

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

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TITLE: GRIEVANCES AND APPEALS

**POLICY
REFERENCE NUMBER: 8-6-100**

**DIVISION OF
RESPONSIBILITY: HUMAN RESOURCE SERVICES**

DATE OF LAST REVISION: May 14, 2009

DISCLAIMER

PURSUANT TO SECTION 41-1-110 OF THE CODE OF LAWS OF SC, AS AMENDED, THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SC STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION / THE SC TECHNICAL COLLEGE SYSTEM.

I. PURPOSE

The purpose of this procedure is two-fold. The first purpose is to provide an orderly means whereby any covered employee of the South Carolina Technical College System (SCTCS) may grieve actions taken by System Office or college management. The second is to specify which actions are grievable or appealable and specify which are not. Employees choosing to file a grievance or appeal must not be disciplined or otherwise prejudiced for exercising rights or testifying under the provisions of this policy.

II. DEFINITIONS

- **APPEAL**

Appeal means the request by a covered employee to the State Human Resources Director for review of an agency's final decision concerning a grievance.

- **CALENDAR DAYS**

Calendar days means the sequential days of a year. The time must be computed

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by excluding the first day and including the last. If the last day falls on a Saturday, Sunday, or legal holiday, it must be excluded.

- **COVERED EMPLOYEE**

Covered employee means a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position (classified employees, unclassified non-teaching personnel, and institutional officers, excluding the College President) who has completed the probationary period of twelve (12) months and has a “meets” or higher overall rating on the employee’s performance evaluation and who has grievance rights. Faculty at state technical colleges are covered upon the completion of not more than two full academic years’ duration¹. If an employee who has completed their probationary period does not receive an evaluation before the official review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, returning retirees (who opted to participate in the TERE Program on or after June 6, 2005), or time-limited employees who do not have grievance rights.

- **DEMOTION**

Demotion means the assignment of an employee by the appointing authority from one established position to a different established position having a lower state salary range.

- **GRIEVANCE**

Grievance means a complaint filed by a covered employee or the employee’s representative regarding an adverse employment action designated in Section 8-17-330 of S.C. Code of Laws taken by the SCTCS.

- **INVOLUNTARY REASSIGNMENT**

Involuntary reassignment means the movement of an employee’s principal place of employment in excess of thirty miles from the prior work station at the initiative of the agency. However, the reassignment of an employee by the President/System President in excess of thirty miles from the prior work station to the nearest facility with an available position having the same state salary range for which the employee is qualified is not considered an involuntary reassignment, and is therefore not grievable or appealable. Teaching faculty may be assigned to any campus/site within the college’s service area depending upon the business needs of the college (Refer to SBTCE procedure #8-2-103.1; Faculty Teaching/Workload and Overload Compensation).

¹ Reference procedure #8-2-102.1; Compensation Plan for Unclassified Faculty Personnel.

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- **REASSIGNMENT**

Reassignment means the movement within an agency of an employee from one position to another position having the same state salary range, or the movement of a position within an agency which does not require reclassification.

- **PROBATIONARY EMPLOYEE**

Probationary employee means a full-time or part-time employee occupying a part or all of an established FTE position in the initial working test period of employment with the State of twelve months' duration for non-instructional personnel, or two full academic years' duration for faculty. An employee who receives an unsatisfactory performance appraisal during the probationary period must be terminated before becoming a covered employee.

- **PROMOTION**

Promotion means an employee's change from a position in one class to a position in another class having a higher state salary range. Failure to be selected for a promotion is not an adverse employment action that can be considered as a grievance or appeal.

- **PUNITIVE RECLASSIFICATION**

Punitive reclassification means the assignment of a position in one class to a different lower class with the sole purpose to penalize the covered employee.

- **RECLASSIFICATION**

Reclassification means the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position.

- **REDUCTION IN FORCE**

Reduction in force means a determination made by the College President/System President to eliminate one or more filled positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, organizational changes, or outsourcing/privatization.

- **SALARY DECREASE BASED ON PERFORMANCE**

Salary decrease based on performance means the reduction of a covered employee's compensation based on the results of an Employee Performance

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Management System (EPMS) or Faculty Performance Management System (FPMS) evaluation.

- STATE HUMAN RESOURCES DIRECTOR

State Human Resources Director means the head of the Office of Human Resources of the State Budget and Control Board, or his designee.

- SUSPENSION

Suspension means an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

- TERMINATION

Termination means the action taken against an employee to separate the employee involuntarily from employment.

III. GRIEVANCE AND APPEAL PROCEDURE

A. GENERAL

The purpose of this section is to provide “covered employees”, as defined in Section II, with an avenue for filing grievances for actions covered under the South Carolina State Employee Grievance Procedure Act, as amended, and appealing final decisions to the State Human Resources Director. All eligible College/System Office employees who wish to file a formal grievance under these procedures shall follow the steps as outlined in Section D. In accordance with Section 8-17-370 of the S.C. Code of Laws, Technical college presidents do not have access to the state employee grievance process.

B. GRIEVABLE OR APPEALABLE ACTIONS UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT

Issues that are grievable or appealable include terminations, suspensions, involuntary reassignments in excess of 30 miles², and demotions. Additional grievable actions are as follows:

- Promotions

² The reassignment of an employee in excess of thirty miles from the prior work station to the nearest facility with an available position having the same state salary range for which the employee is qualified is not considered involuntary reassignment and therefore not grievable or appealable. Teaching faculty may be assigned to any campus/site within the college’s service area depending upon the business needs of the college (Refer to SBTCE procedure #8-2-103.1; Faculty Teaching/Workload and Overload Compensation.)

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Promotions may be considered grievances in instances where the System President, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not the SCTCS has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity.

- **Salary Decreases**
Salary decreases based on the results of a (EPMS/FPMS) performance evaluation are adverse employment actions that may be considered as grievances or appeals.
- **Reduction In Force**
A reduction in force is an adverse employment action considered as a grievance only if the System President, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.
- **Punitive Reclassification**
The assignment of a position in one class to a different class with a lower pay band with the sole purpose to penalize the covered employee. A punitive reclassification is an adverse employment action considered as a grievance only if the System President, or an appeal if the State Human Resource Director determines that a material issue of fact exists.

C. ACTIONS NOT GRIEVABLE OR APPEALABLE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT³

The following examples of employment actions do not constitute a basis for a grievance or an appeal:

1. A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the College President (or System President in the case of System Office employees) or his designee agrees;

³ Actions that are not grievable or appealable under the State Employee Grievance Procedure Act must be handled through the College or System Office's informal complaint process. (Such actions that may be suitable for the informal complaint process include, but may not be limited to: informal counseling, oral warnings, and written warnings.)

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2. Reclassifications, reassignments, and transfers within the same salary range are not adverse employment actions which may be considered grievances or appeals;
3. A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal, unless a determination is made that a material issue of fact exists concerning a punitive reclassification;
4. A covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range than the class in which the employee was serving prior to promotion;
5. A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion;
6. When the SCTCS promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee;
7. A covered employee who receives a salary increase for assuming additional job duties or responsibilities, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six (6) months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.

D. STEPS IN THE GRIEVANCE PROCESS

The State Employee Grievance Procedure Act provides that an agency complete all actions on a grievance within a period of forty-five (45) calendar days. Any

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employee who does not have his/her grievance completed within forty-five (45) calendar days of the filing of such grievance, may appeal directly to the State Human Resources Director, so long as the employee initiates his/her appeal no later than fifty-five (55) calendar days from the initial date the grievance was filed within the SCTCS. Otherwise, the employee waives his/her right to appeal. Failure by the agency to issue a final decision within this 45 calendar day period is considered an adverse decision. The 45 calendar day period for action by the agency may not be waived.

The following steps are a guideline to ensure timely completion of the agency grievance process. These steps are intended to start with the grieving employee's local Human Resource Officer and proceed from there. The internal time frames may be waived with the mutual written consent of the parties (refer to Addendum #1).

1. First Step

The covered employee initiates a grievance by written correspondence [that includes the nature and substance of the grievance and the relief sought] to the College/System Office Human Resource Officer which must occur within fourteen (14) calendar days of the effective date of the action. The Human Resource Officer shall initially review the grievance to determine whether the matter involves a grievance as defined by the Act. Should the grievance be related to a promotion, reduction in force, or punitive reclassification, the College Human Resource Officer should notify and forward the grievance to the System Office Human Resource Services, for a determination by the System President as to whether a material issue of fact exists. The Human Resource Officer may conduct appropriate investigations and fact findings as he/she may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be so advised in writing by the College President (or System President in the case of System Office employees) or his/her designee, normally within five (5) calendar days⁴ of receipt of the grievance. Such determination shall be a final decision within the SCTCS⁵. The College President (or System President in the

⁴ Unless holiday schedules, inclement weather, and other verifiable extenuating circumstances prevent adhering to this deadline. Any extension of time must be by mutual written agreement of both parties. (Addendum #1)

⁵ The Executive Director/System President delegates the limited authority to the College President to render this decision concerning grievability and/or timeliness as the final decision of the agency. However, all matters that are grievable and/or require a determination as to whether a material issue of fact exists about the decision grieved are specifically reserved for the Executive Director/System President to issue the final agency decision. Accordingly, College Presidents do not have authority to make final agency decisions on grievances filed for any of the following reasons: terminations, suspensions, involuntary reassignments in excess of 30 miles, demotions, promotions, salary decreases, reduction in force, and punitive reclassifications.

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case of System Office employees) shall notify the employee to contact the Human Resource Officer who shall provide information regarding the informal complaint process.

If it is determined that the matter is grievable, the Human Resource Officer will promptly schedule a conference to occur between the covered employee's immediate supervisor, in conjunction with the appropriate Vice President (VP) of the College or Executive Council member of the System Office (if applicable), and the covered employee, normally within five (5) calendar days of receipt of the grievance. This conference may occur face-to-face or via telephone, depending on the preference of the employee. However, any initial determination by the Human Resource Officer that the matter may be grieved shall only entitle the covered employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be a judicial decision of the merits of the grievance. At the conference with the covered employee's immediate supervisor and appropriate VP (or Executive Council member for System Office employees), the covered employee will have an opportunity to present his/her rationale for disagreement with the action taken against him/her. The immediate supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his/her immediate supervisor's and VP's (or Executive Council member's, in the case of System Office employees) decision in writing within five (5) calendar days of the conference.

2. Second Step

If, in the opinion of the covered employee, the written decision of the first step official does not represent satisfactory disposition, then within five (5) calendar days of receiving the first step official's decision, the employee shall continue the grievance in writing to the second step official (College President or for System Office employees, the System President). The second step official will promptly schedule separate inquiries with the covered employee and any other parties as necessary. The second step official may designate others to assist in the investigation or in making recommendations.

The second step official shall make a decision within ten (10) calendar days of receipt of the grievance and notify the employee of such decision in writing.

- a) For college employees, the second step decision may be further grieved by the employee as provided in III(D)(3).

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- b) For System Office employees, the decision rendered by the System President shall constitute the final agency decision. The System President may personally handle Step Two of the grievance procedure or may appoint a designee(s) or ad hoc committee. The System President (or designee) shall conduct whatever inquiries, investigations, and/or fact finding sessions that are considered necessary. Following this review, the System President will determine whether a meeting with the employee is necessary. The option whether to meet with the employee or make a decision based on the findings shall belong to the System President. Any appeal of this decision shall be directed to the Budget and Control Board's State Human Resource Director within ten (10) calendar days of the agency's final decision.
- c) In the event that the College President serves as the first step official, then the second step official shall be the System President of the State Board for Technical and Comprehensive Education who will render the final agency decision. If the final agency decision is not satisfactory to the covered employee, this decision may be appealed to the S. C. Human Resources Director, as provided in III(D)(4).

3. Third Step

If the decision reached by the second step official is not satisfactory to the covered employee, the grievance may be continued to the System President of the State Board for Technical and Comprehensive Education. The covered employee must submit a continuance of the grievance in writing to the System President within five (5) calendar days of receipt of the second step official's decision. The employee shall provide a written summary of the specific facts of the grievance and the relief sought.

The System President may personally handle Step Three of the grievance procedure or may appoint a designee(s) or ad hoc committee. The System President (or designee) shall conduct whatever inquiries, investigations, and/or fact finding sessions that are considered necessary. Following this review, the System President will determine whether a meeting with the employee is necessary. The option whether to meet with the employee or make a decision based on the findings shall belong to the System President. Within fifteen (15) calendar days of receipt of the grievance, the System President will render a decision, in writing, to all parties concerned. The decision of the System President shall be final within the agency.

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4. Fourth Step (Appeals to S.C. State Human Resources Director)

If the decision of the System President is not satisfactory to the covered employee, the decision may be appealed to the State Human Resources Director. Such appeal must be in writing. The appeal must be made within ten (10) calendar days of receipt of the System President's decision or within fifty-five (55) calendar days of the date of the initial grievance, whichever comes later. Failure to file an appeal within this time period shall constitute a waiver of the right to appeal by the employee. The Act allows covered employees to appeal to the State Human Resources Director any grievance involving issues specified in the Act only after all administrative remedies to secure relief within the agency have been exhausted.

E. LEGAL REPRESENTATION

Eligible employees may be accompanied by an attorney or other representative at any stage of the grievance process, though it is not necessary as all meetings within the agency are informal, non-adversarial meetings. Only when a matter reaches the South Carolina State Employee Grievance Committee does it become adversarial. Legal representation shall be at the employee's expense.

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AGENCY ADDENDUM #1

<Employee First Name Last Name>

<Street Name>

<City, State Zip Code>

<Relevant Step Official>

<College Name>

<College Address>

Re: Consent to extend grievance hearing

Our signatures below evidence our consent to a <Number> (#) day extension of the <number of step> step grievance process due to <Insert Reason: e.g. holiday schedule, inclement weather, or other verifiable extenuating circumstance>.

<Employee Name>

Date

<Human Resources Official>

Date