

CHAPTER 17
State or Local Employees Grievance Procedure

ARTICLE 5
State Employee Grievance Procedure

SECTION 8-17-310. Legislative findings; declaration of purpose; short title.

The General Assembly finds that harmonious relations between public employers and public employees are a necessary and most important factor in the effective and efficient operation of government, and that a proper forum for the understanding and resolution of employee grievances will contribute to the establishment and maintenance of harmony, good faith, and the quality of public service. The General Assembly also recognizes that the most effective and cost efficient means of resolving grievances occurs at the lowest level, and state agencies are encouraged to use methods of alternative dispute resolution to avoid a grievance hearing and further litigation. It is for the protection and in the interests of both the employee and the agency via a neutral method of dispute resolution and fair administrative review, that this act, which may be cited as the "State Employee Grievance Procedure Act", is enacted.

HISTORY: 1982 Act No. 402, Section 1; 1996 Act No. 284, Section 2, eff October 1, 1996.

SECTION 8-17-320. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(1) "Agency" means a department, institution of higher learning, board, commission, or school that is a governmental unit of the State of South Carolina. Special purpose districts, political subdivisions, and other units of local government are excluded from this definition.

(2) "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.

(3) "Board" means the State Budget and Control Board.

(4) "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.

(5) "Class" means a group of positions sufficiently similar in the duties performed, degree of supervision exercised or received, minimum requirements of education, experience or skill, and the other characteristics that the same state class title and the same state salary range are applied to each position in the group by the Office of Human Resources.

(6) "Committee" means the State Employee Grievance Committee.

(7) "Covered employee" means a full-time or part-time employee occupying a part or all of an established full-time equivalent (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 of not more than two full academic years' duration. If an employee 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, or time-limited employees who do not have grievance rights.

(8) "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.

(9) "Deputy director" means an employee who has been appointed under the provisions of Section 1-30-10(E), oversees a division, and reports directly to the agency head.

(10) "Full-time equivalent" or "FTE" means a value expressing a percentage of time in hours and of funds related to a particular position authorized by appropriations acts enacted by the General Assembly.

(11) "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 taken by an agency.

(12) "Instructional personnel" means employees of an agency that has primarily an educational mission, excluding the state technical colleges and excluding those employees exempted in Section 8-17-370(10) who work an academic year.

(13) "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. The reassignment of an employee by an agency 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.

(14) "Mediation" means 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 nonadversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

(15) "Mediation-arbitration" means an alternative dispute resolution process that provides for the submission of an appeal to a mediator-arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.

(16) "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 noninstructional personnel, of the academic year duration for instructional personnel except for those at state technical colleges, or of not more than two full academic years' duration for faculty at state technical colleges. An employee who receives an unsatisfactory performance appraisal during the probationary period must be terminated before becoming a covered employee.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

(21) "Reduction in force" means a determination made by an agency head to eliminate one or more filled positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, or organizational changes.

(22) "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) evaluation.

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

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

(25) "Temporary employee" means a full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and who is not a covered employee.

(26) "Termination" means the action taken by an agency against an employee to separate the employee involuntarily from employment.

(27) "Transfer" means the movement to a different agency of an employee from one position to another position having the same state salary range, or the movement of a position from one agency to another agency which does not require reclassification.

HISTORY: 1982 Act No. 402, Section 2; 1993 Act No. 178, Section 9, eff July 1, 1993; 1993 Act No. 164, Part II, Section 8A, eff June 21, 1993, and subsec. (11) first applies with respect to employees hired after June 30, 1993; 1994 Act No. 407, Section 1, eff May 25, 1994; 1996 Act No. 284, Section 3, eff October 1, 1996.

SECTION 8-17-330. Agency employee grievance plans; procedures; appeals.

Each agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources. A copy of the approved agency grievance procedure must be made available to covered employees of the agency. The provisions of the State Administrative Procedures Act apply in proceedings before the State Employee Grievance Committee. At other levels the State Administrative Procedures Act does not apply, but the covered employee has the right to a representative, including counsel. When a final decision is rendered, it must be given to the covered employee or the employee's representative in writing. If the covered employee chooses to exercise the right to counsel, the employee does so at his own expense.

The procedure must provide that all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action and that the agency shall make a final decision on a grievance within forty-five calendar days of the filing of the grievance by the covered employee. Failure by the agency to make a final decision on the grievance within forty-five calendar days after the filing of the grievance is considered an adverse decision, and the covered employee may appeal thereafter to the State Human Resources Director. The internal time periods of the agency grievance procedure may be waived upon the mutual written agreement of both parties. The forty-five-calendar-day period for action by the agency may not be waived except by mutual written agreement of both parties. The time periods for appeal to the State Human Resources Director may not be waived.

A covered employee who wishes to appeal the decision of the agency grievance procedure to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within fifty-five calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of the agency's final decision or fifty-five calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal.

An employee must not be disciplined or otherwise prejudiced in employment for exercising rights or testifying under these processes.

As used in this article, a covered employee may file a grievance or appeal concerning the following adverse employment actions: terminations, suspensions, involuntary reassignments, and demotions. Reclassifications are considered a grievance only if an agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. However, reclassifications, reassignments, and transfers within the same state salary range are not adverse employment actions which may be considered grievances or appeals. Promotions are not adverse employment actions which may be considered grievances or appeals 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 an 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. For purposes of this article, when an agency 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. Salary decreases based on performance are adverse employment actions that may be considered as grievances or appeals. A reduction in force is an adverse employment action considered as a grievance only if the agency, 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.

A covered employee has the right to appeal to the State Human Resources Director an adverse employment action involving the issues specified in this section after all administrative remedies to secure relief within the agency have been exhausted.

HISTORY: 1982 Act No. 402, Section 3; 1988 Act No. 375, eff March 14, 1988; 1993 Act No. 164, Part II, Section 8B, eff June 21, 1993; 1993 Act No. 178, Section 10, eff July 1, 1993; 1996 Act No. 284, Section 4, eff October 1, 1996.

SECTION 8-17-340. State Employee Grievance Committee; hearings; procedures; appeals.

(A) There is created the State Employee Grievance Committee constituted and appointed to serve as an administrative hearing body for state employee appeals. The State Human Resources Director shall forward to the committee for a hearing all appeals which meet jurisdictional requirements and relate to the following adverse employment actions: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy. The committee shall consist of at least eighteen and not more than twenty-four members who must be appointed by the State Budget and Control Board to serve for terms of three years and until their successors are appointed and qualify. All members of the committee must be selected on a broadly representative basis from among the personnel of the various state agencies as recommended by the agency head.

The committee annually shall elect a chairman from among its members to serve for a one-year term. In addition, the State Human Resources Director may divide the committee into panels of five members to sit at hearings and designate a member to serve as the presiding officer and a member to serve as secretary at all panel hearings. A quorum of a panel consists of at least three members.

Vacancies occurring for a reason other than expiration of a term must be filled by the State Budget and Control Board in the same manner as the original appointments. Members may be reappointed for succeeding terms at the discretion of the State Budget and Control Board. The committee and the State Human Resources Director may recommend to the State Budget and Control Board that it promulgate regulations as necessary to carry out the provisions of this article and the board is authorized to promulgate these and other necessary regulations.

Committee members shall receive their normal pay for the time they are required to be away from their regular assignments. They may be reimbursed as provided by law from funds appropriated to the State Budget and Control Board for expenses, such as meals, lodging, and mileage, when using their personal automobiles, incurred in connection with the performance of necessary committee business.

(B) Whenever an appeal before the committee is initiated by or involves an employee of an agency of which a committee member also is an employee or involves another impermissible conflict of interest, the member is disqualified from participating in the hearing.

(C) The committee chairman or a designee shall conduct the grievance hearing in an equitable, orderly, and expeditious fashion. The committee chairman or a designee is authorized to administer oaths; to issue subpoenas for files, records, and papers; to call additional witnesses; and to subpoena witnesses. The State Budget and Control Board is authorized to request assignment by the Attorney General of one or more of his staff attorneys admitted to practice law in South Carolina to serve in the capacity of committee attorney. If the Attorney General is not able to provide sufficient legal staff for this purpose due to an impermissible conflict of interest, the State Budget and Control Board, with the approval of the Attorney General, is authorized to secure other qualified attorneys to serve as committee counsel. The committee attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions, and all legal issues. The parties are bound by the decisions of the committee chairman or a designee or the committee attorney insofar as these hearings are concerned.

(D) At these hearings the employee and the agency are allowed representatives, including counsel. During the course of the hearing the parties and witnesses also shall respond to questions asked by the committee attorney or the committee members. The committee attorney or the attorney for the Office of

Human Resources may assist the committee in the preparation of its findings of fact, statements of policy, and conclusions of law. The committee attorney may be present during the committee's deliberations on its decision only upon the request of the presiding officer. Within twenty calendar days of the conclusion of the hearing, the committee shall render its decision on the appeal. The decision shall include the committee's findings of fact, statements of policy, and conclusions of law.

(E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows:

(1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in Section 43-35-10 or 63-7-20, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:

(a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;

(b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations; or

(c) The agency's action was arbitrary and capricious.

(2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(F) The decision of the committee members must be transmitted in writing to the employee and the employing agency and is final in terms of administrative review. As a result of this decision, either the covered employee or the agency may request a rehearing or reconsideration within thirty calendar days from receipt of the decision. A notice of appeal seeking appellate review of the final decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). Only after an agency submits a written request to the Office of Human Resources seeking approval of the board may the agency file a notice of appeal seeking appellate review to the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the board. The covered employee or the agency who first files the notice of appeal seeking appellate review is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the audio tapes of a hearing required for certification of the record to the Administrative Law Court. Neither the board nor the Office of Human Resources nor the State Human Resources director nor the committee may be named in this notice of appeal. However, any of these entities are entitled to make a motion in the Administrative Law Court to be allowed to intervene to participate in the appeal for appropriate reasons including their interest in defending their policies.

HISTORY: 1982 Act No. 402, Section 4; 1993 Act No. 110, Section 2, eff three months after June 11, 1993; 1996 Act No. 284, Section 5, eff October 1, 1996; 2006 Act No. 387, Section 9, eff July 1, 2006.

SECTION 8-17-345. Mediation-arbitration of employment action appeals.

The State Human Resources Director shall forward to a mediator-arbitrator all appeals which meet jurisdictional requirements and relate to the appeal of the following adverse employment actions: lack of promotional consideration and punitive reclassifications when the State Human Resources Director determines there is a material issue of fact regarding these issues, suspensions for ten days or fewer, and

involuntary reassignments. In these cases, the arbitration decision is final. The provisions of the State Administrative Procedures Act do not apply to the mediation-arbitration proceedings.

The mediator-arbitrator must be assigned by the State Human Resources Director and shall serve as an impartial third party to hold conferences to mediate the appeal and if the appeal is not mediated, determine whether the covered employee substantiates that the agency's decision was not reasonable. The mediator-arbitrator shall review the documents which have been submitted by each party and shall schedule a time to meet with both parties, jointly or independently. Failure of the covered employee or the employee's representative to attend a conference without reasonable justification constitutes a waiver of the employee's rights to pursue the appeal further. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties.

The conferences with the parties are confidential and limited to the parties and their representatives, but other persons may attend with the permission of the parties and the mediator-arbitrator. The parties or their representatives attending a conference must have full authority to negotiate and recommend settlement. The mediator-arbitrator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation-arbitration in any adversary proceeding or judicial forum. All records, reports, documents, discussions, and other information received by the mediator-arbitrator while serving in that capacity are confidential, except the documents which have been submitted by each party shall be the record during judicial review.

If an agreement by the two parties is not reached, the mediator-arbitrator shall transmit to both parties a final written decision based on the information presented during the process concerning the appeal within forty-five calendar days after the mediator-arbitrator conducts a conference with either or both parties. This forty-five-day period may be extended by the State Human Resources Director under extenuating circumstances. The mediator-arbitrator shall request assistance from the attorney for the Office of Human Resources in the preparation of the final written decision. As a result of this decision, either the covered employee or the agency may request a reconsideration within thirty calendar days from receipt of the decision. The mediator-arbitrator shall request assistance from the attorney for the Office of Human Resources in the preparation of the written response to the request for reconsideration. Petition for judicial review of the final decision may be made by the covered employee to the court of common pleas of the county in which the covered employee's place of employment is located. Only after an agency submits a written request to the Office of Human Resources seeking approval of the board may the agency initiate a petition for judicial review to the court of common pleas of the county in which the covered employee's place of employment is located. However, the agency may perfect the petition for judicial review only upon approval of the board. The record for judicial review shall be limited to the documents which have been submitted by each party and the final written decision of the mediator-arbitrator. Neither the board nor the Office of Human Resources nor the State Human Resources Director nor the mediator-arbitrator may be named in this petition for judicial review. However, any of these entities are entitled to make a motion in the court of common pleas to be allowed to intervene to participate in the petition for judicial review for appropriate reasons including their interest in defending their policies.

HISTORY: 1996 Act No. 284, Section 1, eff October 1, 1996.

SECTION 8-17-350. Duties of state personnel director relative to grievance appeals from agency decisions.

When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator. The attorney for the Office of Human Resources or a committee attorney shall provide the State Human Resources Director legal advice requested to assist the State Human Resources Director in complying with the provisions of this article. If the State Human Resources Director determines that the action is grievable, he shall forward the appeal and documents either (1) to the

mediator-arbitrator for mediation-arbitration or (2) after the mediation process has been completed, to the designated committee panel and to the committee attorney for a hearing, whichever is appropriate based on the type of adverse employment action. The State Human Resources Director shall notify committee members, the committee attorney, and the parties concerned of the date, time, and place of hearings. The documents transmitted by the State Human Resources Director to the designated committee panel and committee attorney must be marked into evidence as "Committee Exhibit I" during the committee chairman's opening statement at the beginning of the hearing unless excluded by the committee attorney based on a prior objection raised by either party.

The State Human Resources Director is responsible for recording the hearings, and shall provide to the committee from the resources of the Office of Human Resources, the administrative and clerical services required.

HISTORY: 1982 Act No. 402; 1996 Act No. 284, Section 6, eff October 1, 1996.

SECTION 8-17-360. Mediation of grievances by state personnel director.

Once an appeal has been made to the State Human Resources Director and has been determined to meet all jurisdictional requirements, but before forwarding the appeal to the committee, the State Human Resources Director shall appoint a mediator to the appeal of the following adverse employment actions: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy. The mediator must be an impartial third party who shall act to encourage and facilitate the resolution of the dispute through mediation. The mediator shall review the documents which have been submitted by each party and shall schedule a time to meet with both parties, jointly or independently, to attempt to resolve the matter. Mediation conferences are confidential and limited to the parties and their representatives. Other persons may attend only with the permission of the parties and the mediator. The parties or their representatives attending a mediation conference must have full authority to negotiate and recommend settlement. Failure of the covered employee or the employee's representative to attend a mediation conference without reasonable justification constitutes a waiver of the employee's rights to further pursue the appeal. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties.

The mediator may not be compelled by subpoena or otherwise to divulge records or discussions or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, documents, discussions, and other information received by the mediator while serving in that capacity are confidential.

HISTORY: 1982 Act No. 402, Section 6; 1996 Act No. 284, Section 7, eff October 1, 1996.

SECTION 8-17-370. Exemptions.

The provisions of this article do not apply to:

- (1) members, officers, or employees of the General Assembly;
- (2) employees within the Office of the Governor who work at the mansion or in the State House or those employees appointed by the Governor to serve at or above the organizational level of assistant directors of the individual program components;
- (3) elected public officials of this State or persons appointed to fill vacancies in these offices;
- (4) all judges, officers, and employees of the Judicial Department; jurors; all employees of the Commission on Prosecution Coordination; and the judges, officers, and employees of the Administrative Law Judge Division;
- (5) members of state boards, commissions, councils, advisory councils, or committees compensated on a per diem basis;

(6) inmate help in a charitable, penal, or correctional institution, residents of rehabilitation facilities, or students employed in institutions of learning;

(7) part-time professional personnel engaged in consultant or contractual services;

(8) an agency head who has the authority and responsibility for an agency within state government including the divisions of the State Budget and Control Board;

(9) employees of the Public Service Authority, State Ports Authority, the Jobs-Economic Development Authority, or the Division of Public Railways and the Division of Savannah Valley Development of the Department of Commerce;

(10) teaching or research faculty, professional librarians, academic administrators, or other persons holding faculty appointments at a four-year post-secondary educational institution, including its branch campuses, if any, as defined in Section 59-107-10;

(11) athletic coaches and unclassified employees in the athletic departments of four-year post-secondary educational institutions as defined in Section 59-107-10;

(12) deputy directors as defined in Section 8-17-320;

(13) regional and county directors of the Department of Social Services as defined in Section 43-3-40(B);

(14) employees of the Medical University Hospital Authority, provided the Medical University Hospital Authority has promulgated an employee grievance plan in accordance with its enabling provision;

(15) presidents of the South Carolina Technical College System;

(16) a retired member of the South Carolina Police Officers Retirement System or a retired member of the South Carolina Retirement System who is hired by an agency to fill all or some fraction of a full-time equivalent (FTE) position covered by the State Employee Grievance Procedure Act; and

(17) notwithstanding the provisions of Section 9-1-2210(E), any participant in the Teacher and Employee Retention Incentive Program.

(18) the chief investment officer and all other employees of the Retirement System Investment Commission.

(19) employees of the Office of the Lieutenant Governor if the employees report directly to the Lieutenant Governor or report directly to a person who reports directly to the Lieutenant Governor.

(20) the executive director, assistant directors, and the area directors of the South Carolina Department of Employment and Workforce created pursuant to Section 1-30-10(A)(20).

HISTORY: 1982 Act No. 402, Section 7; 1993 Act No. 177, Section 1, eff June 16, 1993, and applies to personnel actions taken after that date; 1993 Act No. 181 Section 73, eff July 1, 1993; 1994 Act No. 452, Section 8, eff June 16, 1994; 1996 Act No. 284, Section 8, eff October 1 1996; 2000 Act No. 264, Section 3, eff May 1, 2000; 2002 Act No. 171, Section 1, eff February 7, 2002; 2002 Act No. 356, Section 11, eff July 1, 2002; 2005 Act No. 153, Pt II, Sections 3.A, 3.B, Pt IV, Section 4, eff July 1, 2005; 2008 Act No. 353, Section 2, Pt 25B, eff July 1, 2009; 2010 Act No. 146, Section 6, eff March 30, 2010.

SECTION 8-17-375. Reassignment, termination, or reduction of compensation of unclassified executive department employees appointed by governing board subject to Senate confirmation.

Notwithstanding any other provision of law, employees of an executive department of this State, except for the Department of Transportation, enumerated in Section 1-30-10(A) with a governing board who are unclassified, whose employment or compensation are decided by the governing board subject to specified approvals provided by law, and whose appointment or employment is subject to Senate confirmation may not be reassigned, terminated, or have their compensation reduced, except by majority vote of the governing board and approval by the Senate upon advice and consent prior to the action being taken or an interim appointment being made.

HISTORY: 2008 Act No. 353, Section 2, Pt 20H, eff July 1, 2009.

SECTION 8-17-380. Grievance and performance appraisal procedure for academic employees.

With respect to the teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at any post-secondary educational institutions described in item (10) of Section 8-17-370, each such institution, subject to the approval of the State Budget and Control Board or its designee and the Commission on Higher Education, shall establish in writing:

(a) A performance appraisal procedure which shall assure:

- (1) annual review and evaluation of such employees;
- (2) written findings;
- (3) review of evaluations with each covered employee;

(4) retention of performance appraisals and written comments of such employee, if any, in a permanent file with right of full disclosure to the employee.

(b) A grievance procedure which shall at an appropriate stage provide a hearing for such employees before an individual or committee designated for such purposes, at which the employee shall have the right to representation by counsel and the opportunity to present evidence in his behalf. Any such procedure shall include the right of the employee to appeal the post-hearing decision to the governing board of the institution, or a committee designated by the board for this purpose, such appeal to be limited to the record of the hearing. Discrimination in compensation, promotion, and work assignment shall be subjects for consideration by such grievance procedure. Dismissal of tenured or other permanent employees and dismissal prior to the end of an employment contract term shall be only for cause, and shall be subject for consideration by such grievance procedure. The granting or the failure to grant tenured status to such employees or nonrenewal of employment contracts at the end of the contract term shall not be subjects for consideration by such grievance procedure.

The grievance and performance appraisal procedure provided for herein shall be submitted to the State Budget and Control Board or its designee and the Commission on Higher Education for approval within six months after the establishment of any new institution.

HISTORY: 1982 Act No. 402, Section 8.