

Utah State Career Service Review Office



CAREER SERVICE REVIEW OFFICE
2023-2026 STRATEGIC PLAN

Overview

CAREER SERVICE REVIEW OFFICE

The Career Service Review Office (CSRO) is an administrative court for executive branch employees of the State of Utah. It is not a public facing agency, which makes it unique compared to other executive branch agencies. The CSRO's primary objective is to provide due process for executive branch employees with career service status who were dismissed from employment, disciplined on the job, or subject to other agency employment actions. At-will employees are also eligible to file retaliatory action grievances and to appeal the findings of abusive conduct investigations.

DUE PROCESS OF LAW

The CSRO conducts evidentiary hearings¹ for some grievance matters and has authority to overturn or uphold employment decisions made by agencies. The office is determined to provide a fair and responsive system of review for the 22,000 employees of the State of Utah and agency employers. To accomplish its mission, the CSRO has worked hard to establish itself as an independent entity and is known for its delivery of equitable access to due process under the law. In this Strategic Plan, the CSRO identifies strategies that will enable it to continue as a fair and impartial tribunal.

Over the last decade, there have been challenges to the continuing existence of the career service system for Utah's employees. The Strategic Plan for the CSRO takes that trend into consideration and is mindful that career service status may not continue indefinitely. This plan

¹ An evidentiary hearing is an informal trial before a hearing officer. At a CSRO hearing, the employee and the agency present documents and question and cross-examine witnesses under oath. The witnesses may be required to attend by subpoena.

focuses on current opportunities for improving the impartial review of employee discipline and the importance of the review process for all employees, including at-will employees. Due process of law is mandatory for career service employees but even where it is not mandated, it improves employee morale.

THE IMPORTANCE OF INDEPENDENCE

The CSRO has 2 full-time employees. The office's Administrator is an attorney who acts as the primary presiding hearing officer for evidentiary hearings, except when a conflict arises. The CSRO also maintains contracts with private attorneys who may serve as hearing officers in the Administrator's stead when called upon. The bulk of CSRO hearings are for employees who were dismissed from employment, or demoted, or suspended without pay. These hearings can be contentious, and the resulting decisions are difficult for the non-prevailing party. For these reasons, the CSRO purposely secludes itself from other agencies; the office's employees seek to avoid creating personal relationships with both employees and leadership at other agencies. While most other agencies seek interagency networking opportunities, the CSRO stays intentionally siloed to preserve its independence.

Mission Statement

"The Career Service Office administers the Utah State Employee's Grievance and Appeals Procedures for executive branch employees."

Core Values

INDEPENDENCE

The office fiercely protects its independence. It must be able to issue written decisions either upholding or overturning Agency employment actions without being influenced by agency relationships, and without fear that its decisions will result in repercussions to the CSRO and its personnel. While the CSRO is under the umbrella of the Office of the Governor as an executive branch state agency, it remains free of influence from executive branch leadership.

ADHERENCE TO THE RULE OF LAW

The office issues written decisions with legal predictability, coherence, and consistency. Written decisions are made through publicly visible processes and grounded in the law.

EQUITABLE ACCESS TO DUE PROCESS OF LAW

The office strives to maintain fairness in the review of all personnel grievances by making CSRO processes accessible to all employees who are eligible to have grievances and appeals heard, and by treating all parties with dignity and respect.

RESPECT

The office has only 2 employees but seeks to have personnel who reflect or are aware of the diversity of the State's workforce and endeavors to maintain a workplace where every person is treated with dignity and respect.

ACCOUNTABILITY

The office maintains stringent standards of conduct, self-enforcement of legal and ethical rules, good stewardship of public funds and property, and effective and efficient use of public resources.

EXCELLENCE AND SERVICE

The office adheres to the highest standards of excellence by committing to be recklessly good in performing its mission, retaining highly competent employees and hearing officers, adhering to the rule of law, staying abreast of relevant changes in the law, committing the discharge of statutory duties, and meeting the needs of parties in a timely and efficient manner.

Outcome Goals

- Access, Fairness, and Inclusion – The CSRO will treat everyone in a fair and just manner. Parties eligible to file a grievance at the CSRO will have equitable access to its proceedings. The process will be fair and explained to parties in a manner that can be understood. The CSRO will strive to be responsive to the needs of parties, regardless of cultural and social backgrounds. The CSRO will always seek to foster inclusive proceedings where all participants are respected and engaged, and their contributions are valued.
- Independence – The CSRO will maintain its status as an independent agency that cannot be influenced by other executive branch agencies. Independent decision-making will be fiercely protected to ensure the fair, impartial, and efficient delivery of due process.
- Accountability – The CSRO will advocate for resources and policies that support

and protect its independent and impartial decision making in accordance with the law.

The CSRO will maintain its historically high accountability for its use of public resources and adherence to its statutory mandates.

- **Technology** – The CSRO will administer due process in a fair, timely, efficient, and effective manner by always seeking to implement effective practices and sustain innovation. Subject to fiscal limitations, the CSRO commits to using technology and modernizing its operations with the ultimate goal of making digital services available for parties based on individual party needs.
- **Quality of Written Decisions** – The CSRO will deliver the highest quality written decisions to the parties.² Decisions will be based on the facts and the laws before the tribunal.
- **Facilitate Access** – The CSRO will commit to making its services and proceedings accessible to employees and employers in rural and outlying areas of Utah through technology. Historically, parties were required to travel to the CSRO’s physical offices to participate in an evidentiary hearing or mediation. Using remote platforms, parties and witnesses can participate in hearings without traveling, which can be prohibitively expensive. Although not all parties have computers, most have access to a smart phone or other mobile device. The CSRO will strive to make its website and other services mobile friendly to improve mobile access.

Objectives and Concerns

Based on feedback collected by the CSRO and the Division of Human Resource Management, there are 2 areas for the CSRO to focus its improvement efforts.

² CSRO decisions may be appealed to the Utah Court of Appeals and subjected to rigorous review.

SIMPLIFYING AND EXPLAINING CSRO PROCESSES

The first area of focus is simplifying instructions to make the CSRO's processes understandable for employees who are not represented by an attorney or an administrative representative. Typically, agencies are represented by attorneys from the Utah Office of the Attorney General. The State does not provide and pay for attorney representation for employees; employees may hire counsel at their own expense, may be represented by an administrative representative or any non-attorney representative, or may represent themselves. This presents an ongoing challenge for the office. The CSRO's personnel are prohibited, by rules of ethics, from dispensing legal advice; this prevents the office from answering certain types of questions from unrepresented parties. At times this presents a fine line to navigate and the CSRO is always striving to provide thorough explanations without running afoul of ethical limitations. The CSRO constantly looks towards the court system for guidance on giving helpful but appropriate information.

TECHNOLOGY AND INNOVATION

There is always room for innovation in enhancing remote and electronic access to CSRO services. Beginning in 2020, necessitated by quarantine measures, the CSRO implemented remote evidentiary hearings via WebEx. When quarantine ended, the CSRO received numerous requests to continue remote hearings and has carried on the practice of remote hearings. Since 2020, the office has received only 1 request for an in-person hearing. The overwhelming majority of parties prefer remote access hearings and proceedings, including remote paperless filing. While the office's current budget and caseload does not justify an upgrade to its digital systems, the CSRO is always looking for ways to improve remote access within its existing infrastructure.

Mindful of current economic conditions, the CSRO will not be seeking either new funding or an overhaul of its technology within the next 5 years. The office forecasts that it will be able to sustain its current workload by exploring underdeveloped uses of current technology and reallocating existing funds. The office will continue working within its existing budget to make its services more convenient and accessible.

Strategies for Implementation of Goals

INDEPENDENCE WITHIN THE EXECUTIVE BRANCH

The CSRO has always held fast to its independence. The hallmarks of good legal decisions are: exemplary and independent hearing officers; well-reasoned and well-written decisions; and ample time for deliberation of evidence. Truly equitable decision making requires absolute impartiality and a commitment to non-discrimination (regardless of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability). Additionally, it requires that the hearing officer is free from personal relationships with the parties. To reach this goal, the CSRO stringently avoids creating personal relationships with both employees and leaders from other executive branch agencies.

EVIDENTIARY HEARINGS

In the past, CSRO hearings were conducted by contract hearing officers selected through the Division of Purchasing's bid process. This practice was costly and made budgeting unpredictable because contract hearing officers are paid hourly. To eliminate these factors, the Legislature amended the CSRO's governing statute to allow the CSRO's Administrator to act as the hearing officer in most hearings. This change has been largely beneficial but has made it paramount for the CSRO to focus on maintaining its independence. Particularly because the

Administrator is a political appointee, the office is scrupulous in protecting itself and its personnel from improper political influences. This plan provides a continued strategy for safeguarding the CSRO's impartiality, which is paramount to the CSRO's mission.

ETHICAL CONSIDERATIONS

In large part, the CSRO earns the confidence of the State by faithfully performing its statutory duties, adhering to ethical standards, and adhering to strict internal oversight. These responsibilities include accountability for failures to comply with ethical standards. The fastest way to lose trust and confidence is thorough failure to establish and maintain scrupulous ethical standards and failure to hold personnel accountable for ethical misconduct.

In the courts, judges are guided by codes of conduct and external accountability mechanisms, including disciplinary action. For guidance, the CSRO looks to the judicial codes of conduct to light its path. For external accountability, DHRM conducts periodic surveys of the parties who appear before the CSRO and the CSRO responds promptly to negative feedback from stakeholders and parties. For the most part, however, the CSRO's accountability mechanisms are internal. The CSRO holds its hearing officers and personnel accountable to statutory and ethical requirements. This includes recusal from hearings and in extreme cases, termination of hearing officer contracts. Additionally, the CSRO's Administrator and Legal Assistant intentionally avoid socializing and personal networking with both the employees and leadership of other executive branch agencies and the Office of the Governor. This promotes continued independence and impartial decision-making, both of which are paramount to maintaining public trust.

LEADING WITH RESPECT

At the CSRO, grievances are filed by executive branch employees. By nature, employee grievances are filed by people who are displeased with their employment circumstances, either because they were disciplined or are dissatisfied with a working condition. Some employees arrive at the CSRO skeptical about their employment and the CSRO processes. Generally, many employee grievances are filed by employees with a perception that they are being unfairly persecuted. Disciplined employees also often allege they are being discriminated against based on a protected class.³

Within its own office, the CSRO is committed to creating an exemplary workplace free from discrimination, harassment, retaliation, and abusive conduct. With only 2 FTEs who work closely as a team, this has been relatively easy to sustain. When it comes to customer service, the CSRO's strategy is to ensure that its personnel act in a manner that shows awareness of the cultural and social values of its customers, while providing consistent treatment in cases regardless of a person's background. The office has not created its own employment training for its 2 FTEs but its personnel routinely participate in DHRM's personnel training on discrimination and abusive conduct.

REMOTE ACCESS

The appropriate use of technology increases productive time and can facilitate work processes. For the CSRO's customers, technology improves access to the CSRO's services and

³ Broadly speaking, in employment law, the protected classes are: race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, and disability. The CSRO does not have jurisdiction over discrimination claims, which are the exclusive domain of the Utah Anti-Discrimination and Labor Division. However, those issues are present in the background of many CSRO grievances.

proceedings. In this regard, the office seeks to balance limited monetary resources against the need for technology.

The CSRO acknowledges that it is not by any means technologically innovative but it is fortunate to be supported by the infrastructure and services provided by the Division of Technology Services. The office has not pursued the implementation of next-generation case management systems, which are extravagant and not well-suited for the CSRO's needs. In reality, the CSRO is not at the front line in a rapidly changing technological landscape. Nonetheless, the office has sought to make the most effective use of existing technologies to provide access to CSRO customers and support to its hearing officers. This plan includes technology because it is crucial to the future of continued success. Moving forward, the CSRO commits to building and maintaining flexibility in thinking about technology systems and applications for efficient communications, record-keeping, electronic case filing, and access. The office is committed to utilizing technology to achieve enhanced performance and efficiency.

EQUITABLE ACCESS

The State does not provide and pay for employees to have legal representation when they appear before the CSRO. Employees may be represented by an attorney at their own expense, be represented by an administrative representative (members of the Utah Public Employees Association can obtain representation in some cases), be represented by a non-attorney, or represent themselves. At the CSRO, agencies are represented by attorneys from the Utah Office of the Attorney General. One of the persistent challenges for the CSRO is ensuring that the CSRO's process is manageable to employees who are not represented by counsel or an administrative representative with knowledge of the CSRO's processes.

For ethical reasons, the CSRO is prohibited from giving legal advice to non-represented individuals. Although evidentiary hearings before the CSRO are simplified and intended to allow unrepresented employees to navigate, some non-represented grievants are understandably intimidated when facing an agency represented by attorneys. The CSRO always informs unrepresented grievants that they should read and understand the answers to frequently asked questions that the CSRO provides on its website. The office also provides employees with basic procedural information, provides forms, and provides access to the CSRO's governing statute and rules. The CSRO periodically revisits and rewrites its forms to make them clearer and simpler. And every person who participates in CSRO proceedings (parties, witnesses, and observers) are treated with dignity and respect. Nonetheless, the CSRO process is legal in nature and it is an ongoing challenge to ensure that participants have enough information to represent themselves. Sustained commitment is needed in this area and the goals in this strategic plan reflect that challenge.

COMMITMENT TO THE RULE OF LAW

Because the CSRO's success depends on gaining and keeping trust, it is of paramount importance that the CSRO is faithful to the rule of law. The office's priorities are grounded in the understanding that, to succeed and retain trust, the CSRO must adhere to its statutory mandates and certain principles. These include independence, the appropriate use of discretion, and adherence to precedent (treating like cases alike). The CSRO will continue to work to ensure that its customers view the office as objective, impartial, and insulated from political influence. The most important way to do this is reaffirming its adherence to the rule of law.

The CSRO is governed by Utah Code Sections 67-19a-101 through 501, which, among other things, sets out a strict standard for deciding whether agencies' employment decisions are

appropriate. The CSRO's chief responsibility is interpreting and applying the statute. By the legislature's design, the agencies have ample discretion in making day to day employment decisions and the CSRO cannot substitute its own judgment for the agency head's judgment. The statute thus authorizes the CSRO to act as a check on agency action but under the statutory framework, the CSRO seldom overturns agency actions and seldom finds in favor of the employee. And because the CSRO is also an executive branch agency, it is always in peril of being accused of favoritism towards the other executive branch agencies. This has the potential to erode public confidence in the CSRO. The office's strategy to minimize allegations of favoritism is to stay grounded in the law. By keeping faithful to the letter of the statute, the CSRO gives both employees and executive branch agencies predictable results. Predictable results mean that employees and agency employers who act in the same way can expect the law to treat them in the same way.

Employees who appear before the CSRO sometimes use emotional or political arguments to support their position. The increasing divisiveness present in our cultural discourse has bled into CSRO proceedings. To guard against this, the CSRO prioritizes evidence and law. There is a clear mandate for the CSRO to consider only the evidence properly before the hearing officer, to faithfully apply the law to the evidence, and to close the door on arguments that are not grounded in law. The CSRO's decisions may be appealed to the Utah Court of Appeals, which is authorized to overturn decisions found to be inconsistent with the CSRO's statute. This is the ultimate guard against injustice. The CSRO makes a renewed commitment to adhere to the principle that nobody is above the law and that the law applies equally to employees and executive branch agency employers.

Performance Measures

State agencies are increasingly challenged to be accountable for their performance, and to ensure that public funds are used responsibly and effectively. For the CSRO, this means maintaining useful measures of performance to maximize efficiency and effectiveness, and reporting those results to the public. Performance measures are based on statutory deadlines. The office adheres to these measures strictly, with only exceptions carved out in the statute of extraordinary circumstances warranting extensions. For this reason, the CSRO does not have delays or backlogs in its docket. Some delays are due to external forces beyond the CSRO's control, cannot be avoided, and do not reflect on the CSRO's case management practices. For the most part, however, the performance measures in place prevent grievance delays and backlogs.

Traditional performance metrics are difficult to apply to the CSRO, but the office tracks performance by converting statutory time limits to output and efficiency measures. Consistent adherence to these deadlines is key to the CSRO's overall performance in carrying out its mission:

- The CSRO shall issue a written decision within 20 working days after an evidentiary hearing is adjourned.
- The CSRO shall issue a jurisdictional decision within 15 days of the date a new grievance is filed.
- In the absence of extraordinary circumstances warranting extension, the CSRO shall conduct an evidentiary hearing within 150 days of the date jurisdiction is established.
- The CSRO shall hire and retain hearing officers who meet the performance standards for Administrative Law Judges set by the Utah Department of Human Resource Management.

Conclusion

The CSRO strives to be noteworthy for its independence and its adherence to the rule of law. In addition, the office accomplishes its mission through timeliness and efficiency, which are its primary measures of performance. This Strategic Plan identifies the office's ongoing efforts to maintain and improve independence, timeliness, and efficiency.