



AFGE LOCAL 252

REPRESENTING U.S. DEPARTMENT OF EDUCATION EMPLOYEES

March 9, 2026

Comments Submitted to the Office of Personnel Management via Federal Rulemaking Portal Regarding Suitability Action Appeals, Docket No. OPM-2025-0173 (Feb. 6, 2026)

Submitted by:

American Federation of Government Employees Local 252

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AFGE Local 252 represents more than 1,500 bargaining unit employees still with the U.S. Department of Education (Department). We submit this comment in strong opposition to the proposed rule captioned above. Under the current collective bargaining agreement (CBA) between AFGE Local 252 and the Department, bargaining unit employees who receive an unfavorable suitability determination may appeal the determination either to the Merit Systems Protection Board (MSPB) or via the grievance procedures outlined in Article 42 of the CBA.¹ The proposed rule would remove those rights and instead designate OPM as the sole and exclusive forum for appeals of unfavorable suitability determinations.

Under the negotiated grievance procedures outlined in Article 42 of the CBA, bargaining unit employees that choose to appeal unfavorable suitability determinations under the grievance procedures have the right to represent themselves or elect to be represented by an attorney or a Union representative.² If the Union is dissatisfied with the decision in the grievance procedure, the Union may refer the matter to arbitration.³ The procedures for arbitration, including the ability of each party to secure witnesses, are outlined in Section 42 of the CBA.

Under the MSPB process, bargaining unit employees have the right to represent themselves or elect to be represented by any person who is willing and available to serve, including a Union representative or an attorney.⁴ Under the MSPB process, if a bargaining unit employee is dissatisfied with an initial decision of the MSPB, they may file a petition for review with the Clerk of the Board in Washington D.C. or with the United States Court of Appeals for the Federal Circuit.

¹ See CBA Section 42.04 (January 17, 2025), <https://afge252ed.org/wp-content/uploads/2025/01/cba-term-agreement-20250116.pdf>.

² See CBA, Section 42.05.

³ See, CBA, Section 42.11.

⁴ See MSPB Appeals, Designating a Representative, <https://www.mspb.gov/appeals/appeals.htm>.



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The grievance procedures and arbitration in the CBA and the MSPB process provide the Department’s bargaining unit employees with meaningful due process rights that would be eliminated by the proposed rule. For example, under the proposed rule, OPM would have the right to disallow the employee’s choice of a representative “if the representative is an employee of the agency or OPM and that employee's representation would result in a conflict of interest or position; that employee cannot be released from his or her official duties because of the priority business needs of the agency; or it would give rise to unreasonable costs to the Government.”⁵ This could result in denying the Department’s bargaining unit employees the right to be represented by the Union where the Union representative is also a federal employee.

The proposed rule would also place sole discretion of whether to reopen and reconsider an initial appeal with OPM. In addition, even if OPM decides to reopen and reconsider an initial appeal, the process for doing so does not include an opportunity for a hearing or other forum with live testimony from parties and witnesses. Thus, removing important appeal rights that bargaining unit employees currently have under both the CBA and MSPB process. These are bargained for contractual rights under a rigorously negotiated and implemented collective bargaining agreement.

Removing the right of bargaining unit employees at the Department to appeal unfavorable suitability determinations to the MSPB or via the negotiated grievance procedures in the CBA raises serious due process concerns. Employees facing removal should retain access to independent adjudication, evidentiary hearings, and meaningful review.

If OPM believes the current suitability determination appeal process at the MSPB is too slow or cumbersome, the appropriate remedy is to work with Congress to reform MSPB’s procedures, adequately fund and staff MSPB, or seek legislative authority for a streamlined process that preserves independent adjudication and judicial review. The solution is certainly not to further diminish or completely remove contractually obligated rights of our bargaining unit members.

We look forward to participating in this conversation going forward and offering feedback on OPM’s proposed. Please contact Rachel Gittleman (afge252ed@gmail.com) with any questions.

⁵ See Proposed Rule, Section 731.504.