

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

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: RIDOC2024PDR008
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DECISION

Introduction

On May 9, 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 “that declares how and in which manner the RIDOC interprets and applies the RIDOC Inmate Grievances Policy 13.10-5 to me, in so far as to the maximum time frame for which the Warden or designee has to respond to my two level 1 grievances I filed on 3-7-24 and 3-8-24.” The Petition contains no factual allegations.

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”).

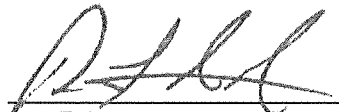
Thus, the Department's Grievance Policy is neither a rule or guidance document under the APA because the policy concerns only the internal management of the Department and does not affect private rights or procedures available to the public. Accordingly, Petitioner's request for a declaratory ruling 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 Petitioner has not set forth any allegations to support a finding that this matter is justiciable. There is nothing before the Department to suggest that there is present case or controversy in this matter. Furthermore, Petitioner has not advanced any allegations to suggest that he has standing, specifically that he has suffered an injury in fact or that he is entitled to actual and articulable relief. Without these essential requisites, Petitioner's request for a declaratory ruling is nothing more than a request for advisory opinion. Mindful of the fact that there is no justiciable basis for Petitioner's requested declaratory ruling, the Department will not render an opinion on this matter.

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



Wayne T. Salisbury, Jr.
Director
Department of Corrections

July 8, 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 8th day of July 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



Exhibit A

Department of Corrections

MAY 09 2024

Office of the Director

Richard Paiva
ID # 86429
MAX H1-41

May 8, 2024

TO: Acting Director Salisbury

I hereby petition the RIDOC for a declaratory order pursuant to R.I. Gen. Laws, Section 42-35-8(a), that declares how and in which manner the RIDOC interprets and applies the RIDOC Inmate Grievances Policy 13.10-5 to me, insofar as to the maximum time frame for which the warden or designee has to respond to my two level 1 grievances I filed on 3-7-24 and 3-8-24.

Thank you,
Richard Paiva