



SCDC POLICY

NUMBER: **HR-11.02**

TITLE: EMPLOYEE GRIEVANCE AND APPEALS PROCEDURES

ISSUE DATE: NOVEMBER 15, 2022

RESPONSIBLE AUTHORITY: DIVISION OF HUMAN RESOURCES

POLICY MANUAL: **HUMAN RESOURCES**

SUPERSEDES: ADM-11.02: March 1, 2008, July 1, 2004

RELEVANT SCDC FORMS/SUPPLIES: 16-33

ACA/CAC STANDARDS: 4-ACRS-7E-07, 4-4048

STATE/FEDERAL STATUTES: State Employee Grievance Procedure Act, § 8-17-110 et seq.

THE LANGUAGE USED IN THIS POLICY DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, 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.

PURPOSE: To outline the administration of a formal grievance and appeals *process* whereby covered state employees may file a *grievance in accordance with the State Employee Grievance Procedure Act*.

POLICY STATEMENT: In order to uphold the professional integrity of the *Agency*, the Agency will establish an employee grievance *process in accordance with the State Employee Grievance Procedure Act*. Under no circumstances will any employee be subjected to reprisal, prejudice, corrective action, or retaliation as a result of exercising his/her grievance and appeals rights under this policy. (4-ACRS-7E-07, 4-4048)

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SPECIFIC PROCEDURES:

1. DEVELOPMENT AND RESPONSIBILITY: The Division Director of Human Resources will be responsible for the development, implementation, management, and administration of an Employee Grievance and Appeals *Policy (EGAP)* applicable to all covered employees of the South Carolina Department of Corrections (SCDC). The *policy* must be reviewed and approved by the South Carolina *Division of State* Human Resources prior to system-wide implementation. (4-ACRS-7E-07, 4-4048)

1.1 This policy does not apply to non-covered employees (e.g., probationary employees, temporary employees, temporary grant employees, time-limited project employees, research grant employees, and employees exempt from the State Employee Grievance Procedure Act).

2. GRIEVABLE AND APPEALABLE ACTIONS: The following actions are considered grievable and/or appealable under the Agency's *EGAP*:

- Terminations, demotions, and suspensions (disciplinary and administrative);
- Salary decreases based on performance evaluations;
- Reclassifications are considered grievable if the *Agency*, or appealable if the State Human Resources Director, determines there is a material issue of fact that the action is a punitive reclassification;
- Reductions-in-force are considered grievable if the *Agency*, or appealable if the State Human Resources Director, determines there is a material issue of fact that the *Agency* inconsistently and/or improperly applied the Agency's reduction-in-force plan or policy; (See SCDC Policy ADM-11.05, "Reduction-in-Force," for information.)
- Involuntary reassignments of an employee greater than 30 miles from his/her current work location to another work location;
- Promotions are not adverse employment actions which may be considered grievable or appealable except in instances where the Agency 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 Agency 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. (However, when the Agency promotes an employee one organizational level above the promoted employee's former level, that action is not grievable or appealable for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered for a grievance or an appeal.)

3. NON-GRIEVABLE ACTIONS: The following actions are not grievable and/or appealable under the Agency's *EGAP*:

- Written warnings or disciplinary probation periods;
- EPMS appraisals;
- Reclassifications, reassignments, and transfers within the same pay band;
- *When a covered employee who is promoted, reclassified to a higher salary range, or moved to an unclassified position with a higher rate of pay and subsequently demoted prior to completing the trial period in the class with the higher 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 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; and*
- Voluntary reassignments or resignations. [NOTE: An employee's failure to report to duty for three (3) consecutive days without contacting the Agency is considered job abandonment and a voluntary resignation.]

NOTE: The listed non-grievable actions in this section do not include every potential non-grievable or appealable actions.

4. GRIEVANCE AND APPEAL PROCESS: The following procedures will be followed for all covered employee grievances and appeals. An employee may appeal to the State Human Resources Director when all administrative remedies to secure relief within the Agency have been exhausted.

4.1 Any covered employee of the SCDC may file a grievance concerning a grievable action by submitting SCDC Form 16-33, "Grievance Report." *The Grievance Report* must be fully completed by the employee and

received by the Division Director of Human Resources, Employee Relations Branch, *(or if mailed, postmarked)* within 14 calendar days of the effective date of the action *or 14 calendar days from when the employee is notified of the action, whichever is later.* Upon receipt of the form, the Division Director of Human Resources, or an approved designee *will follow this process:*

4.1.1 If it is determined that the matter is not grievable, the covered employee will be advised in writing by the Division Director of Human Resources or a designee, normally within five (5) calendar days of receipt of the grievance. Such determination will be a final decision within the Agency which may then be appealed to the State Human Resources Director. If it is determined that the matter is grievable the Division Director of Human Resources will proceed as described in the following paragraphs. Any initial determination by the Agency's Division Director of Human Resources or other designated official 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 an adjudication of the merits of the grievance.

4.1.2 The Agency's Division Director of Human Resources or other designated official will contact the covered employee and the appropriate agency representative(s), normally within five (5) calendar days of receipt of the Grievance Report, to inform them the issue can be heard under this grievance procedure and inquire whether or not they desire to participate in voluntary mediation.

4.1.3 Both parties must make a written decision regarding participating in mediation to the Agency's Division Director of Human Resources within two (2) calendar days of this notification. Failure by either party to respond timely to this notification is deemed refusal to participate in mediation and the grievance will proceed as described to the Office of General Counsel for review as described in section 4.2.

4.1.4 If one or both parties initially decline to participate in mediation, this decision does not prevent mediation efforts to occur later in the grievance process. If a party is interested in mediation following the initial refusal to participate, they should submit a written request to the Division Director of Human Resources before the final decision is rendered.

4.1.5 Mediation: If both parties agree to participate in mediation, the Agency's Division Director of Human Resources or designee will schedule a mediation conference, normally within three (3) calendar days of receipt of the mediation request, to mediate the matter. The Division Director of Human Resources will provide a mediator as appropriate. The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be. The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party. The mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify regarding the mediation conference in any adversary proceeding or judicial forum. If the matter is resolved, the mediator will assist the parties in preparing a written agreement to reflect the terms of the resolution for both parties to sign. The mediator may share terms of the settlement agreement with the Agency's designated officials as needed to finalize and assist in implementing the terms of the agreement and with other agency employees as appropriate. The mediation should be completed within a reasonable timeframe, normally within five (5) calendar days of the initial mediation conference. If the matter is not settled within five (5) calendar days of the initial mediation conference, the mediator will inform the agency's Division Director of Human Resources or other designated official that settlement has not occurred. This notification does not preclude the parties from continuing their efforts to resolve the grievance through mediation.

4.1.6 If the grievance is not resolved, it will be forwarded to the Office of General Counsel within five (5) calendar days of the initial mediation conference.

4.2 General Counsel Review: Upon receipt, an attorney from the Office of General Counsel will be assigned the grievance and will be responsible for conducting an investigative review of all pertinent documentation and

related SCDC policies. A summary report of facts will be prepared and a recommendation will be forwarded to the appropriate Director's staff member within 25 calendar days. If necessary, a non-adversarial fact-finding conference may be scheduled by the Office of the General Counsel and may include the grievant, relevant witnesses, the reprimanding authority, and any other individuals deemed necessary by the attorney assigned the grievance. The following guidelines may apply to such hearing:

- Each individual may be called to testify separately and alone;
- Testimony may not be made under oath and will not be recorded;
- Cross-examination will not be allowed;
- A grievant may be represented by counsel *or other representative*; (However, such representation will be at the grievant's own expense.)
- The grievant may ask Agency employees to submit statements, present personal testimony, or otherwise participate in the grievance process. However, unless the employee is issued an official directive and/or subpoena, the employee has the right to refuse to participate. In addition, the appropriate Director's staff member, Division Director, or Warden has the right to limit the number of employee and Agency witnesses asked to testify if participation in the grievance process poses a staffing and/or security problem or other hardship on the division or facility, provided that the specified number of witnesses are equal for both the Agency and the employee.

Upon conclusion of the conference, a summary report of facts will be made and forwarded as described in Section 4.2.

4.3 The *Director/Director's Staff Review:* *The Director or* appropriate Director's staff member receiving the summary report will be responsible for reviewing the facts and making a determination to uphold, reverse, or modify the grievance action. The *Director or* appropriate Director's staff member's response will be made in writing to the grievant within five (5) calendar days *of receipt of the summary report and will represent the final Agency decision.*

4.4 External Appeal: *The State Employee Grievance Act also provides for an appeal of a grievance beyond SCDC to the State Human Resources Director after all administrative remedies to secure relief within SCDC have been exhausted. A covered employee has not exhausted administrative remedies to secure relief within SCDC until SCDC's internal grievance process is completed or the 45 calendar days provided for SCDC to issue a decision has elapsed, whichever occurs sooner.* The grievant may appeal the Agency's final ruling to the *South Carolina State Human Resources Director* within ten (10) calendar days of his/her receipt of the *final Agency decision* or within 55 calendar days from the initial date the grievance was filed within the Agency, whichever is later.

5. TIME PERIODS: The Agency should complete its internal grievance process including the final *Agency decision* on any grievances within 45 calendar days from receipt of Form 16-33, "Grievance Report," to the Division of Human Resources, Employee Relations Branch. Failure to act within 45 days will be considered a decision against the grievant from which s/he may appeal to the *South Carolina State Human Resources Director*. The 45 day calendar period for internal departmental action may only be waived by a signed mutual agreement. Internal time periods for the Agency's internal grievance process (Section 4) are guidelines for the convenience of the Agency and are not binding upon the Agency. In the event that an internal time period lapses, the grievant should proceed to the next level of the grievance process.

6. LEAVE: Any time away from normal job duties during the grievance or appeal process will be charged to the employee as time worked if the employee is involved in official grievance or appeal business such as, but not limited to, scheduled meetings with the Division of Human Resources, Employee Relations Branch, Office of General Counsel, or Office of Human Resources. Any time used to handle official grievance or appeal business during scheduled work hours must be approved by the employee's supervisor and is subject to verification by the Division Director of Human Resources or designee. Furthermore, any time away from normal job duties during scheduled work hours for the purpose of general follow-up, or unscheduled meetings to inquire as to the status of a grievance or appeal, will be charged to the employee as annual leave. All annual leave must be approved in accordance with SCDC Policy *HR-11.08*, "Employee Leave."

7. CORRESPONDENCE: Grievance correspondence to individuals/offices outside the Agency (to include correspondence to the grievant) will be sent U.S. Mail, Certified, Return Receipt Requested. *or via email with a return receipt or other acknowledgement by the recipient as proof of receipt.* A copy of the correspondence will be forwarded to the Division of Human Resources, Employee Relations Branch. An employee who files a grievance and misses a deadline or fails to meet with the Agency's attorney for an investigative review will not be excused because s/he neglects to provide the Agency with a current address or fails to retrieve his/her certified mail.

8. REPRESENTATION: A grievant may be represented by counsel *or other representative*; however, such counsel will be at the grievant's expense. Upon notification that a grievant is represented by counsel, the Division Director of Human Resources or designee will inform the South Carolina Department of Corrections General Counsel and all interested parties within the Agency so as to ensure that all material and information pertinent to the case are forwarded to counsel for the grievant collaterally as it is presented to the grievant. Such correspondence will be sent to the employee's attorney by U.S. Mail, Certified, Return Receipt Requested *or via email with a return receipt or other acknowledgement by the recipient as proof of receipt.* (All copies of the receipt information will be maintained on file by the sender.) A copy of all such correspondence will be forwarded to the Division of Human Resources, Employee Relations Branch.

9. DEFINITION(S)

Appropriate Director's Staff Member refers to the *Deputy Director of Administration, Director of Human Resources, Deputy Director of Programs, Reentry and Rehabilitative Services, Medical Services Administrator, Deputy Director of Behavioral Health,* the General Counsel, *Deputy Director, Office of Inspector General, Deputy Director of Operations,* and the *Deputy Director of Legal and Compliance.*

Covered Employee means 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 "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges upon the completion of not more than two full academic years' duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. NOTE: This definition does not include employees in positions such as temporary, temporary grant, or time limited employees who do not have grievance rights.

Employee Or Grievant as used throughout this policy refers to a covered state employee who has *submitted a grievance.*

SIGNATURE ON FILE

s/Bryan P. Stirling, Director

Date of Signature

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.