


**AIKEN TECHNICAL COLLEGE
PROCEDURE**

Procedure Title:	EMPLOYEE GRIEVANCE AND APPEAL	Procedure Number:	3-1-101.1
Institutional Authority:	Vice President of Administrative Services		
Associated SBTCE Policy/Procedure:	8-6-100		
Governing ATC Policy:	3-1-101		

Approved: 

President



Vice President of Administrative Services

Date Adopted: 07/01/2004

Date Revised: 02/11/2008

DISCLAIMER

PUSUANT 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 AGENCY.

Aiken Technical College will comply with Section 59-53-20 of the 1976 Code of Laws of South Carolina, as amended. The College will follow the procedure outlined below in accordance with SBTCE Policy 8-6-100.

I. PURPOSE

The purpose of this procedure is two-fold. The first purpose is to provide an orderly means whereby any covered employee of Aiken Technical College may grieve actions taken by System Office or College management. The second is to specify which actions are grievable or appealable and specify which are not. Employees choosing to file a grievance or appeal must not be retaliated against for exercising rights or testifying under the provisions of this policy.

II. 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. The last day must be excluded if it falls on a Saturday, Sunday, or legal holiday.

- 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 (classified employees, unclassified non-teaching personnel, and institution officers, excluding the College President) who has completed the probationary period of twelve (12) months and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. Faculty are covered upon the completion of not more than two (2) full academic years' duration¹. 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 employees in positions such as temporary, temporary grant, returning retirees, or time-limited employees 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.

- 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 South Carolina Technical College System.

- 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 President/System 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

¹ Reference procedure #3-3-121.1 (Compensation Plan for Unclassified Faculty Personnel)

depending up the business needs of the college (Refer to ATC procedure #3-3-110.1; Faculty Teaching/Workload and Overload Compensation).

- 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.

- 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 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 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.

- 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.

- 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 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, or organization changes.

- SALARY DECREASE BASED ON PERFORMANCE

Salary decrease based on performance means the reduction of the covered employee's compensation based on the results of an Employee Performance Management System (EPMS) or Faculty Performance Management System (FPMS) evaluation.

- STATE HUMAN RESOURCES DIRECTOR

State Human Resources Director means the head of the Office of Human Resources of the State Budget and Control Board, or his 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.

III. GRIEVANCE AND APPEAL PROCEDURE

A. GENERAL

The purpose of this section is to provide “covered employees”, as defined in Section II, 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 College employees who wish to file a formal grievance under these procedures shall follow the steps as outline in Section D. 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.

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

Issues that are grievable or appealable include terminations, suspensions, involuntary reassignments in excess of 30 miles², and demotions. Additional grievable actions are as follows:

² 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 grievable or appealable. Teaching faculty may be assigned to any campus/site within the college’s service are depending upon the business needs of the College (Refer to ATC Procedure #3-3-110.1; Faculty Teaching/Workload and Overload Compensation).

- Promotions

Promotions may be considered grievances or appeals in instances where the College 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 College 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.

- Salary Decreases

Salary decreases based on performance are adverse employment actions that may be considered as grievances or appeals.

- Reduction in Force

A 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 college inconsistently or improperly applied its reduction in force policy or plan.

C. ACTIONS NOT GRIEVABLE OR APPEALABLE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT³

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

1. 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 College President or designee agrees;
2. Reclassifications, reassignments, and transfers within the same salary range are not adverse employment actions which may be considered grievances or appeals;
3. 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;

³ Actions that are not grievable or appealable under the State Employee Grievance Procedure Act must be handled through the College's informal complaint process.

4. A covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is a to a class with a lower salary range than the class in which the employee was serving prior to promotion;
5. A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher salary range 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 promotion;
6. When an employee is promoted one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee;
7. A covered employee who receives a salary increase for assuming additional job duties or responsibilities, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six 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 the College complete all actions on a grievance within a period of forty-five (45) calendar days. Any employee who does not have their grievance completed within forty-five (45) calendar days of the filing of such grievance, may appeal directly to the State Human Resources Director, so long as the employee initiates their appeal no later than fifty-five (55) calendar days from the initial date the grievance was filed within the College. Otherwise, the employee waives their right to appeal. Failure by the college 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 College may not be waived except by mutual written agreement of both parties (refer to Addendum #1).

The following steps are a guideline to ensure timely completion of the College grievance process. The internal time frames may be waived with the mutual consent of the parties. (Refer to Addendum #1).

1. First Step

The covered employee initiates a grievance by written correspondence [that includes the nature and substance of the grievance and the relief sought] to the College Human Resources Director which must occur within fourteen (14) calendar days of the effective

date of the action. The Human Resources Director shall initially review the grievance to determine whether the matter involves a grievance as defined by the Act. The Human Resources Director may conduct appropriate investigations and fact findings as are considered 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 College President or designee, normally within five (5) calendar days⁴ of receipt of the grievance. Such determination shall be a final decision within the College⁵. The College President shall notify the employee to contact the Human Resources Director who shall provide information regarding the informal complaint process.

If it is determined that the matter is grievable, the Human Resources Director will promptly schedule a conference to occur between the covered employee's immediate supervisor, in conjunction with the appropriate Vice President (VP), and the covered employee, normally within five (5) calendar days of receipt of the grievance. This conference may occur face-to-face or via telephone, depending on the preference of the employee. However, any initial determination by the Human Resources Director 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 with the covered employee's immediate supervisor and appropriate VP, the covered employee will have an opportunity to present their rationale for disagreement with the action taken against them. The immediate supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of their immediate supervisor's and VP's decision in writing within five (5) calendar days of the conference.

2. Second Step

If, in the opinion of the covered employee, the written decision of the first step official does not represent satisfactory disposition, then within five (5) calendar days of receiving the first step official's decision, the employee shall continue the grievance in writing to the second step official (College President). The second step official will promptly schedule separate inquiries with the covered employee and any other parties necessary. The second step official may designate others to assist in the investigation or in making recommendations. The second step official shall make a decision within ten (10)

⁴ Unless holiday schedules, inclement weather, and other verifiable extenuating circumstances prevent adhering to this deadline.

⁵ The Executive Director/System President delegates the authority to the College President to render this decision as the final decision of the agency.

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 III (D) (3).

b) In the event that the College President serves as the first step official, then the second step official shall be the System President of the State Board for Technical and Comprehensive Education 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 S.C. Human Resources Director, as provided in III (D) (4).

3. Third Step

If the decision reached by the second step official is not satisfactory to the covered employee, the grievance may be continued to the System President of the State Board for Technical and Comprehensive Education. The covered 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 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 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. 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.

4. Fourth Step (Appeals to S.C. State Human Resources Director)

If the decision of the System President 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 with 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.

E. LEGAL REPRESENTATION

Eligible employees may be accompanied by an attorney or other representative at any stage of the grievance process, though it is not necessary as this is a non-adversarial meeting. Legal representation shall be at the employee's expense.

Procedure Review		
Review Date	Reviewed By	Date Completed
07/01/2007		
02/11/2013		

AGENCY ADDENDUM #1

<Employee First Name Last Name>

<Street Address>

<City, State Zip Code>

<Relevant Step Official>

<College Name>

<College Address>

Re: Consent to extend grievance hearing

My signature below evidences my 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 Signature>

Date