

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Grievance--Faculty

NUMBER: 4:7

I. Faculty Grievance Procedure

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

A. 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.

B. 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.

C. Definitions

For the purpose of this Article:

- (1) The term "grievance" means an alleged misinterpretation, misapplication or violation of the laws of the State of South Dakota or of a rule, policy, or regulation of the Board of Regents or the institution at which the faculty member is employed, and which affects him personally.
- (2) The term "grievant" means a named faculty member or a group of named faculty members who has filed a grievance under this procedure.

- (3) "Working days", as used herein, means those days when the offices of the institution or Board are open for business - Monday through Friday - exclusive of legal holidays. Working days will not be counted under special circumstances where the faculty member is unavailable to process his grievance by reason of travel or absence necessitated for continuing education, in special cases of emergency, during holiday or vacation except where a grievance has already been filed, and where an extension of time has not been made the subject of a written agreement.

D. Representation

Faculty members, in processing grievances, may represent themselves or may be represented by someone of their choice.

E. Confidentiality

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.

F. Time Limitations

When any action which is required to be taken within a specified time period is not taken in time, the following will apply:

- 1) 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 withdrawn.
- 2) In the case where the administration fails to act in time, the grievant may proceed to the next review level and any subsequently issued decision on the matter at the bypassed level will be void.

G. Steps For Processing A Grievance

1) Step 1

A grievant must first present a grievance, identified as such, in writing and informally, at the lowest administrative level having authority to dispose of the grievance. The grievance must be filed within fifteen (15) working days of the date on which the grievant knew or should have known of the action or condition which occasioned the grievance. The administrator, upon learning of the grievance, will investigate the grievance as deemed appropriate and will respond to the grievant in writing within seven (7) working days; such investigation may include a private meeting with the grievant. Notwithstanding the foregoing, if the office of the President or Superintendent represents the lowest administrative level having authority to

dispose of the grievance, then the grievance will be filed in the first instance at Step 2; in this circumstance, the applicable filing period remains fifteen (15) working days.

2) Step 2 General Procedures

If the grievance is not resolved in Step 1, the grievant will formalize the grievance by filing it with the President or Superintendent of the institution within five (5) working days of the Step 1 decision. The filing requires the legal name of the grievant, a statement of the specific rule, regulation, policy, or law alleged to have been violated, the relief requested, the name of the representative, if any, and evidence that the grievant attempted an informal adjustment of the grievance, as required in Step 1.

If, at the time of the notice and filing of the Step 2 grievance, as above provided, grievant elects to invoke the intervention or assistance of a standing peer faculty committee, grievant shall so note. The standing peer faculty committee will be comprised of faculty members of recognized standing in the community, two of whom will be designated by the faculty member at the time of the notice, and two of whom will be designated by the administration within one day of the receipt of the notice.

The President or Superintendent, or their designees, will conduct an investigation, which may include the services of an investigative panel, for the purpose of arriving at an ultimate decision on the merits. Based on the investigative results of such investigation, and the recommendations that may be generated by the investigative process employed, the President or Superintendent will prepare a proposed decision on the grievance.

In the proposed decision, under circumstances where all, or even a part of, the requested relief is to be denied grievant, the President or Superintendent will schedule a conference with the grievant, which will be held no sooner than four (4) days after the proposed decision, grievant will also receive all material and documentation generated by the investigative process employed.

At the time of the meeting and informal conference the grievant, his representative, and a second representative designated by the administration, will attempt to reach a settlement. At the time of the conference, grievant will be entitled to present his or her position on the matter in issue, which may include investigative materials and recommendations of the peer faculty committee, if such was noticed as above provided. If no settlement is reached at the conference, the President or Superintendent will proceed to issue a decision which will be issued, and the grievant notified, within twenty (20) working days after the grievance was filed at Step 2. The decision will include a statement of the findings and conclusions supporting the decision.

Except as otherwise agreed, all meetings in regard to Step 2 grievances will be held on the campus where the grievance occurs.

- 3) Optional step 2 procedures for certain grievances involving termination of employment.

The special procedures set out hereunder are available only in three circumstances: where the grievance arises from a dismissal for cause, a termination of a tenure contract or a reduction in force.

If such a grievance is not resolved in Step 1, the grievant will formalize the grievance by filing it with the President or Superintendent of the institution within five (5) working days of the Step 1 decision. The filing requires the legal name of the grievant, a statement of the specific rule, regulation, policy, or law alleged to have been violated, the relief requested, the name of the representative, if any, and evidence that the grievant attempted an informal adjustment of the grievance, as required in Step 1.

If, at the time of notice and filing of the Step 2 grievance form, as above provided, grievant elects to invoke the intervention or assistance of a faculty hearing panel, grievant will so note on a grievance form or the right will be waived.

If the grievant waives the right to a faculty hearing panel, grievance procedures and timeline will be those outlined in 5.4.6(7)(b)(i).

If the grievant elects to have a faculty hearing panel review the matter, the following will apply:

- a. Within ten days after filing a notice, the president of the institution will formally appoint the faculty hearing panel comprising those individuals selected pursuant to paragraph (b) below and charge it to conduct a grievance hearing on the record. The grievant and the party responding on behalf of the administrative decision maker will have the right to call and examine witnesses and to introduce evidence. The panel will make written findings and conclusions based upon the record taken as a whole and will forward its recommended disposition of the matter to the president. In reaching its conclusions, the panel should consider that the administration has the burden of proof as set out in Division I, Section 6.8(7). The panel may request legal advice in determining applicable due process standards in the matter before it. The institution will be responsible for necessary arrangements to provide competent, disinterested legal advice.

- b. The hearing panel will be made up of three faculty members, one selected by the president of the institution or a designee, one selected by the grievant and a third selected by the first two. In the event that the persons designated by the parties cannot agree upon a third member, the lists of candidates and recommendations will be forwarded to the executive director who will select a third member. This process will be completed within seven working days and will extend the deadlines for all subsequent proceedings by seven working days.
- c. The three panel members will select a chairperson. The chair of the faculty hearing panel, in consultation with the grievant and other necessary parties, will fix a date for a hearing, which must be held no later than forty-five (45) days after the filing of the Step 2 grievance.
- d. Within ten working days of the date of hearing, a panel will issue written findings and conclusions and will forward them, a hearing transcript and an advisory recommendation to the president.

Within ten (10) working days after receiving the recommendation from the faculty hearing panel, the president will render his decision in writing to the affected faculty member and the local COHE president. The decision will include a statement of the president's findings and conclusions in support of the decision if these differ from those of the faculty hearing panel.

Except as otherwise agreed, all meetings in regard to the Step 2 grievance will be held on the campus where the grievance occurs.

4) Step 3

If a grievance has not been resolved in Step 2, the grievant may submit the grievance to the Board of Regents. The Step 3 grievance will be filed with the Executive Director within ten (10) working days following receipt of the Step 2 decision. A copy of the Step 3 grievance will be sent by the grievant to the President or Superintendent of the institution.

The Executive Director will have fifteen (15) working days within which to attempt, at his discretion, a resolution through informal means.

If no resolution is achieved within the time herein last provided, the formal grievance will be referred to a Hearing Examiner who will be designated by the Board of Regents and who will, within ten (10) days after his designation and appointment, set the matter down for full hearing to be held no earlier than seven (7) days and no later than fifteen (15) days after his notice of appointment has been postmarked to grievant.

Such hearing will be conducted in a confidential setting and all parties to the grievance will make no public statements about the case during the pendency of the proceedings.

All parties to the grievance have the right to obtain witnesses and present evidence. The institution(s) will cooperate with the Hearing Examiner in securing witnesses and in making available specifically identified and relevant documentary and other evidence requested by the grievant(s), to the extent not limited by contract or law. Faculty members will respond to requests to give testimony under oath, incidental to the processing of any grievance. The parties to the grievance have the right to cross-examine witnesses. Where a witness cannot or will not appear, but the Hearing Examiner determines that the interest of justice requires admission of their statement, then the Hearing Examiner will arrange for a deposition. The Hearing Examiner may grant continuances when requested by either party to enable either party to investigate evidence, or for any other reason deemed appropriate. The Hearing Examiner will keep a record of the proceedings.

The hearing will not be conducted under strict rules of legal evidence and is not a contested case. Every possible effort will be made to obtain the most reliable evidence.

The Hearing Examiner will make a recommendation to the Board which will take the form of findings of fact, conclusions of law, and an order of disposition and which will be issued within fifteen (15) working days of the hearing or of the expiration of any briefing schedule established by the hearing examiner. A copy of the recommendation will be provided to the grievant(s) and the President or Superintendent. The recommendation must be based solely on the record, pertinent institutional and Board policies, and the law of the land. Whenever the recommendation reverses or modifies the Step 2 decision, it must be accompanied by a statement of reasons and referred along with the record, to the Central Office of the Board of Regents.

The Board will make a final decision based upon the recommendation of the Hearing Examiner. In addition, it may review the record pertinent to the issues. Such decision will be made at the next regularly scheduled Board meeting following receipt of the recommendation, provided the recommendation is received ten (10) working days prior to the Board meeting. If not received in time, the recommendation will be acted upon at the subsequent meeting. If the Board rejects or modifies the recommendation of the Hearing Examiner, the Board will provide the grievant with the reasons for rejecting or modifying the recommendation. Appeals from the decision of the Board of Regents will be governed by SDCL 3-18-15.2, and other laws in such cases made and provided.

H. Miscellaneous Provisions

- 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, unless otherwise agreed.
- 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, unless otherwise provided in this Agreement. The burden of proof, in such cases, shall rest with the grievant.
- 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.
- 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.
- 5) Grievance records will not be maintained in any faculty member's institutional personnel file.
- 6) 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 machinery.
- 7) In the case of a grievance concerning a 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.
- 8) 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.
- 9) 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.

SOURCE: Current Policy Manual 5.4.6; BOR April 2009.