

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: September 9, 2021

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. THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT

I. PURPOSE

The purpose of this procedure 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/College management. A covered employee is defined as a full-time or part-time employee occupying a part or all of an FTE position who has completed the probationary period and has a “successful” or higher rating on the employee’s performance evaluation and who has grievance rights. Faculty are covered upon the completion of not more than two full academic years’ duration. Employees in positions such as temporary, temporary grant, or time-limited do not have grievance rights. 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. In addition, retired members of the South Carolina Retirement System or South Carolina Police Officers Retirement System who are rehired to fill a FTE position do not have grievance rights. 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 procedure.

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II. GRIEVANCE AND APPEAL PROCEDURE

A. GENERAL

The purpose of this section is to provide covered employees 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 employees who wish to file a formal grievance under these procedures shall follow the steps as outlined in Section D. The System Office/College and the employee may enter into a mediation agreement at any point in the agency process prior to the appeal to the State Human Resources Director.

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

As provided for in the Act, and defined in §8-17-320 of the S.C. Code of Laws, a covered employee may file a grievance or an appeal concerning only the following employment actions:

- Terminations;
- Suspensions;
- Demotions;
- Involuntary reassignments in excess of thirty (30) miles from the prior work station¹;
- Promotions are not adverse employment actions which may be considered grievance or appeals except in instances where the System President of the State Board for Technical and Comprehensive Education (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;
- Punitive Reclassifications are considered a grievance only if the System President, or in the case of an appeal, the State Human Resources Director determines that there is a material issue of fact that the action was solely to penalize the covered employee;

¹ 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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- 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 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.

C. ACTIONS NOT GRIEVABLE OR APPEALABLE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT²

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

- 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 System/College President or designee agrees;
- Reclassifications, reassignments, and transfers within the same salary range are not adverse employment actions which may be considered grievances or appeals;
- 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 concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification;
- A covered employee in an unclassified position whose position is changed to a lower salary range or whose rate of pay is lowered shall not have the right to file a grievance or an appeal concerning the change to the State Human Resources Director unless a determination is made that a material issue of fact exists that the change in salary range or rate of pay was punitive;
- A covered employee who is promoted, reclassified to a higher state salary range, or moved to an unclassified position with a higher rate of pay and subsequently demoted prior to serving six months of satisfactory service in the class with the higher state salary range or higher rate of pay 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 state salary range or lower rate of pay than the position in which the employee was serving prior to promotion, reclassification, or movement to an unclassified position with a higher rate of pay;

² 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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- A covered employee who is promoted or moved to an unclassified position with a higher rate of pay and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher state salary range or higher rate of pay 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 the promotion or movement to an unclassified position with a higher rate of pay;
- When the SCTCS promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or an appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered grievable or appealable;
- A covered employee who receives an additional job duties or responsibilities salary increase, 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 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 after 45 calendar days, 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 with the System Office/college Human Resource Officer. 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 #2).

Step One

The covered employee initiates a grievance by written correspondence [that includes the nature and substance of the grievance and the relief sought] to the System Office/College 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. The Human Resource Officer may conduct

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appropriate investigations and fact findings as he/she may consider necessary to make this determination.

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 Executive Council member of the System Office or Vice President of the College or designee and the covered employee, normally within five (5) calendar days of receipt of the grievance. This conference may occur face-to-face or remotely, 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 the covered employee will have an opportunity to present his/her position regarding the action taken against him/her. Following the conference, appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee may be conducted. The covered employee will be advised of his/her immediate supervisor's and the Executive Council member's/Vice President's and/or designee decision in writing within five (5) calendar days of the conference. A representative from the human resources office may participate during each step in the grievance process.

If it is determined that the matter is not grievable³, the covered employee shall be so advised in writing by the System/College President, as appropriate, or designee, normally within five (5) calendar days⁴ of receipt of the grievance. Should the employee disagree with this decision, the employee may appeal to the State Human Resource Director in accordance with Section E. - Appeals to the State Human Resources Director of the procedure.

Should the grievance be related to a promotion, reduction in force, or punitive reclassification, the college Human Resource Officer shall 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 System Office Human Resource Services 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 System President or designee, normally within five (5) calendar days⁴ of receipt of the grievance. Such determination shall be a final agency decision within the SCTCS⁵.

³ The 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.

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 All matters that are grievable and all matters that require a determination as to whether a material issue of fact exists about the decision grieved are specifically reserved for the 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

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Step Two

If the covered employee is not satisfied with the Step One decision, he/she may continue with the grievance procedure. To continue the grievance, the covered employee must notify the System/College President in writing within five (5) calendar days after receiving the Step One decision. The second step official will promptly schedule a conference with the covered employee and he/she will be provided an opportunity at this time to present his/her position regarding the grievance. The System/College President may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The System/College President 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 Step Three below.
- 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 State Human Resource Director within ten (10) calendar days of receipt of the System President'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 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 State Human Resources Director, as provided in Section E.

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Step Three

If the decision reached by the second step official is not satisfactory to the college employee, the grievance may be continued to the System President. The college 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 College 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 College employee is necessary. The option whether to meet with the College 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.

E. APPEALS TO THE STATE HUMAN RESOURCES DIRECTOR

If the final agency decision of the System/College President⁶ 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.

F. LEGAL REPRESENTATION

Covered employees may be accompanied by an attorney or other representative at any stage of the grievance and appeal process, though it is not necessary as all meetings within the agency are informal, non-adversarial meetings. Legal representation shall be at the employee's expense.

⁶ All matters that are grievable and all matters that require a determination as to whether a material issue of fact exists about the decision grieved are specifically reserved for the 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.

ADDENDUM #1 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 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 (excluding the College President) who has completed the probationary period of twelve (12) months and has a "successful" or higher overall rating on the employee's performance evaluation and who has grievance rights. Faculty at state colleges is covered upon the completion of not more than two full academic years' duration⁷. 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 returning retirees or employees in positions such as temporary, temporary grant or time limited 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 or, for employees in positions without a state salary range, assignment of a lower rate of pay to the employee except when the employee's job duties are decreased for non-punitive reasons.

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 System/College 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).

⁷ Reference procedure #8-2-102.1; Compensation Plan for Unclassified Faculty Personnel.

ADDENDUM #1 DEFINITIONS

MEDIATION

An alternative dispute resolution process whereby a mediator, who is an impartial third party, acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and non-adversarial with the object of helping the disputing parties reach a mutually acceptable agreement.

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 of not more than 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 the assignment of an employee from one established position to a different established position having a higher state salary range or, for positions without a state salary range, having a higher rate of pay. 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.

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.

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

**ADDENDUM #1
DEFINITIONS**

STATE HUMAN RESOURCES DIRECTOR

State Human Resources Director means the head of the Department of Administration's Division of State Human Resources, or 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.

ADDENDUM #2

<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