

STATE OF RHODE ISLAND
DEPARTMENT OF CORRECTIONS
40 HOWARD AVENUE
CRANSTON, RHODE ISLAND

In the Matter of the Petition of	:	
Richard Paiva for a Declaratory	:	
Ruling	:	RIDOC2024PDR006
	:	
	:	
	:	

DECISION

Introduction

On April 30, 2024, the Department of Corrections (“Department”) received Petitioner’s *Petition for Declaratory Ruling* (“Petition,” attached hereto as Exhibit A.) In the Petition, the Petitioner requests that the Department issue a “declaratory order ... to state in what manner does RIDOC policy 13.10-5 prevent matters involving vendors from being resolved through the RI DOC grievance procedure.” In so asking for a declaratory order, Petitioner acknowledges that his “grievance clearly does not raise any issues against a vendor, but only raises the issue of typing supplies frequently running out, due to poor supply management.”

In his Petition, Petitioner sets forth that he recently filed a grievance in which he alleged that:

“[t]he issue raised in the grievance pertains to poor management of he typing supplies for the Max Law Library, whereas typing supplies frequently run our, sometimes for weeks at a time. A real simple resolution of the issue would have been to permit inmates to purchase their own typing supplies from the commissary or from an outside vendor or assurance that staff would order more typing supplies when the stock runs low, instead of waiting until the stock runs completely out before ordering more.

Exhibit A. The Petitioner’s April 1, 2024 Level 1 grievance speaks to the alleged lack of availability of typewriter ribbons and correction tape and suggests the items be offered for inmate purchase on facilities’ commissary. Exhibit B: Level 1 grievance. The grievance was denied at the facility level explaining that matters involving vendors cannot be resolved through the grievance policy. Exhibit B. The Facility’s denial also explained that Petitioner’s grievance related to the ordering, delivery, and approvals of said items (i.e., typewriter ribbons and correction tape)¹. On April 26, 2024, Petitioner appealed his grievance (Level 2). *Id.* On June 6, 2024, Departmental Grievance Coordinator Gallagher responded to Petitioner’s Level 2 grievance of the availability of typewriter ribbon and correction tape. Exhibit C: Level 2 Grievance Response. The Grievance Coordinator explained that the Maximum Facility has acquired additional typewriters and correction tape and ribbon has been ordered but not delivered. *Id.* Petitioner was also advised that “suggestions regarding products offered through Keefe Commissary are best addressed to Deputy Warden Hahn,

¹The Department’s procurement of goods and services follows R.I. Gen. Laws § 37-2-1 *et seq.*, State Purchasing Rules and other applicable State Government procedures and regulations.

...[who] is the Keefe Liaison and is in the best position to answer [Petitioner's] questions and /or concerns with regard to commissary items.

Petitioner failed to include the information from his Level 2 grievance in this Petition because he authored the instant Petition for Declaratory Ruling one day after he appealed his Level 1 grievance.

Issue

Whether the Department shall issue a declaratory order, decline to issue an order, or schedule the matter for further consideration.

Discussion

The applicable law regarding petitions for declaratory orders in the administrative law context begins with R.I. Gen. Laws § 42-35-8(a), which states: “[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner.” Additionally, R.I. Gen. Laws § 42-35-8(c) provides: “[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” If an agency declines to issue a declaratory order, the decision must be in a record and must include a brief statement of the reasons for declining. An agency decision to decline to issue a declaratory order is subject to judicial review for abuse of discretion.

The Petitioner has not established that the Petition requests the

interpretation of a statute, rule, guidance document, or order consistent with the letter and spirit of R.I. Gen. Laws § 42-35-8(a). The Petitioner is not requesting an interpretation of a statute, but rather the interpretation of an internal agency policy, specifically, the Department's Inmate Grievance Policy, 13-10-5 DOC ("Grievance Policy"). This internal agency policy is not an order, rule, or guidance document under the Administrative Procedures Act ("APA"). An order within the context of the APA is "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of a contested case." R.I. Gen. Laws § 42-35-1(13). The Department's Grievance Policy is not an order as it does not constitute a final disposition of a "contested case." Furthermore, the Department's grievance decisions, like the Department's classification and discipline decisions, pertain to the Department Director's discretion to make and promulgate necessary policies that pertain to the care and custody of prisoners committed to the correctional facilities. As a result, grievance decisions are not considered "contested cases" under the APA. See *L'Heureux v. State Department of Corrections*, 708 A.2d 549, 551 (R.I. 1998) (explaining that disciplinary and classification decisions rendered by officials of the ACI are not contested cases within the meaning of the APA). Petitioner, by asking the Department for a declaratory order, is inappropriately attempting to convert the grievance process into a contested case appealable to the Superior Court for review under the APA.

Moreover, the Department's Grievance Policy is neither a rule nor guidance document. A rule under the APA, is "the whole or a part of an agency statement of

general applicability that implements, interprets, or prescribes law or policy or the organization, procedure, or practice requirements of an agency and has the force of law.” R.I. Gen. Laws § 42-35-1(19). The term does not include “[a] statement that concerns only the internal management of an agency and which does not affect private rights or procedures available to the public.” R.I. Gen. Laws § 42-35-1(19)(i). A guidance document is “a record of general applicability developed by an agency which lacks the force of law but states the agency’s current approach to, or interpretation of, law or describes how and when the agency will exercise discretionary functions.” R.I. Gen. Laws § 42-35-1(9). Similar to a rule, the term guidance document does not include records that concern only the internal management of an agency and which do not affect private rights or procedures available to the public. *See id.* (“The term does not include records described in subdivisions (19)(i)”).

The Department’s Grievance Policy was created for the purpose of providing an internal procedure for the resolution of prisoner complaints, problems, and grievances that cannot be resolved informally. It is an agency policy that deals with the internal affairs of the Department and as such, was not promulgated pursuant to the APA. *See L’Heureux v. State Department of Corrections*, 708 A.2d 549 (R.I. 1998) (“the APA is not applicable to classification proceedings, disciplinary proceedings, or rule making dealing with the internal affairs of the ACI by the DOC”). This policy does not affect procedures available to the public as it does not authorize members of the public to submit grievances on behalf of themselves or

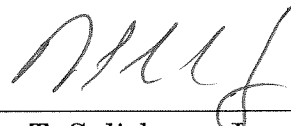
inmates. Additionally, this policy does not affect private rights as it is well established that a prisoner “has no constitutional right of access to a grievance procedure.” *Diaz v. Wall*, 2018 U.S. Dist. LEXIS 38097, *22 (D.R.I. February 12, 2018); *Reichert v. Abbott*, 2019 U.S. Dist. LEXIS 113270, *6 (D. Me. July 9, 2019) (“a prisoner does not have a constitutional right to a particular prison grievance procedure, or even to file a prison grievance”); *Holloman v. Clarke*, 244 F. Supp. 3d 223, 230 (D. Mass., March 23, 2017) (“inmates do not have a constitutionally protected right to a grievance procedure”).

Thus, the Department’s Grievance Policy is neither a rule or guidance document under the APA because the policy concerns only the internal management of the Department and does not affect private rights or procedures available to the public. Accordingly, Petitioner’s request for a declaratory ruling is outside the confines of R.I. Gen. Laws § 42-35-8(a).

Additionally, the Petitioner’s request for a declaratory ruling is not justiciable. The Rhode Island Supreme Court has stated that R.I. Gen. Laws § 42-35-8 is “an administrative counterpart of the Declaratory Judgments Act.” *Liguori v. Aetna Casualty & Surety Company*, 384 A.2d 308, 312 (R.I. 1978). It is well-settled rule that “the Superior Court is without jurisdiction under the Uniform Declaratory Judgments Act unless it is confronted with an actual justiciable controversy.” *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005). This principal applies equally to declaratory rulings under § 42-35-8. *See City of Providence Board of Licenses v. Department of Business Regulation of R.I.*, 2013 R.I. Super. LEXIS

195, *9 (November 18, 2013). “It is fundamental that, to be entitled to a declaratory judgment, a plaintiff must both demonstrate a personal stake in the outcome of the controversy and advance allegations claiming an entitlement to actual and articulable relief.” *McKenna*, 874 A.2d at 227. The Declaratory Judgments Act was “not intended to serve as a forum for the determination of abstract questions or the rendering of advisory opinions.” *Lamb v. Perry*, 225 A.2d 521, 523 (1967). The Petitioner’s request for a declaratory ruling would require the Department to issue an advisory opinion as he acknowledges that that his “grievance clearly does not raise any issues against a vendor, but only raises the issue of typing supplies frequently running out, due to poor supply management.” Exhibit A. Thus, by Petitioner’s own admission, there is no present case or controversy before the Department. Petitioner’s request for a declaratory ruling is nothing more than a request for advisory opinion. Petitioner has not made a showing that he is entitled to actual and articulable relief. Accordingly, the Petitioner has failed to articulate a justiciable basis for a declaratory ruling.

For these reasons, the Department declines to issue a declaratory order.



Wayne T. Salisbury, Jr.
Director
Department of Corrections

June 28, 2024

NOTICE OF APPELLATE RIGHTS

This decision constitutes a denial to issue a declaratory order requested under R.I. Gen. Laws § 42-35-8(a). Pursuant to R.I. Gen. Laws § 42-35-8(d), this order may be subject to judicial review.

Certification

I hereby certify that on this 28th day of June 2024, that a copy of the within Decision was sent by inter-department mail to:

Richard Paiva (#86429)
Maximum Security
P.O. Box 8273
Cranston RI 02929

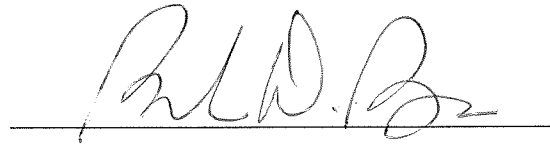
A handwritten signature in black ink, appearing to read "Richard Paiva", is written over a horizontal line.

Exhibit A

Richard Paiva
ID # 86429
MAX H1-41

LEGAL COUNSEL

APR 30 2024

Department of Corrections

April 27, 2024

RE: Petition for Declaratory order

TO: RIDOC

I had recently filed a level 1 grievance, and although it was very clear that the issue was not with an outside vendor, the grievance was denied for the reason that "matters involving vendors cannot be resolved through the grievance procedure." Grievance # 00321-2024.

The issue raised in the grievance pertains to poor management of the typing supplies for the MAX Law Library, whereas typing supplies frequently run out, sometimes for weeks at a time. A really simple resolution of the issue would of

been to permit inmates to purchase their own typing supplies from the commissary or from an outside vendor, or assurance that staff would order more typing supplies when the stock runs low, instead of waiting until the stock runs completely out before ordering more.

This grievance response is yet another example of just how futile the RIDOC grievance policy really is. And it is the reason why I will be pursuing the legislature to create a Correctional ombudsman.

I hereby petition the RIDOC for a declaratory order, pursuant to R.I.G.L. 42-35-8(a), to state in what manner does RIDOC policy 13.10-5 prevent matters involving vendors from being resolved through the RIDOC grievance procedure.

And please keep in mind that

my grievance clearly does not raise any issues against a vendor, but only raises the issue of typing supplies frequently running out, due to poor supply management. And unfortunately, the issue was not resolved and still persists.

When the grievance procedure results in a mere 10% approval rate, the procedure needs to be replaced. I hope that the RIDOC will consider advocating to the state legislature for a Correctional ombudsman. It will be the only procedure which will fairly and properly address inmate grievances. Because the procedure as is, is clearly futile and ineffective. This grievance was a very simple issue to resolve, but yet staff deliberately chose to create a false justification to deny the issue. Any lay person can review my grievance and see that my issue was not against any.

Vendor. see Michigan Compiled Laws Service, Section 4.351 et seq.; New Jersey Annotated Statutes, section 52:27 EE-26 et seq.; Burns' Indiana Statutes Annotated, Section 4-13-1.2 et seq.; Oregon Annotated Statutes, Section 423.400 et seq.; and Virginia Senate Bill No. 456, 2024 Session.

Sincerely,

Richard Paiva

Exhibit B

RHODE ISLAND DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

2024-0321
189

Department of Corrections

Grievance #:	Date Received (Level 1):	Date Received (Level 2):
		APR 29 2024

DO NOT WRITE ABOVE THIS LINE

Part A. - Complaint

Office of the Director

Instructions: Provide complete, accurate and legible information. Attach copies of required documentation. If additional space is needed, please attach a separate sheet to this form and include your name and inmate ID number on each sheet of paper. Failure to adhere to the filing procedures outlined in the most recent version of RIDOC policy 13.10; Inmate Grievance Procedure, may result in your grievance being returned as denied or unprocessed.

Inmate Name: Richard Paiva Inmate ID#: _____ Grievance File Date: 4-1-24

Facility: ISC HSC MAX MED MIN WOM

Description (Must include the date the incident occurred, the facility where it occurred and the reasonable relief requested):

The MAX Law Library frequently runs out of correction tape and/or typing ribbons, sometimes for weeks at a time. As a resolution, I respectfully ask that correction tape and/or typing ribbons be added to the commissary, or that I be

Inmate's Signature: Richard Paiva Date: 4-1-24

Receiving Staff Signature: LT Fetter Date: 4-2-2024

allowed to purchase these items from: Walkenhorst's

Part B. - Response Level 1 - Date Received by Warden/designee: _____ Level 2

You have failed to adhere to DOC Policy 13:10; Inmate Grievance Procedure. Per policy, matters involving vendors cannot be resolved through the grievance procedure. Your grievance is denied. Ordering, delivery and approvals of said Items are affected.

Approved Denied Unprocessed Withdrawn Referred to: _____

Signature: _____ Title: _____ Response Date: _____

Part C. - Appeal Level 1 Grievance Response Not Received Within Fifteen (15) Days

Instructions: If you wish to appeal your Level 1 grievance decision please sign and date below. **DO NOT** include a statement or summary of your grievance, as it is on file with the Department. This appeal will take into consideration only the grievance statement submitted at Level 1.

Inmate Signature: Richard Paiva Date: 4-26-24

Level 1 Distribution: Facility Grievance Officer, Inmate Level 2 Distribution: Department Grievance Coordinator

Exhibit C



Rhode Island Department of Corrections

6/6/2024 3:13:37 PM

Inmate Grievance Log

Grievance Log No.: 2024-0321 Inmate ID:
Facility Unit: MAX Inmate Name: Paiva, Richard
Grievance Level: Level 2 Grievance Subject: Access to Law Library Information
Grievance Summary: The MAX Law Library frequently runs out of correction tape and typing ribbons, sometimes for weeks at a time. As a resolution, I request that corrections tape and typing ribbons be added to the commissary or that I be allowed to buy these items.

Grievance Received Date: 4/29/2024 File Date: 4/26/2024

Inmate Attached Supporting Documentation

Support
Docs
Description:

Grievance Response: Mr. Paiva

I have conducted a review of the information related to your grievance where you state that the Maximum-Security Law Library frequently runs out of correction tape and/or typing ribbons, sometimes for weeks at a time. As a resolution, you request that correction tape and/or typing ribbon be added to the commissary, or that you be given permission to purchase these items from Walkenhorst's.

The RIDOC recognizes the important role of the Law Library as a meaningful resource for the inmate population. When there is limited access to the Law Library or resources within, the protocol relative to legal affairs is administered by submitting a request in writing to Captain Duffy or Lieutenant Burt, via request slip. You may also send a law library request form to Librarian Loretta Cimini. By this process you will have access to LexisNexis, and also be able to meet with the law clerk in the dining room and/or obtain legal copies.

You should know, the facility's administration has taken this matter into consideration and corrective measures are in place. Additional typewriters have been acquired and correction tape, as well as typing ribbon has been ordered but not yet delivered.

Going forward, suggestions regarding products offered through Keefe Commissary are best addressed by writing directly to Deputy Warden Hahn. Deputy Hahn is the Keefe Liaison and is in the best position to answer your questions and/or concerns with regard to commissary items. He may be reached at:

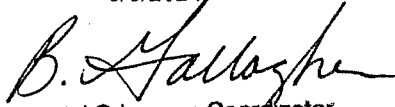
Intake Service Center
P.O. Box 8249
Cranston, RI 02920

Based on the above-mentioned information, your appeal will not be processed.

Decision: Unprocessed

Response Date: 6/6/2024

Level 1 Response Not Received Within 15 Days


Departmental Grievance Coordinator