitted in writing to the Warden (if the person is incarcerated), the Regional Parole Administrator (if the person is supervised), or the Secretary (if neither of those circumstances apply). If the written request authorizes a third party to perform the inspection, then a copy of the third party's passport, driver's license, or other form of government-issued photographic identification shall be included with the written request. The department shall permit the inspection to occur within 30 calendar days of receiving the request, unless the request involves records that are geographically dispersed or which are inactive and in central storage, in which case the inspection shall be permitted within 60 calendar days. In addition, the department shall permit the person to have an exact copy made of all or any portion of the record or file within 15 calendar days of the inspection.

(2) Requests to amend a record or file shall be submitted in writing, to the Warden (if the person is incarcerated), the Regional Parole Administrator (if the person is supervised), or the Secretary (if neither of those circumstances apply). No later than 30 calendar days after receiving the request, the department shall either:

(A) adopt the requested amendment and inform the person that the amendment was adopted, or  
(B) reject the requested amendment and inform the person that the amendment was rejected, the reason the amendment was rejected, how to request a review of the department's decision, and the deadline to request such a review (as described in subsection 3482(a)).

(b) No person shall prepare, handle, or destroy any portion of a departmental record containing confidential information as that term is defined in section 3321.

(c) No person shall prepare, handle, or destroy any portion of a departmental record containing personal information except:

(1) As provided for in ~~Section~~ section 3041(e), or

(2) Their copies of such records provided to them by the department.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 1798.20 and 1798.32, Civil Code.

## **Subchapter 5.1. Incarcerated and Supervised Person Programs**

### **Article 1. Administrative Remedies**

## Section 3480. Implementation Date and Definitions.

(a) The provisions of this Article shall apply to all grievances, reasonable accommodation requests, and appeals received by the Department of Corrections and Rehabilitation (department) from persons under its legal custody or supervision on or after ~~January 1, 2025~~ January 22, 2026.

(b) For purposes of this Article and Article 1.5 of this Subchapter, the following definitions shall apply:

(1) "Administrative remedies" refers to the non-judicial process provided by the department to address grievances, reasonable accommodation requests, and appeals.

(2) "Appeal" refers to a written disagreement with a decision letter issued by the Office of Grievances request submitted to from a claimant for review by the Office of Appeals for review.

(3) "Claim" means a single issue or event or a course of conduct arising from a unique set of facts or circumstances.

(4) "Claimant" refers to a person who files a claim with the department.

(5) "Coordinator" means the official responsible for the administrative functions of the Office of Grievances or Office of Appeals, depending on their assignment.

(6) "Department" and "departmental staff" refers exclusively to the Department of Corrections and Rehabilitation and to all employees, contractors, and volunteers associated with the department, except those employed by the Board of Parole Hearings, the Prison Industry Authority, and the Commission on Correctional Peace Officer Standards and Training.

(7) "Disability-related" means a request or claim with a nexus to a person's disability or functional limitation.

~~(7)~~ "Grievance" refers to a written complaint ~~from a claimant~~ containing one or more claims ~~for review by an Office of Grievances~~ that challenges disputes a policy, decision, action, condition, or omission by the department or departmental staff submitted to an Office of Grievances for review.

~~(9)~~ "Personal interaction" means direct contact with a claimant, either face-to-face or by writing the claimant directly. Participating in a committee meeting that concerns a claimant or that the claimant attended does not, by itself, constitute personal interaction; nor does signing a memo that applies to a group of individuals or signing a decision letter pursuant to this Article.

~~(9)~~ "Policy review" refers to the process used by the department to respond to complaints that departmental policy violates or contradicts an established rule of law or pre-existing policy issued by a higher authority.

(10) "Reasonable Accommodation" refers to the modification of a program, service, or activity, or to the issuance of an assistive device, which makes it possible for a person with a disability to achieve equal access to that program, service or activity without imposing an undue hardship on the department or posing a direct threat to the health or safety of any person or the security of the institution.

(11) "Reasonable Accommodation Panel" refers to a group of subject matter experts empaneled at each institution and overseen by the Associate Warden responsible for compliance with the Americans with Disabilities Act who are tasked with reviewing reasonable accommodation requests.

~~(12)~~ "Reasonable accommodation request" refers to a written request ~~from a claimant~~ for one or more disability-related accommodations submitted to the Associate Warden responsible for compliance with the Americans with Disabilities Act for review by an Office of Grievances.

~~(13)~~ "Reasonable accommodation review" refers to the process used by the department to respond to a written request for one or more disability-related accommodations.

(142) "Reviewing Authority" refers to the officials identified in subsection 3481(b) who review and approve all "grant" decisions and "denial" decisions as described in subsections 3483(g) and 3485(g) and who are thus responsible for the overall quality and timeliness of those decisions.

(153) "Routine review" refers to the process used by the department to respond to grievances that do not allege staff misconduct as well as grievances that do allege allegations of staff misconduct ~~but that~~ are not referred for an investigation.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

### **Section 3481. Claimant's Ability to Submit Grievances, Reasonable Accommodation Requests, and Appeals.**

(a) A claimant has the ability to submit one or more claims in a written grievance, a written reasonable accommodation request, or both (subject to the requirements in section 3482). In response, a claimant shall receive a written decision letter (as described in section 3483) clearly explaining the reasoning and the evidence in support of the decision for each claim. A claimant also has the ability to appeal one or more of those decisions (subject to the requirements in section 3484). In response, a claimant shall receive a written decision letter (as described in section 3485) clearly explaining the reasoning and the evidence in support of the decision for each claim.

(b) Reviewing Authorities.

(1) The Warden and Chief Deputy Warden at each institution are the primary Reviewing Authorities for all grievances and reasonable accommodation requests received at that institution. The Warden may authorize one or more Associate Wardens to also serve as Reviewing Authorities, including the Associate Warden responsible for compliance with the Americans with Disabilities Act (also referred to as the ADA Reviewing Authority).

(2) The Regional Parole Administrator and Chief Deputy Parole Administrator in each region are the primary Reviewing Authorities for all grievances and reasonable accommodation requests received in that region. The Regional Parole Administrator may authorize one or more Assistant Regional Administrators to also serve as Reviewing Authorities.

(3) The Associate Director of the Office of Appeals shall serve as the primary Reviewing Authority for all appeals and answer them on behalf of the Secretary. The Associate Director may authorize one or more managers in the Office of Appeals to also serve as Reviewing Authorities.

(c) A claimant may choose to informally resolve a claim; however, any attempt to informally resolve a claim shall not extend the time for submitting that claim in a grievance or an appeal.

(d) Departmental staff shall not retaliate against a claimant for seeking to informally resolve a claim or for submitting a grievance, reasonable accommodation request, or appeal. In addition, staff shall not access grievances, reasonable accommodation requests, or appeals in the department's information technology system unless specifically assigned to respond to a claim or when fulfilling another legitimate business need.

(e) ~~This Article does not create a~~ ~~A claimant does not have the~~ right to grieve or appeal a policy, decision, action, condition, or omission that was not made by the department or departmental staff, but instead was made by an entity or official outside of the department, including, but not limited to, a county jail, the Department of State Hospitals, or the Interstate Commission for Adult Offender Supervision; nor by an entity or official that is quasi-independent of the department, including, but not limited to, the Board of Parole Hearings, the Prison Industry Authority, or the

Commission on Correctional Peace Officer Standards and Training. This Article does not preclude a claimant from filing a complaint with the outside entity or official.

(f) Forms.

(1) CDCR Form 602-1/1824 (01/25), the “Grievance/~~Request for~~ Reasonable Accommodation Request” form, hereby incorporated by reference, shall be made available to claimants who are under the custody of the department at all housing units, libraries, and law libraries; and to claimants who are under the supervision of the department at all parole offices statewide, and made available during regular home visits face-to-face contact upon request.

(2) CDCR Form 602-2 (Rev. 01/25), the “Appeal” form, hereby incorporated by reference, shall be made available to claimants as an attachment to each decision letter issued by an Office of Grievances.

(3) CDCR Form 602-3 (Rev. 01/25), the “Request to Implement Overdue Remedy” form, hereby incorporated by reference, shall be made available to claimants as an attachment to each decision letter issued by an Office of Grievances or the Office of Appeals containing a remedy.

(g) Prior to submitting forms for review by an Office of Grievances or the Office of Appeals, a claimant may obtain two copies of the documents described in subsection (f) from a library or law library following the procedures described in section 3162; however, the time needed to copy the forms shall not extend the time for submitting that claim in a grievance or an appeal.

(h) Departmental staff shall provide reasonable accommodations and comply with effective communication and documentation requirements if a claimant requests assistance based on a disability, lack of literacy, or need for translation services when submitting a grievance, reasonable accommodation request, or appeal; conducting a related interview; or receiving a decision letter issued by an Office of Grievances ~~or the Office of Appeals~~. Staff shall do the same if they detect the need for such assistance or the claimant has a documented need for effective communication under the same circumstances.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

### **Section 3482. Preparation and Submittal of a Grievance, Reasonable Accommodation Request, or both.**

(a) Where to submit a grievance, reasonable accommodation request, or both.

(1) An incarcerated person who wishes to submit a grievance or reasonable accommodation request shall do so in writing to the Office of Grievances at the institution where they are housed. If the claimant is housed at a re-entry facility or fire camp, then they shall submit the grievance or reasonable accommodation request to the Office of Grievances designated for that location. Every Warden shall issue a local rule in compliance with subdivision (c) of section 5058 of the Penal Code, identifying the address where grievances and reasonable accommodation requests may be mailed, the availability of electronic kiosks or tablets for submitting grievances and reasonable accommodation requests, the physical location of all lockboxes where grievances and reasonable accommodation requests may be submitted, and the specific departmental staff permitted to collect grievances and reasonable accommodation requests from those lockboxes. Grievances and reasonable accommodation requests shall be collected from lockboxes at least once per business day by staff not regularly assigned to that housing unit. If a written grievance or reasonable accommodation request is received by staff any other way, then it shall be forwarded to the Office of Grievances where the claimant is housed. Additional local processes and procedures regarding the preparation and submittal of a grievance or reasonable

accommodation requests may be promulgated by the Division of Adult Institutions so long as they are consistent with this Article, pursuant to subdivision (c)(1) of section 5058 of the Penal Code.

(2) A supervised person who wishes to submit a grievance or reasonable accommodation request shall do so in writing to the Office of Grievances in the parole region where they are supervised. Every Regional Director, in consultation with the Director of the Division of Adult Parole Operations, shall issue a written advisement no later than 15 calendar days after the claimant begins parole identifying the address where grievances and reasonable accommodation requests may be mailed, the availability of electronic kiosks or tablets for submitting grievances and reasonable accommodation requests, and the physical location of all lockboxes where grievances and reasonable accommodation requests may be submitted. Grievances and reasonable accommodation requests shall be collected from lockboxes at least once per business day. If a written grievance or reasonable accommodation request is received by departmental staff any other way, then it shall be forwarded to the Office of Grievances in the region where the claimant is supervised. Additional local processes and procedures regarding the preparation and submittal of a grievance or reasonable accommodation requests may be promulgated by the Division of Adult Parole Operations so long as they are consistent with this Article, pursuant to subdivision (c)(1) of section 5058 of the Penal Code.

(b) Time eConstraints.

(1) A claimant shall submit a grievance no later than 60 calendar days after discovering an adverse policy, decision, action, condition, or omission by the department. Discovery occurs when a claimant knew or should have reasonably known of the adverse policy, decision, action, condition, or omission.

(2) The time constraint to submit a grievance, including an allegation of staff misconduct, shall be extended for the period of time that a claimant is:

(A) in the custody of another authority for court proceedings;

(B) in the care of an outside hospital;

(C) temporarily housed in a medical or mental health crisis bed; or

(D) actively and directly engaged in fire suppression.

(3) ~~Grievances deemed untimely shall be rejected pursuant to subsection 3483(g)(6)(A). Even if rejected, all allegations of staff misconduct shall be referred for a routine review or an investigation. Even if a particular claim in a grievance is rejected under subsection 3483(g)(6)(A), if the claim contains an allegation of staff misconduct, that claim shall be reviewed by the Centralized Screening Team and referred for a routine review or an investigation. Similarly, if a particular claim in a grievance is rejected under subsection 3483(g)(6)(D) and it contains an allegation of staff misconduct, that claim shall also be reviewed by the Centralized Screening Team and referred for a routine review or an investigation. If the claim is rejected pursuant to subsection 3483(g)(6)(A), then at the conclusion of the routine review or investigation the Hiring Authority shall notify the claimant in writing of the findings no later than thirty (30) calendar days after the findings are made, as required by subdivision (f)(1) of section 832.7 of the Penal Code.~~

(c) To submit a grievance or reasonable accommodation request, a claimant shall type or print legibly on an official CDCR Form 602-1/1824, (01/25), Reasonable Accommodation Request, hereby incorporated by reference, or complete the form electronically, if available, and include the following;

(1) for grievances, describe all information known and available to the claimant regarding the claim, including key dates and times, names and titles of all involved departmental staff (or a description of those staff), and names and titles of all witnesses, to the best of the claimant's knowledge;

(2) for grievances, describe any attempt to resolve the claim informally and, if there was such an attempt, provide the details of that attempt, including key dates and times, names and titles of all

involved departmental staff (or a description of those staff), and the results of that attempt, to the best of the claimant's knowledge;

(3) for reasonable accommodation requests, describe the limitation, the cause of the limitation, and the accommodation requested;

(4) for grievances and reasonable accommodation requests, include all supporting documents available to the claimant related to the claim or identify to the best of the claimant's ability all relevant records with sufficient specificity for those records to be located; and

(5) for grievances and reasonable accommodation requests, sign and date the CDCR Form 602-1/1824, hereby incorporated by reference.

(d) When submitting a grievance or reasonable accommodation request, a claimant shall not:

(1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;

(2) include information or accusations known to the claimant to be false; or

(3) contaminate the submission by including organic, toxic, or hazardous materials that may threaten staff safety or institutional security, in which case the submission shall be safely discarded and disallowed. The claimant may re-submit the same claim or claims so long as it is submitted within the time constraints set forth in subsection (b).

(e) The entire submission shall be returned to the claimant with the acknowledgement of receipt described in subsection 3483(c).

(f) The entire submission from the claimant shall be stored electronically by the department.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

### **Section 3483. Office of Grievances Review and Response.**

(a) Initial Review. The Reviewing Authority over each Office of Grievances shall designate at least one official to assess each written grievance and reasonable accommodation request no later than one business day after its receipt.

(1) If it contains information concerning an imminent risk to personal health or safety, to institutional security, or of sexual abuse, including allegations of sexual misconduct as defined by the federal Prison Rape Elimination Act ~~or and~~ the California Sexual Abuse in Detention Elimination Act, then the official shall immediately refer the matter to the appropriate authority in the institution or parole region as required by all applicable laws and regulations.

~~(2) If it contains information suggesting the threat of injury or other serious harm absent an accommodation, then the official shall determine whether an interim accommodation is necessary to mitigate the threat and if so, ensure the interim accommodation is provided no later than five business days after its receipt.~~ If it contains information suggesting the claimant seeks a disability-related accommodation, then the official shall immediately refer the matter to the ADA Reviewing Authority who shall ensure the matter is reviewed and if any injury or other serious harm is reasonably foreseeable, that an interim accommodation is provided no later than five business days after its receipt.

(3) If it contains information suggesting the claimant needs assistance repairing or replacing a previously approved disability-related item or device, then the official shall immediately refer the matter to the ADA Reviewing Authority who shall ensure the item or device is repaired or replaced no later than five business days after its receipt and the action is documented in the department's information technology system or that the matter is referred to the Reasonable Accommodation Panel.

(43) If it contains information suggesting the claimant's Earliest Possible Release Date (EPRD) is wrong and the claimant is scheduled to be released within 90 calendar days of its receipt, then a comprehensive review of the EPRD shall be conducted and the results provided to the claimant no later than 30 calendar days after receipt of the grievance.

(54) If it contains information suggesting the claimant disagrees with the department's refusal to amend a record or file containing personal information pursuant to section 3450, then a comprehensive review of the matter shall be conducted and a final determination provided to the claimant no later than 30 calendar days after receipt as required by section 1798.36 of the Civil Code, unless the official conducting the comprehensive review notifies the claimant that the time period to complete the review was extended by 30 calendar days pursuant to that same section of the Civil Code.

(b) The Grievance Coordinator shall ensure that the intake process described in subsection (a) is completed and each grievance and reasonable accommodation request is referred to the Centralized Screening Team no later than three business days after receipt of the grievance or reasonable accommodation request.

(c) The Office of Grievances Coordinator shall acknowledge receipt of each grievance and reasonable accommodation request to the claimant in writing no later than 14 calendar days after its receipt indicating the date the grievance or request was submitted, the date the grievance or request was received, the calculated date for the department's response, and whether the grievance or request was disallowed pursuant to subsection 3482(d)(3).

(d) The Grievance Coordinator shall ensure that all claims returned from the Centralized Screening Team to the Office of Grievances are reviewed and answered in accordance with subsections (e) through (i) of this section, except for those claims that are diverted to the Grievance Resolution Team pursuant to section 3483.5.

(e) Answering a Claim.

(1) The Grievance Coordinator shall assign all claims that are not screened out pursuant to subsections (g)(3) through (g)(10) to a Reviewing Authority, who may delegate the claim to any supervisor, for the purpose of gathering relevant facts and recommending whether to grant or deny the claim. If the claim requires a routine review, then the Reviewing Authority who determines whether to grant or deny the claim shall be at least one rank higher than the highest-ranking employee accused of personal interaction resulting in the alleged staff misconduct. as described below:

(A) If the claim concerns a reasonable accommodation request, the Office of Grievances shall refer the matter to the ADA Reviewing Authority, who may grant the request or refer it to the Reasonable Accommodation Panel for the purpose of gathering relevant facts and recommending whether to grant or deny the request.

(B) If the claim concerns a disability-related complaint, the Office of Grievances shall refer the matter to the ADA Reviewing Authority, who may delegate the claim to any supervisor for the purpose of gathering relevant facts and recommending whether to grant or deny the claim.

(C) All other claims shall likewise be referred to a Reviewing Authority who may delegate the claim to any supervisor for the purpose of gathering relevant facts and recommending whether to grant or deny the claim. If the claim requires a routine review, then the Reviewing Authority who determines whether to grant or deny the claim shall be at least one rank higher than the highest-ranking employee accused of staff misconduct. If the claim involves an allegation of staff misconduct that was not referred for an investigation, then the supervisor who conducts the fact

gathering shall be at least one rank higher than the highest-ranking employee accused of staff misconduct.

(2) The assigned supervisor shall conduct a complete review of each claim and ensure all relevant evidence, including documents, interviews, and video or audio recordings, are identified, summarized, and preserved.

(3) A claimant or witness shall be interviewed during the course of responding to a grievance if the supervisor responsible for answering the grievance determines it would assist in resolving the claim. The interview shall be conducted in a manner that provides as much privacy for the claimant as operationally feasible. If a claimant is unavailable to be interviewed or refuses to be interviewed, then those facts shall be documented in the department's information technology system.

(4) Suspend and Elevate Process.

(A) If a supervisor assigned to conduct a ~~policy review~~ or a reasonable accommodation review discovers information suggesting the claim involves staff misconduct, then the supervisor shall immediately suspend their activities related to the allegation of staff misconduct and refer the allegation to the Centralized Screening Team who shall ~~to~~ determine if the claim should be elevated ~~for~~ to a routine review or for an investigation because one of the factors described in subsection (B) applies. ~~If elevated to a routine review by the Centralized Screening Team, a new claim shall be opened by the Office of Grievances to answer the allegation of staff misconduct.~~

(B) If a supervisor assigned to conduct a routine review of a disability-related complaint or any other claim discovers information suggesting that the claim meets one of the following criteria, ~~involves complex issues requiring specialized investigative skills or resources; the claim, if proven true, is likely to result in adverse action; or the claim is similar to previous staff misconduct that was sustained against the departmental staff involved,~~ then the supervisor shall immediately suspend the review and refer the matter to the Centralized Screening Team who shall ~~to~~ determine if the claim should be elevated for ~~to~~ an investigation.

1. The claim involves complex issues requiring specialized investigative skills or resources.

2. The claim, if proven true, is likely to result in adverse action, including instances when the accused staff member engaged in similar misconduct within the past three years of the alleged misconduct which was granted by a Reviewing Authority or sustained by a Hiring Authority.

3. The claim accuses a Warden or Chief Deputy Warden, a Regional Parole Administrator or Chief Deputy Parole Administrator, a Chief Executive Officer or Chief Support Executive, or any other departmental staff with a rank higher than those described in this section. of staff misconduct resulting from personal interaction.

(C) If a supervisor assigned to a ~~policy review,~~ reasonable accommodation ~~request~~ review, or routine review discovers information indicating potential staff misconduct unrelated to the original claim, then the supervisor shall submit that information to the Centralized Screening Team.

(5) Upon completion of the review, the supervisor shall document their fact gathering, preserve all supporting documents and recordings in the department's information technology system, and draft a recommended decision letter for consideration by the Reviewing Authority.

(f) Any individual whose personal interaction with a claimant forms part of the claim shall be excluded by the Reviewing Authority from participating in the grievance under review, including any interviews conducted as part of that process, unless one of the following exceptions apply:

(1) The individual participated in a committee meeting that concerns a claimant;

(2) The individual reviewed a disciplinary action pursuant to subsection 3312(c);

(3) The individual signed a letter or memorandum that applies to a group of individuals; or

(4) The individual signed one or more prior decision letters pursuant to subsection (g).

~~(f) The Reviewing Authority shall ensure that any individual whose personal interaction with a claimant forms part of the claim is excluded from participating in the process as to that claim, including any interview of a claimant conducted as part of the process. Signing a decision letter pursuant to subsection (g) does not, by itself, constitute personal interaction.~~

~~(1) If the individual in question is a Warden, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.~~

~~(2) If the individual in question is a Regional Parole Administrator, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.~~

(g) The Grievance Coordinator shall ensure that a written decision letter is issued no later than 60 calendar days after receipt of the grievance, unless other statutory, judicial, or regulatory authority requires a response in less than 60 calendar days, and contains one of the following decisions as to each claim in the grievance:

(1) "Denied," meaning that the Reviewing Authority found by a preponderance of the evidence available that:

~~(A) for policy reviews, the policy under review was not a violation or contradiction of an established rule of law;~~

~~(AB) in the case of a for reasonable accommodation reviews, and following consideration by the Reasonable Accommodation Panel, an the accommodation requested was not reasonable under the totality of the circumstances pursuant to the Americans with Disabilities Act and the California Disabled Persons Act; or~~

~~(BC) in the case of a for routine reviews, the departmental staff were found not to be in violation of applicable rules;~~

(2) "Granted," meaning that the Reviewing Authority found by a preponderance of the evidence available that:

~~(A) for policy reviews, the policy under review was in violation or contradiction of an established rule of law, in which case the Reviewing Authority shall order an appropriate remedy;~~

~~(AB) in the case of a for reasonable accommodation reviews, an the accommodation requested was reasonable under the totality of the circumstances pursuant to the Americans with Disabilities Act or the California Disabled Persons Act, in which case the Reviewing Authority shall order an appropriate remedy; or~~

~~(BC) in the case of a for routine reviews, the departmental staff were found to be in violation of applicable rules, in which case the Reviewing Authority shall order an appropriate remedy,~~

(3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity or official which requires that the claimant file a complaint with that entity or official, as described in subsection 3481(e);

(4) "Redirected," meaning that the claim was forwarded to the appropriate authority described below because it fits one of the following circumstances:

(A) An issue concerning medical, dental, or mental health services provided by the Division of Health Care Services or a dispute concerning a policy, decision, action, condition, or omission by the Division of Health Care Services or its staff, which shall be redirected to that Division after consulting with the coordinator in the Health Care Grievance Office;

~~(B) A request for assistance, which shall be redirected to departmental staff designated by the hiring authority for a response; A request to repair or replace a disability-related item or device that was not referred to the Reasonable Accommodation Panel pursuant to subsection 3483(a)(3), which shall be redirected to the ADA Reviewing Authority;~~

(C) A request for implementation of an overdue remedy, which shall be redirected to the Remedies Compliance Coordinator as described in subsection (j)(2);

(D) A request for records pursuant to the Public Records Act, which shall be redirected to a Public Records Act coordinator;

(E) A request to inspect a record or file containing personal information or to amend a record or file containing personal information pursuant to the Information Practices Act and section 3450 of Subchapter 5 of Article 6, which shall be redirected to a Public Records Act coordinator;

(F) All other requests for assistance, which shall be redirected to departmental staff designated by the Hiring Authority for a response;

~~(G)~~ A complaint regarding a decision issued by the Office of Grievances, which shall be redirected to the Office of Appeals;

~~(H)~~ A complaint against an incarcerated or supervised person, which shall be redirected to departmental staff designated by the ~~H~~iring ~~A~~uthority for a response; or

~~(I)~~ An allegation of staff misconduct between staff members or between a staff member and a person not under the custody or supervision of the department, improper conduct by one departmental staff member against another staff member, which shall be redirected to departmental staff designated by the Hiring Authority responsible for the accused staff member.;

(5) "Reassigned," meaning that the claim was assigned to a different Office of Grievances than the one which originally received it because the majority of evidence (documents, recordings, or witnesses) is located at the other Office of Grievances, however, regardless of the number of reassignments, the claim shall be treated as if it was received on the date the original Office of Grievances received it.;

(6) "Rejected," meaning that the claim was rejected because it fits one or more of the following circumstances:

(A) The claimant did not submit the claim within the time constraints required by subsection 3482(b), unless the claim concerns a reasonable accommodation request;

(B) The claim concerns an anticipated policy, decision, action, condition, or omission by the department or departmental staff;

(C) The claim is substantially duplicative of a prior claim by the same claimant, unless the prior claim was rejected as anticipatory pursuant to subsection (B) or the prior claim concerns a reasonable accommodation request and there has been a change in circumstance ~~or the prior claim was rejected as anticipatory pursuant to subsection (B);~~

(D) The claim concerns harm to a person other than the person who signed the grievance, unless the claim concerns an allegation of staff misconduct that was referred for an investigation; or

(E) The claim challenges ~~objects to~~ one of the following:

1. a decision issued by the Office of Appeals;

2. the fact gathering process during a routine review;

3. the fact gathering process during an investigation ~~of staff misconduct;~~

4. the findings made by a ~~H~~iring ~~A~~uthority at the conclusion of an investigation ~~of staff misconduct;~~ or

5. the verbal or written statements submitted by departmental staff under penalty of perjury to a court of law or administrative tribunal.

(7) "Disallowed," meaning the submission from the claimant was discarded because it was contaminated with organic, toxic, or hazardous materials that may threaten staff safety or institutional security, in which case the claimant may re-submit the grievance so long as it is submitted within the time constraints set forth in subsection 3482(b);

(8) "Identified as Staff Misconduct and Referred for Investigation," meaning that the claim involved an allegation of staff misconduct which the Centralized Screening Team referred for an investigation;

(9) "Pending Legal Matter," meaning that the substance of the claim falls within the scope of pending litigation (excluding class action litigation), pending legislation, or pending regulatory action; ~~or~~

(10) "Time Expired," meaning that the Reviewing Authority was not able to respond to the claim within 60 calendar days.

(h) If a claim is rejected as untimely pursuant to subsection (g)(6)(A), then the decision letter shall also include the following dates as determined by the Office of Grievances Coordinator: the date the claim was discovered, the date the claim was submitted, the date the claim was received, and the time constraint for submission of the claim pursuant to subsection 3482(b).

~~(i) The written decision letter shall be sent to the claimant no later than ten business days after its issuance by the Office of Grievances with a CDCR Form 602-2, Appeal (Rev. 01/25) which is incorporated by reference, attached. If the decision letter contains one or more granted claims, then a CDCR Form 602-3, Request to Implement Overdue Remedy (Rev. 01/25) which is incorporated by reference, shall also be attached. If the claimant is an incarcerated person, the written decision letter shall be delivered to the claimant no later than 10 business days after its issuance. If the claimant is a supervised person, the written decision letter shall be postmarked no later than five business days after its issuance, unless a reasonable accommodation or effective communication is required pursuant to subsection 3481(h), in which case it shall be delivered during the claimant's next regular home visit. The Office of Grievances shall attach a CDCR Form 602-2, (Rev. 01/25), Appeal, hereby incorporated by reference, to all written decision letters and a CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, hereby incorporated by reference if the decision letter contains one or more granted claims.~~

(j) Implementation of Remedy

(1) If the Reviewing Authority grants a claim, then the corresponding remedy shall be implemented no later than 30 calendar days after the date at the top of the decision letter issued by the Office of Grievances, unless:

(A) the remedy requires the disbursement of funds, in which case the remedy shall be implemented no later than 90 calendar days after the date at the top of the decision letter; or

(B) the remedy requires budget authorization outside the department's existing authority, in which case the remedy shall be implemented no later than one year after the date at the top of the decision letter.

(2) If the remedy has not been implemented within the time period described in the above subsection, then a claimant may submit a CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, hereby incorporated by reference, directly to the Remedies Compliance Coordinator by regular mail sent to the address indicated on the form. Correspondence directed to this address shall not be opened by any departmental staff other than those in the Office of Appeals.

(3) In order to be considered, the CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, hereby incorporated by reference, must be submitted by the claimant no later than one calendar year after the decision letter was issued.

~~(4) Upon receipt of a CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, hereby incorporated by reference, the Remedies Compliance Coordinator shall contact the relevant Office of Grievances to confirm the remedy was implemented. If the remedy was already implemented, the Office of Grievances Coordinator shall provide the Remedies Compliance Coordinator with documentation confirming the remedy was implemented, including the date it was implemented and the full name and title of the official responsible for implementing it. If the remedy has not been ~~was not yet~~ implemented, the Grievance Coordinator and Remedies Compliance Coordinator shall regularly consult until the remedy is implemented.~~

(k) Pursuant to subdivision (c)(1) of section 5058 of the Penal Code, additional local processes and procedures may be promulgated by the Division of Adult Institutions and the Division of Adult Parole Operations so long as they are consistent with this Article.

(I) Exhaustion.

(1) Under the following circumstances a claimant may appeal the decision issued by the Office of Grievances, therefore, the administrative remedies process is not yet exhausted:

- (A) "denied" and the claimant is dissatisfied with the answer;
- (B) "granted" but the claimant is dissatisfied with the answer or the remedy;
- (C) "no jurisdiction;"
- (D) "redirected;"
- (E) "reassigned;"
- (F) "rejected;"
- (G) "disallowed;" or
- (H) "pending legal matter."

(2) Pursuant to section 1798.36 of the Civil Code, if a final determination is provided to the claimant as described in subsection ~~(a)(4)~~ (a)(5), then the administrative remedies process is exhausted. Nevertheless, the claimant may choose to:

- (A) waive exhaustion by submitting an appeal pursuant to section 3484; or
- (B) file a statement of reasonable length setting forth the reasons for their disagreement which shall be made available to any person or agency as required by section 1798.37 of the Civil Code.

(3) Under the following circumstances a claimant may not appeal the decision issued by the Office of Grievances, therefore, the administrative remedies process is exhausted:

- (A) "identified as staff misconduct and referred for investigation;" or
- (B) "time expired."

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

**New Section 3483.5 is adopted.**

**Section 3483.5. Grievance Resolution Team.**

(a) Each calendar quarter the Office of Appeals shall identify the 50 claimants (or more in the case of a tie) who submitted the highest number of claims in the preceding calendar quarter. The Office of Appeals shall notify the Office of Grievances and the Centralized Screening Team of the identity of those claimants so that any grievances submitted by those claimants during the ensuing calendar quarter shall be reviewed by the Centralized Screening Team for diversion to the Grievance Resolution Team if one or more claims meet any of the criteria in subsections (c)(1) through (c)(5).

(b) Team Composition and Meeting Details.

(1) The Grievance Resolution Team shall consist of one representative from the local Office of Grievances, one representative from the Office of Appeals, and one representative from the Centralized Screening Team.

(2) The Grievance Resolution Team shall meet with each of the claimants identified in subsection (a) at least once per month during the ensuing calendar quarter to discuss the claims diverted to the Grievance Resolution Team for review.

(3) The meeting date and time shall be set by the Office of Appeals and conducted in a manner that provides as much privacy for the claimant as operationally feasible.

(4) If the claimant chooses not to attend the meeting or is unavailable to attend, departmental staff shall document the circumstances and the Grievance Resolution Team shall conduct the review in absentia.

(c) After receiving a grievance from one of the claimants identified in subsection (a), the Centralized Screening Team shall review the grievance within five business days of receiving it (within eight business days if a clarifying interview is necessary) to determine if any claims fit any of the criteria below. Those claims that do not fit any of the criteria below shall be screened by the Centralized Screening Team in accordance with subsection 3486.1(e). Those claims that do fit any of the criteria below shall be diverted to the Grievance Resolution Team.

(1) The claim lacks sufficient detail for a meaningful screening determination and the claimant refuses to participate in a clarifying interview or participates in a clarifying interview but is still unable to provide sufficient detail to clarify the claim.

(2) The claim is factually impossible (meaning the claim defies the laws of physics, biology, or any other discipline).

(3) The claim is highly implausible (meaning the claim is factually possible but so improbable that any reasonable person would dismiss the claim as preposterous).

(4) The claim closely mirrors three or more previous claims submitted by the same claimant during the most recent calendar quarter and is similar to at least one other claim which was previously denied by a Reviewing Authority or determined to be unfounded, exonerated, or not sustained by a Hiring Authority.

(5) The claim accuses departmental staff of failing to take a specific action but documentary evidence found in the department's information technology system clearly shows that the action was taken by that same staff.

(d) At the conclusion of each meeting between the Grievance Resolution Team and one of the claimants identified in subsection (a), the Grievance Resolution Team shall determine outside the presence of the claimant whether each claim fits any of the criteria listed in subsection (c).

(1) If any one member of the Grievance Resolution Team determines that a claim does not fit any of those criteria, then that claim shall be screened by the Centralized Screening Team in accordance with subsection 3486.1(e).

(2) If all the members of the Grievance Resolution Team determine that a claim does fit any of those criteria, then those claims that fit any of subsections (c)(1) through (c)(5) shall be answered by the Office of Grievances without the necessity of a routine review or an investigation.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

### **Section 3484. Preparation and Submittal of an Appeal.**

(a) A claimant who wishes to appeal a decision or remedy issued by an Office of Grievances shall do so in writing by submitting a CDCR Form 602-2, (Rev. 01/25) Appeal, hereby incorporated by reference, directly to the Office of Appeals by regular mail sent to the address indicated on the form or by electronic kiosk or tablet, if available. Correspondence directed to this address shall not be opened by any departmental staff other than those in the Office of Appeals. If a written appeal is received by any other staff, then it shall be forwarded to the Office of Appeals.

(b) Time Constraints.

(1) A claimant who wishes to appeal a decision or remedy issued by an Office of Grievances shall submit an appeal no later than 60 calendar days after the date at the top of the decision letter issued by the Office of Grievances or the date the decision was discovered by the claimant, whichever occurs later in time. Discovery occurs when a claimant knew or should have reasonably known of the decision or remedy.

(2) The time constraint to submit an appeal shall be extended for the period of time that a claimant is:

(A) in the custody of another authority for court proceedings;

- (B) in the care of an outside hospital;
- (C) temporarily housed in a medical or mental health crisis bed; or
- (D) actively and directly engaged in fire suppression.

(c) To submit an appeal, a claimant shall:

- (1) type or print legibly on the appeal form (CDCR Form 602-2, (Rev. 01/25), Appeal, hereby incorporated by reference) or complete the form electronically, if available;
- (2) describe in detail why the decision issued by the Office of Grievances is inadequate; and
- (3) sign and date the CDCR Form 602-2, (Rev. 01/25), Appeal, hereby incorporated by reference.

(d) When submitting an appeal, a claimant shall not:

- (1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;
- (2) include information or accusations known to the claimant to be false;
- (3) contaminate the submission by including organic, toxic, or hazardous materials that may threaten staff safety or institutional security, in which case the submission shall be safely discarded and disallowed. The claimant may re-submit the same claim or claims so long as it is submitted within the time constraints set forth in section 3484(b); or
- (4) include a new claim that was not included in the original grievance or reasonable accommodation request, in which case the new claim shall be referred to the appropriate Office of Grievances.

(e) The CDCR Form 602-2, (Rev. 01/25), Appeal, hereby incorporated by reference, shall contain a notification to the claimant that the Office of Appeals has access to all of the documents previously submitted by the claimant to the Office of Grievances so re-submitting those documents is not necessary and that any documents attached to the ~~f~~Form 602-2 will not be returned.

(f) The entire submission from the claimant shall be stored electronically by the department.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

### **Section 3485. Office of Appeals Review and Response.**

(a) Initial Review. The Reviewing Authority for the Office of Appeals shall designate at least one official to assess each written appeal no later than two one business days after its receipt and determine if it contains information concerning an imminent risk to personal health or safety, to institutional security, or of sexual abuse, including allegations of sexual misconduct as defined by the federal Prison Rape Elimination Act or the California Sexual Abuse in Detention Elimination Act. If an imminent risk is detected, the official shall immediately refer the matter to the Office of Grievances to be handled pursuant to subsection 3483(a), unless the official determines that the Office of Grievances already detected the matter.

(b) If the Office of Appeals receives a claim on appeal and determines that the Centralized Screening Team failed to identify an allegation of staff misconduct, then the Office of Appeals shall grant the claim and order the Centralized Screening Team to refer the allegation for a routine review or investigation.

(c) The Office of Appeals Coordinator shall acknowledge receipt of each appeal to the claimant in writing no later than 14 calendar days after its receipt indicating the date the appeal was submitted, the date the appeal was received by the Office of Appeals, the calculated date for the

department's response, and whether the appeal was disallowed pursuant to subsection 3484(d)(3).

(d) The Appeal Coordinator shall ensure that all claims are reviewed and answered in accordance with subsections (e) through (i) of this section.

(e) All of the information gathered for the purpose of answering a grievance or reasonable accommodation request, including interviews, documents, and video or audio recordings, shall be made available to the Office of Appeals for its review. If not already preserved in the department's information technology system, the Office of Grievances shall ensure the information is provided to the Office of Appeals and added to the system.

~~(f) The Reviewing Authority shall exclude any individual whose personal interaction with the claimant forms part of the claim from participating in the process as to that claim. If the individual in question is the Associate Director of the Office of Appeals, then the Director from the Division of Correctional Policy Research and Internal Oversight shall serve as the Reviewing Authority for that claim. Signing a decision letter pursuant to subsection (g) does not, by itself, constitute personal interaction. Any individual whose personal interaction with a claimant forms part of a claim shall be excluded by the Reviewing Authority from participating in the appeal under review. Signing a letter or memorandum that applies to a group of individuals does not, by itself, constitute personal interaction. Nor does signing one or more prior decision letters pursuant to subsection (g).~~

(g) The Appeal Coordinator shall ensure that a written decision letter is issued no later than 60 calendar days after receipt of the appeal, unless other statutory, judicial, or regulatory authority requires a response in less than 60 calendar days, and contains one of the following decisions as to each claim in the appeal.:

(1) "Denied," meaning that the Reviewing Authority found by a preponderance of the evidence available that the decision by the Office of Grievances was proper.;

(2) "Granted," meaning that the Reviewing Authority found by a preponderance of the evidence available that the decision by the Office of Grievances was not proper, in which case the Reviewing Authority shall order an appropriate remedy.;

(3) "Remanded," meaning that the departmental staff failed to clearly explain the reasoning in support of a decision, failed to preserve the evidence relied on to reach a decision, or failed to apply the correct burden of proof in a decision, in which case the Office of Appeals shall order the Office of Grievances to re-examine the claim and issue a new decision letter no later than 30 calendar days after the date at the top of the decision letter issued by the Office of Appeals.;

(4) "Overlooked," meaning that the claim was submitted in a grievance or reasonable accommodation request but not answered by departmental staff as required by subsection 3481(a), so the Office of Appeals logged the claim and assigned it to the Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred.;

(5) "Bypassed," meaning that the claim was not first submitted in a grievance or reasonable accommodation request as required by subsection 3482(a), so the Office of Appeals logged the claim and assigned it to the Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred.;

(6) "Rejected," meaning that the claimant did not submit the claim within the time constraints required by subsection 3484(b) or the claim was correctly "rejected" by the Office of Grievances pursuant to subsection ~~3483(g)(6)(A)-(D)~~ 3483(g)(6)(A) through (g)(6)(D).;

(7) "Disallowed," meaning the submission from the claimant was discarded because it was contaminated with organic, toxic, or hazardous materials that may threaten staff safety, in which

case the claimant may re-submit the grievance appeal so long as it is submitted within the time constraints set forth in subsection 3482(b).;

(8) "Previously Identified as Staff Misconduct and Referred for Investigation," meaning that the claim was previously referred for an investigation by the Centralized Screening Team and may not be appealed pursuant to subsection 3483(l)(2).;

(9) "Remedy Referred," meaning that the substance of the claim concerns implementation of a remedy and, as a result, shall be referred to the Remedies Compliance Coordinator.;

(10) "Time Expired," meaning that the Reviewing Authority was not able to respond to the claim within 60 calendar days, in which case the grievance level decision shall serve as the department's final decision.

(h) If a claim is rejected as untimely pursuant to subsection (g)(6), then the decision letter shall also include the following dates as determined by the Office of Appeals Coordinator: the date the claim was discovered, the date the claim was submitted, the date the claim was received, and the time constraint for submission of the claim pursuant to subsection 3484(b).

(i) The written decision letter shall be postmarked and sent to the claimant no later than five business days after its issuance ~~by the Office of Appeals~~. If the decision letter contains one or more granted claims, then a copy of the CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, hereby incorporated by reference, shall also be attached. If the Reviewing Authority grants a claim, then notice of the decision shall be sent to the appropriate Office of Grievances Coordinator. If the Office of Appeals grants an appeal and orders an Office of Grievances to open a new grievance to address the claim, then the Office of Grievances shall treat the claim as received on the date at the top of the decision letter issued by the Office of Appeals.

(j) Implementation of Remedy.

(1) If the Office of Appeals grants a claim, then the Office of Grievances shall ensure that the corresponding remedy is implemented no later than 30 calendar days after the date at the top of the decision letter issued by the Office of Appeals, unless:

(A) the remedy requires the disbursement of funds, in which case the remedy shall be implemented no later than 90 calendar days after the date at the top of the decision letter; or

(B) the remedy requires budget authorization outside the department's existing authority, in which case the remedy shall be implemented no later than one year after the date at the top of the decision letter.

(2) If the remedy has not been implemented and the applicable time constraint has passed, then the claimant may submit a CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, Request to Implement Overdue Remedy, hereby incorporated by reference, directly to the Remedies Compliance Coordinator by regular mail sent to the address indicated on the form. Correspondence directed to this address shall not be opened by any departmental staff other than those in the Office of Appeals.

(3) In order to be considered, the CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, hereby incorporated by reference, must be submitted by the claimant no later than one calendar year after the decision letter was issued.

~~(4)~~ Upon receipt of a CDCR Form 602-3, (Rev. 01/25), Request to Implement Overdue Remedy, hereby incorporated by reference, the Remedies Compliance Coordinator shall contact the relevant Office of Grievances to confirm the remedy was implemented. If the remedy was already implemented, the Office of Grievances Coordinator shall provide the Remedies Compliance Coordinator with documentation confirming the remedy was implemented, including the date it was implemented and the full name and title of the official responsible for implementing it. If the

remedy ~~has not been~~ ~~was not yet~~ implemented, the Grievance Coordinator and Remedies Compliance Coordinator shall regularly consult until the remedy is implemented.

(k) Additional local processes and procedures may be promulgated by the Office of Appeals so long as they are consistent with this Article.

(l) Exhaustion.

(1) Under the following circumstances a claimant will receive a subsequent answer from the department, therefore, the administrative remedies process is not yet exhausted:

(A) "denied" because the Office of Grievances correctly redirected, reassigned, or disallowed the claim;

(B) "granted" and the claim is returned to the Office of Grievances for re-consideration and issuance of a new decision;

(C) "remanded;"

(D) "overlooked;"

(E) "bypassed;"

(F) "disallowed;"

(G) "remedy referred;" or

(H) "time expired" and the Office of Grievances redirected, reassigned, or disallowed the claim.

(2) If a claim is "denied" because a claimant failed to write legibly enough for the Office of Appeals to understand the issue on appeal as required in subsection 3484(c)(1) or a claimant failed to describe clearly enough why the decision by the Office of Grievances was inadequate as required in subsection 3484(c)(2), then the administrative remedies process was not exhausted.

(3) If a claim is "rejected" because a claimant failed to comply with the time constraints found in subsection 3484(b) or because the Office of Grievances correctly "rejected" the claim under subsection ~~3483(g)(6)(A)-(D)~~ 3483(g)(6)(A) through (g)(6)(D), then the administrative remedies process was not exhausted.

(4) If a claim is "denied" because the Office of Grievances correctly screened out the claim as a pending legal matter, then the administrative remedies process was not exhausted because the claimant initiated litigation prior to initiating the administrative remedies process.

(5) Under the following circumstances a claimant will not receive any further answer from the department, therefore, the administrative remedies process is exhausted:

(A) "denied" on the merits or due to a lack of jurisdiction;

(B) "granted" and the claim is not returned to the Office of Grievances for re-consideration and issuance of a new decision;

(C) "previously identified as staff misconduct and referred for investigation;" or

(D) "time expired" and the Office of Grievances denied the claim or screened it out due to a lack of jurisdiction.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

### **Section 3486. Allegations of Staff Misconduct Toward an Incarcerated or Supervised Person.**

(a) Right to submit claim alleging staff misconduct toward an incarcerated or supervised person.

(1) The provisions of this Article shall apply to all allegations of staff misconduct received by the Department of Corrections and Rehabilitation (department) on or after ~~January 1, 2025~~ January 22, 2026.

(2) Any person can submit a claim alleging staff misconduct toward an incarcerated or supervised person when they believe departmental staff have engaged in behavior that ~~resulted~~ resulted in a violation

of law, regulation, policy, ~~regulation~~, or procedure, or to actions contrary to or an ethical or professional standard.

(3) Staff shall not retaliate against a claimant or witness for submitting a claim or reporting an allegation of staff misconduct.

(4) As provided in this Article, and Article 2 of Subchapter 5, the department shall ensure all claims of staff misconduct are properly documented consistent with section 3486.1.

(b) Definitions. For purposes of this Article and Article 1 of this Subchapter, the following definitions shall apply:

(1) "Centralized Screening Team" (~~CST~~) refers to the team responsible for screening all grievances, reasonable accommodation requests, and allegations of staff misconduct, ~~and then routing the claim.~~

(2) "Clarification Interview" refers to an interview conducted by the Centralized Screening Team ~~CST staff~~ when clarification is needed ~~required~~ to make a screening decision.

(3) "Designated Case" refers to a case assigned to an attorney with ~~in~~ the Employment Advocacy and Prosecution Team (~~EAPT~~).

(4) "Employment Advocacy and Prosecution Team" (~~EAPT~~) refers to the entity in the Office of Legal Affairs responsible for providing legal counsel and representation during the employee investigation, discipline, and appeal process.

(5) "Hiring Authority" has the same meaning in this Article as in subsection 3392(a)(10~~2~~).

(6) "Investigation" refers to the gathering of facts and evidence by an specially trained headquarters investigator ~~OIA Investigator~~ concerning employee misconduct toward an incarcerated or supervised person ~~an allegation of staff misconduct.~~

~~(7) "Investigator" refers to a specially trained employee assigned to conduct a staff misconduct investigation.~~

~~(8) "Investigative Report" refers to the confidential report prepared by an OIA investigator following an investigation.~~

~~(9) "Office of Internal Affairs" (OIA) refers to an entity with authority to investigate allegations of employee misconduct.~~

~~(740) "Staff Misconduct" refers to behavior that results in a violation of law, regulation, policy, or procedure, or to actions contrary to an ethical or professional standard.~~

~~(844) "Vertical Advocate" (~~VA~~) refers to an EAPT attorney with the Employment Advocacy and Prosecution Team who provides legal advice to the department during investigations and the employee discipline process for designated cases, and represents the department at administrative hearings and during any subsequent writ or appellate proceedings.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

### **Section 3486.1. Centralized Screening Process.**

#### (a) Claims Involving Departmental Staff.

(1a) If departmental staff receives a written claim from a claimant alleging staff misconduct toward an incarcerated or supervised person, the departmental staff receiving the claim shall refer the claim to the Centralized Screening Team (~~CST~~) and notify their supervisor to determine if it contains information constituting an imminent risk to personal safety, institutional security, or involves sexual abuse or acts of sexual misconduct as defined by the federal Prison Rape Elimination Act (~~PREA~~) and or the California Sexual Abuse in Detention Elimination Act.

~~(2b) Allegations of staff misconduct not involving an incarcerated or supervised person shall not be referred to CST. If a claim is received by CST that does not contain allegations involving misconduct towards an incarcerated or supervised person, CST shall refer the claim to the hiring authority. If departmental staff receive a written claim from a claimant alleging staff misconduct between staff members or between a staff member and a person not under the custody or supervision of the department, the departmental staff receiving the claim shall refer the claim to the Hiring Authority responsible for the accused staff member.~~

~~(be) Claims of misconduct not involving Departmental Staff.~~

~~(1) If a Hiring Authority receives a written claim of misconduct, that does not involve departmental staff, the Hiring Authority shall advise the claimant that the subject of the claim is not employed by the department CDCR and is outside the department's jurisdiction.~~

~~(2) For all allegations of misconduct, excluding sexual abuse or sexual misconduct allegations as defined in PREA the federal Prison Rape Elimination Act or ~~and~~ the California Sexual Abuse in Detention Elimination Act, the claimant shall be advised to file a claim directly with the appropriate outside entity.~~

~~(3) For allegations of sexual abuse or sexual misconduct as defined by PREA the federal Prison Rape Elimination Act or ~~and~~ the California Sexual Abuse in Detention Elimination Act, the Hiring Authority receiving the claim shall notify the appropriate outside entity of the allegations as required by law, and inform the claimant of this referral.~~

~~(cd) Verbal Claims~~

~~(1) Departmental staff shall document in writing any verbal claims received that involve an allegation alleging that an incarcerated or supervised person was subject to unnecessary or excessive use of force or to sexual abuse, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act or ~~and~~ the California Sexual Abuse in Detention Elimination Act. If either of the above circumstances apply, the departmental staff shall refer the claim to CST if it involves a staff on offender claim, and immediately forward the claim to their Hiring Authority. If the subject of the claim is a Hiring Authority, the allegation shall be referred to the Hiring Authority's supervisor. In addition, if the allegation concerns staff misconduct toward an incarcerated or supervised person, the departmental staff shall refer the claim to the Centralized Screening Team.~~

~~(2) For all other verbal claims, departmental staff shall provide the reporting party with information on how to submit their claim in writing.~~

~~(d) The Centralized Screening Team shall review all the documents it receives from incarcerated or supervised persons to determine if they contain information constituting an imminent risk to personal safety, institutional security, or involve sexual abuse or acts of sexual misconduct as defined by the federal Prison Rape Elimination Act or the California Sexual Abuse in Detention Elimination Act. In those instances, the Centralized Screening Team shall immediately notify the Hiring Authority at the affected institution or parole region for appropriate action.~~

~~(e) The Centralized Screening Team CST shall review all claims it receives that involve an incarcerated or supervised person and make one of the following screening decisions:~~

~~(1) Claims challenging departmental policy shall be referred to the Office of Grievances for a policy review;~~

~~(2) Claims requesting a reasonable accommodation shall be referred to the Office of Grievances for a reasonable accommodation review.~~

~~(13) Claims concerning an Allegations of staff misconduct which meet one of the following criteria include complex issues requiring specialized investigative skills or resources shall be referred for an investigation;~~

~~(A) The allegation involves complex issues requiring specialized investigative skills or resources;~~

~~(B) The allegation accuses a Warden or Chief Deputy Warden, a Regional Parole Administrator or Chief Deputy Parole Administrator, a Chief Executive Officer or Chief Support Executive, or any other departmental staff with a rank higher than those described in this subsection, of staff misconduct resulting from personal interaction;~~

~~(24) Allegations of staff misconduct which do not include complex issues requiring specialized investigative skills or resources shall be referred to the Office of Grievances for a routine review; or Notwithstanding subsection (e)(1), an allegation of staff misconduct submitted by one of the 50 (or more in the case of a tie) claimants identified by the Office of Appeals in subsection 3483.5(a) shall be diverted to the Grievance Resolution Team and answered in accordance with subsection 3483.5(d) if the allegation fits one of the criteria described in subsection 3483.5(c)(1) through (c)(5);~~

~~(35) Notwithstanding subsections (1) through (4) above, eClaims concerning related to health care services or staff, excluding allegations of staff misconduct referred for investigation, shall be referred to the Division of Health Care Services, unless the claim concerns an allegation of staff misconduct in which case it shall be referred pursuant to subsection (1);-~~

~~(4) Claims concerning a reasonable accommodation request shall be referred to the ADA Reviewing Authority for a reasonable accommodation review; or~~

~~(5) All other claims shall be referred to the Office of Grievances.~~

~~(f) Assigned CST staff shall review each document received to determine if it contains information constituting an imminent risk to personal safety, institutional security, or involves sexual abuse or acts of sexual misconduct as defined by the PREA and the California Sexual Abuse in Detention Elimination Act. In those instances, CST shall immediately notify the Hhiring Aauthority of the affected institution or program for appropriate action.~~

~~(fg) The Centralized Screening Team CST may conduct a clarification interview with any person if required to assist in making make a screening decision. The clarification interview shall be conducted in a manner that provides as much privacy for the person claimant as operationally feasible.~~

~~(gh) CST's Screening Ddecisions by the Centralized Screening Team shall be documented in the department's information technology system.~~

~~(hi) The Hhiring Aauthority shall be notified of all CST's screening decisions by the Centralized Screening Team via the department's information technology system.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644 and 5054, Penal Code; 28 CFR Part 115, Code of Federal Regulations; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

## **Section 3486.2. Staff Misconduct Investigations Involving Staff Misconduct toward Incarcerated or Supervised Persons.**

~~(a) Investigation Processing.~~

~~(1) Upon receipt of a claim from CST, OIA staff shall analyze the claim, obtain initial information including records, documents, evidence, or recordings relating to the claim, and assemble an investigation file.~~

~~(2) A manager shall review the investigation file to determine the level of investigator to be assigned, in consultation with EAPT for designated cases.~~

~~(b) Staff Misconduct Investigations.~~

~~(a) The department shall ensure that each investigation is conducted pursuant to existing laws, regulations, and departmental CDCR policies and procedures.~~

~~(b) When an investigator is assigned a case, they shall disclose if they have a potential conflict of interest in the case prior to investigating the allegations of staff misconduct toward incarcerated or supervised persons. If a potential conflict is disclosed then a manager shall determine whether an actual conflict exists and, if so, shall assign the case to another investigator.~~

~~(c) Completion of Investigations.~~

~~(1) When investigators conduct investigations, they shall ensure that all relevant evidence is gathered, recordings are preserved, and interviews are conducted.~~

~~(2) At the conclusion of an investigation, the assigned investigator shall prepare a confidential investigative report which summarizes the facts and evidence gathered during the investigation.~~

~~(d) Closure of Investigation Based on Special Conditions.~~

~~(1) An investigator may recommend an investigation be closed whenever one of the following special conditions is met:~~

~~(A) Upon review of all relevant video and audio recordings, sufficient evidence exists to prove conclusively that the alleged misconduct did not occur; or~~

~~(B) Upon review of all relevant video and audio recordings, sufficient evidence exists to prove conclusively that the alleged misconduct did occur and each of the employees engaged in the alleged misconduct were given the opportunity to respond to the allegation and provide any mitigating factors that the Hiring Authority should consider;~~

~~(C) No additional investigatory steps can be pursued due to the lack of specificity provided by the claimant and the claimant's refusal to cooperate with the investigator's efforts to obtain additional information. Upon review of an allegation that staff engaged in misconduct, no reasonable investigatory steps remain for the investigator to pursue because the allegation lacks sufficient detail and the claimant refused to participate in an interview, participated in an interview but was still unable to provide sufficient detail, or could not participate in an interview due to their long-term unavailability; or~~

~~(D) Upon review of an allegation that staff failed to take a specific action, documentary evidence found in the department's information technology system clearly shows that the action was taken by that same staff.~~

~~(2) If the investigator determines that one of the special conditions contained in subsection (d)(1) apply, the investigator shall document the evidence in support of their conclusion and forward their report recommendation to a supervisor at least one rank higher than the investigator manager and, if the case is designated, to the assigned Vertical Advocate VA. Thereafter:~~

~~(A) If the case is designated and the supervisor manager and Vertical Advocate VA concur that one of the special conditions apply, then the supervisor manager shall forward the report to approve the recommendation to close the investigation, and notify the Hiring Authority for review of the decision.~~

~~2) If the case is not designated and the manager concurs that one of the special conditions apply, then the manager shall refer the case to the OIA regional administrator to review. If the OIA regional administrator concurs, then the manager shall notify the hiring authority of the decision.~~

~~(B) If the case is designated and the manager or the VA do not concur that one of the special conditions apply, then the manager shall refer the investigation back to the investigator for further~~

~~investigation. If the case is designated and either the supervisor or the Vertical Advocate do not concur that one of the special conditions apply, then the supervisor shall refer the matter back to the investigator for further investigation; or~~

~~(C) If the case is not designated and the supervisor concurs that one of the special conditions apply, then the supervisor shall forward the report to the Hiring Authority for review.~~

~~(3C) After receiving notification, if the Hiring Authority:~~

~~(A4) Does not concur that one of the special conditions apply or determines additional investigation is warranted, then the Hiring Authority shall notate their concerns in the department's information technology system and refer the matter investigation back to the investigator for further investigation.~~

~~(B2) Concurs that the first, third, or fourth one of the special conditions apply applies and determines additional investigation is not warranted, then the Hiring Authority shall notify the subject of the investigation and the claimant that the investigation was closed; or.~~

~~(C) Concurs that the second special condition applies and determines additional investigation is not warranted, then the Hiring Authority shall determine what, if any, corrective or disciplinary action is warranted.~~

~~(e5) Investigative Report Review.~~

~~(1A) A manager supervisor at least one rank higher than the investigator shall review the draft investigative report, ~~and supporting exhibits and recordings~~, to determine whether the investigation is sufficient, complete, and unbiased.~~

~~(2B) For designated cases, the Vertical Advocate VA shall review the draft investigative report and all supporting exhibits and recordings, and provide feedback to the assigned investigator.~~

~~(3C) After the investigative report is finalized, the ~~confidential final~~ investigative report and all supporting exhibits and recordings, shall be provided to the Hiring Authority and, if the case is designated, to the assigned Vertical Advocate VA for designated cases, and the Hiring Authority.~~

~~(4D) If the Hiring Authority finds the investigation insufficient to make determine a finding for each allegation, they shall request additional investigation in accordance with subsection 3392.5(c).~~

~~(5E) If the Hiring Authority finds the investigation sufficient to make determine a finding for each allegation, they shall do so in accordance with section 3392.1.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

### **Section 3486.3. Notification of Investigative Findings.**

~~(a) For allegations of staff misconduct requiring an investigation, the hiring authority shall notify the claimant, in writing, of the investigative findings no later than thirty (30) calendar days after the hiring authority makes disciplinary findings as described in subsection 3486.2(b)(5)(E). If an allegation of staff misconduct is referred for investigation and the Hiring Authority makes a finding, the Hiring Authority shall notify the claimant in writing of the findings no later than thirty (30) calendar days after the findings are made, as required by subdivision (f)(1) of section 832.7 of the Penal Code.~~

~~(1) The notification of the findings regarding the staff misconduct claim shall be limited to whether the original claim was is sustained, not sustained, exonerated, unfounded, or no finding.~~

~~(2) Information related to any personnel action shall not be conveyed to the reporting party in the matter.~~

(b) The department's information technology system shall be updated to reflect all determinations made regarding ~~the~~ allegations of staff misconduct.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.

**GRIEVANCE / REASONABLE ACCOMMODATION REQUEST**

CDCR 602-1 / 1824 (01/25)

**ADOPT**

<b>NAME (Print)</b>	<b>(LAST NAME)</b>	<b>(FIRST NAME)</b>	<b>CDCR NUMBER</b>
<b>INSTITUTION OR PAROLE REGION</b>			<b>HOUSING AND BED NUMBER</b>

\*\*\* YOU CAN NOW FILE A GRIEVANCE OR REQUEST A REASONABLE ACCOMMODATION BY COMPLETING THIS FORM \*\*\*

If you are submitting a grievance, an allegation of staff misconduct, or an allegation of disability-based discrimination, please complete the section below and sign and date the form.

**GRIEVANCE (CDCR 602-1)**  
Please describe your complaint. Include the names of all those who were involved; any attempts to informally resolve the issue; and any related log numbers for documents in your central file.

**Date of Event, if known:** \_\_\_\_\_ **Time of Event, if known:** \_\_\_\_\_

**Location of Event, if known:** \_\_\_\_\_

**Describe your complaint:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you need more space, continue on the back of this form

If you are requesting assistance or an accommodation so you can access or participate in a program, service, or activity, or want to report the removal or denial of an accommodation due to disability-based discrimination, please complete the section below and sign and date the form.

**REASONABLE ACCOMMODATION REQUEST (CDCR 1824)**  
Please answer the following questions:

1. **What can't you do / What is the problem?**

\_\_\_\_\_

\_\_\_\_\_

2. **Why can't you do it?**

\_\_\_\_\_

\_\_\_\_\_

3. **What do you need?**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you need more space, continue on the back of this form

**Your Signature:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

**STAFF USE ONLY**

**Date Received:** \_\_\_\_\_

**Log Number:** \_\_\_\_\_



<b>STAFF USE ONLY</b>	Log No: _____ Claimant Name: _____ CDCR No. _____
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**STAFF USE ONLY**

Use this form to appeal a decision or a remedy issued by the Office of Grievances.

Do not include new claims on this form. All claims must first be filed on a CDCR 602-1/1824.

Log No: \_\_\_\_\_ Claim No: \_\_\_\_\_

I am dissatisfied with the decision or remedy because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**This form must be mailed to the:**  
Office of Appeals  
Department of Corrections and Rehabilitation  
P.O. Box 942883  
Sacramento, CA 95811

**IMPORTANT:**

When reviewing your appeal, the Office of Appeals has access to all of the documents you submitted to the Office of Grievances, so it is not necessary for you to re-submit those documents.

Any documents you attach to this form will not be returned to you.

Claimant Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_



<b>STAFF USE ONLY</b>	Log No: _____
	Claimant Name: _____
	CDCR No. _____

**STAFF USE ONLY**

Use this form to ask for a remedy that was granted but is overdue.

Do not include new claims on this form. All claims must first be filed on a CDCR 602-1/1824.

Log No: \_\_\_\_\_

Claim No. \_\_\_\_\_ was not satisfactory because \_\_\_\_\_

Claim No. \_\_\_\_\_ was not satisfactory because \_\_\_\_\_

Claim No. \_\_\_\_\_ was not satisfactory because \_\_\_\_\_

**This form must be mailed to the:**  
Office of Appeals  
Remedies Compliance Coordinator  
Department of Corrections and Rehabilitation  
P.O. Box 942883  
Sacramento, CA 95811

**IMPORTANT:**

This form is only intended to resolve delays in the implementation of a remedy issued by the Office of Grievances or the Office of Appeals, not to dispute a remedy or submit a new claim.

Any documents you attach to this form will not be returned to you.

Claimant Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**GRIEVANCE / REASONABLE ACCOMMODATION REQUEST**

CDCR FORM 602-1 / 1824 (01/25)

**REPEAL**

NAME (Print)	(LAST NAME)	(FIRST NAME)	CDCR NUMBER
INSTITUTION OR PAROLE REGION			HOUSING AND BED NUMBER

\*\*\* YOU CAN NOW FILE A GRIEVANCE OR REQUEST A REASONABLE ACCOMMODATION BY COMPLETING THIS FORM \*\*\*

If you are submitting a grievance, an allegation of staff misconduct, or an allegation of disability-based discrimination, please complete the section below and sign and date the form.

**GRIEVANCE (CDCR FORM 602-1)**  
Please describe your complaint. Include the names of all those who were involved; any attempts to informally resolve the issue; and any related log numbers for documents in your central file.

Date of Event, if known: \_\_\_\_\_ Time of Event, if known: \_\_\_\_\_  
Location of Event, if known: \_\_\_\_\_

Describe your complaint: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you need more space, continue on the back of this form

If you are requesting assistance or an accommodation so you can access or participate in a program, service, or activity, or want to report the removal or denial of an accommodation due to disability-based discrimination, please complete the section below and sign and date the form.

**REASONABLE ACCOMMODATION REQUEST (CDCR FORM 1824)**  
Please answer the following questions:

- What can't you do / What is the problem?  
\_\_\_\_\_  
\_\_\_\_\_
- Why can't you do it?  
\_\_\_\_\_  
\_\_\_\_\_
- What do you need?  
\_\_\_\_\_  
\_\_\_\_\_

If you need more space, continue on the back of this form

Your Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

**STAFF USE ONLY**

Date Received: \_\_\_\_\_ Log Number: \_\_\_\_\_



<b>STAFF USE ONLY</b>	Log No: _____ Claimant Name: _____ CDCR No. _____
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**STAFF USE ONLY**

*Use this form to appeal a decision or a remedy issued by the Office of Grievances.*

Do not include new claims on this form. All claims must first be filed on a CDCR Form 602-1/1824.

Log No: \_\_\_\_\_ Claim No: \_\_\_\_\_

I am dissatisfied with the decision or remedy because: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**This form must be mailed to the:**  
 Office of Appeals  
 Department of Corrections and Rehabilitation  
 P.O. Box 942883  
 Sacramento, CA 95811

**IMPORTANT:**

When reviewing your appeal, the Office of Appeals has access to all of the documents you submitted to the Office of Grievances so it is not necessary for you to re-submit those documents.

**Any documents you attach to this form will not be returned to you.**

Claimant Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_



REQUEST TO IMPLEMENT OVERDUE REMEDY

CDCR 602-3 (Rev. 01/25)

<b>STAFF USE ONLY</b>	Log No: _____ Claimant Name: _____ CDCR No. _____
-----------------------	---

**STAFF USE ONLY**

Use this form to ask for a remedy that was granted but is overdue.

Do not include new claims on this form. All claims must first be filed on a CDCR Form 602-1/1824.

Log No: \_\_\_\_\_

Claim No. \_\_\_\_\_ was not satisfactory because \_\_\_\_\_

Claim No. \_\_\_\_\_ was not satisfactory because \_\_\_\_\_

Claim No. \_\_\_\_\_ was not satisfactory because \_\_\_\_\_

<p><b>This form must be mailed to the:</b>          Office of Appeals          Remedies Compliance Coordinator          Department of Corrections and Rehabilitation          P.O. Box 942883          Sacramento, CA 95811</p>
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**IMPORTANT:**

This form is only intended to resolve delays in the implementation of a remedy issued by the Office of Grievances or the Office of Appeals, not to dispute a remedy or submit a new claim.

Any documents you attach to this form will not be returned to you.

Claimant Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_





**REPEAL**

<b>INSTITUTION</b> (Staff use only)	<b>LOG NUMBER</b> (Staff Use Only)	<b>DATE RECEIVED BY STAFF:</b>	
***** <b>TALK TO STAFF IF YOU HAVE AN EMERGENCY</b> *****			
<u><b>DO NOT</b></u> use a CDCR 1824 to request health care or to appeal a health care decision. This may delay your access to health care. Instead, submit a CDC 7362 or a CDCR 602-HC			
<b>INCARCERATED PERSON'S NAME</b> (Print)	<b>CDCR NUMBER</b>	<b>ASSIGNMENT</b>	<b>HOUSING</b>

**INSTRUCTIONS:**

- You may use this form if you have a physical or mental disability or if you believe you have a physical or mental disability.
- You may use this form to request a specific reasonable accommodation which, if approved, will enable you to access and/or participate in a program, service or activity. You may also use this form to submit an allegation of disability-based discrimination.
- Submit this form to the Custody Appeals Office.
- The 1824 process is intended for an individual's accommodation request. Each individual's request requires a case-by-case review.
- The CDCR 1824 is a request process, not an appeal process. All CDCR 1824 requests will receive a response.
- If you have received an 1824 decision that you disagree with, you may submit an appeal (CDCR 602, or CDCR 602-HC if you are disagreeing with a medical diagnosis/treatment decision).

**WHAT CAN'T YOU DO / WHAT IS THE PROBLEM?**

  
  
  

**WHY CAN'T YOU DO IT?**

  
  
  

**WHAT DO YOU NEED?**

  
  
  
  
  
  

*(Use the back of this form if more space is needed)*

**DO YOU HAVE DOCUMENTS THAT DESCRIBE YOUR DISABILITY?**    Yes     No     Not Sure

List and attach documents, if available.

I understand that staff have a right to interview or examine me, and my failure to cooperate may cause this request to be disapproved.

<b>INCARCERATED PERSON'S SIGNATURE</b>	<b>DATE SIGNED</b>	
Assistance in completing this form was provided by:		
_____ Last Name	_____ First Name	_____ Signature

<b>STAFF USE ONLY</b>	OGT Log No: _____ Date Received: _____
	Decision Due Date: _____
	Categories: _____

Claimant Name: \_\_\_\_\_ CDCR #: \_\_\_\_\_

Institution/Parole Region: \_\_\_\_\_ Current Housing/Parole Unit: \_\_\_\_\_

**STAFF USE ONLY**

*Use this form to appeal a decision or a remedy by the Office of Grievances.*

Do not include new complaints on this form, they must first be filed with the Office of Grievances on a Form 602-1.

OGT Log No: \_\_\_\_\_ Claim No: \_\_\_\_\_

Explain the reason for your appeal. Be as specific as you can.

*I am dissatisfied with the response I was given because* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<p><b>This form shall be submitted by mail to:</b>  Office of Appeals  Department of Corrections and Rehabilitation  P.O. Box 942883  Sacramento, CA 95811</p>
--

**IMPORTANT:**

The Office of Appeals will consider all of the supporting documentation you previously submitted to the Office of Grievances when reviewing your appeal, but will not consider any new documentation.

Therefore, it is recommended you not attach any documentation to this form.

**Furthermore, any documentation you attach to this form will not be returned to you.**

Claimant Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_



<b>STAFF USE ONLY</b>	OGT Log No: _____ Date Received: _____
	Remedy Confirmed: _____ Remedy Unconfirmed: _____
	Screen Out: _____ Status Letter: _____ Resolved: _____

Claimant Name: \_\_\_\_\_ CDCR #: \_\_\_\_\_

Institution/Parole Region: \_\_\_\_\_ Current Housing/Parole Unit: \_\_\_\_\_

*Use this form to ask for a remedy that was granted but is overdue.*

Do not include new complaints on this form, they must first be filed with the Office of Grievances on a Form 602-1.

Grievance or Appeal Log No: \_\_\_\_\_

Claim No: \_\_\_\_\_

Date of Decision: \_\_\_\_\_

Description of Remedy: \_\_\_\_\_

**This form must be submitted by mail to:**  
 Remedies Compliance Coordinator  
 Department of Corrections and Rehabilitation  
 P.O. Box 942883  
 Sacramento, CA 95811

**IMPORTANT:**

The Remedies Compliance Program is only intended to resolve delays in the implementation of a remedy previously granted by the Office of Grievances or the Office of Appeals; it is not intended for new issues, to seek additional remedies, or to dispute the remedy provided.

When reviewing this request, the Office of Appeals will consider all of the supporting documentation you previously submitted to the Office of Grievances but will not consider any new documentation.

Therefore, it is recommended you not attach any documentation to this form.

**Furthermore, any documentation you attach to this form will not be returned to you.**

Claimant Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_





Tracking #:

SECTION C: Health Care Grievance Appeal. If you are dissatisfied with the Institutional Level Grievance Response, explain the reason below (if more space is needed, use Section C of the CDCR 602 HC A), and submit the entire health care grievance package by mail for Headquarters' (HQ) Level health care grievance appeal review. Mail to: Health Care Correspondence and Appeals Branch, P.O. Box 588500, Elk Grove, CA 95758.

Patient Signature:

Date Submitted:

SECTION D: HEALTH CARE GRIEVANCE APPEAL REVIEW HQ LEVEL: Staff Use Only Is a CDCR 602 HC A attached?  Yes  No

This grievance has been:

- Rejected (See attached letter for instruction): Date: \_\_\_\_\_ Date: \_\_\_\_\_
- Withdrawn (see section E)  Accepted
- Amendment Date: \_\_\_\_\_

Interview Conducted?  Yes  No Date of Interview: \_\_\_\_\_ Interview Location: \_\_\_\_\_

Interviewer Name and Title (print): \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Disposition: See attached letter  Intervention  No Intervention

*This decision exhausts your administrative remedies.*

HQ Use Only: Date closed and mailed/delivered to patient:

SECTION E: Patient requests to WITHDRAW health care grievance: I request that this health care grievance be withdrawn from further review. Reason:

Patient Signature:

Date Submitted:

Staff Name and Title (Print):

Signature:

Date:

**STAFF USE ONLY**

## **FINAL STATEMENT OF REASONS**

### **DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

The California Department of Corrections and Rehabilitation (CDCR or the department) has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action.

The department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination.

The department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned.

The department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

### **UPDATES TO THE INITIAL STATEMENT OF REASONS (ISOR)**

**Economic Impact Assessment:** The department hereby provides the following updates to the Economic Impact Assessment:

#### **Creation or Elimination of Jobs within the State of California**

The department has determined the proposed regulations will not have an impact on the creation or elimination of jobs within California as the proposed regulations affect the internal management of prisons only.

#### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

The department has determined the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California as the proposed regulations affect the internal management of prisons only.

#### **Expansion of Businesses Currently Doing Business within the State of California**

The department has determined the proposed regulations will not have an impact on the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

#### **Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The department has determined the proposed regulations will have no impact upon the health and welfare of California residents, worker safety, and the state's environment.

### **Specific Purpose and Rationale for Each Section**

The following documents are incorporated by reference:

The Notice of Change to Regulations as Originally Proposed (Renotice)  
The Second Notice of Change to Regulations as Originally Proposed (Second Renotice)  
The Third Notice of Change to Regulations as Originally Proposed (Third Renotice)

Each of these documents describes changes to the regulation text made during the respective notice period and explains the purpose and necessity for those changes.

The department has determined that the following updates to the Initial Statement of Reasons are needed to ensure the department has established the purpose and necessity for various changes to the regulation text made during the three Renotice periods.

**Subsection 3480(b):** Now that the CDCR Form 602-1/1824 has been incorporated into the regulations, these disability-related terms and processes are being incorporated into regulations. These definitions were developed in conjunction with requirements specified in the court-ordered *Armstrong* Remedial Plan. These definitions need to be adopted to ensure their meaning is clear. The definitions are used throughout these regulations. Therefore, a clear understanding of their meaning is necessary to prevent a reader from misunderstanding their meaning.

**Subsection 3483(a)(2):** This requirement and the associated timeframes were developed in conjunction with requirements specified in the court-ordered *Armstrong* Remedial Plan. Agreements reached between the department and the plaintiffs concerning the processing of disability-related requests included improvements to an interim accommodation process. Specifically, a disability-related request seeking an accommodation would be referred to the Americans with Disability Act (ADA) Reviewing Authority when staff identified a potential risk of injury or other serious harm to the requestor while the request was being processed. In many cases, the request process may take 30 calendar days to complete; therefore, a decision to require an interim accommodation decision within five days was decided upon by all involved parties as a reasonable amount of time. These timeframes are now part of the Court's order.

**Subsection 3483(e)(1)(B):** This requirement was developed in conjunction with requirements specified in the court-ordered *Armstrong* Remedial Plan. Agreements reached between the department and the plaintiffs included improvements to how disability-related complaints were to be handled, including the establishment of the Americans with Disability Act (ADA) Reviewing Authority (also referred to as an ADA Coordinator). One of the responsibilities of this position includes oversight of the disability-related complaint process, also referred to as allegations of non-compliance. Part of this oversight process includes the assigning of a supervisor to gather facts and report their findings back to the ADA Reviewing Authority.

**Subsection 3483(f):** Out of necessity, these exceptions are established so that the grievance and appeal process can function at the local level; otherwise, allegations against Hiring Authorities or other high ranking officials could not be answered by any local staff who report to them, as Hiring Authorities and high ranking officials chair most committees and sign most documents. For example, if the Warden or Chief Deputy Warden has to be recused, all staff at the institution who report to the Warden or Chief Deputy Warden would also have to be recused, thereby often leaving no one to respond to the claim. The four exceptions under (f) are routine processes that are engaged in frequently by high-level staff.

**Subsection 3483(g)(1)(A):** This requirement was developed in conjunction with requirements specified in the court-ordered *Armstrong* Remedial Plan. Agreements reached between the department and the

plaintiffs included improvements to the decision-making process for requests for reasonable accommodation. Specifically, a Reasonable Accommodation Panel was established to determine whether a request for accommodation should be deemed reasonable or not. The ADA Reviewing Authority, who is the chairperson of the Reasonable Accommodation Panel, is charged with rendering the decision.

**Subsection 3483(I)(1)(H):** The Initial Statement of Reasons erroneously stated that a claim given a “pending legal matter” decision exhausted the administrative remedies process. As pointed out by a commenter, this is incorrect. The “pending legal matter” decision does not exhaust the process. The text of the proposed regulations shows this correctly; the error occurred in the ISOR only.

**Subsection 3483.5:** The administrative remedies process provides a means for incarcerated and supervised persons to address grievances, reasonable accommodation requests, and appeals. While recent regulatory revisions removed limits placed on the number of claims a person may file, and while most incarcerated and supervised persons continue to use the process responsibly, a small percentage of individuals flooded the system with claims. To more efficiently respond to the high number of claims from these individuals, the Grievance Resolution Team (GRT) process was adopted. Concerning the rationale for limiting the number of claimants to 50 is provided in the ISOR for subsection 3483.5(a) which states: “Since this is a new process being introduced into the administrative remedies process the number of claimants eligible for this review process is limited to 50 individuals (or more in the event of ties). Using a 90-day window to gather data when identifying the top 50 individuals in a given month was deemed a reasonable period of time to identify a pattern of activity, as opposed to a shorter period of time which would be prone to momentary spikes of activity that are not a good indicator of ongoing atypical grievance activity.” Additionally, these initial numbers were discussed with both the Armstrong plaintiffs and the court expert.

**Subsection 3483.5(a):** Since this is a new process being introduced into the administrative remedies process, the number of claimants eligible for this review process is limited to 50 individuals (or more in the event of ties) because they file the highest number of claims and the department has limited resources to devote to the GRT. Additionally, this initial number was discussed with both the Armstrong plaintiffs and the court expert.

**Subsection 3483.5(c):** Both the five-day, and eight-day processing timelines when a clarifying interview is needed, were selected to both expeditiously process a claim and provide enough time to respond to the claim within 60 calendar days when processed as a routine review, regardless of whether the claim meets the criteria for division to the GRT. The 5-day timeframe was agreed upon during negotiations with the plaintiff’s counsel. The department determined that adding three days for situations in which a clarifying interview is necessary was reasonable because these meetings require working with the institution and claimant to determine a time and location that fits the schedules of both the claimant and staff.

**Subsections 3483.5(c)(1) through (5):** A claim must fit one of five criteria for it to be referred through the GRT process. These five criteria were established following extensive discussions with both the Armstrong plaintiffs and the court expert. Criteria (c)(1) was developed because without sufficient detail about the claim there is no effective means for the department to gather relevant information and render a decision. Criteria (c)(2) was developed because it serves no purpose to gather information regarding the claim when the allegation is factually impossible. As in the case with criteria (c)(2), criteria (c)(3) was developed because it serves no purpose to gather information regarding the claim when the allegation is highly implausible (i.e., so far outside the bounds of probability as to be a waste of resources to investigate). Criteria (c)(4) was developed because investigating the repeated filing of a claim that essentially mirrors a previously investigated claim that was found not to be true would be a waste of limited departmental resources. Criteria (c)(5) was developed because it serves no purpose to gather information and expend resources investigating the issue when readily available independent documentary evidence clearly refutes the allegation in question.

**Subsections 3483.5(d)(1) and (2):** Since this is a new process, a decision was made to err on the side of caution when deciding whether to apply one of the criteria listed in subsection 3483.5(c) by requiring unanimity. Without a unanimous decision, the claim is returned for screening through the administrative remedies process, excluding the GRT process.

**Subsection 3485(g)(3):** If the Office of Appeals grants a claim, then the Office of Grievances shall ensure that the corresponding remedy is implemented no later than 30 calendar days after the date at the top of the decision letter issued by the Office of Appeals. The 30-day deadline was deemed to be a reasonable amount of time to allow a claim to be revisited and a new decision letter issued that corrects the issue identified by the Office of Appeals in the original decision. It is further noted that the 30-day timeframe for implementing a remedy was previously adopted regulatory language which has been in effect for several years. The 30-day deadline ordered by the Office of Appeals when a claim is remanded is consistent with the 30-day deadline found in subsection 3485(j).

Previously, when the Office of Appeals detected an error in a decision by the Office of Grievances, they granted the claim and ordered the institution to correct a substantive or procedural error. In such circumstances, section 3485(j) required that the institution comply with the order within 30 calendar days. This new “Remand” process was established in these regulations to address procedural errors and thus functions the same way as a substantive grant described above, and therefore uses the same timeframe.

**Subsection 3486.2(b):** After being assigned a case to investigate, this section requires an investigator to notify management if they believe a potential conflict of interest exists. A managerial review is then required to verify whether a conflict exists. Using a manager is necessary to ensure someone independent of the assigned investigator is used to conduct the review and further reduce the potential for bias. Requiring a manager to reassign a case without first determining whether an actual conflict exists would be a waste of departmental resources. Furthermore, having a manager verify that a conflict of interest exists may prevent additional cases from being assigned to an examiner once a conflict is established.

**NOTE REGARDING CDCR FORMS INCORPORATED BY REFERENCE (CCR, TITLE 1, SECTION 20):**

This note explains the department’s justification for incorporating forms by reference. The department uses over 1,500 forms, many of which are regulatory. It would be unduly cumbersome, expensive and impractical to print all of these forms in the CCR text, therefore the department has always incorporated forms by reference, except in specific circumstances which do not apply in the case of these regulations.

The adopted, amended, and/or repealed forms included in this rulemaking action were available to the public for review.

**NON-SUBSTANTIVE AMENDMENT TO FINAL TEXT**

As part of the Second Notice of Change to Text Originally Proposed, the department adopted new section 3483.5, Grievance Resolution Team. As a commenter indicated, the department neglected to add authority and reference citations to this new section. In order to correct this clerical error, Penal Code section 5058 is added as the authority citation, and Penal Code section 5054 is added as the reference citation. These statutes are standard citations for most department regulations. This correction does not alter the meaning or effect of any provision of this new section.

**SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD:**

**Abbreviations:**

CST = Centralized Screening Team

OOG = Office of Grievances

OOA = Office of Appeals  
ADA = Americans with Disabilities Act

**Commenter #1:** Commenter states that all grievances and appeals should be treated as legal/confidential mail. The right to attach a supporting document “creates an instrument of legal mail.” This would help ensure incarcerated persons receive their responses in a timely manner.

**Response:** Correspondence with the Office of Appeals is considered confidential pursuant to CCR 3141(c)(8) but not considered legal mail. Mail sent to the Office of Appeals is only to be opened by Office of Appeals staff pursuant to CCR 3484(a). Lockboxes are available in all housing units for claimants to submit a grievance. Only designated staff are authorized to retrieve a grievance from a lockbox and hand deliver them to the Office of Grievances, who then open and date stamp the grievance, ensuring grievances are processed in a timely manner. This practice was deemed preferable to having claimants hand their grievance to staff, which some claimants may find too confrontational, which could lead to a chilling effect. With regard to the delivery of grievance and appeal decisions, subsections 3483(i) and 3485(i) require that decisions be delivered within ten business days for the office of grievances and five business days for the Office of Appeals, respectively. These time frames were deemed an appropriate amount of time in order to mail decision letters to incarcerated persons or deliver decision letters to incarcerated persons who require effective communication.

**Commenter #2:**

**Comment 1:** Commenter states “the word ‘disputes’ as used in section 3480(b)(7) is confusing” and should be replaced with “concerns” for improved clarity. Commenter states “The most common sense of the word ‘disputes’ is to contend that something is not true.”

**Response:** Section 3480(b)(7) has been renumbered to 3487(b)(8) and the term “disputes” has been changed to “challenges.” This term’s meanings include, but are not limited to: 1) To make or present a challenge; 2) to dispute; especially as being unjust, invalid, or outmoded; 3) to confront or challenge; 4) to question formally the legality of someone or something.

**Comment 2:** Commenter states the references to “preponderance of the evidence” in sections 3483(g)(1) and (2) are confusing as they relate to the denial of policy reviews in section 3483(g)(1)(A) and the granting of policy reviews in section 3483(g)(2)(A). Whether policy reviews are granted or denied depends on whether or not “the policy under review was a violation or contradiction of an established rule of law.” See, section 3483(g)(2)(A). This is a pure question of law, not a question of fact. Only questions of fact have a standard of proof. The references to the “preponderance of the evidence” standard of proof as they relate to policy reviews therefore make no sense and are confusing. These sections should be amended to make clear that the standard of proof is not a requirement for policy reviews.

**Response:** The term “policy review” was deleted here and throughout the chapter because the number of policy reviews was inconsequential.

**Comment 3:** Commenter states the non-discretionary exclusionary criteria contained in section 3483(g)(6)(E)(1) – (5) should be moved to section 3481(e). These sections require the Grievance Coordinator to reject five types of claims. The Grievance Coordinator does not have any discretion to actually decide these types of claims. Incarcerated persons may appeal such a rejection, but the Office of Appeals must deny such appeals. Therefore, these five types of claims are categorically excluded from receiving a substantive decision by the administrative remedies regulations.

The ordinary way to exclude categories or claims is to exclude them from being brought in the first instance. For example, section 3481(e) excludes claims based on the conduct of non-department employees. Claims excluded in this matter are exhausted because no administrative remedy exists. The categories of claims contained in sections 3483(g)(6)(E)(1) - (5) should also be excluded in this manner. As it stands, to exhaust

such excluded claims, incarcerated persons must raise the claim, the Grievance Coordinator must reject the claims, the incarcerated persons must appeal the rejection, and the Appeals Coordinator must deny the appeal. This procedure unnecessarily delays incarcerated persons' judicial review of excluded claims, wastes state resources, and risks Grievance Coordinators mistakenly accepting excluded claims.

**Response:** While the commenter believes "the ordinary way to exclude categories or claims is to exclude them from being brought in the first instance," these regulations are drafted in recognition that claimants may submit grievances that violate the regulations intentionally, or due to a lack of information; regardless the department will provide the claimant with an answer explaining why the grievance was excluded.

**Comment 4:** Commenter states that claims that allege that certain public records are being improperly withheld should be excluded from the administrative remedies procedures. These claims "raise mixed questions of fact and law" and do not lend themselves to resolution by the existing remedies. CDCR attorneys are required to approve any decision to withhold public records. Staff who review and respond to grievances and appeals do not have the training or expertise to review these decisions. Commenter states that "the appeals court has held that administrative remedies like the department's do not have to be exhausted for public records claims", citing *Rittman v. Public Utilities Com.*

**Response:** Requests for public records are referred to the Public Records Act (PRA) Coordinator for review and response, pursuant to subsection 3483(g)(4)(D). The PRA Coordinator may consult with other departmental staff, including staff from the Office of Legal Affairs, prior to completing a response. Only after receiving a response from a PRA Coordinator and being dissatisfied with the response should a claimant file a grievance. Similarly, the grievance coordinator may consult with the Office of Legal Affairs. Additionally, if an appeal is filed, the Office of Appeals (OOA) may consult with the Office of Legal Affairs.

**Comment 5:** Commenter states that claims that challenge the validity of any regulation should be excluded from the administrative remedies procedures, as they do not lend themselves to resolution by existing remedies. These claims raise pure questions of law. Current reviewing authorities do not have the training or expertise to resolve these claims. These claims "are not amenable to the policy that the Reviewing Authority must be one rank higher than the highest ranked employee involved in a claim. The highest ranked employee involved in such claims is necessarily the Secretary." Commenter states that "some superior courts have held that the department's administrative remedies need not be exhausted for claims that challenge the validity of a regulation pursuant to Government Code section 11350."

**Response:** The commenter does not cite a provision of the proposed regulations that excludes claims challenging the validity of a regulation from the administrative remedies procedures. Pursuant to subsection 3486(b)(7), staff misconduct means "behavior that results in a violation of law, regulation, policy, or procedure, or to actions contrary to an ethical or professional standard." Based on this definition, claims challenging the validity of a regulation are not addressed in the department's grievance and appeal process. Instead, claims challenging staff adherence to a regulation are subject to review and will receive a response.

**Comment 6:** Commenter states the term "policy" is ambiguous and should be defined in these regulations. The term could be used to refer to Department Operations Manual (DOM) policies, DOM supplements, local operating procedures, regulations, pilot projects, memoranda, and informal policies. Commenter cites a court ruling which refers to department regulations as "policies." The regulations should define the term for clarity.

**Response:** The department contends that the term "policy" is clear as used in this context. Pursuant to subsection 3486(b)(7), staff misconduct means "behavior that results in a violation of law, regulation, policy, or procedure, or to actions contrary to an ethical or professional standard." The use of the word policy in this subsection was intended to cover any written policies issued by the department not contained in a regulation or the Department Operations Manual (e.g., memos).

### **Commenter #3:**

**Comment 1:** Commenter opposes the proposed regulations and states that they only benefit “bad apple employees” and roll back safeguards for incarcerated persons. The regulations adopted in 2022 were “a real attempt to hold staff accountable by taking misconduct claims out of CDCR’s hands and allowing an independent agency to review” claims. The department should not only hold incarcerated persons accountable, but should also make sure staff do not retaliate, abuse their power, or commit misconduct.

**Response:** This comment is generalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore this comment is irrelevant pursuant to Government Code Section 11346.9(a)(3). The department acknowledges the commenter’s opposition to the proposed regulations but will continue with this rulemaking action for the reasons described in the Notice of Proposed Action. The 2022 regulations did not, as the commenter claims, take misconduct claims out of the department’s hands.

**Comment 2:** Commenter quotes the Informative Digest and Policy Statement Overview’s comment that “Despite exhaustive efforts to make the system work as envisioned, weaknesses threaten to cause the process to break under its own weight.” Commenter states that this statement does not specify what the weaknesses are or provide any statistics to support this claim.

**Response:** The Initial Statement of Reasons provides the department’s reasoning and justification for repealing former provisions and adopting new provisions. The 2022 regulations eliminated any deadline to submit an allegation of staff misconduct, which resulted in a larger than expected volume of such allegations.

**Comment 3:** Commenter states the regulations do not state who will comprise the Centralized Screening Team (CST) and asks whether they are department employees. Commenter asks “what makes them unbiased?” if they’re employees of the department.

**Response:** The department contends this text is clear as written. The CST will be comprised of department staff at CDCR headquarters. This is intended to reduce bias as CST members are less likely to have professional and personal connections with local institution staff accused of misconduct. The department does not have the authority to create a body comprised of non-CDCR staff.

**Comment 4:** Commenter states the routine review process “allows staff to minimize complaints by labeling them routine review.” Commenter asks “how many corrective actions have supervisors taken independently, or after a complaint prior” to the 2022 regulation adoption? Commenter states “the number of supervisors taking independent action to correct staff should be released.”

**Response:** The regulations govern how the department screens claims, and provide specific screening criteria. Any deviations from the regulations may be reviewed by the Office of Audits and Court Compliance or the independent Office of the Inspector General (OIG). OIG reviews claims weekly and provides recommendations to CST when they believe CST has deviated from regulations. These are the mechanisms the department has developed to ensure compliance with regs.

**Comment 5:** Commenter states “Section 3486(a) tries to take away the right to make staff complaints, and minimizes it as a ‘claim.’ A complaint is specifically referring to misconduct. A claim is an amorphous term open for interpretation.”

**Response:** The regs define “Claim” as a single issue or event or a course of conduct arising from a unique set of facts or circumstances. This definition ensures that the term can be understood by all parties and is not “amorphous.”

NOTE: The remainder of this comment contains the commenter's summary of their own grievance and appeal against the department. This does not constitute a relevant comment pursuant to Government Code section 11346.9(a)(3) and is therefore dismissed.

**Commenter #4:**

**Comment 1:** Commenter provides an extensive background regarding the grievance and appeal process, including staff misconduct complaints, and summarizes previous rulemaking efforts and relevant court cases such as *Madrid*.

**Response:** This comment is generalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore this comment is irrelevant pursuant to Government Code Section 11346.9(a)(3). The department acknowledges the commenter's opposition to the proposed regulations but will continue with this rulemaking action for the reasons described in the Notice of Proposed Action.

**Comment 2:** Commenter states "The need for staff misconduct investigations could be minimized with proper classification and cohorting policies and procedures which reflect the nature of the inmate population specifically rather than generally."

**Response:** The department is unable to determine the commenter's intent with this statement or how the proposal could be operationalized, therefore no accommodation is possible.

**Comment 3:** Commenter states that three new decision types proposed in the regulations (Remanded, Overlooked, and Bypassed) will prevent incarcerated persons from exhausting all available administrative remedies, and therefore from accessing the courts. The department can use these three decision types to force claims back to institutions without time constraints. These new provisions are inconsistent with other provisions of law which guarantee access to the courts.

**Response:** These three decision types each have time constraints explicit in the regulations. For "Remanded" the time constraint is 30 calendar days, as described in subsection 3483(g)(3). For "Overlooked" and "Bypassed" the time constraint is 60 calendar days as described in subsection 3483(g).

**Comment 4:** Commenter states that the provision of the proposed regulations that states that department staff shall not access grievances is "truly laughable." Current collective bargaining rules allow correctional staff to request and receive copies of any grievance filed against them, and no rule prevents them from showing the grievance to other staff, thereby perpetuating the code of silence.

**Response:** The regulations establish that staff shall not access the claims database unless they have a business need. While other laws may permit employees access to complaints filed against them specifically, and employees may choose to share that information with others, this section was not intended to prohibit that activity. Instead, it was intended to prohibit staff from accessing complaints against other staff when they do not have a business need to do so. The code of silence is explicitly prohibited by department regulations (section 3392.5)

**Comment 5:** Commenter proposes that all incarcerated persons, correctional staff, the department itself, and the union representing correctional staff, implement a formal code of conduct. This could "eliminate the need for court interventions."

**Response:** This proposal is impractical and may require enabling legislation and revisions to collective bargaining agreements. The comment is outside the scope of the proposed regulations.

**Comment 6:** Commenter proposes "informal resolutions at the institutional level". Commenter states this was the process "envisioned" in 2010, and only failed because department staff were required to sign

complaint forms presented to them by incarcerated persons, and refused to do so. Commenter proposes a grievance committee similar to the Inmate Advisory Council. This committee would meet daily with a specially hired administrator who exclusively handles complaints from incarcerated persons, with the goal of resolving issues informally or referring them to headquarters or court review.

**Response:** These regulations address the formal administrative remedies process only and therefore this comment is outside the scope of the regulations.

**Comment 7:** Commenter proposes to “identify a streamlined to Sacramento process for those grievances challenging regulations far beyond the local institution’s ability to resolve.” For policy reviews, there should be an immediate bypass of institutional review by the Office of Grievances with a required review by department attorneys, with decisions available to all incarcerated persons via their wireless devices. Alternative language should be included in the new regulations related to duplicative grievances already raised under policy review. There is a difference between an Operational Procedure and staff member’s direct involvement in an event or incident. Specific direction should be provided in the grievance process to culling and filtering in an effort to permit all complaints to be raised without overwhelming the system

**Response:** Regarding the comment concerning policy reviews, these reviews were removed from the text, as the number of policy of reviews was inconsequential. The regulations require that all claims be addressed locally first in order to collect evidence relevant to the claim before referring the claim to headquarters, where fact-gathering would be impractical. If claims were “streamlined” directly to headquarters, the opportunity for a secondary review would be lost. Additionally, tasking department attorneys with primary review of grievances would require additional staffing within the Office of Legal Affairs. It is worth noting that the Office of Appeals often consults with department attorneys when necessary. Regarding wireless devices, the department continues to explore options to provide more information to incarcerated persons via their devices.

**Comment 8:** The past has shown what must be done going forward if one looks to historical realities. Therefore, it is imperative for the CDCR to acknowledge that when it states: "The department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document," it is not in compliance with the APA. Without any direct evidence nor proof of emergency, the department is acting arbitrarily and capriciously. Engagement with parties directly impacted by these regulations is warranted under the laws of the state of California. These proposed alternatives must be discussed in an open forum so the various stakeholders can participate. The aim of the APA is not just a high level of public participation in the rulemaking process, but a high level of "meaningful" participation in that process.

**Response:** The APA states that rulemaking agencies must identify “each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption” of the proposed regulations. The language “if any” makes clear that agencies must only identify such documents or reports in cases when such documents were relied upon. The department did not rely on any report contemplated by this provision of law.

**Comment 9:** For any and all policy reviews, there should be an immediate bypass of institutional OOG review with a required review by Legal Affairs in Sacramento similar to an OAL petition with results and decisions posted to the tablets so that the inmate population is fully aware of the legal positions of the department in an effort to avoid repetitive and redundant claims from being presented through the 602 process. Alternative language should be included in the new regulations related to duplicative grievances already raised under policy review. There is a difference between an Operational Procedure and staff members direct involvement in an event or incident. Specific direction should be provided in the grievance process to culling and filtering in an effort to permit all complaints to be raised without overwhelming the system.

**Response:** The commenter states that “alternative language should be included” but does not suggest such language. This comment is specifically regarding policy reviews, and was received during the initial public comment period. After the initial public comment period, policy reviews were eliminated from the proposed regulations as part of a renote. Therefore, the comment is related to a deleted provision and cannot be accommodated.

**Commenter #5:**

**Comment 1:** Commenter states there is an inconsistency between the ISOR and the proposed text regarding subsection 3483(l)(1)(H); specifically, whether “pending legal matter” amounts to exhaustion of the administrative remedies process.

**Response:** The department acknowledges this inconsistency. The ISOR was incorrect. The department has updated the ISOR statement regarding this provision in the Final Statement of Reasons.

**Comment 2:** Commenter states there is an inconsistency between the ISOR and the proposed text; specifically, where the mailing address is located to submit an appeal of a grievance decision.

**Response:** The proposed text states the mailing address is located on the CDCR Form 602-2. A copy of this form is generated electronically and is attached to each grievance response. Should the Office of Appeals relocate in the future, the electronic system will be promptly updated to provide the claimant with the current address of the Office of Appeals. This solution is preferable to having to update the regulations, which is both lengthy and costly, and then ensure the population has the most up-to-date copy from which to obtain an address.

**Comment 3:** Commenter states there is an inconsistency between the ISOR and the proposed text; specifically, whether anyone can submit a complaint alleging staff misconduct.

**Response:** The proposed text makes it clear that this section only applies to claims alleging staff misconduct toward an incarcerated or supervised person. Allegations of staff misconduct that do not involve an incarcerated or supervised person are addressed separately and are routed through the employee’s hiring authority.

**Comment 4:** Commenter states that CCR 3481(e), which speaks to a claimant’s ability to grieve an issue when the issue does not involve the department or departmental staff, is confusing and suggests alternate wording.

**Response:** The department accommodated the commenter’s section to replace the verbiage “A claimant does not have the” with the commenter’s suggested verbiage “This Article does not create” a right to grieve or appeal.

**Comment 5:** Commenter states there are textual issues between CCR 3483(g)(7) and CCR 3485(g)(7).

**Response:** In CCR 3485(g)(7) the term “grievance” was replaced with the term “appeal.”

**Comment 6:** Commenter states portions of CCR 3483(g)(6)(E), which describes conditions when a claim may be rejected, do not have a clear legal rationale or sufficient justification for their inclusion in this section. Specific to CCR 3483(g)(6)(E)(1), the commenter said it would be better to inform the claimant that a claim concerning an appeal decision is exhausted rather than “rejected.”

**Response:** With regards to the commenter’s concerns regarding rejections of grievances pursuant to subsection 3483(g)(6)(E)(5), the judge or hearing officer presiding over the matter is responsible for determining the credibility of such statements; and the parties are responsible for raising credibility

concerns during those proceedings. Furthermore, credibility determinations such as these are governed by the rules of the court or tribunal in question, not by the department's administrative remedies process.

With regards to the commenter's concerns regarding rejections of grievances pursuant to subsection 3483(g)(6)(E)(2) and (3), the internal fact-gathering process used by the department to determine if an employee violated departmental policy or not is an important step toward holding an employee accountable and is governed by the State's progressive disciplinary process, not by the department's administrative remedies process.

With regards to the commenter's concerns regarding rejections of grievances pursuant to subsection 3483(g)(6)(E)(4), the findings made by a Hiring Authority at the conclusion of an internal investigation are an important step toward holding an employee accountable and are governed by the State's progressive disciplinary process, not by the department's administrative remedies process.

With regards to the commenter's concerns regarding rejections of grievances pursuant to subsection 3483(g)(6)(E)(4), claims concerning a decision issued by the Office of Appeals generally means that your claim has been reviewed and answered at the first level of the administrative remedies process and at the second level of the process. Once your claim has been reviewed and answered at the second level, you may not dispute that decision at the first level.

**Comment 7:** Commenter states the category "overlooked" creates the potential for a claimant to be unable to exhaust the administrative remedies process when a grievance decision failed to address a claim. The commenter states these regulations do not establish any sanction for the Office of Grievance's failure to comply with the requirements of CCR 3483.

**Response:** The Office of Appeals is tasked with identifying any deficiencies within the offices of grievances such as the one raised by the commenter. Furthermore, the department's Office of Audits and Court Compliance independently monitors the administrative remedies process and would issue corrective action in the event such a situation were to occur.

**Comment 8:** Commenter states that when a claim is "Time Expired" the claimant is left wondering what to do next when a decision was not completed timely.

**Response:** If an appeal time expires, meaning the Office of Appeals failed to provide a response within 60 calendar days as required by these regs, then the decision issued by the local Office of Grievances becomes the department's final response. Depending on that response, the claimant may choose to take whatever course of action they believe is appropriate, including judicial review.

**Comment 9:** Commenter states consolidation of the grievance and reasonable accommodation request forms will create confusion which would be exacerbated should a request for an accommodation time expire. The commenter cited a conundrum between exhausting a request and seeking damages versus obtaining a practical remedy to an obstacle to daily living. The commenter questions which is the lesser of two evils, creating a rule that provides a fast track to exhaustion of the claimant's administrative remedies which in turn eases the path to court but can be expected to render the administrative remedies process less effective and less reliable, and burdens the claimant with litigation.

**Response:** Although the review and response processes for grievance and reasonable accommodation requests are distinctly different, the use of one form for both has clear advantages. Prior to the incorporation of the two forms, the incarcerated person had to determine which form they needed to use to have their issue addressed. Oftentimes, this confusion led to the wrong form being used or multiple forms being submitted. All forms are ultimately received by the Office of Grievances, whose staff process the issue, not on the form it was submitted on, but rather based on the contents of the issue as written. The one form currently in use has two distinct sections: the top section for requesting a reasonable accommodation, and the bottom section for submitting a grievance claim. Should the incarcerated person accidentally complete

the wrong section, staff reviewing the document will ensure the issue is logged and routed properly. All reasonable accommodation requests are routed to a Reasonable Accommodation Panel comprised of subject matter experts who will review and respond to each request. Routine grievance claims are routed to the area best able to address the issue under review.

**Comment 10:** Commenter states “the department’s reason for not publishing the forms in the regulations is unconvincing.”

**Response:** The department’s reasoning for incorporating forms by reference rather than publishing the forms in the California Code of Regulations (CCR) complies with CCR Title 1, section 20(c)(1) and has been accepted by the Office of Administrative Law as part of several rulemaking actions in the past. That reasoning is included on page 1 of this document.

**Comment 11:** In the case of sub-subparagraph 1 of the proposed §3483(g)(6)(E), by contrast, there is a sensible reason for not issuing a fresh appeal decision since, as the ISOR laconically puts it, “the Office of Appeals is the final level of appeal” (p.13). However, rather than (so to speak) stamping a would-be appeal of an appeal “Rejected” a more helpful response would be to issue a *notice of exhaustion of administrative remedies* for the claim.

**Response:** The department chooses not to adopt the commenter’s recommendation. The commenter assumes that all appeals that fall under subsection 3483(g)(6)(E) are exhausted and thus deserving of a notification of exhaustion. However, if the claimant failed to follow the regulations their appeal may not be exhausted and such a notification would be improper. The more accurate response is to simply reject the claim for appeal because it was previously answered by the Office of Appeals, rather than incorrectly assume the appeal was exhausted by providing the commenter’s recommended notification.

**Commenter #6:**

**Comment 1:** Commenter states the proposed regulations eliminate the use of Locally Designated Investigators (LDI) and instead will have this workload routed to routine grievance reviewers. The commenter is concerned that this change may result in incomplete and biased investigations into complaints about less serious categories of staff misconduct. Although Defendants assert that, “the top-heavy process for less serious issues has overwhelmed the limited resources within the Office of Internal Affairs (OIA),” Plaintiffs’ counsel maintain that CDCR has for years failed to take the steps necessary to adequately staff the new staff complaint system implemented to comply with the *Armstrong* court orders, and have not addressed inefficiencies in conducting staff complaint investigations reported on for years by Plaintiffs’ counsel and the Office of Inspector General.

**Response:** The Allegation Inquiry process was replaced with a “routine review” process for grievances and requests for reasonable accommodation. The old Allegation Inquiry process bypassed managers with oversight of these areas from being directly involved. This top-heavy process for less serious issues overwhelmed the limited resources within the Office of Internal Affairs and upper management. The new routine review process will be conducted by a supervisor or manager responsible for gathering facts and determining if the complaint is true; if true, then they shall recommend corrective action, if appropriate. Any corrective action would be presented to a manager for approval. During a routine review, if a supervisor gathers facts which may result in adverse action, including the discovery of prior similar claims of sustained staff misconduct against the staff involved, the Reviewing Authority shall refer the matter to the Office of Internal Affairs for investigation. Regarding the comment that the department has not adequately staffed the complaint system, this is not a comment regarding a regulatory provision of the proposed regulations. Furthermore, the court order referred to by the commenter does not mandate specific staffing levels, but rather requires that thorough and unbiased investigations be conducted into allegations of staff misconduct. These regulations will modify the process of conducting investigations to be more efficient while continuing to ensure that they are conducted in a thorough and unbiased manner. Therefore, the proposed regulations do not violate court orders.

**Comment 2:** Commenter states regulations should make it clear that allegations of staff misconduct may be routed for routine review or for an investigation, and that not all routine reviews involve staff misconduct. The commenter also states that a section should be added to the staff misconduct regulations with an explanation that staff misconduct may also be handled as a routine review.

**Response:** The definition of the term “Routine” found in subsection 3480 has been amended to incorporate the commenter’s concerns. Additionally, subsection 3486.1 has been amended to clearly identify when a claim alleging staff misconduct is to be referred for investigation and when it is to be referred to the Office of Grievances for a routine review.

**Comment 3:** Commenter states the terms used to define the term “staff misconduct” are too vague and subjective and instead want the Allegation Decision Index (part of the Department Operations Manual) to be incorporated into the regulations.

**Response:** The definition of staff misconduct was incorporated into regulations in 2022 and is not substantively changed in these regulations. This comment is regarding existing language that is not being amended as part of this rulemaking action. That said, the terms used to define “staff misconduct” are intended to ensure that cases are referred to AIU for investigations which involve “complex issues requiring specialized investigative skills or resources,” meaning that these cases are too complex for a supervisor at a local prison to handle based on subject matter, or may need an investigation that requires the use of surveillance, search warrants, stings, or other skilled investigative tactics beyond the level of supervisor.

**Comment 4:** Commenter states that allegations of staff misconduct should not be subject to time constraints and request the previous language regarding time constraints be restored.

**Response:** Exhaustion of administrative remedies for failing to comply with time constraints, including allegations of staff misconduct, was a fixture within the department’s administrative remedies process for decades. A recent departmental regulation changed this practice and required that grievances alleging staff misconduct not be subject to time constraints. The current rulemaking action proposes to no longer exempt grievances alleging staff misconduct from complying with time constraints set forth in the administrative remedies process. Even if deemed untimely, all allegations of staff misconduct will still be looked into and notice to the claimant will be provided at the conclusion of an investigation conducted by the Office of Internal Affairs.

**Comment 5:** Commenter states claimants should be able to submit grievances that challenge “the fact gathering process” during both routine reviews and investigations of staff misconduct.

**Response:** If the department receives an allegation of staff misconduct, staff are assigned to gather relevant evidence in order to determine if the allegation is true or not, and if the allegation is true, what disciplinary action is appropriate. These are important steps toward holding employees accountable for misconduct, which may or may not lead to adverse disciplinary action against an employee. Furthermore, these steps are part of a personnel action governed by the state’s progressive disciplinary process, not by the department’s administrative remedies process. Therefore, complaints regarding the steps taken by the department in a personnel action are outside the scope of these regulations.

**Comment 6:** Commenter states that the term “granted” should not be used for appeals when a claim is returned to the Office of Grievances for reconsideration and issuance of a new decision, and question how this action differs from a “remand.” Commenter states the term “granted” should only apply to substance and granting of a requested remedy, not to process.

**Response:** The commenter makes a good point that subsection 3485(g)(2) (grant) and (g)(3) (remand) may both result in an order from the Office of Appeals to the Office of Grievances to open a new log number; however, subsection 3485(g)(3) only applies in three specific circumstances (when the Office of Grievances

fails to provide reasoning for their decision, preserve evidence, or use the correct burden of proof); whereas subsection 3485(g)(2) may require the Office of Grievances to open another log number or a variety of reasons.

**Comment 7:** Commenter raises concerns with the proposed language concerning closure of an investigation based on special conditions.

**Response:** An investigator may recommend an investigation be closed when certain special conditions are met and strong evidence proves the allegation did or did not occur. All recommendations to close an investigation based on a special condition require a manager's approval from the Office of Internal Affairs and a vertical advocate from the Office of Legal Affairs if the case is designated.

**Comment 8:** Commenter states section 3392.1(c) concerning allegation inquiries has been eliminated and wants to know if there still exists the ability to impose adverse action when there is a staff misconduct finding in the routine grievance process. The commenter questions whether the suspend and elevate process serves the same purpose of the direct adverse action principle that previously existed in the regulations and has been eliminated.

**Response:** The Direct Adverse Action process, which enabled a Hiring Authority to pursue adverse action without an investigation, has been eliminated. When a supervisor conducting a routine review discovers information which would make adverse action appropriate, then the claim must be suspended and elevated to the Centralized Screening Team for referral for an investigation.

**Comment 9:** Commenter states that the combination of the CDCR Form 602 and the Reasonable Accommodation Request Form has created confusion for both the incarcerated person population and the staff who process the combined form. The commenter states they have reviewed the use of the combined form and found incarcerated persons, especially those who have communication disabilities, have difficulty completing the form. The commenter adds that they have seen staff screening the form who fail to identify and route reasonable accommodation requests appropriately.

**Response:** Although the review and response processes for grievance and reasonable accommodation requests are distinctly different, the use of one form for both has clear advantages. Prior to the incorporation of the two forms, the incarcerated person had to determine which form they needed to use to have their issue addressed. Oftentimes, this confusion led to the wrong form being submitted which would lead to delays. In addition, incarcerated persons would often find one form or the other unavailable, which would also lead to delays. And in some cases, claimants would intentionally submit their claims on both forms, leading to abuse of the system.

Furthermore, both forms have always been collected and processed by the Office of Grievances. Currently, a single form is in use with two distinct sections: the top section for submitting a grievance claim, and the bottom section for submitting a reasonable accommodation. The benefit of this combined form is that it provides claimants with the ability to submit all their complaints or requests on a single form, reducing the possibility of confusion, errors, or intentional abuse.

In other words, should the incarcerated person accidentally complete the wrong section, staff reviewing the document will ensure the issue is logged and routed properly. All reasonable accommodation requests are routed to a Reasonable Accommodation Panel comprised of subject matter experts who will review and respond to each request. Routine grievance claims are routed to the area best able to address the issue under review. Should the Office of Grievances fail to properly log and process a reasonable accommodation request appropriately, the requestor may appeal this oversight to the Office of Appeals.

**Comment 10:** Commenter states the definition for "Reasonable accommodation request" requires modification regarding who reviews a reasonable accommodation request.

**Response:** The definition for the term “Reasonable accommodation request” in subsection 3480(b)(11) has been changed to strike the language “for review by an Office of Grievances” as the commenter correctly noted that reasonable accommodation requests should be routed to a Reasonable Accommodation Panel which is overseen by the Associate Warden responsible for compliance with the Americans with Disabilities Act.

## **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE FIRST RENOTICE PUBLIC COMMENT PERIOD:**

### **Commenter #R1**

**Comment 1:** I write as class-action counsel in *Armstrong v. Newsom*, a lawsuit involving the rights of incarcerated people with disabilities housed in prisons in California, to object to CDCR’s proposed regulatory changes. See NCR 25-06 Renotice Text (July 25, 2025). The *Armstrong* Court ordered changes to the staff complaint process at six prisons in California in order to improve the quality of investigations and to ensure that staff would be held accountable for ongoing violations of the rights of people with disabilities. *Armstrong v. Newsom*, 484 F. Supp. 3d 808, 838-39 (2020); *Armstrong v. Newsom*, No. 94-cv-2307 CW, 2021 WL 933106 (N.D. Cal. Mar. 11, 2021); *Armstrong v. Newsom*, No. 94-cv-2307 CW, 2021 WL930454 (N.D. Cal. Mar. 11, 2021). Any changes to the staff misconduct regulations are therefore relevant to and must comply with existing *Armstrong* Court orders.

We previously submitted comment on Defendants’ proposed revisions to the staff misconduct regulation on June 3, 2025. We now submit the following comment regarding additional, renoticed, proposed changes to the staff complaint regulations:

#### **1. CDCR Refuses to Define the Staff Misconduct Screening Standard in the Regulations**

Plaintiffs continue to object to CDCR’s ongoing refusal to refer to the Allegation Decision Index (ADI) in the regulations. The ADI—which was negotiated by CDCR, Plaintiffs’ counsel, and the *Armstrong* Court Expert in order to comply with the *Armstrong* Court’s orders and the court-ordered remedial plans—identifies the categories of allegations that are considered “serious” to ensure those allegations are routed to Office of Internal Affairs (OIA) for investigation. When a grievance alleges staff misconduct that meets a category on the ADI, it must be routed to the OIA for investigation. Conversely, when a grievance alleges staff misconduct that does not meet a category on the ADI, it must be routed back to the local prison for “routine” review. The ADI, therefore, is critical in determining how an allegation of staff misconduct is investigated.

But CDCR continues to refuse to acknowledge the ADI in the regulations. Instead, the regulations invent a standard that the parties have not agreed to, stating that a “claim [that] involves complex issues requiring specialized investigative skills or resources” should be “elevated for an investigation.” NCR 25-06 Renotice Text (July 25, 2025), § 3486.1(e)(1)(A). Plaintiffs have long objected to this language as too vague and subjective and inconsistent with the ADI. This confusing standard is **not and has never been** the actual standard used to route complaints, and it is thus misleading to include it in the regulations. Inclusion of this standard in the regulations, rather than including any information about how staff complaints are actually routed, will make it difficult for anyone to determine how their complaint should be handled as part of this process.<sup>1</sup> CDCR should include the ADI in the regulations, either by adding the entire ADI into the regulations or incorporating the document by reference.

<sup>1</sup>This problem, where CDCR uses a confusing and unnecessarily long word or phrase instead of using the word or phrase more commonly used, pervades the regulations. For example, instead of referring to investigators at the Allegation Investigation Unit (AIU) or the Office of Internal Affairs (OIA) investigators, the renoticed regulations refer to “specially trained headquarters investigators.” See NCR 25-06 Renotice Text (July 25, 2025), § 3486(b)(6) (“‘Investigation’ refers to the gathering of facts and evidence by a **specially trained headquarters investigator** concerning employee misconduct toward an incarcerated

or supervised person”) (emphasis added). This circumlocution makes the regulations more confusing than they need to be.

**Response:** Commenter states the Allegation Decision Index must be incorporated into these regulations. No court order has been issued mandating such action by the department. The department chose to incorporate the Allegation Decision Index in the Department Operations Manual.

That said, the terms used to define “staff misconduct” are intended to ensure that cases are referred to AIU for investigations which involve “complex issues requiring specialized investigative skills or resources,” meaning that these cases are too complex for a supervisor at a local prison to handle based on subject matter, or may need an investigation that requires the use of surveillance, search warrants, stings, or other skilled investigative tactics beyond the level of supervisor.

**Comment 2:** The Regulations Improperly Require the Routing of Serious Allegations of Staff Misconduct Through the Routine Grievance Process

The proposed regulations violate court orders and misrepresent the parties’ agreement about the routing of certain serious allegations of staff misconduct. As explained above, all grievances that allege staff misconduct on the ADI must be routed to the OIA for investigation. For years, CDCR has been attempting to limit the number of allegations that are routed to OIA for investigation because, according to CDCR, the number of allegations requiring investigation outpace OIA’s capacity to complete those investigations. Most recently, CDCR proposed that CDCR could route as “routine” an allegation that otherwise would have been routed to OIA in very limited circumstances. Specifically, CDCR could route as routine an allegation when:

1. The allegation is filed by a person who, during the prior quarter, was among the 50 incarcerated people in CDCR who had filed the most grievances;
2. The allegation meets one of the five criteria on which the parties agreed (herein “frequent filer criteria”)—insufficient detail; similar to three prior denied allegations; factually impossible; factually implausible; or documentary evidence disproves allegation of failure to act; and
3. All three members of the Grievance Resolution Team (GRT)—which consists of a Subject-Matter Expert, a representative from the Office of Appeal, and the Grievance Coordinator—agree that the allegation meets one of the above-listed criteria.

Plaintiffs agreed to not object to this proposal, in part because it includes two important safeguards—the proposal was limited to the top 50 “frequent filers” and the GRT could serve as a safety net to route meritorious allegations back to OIA. However, the regulations that CDCR now proposes do not include either safeguard. The regulations require the Centralized Screening Team (CST) to route as routine all allegations that meet the frequent filer criteria, regardless of whether the allegation was filed by one of the 50 most-frequent filers. Also, the regulations do not discuss the GRT and how it will operate. Both of these problems dramatically change the staff misconduct investigation process in a manner that is inconsistent with the *Armstrong* Court’s prior orders and the parties’ agreements.

As to the first issue—the requirement in the regulations that all allegations meeting the frequent filer criteria, regardless of who filed the allegation, be routed as routine—CDCR has admitted to a drafting mistake. During a meeting on August 7, 2025, CDCR stated that it intended the relevant language to read: [n]otwithstanding subsection (e)(1), claims concerning allegations of staff misconduct which meet one of the following criteria *may* be referred to the Office of Grievances for a routine review.” (Emphasis added). This language, in CDCR’s view, allows the CST to route allegations on the ADI as routine instead of to OIA. According to CDCR, a forthcoming internal memorandum will explain exactly which allegations will be routed as routine and which allegations will be routed to OIA.

But CDCR's proposed correction to the regulatory language does not resolve the problem. The proposed language does not provide enough clarity for the CST or for incarcerated people to understand when grievances meeting the frequent filer criteria will be routed as routine. According to that proposed language, an incarcerated person who files an allegation of staff misconduct that should be routed to the OIA "may" have their allegation routed as routine, and it remains entirely unclear under what circumstances that will happen. On its face, the proposed language provides the CST with unlimited discretion to route cases that meet the frequent filer criteria as routine or to the OIA, as it so chooses. But the parties agreed that the CST has no discretion in that decision—the CST *must* route grievances filed by the top 50 frequent filers that meet the above criteria as routine, and it *must* route grievances alleging conduct on the ADI filed by anyone else to OIA. CDCR's proposed change to the regulations does not make that process clear.

As to the second issue—the fact that the regulations omit any reference to the GRT and how it will operate—CDCR states that the same internal memorandum describing the frequent filer plan will also describe the GRT and how it will operate. That proposal is similarly inadequate. Plaintiffs cannot agree to regulations that give CDCR sweeping authority to route allegations of serious staff misconduct as routine without the regulations mentioning the safeguards that the parties agreed to.

CDCR must either add a reference to the internal memorandum in the regulations so that it is clear that the screening of grievances is subject to another document, or CDCR must add the content of that memorandum directly into the regulations.

**Response:** A new section has been added to the regulations that addresses the newly established Grievance Resolution Team (GRT). As a result, the department has provided the clarity requested by the commenter. The new section describes the process for reviewing grievances from the "frequent filers" referenced by the commenter. In addition, the new section addresses the parties who make up the GRT and are responsible for conducting the review. Also, the new section addresses the frequency of the reviews, and the criteria to be applied by the GRT. The changes to these provisions included in the Third Notice of Change to Text as Originally Proposed (third Renotice) were deemed necessary to ensure clarity regarding the GRT processes.

**Comment 3:** The Regulations Fail to Capture the Parties' Agreement about the Suspend- and-Elevate Process

The description of the "suspend-and-elevate" process in the regulations is confusing and inconsistent with the parties' agreements. See NCR 25-06 Renotice Text (July 25, 2025), § 3483(e)(6). First, the suspend-and-elevate process set forth in CDCR's proposed regulations misstates the parties' agreement on this issue. The parties agreed that a supervisor conducting a routine review of staff misconduct (*i.e.*, a claim of staff misconduct that alleges conduct not on the ADI) will suspend their investigation and refer the allegation to the CST for an OIA investigation in the following scenarios:

1. during the investigation, the supervisor discovers information suggesting the claim is on the ADI;
2. the claim, if proven true, is likely to result in adverse action (*i.e.*, the conduct is not on the ADI but is so egregious as to warrant adverse action); or
3. the claim is similar to previous staff misconduct that was sustained against the departmental staff involved and therefore adverse action should be considered.

The proposed regulations do not capture that agreement. See NCR 25-06 Renotice Text (July 25, 2025), § 3483(e)(6)(B)(1-3). They list part of the first scenario described above (the claim is on the ADI), but fail to mention the possibility that other misconduct is discovered as part of the investigation which should be referred.

The regulations also improperly combine the second and third scenarios into one provision that does not accurately represent the parties' agreement. See NCR 25-06 Renotice Text (July 25, 2025), §

3483(e)(6)(B)(2). Specifically, the proposed regulatory language states that the supervisor will suspend-and-elevate their investigation in circumstances where “[t]he claim, if proven true, is likely to result in adverse action, including instances when the accused staff member engaged in similar misconduct which was recently sustained by a Hiring Authority and resulted in corrective or adverse action.” *Id.* Those are two distinct provisions and should be separated. All claims that allege misconduct similar to prior, sustained misconduct should be routed to OIA for investigation. Under the current language, however, only claims that relate to prior, sustained misconduct *and* are likely to result in adverse action will be elevated for investigation. That language requires the supervisor to analyze both factors before elevating the grievance. The parties agreed that all allegations where the alleged misconduct could result in adverse action should be elevated, and all allegations where the alleged misconduct is similar to prior, sustained misconduct should be elevated. The regulatory language improperly turns that provision into a two-part test.

Also, CDCR inappropriately added the requirement that the employee’s misconduct must have been sustained “recently.” The parties did not agree that the misconduct had to be “recent,” nor is it clear what qualifies as “recently sustained misconduct.” The requirement that misconduct be recent should be deleted from the regulations.

Second, the regulations are unclear in their explanation about what supervisors must do when they discover staff misconduct in the course of a reasonable accommodation review:

If a supervisor assigned to conduct a reasonable accommodation review discovers information suggesting the claim involves staff misconduct, then the supervisor shall immediately suspend their activities related to the allegation of staff misconduct and refer the allegation to the Centralized Screening Team who shall determine if the claim should be elevated for a reasonable accommodation review, a routine review, or an investigation if any of the factors described in subsection (B) apply.

NCR 25-06 Renotice Text (July 25, 2025), § 3483(e)(6)(A). This language is confusing. It indicates that the supervisor must stop a reasonable accommodation review if the supervisor discovers staff misconduct; then, the supervisor must refer the allegation to the CST, who will determine whether the claim should be elevated for a reasonable accommodation review.

That process does not make sense. Also, that provision does not make it clear what should happen with the ongoing reasonable accommodation review that the supervisor was conducting when they discovered the misconduct. For example, a supervisor is responding to a wheelchair-user’s request to be pushed to his education class when the supervisor discovers that officers have been inappropriately instructing other incarcerated people not to assist that person get to class. In that situation, it is unclear from this language whether the supervisor is prevented from responding to the person’s reasonable accommodation request until the CST routes the allegation. The regulations should make clear that the underlying reasonable accommodation review should not be stopped—and the person should receive the disability accommodation, if warranted—while the staff misconduct allegation is being processed and investigated.

**Response:** Commenter expresses concern that the regulations “fail to mention the possibility that other misconduct is discovered as part of the investigation which should be referred” however that concern is resolved in subsection 3483(e)(4)(C) which states “If a supervisor assigned to a reasonable accommodation review or routine review discovers information indicating potential staff misconduct unrelated to the original claim, then the supervisor shall submit that information to the Centralized Screening Team.”

Commenter expresses concern that subsection 3483(e)(6)(B)(2) contains “two distinct provisions and should be separated”. The regulatory language in question states that a supervisor will suspend-and-elevate a case in circumstances where “[t]he claim, if proven true, is likely to result in adverse action, including instances when the accused staff member engaged in similar misconduct which was recently sustained by a Hiring Authority and resulted in corrective or adverse action.” These provisions are combined into one subsection because the only time that a claim should be elevated for investigation due

to prior similar misconduct is when the alleged misconduct is likely to result in adverse action. This approach is consistent with the state's progressive discipline model.

This commenter also states that "...nor is it clear what qualifies as "recently sustained misconduct." In response, the term "recently" was removed from the regulations, and replaced with a three-year timeframe. This more specific timeframe is consistent with the new database tool developed by the department to capture prior sustained disciplinary actions by its employees.

Regarding the comment that "The regulations should make clear that the underlying reasonable accommodation review should not be stopped" subsection 3483(e)(4)(A) states "If a supervisor assigned to conduct a reasonable accommodation review discovers information suggesting the claim involves staff misconduct, then the supervisor shall immediately suspend their activities related to the allegation of staff misconduct and refer the allegation to the Centralized Screening Team . . ." This language establishes that the supervisor should only suspend their activities "related to the allegation of staff misconduct," not their activities related to the reasonable accommodation review.

#### **Comment 4: The Regulations Should Not Include Quick Close of Cases**

Plaintiffs object to CDCR's proposal of quickly closing cases based on a brief video review. The regulations state that an investigation can be closed if, "[u]pon review of all relevant video and audio recordings, sufficient evidence exists to prove conclusively that the alleged misconduct did not occur." NCR 25-06 Renotice Text (July 25, 2025), § 3486.2(d)(1)(A). Plaintiffs object based on our experience of reviewing cases where investigators close cases after reviewing too short of a video clip, or video from the wrong day. Plaintiffs have remained willing to engage CDCR on the use of the quick-close process, including by meeting with the Office of the Inspector General (OIG) to discuss how to effectively implement a quick-close process. To date, however, CDCR has refused to meaningfully engage on this issue. Plaintiffs cannot agree to this significant change to the investigation process without meeting with necessary stakeholders and coming to a common understanding of how this process will work in practice.

Plaintiffs similarly object to CDCR's proposal of quickly closing cases based on a brief review of documentary evidence. See NCR 25-06 Renotice Text (July 25, 2025), § 3486.2(d)(1)(D). As discussed above, Plaintiffs agreed to this provision in very narrow circumstances—when the claimant was in the top 50 grievance-filers in the previous quarter and when the Grievance Resolution Team still met with the claimant monthly to discuss the allegation. CDCR now appears to be attempting to roll out this very narrow agreement on a statewide-level and without the safeguards of the GRT. We cannot agree to this change to this proposed change.

Plaintiffs also object to CDCR's proposal of quickly closing a case when video evidence determines that misconduct did occur. NCR 25-06 Renotice Text (July 25, 2025), § 3486.2(d)(1)(B). CDCR included language in the regulations that allow an investigator to recommend a case be closed when, "[u]pon review of video and audio recordings, sufficient evidence exists to prove conclusively that the alleged misconduct did occur." *Id.* In those circumstances, the regulations require that "each of the employees engaged in the alleged misconduct were given the opportunity to respond to the allegation and provide any mitigating factors that the Hiring Authority should consider." *Id.* Plaintiffs have reviewed numerous cases where investigators completed comprehensive investigations and hiring authorities sustained misconduct, yet CDCR settled the case for no or very little discipline at or before the State Personnel Board (SPB). CDCR has expressed that holding employees accountable for their misconduct requires ample evidence. In cases where CDCR believes misconduct definitively occurred, it should ensure that all relevant evidence is collected, not that investigators quickly close those cases. This provision, although well-intentioned to make better use of limited investigatory resources, will likely have the effect of CDCR failing to hold employees accountable even when the employee engages in serious misconduct.

Plaintiffs remain willing to discuss this process with CDCR, but given how often CDCR fails to hold staff accountable even when there is clear video evidence, it is unclear how this proposal would strengthen CDCR's accountability system.

**Response:** If video or audio recordings establish that a claim is true or not true by a preponderance of the evidence, then the purpose of the investigation has been satisfied, and the case may be closed for review by the Hiring Authority. If the Hiring Authority believes the investigation was inadequate they may return it to the investigator for further fact-gathering.

**Comment 5: The Regulations Limit Incarcerated People's Ability to File Grievances About Staff Misconduct They Witness**

The renoticed regulations limit an incarcerated person's ability to file a grievance about staff misconduct that they observe, in violation of the *Armstrong* Court-ordered remedial plans. The regulations allow CDCR to "reject" a grievance when "[t]he claim concerns harm to a person other than the person who signed the grievance." NCR 25-06 Renotice Text (July 25, 2025), § 3483(g)(6)(D). However, under the current, operative version of this regulation (and in previous versions of these proposed regulations), CDCR cannot reject these grievances when the third-party "claim concerns an allegation of staff misconduct." 15 C.C.R. § 3483(g)(6)(D). In other words, CDCR must provide a substantive response to an incarcerated person's grievance that alleges staff misconduct against another incarcerated person.

For the first time in the renoticed regulations, CDCR limited this language. The language now states that CDCR can reject a third-party claim from an incarcerated person unless "the claim concerns an allegation of staff misconduct *that was referred for an investigation.*" NCR 25-06 Renotice Text (July 25, 2025), § 3483(g)(6)(D). Under these proposed regulations, when an incarcerated person experiences misconduct and another incarcerated person witnesses that misconduct, CDCR can generally reject that witness's grievance. The only time CDCR cannot reject that witness's grievance is when the incarcerated person who was the direct subject of the misconduct filed a grievance about that misconduct, and that grievance was referred to the OIA for investigation. In effect, this newly added clause gives CDCR much broader authority to reject meritorious grievances about misconduct.

That language violates the court-ordered remedial plans. See *Armstrong v. Newsom*, Case No. 4:94-cv-02307-CW, Doc. 3393 (Mar. 23, 2022) (Richard J. Donovan Correctional Facility and Five Prisons (LAC, COR, SATF, CIW, and KVSP) Court Ordered Remedial Plans) at 8 (requiring, without qualification, that "[a]ll grievances submitted by an incarcerated person or parolee shall be reviewed by CST"). The provision prevents incarcerated people from filing third-party allegations of staff misconduct that does not fall on the ADI. For example, if an incarcerated person witnesses staff act incredibly discourteously to another incarcerated person, that witness is not able to file a staff misconduct complaint.

Apart from violating the remedial plans, that outcome is counterproductive. CDCR should be encouraging people to report misconduct, not giving the Office of Grievances authority to reject valid complaints of staff misconduct. Some people are too afraid to come forward to report misconduct or otherwise cannot write a grievance as a result of their disability. Also, people who report observing staff misconduct as a third party could serve as important witnesses to the misconduct review, regardless of whether it results in an ADI investigation. This is especially true in the case of reports of allegations of denials of disability accommodations—most of which will be routed as routine—and which are central to the *Armstrong* case. The regulations must not limit people's ability to report misconduct that they observe.

**Response:** Under these proposed regulations, all allegations of staff misconduct will be investigated and, if staff accountability is appropriate, the Hiring Authority shall be responsible for ensuring appropriate action is taken. Because a witness is not the principal party in an incident, these proposed regulations establish that the witness shall not receive a substantive decision letter regarding the matter. In other words, contrary to the commenter's claim, the proposed regulations place no limitations on an incarcerated person's ability to file a grievance about staff misconduct that they observe and that grievance shall be investigated.

However, witnesses will not be informed of the results of the investigation because they were not a party to the incident. Furthermore, the portion of the court order referred to by the commenter which requires that CST review all grievances submitted by an incarcerated or supervised person is still mandated in these proposed regulations. Therefore, the proposed regulations do not violate court orders.

**Comment 6:** The Regulations Improperly Limit Documents that the CST will Review to Determine Whether an Urgent or Emergent Response is Necessary

Newly added language in the renoticed regulations limit the scope of the documents that the CST will review for urgent and emergent situations. Specifically, the regulations state: “The Centralized Screening Team shall review all the documents it receives *from incarcerated or supervised persons* to determine” whether they contain issues requiring immediate action from the Hiring Authority. NCR 25-06 Renotice Text (July 25, 2025), § 3486.1(d) (emphasis added). It is unclear why the CST will only review documents submitted by incarcerated or supervised persons for urgent or emergent content. This provision should be expanded to include documents submitted by anyone, not only incarcerated or supervised persons.

**Response:** If the Centralized Screening Team receives a document that was not routed through the local grievance office, such as a citizen’s complaint or advocacy letter, all claims will receive an imminent risk assessment by other departmental representatives prior to the document being forwarded to the Centralized Screening Team. The reason CST only reviews documents from incarcerated and supervised persons is to ensure that the review by the local grievance office is accurate.

**Comment 7:** The Regulations Improperly Delete the Investigation Assignment Process

CDCR is required by court-ordered remedial plan to review an allegation of staff misconduct and assign the level of investigator based on the complexity of the case. See *Armstrong v. Newsom*, Case No. 4:94-cv-02307-CW, Doc. 3393 (Mar. 23, 2022) (Richard J. Donovan Correctional Facility and Five Prisons (LAC, COR, SATF, CIW, and KVSP) Court Ordered Remedial Plans) at 50. That process is also set forth in the current regulations, see 15 C.C.R. § 3486.2(a), as well as in previous versions of these proposed regulations. CDCR has, however, struck this language in the renoticed proposed regulations. See NCR 25-06 Renotice Text (July 25, 2025), § 3486.2 (subsection (a) struck). It is unclear why CDCR would strike this language. Plaintiffs object to CDCR striking this language and request that it be reinserted into the forthcoming renoticed regulations.

**Response:** The department will continue to review allegations of staff misconduct and assign the level of investigator based on the complexity of the case, consistent with relevant court orders. The repealed language regarding the assignment process dealt with non-regulatory issues more appropriately left to procedural guidelines rather than being codified in regulations.

**Comment 8:** The Regulations Improperly Prohibit Grievances about the Investigation Process

The regulations allow CDCR to “reject” a claim if the claim challenges “the fact gathering process during a routine review” or “the fact gathering process during an investigation of staff misconduct.” NCR 25-06 Renotice Text, § 3483(g)(6)(E)(2-3). As we stated in our previous objections, incarcerated people should have the right to grieve if, for example, they were disrespected by investigation staff during the interview, they did not believe the interview was confidential, they were called out to speak with OIA staff over the intercom in their housing unit (undermining their ability to speak with investigative staff without legitimate fear of reprisal), or the interviewer was connected in some way to the subject of the complaint, increasing the likelihood of bias in favor of the subject and/or creating the appearance of bias. These are all legitimate complaints about the fact-finding process, and incarcerated people should not be prevented from grieving this kind of staff misconduct. CDCR should have an interest in investigating grievances that allege significant problems with their internal investigation process.

**Response:** If the department receives an allegation of staff misconduct, staff are assigned to gather relevant evidence in order to determine if the allegation is true or not, and if the allegation is true, what disciplinary action is appropriate. These are important steps toward holding employees accountable for misconduct, which may or may not lead to adverse disciplinary action against an employee. Furthermore, these steps are part of a personnel action governed by the state's progressive disciplinary process, not by the department's administrative remedies process. Therefore, complaints regarding the steps taken by the department in a personnel action are outside the scope of these regulations.

**Comment 9:** The Regulations Continue to Omit Definitions of "Centralized Screening Team" and "Staff Misconduct"

The renoticed regulations maintain a strike to the definitions of "staff misconduct" and the "Centralized Screening Team" from the administrative remedies section. See NCR 25-06 Renotice Text (July 25, 2025), § 3480 (previously subsections (4) and (13)). CDCR previously committed to including these definitions in this section and have not yet done so. We request that CDCR add these definitions into this section.

**Response:** The term staff misconduct is defined in these regulations in subsection 3486(b)(7). The term Centralized Screening Team is defined in subsection 3486(b)(1). The definition applies to "this Article and Article 1 of this Subchapter" pursuant to subsection 3486(b).

### **Commenter #R2**

**Comment 1:** NOTE: The commenter appears to address this comment to the Office of Administrative Law (OAL) and asks that they "determine the validity of the operational necessity" filed by the department with the initial emergency regulations.

**Response:** This comment is generalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore this comment is irrelevant pursuant to Government Code Section 11346.9(a)(3). The department notes that OAL has already rendered a determination regarding the validity of the department's operational necessity statement by approving the emergency regulations.

**Comment 2:** Commenter is seeking a determination that the regulations at issue, sections 3480 et seq., are inconsistent and in conflict with other provisions of law. Specifically, the language within section 3485, subd. (1), involving the nonexhaustion of claims violates Art. 1, and 3 of the California Constitution and an incarcerated person's right to petition the government for redress because it forecloses an incarcerated person to present a claim to the courts based on *Wright v. State of California* (2004) and its exhaustion as a prerequisite holding.

**Response:** The department assumes the commenter is referring to subsection 3485(l). The rules regarding exhaustion of administrative remedies at the department were first implemented with the 2020 rulemaking action. This current action makes modifications to the rules to further clarify which circumstances will or will not result in exhaustion. These clarifications are included because numerous requests were received from the incarcerated population seeking clarification regarding this issue.

In general, failure to follow the procedural rules set forth in regulations for administrative remedies will result in failure to exhaust a claim and foreclose litigation. To the extent the commenter believes this section forecloses an incarcerated person's ability to present a claim to the courts based on *Wright v. State of California*, it would be necessary to understand the scenario the commenter has in mind, which the department is unable to do based on the limited facts provided by the commenter.

**Comment 3:** Requestor is further seeking a determination that the regulations at issue, sections 3480 et seq., are clear and certain under the clarity standard defined in Government Code section 11349. Specifically, commenter points to the language in subsection 3483(e)(4)(A)-(B) and the term staff misconduct meaning two different things. This invokes the consistency definition as well but it is the fact

that staff misconduct has been and currently is defined as a violation of laws, regulations, policies, procedures, or ethical or professional standards whereas DOM 33070.9.7, the Allegation Decision Index does not consider these aspects of a staff misconduct claim.

**Response:** The term “staff misconduct” is defined in subsection 3486(b)(7). To the degree the term is referenced in any other departmental manual, policy, memo, or other document, the definition contained in the regulations cited above is controlling.

NOTE: The commenter attached the comment they sent during the first public comment period (see comment #4 above). This comment has already received a response and will not receive a response here.

## **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE SECOND RENOTICE PUBLIC COMMENT PERIOD:**

### **Commenter #S1**

**Comment 1:** The Second Renoticed version of this rulemaking introduces a new procedure whereby a list of fifty (50) claimants are singled out for special treatment. New **section 3483.5**, title 15 Code of Regulations, creates a Grievance Resolution Team (proposed §3483.5(b)), for each institution, consisting of representatives from the local grievance office, the Office of Appeals, and the Centralized Screening Team (CST). The Grievance Resolution Team (GRT) will meet monthly with the persons on the *list of fifty*, and the team will review claims diverted to it, pursuant to new §3483.5(c). The latter sub-section lays out criteria for diverting claims to the GRT. If any member of the GRT disagrees with the determination that had led to the diversion, the claim is sent to CST for screening and subsequent routing for review and investigation under the process of §3486.1(e). If the GRT members all agree, the routing varies depending on which criteria under §3483.5(c) are at play. If the grievance is unclear and unclarified by means of interview (§3483.5(c)(1)), or if the grievance alleges facts that are “impossible” ((c)(2)) or “highly implausible” ((c)(3)), it will be answered by the Office of Grievances without further investigation or routine review (§3483.5(d)(2)). If the grievance is repetitive ((c)(4)) or contradicted by documentary evidence ((c)(5)), it will be routinely reviewed ((d)(2)).

Moreover, the rationale for the new process of §3483.5 is not comprehensive or illuminating as to why the Department favors this approach. The explanatory summary of the whole section restates *that* the process relates to the top fifty but gives no clue as to how the number<sup>1</sup> was arrived at or why the set of claimants with the highest submissions in the previous year needs to receive special treatment. Was a flaw in the existing system found that needed addressing? The Second Renotice statement does not directly say. Does the distribution of grievances have a curve that statistically supports the identification of outliers? What sort of study was relied on for that premise? If there is a distributional curve that supports this, does the Department subscribe to any particular interpretation of the significance of it? Is the interview process, and the constitution of a GRT, something that high-frequency claimants are asking for? None of this background is presented.

In the absence of an explicit rational theory undergirding the proposal, the reader can only speculate as to the motivations for the regulation. Some candidate theories can be derived from the implicit meaning of the text itself. The criteria delineated at subsection (c) suggest the hypothesis that the Department believes a large portion of the high-frequency claimants are submitting frivolous claims (paragraphs (c)(2) - (5)).

Paragraph (c)(1), along with (d)(1), might suggest instead, or in addition, that the GRT process can serve as a mechanism for clarification of claims through interviewing. That would perhaps improve the effectiveness of the process for persons with unclear, yet clarifiable, claims. Generalizing, we might say that one possible function of the GRT process could be to improve the quality of remedial effectiveness for some claimants.

Finally, the explanation suggests another rationale for the special treatment of the list of fifty: “to allow all parties to better understand both the nature of each claim and the *potential reasons why the claims are being submitted in such a high volume* when compared to the rest of the incarcerated population” (emphasis added). In other words, not merely to investigate a particular claim but to diagnose the conditions (be they individual or institutional or a combination of factors) giving rise to the higher number of claims.

Thus, there are three functions discernible in the Department’s scheme: weeding out frivolous claims, clarifying nonfrivolous claims, and conducting intra-Department research. In the event that any one of these three functions comes to dominate in practice or in the minds of administrative staff implementing the program, the list of fifty high volume claimants may carry with it a positive status or negative stigma. If the image of frivolousness predominates, then the list will be akin to a blacklist – the scenario of a *frivolous fifty*. If, instead, the GRT process works to be benefit of claimants, it could be a boon to be listed – the *nifty fifty*, as it were. And if the third scenario preponderates, we can think of the list as the *focus-group fifty*. Conceivably, each of these functions will appear in some measure, though the proportions of the resulting mixture are difficult to guess. The scenario in which no connotation, good or bad, is attached to presence on the list, and in which the fact-finding focus group function is not prominent, can be called the *formal fifty*.

In the scenario of the formal fifty, being on the list does not prejudice the resolution of claims. No specific bias against the claimant can be expected to ensue from being part of the GRT process, in that scenario. In the nifty fifty scenario, it would be advantageous to be on the list, *ceteris paribus*, which would create a perverse incentive to filing grievances, thus clogging the system. Tendentially, the nifty fifty would, over time, drift into a frivolous fifty scenario. The focus-group fifty scenario, does not have direct implications for the disposition of claims but does raise questions as to whether it is ethical and lawful for the institution to use the persons on the list for subjects research; their consent cannot be freely given, arguably, since the pending fate of their claim makes their expected participation not entirely voluntary. Overall, whichever valence attaches to the list of fifty persons singled out in this way will foreseeably give rise to problems that would not otherwise arise without this procedure.

Given the implied meaning of the text, however, it is *most likely* that the stigma of frivolousness will attach to the list of fifty names. Assuming that stigmatization occurs, the claimants thus blacklisted will find it harder to have their claims handled fairly by the administrative grievance process. The GRT members may hold unconscious prejudice against the claims insofar as they are (tacitly) presumed frivolous. Even after a claim is re-referred to CST or to the local grievance office, its pathway through the GRT may mark it for prejudicial treatment (unconsciously even).

Sensing this danger, the explanatory statement says “To reduce concerns of any perceived local bias, two of the team’s members are from outside the institution and work at headquarters.” (p. 2). Addressing local bias, however, does not eliminate the prejudice resulting from the presence on the list itself. Furthermore, since the list originates at the headquarters (§3483.5(a)), there will be an *HQ bias* that complements the local bias.

The rule does not clearly state that the list is fifty names *system-wide*, but that the list is compiled by the Office of Appeals suggests such. In any event, it is not clear how the Office generates the list. The grievance rules do not describe a process whereby that Office is analyzing data about grievances (not only ones that went to appeal) and tracking the grievance submission histories of individuals. If it is already doing that – or if it will start doing so, albeit with the exact method underdefined by these new rules – this raises a whole set of issues that the Department should examine carefully. What safeguards ensure that the collection and analysis of that data is conducted by personnel not involved in the review of appeals of grievances? If they are not shielded off, it can be expected that their review of appeals will be colored by their impressions about the history of the individual submitting it, in ways that might not be relevant to the appealed issue. Will the involvement of the Office of Appeals in the compilation of the list, deter persons from submitting appeals, for fear that it will increase the likelihood of being put on the list? Will the existence of the list deter persons from submitting grievances for fear of retaliation or being labelled a troublemaker? Will designation on the list show up in central files and have any effect on parole board hearings?

It can easily be imagined that the answers to the last three questions posed in the preceding paragraph will each be Yes. The alternative of not compiling the list, then, can be expected to be less burdensome on incarcerated persons and potentially reduce the costs to their families caused by the suffering of their loved ones. At any rate, the Second Renoticed NCR 25-06 does not demonstrate that the program as designed is a cost-effective and not unduly burdensome means of furthering administrative objectives.

**Response:** The commenter expresses concern that the list compiled by the Office of Appeals may not include incarcerated persons from the entire state. Pursuant to section 3483.5(a) "Each calendar quarter the Office of Appeals shall identify the 50 claimants (or more in the case of a tie) who submitted the highest number of claims in the preceding calendar quarter." As described in section 3484, the Office of Appeals processes claims from incarcerated persons throughout the entire state. Assigning responsibility to the Office of Appeals ensures the list includes incarcerated persons from all department institutions.

Statements provided in the ISOR for subsection 3486.1(e)(2) address the commenter's other concerns; specifically: "... the purpose of diverting these claims from an investigation to a routine review is that it reduces the expenditure of limited departmental resources which can be focused on more relevant concerns." Comments provided in the ISOR for section 3483.5 states: "... the claimant will normally receive a face-to-face meeting with the Team to allow all parties to better understand both the nature of each claim and the potential reasons why the claims are being submitted in such a high volume when compared to the rest of the incarcerated population." Concerning the rationale for limiting the number of claims to 50 is provided in the ISOR for subsection 3483.5(a) which states: "Since this is a new process being introduced into the administrative remedies process the number of claimants eligible for this review process is limited to only 50 individuals. Using a 90-day window to gather data when identifying the top 50 individuals in a given month was deemed a reasonable period of time to identify a pattern of activity, as opposed to a shorter period of time which would be prone to momentary spikes of activity that are not a good indicator of ongoing atypical grievance activity."

In addition, the commenter expresses concern about possible implications of an incarcerated person participating in the GRT process. Commenter's concerns are based on speculation without any specific reference to regulatory provisions that support such conjectures. The department views the GRT process as an alternative way to process claims from incarcerated persons in a manner that increases efficiency for the department and provides more direct feedback to the incarcerated person.

As stated in the Form STD. 399, Economic and Fiscal Impact Statement, the department does not anticipate any additional costs associated with the GRT process.

**Comment 2:** One problem with this rulemaking is that there is no *authority* or *reference* provided for new §3483.5. Contrary to long-standing practice of the Department, and unlike the rest of the rules in this rulemaking which *do* have authorities/references, in the case of §3483.5 that piece is simply omitted. See NCR 25-06 Second Renotice Text, p. 24. Nor is that information given in the explanation portion corresponding to that section (NCR 25-06 Second Renotice, pp. 2-3). The explanation describes the reasons for the adopted rule without specifying a statutory or other basis for it.

**Response:** The commenter is correct about authority and reference citations for new section 3483.5. This clerical error will be rectified when the department files final regulations with the Office of Administrative Law. The authority citation will be Penal Code section 5058 and the reference citation will be Penal Code section 5054.

**Comment 3:** Commenter states the grievance form and the reasonable accommodation form have been merged into one form and that this may lead to a disproportionate number of accommodation requests being included into the list of 50 high volume claimants. The commenter raises concerns that this could call into question whether the Department will be in compliance with federal ADA laws concerning discrimination and equal access to services, programs, or activities.

**Response:** While all claims are considered when compiling a list of the top 50 filers, including requests for reasonable accommodation, these requests are specifically excluded from the GRT process and are routed directly to the ADA Coordinator for response and referral to the Reasonable Accommodation Panel if necessary. Therefore, there is no conflict with federal ADA laws.

**Comment 4:** Commenter states subsection 3483.5(b)(3) does not guarantee that Grievance Resolution Team meetings will be held in a private setting; specifically, the commenter takes issue with the following proposed language: "... the meeting shall be conducted in a manner that provides as much privacy for the claimant as operationally feasible." Since the subject matter and claims to be discussed typically will involve sensitive information, these meetings should be conducted in a setting that maximizes confidentiality and privacy, without the escape clause of "feasibility." If the person's privacy cannot be ensured, then in a case where the information is especially sensitive, the result should be not conducting the interview until a private setting can be established. Otherwise, persons will be essentially coerced into disclosing information that, if discovered by other incarcerated persons or by staff, could put the person at risk of harm or could violate the interviewee's privacy rights. A blanket exception of "feasibility" does not trump privacy rights. Moreover, the lack of a private setting will compromise the reliability and objectivity of the interviews to the extent that they serve as a fact-gathering process or quasi-hearing of the claims involved. Thus, any due process concerns about the GRT procedure will be exacerbated. Commenter suggests that the phrase in subsection 3485.3(b)(3) "in a manner that provides as much privacy as possible" be replaced with "in a private setting".

**Response:** The phrase "as much privacy ... as operationally feasible" is intended to ensure that the GRT seeks a location that provides as much privacy as possible, on a case-by-case basis. In the best of circumstances, that would mean a location where only the members of the GRT and the incarcerated person are in attendance. However, the incarcerated person's history of violence must also be considered in determining the location of the meeting, and whether other security staff will be nearby. This meeting is held in a prison facility which often has limited options for group meetings. This subsection was written to account for the physical plant limitations at some prisons. In addition, subsection 3483(f) prohibits any staff mentioned in the grievance from participating in these meetings. For these reasons, the department will not accommodate the commenter's proposed alternative language.

## **Commenter S2**

**Comment 1:** I write as class-action counsel in *Armstrong v. Newsom*, a lawsuit involving the rights of incarcerated people with disabilities housed in prisons in California, to object to CDCR's proposed regulatory changes. See NCR 25-06 Second Renotice Text (Sept. 8, 2025). We previously submitted comment on Defendants' proposed revisions to the staff misconduct regulation on June 3, 2025, and to the renoticed regulations on August 11, 2025. We now submit the following comment regarding CDCR's second renoticed regulations.

Our comments and objections relate to both the staff misconduct complaint and investigation processes described in the regulations, as well as to the disability accommodation request and response processes. The *Armstrong* Court ordered changes to the staff complaint process at six prisons in California in order to improve the quality of investigations and to ensure that staff would be held accountable for ongoing violations of the rights of people with disabilities. *Armstrong v. Newsom*, 484 F. Supp. 3d 808, 838-39 (2020); *Armstrong v. Newsom*, No. 94-cv-2307 CW, 2021 WL 933106 (N.D. Cal. Mar. 11, 2021); *Armstrong v. Newsom*, No. 94-cv-2307 CW, 2021 WL930454 (N.D. Cal. Mar. 11, 2021). Any changes to the staff misconduct regulations are therefore relevant to and must comply with existing *Armstrong* Court orders. Additionally, the administrative remedies provisions of the regulations implicate ongoing negotiations between the parties in *Armstrong v. Newsom* regarding how CDCR will process disability-related requests and grievances.

The second renoticed regulations state that Defendants will only consider “comments relating directly to the amendments indicated by **bold dotted underline** or **bold dotted underline with strikethrough**.” However, because negotiations are ongoing, and Defendants have in fact agreed to make changes to the processing of disability-related requests and grievances since the first renote regulations were issued, we include comments beyond the scope of “comments relating directly to the amendments indicated by **bold dotted underline** or **bold dotted underline with strikethrough**” here.

It is essential the regulations comport with party agreements and existing court orders. Please find our comments and objections below.

**Section 3486.1(e)(1)(A)** states that a “claim [that] involves complex issues requiring specialized investigative skills or resources” should be “elevated for an investigation.”

**Plaintiffs’ Comment:** Plaintiffs have repeatedly objected—and continue to object—to CDCR’s ongoing refusal to refer to the Allegation Decision Index (ADI) in the regulations. The ADI was negotiated by CDCR, Plaintiffs’ counsel, and the *Armstrong* Court Expert in order to comply with the *Armstrong* Court’s orders and the court-ordered remedial plans, and it identifies the categories of allegations that are considered “serious” to ensure those allegations are routed to the Office of Internal Affairs (OIA) for investigation. When a grievance alleges staff misconduct that meets a category on the ADI, it must be routed to the OIA for investigation. Conversely, when a grievance alleges staff misconduct that does not meet a category on the ADI, it must be routed back to the local prison for “routine” review. The ADI, therefore, is critical in determining how an allegation of staff misconduct is screened and routed. See RJD Remedial Plan, ECF No. 3392-1, at 5 (“CST will utilize an Allegation Decision Index (ADI) to determine whether a complaint should be referred to OIA for investigation.... The ADI addresses allegations of serious misconduct, which include, but are not limited to: use of force, staff sexual misconduct, dishonesty to include allegations of false and retaliatory Rules Violation Reports, discrimination/harassment, retaliation, code of silence, and integrity.”); Five Prisons Remedial Plan, ECF No. 3392-2, at 5 (same).

But CDCR continues to refuse to acknowledge the ADI in the regulations. Instead, the regulations invent a standard that the parties have not agreed to, stating that a “claim [that] involves complex issues requiring specialized investigative skills or resources” should be “elevated for an investigation.” Plaintiffs have long objected to this language as too vague and subjective and inconsistent with the ADI. This confusing standard **is not and has never been** the actual standard used to route complaints, and it is misleading to include it in the regulations. Some claims of staff misconduct that are not on the ADI nevertheless require “specialized investigative skills or resources”; conversely, some claims that are on the ADI are straightforward and require less investigative skills or resources. The central fact that determines where those allegations are routed is whether the allegation is on the ADI, not the amount of investigative skill or resources that they require. CDCR’s inclusion of this invented and inaccurate standard in the regulations makes it virtually impossible for an incarcerated person who files a staff complaint to understand how their complaint should be handled as part of this process.<sup>1</sup> CDCR should include the ADI in the regulations, either by adding the entire ADI into the regulations or incorporating the document by reference.

**Response:** See response to commenter #R1, comment #1.

**Comment 2: Section 3480(8):** “Grievance’ refers to a written complaint containing one or more claims that challenges a policy, decision, action, condition, or omission by *the department or departmental staff* submitted to an Office of Grievances for review.” (emphasis added)

**Plaintiffs’ Comment:** Incarcerated people have the right to grieve actions taken by CDCR contractors and other third parties with whom CDCR has arrangements to provide services to incarcerated persons, and the grievance process should not be limited solely to allegations against departmental staff. The definition of “departmental staff” in the regulations does not include those employed by the Board of Parole Hearings, the Prison Industry Authority, and the Commission on Correctional Peace Officer Standards and Training, or Transitional Case Management Program benefits workers and other contractors who provide services to incarcerated persons on CDCR’s behalf. CDCR is responsible, however, for ADA violations committed by these contractors. Title II of the ADA prohibits public entities from discriminating against people with

disabilities “directly or through contractual, licensing, or other arrangements.” *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1065 (9th Cir. 2010) (quoting 28 C.F.R. § 35.130(b)(1)); see *id.* at 1068 (explaining that the “‘benefits’ of programs or services provided to class members by defendants through their contracts . . . come under the purview of the ADA and its regulations”); see also *id.* at 1065-67 (rejecting CDCR’s challenge to validity of this Title II regulation).

**Response:** The definition for “Department” and “departmental staff” includes contractors and volunteers. Subsection 3480(b)(6) states: “‘Department’ and ‘departmental staff’ refers exclusively to the Department of Corrections and Rehabilitation and to all employees, contractors, and volunteers associated with the department, except those employed by the Board of Parole Hearings, the Prison Industry Authority, and the Commission on Correctional Peace Officer Standards and Training.”

**Comment 3: Section 3480(10):** “‘Reasonable accommodation’ refers to the modification of a program, service, or activity, or to the issuance of an assistive device, which makes it possible for a person with a disability to achieve equal access to that program, service, or activity without imposing an undue hardship on the department or posing a direct threat to the health or safety of any person or the security of the institution.”

**Plaintiffs’ Comment:** The section should read (with edits in red), “‘Reasonable accommodation’ refers to the modification of a program, service, or activity, or to the issuance of an assistive device, which makes it possible for a person with a disability to achieve equal access to that program, service, or activity without imposing an undue ~~hardship~~ financial and administrative burden on the department or posing a direct threat to the health or safety of any person or the security of the institution.” This change is necessary to make the language consistent with the Americans with Disabilities Act. See 28 C.F.R. § 35.164.

Also, consistent with comments from Plaintiffs’ counsel on CDCR’s internal policies regarding the processing of disability-related complaints, this definition should also consider the completion of activities of daily living as a reasonable accommodation. See *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1068 (9th Cir. 2010) (the ADA mandates equal access to benefits provided to incarcerated persons, including “to the fundamentals of life, such as sustenance, the use of toilet and bathing facilities, and elementary mobility and communication”). In other words, the text should be edited to include the following phrase (in red), “‘Reasonable accommodation’ refers to the modification of a program, service, or activity, or to the issuance of an assistive device, which makes it possible for a person with a disability to achieve equal access to activities of daily living or to programs, services, or activities without imposing...”

**Response:** It is unnecessary to expand the “hardship” language to include “financial and administrative burden” since the current language is inclusive of financial and administrative burden. Additionally, it is not necessary to add “activities of daily living” language because things like “sustenance, the use of toilet and bathing facilities, and elementary mobility and communication” are already captured by the “programs, services and activities” language.

**Comment 4: Section 3481(e):** “This Article does not create a right to grieve or appeal a policy, decision, action, condition, or omission that was not made by the department or departmental staff, but instead was made by an entity or official outside of the department, including, but not limited to, a county jail, the Department of State Hospitals, or the Interstate Commission for Adult Offender Supervision; nor by an entity or official that is quasi-independent of the department, including, but not limited to, the Board of Parole Hearings, the Prison Industry Authority, or the Commission on Correctional Peace Officer Standards and Training. This Article does not preclude a claimant from filing a complaint with the outside entity or official.”

**Plaintiffs’ Comment:** CDCR is responsible for ensuring that its contractors, including PIA and other entities, do not engage in disability discrimination. *Armstrong*, 622 F.3d at 1065, 1068. This text should be modified to include responsibility for court-ordered requirements.

**Response:** The Prison Industry Authority is a separate legal entity with a separate set of regulations, a separate hiring authority, and is therefore beyond the jurisdiction of the California Department of

Corrections and Rehabilitation.

**Comment 5: Section 3481(f)(1):** “CDCR Form 602-1/1824 (01/25), the ‘Grievance/Request for Reasonable Accommodation’ form, hereby incorporated by reference, shall be made available to claimants who are under the custody of the department at all housing units, libraries, and law libraries; and to *claimants who are under the supervision of the department at all parole offices and during regular home visits.*” (emphasis added)

**Plaintiffs’ Comment:** Defendants have never notified Plaintiffs that they intend to eliminate the CDCR Form 1824-B, which they are required under the *Armstrong* Remedial Plan (ARP) to make “readily available to all parolees.” Amended Parole Field Operations Section of ARP, ECF No. 3491, at 7. The court-ordered remedial plan requires: “Parolees shall be able to obtain an 1824-B by requesting one from DAPO staff, and from a publicly accessible location at all parole office,” and “[b]lank 1824-B Reasonable Accommodation Request forms and stamped pre-addressed envelopes for mailing them to DAPO shall be maintained in all STOP programs and all other CDCR-funded transitional housing programs for CDCR parolees ... in an accessible public location that parolees can freely access without asking staff for the forms or envelopes.” *Id.* at 7, 18. The ARP includes specific requirements regarding the availability and processing of 1824-Bs. *Id.* at 7-8. While Plaintiffs do not object to CDCR making the CDCR Form 602-1/1824 (01/25) available to persons under parole supervision *in addition to the CDCR Form 1824-B*, we do not agree to eliminate the 1824-B form. To the extent that the proposed regulations would do so, they are in violation of the court-ordered remedial plan.

Also, if 3482(c) is supposed to apply to supervised people, it should include reference to the parole forms that they may use to make disability requests, including the CDCR Form 1824-B and the CDCR Form 2275-CJ (for disability requests by persons housed by CDCR in county jails).

**Response:** This rulemaking action does not eliminate the CDCR Form 1824-B. This form is not regulatory. The department announced in the emergency regs in January 2024 that the CDCR form 602 and the 1824 were being combined. The CDCR Form 1824-B form remains available to supervised persons, consistent with relevant court orders.

**Comment 6: Section 3482(b)(1):** “A claimant shall submit a grievance no later than 60 calendar days after discovering an adverse policy, decision, action, condition, or omission by the department. Discovery occurs when a claimant knew or should have reasonably known of the adverse policy, decision, action, condition, or omission.”

**Plaintiffs’ Comment:** This 60-day time limit does not apply to requests for reasonable accommodations, and the regulations should make this clear.

Also, actual notice should be required, not that the person should have “reasonably known” about the adverse action. If this language is retained, its application by staff must be clearly and carefully defined in policy, so that claimants’ grievances are not improperly rejected as untimely.

**Response:** The commenter quotes subsection 3482(b)(1) which contains the 60-day time limit, but overlooked the exception found in subsection 3486(g)(6)(A) for reasonable accommodation requests. That subsection states that a claim may be rejected if “The claimant did not submit the claim within the time constraints required by subsection 3482(b), unless the claim concerns a reasonable accommodation request.”

In response to the commenter’s issue concerning when a person should have reasonably known about an adverse action, this language has been incorporated into regulations since at least 2022 and is not substantively changed in these regulations. This comment is regarding existing language that is not being amended as part of this rulemaking action. As stated in Second Notice of Changes to Text as Originally Proposed, “Only those comments relating directly to the amendments indicated by bold dotted underline

or bold dotted underline with strikethrough will be considered.” Therefore, the comment is irrelevant pursuant to Government Code section 11346.9(a)(3).

**Comment 7: Section 3483(a)(2):** “If it contains information suggesting the claimant seeks a disability related accommodation, then the ADA Reviewing Authority shall ensure the matter is reviewed and, if any injury or other serious harm is reasonably foreseeable, that an interim accommodation is provided no later than five business days after its receipt.”

**Plaintiffs’ Comment:** Policy requires that, if the disability request is determined to be urgent or emergent, the interim accommodation review should be completed within 24 hours. This requirement should be added here.

**Response:** Time frames for the underlying procedure are established in policy, and the interim accommodation review is required to be completed within 24 hours. This section outlines the time period to provide an interim accommodation, if approved, without specifically referencing each step of the process. While many steps must occur during the five-day time period to meet the regulatory deadline, these steps are procedural rather than regulatory. These steps will be addressed through training and internal procedures.

**Comment 8: Section 3483(a)(3):** “If it contains information suggesting the claimant needs assistance repairing or replacing a previously approved disability related item or device, then the ADA Reviewing Authority shall ensure that the item or device is repaired or replaced no later than five business days after its receipt and the action is documented in the department’s information technology system or that the matter is referred to the Reasonable Accommodation Panel.”

**Plaintiffs’ Comment:** This new process, designed to easily and quickly address disability-related requests, is currently under negotiation by the parties. As worded in the above regulations, this section is unnecessarily limited to instances where a previously approved disability-related item or device needs to be repaired or replaced. Plaintiffs’ counsel understands that this new process will also apply more broadly to, for example, commonly requested accommodations that are stocked and available for distribution at prisons and do not require health care approval, such as over-the-ear headphones for people who are hard of hearing.

Also, an important part of this process is that the person requesting the disability accommodation be notified, through a CDCR 128-B, of how their request was handled. The regulation merely states that it will be documented in CDCR’s technology system. However, if the person is not notified of the result and they disagree with the result, they are unable to challenge it. Failure to notify the person is a due process violation that could result in the person losing the opportunity to exhaust their administrative remedies and challenge the decision in court.

**Response:** The ADA Reviewing Authority oversees the reasonable accommodation request process and is not prevented from expeditiously resolving a request for accommodation. Subsection 3483(e)(1)(A) states: “If the claim concerns a reasonable accommodation request, the Office of Grievances shall refer the matter to the ADA Reviewing Authority, *who may grant the request or refer it* to the Reasonable Accommodation Panel for the purpose of gathering relevant facts and recommending whether to grant or deny the request.”

The commenter cites subsection 3483(a)(3), and expresses concern that a claimant will not receive a written response to their claim, thus preventing them from filing an appeal if they are dissatisfied. Subsection 3483(g) requires the department to provide every claimant who files a grievance with a written response, which can then be appealed.

**Comment 9: Section 3483(a)(4):** “If it contains information suggesting the claimant’s Earliest Possible Release Date (EPRD) is wrong and the claimant is scheduled to be released within 90 calendar days of its receipt, then a comprehensive review of the EPRD shall be conducted and the results provided to the

claimant no later than 30 calendar days after receipt of the grievance.”

**Plaintiffs’ Comment:** The phrase, “or in fewer than 30 days if the claimed EPRD is sooner than 30 days” should be added to this provision.

**Response:** The regulatory language referred to by the commenter was incorporated into regulations in 2022 and is not substantively changed in these regulations. This comment is regarding existing language that is not being amended as part of this rulemaking action. Therefore, the comment is irrelevant pursuant to Government Code section 11346.9(a)(3).

**Comment 10: Section 3483(b):** “The Grievance Coordinator shall ensure that the intake process described in subsection (a) is completed and each grievance and reasonable accommodation request is referred to the Centralized Screening Team no later than three business days after receipt of the grievance or reasonable accommodation request.”

**Plaintiffs’ Comment:** As mentioned above, the reasonable accommodation process is still under negotiation by the parties. This language is misleading given the ADA office’s role in triaging/initially reviewing requests, which the parties agreed to on August 15, 2025. As currently written, this language suggests that only the Office of Grievances and CST are reviewing for reasonable accommodation requests when, in reality, the ADA office is reviewing all requests that are completed on the 1824 portion of the form.

**Response:** This subsection addresses the referral process from the OOG to the CST for screening. However, prior to any referral from the OOG to the CST for screening, subsection 3483(a)(2) requires that the OOG refer the matter to the ADA Reviewing Authority. Therefore, the OOG and CST are not the only entities reviewing for reasonable accommodations, as the ADA reviewing authority is also involved at an early stage in these reviews.

**Comment 11: Section 3483(e)(1)(A):** “If the claim concerns a reasonable accommodation request, the Office of Grievances shall refer the matter to the ADA Reviewing Authority, who may grant the request or refer it to the Reasonable Accommodation Panel for the purpose of gathering relevant facts and recommending whether to grant or deny the request.”

**Plaintiffs’ Comment:** This language is inconsistent with agreements made between the parties on August 15, 2025. The parties agreed that, if the request is completed on the 1824 portion of the form, it will be automatically forwarded to the ADA office who will review to determine whether it raises an ADA-related request. This language suggests that the OOG conducts that review. But the OOG conducts such a review only for the 602-1 portion of the form. If that part of the form concerns a reasonable accommodation request, the OOG shall forward it to the ADA office for review.

Plaintiffs’ counsel proposes the following (with edits in red): “~~If the claim concerns a reasonable accommodation request~~ If the 1824-section of the form is completed, the Office of Grievances shall automatically refer the matter to the ADA Reviewing Authority, ~~who~~. If the 602-1-section of the form is completed, the Office of Grievances shall determine whether it concerns a reasonable accommodation request and, if so, shall refer the matter to the ADA Office. In both cases, the ADA Office will then determine whether the claim contains a request for reasonable accommodation and, if so, the ADA Reviewing Authority may grant the request or refer it to the Reasonable Accommodation Panel for the purpose of gathering relevant facts and recommending whether to grant or deny the request.”

**Response:** This subsection currently addresses situations when a request for reasonable accommodation has been included on the form 602-1/1824. While the commenter suggests we also refer matters to the ADA Reviewing Authority that are not disability-related if they’re included on the ADA portion of the form, this subsection does not prohibit the department from doing so and, therefore, is unnecessary.

**Comment 12: Section 3483(e)(1)(B):** “If the claim concerns a disability-related complaint, the Office of

Grievances shall refer the matter to the ADA Reviewing Authority, who may delegate the claim to any supervisor for the purpose of gathering relevant facts and recommending whether to grant or deny the claim.”

**Plaintiffs’ Comment:** This language is unclear. To be clearer, it should state (with edits in red), “If the claim concerns a disability-related staff complaint not referred for investigation, either the Office of Grievances or the ADA Office, whomever reviewed the grievance, shall refer the matter to the ADA Reviewing Authority, who may delegate the claim to any supervisor for the purpose of gathering relevant facts and recommending whether to grant or deny the claim.”

**Response:** The commenter is directed to subsection 3483(d) which states that only claims returned from the Centralized Screening Team shall be reviewed and answered in accordance with subsections (e) through (i). The claims referred to by the commenter have already been referred to the AIU for investigation by the Centralized Screening Team, which is why there’s no need to reference those claims in this section. Subsection 3483(d) states: “The Grievance Coordinator shall ensure that all claims returned from the Centralized Screening Team to the Office of Grievances are reviewed and answered in accordance with subsections (e) through (i) of this section, except for those claims that are diverted to the Grievance Resolution Team pursuant to subsection 3483.5.”

**Comment 13: Section 3483(e)(4)(B)(ii):** “(B) If a supervisor assigned to conduct a routine review of a disability-related complaint or any other claim discovers information suggesting that the claim meets one of the following criteria the supervisor shall immediately suspend the review and refer the matter to the Centralized Screening Team who shall to determine if the claim should be elevated for to an investigation:

“(ii) The claim, if proven true, is likely to result in adverse action, including instances when the accused staff member engaged in similar misconduct within the past three years of the alleged misconduct which was granted by a Reviewing Authority or recently sustained by a Hiring Authority and resulted in corrective or adverse action.”

**Plaintiffs’ Comment:** This description of the “suspend-and-elevate” process is inconsistent with the parties’ agreements. The parties’ negotiated a change to the court-ordered process for investigating staff complaints not listed in the ADI, permitting those allegations to be referred for “routine review,” rather than referring them to the hiring authority for an allegation inquiry conducted by a Locally-Designated Investigator trained by OIA. See RJD Remedial Plan, ECF No. 3392-1, at 10; Five Prisons Remedial Plan, ECF No. 3392-2, at 10. As a condition of that agreement, the parties agreed that a supervisor conducting a routine review of staff misconduct (*i.e.*, a claim of staff misconduct that alleges conduct not on the ADI) will suspend their investigation and refer the allegation to the CST for an OIA investigation in the following scenarios:

1. during the investigation, the supervisor discovers information suggesting the claim is on the ADI;
2. the claim, if proven true, is likely to result in adverse action (*i.e.*, the conduct is not on the ADI but is so egregious as to warrant adverse action); or
3. the claim is similar to previous staff misconduct that was sustained against the departmental staff involved and therefore adverse action should be considered.

The proposed regulations do not capture that agreement because they improperly combine the second and third scenarios into one provision that distorts the parties’ agreement. As a result, this language makes it less likely that claims involving staff who engage in repeated misconduct will be issued adverse action. Under the parties’ agreement, a claim would have been elevated to OIA if the subject- employee had previously been issued corrective or adverse action for misconduct that is similar to the misconduct alleged in the present claim. However, under the modified language, a claim will only be elevated to OIA under this provision if:

- (1) if the subject-employee had been previously found to have committed similar misconduct, and (2) the present claim is likely to result in adverse action if proven true. That language requires the supervisor to analyze both factors before elevating the grievance. All claims that allege misconduct similar to prior,

sustained misconduct should be routed to OIA for investigation. The proposed regulatory language improperly turns that provision into a two-part test.

Also, CDCR inappropriately added the requirement that the employee's misconduct must have been sustained "within the past three years."<sup>2</sup> The parties did not agree that the misconduct had to be sustained in the recent past. The requirement that misconduct be within the past three years should be deleted from the regulations.

**Response:** See response to commenter #R1, comment #3 above.

**Comment 14: Section 3483(f)(1)-(2):** "Any individual whose personal interaction with a claimant forms part of a claim shall be excluded by the Reviewing Authority from participating in the grievance under review, including any interviews conducted as part of that process, unless one of the following exceptions apply:

- (1) The individual participated in a committee meeting that concerns a claimant;
- (2) The individual reviewed a disciplinary action pursuant to Title 15, subsection 3312(c);

**Plaintiffs' Comment:** Plaintiffs' counsel objects to the first two criteria. If the individual is grieving the actions of the committee, and in particular about the actions of any individual on the committee, the members of the committee and that specific staff member should be excluded from participating in the review for that grievance. Similarly, if the incarcerated person is grieving a disciplinary action, the person who reviewed the disciplinary action should be excluded from the grievance review. CDCR is court ordered to conduct thorough and unbiased reviews of staff complaints. Allowing staff who are the subject of a complaint to participate in the review or investigation of that complaint is facially biased.

**Response:** Committees often involve staff from the warden's level down meaning the adoption of this suggestion would exclude all local staff who are subordinate to the warden from responding to the claim. The exclusion of all staff at the local level from addressing claims at the initial level of review would be excessive and contrary to the administrative remedies goal to resolve issues at the lowest level.

The Chief Disciplinary Officer is the subject matter expert who oversees the disciplinary hearing process, and is in the best position to respond to disciplinary claims. Furthermore, the reference to subsection 3312(c) is meant to acknowledge that the Chief Disciplinary Officer conducts an independent audit of disciplinary actions, which does not constitute a conflict.

**Comment 15: Section 3483(g):** "The Grievance Coordinator shall ensure that a written decision letter is issued no later than 60 calendar days after receipt of the grievance, unless other statutory, judicial, or regulatory authority requires a response in less than 60 calendar days, and contains one of the following decisions as to each claim in the grievance"

**Plaintiffs' Comment:** Because this section of the regulation also pertains to the handling of reasonable accommodation requests, and those responses are due per court order within 30 days, the 30-day time period for those responses should also be mentioned in the regulations here. It is odd to discuss how CDCR is handling both types of requests under the administrative remedies section and then mention only the timeframe for responding to one type of request in this section. It implies that the 60-day timeframe applies to all requests discussed in these regulations, when it does not.

**Response:** A rule has been created to cover the 30-day requirement. Subsection 3483(g) states: "The Grievance Coordinator shall ensure that a written decision letter is issued no later than 60 calendar days after receipt of the grievance, unless other statutory, judicial, or regulatory authority requires a response in less than 60 calendar days, and contains one of the following decisions as to each claim in the grievance."

The reason 30 days was not specifically included in the regulations is that this time period was part of a judicial decision that could change and, therefore, the regulations take this fluidity into consideration.

**Comment 16: Section 3483(g)(4)** provides that the Office of Grievances will notify someone that their request has been “redirected” when it is “[a] request to repair or replace a disability related item or device that was not referred to the Reasonable Accommodation Panel pursuant to subsection 3483(a)(3), which shall be redirected to the ADA Reviewing Authority.”

**Plaintiffs’ Comment:** As discussed during negotiations between the parties regarding this new process—which is not final—Plaintiffs’ counsel does not agree that telling someone their request has been “redirected” is the appropriate approach. This is especially true given that the parties have already agreed that the ADA Office will be reviewing all requests. A person who files an ADA request on the 1824 portion of the form will have their request automatically sent to the ADA Office for review and will be potentially handled directly by the ADA Coordinator. That person should not be told that their request was “redirected.” That response is confusing. This provision should be deleted.

Also, as commented above, this language is too narrow, as this negotiated process should be broader than simply requests for repair and replacement of previously granted devices. This process could also include commonly requested devices that are available through the ADA office.

**Response:** These redirected decisions apply to previously approved accommodations that are able to be expeditiously addressed by the ADA Reviewing Authority and do not require another review by the Reasonable Accommodation Panel. Subsection 3483(a)(3) states: If it contains information suggesting the claimant needs assistance repairing or replacing a previously approved disability related item or device, then the ADA Reviewing Authority shall ensure that the item or device is repaired or replaced no later than five business days after its receipt and the action is documented in the department’s information technology system or that the matter is referred to the Reasonable Accommodation Panel. The department disagrees with the commenter’s contention that this language is “confusing” or “narrow”, for the reasons cited in the Initial Statement of Reasons and other rulemaking documents.

**Comment 17: Section 3483(g)(6)(D)** states that CDCR can reject a third-party claim from an incarcerated person unless “the claim concerns an allegation of staff misconduct *that was referred for an investigation.*” (emphasis added)

**Plaintiffs’ Comment:** This language limits an incarcerated person’s ability to file a grievance about staff misconduct that they observe, in violation of the *Armstrong* Court-ordered remedial plans. Under these proposed regulations, when an incarcerated person experiences misconduct and another incarcerated person witnesses that misconduct, CDCR can generally reject that witness’s grievance. The only time CDCR cannot reject that witness’s grievance is when the incarcerated person who was the direct subject of the misconduct filed a grievance about that misconduct, and that grievance was referred to the OIA for investigation. The provision prevents incarcerated people from filing third-party allegations of staff misconduct that does not fall on the ADI. In effect, this newly added clause gives CDCR much broader authority to reject meritorious grievances about misconduct. That language also violates the court-ordered remedial plans. See *Armstrong v. Newsom*, Case No. 4:94-cv-02307-CW, Doc. 3393 (Mar. 23, 2022) (Richard J. Donovan Correctional Facility and Five Prisons (LAC, COR, SATF, CIW, and KVSP) Court Ordered Remedial Plans) at 8 (requiring, without qualification, that “[a]ll grievances submitted by an incarcerated person or parolee shall be reviewed by CST”).

If an incarcerated person, for example, witnesses staff act incredibly discourteously towards another incarcerated person, that witness is not able to file a staff misconduct complaint. That outcome, apart from violating the remedial plans, is counterproductive. CDCR should be encouraging people to report misconduct, not giving the Office of Grievances authority to reject valid complaints of staff misconduct. Some people are too afraid to come forward to report misconduct or otherwise cannot write a grievance as a result of their disability. Also, people who report observing staff misconduct as a third party could serve as important witnesses to the misconduct review, regardless of whether it results in an investigation by OIA. This is especially true in the case of reports of allegations of denials of disability accommodations—most of which will be routed as routine—and which are central to the *Armstrong* case. The regulations must not limit people’s ability to report misconduct that they observe.

**Response:** See response to commenter #R1, comment #5 above.

**Comment 18: Section 3483(g)(6)(E)(2-3)** allows CDCR to “reject” a claim if the claim challenges “the fact gathering process during a routine review” or “the fact gathering process during an investigation of staff misconduct.”

**Plaintiffs’ Comment:** As we stated in our previous objections, incarcerated people should have the right to grieve if, for example, they were disrespected by investigation staff during the interview, they did not believe the interview was confidential, they were called out to speak with OIA staff over the intercom in their housing unit (undermining their ability to speak with investigative staff without legitimate fear of reprisal), or the interviewer was connected in some way to the subject of the complaint, increasing the likelihood of bias in favor of the subject and/or creating the appearance of bias. These are all legitimate complaints about the fact-finding process, and incarcerated people should not be prevented from grieving this kind of staff misconduct. CDCR should have an interest in investigating grievances that allege significant problems with their internal investigation process.

**Response:** If the department receives an allegation of staff misconduct, staff are assigned to gather relevant evidence in order to determine if the allegation is true or not, and if the allegation is true, what disciplinary action is appropriate. These are important steps toward holding employees accountable for misconduct, which may or may not lead to adverse disciplinary action against an employee. Furthermore, these steps are part of a personnel action governed by the state’s progressive disciplinary process, not by the department’s administrative remedies process. Therefore, complaints regarding the steps taken by the department in a personnel action are outside the scope of these regulations.

**Comment 19: Section 3483.5:** “Each calendar quarter the Office of Appeals shall identify the 50 claimants who submitted the highest number of claims in the preceding calendar quarter. The Office of Appeals shall notify the Office of Grievances and the Centralized Screening Team of the identity of those 50 claimants so that *any grievances submitted by those claimants* during the ensuing calendar quarter may be reviewed by the Centralized Screening Team for possible diversion to the Grievance Resolution Team.” (emphasis added)

**Plaintiffs’ Comment:** It is unclear how reasonable accommodation requests relate to this new Grievance Resolution Team process. It is Plaintiffs’ counsel’s understanding that if a reasonable accommodation request is filed, even if the person who files the request is a “Top 50 Frequent Filer,” the request should be nevertheless routed to the ADA Office. Prior iterations of these regulations process make that clear, explicitly stating, “Claims involving a request for reasonable accommodation that fall within the scope of this subsection shall be referred to the ADA Reviewing Authority for a reasonable accommodation review.” This language has been deleted from the second re-noticed regulations. That language should be included in the final regulations to clarify this process.

**Response:** A request for reasonable accommodation may be diverted to the Grievance Resolution Team when it fits into one of the five narrowly defined criteria, pursuant to subsection 3483.5(c). This diversion would only occur when the claim meets one of the five specific criteria, including claims that are vague and are still vague after a clarifying interview, factually impossible, highly implausible, closely mirrors three or more previously submitted claims, or refuted by documentary evidence. That said, all claims will receive an imminent risk review.

**Comment 20: Section 3484(d)(4)** states that, when submitting an appeal, the claimant shall not “include a new claim that was not included in the original grievance or reasonable accommodation request, in which case the new claim shall be referred to the appropriate Office of Grievances.”

**Plaintiffs’ Comment:** This provision should make clear that, in the case of a reasonable accommodation request, that request will be forwarded to the ADA Office since, per agreement by the parties, the Office of Grievances will not be reviewing reasonable accommodation requests.

**Response:** If an appeal is filed and a claim was added that was never filed at the local level, the claim will be forwarded to the local grievance office to open a new case and process the claim that was added on appeal. When processing the new case, staff will apply all existing screening standards, including referral to the ADA Reviewing Authority when the claim involves a disability-related issue.

**Comment 21: Section 3485(g)(10)** gives CDCR the authority to issue a “Time Expired” response to an appeal, meaning that the Reviewing Authority was not able to respond to the claim within 60 calendar days, in which case the grievance-level decision shall serve as the department’s final decision.

**Plaintiffs’ Comment:** This provision should not apply to requests for reasonable accommodation. Those requests should always be reviewed by someone rather than simply closed out and determined to be “Time Expired.” Each reasonable accommodation request and the appeals should receive a substantive response.

**Response:** The commentator is correct. All requests for reasonable accommodation should be answered timely; however, the regulations include this provision in the event the department fails to answer a claim timely, which enables the claimant to exhaust their administrative remedies.

**Comment 22: Section 3486.1(d):** “The Centralized Screening Team shall review all the documents it receives *from incarcerated or supervised persons* to determine” whether they contain issues requiring immediate action from the Hiring Authority. (emphasis added)

**Plaintiffs’ Comment:** This language limits the scope of the documents that the CST will review for urgent and emergent situations. It is unclear why the CST will only review documents submitted by incarcerated or supervised persons for urgent or emergent content. This provision should be expanded to include documents submitted by anyone, not only incarcerated or supervised persons.

**Response:** If the Centralized Screening Team receives a document that was not routed through the local grievance office, such as a citizen’s complaint or advocacy letter, all claims will receive an imminent risk assessment by other departmental representatives prior to the document being forwarded to the Centralized Screening Team. The reason CST only reviews documents from incarcerated and supervised persons is to ensure that the review by the local grievance office is accurate.

**Comment 23: Section 3486.2(a) (now struck):** “(a) ~~AIU Investigation Processing. (1) Upon receipt of a claim complaint from CST, OIA AIU staff shall analyze the claim complaint, obtain initial information including records, documents, evidence, or recordings relating to the claim complaint, and assemble an investigation file. (2) An AIU manager shall review the investigation file to determine the level of investigator to be assigned, and make an Investigation Assignment Decision in consultation with EAPT for designated cases.~~”

**Plaintiffs’ Comments:** CDCR is required by court-ordered remedial plan to review an allegation of staff misconduct and assign the level of investigator based on the complexity of the case. See *Armstrong v. Newsom*, Case No. 4:94-cv-02307-CW, Doc. 3393 (Mar. 23, 2022) (Richard J. Donovan Correctional Facility and Five Prisons (LAC, COR, SATF, CIW, and KVSP) Court Ordered Remedial Plans) at 50. That process is also set forth in the current regulations, see 15 C.C.R. § 3486.2(a), as well as in previous versions of these proposed regulations. CDCR has, however, struck this language in the first noticed proposed regulations. See NCR 25-06 Renotice Text (July 25, 2025), § 3486.2 (subsection (a) struck). That language remains struck in the second noticed regulations. See NCR 25-06 Second Renotice Text (Sept. 8, 2025), § 3486.2 (subsection (a) struck). It is unclear why CDCR would strike this language. Plaintiffs object to CDCR striking this language and request that it be reinserted into the final version of the regulations.

**Response:** The repealed language regarding the assignment process dealt with non-regulatory issues more appropriately left to procedural guidelines rather than being codified in regulations. See response to

commenter R1, comment #7.

**Comment 24: Section 3486.2(d)(1)(A), (B), and (D)** allows investigators to recommend the closure of an investigation in “special circumstances,” including: “[u]pon review of all relevant video and audio recordings, sufficient evidence exists to prove conclusively that the alleged misconduct did not occur”; “[u]pon review of video and audio recordings, sufficient evidence exists to prove conclusively that the alleged misconduct did occur”; or “[u]pon review of an allegation that staff failed to take a specific action, documentary evidence found in the department’s information technology system clearly shows that the action was taken by that same staff.”

**Plaintiffs’ Comments:** Plaintiffs’ counsel is in favor of CDCR efficiently using its investigatory resources, including by not wasting time on allegations of staff misconduct that can be clearly confirmed or disproven with video evidence. Therefore, Plaintiffs’ counsel does not object to this language in the regulations.

However, based on our experience of reviewing cases where investigators close cases after reviewing too short of a video clip or video from the wrong day, Plaintiffs’ counsel will be closely monitoring this process to ensure that meritorious cases are not being improperly and quickly closed just to improve the backlog of investigations. Plaintiffs have remained—and continue to remain—willing to engage CDCR on the use of this “closure in special circumstances” process, including by meeting with the Office of the Inspector General (OIG) to discuss how to effectively implement the process. To date, however, Defendants have not meaningfully engaged in a conversation about how this process work in practice.

Similarly, regarding the closing of cases where video evidence exists to confirm an allegation, Plaintiffs’ counsel remains concerned that CDCR will fail to gather enough evidence to properly hold staff accountable. Plaintiffs’ counsel has reviewed numerous cases where investigators completed comprehensive investigations and hiring authorities sustained misconduct, yet CDCR settled the case for no or very little discipline at or before the State Personnel Board (SPB). CDCR has expressed that holding employees accountable for their misconduct requires ample evidence. In cases where CDCR believes misconduct definitively occurred, it should ensure that all relevant evidence is collected so that staff are held accountable. Although we do not object, we remain concerned that this provision, while well-intentioned to make better use of limited investigatory resources, might have the effect of CDCR failing to hold employees accountable even when the employee engages in serious misconduct. Plaintiffs’ counsel is interested in further engaging CDCR on this process to make it effective.

**Response:** Commenter does not object to this language but merely indicates that they will be monitoring and expressed concerns about the thoroughness of an investigation which could later fail to hold staff accountable.

**SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE THIRD RENOTICE PUBLIC COMMENT PERIOD:**

**Commenter #T1**

**Comment 1:** I write as class-action counsel in *Armstrong v. Newsom*, a lawsuit involving the rights of incarcerated people with disabilities housed in prisons in California, to object to CDCR’s proposed regulatory changes. See NCR 25-06 Third Renotice Text (Nov. 18, 2025). We previously submitted comment on Defendants’ proposed revisions to the staff misconduct regulation on June 3, 2025, to the first renotice of those regulations on August 11, 2025, and to the second renotice of those regulations on September 23, 2025.

We incorporate those prior comments herein. We now submit the following comment regarding CDCR’s third renotice to the regulations.

Our comments and objections relate to both the staff misconduct complaint and investigation processes described in the regulations, as well as to the disability accommodation request and response processes. The *Armstrong* Court ordered changes to the staff complaint process at six prisons in California in order to

improve the quality of investigations and to ensure that staff would be held accountable for ongoing violations of the rights of people with disabilities. *Armstrong v. Newsom*, 484 F. Supp. 3d 808, 838-39 (2020); *Armstrong v. Newsom*, No. 94-cv-2307 CW, 2021 WL 933106 (N.D. Cal. Mar. 11, 2021); *Armstrong v. Newsom*, No. 94-cv-2307 CW, 2021 WL930454 (N.D. Cal. Mar. 11, 2021). Any changes to the staff misconduct regulations are therefore relevant to and must comply with existing *Armstrong* Court orders. Additionally, the administrative remedies provisions of the regulations implicate ongoing negotiations between the parties in *Armstrong v. Newsom* regarding how CDCR will process disability-related requests and grievances.

It is essential the regulations comport with party agreements and existing court orders. Please find our comments and objections below.

1. § 3483.5(b)(4)

Plaintiffs object to the proposed change to this section. Previously, the section gave the GRT the discretion, if a claimant refuses or is unavailable for a monthly GRT meeting, to determine whether to proceed with the monthly GRT meeting for that claimant in absentia. Pursuant to the proposed revision, if a claimant refuses or is unavailable for a monthly GRT meeting, the GRT “shall” proceed with the monthly GRT meeting for that claimant in absentia. (Emphasis added). Plaintiffs do not understand the rationale for eliminating the discretion that existed in the Second Renote of the regulations. In particular, if a claimant is unavailable because of a medical appointment or other scheduling conflict, the GRT should have the discretion to conduct the GRT meeting at a time when the claimant is available. The GRT meeting with the claimant is an important part of the GRT process, as it provides claimants an opportunity to explain their claims before the GRT makes a decision regarding whether those claims will receive a substantive response. The meeting should occur with the claimant present whenever possible.

**Response:** These changes were necessary to eliminate ambiguity about the process. The GRT will make every effort to schedule their meetings with incarcerated persons at a time and date when the person is available to meet. For these reasons, the department declines to accommodate this comment.

**Comment 2:** 2. § 3483.5(d)(2)

Plaintiffs object to the two changes that Defendants have made to this section, both of which are inconsistent with Plaintiffs’ prior agreements with CDCR.

First, the proposed revisions eliminate the GRT’s discretion to route a claim for a routine review if the claim meets one of the five criteria set forth in subsection (c). Previously, subsection (d)(2) provided that, if all three GRT members agree that a claim meets one of the five criteria in subsection (c), then the claim “may be answered by the Office of Grievances without the necessity of a routine review or an investigation,” i.e., closed without a substantive response. (Emphasis added). That discretion was consistent with agreements between Plaintiffs and CDCR that the GRT could send a claim for a routine review or OIA investigation, even if it met one of the five criteria in subsection (c), if the GRT decided such a review was appropriate. The proposed revision would, in contravention of the parties’ agreements, eliminate that discretion by requiring that any claim that the GRT determines meets one of the criteria in subsection (c) be answered without any routine review or investigation. This removal of GRT discretion to route a claim for routine review or investigation is particularly problematic with respect to criteria (c)(3), which applies to any claim that “is highly implausible (meaning the claim is factually possible but so improbable that any reasonable person would dismiss the claim as preposterous),” as Plaintiffs’ counsel have raised serious concerns in the past that CDCR has used the “factually implausible” criteria to screen out meritorious allegations of staff misconduct, preventing them from being investigated or reviewed.

Second, the proposed revisions have changed what happens when the GRT determines that a claim meets criteria (c)(4) or (c)(5). Criteria (c)(4) applies to any claim that “closely mirrors three or more previous claims submitted by the same claimant during the most recent calendar quarter and is similar to at least one other

claim which was previously denied by a Reviewing Authority or determined to be unfounded, exonerated, or not sustained by a Hiring Authority.” Criteria (c)(5) applies to any claim that “accuses departmental staff of failing to take a specific action but documentary evidence found in the department’s information technology system clearly shows that the action was taken by that same staff.” Under the prior version of the proposed regulations, if the GRT determined that a claim met either of these criteria, then the GRT would route the claim for a routine review. The current version of the proposed regulations treat all of the criteria the same; if the GRT determines that the claims meet any of the five criteria, then the claim is resolved without any review or investigation.

This change is inconsistent with the agreement between Plaintiffs and CDCR regarding the GRT. Plaintiffs and CDCR agreed that claims that met criteria (c)(4) and (c)(5) would receive a routine review, while claims that met criteria (c)(1), (c)(2), and (c)(3) could be resolved without a review (although the GRT would have discretion to determine that a particular claim should nevertheless receive a routine review or investigation). That distinction makes sense, because a routine review can confirm whether a claim that meets criteria (c)(4) or (c)(5) is unfounded. In contrast, it is very difficult for a routine review of claims that meet criteria (c)(1), (c)(2), or (c)(3) to uncover any information that would shed light on the veracity of the claim. Because the proposed change is inconsistent with the parties’ agreement and results in a worse process, Plaintiffs object to the change.

**Response:** These changes were necessary to eliminate ambiguity regarding these processes. The department contends that the five criteria under subsection 3483.5(c) are sufficiently clear to render additional review unnecessary. The proposed regulations continue to require that all three members of the GRT agree that the claim fits one of the specified criteria. If all three members agree, there is little reason to utilize department resources to conduct an additional review. For these reasons, the department declines to accommodate this comment.

## **Commenter #T2**

Legal Services for Prisoners with Children, a nonprofit support center that advocates for the civil rights of formerly and currently incarcerated persons and their families, submitted public comment in earlier rounds of this rulemaking, on June 3<sup>rd</sup> and September 24<sup>th</sup> of this year. The State of California disproportionately incarcerates people with disabilities, and thus any rulemaking affecting their rights should be scrutinized with the utmost care, including input from the individuals who are most affected by these decisions and community organizations representing their interests. Due to the speed with which this rulemaking has progressed, we have concerns about whether the perspectives of incarcerated individuals with disabilities and advocates representing them have been considered on these proposed changes to CDCR regulations.

Most of the concerns articulated in our prior public comments remain and are hereby incorporated by reference (*see Attachments 1 and 2*). We call special attention to the problems generated by the consolidation of reasonable accommodation requests and grievances, as discussed on pp. 5-7 of the June 3<sup>rd</sup> Comment (*Attachment 1*), which has been a feature of all versions of NCR 25-06.

Additionally, creating a separate track for 50 (or more) high-frequency claimants, a procedure introduced in the previous round of proposed changes and which our September 24<sup>th</sup> Comment (*Attachment 2*) discussed at pp. 1-4, has carried over into the present round. The Third Renotice fails to address the problems identified that the new procedure will likely deter claims/request submissions, stigmatize claimants facing barriers, and prejudice the claims/requests themselves (*see Attachment 2*, at 3-4). In addition to these concerns, incarcerated people with disabilities could be at greater risk for staff retaliation. All of these outcomes would frustrate and defeat the purposes of grievance and accommodations processes, which are legally required.

Instead of eliminating the “50 claimant” process, or amending it, the Third Renotice doubles down, by changing the language in newly proposed 15 C.C.R. §3483.5(c) and (d)(2) and §3486.1(e)(2) from “may” to “shall.” The department explains this change as t “necessary for clarity to establish that this process shall

be followed, rather than being discretionary.” (NCR 25- 06 Third Renotice, at 2.) But this proposed process for high-frequency claimants is fundamentally flawed and discriminatory. All the objections to the process—as delineated in our public comment to the Second Renotice—are therefore applicable *a fortiori* to the Third Renotice, since a mandatory process of siphoning off 50 claimants for discriminatory treatment will be no less burdensome than a discretionary one.

In conclusion, the grievance system is imperfect, as is the system for reviewing accommodations requests; however, NCR 25-06 in its present iteration is poised to be a step in the wrong direction for both processes. LSPC implores the CDCR Regulation and Policy Management Branch to seriously consider the alternatives to these regulations and to extend the time for public comment and especially for input from incarcerated people with disabilities. If these new regulations are rushed through, including the consolidation of grievances and accommodations and creation of a special track for perceived frequent claimants, the Department will be doing a disservice to people in its custody. It risks failing in its duties to protect the rights of incarcerated persons with disabilities and to honor valid requests for accommodations.

**Response:** This comment reiterates comments previously submitted by the commenter regarding versions of the text prior to the third Renotice. Those comments have already received responses elsewhere in this document and will not receive an additional response. To the extent the commenter addresses the third Renotice, specifically the changes to section 3483.5, see responses to commenter #T1, comments #1 and #2.

Regarding the comment about the “speed with which this rulemaking has progressed” the department has complied with all APA rulemaking requirements regarding timeframes for public comment. The department notes that several incarcerated persons and advocates for incarcerated persons, including disabled incarcerated persons, have submitted comments regarding this rulemaking action. Therefore, the department will not accommodate the commenter’s request to extend the time period for public comment.

The department takes the commenter’s concern that “incarcerated people with disabilities could be at greater risk for staff retaliation” seriously. For that reason, the GRT process, which requires a face-to-face meeting, unless the claimant is unavailable or chooses not to attend, between the incarcerated person, a member of the Office of Grievances, a member of the CST from headquarters, and a member of the Office of Appeals, also from headquarters, to discuss their claims in a private setting, can only help to mitigate the commenter’s concerns.

**PUBLIC HEARING:**

A public hearing regarding this proposed rulemaking action was held on June 3, 2025. No comments were received at the hearing.