

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Grievance Faculty

**NUMBER:** 4.4.9

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### **A. PURPOSE**

To outline the general provisions, requirements and process for faculty grievance procedures.

### **B. DEFINITIONS**

- 1. Day:** Calendar days
- 2. Executive Director:** The chief executive officer of the Board of Regents
- 3. Grievance:** An alleged misinterpretation, misapplication, or violation of a specific term or provision of BOR policy, or other agreements, contracts, policies, rules, regulations, or statutes that directly affect terms and conditions of employment for the individual employee; provided the allegations assert a specific factual basis for the claim that, if proven, would establish that an action attributable to the administration deprived the grievant of a right arising under such term or provision. A grievant may not rely upon mere conclusions, general allegations, and speculative statements to establish a factual basis for the claim that a term or provision has been misinterpreted, misapplied, or violated.
- 4. Grievant:** A named faculty member or a group of named faculty members who has filed a grievance under this procedure.
- 5. Institution:** Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind and Visually Impaired, South Dakota Services for the Deaf, University of South Dakota, and the Office of the Executive Director.
- 6. President:** The chief executive officer of a South Dakota Board of Regents University.
- 7. Superintendent:** The chief executive officer of a South Dakota Board of Regents Special School.

### **C. POLICY**

#### **1. Faculty Grievance Procedure**

The following grievance procedure is applicable to non-bargaining unit faculty. Special Schools bargaining unit faculty grievance procedures are contained in the Special Schools COHE/BOR contract.

### **1.1. Purpose**

All problems should be resolved, whenever possible, before the filing of a grievance. Open communication is encouraged between administrators and faculty members so that resorting to the formal grievance procedure will not be necessary. The purpose of this policy is to promote prompt and efficient procedures for investigating and resolving grievances.

### **1.2. Resorting to Other Procedures**

If the faculty member seeks resolution of any civil rights claim in any forum or by any set of procedures other than those established in this policy, whether administrative or judicial, the institution or Board will be under no obligation to proceed any further with the matter unless the grievant is under an obligation to exhaust administrative remedies in order to bring such other action. The act of filing an action or claim in any other forum in order to avoid violating a time limitation will not be considered a violation of the intent of this policy.

### **1.3. General Provisions**

- 1.3.1. No offer of settlement of a grievance by either party to the grievance will be admissible as evidence in later grievance proceedings, or elsewhere. No settlement of a grievance will constitute a binding precedent in the settlement of similar grievances.
- 1.3.2. If the grievance concerns non-renewal, denial of promotion, or denial of tenure, the grievance review will be limited to determining whether the decision was the result of failure to follow procedures. The burden of proof in such cases shall rest with the grievant.
- 1.3.3. Neither the institution nor the Board of Regents will retaliate or effect reprisals against any faculty member for processing or participating in a grievance.
- 1.3.4. In the event a grievance is filed near the end of an academic year and strict adherence to time limits will result in hardship to any party, the parties will do everything reasonable to allow the grievance to be processed in an expeditious manner.
- 1.3.5. If the grievant fails to act within the time limits provided herein, the administration will have no obligation to process the grievance and it will be deemed waived.
- 1.3.6. If the administration fails to act in time, the grievant may proceed to the next review level by filing the grievance with the appropriate official and within the timeframe required under Section E and any subsequently issued decision on the matter at the bypassed level will be void.
- 1.3.7. If the grievant fails to state a grievance as defined in Section B.3 in any filing under the grievance procedure, the administration will have no obligation to process the filing beyond providing notice to the grievant within five (5) days of receipt of the filing that the filing failed to meet the definition of a grievance, after which the filing will be dismissed.

- 1.3.8. The parties to the grievance may, in their discretion, waive any of the time limitations provided for herein; provided, however, that such waiver must be in writing and signed by both parties involved at the particular level or step of the grievance process.
- 1.3.9. Required written notice may be sent via the Postal Service, delivered by hand, or sent through electronic mail. Notice will be effective on the date postmarked by the Postal Service, on the date delivered by hand, or on the date sent electronically, provided that, where disruption of institutional electronic communications systems interferes with delivery of an electronic notice, the effective date of notices sent electronically will be delayed until service has been restored.
- 1.3.10. Grievance records will not be maintained in any faculty member's institutional personnel file.
- 1.3.11. In the case of a grievance concerning discipline or a termination pursuant to reduction procedures, the burden of proof will rest upon the administration to the extent required by law. In all other cases the burden of proof will rest upon the grievant.
- 1.3.12. Each party to the grievance will bear his own expense in a grievance proceeding. The institution or the Board will bear the expense of providing the Hearing Examiner and all attendant costs thereto.
- 1.3.13. A grievant will be permitted at any time prior to the time the Hearing Examiner sets the matter down for hearing, by written notice, to amend a grievance by further specifications. However, the filing of such amendments will not act to extend any time constraints.
- 1.3.14. Throughout the grievance process, the grievant shall include copies of the original grievance and all responses and decisions from prior steps, if any.
- 1.3.15. Throughout each step of the grievance process, any response or decision issued by the institution shall be provided simultaneously to the grievant and each administrator who issued a decision in prior steps, if any. All decisions issued by the institution in response to a grievance shall include a statement of findings and conclusions supporting the decision.
- 1.3.16. Faculty members, in processing grievances, may represent themselves or may be represented by someone of their choice.
- 1.3.17. The grievance proceedings will be maintained as confidential, subject only to the necessity of the parties to prepare their cases. All meetings and conferences will be held in a confidential setting.
- 1.3.18. Informal resolution may be attempted by the parties to a grievance at any point during the grievance procedure. If a grievance is resolved informally, the institution will be under no obligation to proceed further with the grievance.
- 1.3.19. If the deadline for any action(s) set forth herein falls on a Saturday, Sunday, legal holiday, or any other day in which the institution's administrative offices

are closed, the timeframe for the action shall continue to run until the end of the first day thereafter when the institution's administrative offices are open.

## **1.4. Grievance Procedure**

### **1.4.1. Step One**

1.4.1.1. The grievant may file a grievance in writing with the lowest administrative level having authority to dispose of the grievance within fourteen (14) days of the date on which the grievant knew, or should have known, of the action or condition which occasioned the grievance.

1.4.1.1.1. If the appropriate Vice President of the institution is the lowest administrative level having authority to dispose of the grievance, the grievance will be filed as a first instance at Step Two. The applicable filing period remains fourteen (14) days.

1.4.1.1.2. If the President or Superintendent is the lowest administrative level having authority to dispose of the grievance, the grievance will be filed as a first instance at Step Three. The applicable filing period remains fourteen (14) days.

1.4.1.2. The administrator, upon receipt of the grievance, will investigate and provide a response to the grievant within seven (7) days of receipt of the grievance.

1.4.1.3. If a grievant is not satisfied with the response, the grievant has seven (7) days to proceed to Step Two.

### **1.4.2. Step Two**

1.4.2.1. The grievant may file, in writing, a grievance of the Step One decision with the appropriate Vice President of the institution

1.4.2.2. The Vice President of the institution shall review the grievance and provide a response to the grievant within fourteen (14) days following receipt of the grievance.

1.4.2.3. If a grievant is not satisfied with the response, the grievant has seven (7) days to proceed to Step Three

### **1.4.3. Step Three**

1.4.3.1. The grievant may file, in writing, a grievance of the Step Two decision with the President or Superintendent of the institution.

1.4.3.2. The President or Superintendent shall, personally or through a designee, review the grievance and provide a response to the grievant within fourteen (14) days.

1.4.3.3. If a grievant is not satisfied with the response, the grievant has seven (7) days to proceed to Step Four.

- 1.4.3.3.1. If the grievant has filed a grievance based on corrective action imposed pursuant to BOR Policy 4.4.8, Section C.4.1., the grievant has seven (7) days to request review of the response pursuant to BOR Policy 1.1.6, Section C.5.

#### 1.4.4. Step Four

- 1.4.4.1. The grievant may file, in writing, a grievance of the Step Three decision with the Board.
  - 1.4.4.1.1. If the grievant has filed a grievance which is not based on a reduction in force conducted pursuant to BOR Policy 4.4.10 or discipline imposed pursuant to BOR Policy 4.4.8, Section C.4.1., the only additional grievance process available shall be under BOR Policy 1.1.6, Section C.5.
- 1.4.4.2. For grievances not governed by Section C.1.4.4.1.1. above, the Executive Director shall select a hearing examiner within fourteen (14) days following receipt of the grievance
- 1.4.4.3. The hearing examiner shall hold a hearing pursuant to SDCL ch. 1-26 with all parties involved in the grievance no later than thirty (30) days after the hearing examiner is appointed. The hearing examiner shall prepare a proposed determination including findings of fact and conclusions of law for the Board's consideration. The proposed determination shall be provided to the board within thirty (30) days of the hearing or fourteen (14) days prior to the next regularly scheduled Board meeting, whichever is sooner.
- 1.4.4.4. The Board's decision shall be issued to the grievant within ten (10) days from the date the grievance is considered by the Board. If the Board fails to respond within the specified time period or if the grievant is not satisfied with the decision, the grievant may grieve to the circuit court in accordance with SDCL ch. 1-26.

### **FORMS / APPENDICES:**

None

### **SOURCE:**

BOR April 2009; BOR May 2021; BOR December 2021; BOR December 2022; October 2023 (Clerical).