SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Non-Faculty Exempt Employment Provisions

NUMBER: 4.3.1

A. PURPOSE

To define the process and provisions relating to the appointment, employment, conduct expectations, compensation practices, remedial action procedures, and grievance procedures for Non-Faculty Exempt (NFE) employees. This policy supersedes all other BOR policies relating to NFE employees.

B. DEFINITIONS

1. **Day:** Calendar days
2. **Executive Director:** The chief executive officer of the SD Board of Regents.
3. **Grievance:** An alleged misinterpretation, misapplication or violation of a specific term or provision of BOR policy, or other agreements, contracts, policies, rules, regulations or statutes that directly affect terms and conditions of employment for the individual employee; provided the allegations assert a specific factual basis for the claim that, if proven, would establish that an action attributable to the administration deprived the grievant of a right arising under such term or provision. A grievant may not rely upon mere conclusions, general allegations, and speculative statements to establish a factual basis for the claim that a term or provision has been misinterpreted, misapplied, or violated.
4. **Institution:** Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind and Visually Impaired, South Dakota Services for the Deaf, University of South Dakota, and the Office of the Executive Director.
5. **Internal Equity Adjustment:** A salary adjustment to reduce or eliminate an internal pay rate disparity within an Institution or defined Institutional department.
6. **Market Equity Adjustment:** A salary adjustment to reduce or eliminate an external pay rate disparity using recognized market data and peer groups.
7. **Non-Faculty Exempt (NFE):** Employees who are exempt from the Civil Service Act by virtue of their administrative and professional functions.
8. **Performance Adjustment:** A salary adjustment made in recognition of work performance that meets or exceeds performance standards documented through an established review process.
9. **President:** The chief executive officer of a South Dakota Board of Regents University.

10. **Student Employee:** Student employees, including teaching and research fellows, are exempt from the Civil Service System. Student employees are considered temporary employees and not eligible for benefits unless meeting the requirements under the Affordable Care Act.

11. **Superintendent:** The chief executive officer of a South Dakota Board of Regents Special School.

C. POLICY

1. Appointment

All NFE Institutional personnel will be employed upon the approval of the President, Superintendent, or Executive Director. BOR Policies 1.1.5 and 1.1.6 outline when Board approval is required for appointment.

1.1. If an Institution wishes to hire a candidate who was previously terminated for cause, or who resigned in lieu of termination, the President or their delegate, and the Office of the Executive Director shall be advised of the circumstances surrounding the termination. The President, Superintendent, or Executive Director will approve or deny the rehire based upon legitimate business and position related reasons.

1.2. If an Institution appoints a candidate who is employed by another Institution, the Institutions shall share position related information with the requesting academic or human resource office, and the appointing authority will consider that legitimate business and position related information in the hiring process prior to appointment.

2. Employment Contracts

2.1. Upon appointment of a benefit-eligible employee, the University or Special School will issue an employment contract, which may be renewed annually at the discretion of the University President or Superintendent.

2.2. NFE employment contracts shall not be more than one year in length, unless otherwise specified in, and issued pursuant to, BOR Policy 4.1.4 – Multi-Year Employment Contracts.

2.3. During a valid contract term, NFE employees may be reassigned for non-discriminatory purposes without cause to any position, so long as the salary is not decreased during the term of the current contract.

2.4. NFE Employment contracts may be non-renewed without cause by providing written notice of the non-renewal to the NFE employee prior to the expiration of the current contract term.

2.5. An NFE employment contract creates no obligation of the Institution for continued employment beyond the term of the contract and non-renewal of the contract is not an action which can be grieved under BOR or Institutional policy.

2.6. NFE employment contracts may be terminated for cause, or as a part of a reduction in force in conformity with this policy and applicable law.

3. Compensation Administration

3.1. All compensation adjustments that meet the criteria identified in BOR Policy 1.1.5 (Section C.5) and 1.1.6 (Section C.4) require Board approval.

3.2. Compensation upon Hire or Transfer

3.2.1. Compensation for employees at hire or transfer will be set comparative to the market value of the position as well as the internal equity of the Institution.

3.2.2. Institutional hiring authorities shall consult with human resources on compensation decisions at hire or transfer, and the Institution shall consider the position requirements, institutional priorities and the candidate's education, experience, skills, and abilities.

3.3. Annual Salary Adjustments

Decisions concerning annual salary policy adjustments will be made in accordance with legislative process and BOR policies. The President, Superintendent or Executive Director determines the Institutional priorities and establish guidelines for salary allocations.

3.3.1. Administrators responsible for making individual salary recommendations will follow approved guidelines:

3.3.1.1. The Legislature will identify the salary pool and the Board will approve a total salary policy pool for which Institutions can distribute based on market, performance or institutional priorities.

3.3.1.2. The President, Superintendent or Executive Director can apply institutional priorities to a specific department or area of concentration so long as it is a portion of the total salary policy pool.

3.3.1.3. Administrator recommendations will be reviewed by the appropriate Vice President and/or President.

3.3.1.4. All annual salary policy for benefit eligible employees must be applied through the HRFIS system, those meeting the criteria for Board approval in BOR Policy 1.1.5 or 1.1.6 must be report to the Board for approval at its regularly scheduled meeting in May.

3.4. Other Base Salary Adjustments

3.4.1. Additional Duty Pay: An increase, permanent or temporary, to base salary may be granted based on a documented additional workload.

3.4.2. Duties and Responsibilities Changes: An increase based upon significant change in the duties, scope and responsibility of a position as documented in an approved position description.

3.4.2.1. The adjustment shall be consistent with previous institutional priority decisions of the Institution and must be made in light of internal equity.

3.4.3. Internal Equity Adjustment: An increase to base salary to reduce or eliminate documented institutional internal salary disparities that are found after an analyses of position duties, individual qualifications, experience, longevity, work performance or institutional priorities.

3.4.4. Market Adjustment: An increase to base salary to reduce or eliminate a documented external salary inequity.

3.5. Instruction of Academic Courses

3.5.1. An NFE employee may be allowed to instruct an undergraduate or graduate course with the appropriate approval process at the Institution.

3.5.2. Employees may not be assigned overload that could interfere with the completion of primary responsibilities.

3.5.3. If an employee is assigned instructional overload in two consecutive contract terms, it will trigger an administrative review of the departmental workload, staffing, credit hour generation, course scheduling, and section-size management.

3.5.3.1. If an employee is assigned instructional overload for more than two consecutive annual contracts, approval from the University president, or their designee, is required.

3.5.4. When eligible, compensation for the instructional work should be comparable to the rates provided to temporary faculty for comparable instruction.

3.5.5. If the instructional workload is assigned as an overload, the work related to course instruction should be completed outside of the scope of the employee's regular position.

3.5.6. Administrators, and any employees with direct decision-making authority over course scheduling and instructional or workload assignments shall be ineligible for additional compensation for instructional duties performed during the term of their appointment.

3.5.6.1. This restriction applies to all institutional assistant and associate vice presidents, vice presidents, assistant and associate deans, deans, assistant, associate, and vice provosts, and provosts, regardless of decision-making authority over course scheduling or workload assignments.

3.5.6.2. Instructional duties performed by such individuals must be considered part of their regular administrative responsibilities and shall not be compensated separately unless explicitly authorized by the President upon a showing of institutional need, the lack of any other viable options, and the absence of any conflict of interests.

4. Reduction in Force

4.1. An Institution may lay off or reduce the percent time of an NFE employee during a current contract term for the following reasons:

4.1.1. Legislative action;

4.1.2. Loss of grant, contract or other funding;

4.1.3. Governor's executive order; or

4.1.4. Reorganization. An Institution may only use this as a means to lay off an employee for such occasions as privatization, the movement of a function to another state agency, the elimination of an organizational function, the consolidation of departments or functions, or a reduction in a program's activities.

4.2. Layoff Notification

4.2.1. An employee shall be given a minimum of fourteen (14) calendar day's written notice prior to the effective date of the layoff or reduction in percent time. The notice shall include:

4.2.1.1. The effective date and reason(s) for the layoff;

4.2.1.2. Information concerning the right to appeal;

4.2.1.3. The timeline in which the employee may present reasons in writing why the layoff should not take place;

4.2.1.4. Notice is effective the day of deposit in the mail of a certified notice, the date electronically sent, or the date personally delivered to the employee.

4.2.2. A copy of the layoff notification should be forwarded to the system human resources officer at the time the action is taken.

4.3. Priorities for Layoff

4.3.1. When more than one NFE employee exists in any classification, department, or geographic location designated for a reduction in force, the following criteria will be used to identify the employee(s) who will be laid off or have reduced hours:

4.3.1.1. Performance;

4.3.1.2. Longevity with the Institution and employment status;

4.3.1.3. Special knowledge, skills, abilities and potential of the employee;

4.3.1.4. Type and mixture of funding for position and fund status;

4.3.1.5. Future needs of the department;

4.3.1.6. Geographic location.

4.4. Benefits

4.4.1. Any accrued and vested leave will be paid in accordance with South Dakota administrative rules and statues.

5. Code of Conduct

Employees are expected to maintain an effective, orderly, safe and efficient work

environment.

5.1. Professional Conduct/Misconduct Defined

5.1.1. Disciplinary action, up to and including termination, may be taken, upon notice and a right to respond, for conduct within or outside the scope of employment. Disciplinary action may be taken for just cause, including, but not limited to the reasons listed below:

5.1.1.1. The employee has violated any Board of Regents or institutional policy;

5.1.1.2. The employee violated a confidentiality agreement, non-disclosure agreement, policy, regulation, or law;

5.1.1.3. The employee disrupts the efficiency or morale of the department;

5.1.1.4. The employee is careless or negligent with the money or other property of the state or property belonging to any person receiving services from the state or has stolen or attempted to steal money or property of the state or property belonging to any person receiving services from the state;

5.1.1.5. The employee has failed to maintain a satisfactory attendance record based on the established working hours or has had unreported or unauthorized absences;

5.1.1.6. The employee has made a false or misleading statement or intentionally omitted relevant information during the application and selection process;

5.1.1.7. The employee has intentionally falsified a state record or document;

5.1.1.8. The employee has violated statutes or standard work rules established for the safe, efficient, or effective operation of the campus;

5.1.1.9. A failure to correct deficiencies in performance which have been documented, whether in email or print, and communicated to the employee;

5.1.1.10. A breach of recognized published standards of professional ethics for the employee's profession;

5.1.1.11. Conviction of any felony or the conviction of a misdemeanor involving immoral actions;

5.1.1.12. The unlawful or unauthorized manufacture, distribution, dispensing, possession or use of alcohol or controlled substances while on duty or while on premises owned and controlled by the Board of Regents or used by the Board of Regents for educational, research, service or other official functions.

5.1.1.13. Insubordination,

5.1.1.14. The use of alcohol, marijuana, or other controlled substances, which impairs performance of duties.

5.1.1.15. Theft of state owned or controlled property.

5.1.1.16. Intentionally and wrongfully counseling, inciting, or participating in a prohibited student or employee activity.

5.1.1.17. Any substantial or irremediable impairment of the ability of a staff employee to perform assigned duties.

5.2. Termination of Faculty Appointment

If an NFE employee holds faculty rank, and/or tenure, then the appropriate faculty termination procedures shall be applied.

6. Remedial Action Procedures

6.1. Remediation may consist of one of the following actions:

6.1.1. Corrective Action:

6.1.1.1. Verbal warnings or directives which do not constitute discipline; or

6.1.1.2. Written warnings or directives to be filed in the personnel file of the employee which do not constitute discipline.

6.1.2. Discipline:

6.1.2.1. Required training or current substance abuse treatment at the cost of the employee;

6.1.2.2. Suspension from duties with loss of pay commensurate therewith;

6.1.2.3. Demotion, which does not include any change(s) in employment status occurring at the expiration of a term contract or any alteration(s) in employment status authorized in the employee's existing contract of employment; or

6.1.2.4. Discharge.

6.2. Administrative Leave

Unlike a disciplinary suspension under Section 6.1.2.2. above, placement on paid administrative leave from duties during the pendency of an active review of allegations of conduct warranting discipline is not deemed to be discipline under Section 6.1.2.

The decision to place an employee on paid administrative leave pursuant to this section does not require compliance with Stage One notice procedures set forth in Section 6.3.2.2. below.

The administration may withhold pay during the pendency of an active review of conduct warranting discipline where the circumstances that trigger administrative leave implicate public trust in ways that would preclude continued discharge of assigned responsibilities.

6.3. Procedures

6.3.1. Corrective Action Procedures

Corrective action may be imposed immediately, upon communication of the corrective action to the employee, pursuant to the discretion of an employee's supervisor. Employees who have had corrective action imposed may request review of the action through the grievance procedure set forth in Section 7 below, subject to the limitation(s) of Section 7.2.3.4.1.

6.3.2. Disciplinary Procedures

6.3.2.1. Legal Review Panel

Prior to providing written notice pursuant to Section 6.3.2.2 below for discipline that would result in demotion or discharge, the administration shall submit the intended discipline, the allegations supporting the intended discipline, and any evidence or documentation upon which the intended discipline is based to an internal legal review panel appointed by the Board of Regent's Executive Director, or as delegated, the institutional President. The legal review panel will be comprised of legal counsel, a human resources representative of the Board of Regents or institution, and an additional representative designated by the panel's appointing authority. The panel will conduct a review of the intended discipline and supporting materials, and provide a recommendation to the administrator for consideration. Employees may be placed on paid administrative leave during the legal panel review process in accordance with applicable law and policies. Any review and recommendation of the legal review panel shall be conducted under attorney-client privilege and shall not be included in the supporting materials provided to the employee, made part of the employee's personnel file, or otherwise disclosed or shared without the express written permission of the Board of Regents or its authorized designee. The legal review panel may be requested to review other employment actions; however, the legal review panel will not be used for discipline resulting from sexual harassment proceedings conducted in accordance with BOR Policy 1.4.1.

6.3.2.2. Stage One: Pre-Discipline Conference

If the administration determines that there are reasonable grounds for discipline, the employee will be furnished written notice of the allegations supporting the determination, an explanation of the evidence relied upon by the administration, and the intended disciplinary action. The matter will be discussed with the employee at a personal conference which will be held at a time not sooner than fourteen (14) calendar days, nor later than twenty-one (21) calendar days from the date of the transmission of the written notice, unless otherwise agreed by the employee and the

administration. The employee may bring to this conference a representative chosen by the employee. At the close of the personal conference, or within seven (7) calendar days thereafter, the administration will notify the employee whether it will discipline the employee, how and the effective date of the discipline.

6.3.2.3. Stage Two: Post-Discipline Hearing Rights

Employees who have been disciplined after completion of the Stage One conference may appeal the action through the grievance procedure set forth in Section 7 below. Any grievance appeal under this section will begin at Step Two in Section 7.2.2.

7. Grievance Procedures

The grievance procedure provides a just and equitable method for resolution of grievances that affect the terms and conditions of employment.

7.1. General Provisions

7.1.1. Grievance procedures are available to NFE employees.

7.1.2. No offer of settlement of a grievance by either party shall be admissible as evidence in later grievance proceedings or elsewhere.

7.1.3. No settlement of a grievance shall constitute a binding precedent in the settlement of similar grievances.

7.1.4. If the grievant fails to act within the time limits provided herein, the administration will have no obligation to process the grievance and it will be deemed withdrawn.

7.1.4.1. The parties to any grievance may, by mutual written agreement, waive the time limits provided herein.

7.1.5. If the administration fails to act in time, the grievant may proceed to the next review level by filing the grievance with the appropriate official and within the timeframe required under Section 7.2 and any subsequently issued decision on the matter at the bypassed level will be void.

7.1.6. If the grievant fails to state a grievance as defined in Section B.3 in any filing under the grievance procedure, the administration will have no obligation to process the filing beyond providing notice to the grievant within five (5) days of receipt of the filing that the filing failed to meet the definition of a grievance, after which the filing will be dismissed.

7.1.7. The Board, administration, or supervisors shall not retaliate against any non-faculty exempt employee for filing or participating in a grievance.

7.1.8. Employees who voluntarily terminate their employment shall have their grievances under this policy immediately withdrawn and shall not benefit by any later settlement of an individual or group grievance.

7.1.9. Grievance records shall not be maintained in the individual's personnel files but shall be maintained in a separate file.

7.1.10. Required written notice may be sent via the Postal Service, delivered by hand, or sent through electronic mail.

7.1.10.1. Notice will be effective on the date postmarked by the Postal Service, on the date delivered by hand or on the date sent electronically, provided that, where disruption of institutional electronic communications systems interferes with delivery of an electronic notice, the effective date of notices sent electronically will be delayed until service has been restored**.**

7.1.11. Grievances will be filed with the lowest administrative level having the authority to dispose of the grievance. If the office of the President, Executive Director, or Vice President represents the lowest administrative level having authority to dispose of the grievance, then the grievance will be filed at Step 2, Step 3 or Step 4 as applicable.

7.1.12. Throughout the grievance process, the grievant shall include copies of the original grievance and all responses and decisions from prior steps, if any.

7.1.13. Throughout each step of the grievance process, any decision issued by the institution shall be provided simultaneously to the grievant and each administrator who issued a decision in prior steps, if any. All decisions issued by the institution in response to a grievance shall include a statement of findings and conclusions supporting the decision.

7.1.14. Informal resolution may be attempted by the parties to a grievance at any point during the grievance procedure. If a grievance is resolved informally, the institution will be under no obligation to proceed further with the grievance.

7.1.15. If the deadline for any action(s) set forth herein falls on a Saturday, Sunday, legal holiday, or any other day in which the institution's administrative offices are closed, the timeframe for the action shall continue to run until the end of the first day thereafter when the institution's administrative offices are open.

7.2. Grievance Procedures

7.2.1. Step One – Grievance to Immediate Supervisor

7.2.1.1. An employee may file a grievance in writing with the immediate supervisor within fourteen (14) days of the date on which the grievant knew, or should have known, of the action or condition which occasioned the grievance.

7.2.1.2. The supervisor, upon receipt of the grievance, will investigate and provide a response to the grievant within seven (7) days.

7.2.1.3. If the employee is not satisfied with the response, the employee has seven (7) days to proceed to the next step.

7.2.2. Step Two – Grievance to Vice President

7.2.2.1. The employee may submit, in writing, a grievance of decision of

the supervisor to the appropriate Vice President of the institution.

7.2.2.2. A written response shall be delivered to the employee within fourteen (14) days following receipt.

7.2.2.3. If the employee is not satisfied with the response, the employee has seven (7) days to proceed to the next step.

7.2.3. Step 3 – Grievance to President, Superintendent, or Executive Director

7.2.3.1. The employee may grieve, in writing, the decision from step two to the President, Superintendent, or Executive Director.

7.2.3.2. The President, Superintendent, or Executive Director shall investigate the matter, personally or through an appointed designee or panel.

7.2.3.3. A written response shall be delivered to the grievant within fourteen (14) days following receipt.

7.2.3.4. If the employee is dissatisfied with the response rendered, the employee has seven (7) days following receipt to proceed to step four.

7.2.3.4.1. If the employee has filed a grievance based on corrective action imposed pursuant to Section 6.3.1. of this policy, the employee has seven (7) days to request review of the response pursuant to BOR Policy 1.1.6, Section C.5.

7.2.4. Step 4 – Grievance to the Board

7.2.4.1. The employee may grieve the decision of the President to the Board.

7.2.4.1.1. If the employee has filed a grievance which is not based on a reduction in force conducted pursuant to Section 4 of this policy or discipline imposed pursuant to Section 6.1.2 of this policy, the only additional grievance process available shall be under BOR Policy 1.1.6, Section C.5.

7.2.4.2. For grievances not governed by Section 7.2.4.1.1 above, the Executive Director shall select a hearing examiner within fourteen (14) days following receipt of the grievance.

7.2.4.3. The hearing examiner shall hold a hearing pursuant to SDCL ch. 1-26 with all parties involved in the grievance no later than thirty (30) days after the hearing examiner is appointed. The hearing examiner shall prepare a proposed determination including findings of fact and conclusions of law for the Board's consideration. The proposed determination shall be provided to the board within thirty (30) days of the hearing or fourteen (14) days prior to the next regularly scheduled Board meeting, whichever is sooner.

7.2.4.4. The Board's decision shall be issued to the employee within ten (10) days from the date the grievance is considered by the Board. If the Board fails to respond within the specified time period, or if the employee is not satisfied with the decision, the employee may grieve in accordance with South Dakota Codified Law Chapter 1-26.

FORMS / APPENDICES:

None

SOURCE:

BOR August 2019; BOR May 2021; BOR December 2021; BOR December 2022; October 2023 (Clerical); BOR April 2026; BOR July 2027.