

Mary Poole  
State Director  
Patrick Maley  
Deputy Director  
Rufus Britt  
Associate State Director  
Operations  
Susan Kreh Beck  
Associate State Director  
Policy  
W. Chris Clark  
Chief Financial Officer



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Lorri S. Unumb  
Secretary  
Robin B. Blackwood  
Eva R. Ravenel

3440 Harden Street Ext (29203)  
PO Box 4706, Columbia, South Carolina 29240  
803/898-9600  
Toll Free: 888/DSN-INFO  
Home Page: [www.ddsn.sc.gov](http://www.ddsn.sc.gov)

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**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS (DDSN). THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. DDSN RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, 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.**

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## INTRODUCTION

The State Employee Grievance Procedure Act (Act) provides that each agency and department of State government shall establish an employee grievance procedure for covered employees which shall be reduced to writing and be approved by the State Human Resources Director. In addition, the approved grievance procedure must be made available to covered employees of DDSN. "Covered employee" is defined as a full-time or part-time employee (FTE/PTE) occupying a part or all of a FTE position, who has completed the probationary period with a "successful" or higher overall rating on the employee's performance evaluation and who has grievance rights. If an employee does not receive an evaluation before his/her performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. 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).

Employees choosing to file a grievance or appeal must not be disciplined or otherwise prejudiced for exercising their rights or for testifying under the provisions of this policy.

### **GENERAL POLICY**

It is the policy of DDSN to give prompt and impartial consideration to the complaints and grievances of employees without restraint, interference, coercion or reprisal. It is the responsibility of the immediate supervisor to make prompt decisions and to work toward solutions that are in the best interests of DDSN and the employee involved. It is expected that the supervisor will make every reasonable effort to reach a satisfactory solution, so that employee complaints may be settled informally between the employee and the immediate supervisor.

Employees have the right to have a representative, including counsel, at any time during DDSN's grievance procedure. If an employee chooses to exercise the right to counsel, it shall be at the employee's expense.

### **GRIEVANCES AND APPEALS**

As provided for in the Act and defined in S.C. Code Ann. § 8-17-320, a covered employee may file a grievance or an appeal concerning **only** the following employment actions:

- Terminations
- Suspensions
- Involuntary Reassignments in excess of 30 miles from the prior work station
- Demotions
- Punitive Reclassifications, but only when DDSN (in the case of a grievance) or the State Human Resources Director (in the case of appeal) determines that there is a material issue of fact that the action was solely done to penalize the covered employee.
- Promotions - In instances where DDSN (in the case of a grievance) or the State Human Resources Director (in the case of appeal) determines that there is a material issue of fact as to whether or not DDSN 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. When DDSN promotes an employee one organizational level above the promoted employee's former level; however, this action is not a grievance or subject to appeal for any other qualified covered employee. Failure to be selected for a promotion is **not** considered an adverse employment action which can be considered grievable or appealable.
- Salary Decrease - Based on performance as the result of an Employee Performance Management System (EPMS) evaluation.

- Reduction In Force is considered only if DDSN (in the case of a grievance), or the State Human Resources Director (in the case of appeal) that there is a material issue of fact that DDSN inconsistently or improperly applied its Reduction In Force policy or plan.

### **CASES NOT ENTITLED TO GRIEVANCE AND APPEAL**

Items not entitled to be considered through the grievance procedure include, but are not limited to the following:

- Reclassifications, reassignments, and transfers within the same state salary range.
- Complaints or grievances from applicants for employment.
- 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 DDSN State Director or the DDSN State Director's designee agrees.
- A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities taken away prior to completing six (6) months of service with the additional job duties or responsibilities, will 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.
- Abandonment of position.
- Position classification.
- Written work improvement notices which do not actually constitute an adverse action.
- Performance appraisal ratings.
- Reassignments not in excess of 30 miles from prior work station are not considered grievable or appealable.
- A covered employee who is promoted and subsequently demoted prior to serving six (6) months of satisfactory service in the class with the higher salary range will not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a lower class salary range than the class in which the employee was serving prior to promotion.
- A covered employee who is promoted and subsequently receives a reduction in pay prior to completing the trial period in the class with the higher salary range will 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.

## **PRIOR TO FILING A FORMAL GRIEVANCE**

Prior to filing a formal grievance, the covered employee may first attempt to resolve the matter informally with his immediate supervisor. This matter may be presented verbally or in writing; however, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of Step One in the following procedure.

### **PROCEDURES**

The time frames used in this policy will be based on calendar days. Calendar days means the sequential days of a year. The time will 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.

#### **STEP-ONE**

A formal grievance must be initiated in writing within 14 calendar days following the effective date of the grievable action or receipt of notification of the grievable action, whichever occurs later.

If the grievance is filed by mail, the postmark date on the envelope will be considered the date filed. In cases where the grievance is hand delivered, the date the written grievance is received in the appropriate representative's office will be considered the date filed. The time shall be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday or a legal holiday, it will be excluded.

The employee should include a written summary of the facts of the grievance and the relief sought.

- Employees assigned to a DDSN Regional Center will file their initial grievance (Step One) with the Facility Administrator.
- Employees assigned to DDSN Regional Human Resources Offices will file their initial grievance (Step One) with the Director of the Central Office Human Resources.
- Employees assigned to the Central Office will file their initial grievance (Step One) with the Associate State Director to which their position is organizationally assigned.
- Employees of Executive Staff Directors (i.e., Internal Audit, Human Resources, etc.) or when the Associate State Director is not the appropriate staff member to review the matter, will file their initial (Step One) level grievance with a manager designated by the DDSN State Director.
- Employees directly reporting to the DDSN State Director shall file a grievance with the Director of Internal Audit.
- Covered employees with complaints or grievances may contact their DDSN Regional Center Human Resource Manager to obtain information regarding procedures to be followed to resolve the matter or to file a formal grievance. DDSN Regional Center

Human Resources Managers will be available to advise employees and management on procedural matters throughout the course of a formal grievance process. If the DDSN Regional Center Human Resources Managers are not available, or in the cases where the DDSN Regional Center Human Resources Manager is not the appropriate person to review the matter, the employee and management should contact the Central Office of Human Resources Director.

DDSN's Central Office Human Resources Director or other designated official will initially review the grievance to determine whether the matter involves a grievance as defined by the Act. DDSN's Central Office Human Resources Director or other designated official may conduct appropriate investigations and fact findings as may be considered necessary to make this determination. If it is determined that the matter is not grievable, the covered employee will be advised in writing by DDSN's State Director or designee, normally within five (5) calendar days of receipt of the grievance. Such determination will be the final decision by DDSN which may be appealed to the State Human Resources Director.

If it is determined that the matter is grievable, DDSN's Central Office Human Resources Director or other designated official will contact the covered employee and the appropriate DDSN representative(s), (normally within five (5) calendar days of receipt of the grievance), to inform them the issue can be heard under this grievance procedure, and inquire whether or not they desire to participate in voluntary mediation. Both parties must make a written decision to DDSN's Central Office Human Resources Director within two (2) calendar days of this notification (See Attachment). Failure by either party to respond timely to this notification is deemed a refusal to participate in the voluntary mediation.

Any initial determination by DDSN's Central Office Human Resources Director or other designated official that the matter may be grieved will only entitle the covered employee to have the matter considered in accordance with this grievance procedure, and will in no way be considered a judgment of the merits of the grievance.

### ***With Mediation***

When the covered employee and the DDSN representative(s) both agree in writing to participate in voluntary mediation, DDSN's Central Office Human Resources Director or other designated official will schedule a mediation conference to occur within five (5) calendar days of receipt of such notice, and make the necessary arrangements for acquiring a mediator. 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 in regard to the mediation conference in any adversary proceeding or judicial forum. If the parties agree to settle the matter, the mediator will assist in drafting a mediation agreement for the parties to review and sign. The mediator may share terms of the settlement agreement with DDSN's designated officials who need to finalize and assist in implementing the agreement.

If the matter is not settled within eight (8) calendar days of the initial mediation conference, the mediator will inform DDSN's Central Office Human Resources Director or other designated official that settlement has not occurred. DDSN's Central Office Human Resources Director or other designated official will then schedule a conference to occur between the appropriate DDSN representative and the covered employee within five (5) calendar days. At the conference with the representative, the covered employee will have an opportunity to present his/her position regarding the grievance. The DDSN representative 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 this decision in writing within five (5) calendar days of the conference.

### ***Without Mediation***

If the covered employee or DDSN submits a written decision not to participate (or fails to respond timely concerning voluntary mediation), DDSN's Central Office Human Resources Director or other designated official will promptly schedule a conference to occur between the appropriate DDSN representative and the covered employee, normally within five (5) calendar days. At the conference with this DDSN representative, the covered employee will have an opportunity to present his/her position regarding the grievance. The DDSN representative 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 this decision in writing within five (5) calendar days of the conference.

### **STEP-TWO**

To continue the grievance, the covered employee must notify DDSN's State Director or a designee in writing. The request to continue the grievance must be received (or, if mailed postmarked) within five (5) calendar days after receiving the Step One decision. DDSN's State Director or designee must promptly schedule and conduct a conference with the covered employee, normally within five (5) calendar days. The covered employee will be provided an opportunity at this time to present his/her position regarding the grievance. DDSN's State Director or designee may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. DDSN's State Director or designee must advise the covered employee of the decision in writing within five (5) calendar days of the conference. This decision will be final within DDSN. DDSN employees will file their second grievance (Step Two) with the DDSN State Director at 3440 Harden Street Ext., Columbia, SC 29203.

Failure by DDSN to issue a final decision within 45 calendar days from date the grievance is initially filed by the covered employee within DDSN is considered an adverse decision.

### **ADDITIONAL INFORMATION**

Failure by the covered employee to comply with the internal time periods in DDSN's grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance. The internal time periods of DDSN's

grievance procedure and the 45 calendar day period for action by DDSN may not be waived except by mutual written agreement of both parties.

### **APPEALS TO THE STATE HUMAN RESOURCES DIRECTOR**

The Act also provides for an appeal of a grievance beyond DDSN to the State Human Resources Director, after all administrative remedies to secure relief within DDSN have been exhausted. A covered employee has not exhausted administrative remedies to secure relief within DDSN until DDSN's internal grievance process is completed or the 45 calendar days provided for DDSN to issue a decision has elapsed, whichever occurs sooner.

Any covered employee may appeal the decision of DDSN's State Director or designee. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of receipt of DDSN's final decision or 55 calendar days from the initial date the grievance was filed within DDSN, whichever occurs later. As to the 55 calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event DDSN does not complete its entire internal grievance procedure within 45 calendar days from the time the grievance is initially filed within DDSN. Failure by DDSN to issue a final decision within this 45 calendar day period is considered an adverse decision and allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed within DDSN.

Failure by the covered employee to file an appeal within the time periods referenced in this section shall constitute a waiver of the right to appeal.

The time periods related to filing an appeal with the State Human Resources Director may not be waived.

  
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Patrick J. Maley  
Deputy Director

  
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Mary Poole  
State Director

Attachment: DDSN Agreement to Mediate Form

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