

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: CSA Classification Appeals/General CSA Grievance Procedures

NUMBER: 4:9

1. Preamble

It is the policy of the Board of Regents to provide career service employees both a classification appeal and a grievance procedure. The CSA Classification Appeal procedure provides an employee the ability to appeal his/her current classification (job title).

The General CSA Grievance procedure provides a just and equitable method for the resolution of grievances that affect terms and conditions of employment without discrimination, coercion, restraint or reprisal against any employee who may submit or be involved in a grievance.

The purpose of these procedures is to promote a prompt and a fair process for resolving an applicable appeal or grievance. Should an employee or management seek advice and assistance, which may include conflict resolution, they may contact Human Resources.

2. Definitions and General Provisions

- A. CSA Classification Appeal—The CSA Classification Appeal is a process whereby an employee can request review of his/her current classification (job title) due to a significant change in duties and responsibilities.
- B. Position Description Questionnaire (PDQ)—The PDQ is the state approved form that the employee completes when requesting a review of their current position.
- C. General CSA Grievance— The general CSA Grievance process permits an employee to appeal the misinterpretation, misapplication, or violation of any existing agreement, contract, policy, or rule, excluding overtime pay issues or CSA job classification, as they apply to the conditions of employment.
- D. The words response and notice shall mean the same throughout the CSA Classification Appeal and General CSA Grievance Procedures.
- E. Required written notices for grievances shall be mailed preferably or may be delivered personally. If mailed, the effective date shall be the date of the postmark and if delivered,

the effective date shall be the date of delivery. With the implementation of our Online Employment System, all classification appeal notifications must be submitted through the system. The date posted on the position history is the date of record.

- F. Failure to appeal a classification decision under CSA Classification Appeal Process (3, B step 5 – step 7) or grieve a decision under the General CSA Grievance Process (4, B) to the next step within the specified time shall end the right to appeal or grieve. However, the parties to any appeal or grievance may, by mutual agreement, waive the time limits provided herein. Such approved extensions shall be in writing and approved by all parties. Copies of the extension shall be provided to all parties. In the event of an appeal under 3, B, all communication must be documented under the history for future documentation. Human Resources shall attach this communication within the history of the Online Employment System.

3. CSA Classification Appeal Process

A. Purpose

The Regental Classification Appeals Procedure provides an orderly process for Regental Career Service Act employees to request review of their classification and to appeal classification action decisions.

B. Procedure

The following steps are to be used in the orderly progression of classification review/appeal. All actions below must be completed within the Online Employment System. This can be accessed at the following URL <http://snap.sdbor.edu>. Once logged into the site, the link can be located on the Employee Tab, under My Employment Details Channel, Job Description.

1. Step One. An employee may request a classification review (usually due to a significant change in duties and responsibilities) by completing the Position Description Questionnaire (PDQ) and submitting it to their hiring manager. The employee will simply go to the Job Description, select the appropriate action for CSA Employee Update.

If a position is vacant or if the employee is absent and unable to prepare the PDQ, the PDQ may be completed and signed by the immediate supervisor. To do this, the Supervisor will request a CSA Institutional Update for that Position Description.

2. Step Two. The immediate supervisor shall review and complete the Supervisor's section of the employee's PDQ within thirty (30) calendar days after its receipt. The PDQ shall be forwarded to and reviewed by the

supervisory levels each institution deems appropriate and then forwarded to the campus human resources office. ****Note—In the event that a supervisor is unable to review in the 30-day period, the employee may skip this step and proceed to the human resources office. This does not constitute a failure to meet the time frames but a process an employee can follow to provide the PDQ to the necessary party for review.** The Online Employment System will automatically push the PDQ to the human resource office.

3. Step Three. Once the PDQ has been received in the human resources office, the position shall be reviewed and an audit completed, with a recommendation for action forwarded to the Board of Regents' Human Resource Director.
4. Step Four. The institution's recommendation shall be reviewed and approved or disapproved by the Regents' Human Resource Director. The completed action shall be returned to the institution, and the employee shall be notified as to the status of the reclassification request. If not satisfied with the classification action, the employee has fourteen (14) calendar days from receipt of the notice to move to step 5. The Online system will automatically remove the ability of appeal should the 14 days lapse.
5. Step Five. If the employee feels the decision of the Regents' Human Resource Director is unsatisfactory, the employee shall submit a written letter of appeal through the Online Employment System to the Board of Regents for referral to a Classification Review Committee. The Committee shall consist of one Career Service employee and one neutral human resource representative from a Regental institution. In a case where the South Dakota Bureau of Personnel has completed the original audit leading to the disputed recommendation, the Bureau of Personnel shall provide a member of the Committee who shall serve in place of the Career Service employee as a voting member of the Committee. In such case, a Career Service employee shall be appointed to the Committee and shall serve in an advisory capacity. The Committee shall be formed, a chair appointed, and a meeting date scheduled within twenty-one (21) calendar days of receipt of the appeal notice from the employee. This does not imply that the hearing must be held within twenty-one (21) calendar days but that all parties agree upon and scheduled a date for the hearing. All hearings are conducted via teleconference unless other modifications are deemed necessary and approved by the SDBOR Director of Human Resources.
6. Step Six. During its deliberative process, the committee may consult with the Board's chief human resource officer, the Bureau of Personnel, or other sources as deemed appropriate. The chair shall submit a written report to the institution's President or Superintendent and the Board's Human Resource Director seven (7) calendar days from the appeal hearing. The report shall

include the rationale used to support the decision arrived at by the committee. The President or Superintendent and the Board's Human Resource Director shall then have seven (7) calendar days to submit a written response to the Executive Director if they wish to do so. After reviewing the Committee report and the institution's response, and after consultation with the Board's Human Resource Director, the Executive Director shall issue a written decision on the classification review.

7. Step Seven. The Executive Director shall notify the institution's Human Resource Director, the employee, immediate supervisor, and president or superintendent of the decision within thirty (30) calendar days of the Classification Review Committee meeting. The decision of the Executive Director may be appealed by the employee to the Career Service Commission by filing written notice of appeal with the Commissioner of the Bureau of Personnel within fourteen (14) calendar days of postmark or delivery of the decision.

4. General CSA Grievance Process

A. General Provisions

The steps of the procedures below will be adhered to as per the institutional organizational chart.

1. No offer of settlement of a grievance by either party shall be admissible as evidence in later grievance proceedings or elsewhere. No settlement of a grievance shall constitute a binding precedent in the settlement of similar grievances.
2. Employees who voluntarily terminate their employment shall have their grievances under this policy immediately withdrawn and shall not benefit by any later settlement of an individual or group grievance.
3. The Board, administration or supervisors shall not retaliate or effect reprisals against any exempt non-faculty employee for processing or participating in a grievance.
4. Grievance records shall not be maintained in the individual's personnel files. Separate files shall be maintained for this purpose.
5. An employee may appeal the misinterpretation, misapplication, or violation of any existing agreement, contract, policy, or rule, excluding overtime pay issues, as they apply to the conditions of employment.

6. Grounds for Dismissing a Grievance. The Board or its institutions may dismiss all or part of a grievance at any step for failure to state an issue that may be appealed, for failure to state a claim upon which relief may be granted, for lack of jurisdiction, or failure to meet a statute of limitations or a time limit. The Board or its institutions may also dismiss a grievance at any step for failure to develop a case involving contested issues of material fact. To establish a contested issue of material fact, the grievant must produce a specific factual basis for the complaint that, if proven, would establish that an action attributable to the state which deprived the grievant of a right arising under SDCL 3-6A. In establishing a contested issue of material fact, a grievant may not rely upon mere conclusions, general allegations, and speculative statements to establish factual grounds for the claim.

B. Procedures

Notice of Intended Disciplinary Action: The South Dakota Career Service administrative rules requires that supervisors provide a written notice for any intended disciplinary action. Employees then have the option to provide reasons to their supervisor as to why the disciplinary action should not take place. For more information on this process, please contact your institutional human resources office.

1. Step One. A Career Service Board of Regents employee who feels aggrieved by a decision which affects the employee's terms and conditions of employment may file a written statement of the grievance with the immediate supervisor within fourteen (14) calendar days of the alleged decision. The statement shall include a detailed description of the alleged grievance and the specific remedy desired. The supervisor shall analyze the facts and provide a written response to the employee within seven (7) calendar days following receipt (postmark or delivery) of the grievance. If the employee fails to receive a response within that time limit, the employee has seven (7) calendar days to proceed to step two. If the employee is dissatisfied with the response rendered, the employee has seven (7) calendar days following receipt (postmark or delivery) to proceed to step two. In the event, the employee feels that this step has been satisfied due to written notification from the immediate supervisor, then the employee may skip step one and proceed on to step two of this procedure. If an employee has already provided his/her supervisor with a written response to the notice of intended disciplinary action (reasons for not taking the action), the employee has the option of moving directly to step two of the grievance process, but must do so within 7 days of receiving a response from his/her supervisor.
2. Step Two. The employee may appeal the decision of the supervisor to the appropriate vice presidential level of the university. If the employee's supervisor is at the university vice presidential level, or an employee of the Board Office, the South Dakota School for the Deaf, or the South Dakota

School for the Blind and Visually Impaired, the appeal shall move to Step Three. The appeal should include copies of the original grievance, or the employee's response to the supervisor's notice of intent to discipline the employee, and any supervisory responses to the employee. A written response shall be delivered to the employee within fourteen (14) calendar days of the date the grievance was postmarked or delivered. If the employee fails to receive a response within that time limit, the employee has seven (7) calendar days to proceed to step three. If the employee is dissatisfied with the response rendered, the employee has seven (7) calendar days following receipt (postmark or delivery) to proceed to step three.

3. Step Three. The employee may appeal the decision arrived at in Step Two to the president of the university (if at the university level), the superintendent of the school (if at a special school) or the Executive Director of the Board (if an employee of the board office), as appropriate. The appeal should include copies of the original grievance and the supervisor's response and if applicable, the decision arrived at in Step Two. The President, Superintendent or Executive Director, as applicable, shall investigate the matter either personally or through an appointed designee or panel. A written decision shall be delivered or mailed within fourteen (14) calendar days of the date the grievance was postmarked or hand delivered. A copy of the decision shall be provided to the employee, supervisor, and the Board's executive director and shall include a statement of findings and conclusions supporting the decision. If the employee fails to receive a response within that time limit, the employee has seven (7) calendar days to proceed to step four. If the employee is dissatisfied with the response rendered, the employee has seven (7) calendar days following receipt (postmark or delivery) to proceed to step four.
4. Step Four. The Executive Director, or designee, shall investigate the grievance and make a recommendation to the Board of Regents. The Executive Director may direct a staff member(s) to conduct the investigation and provide findings and recommendations. The Board of Regents shall review the recommendations of the Executive Director and may, in its discretion, limit the review to the record previously established or may provide the employee an opportunity to be heard by a hearing officer or committee appointed by the Board or its designee. The Board's decision shall be issued to the employee within seven (7) calendar days from the date the grievance is considered by the Board. If the employee fails to receive a response within that time limit, the employee has seven (7) calendar days to appeal in writing to the Career Service Commission. If the employee is dissatisfied with the response rendered, the employee has seven (7) calendar days following receipt (postmark or delivery) to appeal in writing to the Career Service Commission.

5. Step Five. The decision of the Career Service Commission may be appealed to the circuit court in accordance with SDCL ch. 1-26. According to Administrative Rule, the Career Service Commission may dismiss all or part of a grievance for failure to state an issue that may be appealed, for failure to state a claim upon which relief may be granted, for lack of jurisdiction, or failure to meet a statute of limitations or a time limit. The Career Service Commission may also dismiss for failure to develop a case involving contested issues of material fact. To establish a contested issue of material fact, the grievant must produce a specific factual basis for the complaint that, if proven, would establish that an action attributable to the state which deprived the grievant of a right arising under this article. In establishing a contested issue of material fact, a grievant may not rely upon mere conclusions, general allegations, and speculative statements to establish factual grounds for the claim.

5. Release of Findings of Hearings Officer

For Career Service employee grievances, Board policy allows the release of the Hearing Officer's recommendation to the grievant at the time the recommendation is made to the Board.

SOURCE: BOR 1974; BOR, October 1986; BOR, January 1987; BOR June 1987; BOR, June 1989; BOR, May 1994; BOR, October 1998; BOR, December 1998; BOR, March 2001; BOR, January 2002; BOR March 2004; BOR, May 2008; BOR, June 2010.