

1.1.C.4 Staff Grievances

I Policy Index:



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II Policy:

Department of Corrections staff members will have available to them, a just and equitable method for resolution of grievances. There will be no discrimination, coercion, restraint, reprisal or retaliation against any staff member who submits or is involved in a grievance in accordance with established policy and procedure.

III Definitions:

Grievance:

For the purposes of this policy, a grievance is a circumstance thought to be unjust or injurious and grounds for complaint by staff.

IV Procedures:

1. General Provisions:

A. A grievance must be based on the following:

1. Disciplinary action, i.e. dismissal, demotion, suspension, reduction in pay, termination, classification, or
2. Any personnel action, condition or privilege on the grounds of discrimination, or
3. Failure to be appointed to a position, i.e. discrimination during the selection/appointment process, or
4. An existing agreement, contract, policy or rule as it applies to conditions of employment (excludes pay and overtime pay issues), or
5. The dismissal, suspension from employment, demotion, decrease in compensation, or other retaliatory action because a staff member in good faith has reported a violation or suspected violation of a law or rule, an abuse funds, abuse of authority, or substantial and specific danger to public health or safety, to an appropriate authority, unless the report is specifically prohibited by law.

- a. This provision may not be appealed if the staff member knowingly provided false report or made the report in reckless disregard for the truth.
6. A belief there has been retaliation against the staff member because of reporting through the DOC chain of command, Attorney General or Department of Legislative Audit, the use of funds or property entrusted to a staff member, in violation of public trust and for the direct financial benefit of a staff member.
- B. The grievance must be in writing and must contain the following information at all steps in the grievance process:
 1. The nature of the grievance, including the date(s) of the incident(s) and/or action(s) on which the grievance is based; and
 2. The remedy sought to satisfy the grievance.
- C. If the staff member fails to properly pursue a grievance within fourteen (14) days after the event causing the grievance or notification of action, the staff member's grievance shall expire.
 1. If the employer fails to comply within the time limits to respond to the grievance, the staff member may initiate the next step in the grievance procedure.
 2. The staff member may submit a written request for an extension of the time before the deadline has passed; however, the employer must approve the request. The staff member must continue to pursue their grievance based on the initial deadline date unless notified by the employer an extension has been granted.
- D. A staff member who voluntarily terminates employment will automatically have his/her grievance withdrawn and may not benefit by any later settlement of an individual or group/class grievance.

2. Procedure:

- A. Notice to the staff member is effective when the notice is personally delivered to the staff member, or the date the notice is deposited in the mail, whichever occurs earlier.
- B. Notice to the employer is effective on the date the notice is received.
- C. A grievance/appeal submitted by a staff member may be dismissed in whole or part for failure to state an issue that may be appealed, for failure to state a claim upon which relief may be granted, for lack of jurisdiction or for failure to meet a statute of limitations or time limit.
 1. The Civil Service Commission may dismiss an appeal/grievance for failure to develop a case involving contested issues of fact or produce a specific factual basis for the complaint that establishes the action attributable to the state deprived the staff member of a right arising under South Dakota Administrative Rule.
- D. The steps to filing a grievance are as follows:
 1. **Step 1:** Appeal to immediate supervisor.
 - a. Within fourteen (14) days after the events causing the grievance, the staff member will submit to their immediate supervisor, a written statement detailing the nature of the grievance and the remedy sought.

- b. The immediate supervisor will respond to the staff member in writing within fourteen (14) days of receipt of the written grievance.
 - c. If the staff member is not satisfied with the response received, the staff member has fourteen (14) days from the date of the supervisor's response to proceed to Step 2.
 2. **Step 2:** Appeal to the Director or Warden.
 - a. The staff member will submit to the Director or Warden, a written statement detailing the nature of the grievance and remedy sought.
 - b. The Director or Warden may meet with the staff member to attempt resolution of the grievance. Any resolution must be agreed to by both parties.
 - c. The Director or Warden will respond to the staff member in writing within fourteen (14) days after receipt of the written grievance.
 - d. If the response is not satisfactory to the staff member, the staff member has fourteen (14) days from the date of the Director or Warden's response to proceed to Step 3.
 3. **Step 3:** Appeal to the Secretary of Corrections.
 - a. The staff member will submit to the Secretary of Corrections, a written statement detailing the nature of the grievance and remedy sought.
 - e. The Secretary of Corrections or his/her designee may meet with the staff member to attempt resolution of the grievance. Any resolution must be agreed to by both parties.
 - b. The Secretary of Corrections will respond to the staff member in writing within thirty (30) days after receipt of the written complaint.
 - c. If the response is not satisfactory to the staff member, the staff member has fourteen (14) days from the date of the Secretary's response to proceed to Step 4.
 4. **Step 4:** Appeal to Civil Service Commission.
 - a. The staff member will submit to the Civil Service Commission, a written statement detailing the nature of the grievance and remedy sought.
 - b. The staff member will address the appeal to the Civil Service Commission and will send this to the Civil Service Commissioner, c/o the Bureau of Human Resources.
 - c. The staff member will send a copy of the notice of the appeal to the Secretary of Corrections.
 - d. The Civil Service Commission will provide notice of the time and place set for the public hearing at least thirty (30) days before the hearing. The notice will be sent certified mail to the last known post office address of the staff person. The thirty (30) day notice requirement may be waived if agreed to by the staff member and Commission.
 - e. If the staff member is not satisfied with the decision of the Civil Service Commission, the employee may proceed to Step 5.

- f. If the staff member fails to appear in person or by having legal counsel present at the time and place set for the hearing, and the staff member does not provide written evidence of extenuating circumstances that prevented personal appearance or legal representation, the staff member shall waive right to further hearing and the Commission may dismiss the grievance/appeal.
 - 1) If either party shall be represented by legal counsel, notice must be provided to the other party as soon as possible but no later than one (1) week prior to the time and date set for the hearing.
5. **Step 5:** Appeal to circuit court. The staff member may appeal to the circuit court in accordance with SDCL chapter 1-26.
- E. The Department of Corrections may waive any of steps 1-3. The waiver must be in writing and must notify the staff member of what step they must perform to continue their grievance.
- F. Any written grievance submitted by a staff member may be delivered personally or mailed by first class mail. If mailed, the notice is effective the date the notice is received.

3. Complaint of Retaliation by Staff:

- A. Staff who believe they have suffered discrimination, coercion, restraint, reprisal or retaliation as a result of their involvement in the filing of a grievance, may contact their supervisor or BHR representative directly to report their complaint.
- B. The DOC shall respond to all allegations and complaints of discrimination, coercion, restraint, reprisal or retaliation directed towards a staff member as a result of involvement in the filing of a grievance.
- C. The staff member will be provided a written response to their complaint.
- D. The Warden, Director, Secretary or designee may monitor the treatment of the staff member after receiving the complaint. Normally, monitoring shall take place for 30 days following receipt of the complaint, unless there is evidence to support a finding discrimination, coercion, restraint, reprisal or retaliation has occurred. Monitoring may be extended, as deemed necessary by the Warden, Director, Secretary or designee.

V Related Directives:

SDCL § [1-26](#)

ARSD § Chapter [55:10](#):

VI Revision Log:

March 2002: Reformatted.

January 2005: Added a definition for grievance.

April 2006: Added specific ARSD references. **Changed** the response time from the Secretary of Corrections from sixty (60) days to forty-five (45) days. **Deleted** the appeal step to the commissioner. **Changed** commissioner to the Commissioner of the Bureau of Personnel. **Revised** the appeal steps that the DOC may waive.

December 2006: No changes made.

December 2007: No changes made.

November 2008: Revised formatting of policy in accordance with DOC policy 1.1.A.2.

November 2009: Added hyperlinks.

November 2010: Revised formatting of Section I.

January 2012: Deleted "Non Public" and Replaced with "Public".

December 2012: Updated ARSD and Deleted "Career" Service and Replaced with "Civil" Service in Section 2.

November 2013: Reviewed with no changes.

November 2014: Added E. to Section 2.

December 2014: Deleted "will be provided" and Replaced with "shall have available to them" in policy statement. Added 1-4 in Section 1 A. Deleted "time limits set in the appeal process" and Replaced with "14 days after the event causing the grievance or the notification of action" in Section 1 C. Added "and may not benefit by any later settlement of an individual or group appeal/grievance" in Section 1 D. Deleted "and must be submitted to the appropriate person" in Section 2 B. Added C. to Section 2. Added 1. to Section 2 C. Deleted "45 days" and Replaced with "30 days" in Section 2 D. 3. c. Added d. to Section 2 D. 4. Added f. to Section 2 D. 4. Added 1. to Section 2 D. 4. f.

November 2015: Reviewed with no changes.

November 2016: Deleted reference to superintendent and administrator from policy.

March 2017: Added 5. and 5. a. and 6. in Section 1.

November 2017: Reviewed with no changes.

November 2018: Added Section 3.

Denny Kaemingk (original signature on file)

01/02/2019

Denny Kaemingk, Secretary of Corrections

Date