

FAYETTEVILLE STATE UNIVERSITY
EMPLOYMENT POLICY FOR EMPLOYEES
EXEMPT FROM THE STATE PERSONNEL ACT

- Authority:** Issued by the Chancellor. Changes or exceptions to this policy may only be made by the Chancellor upon authorization of the University of North Carolina Board of Governors and the Fayetteville State University Board of Trustees.
- Category:** Employment – EPA Faculty
- Applies to:** ● Administrators ● Staff
- History:** Latest Revision – November 10, 2009
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First Issued – December, 1994
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- Related Policies:**
- *Employment Background and Reference Checks*
 - *Recruitment and Selection of Senior Academic and Administrative Officers and Other EPA Non-Faculty Employees*
 - *Selection and Evaluation of Academic Department Chairs*
 - *Employees Exempt from the State Personnel Act [UNC Policy #300.2.1]*
 - *Evaluations of Positions for Designation as Senior Academic and Administrative Officer [UNC Policy #300.1.2]*
 - *Guidelines on Interpreting General Statute 126-5(c1)(8): Instructional and Regulations on Recruitment of Employees from Other Campuses within the University of North Carolina [UNC Policy #300.2.7[R]]*
 - *Research Staff Exempt from the State Personnel Act [UNC Policy #300.2.5[G]]*
 - *Senior Academic and Administrative Officers [UNC Policy #300.1.1]*
- Contact for Info:** Office of Human Resources (910) 672-1146
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I. INTRODUCTION

- A.** Employment positions covered by this Policy Employment positions at Fayetteville State University that are covered by this *Employment Policy for Employees Exempt from the State Personnel Act* (hereinafter referred to as “Policy”) are those positions that are not subject to the State Personnel Act and are not otherwise categorized. This category includes the following:

1. Senior Academic and Administrative Officers

This category of employees is defined in Section I.B. of the UNC Board of

Governors' (Board) policy 300.1.1 and includes employees classified as associate and assistant vice Chancellors, associate and assistant deans, and employees who hold administrative positions within the university that have been designated by the President as Senior Academic and Administrative Officers; and

2. Instructional and Research Staff

This category of employees is defined in the Board's policy 300.2.5 and includes, but is not limited to employees in areas of academic advising, academic preparation and enhancement, co-operative education, coaching, student support services, counseling, institutional research, academic computing and community service.

This *Policy* applies to all permanent covered positions.

B. Employment Positions Not Covered by this Policy

Employment positions that are not covered by this *Policy* include the following:

1. Faculty positions subject to university tenure regulations;
2. Positions within the "physicians or dentists" category;
3. University students who are employed incident to their status as students, as in graduate teaching assistantships or work-study positions; and
4. Senior Academic and Administrative Officers defined in Section I.A. of the Board's policy 300.1.1 and includes employees classified as Chancellors, vice Chancellors, provosts, deans and directors of major administrative, educational, research and public services activities.

II. APPOINTMENTS TO POSITIONS COVERED BY THIS POLICY

A. Method of Appointment

Every appointment to a position covered by this *Policy* within the university shall be made by or on behalf of the Chancellor by means of a letter of appointment that fulfills the requirements of this *Policy*.

B. Letter of Appointment

Every letter of appointment to a position covered by this *Policy* shall include the following:

1. the title of the position;
2. the initial salary;

3. provision for periodic review of compensation. Such review shall be subject to any compensation policies adopted by the Board of Governors or the Board of Trustees;
4. provision consistent with Sections II.C. and II.D. below, if contingencies based on availability of funding are applicable;
5. the annual leave entitlement of the employee;
6. notice that the employment conferred is either for a stated definite term (only contracts for athletics directors or athletics coaches may be for a stated term) or is an "employment at will" subject to continuation or discontinuation at the discretion of the Chancellor; and,
7. notice that the employment is subject to this *Policy*, as it was originally adopted and as it may periodically be revised from time to time. A copy of this *Policy* shall be attached to the letter of appointment.

C. Appointments from Sources Other than State Funds

When a position covered by this *Policy* is funded in whole or substantial part from sources other than continuing State budget funds or permanent trust accounts, the letter of appointment shall include the following:

1. a statement indicating that continuation of the employee's service in that position is contingent upon the continuing availability of funds from such other sources to support that position,
2. specification of the source of such funds, and
3. a statement which indicates that the effect of such contingency may apply without the additional notice otherwise required by Section III.A., III.B., and III.C., provided that the affected employee shall be informed at the earliest practicable date of the occurrence of such a funding contingency.

D. Individuals Covered by More than One Employment Policy

When an employee is to serve simultaneously in both a position covered by this *Policy* and a position of university employment not covered by this *Policy*, with the result that two different prescriptions may apply, one position shall be designated the base position. The base position shall be used to determine the conditions of employment and the rights and responsibilities of the employee. In this situation, the following shall apply:

1. Subsequent Appointment to a Position Covered by this Policy

If appointment to a position covered by this *Policy* occurs subsequent to an appointment to a position not covered by this *Policy*, the letter of appointment to the position covered by this *Policy* shall embody the required designation of base employment. The designation of base employment shall specifically describe the different rights, duties, and

compensation for each position and the relationship, if any, between the two positions.

2. Subsequent Appointment to a Position Not Covered by this Policy

If appointment to a position covered by this *Policy* precedes appointment to a position not covered by this *Policy*, the letter of appointment or contract establishing the second employment shall embody the required designation of base employment. The designation of base employment shall specifically describe the different rights, duties, and compensation for each position and the relationship, if any, between the two positions.

3. Funding Contingency

Any funding contingency of the type referred to in Section II.C. shall be set forth separately for the position covered by this *Policy* and for the position not covered by this *Policy*, since the operation of any such contingencies may be independent.

4. Appointment to an Adjunct Faculty Position

When an appointment to a covered position is to be accompanied by appointment to a faculty position that is intended to be nominal or honorary or to create a faculty affiliation not entailing significant duties or compensation, the term "adjunct" shall be used to identify the faculty appointment.

III. DISCONTINUATION OF EMPLOYMENT IN COVERED POSITIONS

A. Discontinuation of Appointment With Notice or Severance Pay

Employment within a position covered by this *Policy* that is established by the letter of appointment to be an "employment at will" is subject to discontinuation at any time at the discretion of the Chancellor or Chancellor's designee, provided that such a discontinuation (as distinguished from discharge for cause, Section III.D.) shall be subject to advance timely notice of discontinuation or the payment of severance pay, in calendar days, as follows:

1. During the first year of service, not less than thirty (30) days notice prior to discontinuation of employment or the payment of severance pay for thirty (30) days;

2. During the second and third years of service, not less than sixty (60) days notice prior to discontinuation of employment or the payment of severance pay for sixty (60) days; and
3. During the fourth and all subsequent years of continuous service, not less than ninety (90) days notice prior to discontinuation of employment or the payment of severance pay for ninety (90) days.

The Chancellor shall determine whether the employee shall receive notice of discontinuation or severance pay.

B. Expiration of a Term Appointment

Employment within a position covered by this *Policy* that is established by the letter of appointment or contract to be for a stated definite term expires automatically at the conclusion of the stated term. Such an appointment may be renewed at the option of the Chancellor or Chancellor's designee, by written notice which satisfies the requirements of Section V.

The decision not to renew an individual's appointment at the expiration of a fixed term of service shall be made early enough to permit timely notice to be given as follows:

1. No notice of intent not to renew shall be required for an individual with a one (1) year appointment. The letter of appointment is considered to be adequate notice of the expiration of the term.
2. With respect to a term of more than one (1) year but less than four (4) years, notice of intent not to renew shall be transmitted in writing at least sixty (60) days prior to the expiration date of the term;
3. With respect to a term of four (4) years or more, notice of intent not to renew shall be transmitted in writing at least ninety (90) days prior to the expiration date of the term.

Failure to provide written notice as required in subsections (2) and (3) shall result in the automatic extension of employment for a period, respectively, of either sixty (60) days or ninety (90) days, beyond the scheduled expiration date of the term.

C. Termination Because of Financial Exigency or Program Elimination

Employment within a position covered by this *Policy* that is established by the letter of appointment to be for a stated definite term may be terminated prior to the expiration of the stated term because of the following:

1. demonstrable, bona fide university financial exigency, or
2. major curtailment or elimination of a program.

"Financial exigency" shall mean a significant decline in financial resources of the

university that compels a reduction in the university's budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or an elimination of a program shall be made by the Chancellor, with advance notice to and approval by the President and the Board of Governors.

If the financial exigency or curtailment or elimination of a program is such that the contractual obligation to an employee within a position covered by this *Policy* cannot be met, the employment of the individual may be terminated, subject to the following notice requirements:

1. During the first year of service, not less than thirty (30) days notice prior to termination;
2. During the second and third years of service, not less than sixty (60) days notice prior to termination; and,
3. During the fourth and all subsequent years of continuous service, not less than ninety (90) notice prior to termination.

D. Discharge for Cause

1. Any employee occupying a position covered by this *Policy* may be discharged for stated cause. Discharge for cause is to be distinguished from discontinuation of an employment at will (Section III.A.), automatic expiration of a term appointment (Section III.B.) and termination (Section III.C.). Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, or misconduct that interferes with the capacity of the individual to perform effectively the requirements of his or her employment. Discharge for cause is to be preceded by written notice of intent to discharge and is subject to Section III.D.2. below.

When an employee occupying a position covered by this *Policy* has been notified of the intention to discharge for cause, the Chancellor may suspend the employee at any time and continue the suspension until the Chancellor makes a final decision concerning discharge has been reached. The power to suspend shall be invoked only in exceptional circumstances and such suspension shall be with full pay.

2. Procedures for Discharge for Cause

- a. The vice-chancellor of the employee's division shall send the employee to be discharged, by certified mail, return receipt requested, a written statement of the intention to discharge or suspend the individual. The statement shall include the reason(s) for the intended discharge and a notice of the individual's rights.
- b. If, within five (5) days* after receiving the notice referred to in subsection 2.b. above, the employee makes no written request for a hearing, the employee may be discharged without recourse to any

University grievance or appellate procedure.

- c. If the employee makes a written request for a hearing within five (5) days, the procedures outlined in Appendix A, Sections C-J shall apply.

* As used in this policy, the word "day" shall mean any day except Saturday, Sunday, or an institutional holiday. In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.

E. Review of Employment Decisions and Grievances

Individuals in position covered by this *Policy* may secure review of decisions concerning a discharge for cause or other disciplinary action, or of grievances concerning the interpretation and application of any provision of this *Policy*, provided, however, that grievances concerning discontinuations or terminations of employment with notice, pursuant to Sections III.A., III.B. or III.C. may be brought only upon allegations of violations of applicable notice requirements or violations of any provision of Section IV and Section V of this *Policy*.

All reviews of employment decisions or grievances shall be in accordance with procedures outlined in Attachment A, *Grievance Policy and Procedures for EPA Non-Faculty Employees*. Decisions reached pursuant to the grievance procedures concerning the discontinuation or termination of employment may be had in accordance with Section 501(c)(4) of *The Code*. (*Effective, January 1, 2004, an individual may petition for a subsequent review of a decision pursuant to Section 609C of The Code.*)

IV. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy and intention of Fayetteville State University that there be equal employment opportunity and freedom from unlawful discrimination in all employment within the university. There shall be no discrimination in positions covered by this *Policy* on the basis of race, color, creed, national origin, sex, religion, disability, age, or honorable service in the armed services of the United States.* Employment in positions covered by this *Policy* shall be conducted in accordance with all provisions of state or federal law or regulation prohibiting any such discrimination, and in accordance with the university's affirmative action policy.

* Bona fide occupational qualifications or other exceptions to those general prohibitions, specifically provided for by State or Federal law are applicable to EPA positions.

V. PROTECTED ACTIVITY

Employment in positions covered by this *Policy* shall not be adversely affected by the exercise of rights guaranteed by the First Amendment to the United States Constitution or by Article I of the North Carolina Constitution; provided, that employees in positions

covered by this *Policy* shall be subject to any limitations on political activity established by Article 5 of N.C.G.S., Chapter 126. The Board of Governors' policies concerning political activity, *Policy* §§300.5, *et seq.* as they may be revised from time to time, shall apply to positions covered by this *Policy*.

VI. HOLIDAY AND LEAVE ENTITLEMENT

A. Holidays

Employees in positions covered by this *Policy* shall be subject to the same State-prescribed holidays given employees subject to the State Personnel Act.

B. Annual Leave (effective July 1, 2001)

1. Basic Leave Policy

The monthly earnings amount of annual leave is equal to one-twelfth of the annual rate for each month the employee works or is on approved leave with pay. Monthly leave is earned when an employee works or is on approved leave with pay at least half the working days of a month

2. Permanent Full-Time Employees

The amount of annual leave to which a permanent full-time (1.00 FTE) employee covered by this *Policy* shall be entitled to accrue is twenty-four (24) workdays per year. With respect to an incumbent employee who is earning more than twenty-four (24) days per year as of the date this policy becomes effective, such employee shall be entitled to continue to earn leave at that rate.

3. Part-Time Employees

Annual leave is accrued at a monthly rate and is adjusted proportionately for a part-time employee who works half-time or more (0.50 - 0.99 FTE).

4. Definition of Year

A year is defined as the "calendar year" (January 1 - December 31).

5. Scheduling of Leave

The scheduling of an employee's annual leave shall be subject to the approval of the employee's supervisor.

6. Leave Carry Forward and Conversion

The maximum number of unused days of annual leave that an employee subject to this *Policy* may carry forward from one calendar year to the next shall be thirty (30) workdays. Annual leave in excess of thirty (30) days will be automatically converted to sick leave at the end of the calendar year.

7. Transfer of Accrued Annual Leave

Fayetteville State University accepts the transfer of annual leave. This includes any leave from a UNC constituent university or State of North Carolina agency or local North Carolina government. Upon discontinuation of employment from this university, an employee may elect a payout of accrued annual leave or transfer the remaining balance of any unused annual leave to another UNC constituent university or State of North Carolina agency or local North Carolina government, subject to the receiving agency's approval.

8. Advancement of Annual Leave

- a. Subject to approval by the employee's supervisor, an employee subject to this *Policy* may be advanced an amount of annual leave up to a combined maximum deficit balance of five (5) days. A supervisor may approve a deficit balance of annual leave, for extenuating circumstance or exceptional need. The permissible negative balance is adjusted proportionately for a permanent part-time employee who works half-time or more (0.50 - 0.99 FTE).
- b. If an employee separates from the university and has taken more annual leave than has been accrued, then the university shall determine the amount of annual leave the employee must repay to the university and make deductions from the employee's final salary check accordingly. However, if the employee has been advanced more leave than can be repaid in the employee's final paycheck, the employee will be billed accordingly.

9. Payout of Accrued Annual Leave

- a. An employee subject to this *Policy* who is separating from the University and who has accrued unused annual leave shall be paid for such unused annual leave if the employee does not elect or is not eligible to transfer such accrued leave to another State or local governmental agency.

- b. The amount paid to an employee subject to this *Policy* who has been employed an aggregate of twenty-four (24) months or less by one or more State or local governmental agencies is equal to one day for each month worked less the number of days of annual leave taken during the employment period. An employee who has been employed for more than 24 months shall be paid subject to a maximum of thirty (30) such days.
- c. If an employee subject to this *Policy* changes contract status from twelve (12) months to nine (9) months, the employee's annual leave balance as of the effective date of the contract change will be paid out at the time of the appointment conversion. An EPA employee who transfers inside the university to an SPA position shall have the annual and sick leave balances transferred to that position.

C. Sick Leave, Family and Medical Leave, Family Illness Leave, Civil Leave, Military Leave, Community Service Leave and Special Annual Leave Bonus

1. Sick Leave

- a. A permanent employee subject to this *Policy* shall be subject to the same policies concerning sick leave as may be prescribed for employees subject to the State Personnel Act.
- b. Subject to the approval of the employee's supervisor, an employee subject to this *Policy* may be advanced an amount of sick leave up to a combined maximum deficit balance of five (5) days. Appropriate uses for sick leave are prescribed in the State Personnel Manual, Section 5, <http://www.osp.state.nc.us/manuals/man5.html>. A supervisor may approve a deficit balance of sick leave, for extenuating circumstance or exceptional need. The permissible negative balance is adjusted proportionately for a permanent part-time employee who work half-time or more (0.50 - 0.99 FTE).
- c. If an employee separates from the university and has taken more sick leave than has been accrued, the university will determine the amount of sick leave the employee must repay to the university and make deductions from the employee's final salary check accordingly. However, if the employee has been advanced more leave then can be repaid in the employee's final paycheck, the employee will be billed accordingly.

2. Family and Medical Leave, Family Illness Leave, Civil Leave, Military Leave, Community Service Leave

Employees in positions covered by this *Policy* shall be subject to the same policies concerning family and medical leave, family illness leave, civil leave, military leave and community service leave as may be prescribed for employees subject to the State Personnel Act.

3. Special Annual Leave Bonus

a. Awarded to Employees on Leave Earning Status as of 9/30/2002

Employees in positions covered by this *Policy* who were in leave-earning status on 9/30/2002 shall be subject to the same policies concerning special annual leave bonus as may be prescribed for employees subject to the State Personnel Act, except that employees covered by this *Policy* are entitled to ten (10) days of bonus leave.

b. Awarded to Employees on Leave Earning Status as of 7/1/2003

Employees in positions covered by this *Policy* who were in leave-earning status on 7/1/2003 shall be subject to the same policies concerning special annual leave bonus as may be prescribed for employees subject to the State Personnel Act, except that employees covered by this *Policy* are entitled to ten (10) days of bonus leave.

4. Leave of Absence without Pay

A permanent employee subject to this *Policy* may request a leave of absence without pay, subject to the approval of such leave by the Chancellor or Chancellor's designee.

5. Voluntary Shared Leave

Employees in positions covered by this *Policy* shall be subject to the same provisions concerning shared leave as are applicable to employees subject to the State Personnel Act with the exception that the donation and acceptance of such leave shall be computed on the basis of days rather than hours.

6. Educational Entitlement

A permanent EPA employee is entitled to the same opportunities as other university employees to invoke the privilege of tuition waiver conferred by N.C.G.S. § 116-143.

VII. STATUTORY AND OTHER RULES OF EMPLOYMENT

A. Privacy of Personnel Records

Employees in positions covered by this *Policy* have the protections of and are subject to the provisions of Article 7 of N.C.G.S. § 126, entitled, *The Privacy of State Employee Personnel Records*.

B. Employment Preference for Veterans

Employees in positions covered by this *Policy* enjoy the protections of and are subject to the provisions of N.C.G.S. § 128-15 and § 128-15.1, which provide for preference in employment for veterans of United States military service and their spouses and widows or widowers.

C. Employment of Related Persons

Employees in positions covered by this *Policy* are subject to the Board of Governors' policy § 300.4.2, as it may be revised from time to time concerning employment of related persons.

D. Retirement

Employees in positions covered by this *Policy* may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes (*Retirement System of Teachers and State Employees*).

VIII. IMPLEMENTATION

The Board of Trustees of this university has adopted this *Policy* for university employees in positions covered by this *Policy*. Any proposed provision that in any manner adds to or modifies the provisions of this *Policy* must be submitted for review and approval by the President of the University of North Carolina prior to its adoption by the Board of Trustees and its subsequent implementation.

APPENDIX A

GRIEVANCE POLICY AND PROCEDURES FOR EPA NON-FACULTY EMPLOYEES

A. Definition of Grievance and Scope of Grievance Procedure

The purpose of this grievance policy is to allow employees covered by Fayetteville State University's *Employment Policy for Employees Exempt from the State Personnel Act* (hereinafter referred to as *Policy*) to secure a review of the following:

1. a decision concerning a discharge for cause (see Section III.D. of the *Policy*) or other disciplinary action; or
2. a grievance concerning the interpretation and application of any provision of the *Policy*; or
3. a discontinuation or termination of employment with notice, pursuant to Sections III.A., III.B. and III.C. of the *Policy*. Such a grievance may only be brought upon allegations of violations of applicable notice requirements or violations of any provisions of Sections IV and V of the *Policy*.

This grievance procedure cannot be used to challenge the general application of a university or college policy on the grounds that the policy itself is unfair or inadvisable.

B. Filing a Grievance

1. A formal grievance may be filed only after an employee covered by the *Policy* (hereinafter referred to as "grievant") has attempted to resolve the grievance with his or her department head and the department head's supervisor without satisfactory results. No grievance may be considered until a determination is made that an unsuccessful attempt has been made by the grievant to resolve it with the administrative officials previously mentioned.
2. After the grievant has attempted to resolve the grievance, the grievant may file a written request for a hearing with the Director of Human Resources or his or her designee (hereinafter referred to as "Director of HR"). The request must be filed within fifteen (15) calendar days of the decision cited in the grievance. This filing deadline can be extended only if, in the judgment of the Director of HR, there are significant extenuating circumstances. The grievant should send copies of this request to all parties against whom the grievance is directed at the same time the request is sent to the Director of HR.
3. The written request for a hearing must include the following:
 - a. the exact nature of the grievance, including what alleged violations, as provided in Part A above, occurred;

- b. the identity of all parties against whom the grievance is filed;
- c. the redress sought; and
- d. a statement giving members of the Committee authorization to review documents submitted by the parties from the grievant's personnel files for the purpose of resolving the grievance.

C. Grievance Committee

1. Upon receipt of the written request for the formation of a grievance committee, the Director of HR shall meet with the Chancellor or his or her designee for the purpose of selecting a three (3) member grievance committee and a grievance committee chair.
2. Once selected, the Human Resources Director shall notify the grievant of the individual who will chair the grievance committee (hereafter referred to as the Committee) and the Committee members. This shall be done no less than ten (10) calendar days following receipt of the grievant's written request.
3. The Human Resources Director shall forward a copy of the grievant's statement to the Committee chair and Committee members and promptly convene the Committee for its initial meeting. Copies of these grievance procedures shall be provided to the Committee chair and each member of the Committee in advance of the initial meeting.
4. At the initial meeting of the Committee, the Director of HR or his or her designee shall provide the members of the Committee with an orientation covering the role and responsibilities of the Committee and a review of the grievance process.
5. After the orientation, the Committee chair and members shall review the grievant's statement and determine whether the matter as stated is properly grievable. The matter is not considered properly grievable if the individual presenting the grievance is not an employee covered by this Policy, if the subject matter does not concern a matter listed in paragraphs A.1., .A.2. or A.3. above, and if the grievance was not filed in a timely manner. (See paragraph B.2. above.)
6. If the matter is properly grievable, the Committee chair should proceed to schedule a hearing with the parties to the grievance. If it is not properly grievable, the Committee may either:
 - a. allow the grievant to amend the grievance statement if this will enable the grievant to prepare a properly grievable claim. If allowed to amend the grievance statement, the grievant should submit the revised statement to the Committee chair no less than three (3) calendar days following notification by the Committee; or

- b. proceed to Part F below by preparing a report that dismisses the grievance for reasons stated.

D. Hearing Schedule and Pre-Hearing Exchanges

1. The hearing shall be scheduled no less than forty-five (45) calendar days from the Human Resources Director's receipt of the grievance statement. Only if the Committee chair is aware of significant extenuating circumstances shall the opening date of the hearings be delayed beyond forty-five (45) calendar days from receipt of the grievance statement. The chair shall notify the grievant and all other parties in writing of the dates and location of the hearing.
2. The Committee chair shall require the parties to exchange witness lists and copies of exhibits the parties wish to introduce as evidence, and the Committee chair shall specify that the exchange occur at least ten (10) calendar days in advance of the hearing.
3. If a party wishes to introduce exhibits at the hearing that were not included in a pre-hearing exchange, the Committee chair shall decide whether there is a good reason for accepting such evidence.
4. Any pre-hearing exchange of proposed exhibits shall be between the parties only, and in no case should evidence be provided to the Committee prior to the hearing.
5. Exhibits must be numbered sequentially and identified by party; e.g., Grievant's Exhibit No. 1, Department Head Exhibit No. 3, or Committee Exhibit No. 5. The exhibit numbers should be written on the exhibits, and pages numbered, at the time they are first presented to the Committee. References to documents during the hearing should be by exhibit number with page references as applicable.

E. Guidelines for the Conduct of Grievance Hearings

1. Committee Members

Hearings shall be conducted with the chair and all three Committee members present. If the Committee is unable to convene and hear the grievance in a timely manner or is not functioning effectively, any Committee member or party to the proceeding may ask the Human Resources Director to disband the Committee or replace members who are delaying or otherwise obstructing the Committee's progress. The Human Resources Director shall have the discretion to make any changes to the Committee, including the Committee chair that are necessary to have it function effectively. The request to disband or replace, and the decision of the Human Resources Director in response, must be in writing and be included in the Official Record.

2. Observers

The grievant and the respondent each are allowed to have one third-party observer present. That observer cannot be an attorney and cannot participate in the hearing.

3. Control of Hearings

The Committee chair shall exercise complete control over all stages of the hearings and over pre-hearing matters. Consistent with the principles of impartiality and equity, the Committee chair shall determine, among other things, the following:

- a. additional information or documentation, if any, that should be requested;
- b. admissibility of all questions and evidence and compliance with procedures; and
- c. parties who may be allowed to be present at any hearing. With the exception of persons specifically designated as third-party observers, grievance hearings are not open to spectators.

4. Relevance of Evidence

The strict rules of legal evidence do not apply and the Committee chair may admit any information determined to be pertinent and the Committee shall have access to any available information relevant to the case. If any hearsay evidence is to be admitted, however, the source of that information must be revealed so that the person(s) can be requested to appear before the Committee for questioning. The Committee chair shall determine whether information or testimony is material and relevant to the issues involved in the grievance and may rule that certain presentations not be considered. All materials submitted as evidence, including any written documents, photographs, audio recordings, and video-materials shall be retained by the Committee until its final report is complete, at which time both the evidence and material excluded from evidence shall be incorporated into the Official Record and forwarded to the Chancellor along with the final report. If material is excluded from evidence, the chair shall make a record of the reasons.

5. Testimony

Parties shall have the right to testify, to present testimony of witnesses, to hear and question witnesses, and to examine all documents and other information considered by the Committee.

6. Order of Presentation

In the standard order of presentation, the grievant makes an opening statement, and then the respondent(s) makes an opening statement, if desired. Next, the

grievant should present his or her case through the grievant's own testimony, exhibits, and witnesses.

If the Committee decides that the grievant's evidence, if taken as entirely true, is not adequate enough to justify corrective action, then the Committee shall proceed to dismiss the grievance. If the Committee decides that the grievant's evidence is adequate enough to justify corrective action, then the Committee chair will ask the respondent(s) to present evidence through testimony of parties, exhibits, and witnesses.

Following each party's and witness' testimony, the Committee chair should allow questions from the other parties. The Committee members may ask questions of the parties and witnesses at any time. After all evidence has been presented, the grievant may make a closing statement, followed by the respondent(s), and a last statement by the grievant.

The Committee chair should set a time limit for opening and closing statements and should prohibit the discussion of any new information in closing statements.

7. Questioning of Witnesses

The Committee chair shall have the prerogative to determine the appropriateness of all questions and the method of questioning. The Committee chair should not allow any questioning that is irrelevant, immaterial, unduly repetitious, or abusive.

8. Confidentiality

Members of the Committee, parties, and witnesses shall maintain strict confidence concerning all aspects of the grievance process. This is required by state law as well as university policy. Access to material placed in evidence and to any records of the proceedings shall be strictly limited for the duration of the hearings procedure to members of the Committee, persons who have a need to know as part of the process (witnesses, observers, etc.), and the parties.

Any breach of confidentiality, which in the judgment of the Committee compromises or substantially affects the process, may result in a Committee decision to terminate the grievance process. In this event, the Committee shall advise the Chancellor and the Director of HR as to whether or not another Committee should be formed to hear the case.

9. Hearings Records

The Committee chair shall ensure that the University's legal counsel is made aware of the date, time, and place of the hearing early enough that arrangements can be made to record the proceedings using a court reporter.

At any stage prior to submission of the Official Record to the Office of the Chancellor, any party shall be granted, under supervision of the Committee chair, access to the official transcript and the Committee records.

After the Official Record is delivered to the Chancellor, access shall be determined in accordance with state personnel records law. Once the Official Record has been delivered to the Chancellor, or a grievance terminated, Committee members may destroy extra copies of records, but any original or unique records, including personal notes of Committee members, must be retained in accordance with state public records law and sent promptly to the Director of HR.

10. Withdrawal of Grievance

At any time prior to submission of the Committee's final report, the grievant shall have the right to withdraw the grievance by submitting a written request to the Committee chair. Receipt of this request shall cancel the proceedings, and the Official Record of the hearing shall consist only of the following:

- a. names of Committee members and its chair;
- b. date Committee was formed;
- c. dates of pre-hearing conference and any grievance hearings;
- d. date of withdrawal;
- e. withdrawal request; and
- f. grievance statement.

The Committee chair shall promptly transmit the Official Record and all other documents to the Director of HR, who shall in turn discharge the Committee.

F. Deliberations and Report of the Grievance Committee

1. Upon the conclusion of the grievance hearing, the Committee shall deliberate and decide whether to sustain all or any part of the grievance. The Committee chair shall be present during the Committee's deliberations and may instruct the Committee regarding its jurisdiction and other grievance related matters. The chair may participate in the discussions but may not vote, veto the decision of the Committee, or write the Committee's report.
2. The Committee shall prepare a written report of its findings and recommendations based solely on evidence presented at the hearing. The report should state a separate finding for each particular issue of the grievance, make findings that resolve the material issues of fact that have been disputed, and recommend action(s) for the Chancellor to take. The Committee should be careful not to substitute its judgment simply for that of the respondent(s). Rather, the Committee should decide if the decision being grieved was reached for improper

or unfair reasons (e.g., based on irrelevant factors such as age or race or political views or personnel procedures violated to the prejudice of the grievant). The Committee may recommend a compromise solution not advanced by any party. The report shall include any minority views of Committee members and shall note the intent of any Committee member to file a separate report. Failure of the Committee to note such intent shall not prohibit any Committee member from filing a separate report.

3. The Committee chair shall send the Committee's report, together with the Official Record of the grievance, to the Chancellor. Copies of the report shall be sent to the parties and to the Director of HR.
4. The Committee may write a separate report to the Director of HR and the Chancellor recommending any changes within the university that might prevent similar grievances in the future or recommending any proposed improvements in the grievance procedure.

G. Response of The Chancellor to the Report of the Committee

1. Upon receipt of the report, the Chancellor may do one of the following:
 - a. accept or reject within thirty (30) calendar days any or all findings and recommendations of the Committee or
 - b. remand the matter to the Committee for further consideration of the grievance or
 - c. may seek clarifying information from the Committee.
2. In considering the Committee's report, the Chancellor may, with proper respect for confidential matters, share parts of the report with appropriate administrators (other than parties or witnesses) for their advice.
3. If the Chancellor's decision is a rejection of the findings or recommendations of the Committee, the Chancellor shall notify the Committee members in writing, with copies to the parties and to the Director of HR, giving his/her specific reasons for not accepting the Committee's findings or recommendations. The Chancellor shall provide the opportunity for the Committee and parties to respond to the Chancellor's decision. The Chancellor shall notify the grievant of the final decision by registered return-receipt mail. Copies of the decision shall be sent to the respondent, the Committee, and the Director of HR.

H. Official Record

1. The Official Record of a grievance hearing shall consist of all correspondence pertaining to the grievance and every item, piece of information, document, and exhibit that was either submitted to or given consideration by the Committee, along with the court reporter's transcript of the hearing. All information relevant

to the Committee's procedural rulings, factual findings, recommendations, and any other aspects of its final report should be included in the Official Record.

2. If the Committee decided that certain information offered by a party or witnesses should be excluded from consideration, the decision to exclude should be recorded for the record and the excluded information should be kept as part of the Official Record but segregated from the information that was accepted as evidence.
3. The Official Record should include a table of contents so that every document and record can be easily identified and located. The Official Record should be forwarded to the Chancellor along with the Committee's final report.

I. Discharge of Grievance Committee

Upon receipt of the Chancellor's final decision, the Committee will have completed its work and shall be officially discharged in writing by the Chancellor.

J. Appeals from the Decision of the Chancellor

An individual may petition for a subsequent review of a decision pursuant to Section 501(c)(4) of *The Code*. *(Effective, January 1, 2004, an individual may petition for a subsequent review of a decision pursuant to Section 609C of The Code.)*