

1.1.C.4 Staff Grievances

I Policy Index:



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Office of Primary Responsibility: DOC Administration

II Policy:

DOC staff members will have available to them, a just and equitable method for resolution of grievances. There will be no discrimination, coercion, restraint or reprisal against any staff member who submits or is involved in an appeal/grievance.

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 Grievance 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).
- 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 appeal within fourteen (14) days after the event causing the grievance or notification of action, the failure to comply with the time limit shall be considered a withdrawal of the appeal.
 - 1. If the employer fails to comply within the time limits to respond to an appeal, the staff member may initiate the next step in the appeal procedure.
 - 2. The staff member may submit a written request for an extension of the time to appeal before the deadline has passed; however, the employer must approve the request. The staff member should continue to comply with the initial deadline unless notified by the employer that 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- D. A staff member who voluntarily terminates employment will automatically have his/her grievance withdrawn and may not benefit by any later settlement of an individual or group appeal/grievance.

2. Employee Grievance 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 by the staff member to develop a case involving contested issues of fact, or to 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 after 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 notice/supervisor's response to proceed to Step 2.
 - 2. **Step 2:** Appeal to Superintendent, Administrator, Director or Warden.
 - a. The staff member will submit to the Superintendent, Administrator, Director or Warden, a written statement detailing the nature of the grievance and remedy sought.
 - b. The Superintendent, Administrator, Director or Warden may meet with the staff member in an attempt to resolve the grievance.

- c. The Superintendent, Administrator, Director or Warden will respond to the staff member in writing within fourteen (14) days after receipt of the written grievance.
 - d. If this response is not satisfactory to the staff member, the staff member has fourteen (14) days from the date of the notice/response to proceed to Step 3.
 3. **Step 3:** Appeal to 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.
 - b. The Secretary of Corrections or his/her designee may meet with the staff member.
 - c. The Secretary of Corrections will respond to the staff member in writing within thirty (30) days after receipt of the written complaint.
 - d. If this response is not satisfactory to the staff member, the staff member has fourteen (14) days from the date of the notice 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 it to the Civil Service Commissioner, c/o the Bureau of Human Resources.
 - c. The staff member will send 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. This 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 by approval of both parties.
 - 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 legal counsel at the time and place set for the hearing, and does not provide written evidence of extenuating circumstances that prevented appearance, 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 in order to continue the grievance.
- F. Any written grievance or appeal 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.

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.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

12/19/2015

Date