

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** General Non-Faculty Exempt (NFE) Grievance Procedure

**NUMBER:** 4:8

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### 1. Preamble

It is the policy of the Board of Regents to provide non-faculty exempt employees a grievance procedure. The 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 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.** Grievance Procedure—This is a process whereby an employee can grieve an applicable employment action that adversely affects his/her terms and conditions of employment.
- B.** Grievance— Grievance is defined as an alleged misinterpretation, misapplication or violation of a specific term or provision of Board policy affecting terms or conditions of employment, or other agreements, contracts, policies, rules, regulations or statutes that directly affect terms and conditions of employment.
- C.** 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.
- D.** Failure to grieve to the next step within the specified time shall end the right to grieve. However, the parties to any grievance may, by mutual agreement, waive the time limits provided herein. Such extensions shall be in writing and approved by all parties. Copies of the extension shall be provided to all parties.
- E.** The Board, administration or supervisors shall not retaliate or effect reprisals against any non-faculty exempt employee for processing or participating in a grievance.

- F. Employees who voluntarily terminate their employment shall have their grievances under this policy immediately withdrawn and shall not benefit by any later settlement of an individual or group grievance.
- G. Grievance records shall not be maintained in the individual's personnel files. Separate files shall be maintained for this purpose.
- H. The words response and notice shall mean the same throughout the Grievance Procedures.
- I. Required written notices 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.

### 3. Procedures

- A. **Step One**— A non-faculty exempt employee, who feels aggrieved by a decision, action or non-action of the supervisor, or the administration, may file a written statement of the grievance with the immediate supervisor within fourteen (14) calendar days of the alleged decision, action or non-action. 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.
- B. **Step Two**— The employee may grieve 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 grievance shall move to Step Three. The grievance should include copies of the original grievance and the supervisor's response. A written response shall be delivered to the employee within fourteen (14) 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 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.

- C. **Step Three**– The employee may grieve the decision arrived at in Step Two to the President of the University, the Superintendent of the School or the Executive Director of the Board, as appropriate. Employees who report directly to the Executive Director may file their Step Three grievances with the Board as per step Four. The grievance 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 shall investigate the matter either personally or through an appointed designee or panel. A written decision shall be delivered within fourteen (14) calendar days of the date the grievance was received (postmark or delivery). 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.
- D. **Step Four**– The employee may grieve the decision rendered in Step Three to the Board. The grievance shall include copies of the original grievance and the responses received in Steps One, Two and Three. The Board's Executive Director may attempt to achieve an informal resolution of the grievance. If the Executive Director elects not to pursue an informal resolution, or if the informal resolution cannot be secured, the Executive Director shall select a hearing examiner. The hearing examiner shall hold investigative hearings with all parties involved in the grievance and prepare proposed findings of fact and conclusions of law for the Board's consideration. 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 Board fails to respond within the specified time period, or if the employee is not satisfied with the decision, the employee may grieve in accordance with South Dakota Codified Law.

#### 4. **General Guidelines for Contested Cases**

This section is in accordance with Administrative Procedures Act and includes those employees who are excluded from SDCL 3:18.

##### A. **Rules of Evidence**

1. The examiner shall exclude irrelevant, incompetent, immaterial, or unduly repetitious evidence. The examiner shall follow the rules of evidence as used by the State of South Dakota's circuit courts. Evidence not normally allowed under those guidelines is permissible if reasonably prudent persons would commonly rely on such information in the conduct of their affairs. No evidence is allowable if its admission is deemed inadmissible by state law. Objections to the submission of evidence may be forwarded by the parties involved and shall be noted in the record of the hearing. Written evidence may be submitted.

2. All parties involved may conduct cross-examinations as necessary for a full and true disclosure of the facts.

**B. Finding and Conclusions**

The Board office shall provide draft findings of fact and conclusions of law to the parties involved in the grievance three weeks prior to the Board meeting where the grievance shall be considered. If a party contests those draft findings, the contesting party shall submit written objections to the Board office within two (2) weeks of the Board meeting. The Board office may, at its discretion, schedule an additional hearing to hear oral arguments after issuance of the draft findings.

**C. Required Record**

The Hearing Examiner shall maintain a record that shall contain the following:

1. All pleadings, motions, intermediate rulings;
2. Evidence received and considered;
3. A statement of matters officially noticed which have been refuted;
4. Questions and offers of proof, objections, and rulings thereon;
5. Proposed findings of fact and conclusions of law submitted to the Board;
6. Any decision, opinion, or report authored by the hearing examiner and submitted to the Board;
7. All staff memoranda or data submitted to the hearing officer by all parties in connection with the hearing.

At any of the participating parties' written request, a recording of the hearing shall be created by the Board office. If a written record is requested by one of the parties, it shall be prepared at the expense of that party. If another party subsequently requests a written record of the hearing, a copy shall be prepared at the expense of that party. If no written record of the hearing is prepared, the Board office shall prepare minutes of the hearing.

**D. Hearing Notification**

Prior to holding the hearing, the hearing examiner shall provide notification of the hearing and include the following:

1. Statement of the time, place, and nature of the hearing;
2. Statement of the legal authority and jurisdiction under which the hearing is to be held;
3. Statement of the issue to be addressed in the hearing, and if applicable, any relevant BOR policies or state laws which shall be addressed in the hearing;

4. A statement which delineates the possible consequences of the Board's ultimate decision of the issue at hand on all parties involved;
5. A clear statement that the hearing is adversarial, that all parties have the right to be represented by legal counsel, and that all due process rights shall be forfeited if they are not exercised at the hearing;
6. A statement that the hearing shall be used as the basis of drafting proposed findings of fact and conclusions of law for the Board's consideration, and that the Board's decision is subject to grieve to the circuit court and ultimately the state Supreme Court as provided by law.

**SOURCE: BOR, January, 1987; BOR, September, 1988; BOR, December 1990; Revised BOR June, 1991; SDCL 1-26; BOR, May, 1994; BOR, December 1998; BOR, March 2004.**