

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 6 – A (2)

DATE: May 11, 2021

SUBJECT

BOR Policy 4:4 – Non-Faculty Exempt Employment Provisions, 4:7 – Grievance Faculty, and BOR Policy 4:14 – Faculty Discipline and Disciplinary Procedures (Second and Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 4:4](#) – Non-Faculty Exempt Employment Provisions

[BOR Policy 4:7](#) – Grievance Faculty

[BOR Policy 4:14](#) – Faculty Discipline and Disciplinary Procedures

BACKGROUND / DISCUSSION

The Board approved the first reading of the proposed revisions to BOR Policies 4:4, 4:7 and 4:14 at its [March](#) meeting. During the Board’s discussion in March there were two issues identified for revision in BOR Policies 4:4 and 4:7, both of which are reflected in Attachments I and II. The first of which was to include a statement indicating how deadlines will be treated in the event the last day falls on a weekend, holiday or other day in which administrative offices are closed, which is now found in section C.6.1.14 of BOR Policy 4:4 (Attachment I) and section D.18 of BOR Policy 4:7 (Attachment II). The second change was to remove the option to elect a documentary review by a peer panel in step 2 of the grievance process in BOR Policies 4:4 and 4:7, which change is reflected in the attached drafts. The remainder of the proposed revisions to BOR Policies 4:4, 4:7 and 4:14 are the same substantive form as what was presented to, and approved by, the Board in March.

IMPACT AND RECOMMENDATION

The proposed revisions set forth in BOR Policy 4:7 address the necessary cleanup resulting from the elimination of collective bargaining, while also promoting a more consistent grievance process across the faculty and NFE classifications. The revisions to BOR Policies 4:4 and 4:14 are the logical byproducts of the underlying changes proposed to BOR Policy 4:7, resulting in a cohesive grievance process, uniform timelines and consistent terminology across the related BOR policies.

(Continued)

DRAFT MOTION 20210511_6-A(2):

I move to approve the second and final reading of the proposed revisions to BOR Policy 4:4, BOR Policy 4:7 and BOR Policy 4:14, as presented.

BOR Policy Revisions - 4:4, 4:7 & 4:14

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Board staff recommends approval.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 4:4

Attachment II – Proposed Revisions to BOR Policy 4:7

Attachment III – Proposed Revisions to BOR Policy 4:14

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Non-Faculty Exempt Employment Provisions

NUMBER: 4:4

A. PURPOSE

To define the process and provisions relating to the appointment, employment, conduct expectations, compensation practices, and grievance procedures for Non-Faculty Exempt (NFE) employees. This policy supersedes all other BOR policies relating to NFE employees.

B. DEFINITIONS

1. Day: Calendar days

1.2.Executive Director: The chief executive officer of the SD Board of Regents.

2.3.Grievance: An alleged misinterpretation, misapplication or violation of a specific term or provision of Board policy, or other agreements, contracts, policies, rules, regulations or statutes that directly affect terms and conditions of employment for the individual employee.

3.4.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 the Visually Impaired, ~~State-South Dakota~~ School for the Deaf, University of South Dakota, and the Office of the Executive Director.

4.5.Internal Equity Adjustment: A salary adjustment to reduce or eliminate an internal pay rate disparity within an Institution or defined Institutional department.

5.6.Market Equity Adjustment: A salary adjustment to reduce or eliminate an external pay rate disparity using recognized market data and peer groups.

6.7.Non-Faculty Exempt (NFE): Employees who are exempt from the Civil Service Act by virtue of their administrative and professional functions.

7.8.Performance Adjustment: A salary adjustment made in recognition of work performance that meets or exceeds performance standards documented through an established review process.

8.9.President: The chief executive officer of a South Dakota Board of Regents University.

9.10. _____ Student Employee: Student employees, including teaching and research fellows, are exempt from the Civil Service System. Student employees are considered temporary employees and not eligible for benefits unless meeting the requirements under the Affordable Care Act.

10.11. _____ Superintendent: The chief executive officer of a South Dakota Board of Regents Special School.

~~11. Working Day: Monday through Friday, except for holidays and other times when the Institution's administrative offices are closed.~~

C. POLICY

1. Appointment

All NFE Institutional personnel will be employed upon the approval of the President, Superintendent, or Executive Director. BOR Policies 1:5 and 1:6 outline when Board approval is required for appointment.

- 1.1. If an Institution wishes to hire a candidate who was previously terminated for cause, or who resigned in lieu of termination, the President or their delegate, and the Office of the Executive Director shall be advised of the circumstances surrounding the termination. The President, Superintendent, or Executive Director will approve or deny the rehire based upon legitimate business and position related reasons.
- 1.2. If an Institution appoints a candidate who is employed by another Institution, the Institutions shall share position related information with the requesting academic or human resource office, and the appointing authority will consider that legitimate business and position related information in the hiring process prior to appointment.

2. Employment Contracts

- 2.1. Upon appointment of a benefit-eligible employee, the University or Special School will issue an employment contract, which may be renewed annually at the discretion of the University President or Superintendent.
- 2.2. NFE employment contracts shall not be more than one year in length, unless otherwise specified in, and issued pursuant to, BOR Policy 4:49.
- 2.3. During a valid contract term, NFE employees may be reassigned for non-discriminatory purposes without cause to any position, so long as the salary is not decreased during the term of the current contract.
- 2.4. NFE Employment contracts may be non-renewed without cause by providing written notice of the non-renewal to the NFE employee prior to the expiration of the current contract term.
- 2.5. An NFE employment contract creates no obligation of the Institution for continued employment beyond the term of the contract and non-renewal of the contract is not an action which can be grieved under BOR or Institutional policy.
- 2.6. NFE employment contracts may be terminated for cause, or as a part of a reduction in force in conformity with this policy and applicable law.

3. Compensation Administration

- 3.1. All compensation adjustments that meet the criteria identified in BOR Policy 1:5(5) and 1:6(4) require Board approval.
- 3.2. Compensation upon Hire or Transfer
 - 3.2.1. Compensation for employees at hire or transfer will be set comparative to the market value of the position as well as the internal equity of the Institution.

- 3.2.2. Institutional hiring authorities shall consult with human resources on compensation decisions at hire or transfer, and the Institution shall consider the position requirements, institutional priorities and the candidate's education, experience, skills, and abilities.

3.3. Annual Salary Adjustments

Decisions concerning annual salary policy adjustments will be made in accordance with legislative process and BOR policies. The President, Superintendent or Executive Director determines the Institutional priorities and establish guidelines for salary allocations.

- 3.3.1. Administrators responsible for making individual salary recommendations will follow approved guidelines:

3.3.1.1. The Legislature will identify the salary pool and the Board will approve a total salary policy pool for which Institutions can distribute based on market, performance or institutional priorities.

3.3.1.2. The President, Superintendent or Executive Director can apply institutional priorities to a specific department or area of concentration so long as it is a portion of the total salary policy pool.

3.3.1.3. Administrator recommendations will be reviewed by the appropriate Vice President and/or President.

3.3.1.4. All annual salary policy for benefit eligible employees must be applied through the HRFIS system, those meeting the criteria for Board approval in BOR Policy 1:5 or 1:6 must be report to the Board for approval at its regularly scheduled meeting in May.

3.4. Other Base Salary Adjustments

3.4.1. Additional Duty Pay: An increase, permanent or temporary, to base salary not exceeding ten percent (10%) may be granted based on a documented additional workload.

3.4.2. Duties and Responsibilities Changes: An increase based upon significant change in the duties, scope and responsibility of a position as documented in an approved position description.

3.4.2.1. The adjustment shall be consistent with previous institutional priority decisions of the Institution and must be made in light of internal equity.

3.4.3. Internal Equity Adjustment: An increase to base salary to reduce or eliminate documented institutional internal salary disparities that are found after an analyses of position duties, individual qualifications, experience, longevity, work performance -or institutional priorities.

3.4.4. Market Adjustment: An increase to base salary to reduce or eliminate a documented external salary inequity.

3.5. Instruction of Academic Courses

- 3.5.1. An NFE employee may be allowed to instruct an undergraduate or graduate course with the appropriate approval process at the Institution.
- 3.5.2. Compensation for the instructional work should be comparable to the rates provided to temporary faculty for comparable instruction.
- 3.5.3. If the instructional workload is assigned as an overload, the work related to course instruction should be completed outside of the scope of the employee's regular position.

4. Reduction in Force

4.1. An Institution may lay off or reduce the percent time of an NFE employee during a current contract term for the following reasons:

- 4.1.1. Legislative action;
- 4.1.2. Loss of grant, contract or other funding;
- 4.1.3. Governor's executive order; or
- 4.1.4. Reorganization. An Institution may only use this as a means to lay off an employee for such occasions as privatization, the movement of a function to another state agency, the elimination of an organizational function, the consolidation of departments or functions, or a reduction in a program's activities.

4.2. Layoff Notification

4.2.1. An employee shall be given a minimum of fourteen (14) calendar day's written notice prior to the effective date of the layoff or reduction in percent time. The notice shall include:

- 4.2.1.1. The effective date and reason(s) for the layoff;
- 4.2.1.2. Information concerning the right to appeal;
- 4.2.1.3. The timeline in which the employee may present reasons in -writing why the layoff should not take place;
- 4.2.1.4. Notice is effective the day of deposit in the mail of a certified notice, the date electronically sent, or the date personally delivered to the employee.

4.2.2. A copy of the layoff notification should be forwarded to the system human resources officer at the time the action is taken.

4.3. Priorities for Layoff

4.3.1. When more than one NFE employee exists in any classification, department, or geographic location designated for a reduction in force, the following criteria will be used to identify the employee(s) who will be laid off or have reduced hours:

- 4.3.1.1. Performance;
- 4.3.1.2. Longevity with the Institution and employment status;
- 4.3.1.3. Special knowledge, skills, abilities and potential of the employee;

- 4.3.1.4. Type and mixture of funding for position and fund status;
- 4.3.1.5. Future needs of the department;
- 4.3.1.6. Geographic location.

4.4. Benefits

- 4.4.1. Any accrued and vested leave will be paid in accordance with South Dakota administrative rules and statutes.

5. Code of Conduct

Employees are expected to maintain an effective, orderly, safe and efficient work environment.

5.1. Professional Conduct/Misconduct Defined

- 5.1.1. Disciplinary action, up to and including termination, may be taken, upon notice and a right to respond, for conduct within or outside the scope of employment. Disciplinary action may be taken for just cause, including, but not limited to the reasons listed below:
 - 5.1.1.1. The employee has violated any Board of Regents or institutional policy;
 - 5.1.1.2. The employee violated a confidentiality agreement, non-disclosure agreement, policy, regulation, or law;
 - 5.1.1.3. The employee disrupts the efficiency or morale of the department;
 - 5.1.1.4. The employee is careless or negligent with the money or other property of the state or property belonging to any person receiving services from the state or has stolen or attempted to steal money or property of the state or property belonging to any person receiving services from the state;
 - 5.1.1.5. The employee has failed to maintain a satisfactory attendance record based on the established working hours or has had unreported or unauthorized absences;
 - 5.1.1.6. The employee has made a false or misleading statement or intentionally omitted relevant information during the application and selection process;
 - 5.1.1.7. The employee has intentionally falsified a state record or document;
 - 5.1.1.8. The employee has violated statutes or standard work rules established for the safe, efficient, or effective operation of the campus;
 - 5.1.1.9. A failure to correct deficiencies in performance;
 - 5.1.1.10. A breach of recognized published standards of professional ethics for the employee's profession;
 - 5.1.1.11. Conviction of any felony or the conviction of a misdemeanor involving immoral actions;
 - 5.1.1.12. The unlawful or unauthorized manufacture, distribution, dispensing, possession or use of alcohol or controlled substances while on duty or while on premises owned and controlled by the Board of Regents or used

by the Board of Regents for educational, research, service or other official functions.

5.1.1.13. Insubordination,

5.1.1.14. The use of alcohol, marijuana, or other controlled substances, which impairs performance of duties.

5.1.1.15. Theft of state owned or controlled property.

5.1.1.16. Intentionally and wrongfully counseling, inciting, or participating in a prohibited student or employee activity.

5.1.1.17. Any substantial or irremediable impairment of the ability of a staff employee to perform assigned duties.

5.2. Termination of Faculty Appointment

If an NFE employee holds faculty rank, and/or tenure, then the appropriate faculty termination procedures shall be applied.

6. Grievance Procedures

The grievance procedure provides a just and equitable method for resolution of grievances that affect the terms and conditions of employment.

6.1. General Provisions

6.1.1. Grievance procedures are available to NFE employees.

6.1.2. No offer of settlement of a grievance by either party shall be admissible as evidence in later grievance proceedings or elsewhere.

6.1.3. No settlement of a grievance shall constitute a binding precedent in the settlement of similar grievances.

6.1.4. 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.

6.1.4.1. The parties to any grievance may, by mutual written agreement, waive the time limits provided herein.

6.1.5. 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 6.2 and any subsequently issued decision on the matter at the bypassed level will be void.

6.1.6. The Board, administration, or supervisors shall not retaliate against any non-faculty exempt employee for filing or participating in a grievance.

6.1.7. 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.

6.1.8. Grievance records shall not be maintained in the individual's personnel files; but shall be maintained in a separate file.

6.1.9. Required written notice may be sent via the Postal Service, delivered by hand, or sent through electronic mail.

6.1.9.1. 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.

6.1.10. Grievances will be filed with the lowest administrative level having the authority to dispose of the grievance. If the office of the President, Executive Director, or Vice President represents the lowest administrative level having authority to dispose of the grievance, then the grievance will be filed at Step 2, Step 3 or Step 4 as applicable.

6.1.11. Throughout the grievance process, the grievant shall include copies of the original grievance and all responses and decisions from prior steps, if any.

6.1.12. Throughout each step of the grievance process, any 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.

6.1.13. 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.

6.1.11-6.1.14. 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.

6.2. Grievance Procedures

6.2.1. Step One – Grievance to Immediate Supervisor

6.2.1.1. An employee may file a grievance in writing with the immediate supervisor within fourteen (14) ~~calendar~~ days of the date on which the grievant knew, or should have known, of the action or condition which occasioned the grievance.

6.2.1.2. The supervisor, upon receipt of the grievance, will investigate and provide a response to the grievant within seven (7) ~~calendar~~ days.

6.2.1.3. If the employee is not satisfied with the response, the employee has seven (7) ~~calendar~~ days to proceed to the next step.

6.2.2. Step Two – Grievance to Vice President

6.2.2.1. The employee may submit, in writing, a grievance of decision of the supervisor to the appropriate Vice President of the institution.

6.2.2.2. A written response shall be delivered to the employee within fourteen (14) ~~calendar~~ days following receipt.

~~6.2.2.1-6.2.2.3.~~ If the employee is not satisfied with the response, the employee has seven (7) days to proceed to the next step.

6.2.3. Step 3 – Grievance to President, Superintendent, or Executive Director

6.2.3.1. The employee may grieve, in writing, the decision from step two to the President, Superintendent, or Executive Director.

6.2.3.2. The President, Superintendent, or Executive Director shall investigate the matter, personally or through an appointed designee or panel.

6.2.3.3. A written response shall be delivered to the grievant within fourteen (14) ~~calendar~~ days following receipt.

~~6.2.3.3.1. A copy of the decision shall be provided to the employee, supervisor, Vice President, and President, Superintendent or Executive Director as applicable, and shall include a statement of findings and conclusions supporting the decision.~~

6.2.3.4. If the employee is dissatisfied with the response rendered, the employee has seven (7) ~~calendar~~ days following receipt to proceed to step four.

6.2.4. Step 4 – Grievance to the Board

6.2.4.1. The employee may grieve the decision of the President to the Board.

~~6.2.4.2. The Executive Director may attempt to achieve an informal resolution of the grievance. If the Executive Director elects not to pursue informal resolution, or if informal resolution cannot be secured, the~~ The Executive Director shall select a hearing examiner within fourteen (14) days following receipt of the grievance.

6.2.4.3. The hearing examiner shall hold ~~investigative hearings~~ 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. ~~and 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.~~

6.2.4.4. The Board's decision shall be issued to the employee within ten (10) ~~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 Chapter 1-26

FORMS / APPENDICES:

None.

SOURCE:

August 2019.

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. Special Schools ~~B~~bargaining unit faculty grievance procedures are contained in the Special Schools 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 ~~T~~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) Day: Calendar days.

(2) Executive Director: The chief executive officer of the Board of Regents.

(3) Grievance: The term "grievance" means aAn 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 personallya specific

term or provision of Board policy, or other agreements, contracts, policies, rules, regulations, or statutes that directly affect terms and conditions of employment for the individual employee.

(24) Grievant: The term "grievant" means 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 School 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.

(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. General 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.

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.

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) 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.
- 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.
- 7) 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.
- 8) 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.
- 9) Grievance records will not be maintained in any faculty member's institutional personnel file.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) Throughout the grievance process, the grievant shall include copies of the original grievance and all responses and decisions from prior steps, if any.

14) 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.

~~D. Representation~~

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

~~E. Confidentiality~~

16) 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.~~

17) 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.

18) 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.

~~G.E. Steps For Processing A Grievance~~Grievance Procedure

1) Step One

a. 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.

- i. 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.
- ii. 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.

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

2) Step Two

- a. The grievant may file, in writing, a grievance of the Step One decision with the appropriate Vice President of the institution.
- b. ~~, the Step One response, any additional documentation filed with the in Step Two~~ 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.
- c. ~~seven~~ If a grievant is not satisfied with the response, the grievant has seven (7) days to proceed to Step Three.

3) Step Three

- a. The grievant may file, in writing, a grievance of the Step Two decision with the President or Superintendent of the institution.
- b. The President or Superintendent shall, personally or through a designee, review the grievance and provide a response to the grievant within fourteen (14) days.
- c. If a grievant is not satisfied with the response, the grievant has seven (7) days to proceed to Step Four.

4) Step Four

- a. The grievant may file, in writing, a grievance of the Step Three decision with the Board.
- b. The Executive Director shall select a hearing examiner within fourteen (14) days following receipt of the grievance.
- c. 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.

d. 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.

~~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; BOR [DATE].

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Faculty Discipline and Disciplinary Procedures

NUMBER: 4:14

1. Discipline and Disciplinary Procedures

A. Preamble

The Board, through its institutional administrators, has the duty to maintain a competent, productive, effective and ethical workforce and to ensure observance of obligations and rights established by law, rule or policy and implicated in university operations. This duty extends to supervision of faculty member conduct. To discharge this duty, the Board and its administrators possess the inherent power to discipline employees, including faculty members, who fail to adhere to expectations for competent, productive, effective and ethical teaching, research or service, who violate laws, rules or policies implicated in university operations, or who engage in misconduct, neglect of duty, insubordination or otherwise unacceptable conduct. This article ensures that the exercise of the power to discipline comports with the requirements of due process.

B. Alternative Measures

Subject to the reserved authority required by *Worzella v. Board of Regents of Education*, 77 S.D. 447, 93 N.W.2d 411 (S.D. 1958), the Board has delegated to institutional administrators provisional authority to discipline any faculty members for failure to adhere to expectations for: competent, productive, effective and ethical teaching, research or service; violation laws, rules or policies implicated in university operations; or misconduct, neglect of duty, insubordination or otherwise unacceptable conduct, including such conduct identified in section 2 of this policy. The authority delegated to institutional administrators must be exercised consistently with Board policy. The delegated authority includes the power to determine the discipline to be imposed and its effective date.

Taking into consideration the circumstances that warrant discipline, past service, scholarly achievements and other mitigating or aggravating circumstances, discipline may include any of the following alternative actions:

- 1) Warnings;
- 2) Warnings to be filed with the personnel file of the faculty member;

- 3) Required training or current substance abuse treatment at the cost of the faculty member;
- 4) Suspension from duties with, or without, loss of pay commensurate therewith;
- 5) Reassignment;
- 6) Demotion;
- 7) Discharge.

C. Interim Suspension

Unlike a disciplinary suspension under paragraph B (4) above, an interim suspension from duties during the pendency of an active review of allegations of conduct warranting discipline is not deemed to be a discipline under this article.

The decision to place a faculty member on interim suspension pursuant to this section does not require compliance with the Stage One notice procedures set forth in section D, below, but an informal pre-suspension process will ordinarily be provided. Absent the need for quick action or manifest impracticality, a faculty member will be informed, either orally or in writing, of the basis for the suspension, given an explanation of the evidence supporting the action and afforded an opportunity to respond before being placed on interim suspension.

In circumstances that require quick action or where the pre-suspension process is impractical, and where independent third-party findings confirm reasonable grounds for the allegations against the faculty member, the administration may place a faculty member on interim suspension before providing the requisite information, explanation and opportunity to respond.

The administration may withhold pay where the circumstances that trigger the interim suspension implicate public trust in ways that would preclude continued discharge of assigned responsibilities.

D. Procedures

The following procedures apply to all disciplinary measures other than warnings and warnings filed in the personnel file.

The disciplinary procedure comprises two stages. The first stage is designed to provide an initial check against mistaken decisions, by creating an opportunity to determine whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. At the first stage, the faculty member will receive oral or written notice of the allegations, an explanation of the

evidence, and an opportunity to tell the faculty member's side of the story. At the close of the first stage ~~hearing-conference~~ the administration may impose the selected discipline. The second stage assures clear and actual notice of the reasons for the disciplinary action in sufficient detail to enable presentation of evidence relating to them; notice of both the names of those who have made allegations against the faculty member and the specific nature and factual basis for the charges; a reasonable time and opportunity to present testimony on any disputed issue of material fact; and a hearing before an impartial decision-maker.

1) *Stage One: Pre-Discipline ~~Hearing~~Conference*

If the administration determines that there are reasonable grounds for discipline, the faculty member will be furnished written notice of the allegations supporting the determination, an explanation of the evidence relied upon by the administration and the intended disciplinary action. The matter will be discussed with the faculty member at a personal conference which will be held at a time not sooner than ~~fourteen (14) calendar days~~ ~~ten (10) working days~~, nor later than ~~twenty-one (21) calendar days~~ ~~fifteen (15) working days~~ from the date of the transmission of the written notice, unless otherwise agreed by the faculty member and the administration. The faculty member may bring to this ~~meeting-conference~~ a representative chosen by the faculty member. At the close of the personal conference, or within ~~five—seven (75)~~ ~~calendar~~ ~~working~~ days thereafter, the administration will notify the faculty member whether it will discipline the faculty member, how and the effective date of the discipline.

2) *Stage Two: Post-Discipline Hearing Rights*

Faculty members who have been disciplined after completion of Stage One ~~hearings~~ ~~personal conferences~~ may challenge the action through the grievance procedures established in Board Policy No. 4:7. Any grievance appeal under this section will begin at Step ~~23 of Board Policy No. 4:7.I.E.~~

In all cases, the burden to prove the charges will rest with the administration to the extent provided by law; provided that the faculty members will bear the burden to prove affirmative defenses or counterclaims relating to a challenged discipline.

2. Unprofessional Conduct

The Board recognizes that academic tradition has established common and accepted standards of acceptable conduct and that academic disciplines may assemble and publish statements applying such standards to the unique circumstances of their respective professions. While the Board expects faculty members to adhere to accepted professional standards, whether published or not, it also recognizes that university lecture halls,

laboratories and work environments have become subject to manifold levels of governmental regulations and contractual restrictions that also establish or imply standards of conduct needed to protect the special interests that justify the regulations and restrictions.

Even standards published by professional organizations or conduct expectations grounded in statute, rule, policy or contract may be subject to change over time or may be extended to technological or social contexts that emerge following their original adoption. These circumstances preclude the establishment of comprehensive policy that catalogs each form of conduct that violates the essential principles recognized by professionals or established in statute, rule, or policy contract. Thus, the Board provides the following instances to illustrate, without limitation, forms of unacceptable conduct that expose faculty members to discipline, but this enumeration is neither intended, nor could be intended, to preclude disciplinary action for other conduct that violates accepted standards or emergent requirements of statute, rule, policy or contract:

- A. Neglect of duty, misconduct, incompetence, abuse of power or other actions that manifest an unfitness to discharge the trust reposed in public university faculty members or to perform assigned duties;
- B. A failure to correct deficiencies in performance in compliance with a constructive plan;
- C. A breach of recognized published standards of professional ethics;
- D. Conviction of any felony or the conviction of a misdemeanor involving moral turpitude;
- E. Unauthorized absence from duties without prior notification or justifiable cause or excuse for the absence;
- F. The manufacture, distribution, dispensing, possession or use of alcohol or controlled substances shall be cause for discipline where:
 - 1) The conduct is unlawful or unauthorized and occurs while acting within the scope of employment; while on premises owned and controlled by the Board of Regents or used by the Board of Regents for educational, research, service or other official functions; or while participating in any capacity in activities sponsored by the Board; or
 - 2) The conduct has been authorized and is lawful, but the use significantly impairs the faculty member in the performance of his duties; or
 - 3) Other conduct that involves a failure to conform to laws regulating alcohol and controlled substances and that results in injury to the person or the rights of others.

- G. The failure or refusal to follow or comply with Board or institutional policies, regulations or published work rules or with lawful orders or instruction of a superior;
- H. Theft, misuse, abuse or wrongful destruction of state owned or controlled property controlled real, personal or intellectual property, including information systems, databases and similar resources;
- I. Participation in strike activities proscribed by SDCL Chapter 3-18;
- J. Violations of rights assured to students, employees or others under federal or state laws or regulations or Board or institutional policies and regulations;
- K. Use of the powers and prerogatives of a faculty member to coerce or to induce others to engage in unlawful conduct or conduct prohibited under Board or institutional policy;
- L. Failure to comply with health or safety regulations, to require compliance by students or others under a faculty member's supervision or to comply with duly issued emergency orders;
- M. Misrepresentation of authority or other conduct intended to deceive or to assist another to deceive others, irrespective of the motives;
- N. Interference with or disruption of the efficiency or morale of educational, research or service programs, workplaces or organizational units, including actions that violate expectations for civil conduct among professors and when working with students, as provided in Board Policy No. 4:38 (54), or failure at all times to be accurate, to exercise appropriate restraint and to show respect for the opinions of others, as required under Board Policy No. 1.11 (1)(C); or
- O. Any substantial or irremediable impairment of the ability of a faculty member to perform assigned duties.

SOURCE: 1991 Policy Manual 5:4:2 and 5:4:3; BOR April 2009; BOR December 2010.