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**SUBJECT: GRIEVANCE POLICY (Staff, Adjunct, At-will Employees)**

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**1.0 PURPOSE**

- 1.1. This Policy is intended to provide eligible employees a fair and expeditious process to resolve work related grievances concerning interpretation, application or claimed violations of personnel policies or practices, working conditions, disciplinary sanctions Level Two and Three Corrective Actions (including Dismissal), or non-retention.

While encouraging employees to seek resolution to their Grievances, the College retains all of its rights to manage its operation, determine its organizational structure and mission and the means, equipment, machinery, technology, personnel, and the ability to assign employee duties and classifications necessary to fulfill such mission, and to supervise its operation to the fullest extent allowable under the law.

**2.0 DEFINITIONS**

- 2.1. **ATHLETIC COACHES:** Employees who are primarily involved with teaching student athletes about general fitness or the particulars of their sport, and otherwise qualify for the teacher exemption under the Fair Labor Standards Act. Athletic Coaches are at-will and exempt from overtime requirements. Employees primarily tasked with administrative tasks in the Athletic Department, including the recruitment of students to play sports, or performing manual labor, are Staff Employees, not Athletic Coaches.
- 2.2. **Calendar Days or Days.** Calendar Days are used for Grievance submission deadlines. If a deadline falls on a weekend, College holiday, College break, or College closure, the deadline moves to the next College business day.
- 2.3. **Conflict.** A personal relationship with a party, by bias concerning the circumstances giving rise to a Grievance, or by any other material influence which would appear to inhibit a committee member's ability to render an unbiased judgment.
- 2.4. **Date of Concern.** The date of the event that has led to an employee's decision to initiate the Grievance process. Example: Date of Written Warning Letter; Date of Final Decision Letter.
- 2.5. **Eligible Employee:** An Employee who is eligible to use a particular level of the Employee Grievance Procedure.
- 2.6. **Employee.** A Staff Employee, Faculty or Adjunct Faculty of Snow College.
- 2.7. **Employee Grievance Hearing:** A hearing before a panel of the Personnel Relations Committee.

- 2.8. Employee Grievance Procedure: the process followed in resolving an Employee Grievance brought before the institution by an Eligible Employee who has the right to make a Grievance.
- 2.9. EXECUTIVE EMPLOYEE – Employees who report to the directly to the President, represent the highest level of decision making for their area of responsibility, and serve on the President’s top council (Cabinet). Executive Employees are at-will.
- 2.10. Final and Binding Decision: a final administrative decision. The complainant cannot take the matter any further administratively.
- 2.11. Final and Binding Decision-Maker: the decision maker empowered to render the final decision of the College. The College President is typically the Final and Binding Decision-Maker for Grievances involving a Level Three Corrective Action. Where a Conflict exists or for less than Level Three Corrective Action Grievances the President may designate an Executive Employee as the Final and Binding Decision-Maker.
- 2.12. Grievance. Concerns over interpretation, application or claimed violations of personnel policies or practices, working conditions, disciplinary sanctions (Level Two and Three Corrective Actions including Dismissal), or non-retention. A Grievance may not be made for other employment issues including position descriptions, classification of positions, and establishment of salaries commensurate with classification. Grievances are considered private and confidential to the extent feasible.
- 2.13. Grievance Hearing Committee. The committee appointed by the Director of Human Resources or designee from the Personnel Relations Committee that is charged with determining the merits of a Grievance and to make initial determinations within the guidelines of this policy.
- 2.14. Grievance Termination. The Grievance procedure stops and no further action may be taken.
- 2.15. Grievant. An Eligible Employee of the College who has a Grievance.
- 2.16. Hearing Officer. The Grievance Hearing Committee Hearing Officer, who may or may not be one of the members of the Grievance Hearing Committee and if not a member may come from outside the College. If the Hearing Officer is not a member of the Grievance Hearing Committee he/she will not vote on the decision. The Hearing Officer shall preside over the Grievance Hearing, assure that procedures are complied with, consider procedural requests including requests for extensions of time limits, and generally conduct the Grievance Hearing in consultation with the Grievance Hearing Committee.
- 2.17. Human Resources or HR. The office in the College charged with the administration and record maintenance of personnel matters or such other

person as may be specially designated by the President to act in regard to this Policy.

- 2.18. Informal Procedure. A good faith effort by an Employee to resolve a Grievance through informal discussions with their immediate supervisor and second level supervisor when necessary. The Human Resources Office shall be available to assist both parties in the informal resolution of Grievances.
- 2.19. Immediate Supervisor: the lowest level of salaried supervision of an Employee. The Immediate Supervisor may designate a Line Supervisor or higher level as the Immediate Supervisor for a Grievance.
- 2.20. Line Supervisor. The lowest level of non-salaried supervision of an Employee.
- 2.21. Mediation. The process that provides a Grievant and Respondent the opportunity to identify issues, consider options, and arrive at a mutual agreement under the supervision of a trained mediator. Both the Grievant and Respondent must agree to participate in Mediation before proceeding.
- 2.22. Non-retention. A Dismissal of an Employee who has no right to continued employment. This includes the Dismissal of non-tenured Faculty at the end of any contract year or the dismissal of an At-will Employment Employee.
- 2.23. Personnel Relations Committee (“PRC”): The committee consisting of faculty and staff appointed and trained for the purpose of hearing Grievances. PRC members shall be appointed by the College President with input from the Faculty Senate President, for faculty members, and the Staff Association President, for staff members. Faculty members may be tenured, tenure track or professional track. Members are to be selected for their objectivity and fairness in personnel matters. Appointments are generally for a two-year term. Members should be appointed by August 1 of every year to open spots. If a member resigns or is unable to serve a replacement will be appointed as soon as possible. At least 4 tenured or tenure-track faculty, 2 Professional Track employees, and 6 Regular Staff employees should be appointed and currently serving. The College’s Legal Counsel shall provide periodic in-service training for the PRC. Executive and Administration Employees may not serve on the PRC.
- 2.24. Respondent. An employee of the College who is designated by HR as the appropriate person to respond to a Grievant’s Grievance, typically the Immediate Supervisor.
- 2.25. Additional definitions may be found in the Staff Employee, Executive Employee, Administration Employee, and Adjunct Faculty Corrective Action Policy.

### 3.0 POLICY

- 3.1. It is the Policy of Snow College that Eligible Employees shall be provided a fair and expeditious process to resolve work related grievances concerning interpretation or application of personnel policies or practices, working conditions, disciplinary sanctions, termination, or non-retention.

#### 4.0 PROCEDURES

##### 4.1. General Information

- 4.1.1. The College recognizes the right of Eligible Employees to use the Employee Grievance Procedure without fear or concern of retaliation. No Grievant, witness or member of the Grievance Hearing Committee shall be subject to harassment, intimidation, reprisal, or retaliation for utilizing or participating in the Grievance process.
- 4.1.2. The following are Eligible Employees for the indicated level of the Employee Grievance Procedures:
  - 4.1.2.1.1. Full-time Regular Staff Employees may use the full Grievance Procedure.
  - 4.1.2.1.2. Full-time Professional Track Faculty may use the full Grievance Procedures except Non-retention decisions are limited to the Informal Procedure and the Professional Track policy.
  - 4.1.2.1.3. At Will Employment Employees (including Adjuncts, Athletic Coaches, Executive Employees, Part-time, Temporary, and Probationary Regular Staff Employees) are limited to the Informal Procedures except they may not grieve any Corrective Action or Termination.
- 4.1.3. Reasonable time off with pay during scheduled working hours shall be provided to the Grievant, the Grievant's representative if a College employee, or any employee witnesses called to testify, for reasonable time spent participating in proceedings leading to resolution of the Grievance. Time spent by the Grievant or representative in such activities outside scheduled working hours is non-compensable. Neither time-off with pay nor compensation is provided for time or money spent in preparation for such proceedings.
- 4.1.4. Complaints regarding discrimination or harassment shall follow the College Policy regarding Discrimination and Harassment.
- 4.1.5. As the Grievance moves through the formal process, the Grievant may not add new issues or claims to the original Grievance but an Amended Grievance may be considered by the Grievance Hearing Committee if a new issue or claim has arisen since the original

Grievance was filed and the Hearing Officer allows amendment. An employee may not institute more than one Grievance procedure based on the same facts, claims, circumstances or events. All records, findings, and decisions shall be maintained in the Human Resources Office in a separate file from the Employee's personnel file.

- 4.1.6. Alternative Procedures. If any steps in this procedure are impractical for any reason, Human Resources, normally after consultation with the Grievant, may prescribe an alternative procedure which, to the maximum practicable degree, assures to the Grievant the fair and adequate consideration of the problem or complaint; provided, however, that a Grievant's right to a hearing before the Grievance Hearing Committee cannot be denied nor abridged, if eligible.
- 4.1.7. Failure of the Grievant to meet Grievance deadlines as outlined in this Policy will result in Grievance Termination.
- 4.1.8. Time limits may be extended by the HR Director or Hearing Officer in writing for good cause shown.
- 4.2. Informal Procedure. An Eligible Employee who has a Grievance shall first attempt to resolve the Grievance through a good faith informal discussion(s) with their Immediate Supervisor. An Eligible Employee or the Immediate Supervisor may request that the Line Supervisor or any supervisor in the chain of supervision participate in this informal discussion(s) but participation shall be at the discretion of the other supervisor. Human Resources shall be available to assist both parties in the Informal Procedure. A resolution by the Informal Procedure may be put in writing by Human Resources and either party may request that HR do so. A resolution by the Informal Procedure is not binding on the College unless in writing and approved by the President or his designee.
  - 4.2.1. An Eligible Employee must within fourteen (14) Calendar Days of the Date of Concern request an informal discussion and within seven (7) Calendar Days of the request meet and discuss with the Immediate Supervisor. Failure by the employee to timely request and meet with the Immediate Supervisor will result in Grievance Termination. Except if the supervisor fails to meet after a request the employee may timely proceed to the Grievance Hearing Procedures.
  - 4.2.2. A Grievance regarding a Level Two or Three Corrective Action is considered to have complied with this Informal Procedure and shall proceed immediately to the Grievance Hearing Procedures.
  - 4.2.3. The following issues are limited to the Informal Procedure under the Employee Grievance Procedure: 1) job descriptions, re-assignment of job duties and responsibilities, 2) classification of positions, 3) wages

and salaries, 4) non-retention of At-will Employment Employees, 5) extension of the new employee probationary period, 5) reorganization that does not result in loss of pay, 6) soft-funded appointments which are terminated for loss of funding or that are time specific, 7) general working conditions, 8) Level One Corrective Actions (Performance Improvement Plan), 9) Pre-Corrective Actions, 10) Annual Evaluations, 11) other issues as stated in this Policy.

#### 4.3. Mediation

4.3.1. If the Grievance is not successfully resolved by the Informal Procedure, or at any other time in the process after Informal Procedure, the parties may agree to a Mediation. Both parties must agree in writing to mediate prior to entering the Mediation process. The Human Resources Office will coordinate a request for Mediation and a mediator will be appointed. If the concerns are unresolved with Mediation, the Grievance will resume at the point Mediation was requested. Mediation must be requested while a Grievance is active and timely. An unagreed to request will not stay the process.

#### 4.4. Grievance Hearing Procedures

- 4.4.1. An Eligible Employee must complete a Grievance Hearing Request Form available from Human Resources or online and submit the form to Human Resources within the following time frames:
- 4.4.1.1. Level Two or Three Corrective Actions: Within seven (7) Calendar Days from the date of the Final Decision Letter.
  - 4.4.1.2. Other concerns: Within seven (7) Calendar Days from the meeting in accord with the Informal Procedure. Except if the supervisor fails to meet within fourteen (14) Calendar Days of a timely request to meet.
  - 4.4.1.3. An untimely request shall result in Grievance Termination.
- 4.4.2. The completed Grievance Request Form must state the nature of the Grievance including any policies and procedures that are alleged to have been violated, attempts at resolution, dates of the request to meet and meeting pursuant to the Informal Procedures, and the remedy the Grievant is seeking.
- 4.4.3. Human Resources will designate a person to coordinate the formal Grievance procedure with the Grievant and supervisor(s), monitor time lines, and answer questions regarding the process.
- 4.4.4. Upon receipt of a request for a Grievance Hearing Committee, Human Resources will establish a committee from the Personnel Relations Committee members. The selection shall be made by HR and take into

account availability, exclude persons with obvious Conflicts, and be done without an attempt to create an unfair Grievance Hearing Committee. The Grievance Hearing Committee shall be created within 7 Calendar Days of the request. The Grievance Hearing Committee for all Grievances excluding Grievances regarding Level 3 Corrective Actions will be comprised as follows:

4.4.4.1. 3 persons from the Personnel Relations Committee at least 1 of whom shall be of a different classification from the other 2 (i.e. 2 Regular Staff Members and 1 Faculty or 1 Regular Staff Member and 2 Faculty).

4.4.4.1.1. At the discretion of the College, instead of a Grievance Hearing Committee, the College may appoint a Grievance Hearing Administrator who shall act in place of the Grievance Hearing Committee and the Hearing Officer. The Grievance Hearing Administrator shall be subject to challenge as set forth in subsection 3.4.6 and 3.4.8.1.1. HR shall prepare procedures for when appointment of a Grievance Hearing Administrator is appropriate and how he/she shall be selected.

4.4.4.2. When a Level Three Corrective Action may be grieved by an Eligible Employee, the Grievance Hearing Committee will be comprised of 3 persons from the Personnel Relations Committee 2 of whom will be from the same classification as the Grievant and 1 from a different classification.

4.4.5. The College President will designate a Grievance Hearing Committee Hearing Officer, who may or may not be one of the members of the Grievance Hearing Committee. If the Hearing Officer is not a member of the Grievance Hearing Committee they may come from outside the College and will not be a non-voting member of the Grievance Hearing Committee. The Hearing Officer shall preside over the Grievance Hearing, assure that procedures are complied with, consider procedural requests including requests for an extension of time limits, and generally conduct the Grievance Hearing in consultation with the Grievance Hearing Committee.

4.4.6. A Grievance Hearing Committee member shall not be considered for any Grievance Hearing Committee where he/she may be influenced by personal relationships with the parties, by bias concerning the circumstances giving rise to the Grievance, or by any other material influence which would appear to inhibit the member's ability to

render an unbiased judgment (collectively “a Conflict”). A member with a Conflict shall recuse him or herself from selection or membership if appointed. A member may be challenged by either party for a Conflict, which shall be decided by the Grievance Hearing Committee Hearing Officer or, if the Hearing Officer is challenged, by the Director of Human Resources. The Grievance Hearing Committee is to act as an impartial fact finding body representing neither side in the cases brought before it. It does not take any corrective actions nor make any binding decision, but exists solely to hear the facts of each case, make findings based upon those facts, and recommend a course of action to the final decision-maker.

- 4.4.7. The Grievance Hearing Committee will begin the process upon selection of its members and notification of the Grievance. The Grievance Hearing Committee will meet initially to read the Formal Grievance (they may meet electronically). The Grievance Hearing Committee may determine that it is unnecessary to proceed with a hearing because: the Grievance as stated is clearly unwarranted; the Grievance is untimely; or the Grievant is not an Eligible Employee. If the Grievance Hearing Committee determines that a hearing should not occur it will issue a written decision citing the reasons therefore. Either party may appeal the decision to deny a hearing within seven (7) Calendar Days to the Final And Binding Decision-Maker.
- 4.4.8. If the Grievance Hearing Committee determines that a Hearing is appropriate the Hearing should be held within 28 Calendar Days of the request but the time may be extended for good cause. The following procedures apply:
  - 4.4.8.1. Prior to the hearing the parties will be notified of the identity of the Grievance Hearing Committee members. The parties will then meet with the Hearing Officer (who may include one or more Grievance Hearing Committee members) in a Pre-Hearing Conference. The Pre-Hearing Conference will:
    - 4.4.8.1.1. Consider claims of a Conflict by a Grievance Hearing Committee Member or Hearing Officer. Claims of a Conflict must be brought at the first Pre-Hearing Conference or they are waived. If a Conflict is found that member shall be recused and another member will be appointed.
    - 4.4.8.1.2. Define the issues for the hearing.
    - 4.4.8.1.3. Set deadlines for the parties to produce to the Grievance Hearing Committee and each other: 1) copies



of the documents and other real evidence they intend to submit at the hearing; 2) a list of witnesses they would like to call at the hearing; 3) other deadlines as needed.

4.4.8.1.4. Discuss the format of the hearing.

4.4.8.1.5. Set a date and time for the hearing.

4.4.8.1.6. Additional Pre-Hearing Conferences may be held if necessary to refine these matters or consider other issues prior to the hearing.

4.4.8.2. The College will attempt to compel witnesses within its jurisdiction to attend the hearing but Parties may have to arrange for other witnesses to attend. The Hearing Officer may limit the number of witnesses and exclude cumulative witnesses and evidence.

4.4.8.3. A hearing is not to be an overly contentious process and the highest level of civility is expected. The Parties shall have the right to be accompanied at the hearing by one support person or advisor of their choice who may, but need not be, an attorney. If an attorney will serve as an advisor, the Grievance Hearing Committee and other party shall be notified at least 7 Calendar Days in advance of the hearing by the Party. The support person/advisor shall be allowed to advise their Party throughout the hearing.

4.4.8.4. At the hearing each party has the right to be heard and to hear the presentation of the other party. The format of the hearing shall be:

4.4.8.4.1. Give an opening statement;

4.4.8.4.2. Present witnesses and evidence (all testimony shall be given under oath);

4.4.8.4.3. Question the other party's witnesses as allowed by the hearing officer. At the minimum an advisor shall be allowed to submit their questions to the hearing officer who, in his or her judgment, may then ask the witness the question, rephrase the question while preserving the substance and ask it, ask the advisor to rephrase the question, disallow the question or ask the advisor to move on to another question or area of questioning. In their discretion the Hearing Officer may allow a party or its advisor to ask questions directly. During questioning, the parties, advisor, and Grievance Hearing Committee shall treat all persons with respect.

- 4.4.8.4.4. Address objections to the Hearing Officer (although this right may be limited or terminated if in the Hearing Officer's discretion objections become burdensome to the progress of the hearing);
- 4.4.8.5. Present a closing statement.
- 4.4.8.6. Typically the Respondent will present their position first but the Hearing Officer may modify this.
- 4.4.9. The Hearing Officer and Grievance Hearing Committee may question witnesses directly.
- 4.4.10. Formal rules of evidence do not necessarily apply, but the Grievance Hearing Committee will consider whether evidence and testimony should be admitted considering relevance, probity, reliability, cumulateness, and other factors. Witness statements or affidavits, made under oath, may be allowed but the Grievance Hearing Committee may consider why the witness is absent.
- 4.4.11. The Hearing Officer is charged with controlling the Hearing and may impose reasonable time limits on the Parties and may exclude cumulative, repetitive, irrelevant, or marginally relevant evidence. The Hearing Officer may direct the Parties and their Advisors as how to proceed in order to control the hearing and achieve a fair and just result. In extreme cases of misbehavior a party or their advisor may be prohibited from further participation.
- 4.4.12. There shall be a record, such as a digital recording, of all hearings and it shall be kept in a confidential file, and shall be available for review by the Final and Binding Decision Maker, any Party, or by the college administration for a period of at least four years. The record shall be the property of the college and shall be classified as a protected record pursuant to GRAMA, Utah Code 63G-2-305 and/or a private record pursuant to 63G-2-302.8.
- 4.4.13. The hearing shall be closed to the public, but College officials and others allowed by the Grievance Hearing Committee may attend the entire hearing.
- 4.4.14. At the conclusion of the hearing, the Grievance Hearing Committee shall commence deliberations in private. The Grievance Hearing Committee may meet further as necessary to finalize its decision.
  - 4.4.14.1. In a Grievance proceeding challenging a Corrective Action, the Grievance Hearing Committee shall determine whether a Corrective Action is supported by substantial evidence. The College shall have the burden of showing this.

- 4.4.14.2. In a Grievance proceeding regarding concerns over interpretation, application or claimed violations of personnel policies or practices, working conditions, or non-retention it shall be the Grievant's burden to prove that there is not substantial evidence supporting the action.
- 4.4.15. Within 7 Calendar Days of the hearing the Grievance Hearing Committee shall prepare a written report including findings and recommendations for the Final and Binding Decision Maker.
- 4.4.16. Upon receipt of the written report, the Final And Binding Decisionmaker shall review the report and such other materials from the Hearing, such as the recording and exhibits, as deemed necessary. Based upon such review and without conducting further hearings or attempting to gather additional evidence, the Final and Binding Decisionmaker, shall take one of the following actions:
  - 4.4.16.1. Ratify the findings and adopt the recommendations.
  - 4.4.16.2. Return the report to the Grievance Hearing Committee for reconsideration or clarification.
  - 4.4.16.3. Reject all or parts of the findings and recommendations and make a final decision as to the disposition of the Grievance. Findings and recommendations may be rejected and a different disposition made for reasons that may include that the recommendations are not supported by the record, or the recommendations are based on a misinterpretation of applicable law or policy.
- 4.4.17. Written notification of the final and binding decision shall be communicated by the Final and Binding Decision-Maker to all parties concerned within 7 Calendar Days of the receipt of the Grievance Hearing Committee's written report.
- 4.5. Human Resources may create procedures to supplement or replace the procedures set forth in section 3.4 as experience suggests changes are needed. Such procedures must be consistent with the spirit of this Policy—to provide eligible employees a fair and expeditious process to resolve work related grievances concerning interpretation or application of personnel policies or practices, working conditions, disciplinary sanctions, termination, or non-retention.
- 5.0 Utah Code 67-21-3.7 requires that the College establish an Independent Personnel Board to hear and take action on a complaint alleging an adverse action as defined and explained in Chapter 21 of Title 67 (hereafter "67-21 Adverse Action"). A Grievance Hearing Committee assembled from the Personnel Relations Committee

members pursuant to the procedures above shall be that Independent Personnel Board.

- 5.1. This process is available to any Employee of the College who suffers a 67-21 Adverse Action.
- 5.2. The procedures for filing a complaint alleging a 67-21 Adverse Action shall be: an Employee shall complete a Grievance Hearing Request Form noting that the Employee is alleging a 67-21 Adverse Action pursuant to Chapter 21 of Title 67 and providing information in the Form as to the other required elements of that Chapter. This shall constitute the “Complaint” called for in Chapter 21 of Title 67.
- 5.3. The Complaint shall proceed according to the process for a Level Three Corrective Action as described above and pursuant to the same timelines except the Grievance Hearing Committee shall hear the matter and forward its written report, findings and recommendations to the Final and Binding Decision-Maker no longer than within 30 Calendar Days after the day on which the Employee files the Form or within such longer period of time, not to exceed 30 additional Calendar Days, if the Employee and the Grievance Hearing Committee mutually agree on a longer time period. The Final and Binding Decision-Maker shall render a decision and enter an order within 7 Calendar Days after the day on which they receive the written report, findings and recommendations.
- 5.4. With regard to a Complaint under this section, the burden is on the College to establish by substantial evidence that its action was justified by reasons unrelated to the Employee’s good faith actions under Utah Code 67-21-3.
- 5.5. If the Grievance Hearing Committee finds that a 67-21 Adverse Action was taken in violation of the policy described in Chapter 21, Title 67 it may recommend, and the Final and Binding Decision-Maker may order, reinstatement of the employee at the same level as before the adverse action; payment of back wages; full reinstatement of fringe benefits; full reinstatement of seniority rights (if any) or a pay raise that results in the Employee receiving the pay that the employee would have received if the person had been promoted.
- 5.6. Members of the Grievance Hearing Committee may be excluded the same as for any other Conflict with the addition that a Conflict will also exist where a member of the Grievance Hearing Committee is in the same department as the Grievant, is a supervisor of the Grievant or has a conflict of interest in relation to the Grievant or an allegation made in the complaint.