

Title: Grievance Procedure for Employees Subject to the State Personnel Act (SPA)

Purpose: The North Carolina State Personnel Commission requires each agency to create and maintain a grievance policy and procedure which is in compliance with the Office of State Personnel policy. UNC Asheville’s grievance procedures allows for the prompt, orderly and efficient resolution of problems and differences arising between the supervisor and employee.

Scope: This grievance procedure applies to former employees and employees in positions that are subject to the State Personnel Act (SPA) and to applicants for positions that are subject to the State Personnel Act. A covered person’s rights to maintain a grievance under this regulation will depend upon the person’s status (e.g. former employee, applicant, career state employee, temporary employee) and whether the person has presented a grievable issue under the policy.

Policy: Employees have the right to use this procedure free from threats or acts of retaliation, interference, coercion, restraint, discrimination or reprisal. Employees may not be retaliated against for participating in a grievance as a grievant, a witness, a support person, or as a Grievance Review Board member.

The following matters ARE grievable internally and then to the State Personnel Commission if the internal procedures do not produce outcomes that are acceptable to the grievant. See Procedures, Section II for additional information concerning grievances based on discrimination or denial of reasonable accommodation).

Covered Persons	Grievable Issues
Employees Subject to the State Personnel Act (SPA) who are Career State employees or former career State employees	<ul style="list-style-type: none"> • Dismissal, demotion, or suspension without pay without just cause • Denial of promotion due to failure to post a vacancy • Failure to give promotional priority over outside applicants in accordance with the Office of State Personnel’s Promotional Priority policy. • Failure to give RIF reemployment consideration • Failure to give policy-making/confidential exempt status priority reemployment consideration • Denial of veteran’s preference in connection with RIF
Any SPA State employee or former SPA State employee	<ul style="list-style-type: none"> • Denial of request to remove inaccurate or misleading information from personnel file • Discrimination in denial of promotion, transfer, or training; or retaliation in selection for demotion, RIF or termination
Any applicant for State employment (for positions subject to the State Personnel Act)	<ul style="list-style-type: none"> • Denial of veteran’s preference in initial State employment • Denial of employment on the basis of illegal discrimination
Any State employee	<ul style="list-style-type: none"> • A false accusation about political threats or promises • Violation of the FLSA, Age Discrimination Act, FMLA or ADA (except for employees in exempt policy-making positions).

Advisory Note on Unlawful Workplace Harassment: Harassment based on race, color, religion, creed, sex, national origin, age, color, or disabling condition is a form of discrimination in violation of federal law, state law, and/or university policy, and will not be tolerated. An employee who feels that he or she has been the victim of unlawful workplace harassment should bring the matter to the attention of a University administrator.

For formal resolution under the Unlawful Workplace Harassment policy, the employee should file a signed Unlawful Workplace Harassment Form with the University's Human Resources Office within 30 calendar days of the last incident. An employee who alleges workplace harassment and elects to utilize the University procedure shall have the right to bypass any step in the University grievance procedure involving discussions with or review by the alleged harasser. The University shall investigate the matter and take appropriate remedial action within 60 calendar days from receipt of the written complaint/grievance.

A grievant also has a right to file a simultaneous complaint under Title VII with the Equal Employment Opportunity Commission (EEOC). An individual with a grievance concerning denial of employment, promotion, training, or transfer, or concerning a demotion, layoff, transfer or termination due to discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation or handicapping condition as defined by G.S. 168A-3, or a grievance based on retaliation for opposition to alleged discrimination may still appeal directly to the Office of Administrative Hearings and the State Personnel Commission.

Please refer to UNC Asheville's Unlawful Workplace Harassment Policy for more information.

The following matters are NOT grievable.

1. Management decisions which include, but are not limited to:
 - a. Departmental functions, programs and budgets;
 - b. Standards of service;
 - c. Utilization of technology; and/or
 - d. Assignment and reassignment of staff to positions, duty stations and shifts, except where such transfers involve an involuntary disciplinary demotion.
2. Management-employee counseling sessions and supervisory conferences
3. Employee concerns related to the administration of the North Carolina position management and classification system.
4. Periods of placement on investigation, and placement on investigatory leave with pay.
5. Written warnings issued pursuant to the disciplinary action policy specified in the State Personnel Manual.
6. Extension of disciplinary actions.

University-Level Appeals

Performance Ratings/Performance Increases may only be appealed per the guidelines in UNC Asheville's SPA Performance Pay Dispute Resolution Policy and may not be appealed to the State Personnel Commission.

Employees may file a grievance at the University level only, through UNC Asheville's SPA Grievance Procedures, for charges alleging discrimination based on sexual orientation¹ in the following matters:

1. Disciplinary actions of discharge, disciplinary suspension without pay and/or demotion,
2. Denials of promotion, training or transfer due to alleged unlawful State employment practice, training, career development, demotion for fiscal purposes, and/or reduction-in-force.

GENERAL GUIDELINES

- Any employee or supervisor who has a work-related problem is encouraged to discuss the problem informally and confidentially with the Office of Human Resources. Employees within the Office of Human Resources will serve as a source of information and advice for the employee or supervisor, and as a sounding board for ideas, rather than as an advocate for an employee or supervisor in a particular problem.

Employees and supervisors are encouraged to discuss matters as fully and freely as they wish. Any such discussion with the Office of Human Resources will be confidential. To the extent permitted by law, no contact with the employee's supervisor or others about the issue or concern will occur without the approval of the individual employee or supervisor. Discussions between a grievant and his/her support person also are considered confidential. A support person may not discuss the issue or concern without the approval of the grievant.

- It is the responsibility of managers and supervisors at all levels, consistent with the authority delegated to them to consider and take action promptly and fairly on any employee grievance presented to them under this policy and procedure.
- Upon initiation of a grievance procedure, a copy of this policy and the policy on Disciplinary Action will be provided to the grievant by Human Resources with written documentation of any grievable disciplinary action.
- For information about the grievance process, the employee may contact UNC Asheville's Human Resources Department:
228 Phillips Hall, CPO #1450
(828) 251-6605

Concerning preparation for a grievance...

1. Employees shall be allowed time off from regular duties as may be necessary/reasonable for the preparation of the internal grievance without loss of pay, vacation leave or other time credits. The employee must notify their supervisor in writing no later than five days in advance of the absence and receive prior approval for the absence. *The maximum time allowed away from work to prepare for an internal grievance is eight (8) hours.*
2. Employees may consult with a fellow employee of their choice to act as a support person in bringing and presenting a grievance, including the right to have the support person accompany them during any hearings that may be held as part of the grievance process. The support person will serve as an advisor, not as an advocate or spokesperson. Upon request, the Human Resources Office will provide a list of employees who have attended campus workshops on the SPA grievance process. A support person who needs to be absent from assigned duties for grievance preparation must secure advance permission from his or her supervisor.
3. Neither the University nor the employee shall be represented by any outside parties (e.g. legal counsel, etc.) during the internal grievance hearing.

¹ Sexual orientation for the purpose of this policy shall mean actual or perceived heterosexuality, homosexuality, or bisexuality, or a person's gender-related identity or expression.

4. An employee may access his or her personnel file by contacting the Office of Human Resources of the University. (An employee may examine any information in his or her personnel file except pre-employment letters of reference and information about a mental or physical disability a prudent doctor would not share.)

Concerning timelines related to the grievance process...

1. The date of receipt of a notice, decision or other document required to be filed or submitted by this policy is the date the person to whom the submission is required *actually or constructively receives the decision or other document*. In the case of an unclaimed certified mailing, the date of the second notice of the mailing to the person from the U.S. Postal Service shall be deemed the date of receipt.
2. A grievant who at any step of the process fails to comply with a reasonable request for information, or with any of the procedures set out in this policy, including failure to appear at a scheduled meeting, conference or hearing, may be deemed to have abandoned his/her appeal.
3. If any deadline falls on a non-workday or any University approved holiday, the deadline shall be extended until the next business day.

Definitions:

According to G.S. 126-1.1, a career state employee means a state employee whom:

1. Is in a permanent position appointment; and
2. Has been continuously employed by the State of North Carolina in a position subject to the State Personnel Act for the immediate 24 preceding months

Procedures:

I. NONDISCRIMINATION GRIEVANCES

A final University decision must be issued according to the following guidelines from the date the grievance is filed:

- 90 days* for cases involving discharge or demotion for disciplinary reasons
- 120 days* for all other issues
- Any University correspondence to the grievant will inform them of their next step in the appeals process.

**The employee and the university may mutually agree to extend the time in either case. Any extensions of timelines should be documented, signed by employee and supervisor with a copy being submitted to the HR Department.*

<p>Step 1 Discussion between Employee and Immediate Supervisor or the Appropriate Supervisor (This step is skipped in the case of a dismissal or demotion because the immediate supervisor cannot overrule the dismissal or demotion decision.)</p>	
<p>Employee Responsibility</p>	<p>University Responsibility</p>
<p>1. Within 30 calendar days of the problem's occurrence, the employee should complete the SPA Employee Grievance Form. The original should be submitted to the supervisor and a</p>	

copy submitted to the HR Department.	
	2. If the grievance does not fall within the administrative or decision-making authority of the immediate supervisor, it should be referred to the lowest level supervisor with authority <i>within 48 hours (2 calendar days)</i>
	3. The supervisor may call higher-level supervisors into the discussion. The supervisor shall meet with the employee to discuss the grievance and submit a response in writing to the employee <i>within 10 calendar days</i> from the receipt of the grievance. A copy of the response should be submitted to the HR Department.

<p>Step 2 Discussion with Next Level Supervisor --Division Director or designee (In the case of a dismissal or demotion, the grievance procedure will start at this step. If the immediate supervisor in Step 1 is the Vice Chancellor, the discussion may occur with the employee, the Vice Chancellor and the Director of Employee Relations.)</p>	
Employee Responsibility	University Responsibility
1. If the employee is dissatisfied with the outcome of Step 1, or did not receive a response within the time limits set for Step 1, he/she may request that the supervisor designated for Step 2 review the decision/ grievance. Completing the SPA Employee Grievance Form makes this request. The original should be submitted to the Step 2 supervisor and a copy submitted to the HR Department. This request must be made <i>within 10 calendar days</i> from the final date of Step 1.	
	2. The supervisor designated for Step 2 shall meet with the employee to discuss the grievance and will submit a response in writing to the employee <i>within 10 calendar days</i> from the date of the receipt of the SPA Employee Grievance Form for Step 2. A copy of the response should be submitted to the HR Department.

<p>Step 3 Grievance Review Board Hearing</p>	
Employee Responsibility	University Responsibility
1. If the employee is dissatisfied with the outcome of Step 2, or did not receive a response within the time limits set for Step 2, he/she may request a	

<p>review by the Grievance Committee. Completing the SPA Employee Grievance Form makes this request. The original should be submitted to the Director of Employee Relations. This request must be made <i>within 10 calendar days</i> from the final date of Step 2.</p>	
	<p>2. The employee, the members of the Grievance Committee and a representative of management will be notified of the date of the hearing <i>within 5 calendar days</i> of the receipt of the request for review. The notification of the date of the hearing will occur <i>10 calendar days in advance of the date of the hearing</i>.</p>
	<p>3. The hearing will occur <i>on the 15th calendar day (not to exceed the 20th calendar day of the final decision of Step 2.)</i></p>
	<p>4. <i>Within 10 calendar days of the hearing</i>, the Grievance Committee shall forward a written summary and recommendation for the final university decision to the Chancellor.</p>
	<p>5. The employee shall be provided a written Final University Decision <i>10 calendar days</i> from the date the Chancellor receives the written summary and the recommendation from the Grievance Committee, or be advised as to why a response within the 10 days is delayed and when a response can be expected.</p>
<p>6. If an employee is dissatisfied with the Final University Decision, he/she has <i>30 calendar days</i> to file an appeal to the State Personnel Commission. Procedure for appeals to the State Personnel Commission will be included in the Final University Decision.</p>	

Exception:

Grievances in which the Chancellor is a first or second step supervisor will bypass either Step 1 and/or Step 2 (as appropriate). In these circumstances, the Grievance Review Board will provide its recommendation to the UNC Asheville Board of Trustee's Personnel Committee. This committee will render UNC Asheville's final agency decision and communicate this decision in writing to the respective parties.

II. GRIEVANCES ALLEGING DISCRIMINATION

A. Appeal Options

For grievances alleging discrimination, state employees and/or applicants who believe they have been treated unfairly or inequitably in situations related to their employment or application may file a grievance by following any of the three courses of action outlined below. The grievance must be filed in writing in a time frame as specified by the agency to which it is submitted.

Individuals who file grievances alleging discrimination due to age, gender, race, color, creed, national origin, political affiliation or disability as defined by federal legislation may elect Course of Action 1, Course of Action 2, or Course of Action 3.

Individuals who file grievances alleging discrimination due to sexual orientation¹ may only elect Course of Action 1.

Courses of Action:

1. Within 30 calendar days of the act or omission that is the basis for the grievance, an applicant or employee may appeal in writing through the UNC ASHEVILLE grievance procedure.
2. Within 30 calendar days of the act or omission that is the basis for the grievance, an applicant or employee may appeal in writing directly to the State Personnel Commission, according to State Personnel Commission rules. Any requests for this type of hearing must be filed in writing with:

The Office of Administrative Hearings

6714 Mail Service Center
Raleigh, NC 27699-6714
Phone: (919) 431-3000

3. An applicant or employee may appeal in writing directly to the Federal Equal Employment Opportunity Commission utilizing the following address:

Equal Employment Opportunity Commission (EEOC)

129 West Trade Street, Suite 400
Charlotte, NC 28202
704-344-6682

B. Reasonable Accommodation Requests

If requested, reasonable accommodations for disabling conditions must be provided to qualified employees regardless of whether they work part-time, full-time, or are considered probationary or non-career status, as well as temporary employees. SPA employees, temporary employees and qualified applicants for SPA positions with disabilities may appeal decisions pertaining to accommodation requests as follows:

1. Employees who are dissatisfied with the decision(s) pertaining to his/her requested accommodation may file a grievance in accordance with UNC Asheville's grievance procedures as set forth in this policy. An employee may also choose to appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings no later than 30 calendar days from receipt of the decision(s).
2. An applicant who is dissatisfied with the decision pertaining to his/her requested accommodation may appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings no later than 30 calendar days from receipt of the decision.

III. GRIEVANCE REVIEW BOARD

Upon receipt of a grievance, the Director of Employee Relations¹ will appoint a Grievance Review Board (GRB) from a pool of qualified employees. At the beginning of each even-numbered calendar year, the

¹ Sexual orientation for the purpose of this policy shall mean actual or perceived heterosexuality, homosexuality, or bisexuality, or a person's gender-related identity or expression.

Chancellor (or the Chancellor's designee) forms a pool of qualified SPA employees to serve on the Grievance Review Board by designating 4 employees from each division to serve in the event of a grievance hearing. At least 4 individuals will be trained to serve as chair of a grievance review board.

The GRB will consist of five SPA employees, with at least two of those employees working in non-supervisory positions, and will consist of one employee from each division. Staff members employed within the same department as the grieving employee or who were involved in the actual problem or grievance may not be appointed to the GRB. The demographics of the GRB should reflect the demographics of the University personnel pool and the employee to the extent possible.

A. Board Members

1. The Director of Employee Relations will appoint a GRB chair.
2. The GRB Chair must submit to the grievant a list of the appointed board members in writing and allow the grievant an opportunity to disqualify up to two members. If this occurs, the GRB Chair shall appoint one or two additional members from the designated pool to replace the members removed by the grievant. If the grievant chooses the GRB chair as one of the members to be replaced, the Director of Employee Relations will appoint a new chair.
3. The GRB Chair presides over the grievance hearing. The Director of Employee Relations will be an ex-officio member serving as an advisor on personnel policy only.

B. Board Responsibilities

Upon receipt of the grievance, the Grievance Review Board (GRB) will conduct a grievance hearing. The Board's responsibilities are to:

1. Schedule a hearing date. The GRB Chair notifies all parties in writing of the hearing date, distributes copies of the *SPA Employee Grievance Form* to all panel members, and schedules a pre-hearing conference to inform the parties of hearing protocol.
2. Conduct an objective, thorough, and timely hearing. The hearing shall be conducted informally. The hearing proceedings are confidential and are not open to the public. Only the board members and the parties involved in the grievance may attend the entire proceeding, which may last up to 1 business day. Witnesses may be called. The employee may choose not to appear and to have the matter reviewed based upon the documentation provided by the parties. In such a case, the grievant must notify the panel chair in advance of the scheduled hearing date and provide the necessary documentation. Representation by an attorney shall not be allowed and oaths shall not be required. After the presentation of the evidence, there is an opportunity for questions and answers. Both parties and the board members may question all witnesses. It is expected that notes be taken by board members to provide a record of information. The hearing proceedings shall not be recorded on audiotape. The board chair, in consultation with the Director of Employee Relations, shall determine other matters relating to the conduct of the hearing.
3. Make a determination as to what happened in the particular incident(s);
4. Review relevant policies, procedures and practices for application and consistency; and
5. Provide a recommendation of findings and/or proposed correction(s) to the Chancellor.
 - a. For matters pertaining to demotion/dismissal, the GRB will provide a recommendation to the Chancellor *within 80 calendar days* from the date of the original receipt of the grievance (see Procedures, Section I, Step 1).
 - b. For matters pertaining to all other issues, the GRB will provide a recommendation to the Chancellor *within 110 calendar days* from the date of the original receipt of the grievance

¹ Note: In the absence of the Director of Employee Relations, the Director of Employee Relations' designee will fulfill his/her duties in the grievance process.

(Procedures, Section I, Step 1). The Chancellor may review the documentation and/or discuss the appeal with the parties involved.

IV. UNIVERSITY DECISION

The employee shall be provided a Final University Decision within *ten (10) calendar* days from the date the Chancellor receives the recommendation from the GRB, or be advised as to why a response within the ten (10) days is delayed and when a response can be expected.

V. APPEALS TO THE STATE PERSONNEL COMMISSION

A career state employee who is not satisfied with the final agency decision has *30 calendar days from receipt of the final agency decision* to file an appeal to the State Personnel Commission. Such appeal is made by filing a petition for contested case hearing with the:

Office of Administrative Hearings
6714 Mail Services Center
Raleigh, North Carolina 27699-6714

VI. UNIVERSITY RESPONSIBILITIES

By January 1 of each even-numbered year, the University shall:

- A. File its grievance procedure with the Office of State Personnel or submit a certified statement that no changes have been made to the university grievance procedure since the last approved procedure.
- B. File for approval by the State Personnel Commission any modification(s) to the University grievance procedure prior to the procedure becoming effective.
- C. Include in the grievance procedure the effective date of the procedure and the effective date of any changes in the procedure.
- D. Continuously evaluate the grievance procedure's effectiveness in achieving the University's goals through feedback received from grievant, supervisors, grievance review panels, and the Office of State Personnel.
- E. Compile information on employee grievances semiannually and as otherwise requested by the Office of State Personnel. These reports shall be submitted prior to the first business day of January and July.

VII. COMMUNICATION OF GRIEVANCE POLICY TO CAMPUS

This policy will be filed in the UNC Asheville Policy and Procedures Manual which is available on UNC Asheville's Web Site. Copies of grievance procedures will be provided to new employees in the new employee packet. No later than 30 days from the effective date of approved changes to the policy, the updated version will be posted on the website and a notice will be sent to employees

that the updated version is available to view on the website or in the Human Resources office.
Upon request, employees may also receive a copy from the Human Resources office.

Date Adopted by UNC ASHEVILLE Chancellor's Council: October 30, 2000
Reviewed and modified in March 2002
Reviewed in 2004, no changes
Reviewed & modified in 2006
Reviewed & modified in January 2007
Modified in July 2008

Approved on: 11/01/2008
Next review: 11/01/2010

**The University of North Carolina at Asheville
SPA EMPLOYEE GRIEVANCE FORM**

To file a formal grievance, an employee is required to complete and submit this form to the Human Resources Department in accordance with the guidelines of the University's *Grievance Procedures for SPA Employees*. All sections must be completed. (Attach additional sheets if necessary.)

A. EMPLOYEE INFORMATION

Name _____

Position Title _____ Department _____

Campus Address _____ Work Telephone _____

Home Address _____ Home Telephone _____

Date of Incident _____ Supervisor _____

B. Grievance Type: (please check one)

- a violation or misapplication of university policies
- a violation or misapplication of rules pertaining to employment in the respective department
- inaccurate or misleading information in a personnel file
- a violation or misapplication of applicable laws or regulations, including anti-discrimination laws
- a suspension without pay, demotion, or dismissal
- dissatisfaction with decisions pertaining to a reasonable accommodation request

C. State the specific reason(s) for Grievance:

D. State the specific resolution being requested:

Employee Signature

Date

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