

# FAYETTEVILLE STATE UNIVERSITY

## SPA GRIEVANCE POLICY

<b>Authority:</b>	Issued by the Chancellor. Changes or exceptions to this policy may only be made upon recommendation by the Chancellor and approval by the State Personnel Commission.
<b>Category:</b>	Employment – SPA
<b>Applies to:</b>	●Staff
<b>History:</b>	Last Revised – September 20, 2010 Revised – February 1, 2009 Revised - March 21, 2001
<b>Related Policies:</b>	● <i>Employee Appeals and Grievances</i> [Section 7 - Office of State Personnel Policies] ● <i>Employee Grievances</i> [25 NCAC 01J .1200]
<b>Contact for Info:</b>	Office of Human Resources (910) 672-2889

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### I. PURPOSE

This policy is intended to provide a means for prompt and orderly resolution of problems and differences arising between a supervisor and grievant. This policy meets all requirements and is consistent with all policies established by the Office of State Personnel (OSP). This policy only applies to grievances filed by past or current SPA employees, past or current career employees (as defined below), or applicants for positions subject to the State Personnel Act.

### II. DEFINITIONS

**Career Employee** -- A State or University SPA employee who has been appointed to a permanent position and who has been continuously employed by the State of North Carolina in a position subject to the State Personnel Act for the immediate twenty-four (24) preceding months.

**Deadlines** – The date upon which an item is due. If any deadline falls on a non-workday or any established holiday observed by the University, the deadline shall be extended until the next business day.

**Final Agency Decision (FAD)** -- The written decision rendered by the Chancellor or designee resulting from a University grievance.

**Grievance** – A grievable issue under Section III of this Policy which is grounds for a contested case that may be appealed to the State Personnel Commission.

**Grievant** – An individual having a grievable issue under Section III of this Policy, such an individual must be a past or current SPA employee, a past or current career employee, or an applicant for a position subject to the State Personnel Act.

### **III. GRIEVABLE ISSUES**

The following issues are grievable according to the eligibilities described below:

#### **A. Alleged Discrimination Grievance**

Individuals alleging discrimination based on age, sex, race, color, national origin, religion, creed, handicapping condition (disability), or political affiliation shall have the right to appeal through the FSU grievance procedure within the time frame established, or may appeal directly to the State Personnel Commission within 30 (thirty) days of the alleged discriminatory action based upon the following:.

- i. Any current or former state employee may grieve an allegation of discrimination based on denial of promotion, transfer, or training, or retaliation in selection for a demotion, RIF or termination.
- ii. Any applicant for SPA employment may grieve a denial of employment on the basis of discrimination. Such grievances must be filed under the University's grievance policy.

#### **B. Alleged Unlawful Workplace Harassment Grievance**

A grievant having a right to file an unlawful workplace harassment complaint must follow the policies and procedures of the University's *SPA Unlawful Workplace Harassment Policy*.

According to the Unlawful Workplace Harassment Policy, any former or current full-time or part-time SPA employee with either a permanent, probationary, trainee, time-limited, or temporary appointment may grieve unlawful workplace harassment based on discrimination as described above.

The Unlawful Workplace Harassment Policy also provides for the completion of the internal grievance process for unlawful workplace harassment issues within 60 days.

Because unlawful workplace harassment is a form of discrimination, the employee also has the right to bypass the agency grievance procedure and appeal directly to the State Personnel.

**C. Violations of the FLSA, Age Discrimination Act, FMLA or ADA/Reasonable Accommodations**

Any current or former SPA employee or career employee may file a grievance regarding a violation of the Fair Labor Standards Act, the Age Discrimination Act, the Family and Medical Leave Act or the Americans with Disabilities Act.

In addition, any current or former SPA employee, career employee or applicant for SPA employment at the University may file a grievance if his/her request for reasonable accommodation has been denied or if s/he is dissatisfied with a decision on a request for reasonable accommodation.

**D. Denial of Veteran's Preference**

State law requires that employment preference be given for having served in the Armed Forces of the United States on active duty, for reasons other than training, during periods of war or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense. Thus, any applicant for employment at the University may grieve denial of veteran's preference in initial SPA employment and a career employee may file a grievance regarding the denial of veteran's preference in connection with a reduction-in-force.

**E. Dismissal, Demotion or Suspension Without Pay**

Any former or current career employee may file a grievance regarding his/her dismissal, demotion or suspension without pay if it is alleged that such action was without just cause.

**F. Reduction-in-Force**

Any former or current career employee may file a grievance regarding failure to follow systematic procedures in a reduction-in-force (RIF) or failure to give RIF reemployment consideration.

**G. Priority in Promotion or Failure to Post**

Any former or current career employee may grieve failure to give promotional priority over outside applicants or a denial of a promotion due to failure to post.

**H. Inaccurate or Misleading Information in Personnel File**

Any current or former SPA employee or career employee may grieve the denial of a request to remove inaccurate or misleading information from his/her personnel file.

**I. False Accusation about Political Threats or Promises**

Any current or former SPA employee or career employee may grieve a false accusation about political threats or promises.

**J. Priority Re-employment Consideration**

Any former career employee who had exempt policy-making/managerial/confidential status may grieve a failure to give priority re-employment consideration to him or her.

**K. Designation as Exempt**

Any current or former SPA employee or career employee may grieve having his or her position designated as exempt policy-making/managerial/confidential.

**IV. ISSUES THAT ARE NOT GRIEVABLE**

Matters of inherent management rights such as the programs and functions of the University, standards of service, the overall University budget, the utilization of technology and the assignment and reassignment of staff to positions, duty stations and shifts (except where such transfers result in a demotion to a lower classification) are not grievable.

While an employee may complain informally about the matters listed below, an employee may not grieve through the University's formal grievance process the following:

- Verbal coaching, reprimand, or admonishment by a supervisor
- Written warning for performance or conduct
- Placement into "investigation with pay" status
- Position classification
- Position assignment in terms of duties and responsibilities or organization
- Duty station assignment
- Work schedule assignment
- Performance evaluation comments or rating, except when it is a performance pay dispute (such pay disputes are handled by the University's *Performance Pay Dispute Resolution Policy*)
- Denial of any secondary or dual employment request
- Denial of any request for the advancement of leave
- Any management or Human Resources referral to the *Employee Assistance Program*
- Salary administration, except in matters where unlawful discrimination is alleged
- Denial of participation in the Voluntary Shared Leave program
- Any requirement to use technology for work efficiency and effectiveness

- Mission of the University or any sub-unit's mission of the University
- Any program function of a department
- Any plan to implement University policy or procedures or policies and procedures of the University of North Carolina Any standard of service
- Any departmental/division or University budget decision
- Any other matters inherent to management

**V. GENERAL PROVISIONS**

**A. Retaliation**

A grievant shall have the right to use this procedure without interference, restraint, coercion or reprisal.

**B. Confidentiality**

Information generated during the review of any grievance brought under this policy shall be given the full extent of confidentiality accorded by law. Any person who, without authorization, reveals such information shall be subject to disciplinary action.

**C. Attorneys**

Attorneys shall not be present at or participate in any step of the internal grievance process. The grievant or the respondent may have ongoing consultation with an attorney, if desired. The grievant may, at his or her option, retain and use an attorney when pursuing an appeal to the State Personnel Commission.

**D. Employee-Advisor**

With respect to the University's grievance process, a grievant may consult with a fellow employee ("employee-advisor") of his or her choosing. As such, the grievant may have the employee-advisor accompany him or her during the grievance process. Such an employee-advisor may serve as an advisor only, not as an advocate or spokesperson for the grievant. The University recognizes the confidentiality of the employee/employee-advisor relationship and, therefore, shall not request the volunteer employee to divulge information that would violate that confidential relationship. In addition, the University prohibits retaliation against an employee who volunteers and acts in good faith as an employee-advisor.

**E. Human Resources Representative**

With or without the grievant's approval, the Office of Human Resources shall have a representative present during the grievance procedures and available to provide advice and consultation regarding policies applicable to SPA employees.

**F. Leave**

In order to prepare for participation in the internal grievance process, an employee shall be allowed up to a maximum of eight (8) hours of time off from the employee's duties. The employee must request and receive approval in advance from the supervisor before taking this leave. This leave is to be granted without loss of the employee's pay, vacation or other time credits.

For participation in contested case hearings or other administrative hearings, an employee may request necessary time away from work without use of vacation or other time credits. Such a request is subject to review and approval by the supervisor who must determine if the leave is necessary and reasonable. Documentation of the time required by the presiding official may be requested by the supervisor before leave approval is granted.

**G. Time Frames**

Failure of the grievant to observe the filing time frames set forth in this policy shall result in the waiver of the right to proceed.

The Associate Vice Chancellor for Human Resources may extend any internal filing, reporting, decision, appeal or decision deadline required by this policy for a reasonable period of time without the consent of the grievant. However, for cases involving discharge or demotion of a career employee for disciplinary reasons, the FAD must be issued within ninety (90) business days from the initial filing of the grievance. For all other grievable issues covered by this Policy, the FAD must be issued within one hundred and twenty (120) business days from the time the grievance was initially filed. The grievant and the Associate Vice Chancellor for Human Resources may mutually agree to extend the time in either case.

**H. Settlements**

If a grievance is settled and the settlement requires a personnel transaction to be processed, except where the only personnel action is the substitution of a resignation for a dismissal, the approval of the State Personnel Director is required.

If the settlement involves an exception to any State Personnel Commission policy, the approval of the State Personnel Commission is also required.

**I. Communication of Policy and Procedures**

This policy and its procedures shall be communicated by the Office of Human Resources to all University employees via the University's electronic mail system or some other similar means. This Policy shall also be included on the

University's policies' website. Printed copies are available, upon request from the Office of Human Resources. Employees shall be notified via e-mail of any changes to the policy no later than thirty (30) calendar days prior to the effective date of the change.

## **VI. UNIVERSITY RESPONSIBILITIES**

### **A. Employee Relations Manager**

The University's Employee Relations Manager shall be responsible for the following:

1. Upon request, providing assistance to grievants, supervisors, the SPA Grievance and Appeal Committee (the "Committee") members, and other university officials (including the Chancellor) in processing and/or responding to grievances.
2. Developing and distributing to all interested parties guidelines for the conduct of hearings.
3. Providing regular training for members of the Committee on their role in the grievance process.
4. Ensuring that a current version of this Policy is available on the University's policies' website and upon request from the Office of Human Resources. The Employee Relations Manager shall ensure that, when changes are made to this policy, they are communicated to all employees within thirty (30) days of the effective date of the changes.

### **B. Associate Vice Chancellor for Human Resources**

The University's Associate Vice Chancellor for Human Resources shall be responsible for the following:

1. Ensuring the maintenance of records on all grievances filed at the University for a period of at least eighteen (18) months. Grievances shall be analyzed on at least an annual basis by demographics, division, and nature of issues grieved to ensure that University policies and procedures are being administered fairly, consistently, and following good employee relations practices. The Associate Vice Chancellor for Human Resources or his or her designee shall report such information, as requested, to the Office of State Personnel and other appropriate authorities.
2. Submitting this policy and any proposed changes for review by the Office of State Personnel by January 1st of each even-numbered year to ensure compliance with State laws and policies.

3. Ensuring the continuous evaluation of the University's grievance process for effectiveness in achieving stated goals.

## VII. UNIVERSITY GRIEVANCE PROCESS

### A. Summary of Grievance Process.

A summary of the University's grievance process is contained in this Section. These procedures are detailed in Section VII.B. – VII.E.

1. **File A Written Complaint.** A grievant must file a formal written complaint in order to document the initiation of a grievance.
2. **Step One: Meeting with Supervisor.** Once a formal written complaint is filed, the grievant shall be required to meet with his or her supervisor in an effort to resolve the grievance.
3. **Step Two: Meeting with the Vice Chancellor in Charge of the Grievant's Unit.** If the grievant and his or her supervisor are unable to resolve the grievance, in order to continue with the formal grievance process, the grievant shall be required to meet with the Vice Chancellor in charge of the grievant's unit.
4. **Step Three: SPA Grievance and Appeal Committee.** If the grievant is not satisfied with the Vice Chancellor's decision, the grievant may present the grievance to the University's SPA Grievance and Appeal Committee (the "Committee"). The Committee shall hold a hearing and shall forward its findings and recommendation to the Chancellor who shall issue a FAD.

### B. Filing a Grievance

First, a grievant who wishes to file a grievance must complete an *Employee Grievance Form*. The form is located on the website of the Office of Human Resources or may be obtained from the Office of Human Resources. The completed form must include the following:

- A clear statement of the nature of the grievance;
- An accurate description of events or circumstances that support the complaint;
- Copies of related materials and correspondence, if any; and
- A clear statement of the grievant's desired outcome.

The grievant must submit the completed form to the Office of Human Resources by the longer of fifteen (15) calendar days after (1) the occurrence of the issue giving rise to the grievance, (2) the date the grievant knew of the occurrence, or (3) the last incident for which the grievant is filing the grievance.

Upon receiving the completed grievance form, the Office of Human Resources shall determine if the grievant is eligible to file a grievance regarding the incident and notify both the grievant and supervisor of the eligibility. In conducting its review, the Office of Human Resources shall review, among other eligibility concerns, whether the grievance falls within the administrative or decision-making authority of the grievant's immediate supervisor or another supervisor. If both of these factors support that there is a grievable issue as defined above, the Office of Human Resources shall, within three (3) calendar days of receipt of the grievance refer the written grievance to the appropriate University supervisor with administrative or decision-making authority over the subject matter of the grievance. Human Resources shall promptly notify the grievant of any such referral.

**C. Step One: Discussion Between Grievant and Supervisor**

The supervisor shall discuss the grievance with the grievant in private, within seven (7) calendar days of the supervisor's receipt of the written grievance from the Office of Human Resources. The grievant may be accompanied by an employee-advisor. The supervisor may also be accompanied by a University official. The supervisor may also consult with or seek advice from other University officials before responding to the grievance. Neither party shall be prohibited from seeking advice on procedural matters from the Office of Human Resources.

Within five (5) calendar days of the discussion with the grievant, the supervisor must issue a written decision to the grievant or advise the grievant in writing as to the condition(s) that prevent an answer within five (5) calendar days. If the supervisor delays the response to the grievant, the supervisor must inform the grievant (in writing) when a response may be expected.

The supervisor's final written response to the grievant's complaint shall advise the grievant of his/her appeal rights. The supervisor shall send a copy of the decision to the Office of Human Resources.

**D. Step Two: Discussion between Grievant and Vice Chancellor**

If the supervisor's decision is not satisfactory to the grievant, or if the grievant does not receive a response from the supervisor or the response is not received within the designated time period (except when the supervisor notified the grievant that additional time will be needed for a response), the grievant may request a meeting with the Vice Chancellor in charge of the grievant's unit. In order to meet with the Vice Chancellor, the grievant must make a written request to Vice Chancellor through the Office of Human Resources. The grievant shall include a copy of the Grievance Form and the supervisor's response (if any). The grievant shall make his or her written request for an appeal to the Vice Chancellor

within five (5) calendar days of the receipt of the supervisor's response or of the deadline for receipt of a response in the event that no response has been received.

The Office of Human Resources shall coordinate the meeting date and time and notify both parties. The meeting shall occur within seven (7) calendar days of the receipt of the appeal to the Vice Chancellor. The Vice Chancellor shall meet privately with the grievant to discuss the grievance.

The grievant may be accompanied by an employee-advisor. The Vice Chancellor may also be accompanied by an University official. The supervisor may also consult with or seek advice from other University officials before responding to the grievance. Neither party shall be prohibited from seeking advice on procedural matters from the Office of Human Resources.

The Vice Chancellor shall consider all facts of the grievance, including all pertinent information provided in written form or orally by the grievant and supervisor.

The Vice Chancellor shall provide a written response to the grievant within five (5) calendar days of the meeting or shall provide written notification of the conditions that prevent a response within five (5) calendar days and an indication of when a response should be expected. The Vice Chancellor's written response shall advise the grievant of his/her appeal rights. The Vice Chancellor shall send a copy of the response to the Office of Human Resources.

**E. Step Three: Appeal to the University SPA Grievance & Appeal Committee**

**1. Requirements for an Appeal to the Committee**

The grievant must comply with the following requirements before appealing to the Committee:

- File a written grievance;
- In an attempt to resolve the grievance, meet with the appropriate supervisor; and
- If the grievance is still un-resolved, meet with the Vice Chancellor in charge of the grievant's unit.

**2. Requesting a Hearing**

If the Vice Chancellor's decision is not satisfactory to the grievant or if the Vice Chancellor's response is not received within the designated time period (provided the grievant has not been notified of an extension of the deadline), the grievant may appeal to the Committee. The *Employee Grievance Form*, the supervisor's and Vice Chancellor's written responses, if any, and a written request to appeal the grievance to the

Committee must be presented to the Employee Relations Manager, or his or her designee, within five (5) calendar days after the Vice Chancellor's response is delivered to the grievant or of the date the response was due in the case in which no response was received or no request for additional response time was made.

Any grievant may consult with the Employee Relations Manager regarding the appeal to the Committee.

The Employee Relations Manager shall transmit the grievant's request for a hearing to the Chairperson of the Committee within five (5) calendar days of the receipt of the request.

**3. Composition of the Committee**

The Committee shall consist of the following:

**a. Chairperson**

A chairperson shall be appointed by the Chancellor to serve a two-year term to begin January 1. On or before September 1 every two years, the Associate Vice Chancellor for Human Resources shall submit recommendations for Chair to the Chancellor.

The Chairperson shall abstain from voting unless his/her vote is needed in order to break a tie.

**b. Six (6) additional voting SPA and EPA employees**

The Employee Relations Manager and grievant shall select the six (6) members of the Committee from a pool of twenty (20) SPA and EPA employees who have received training on the university's grievance process conduct of a SPA hearing.

The members of the Committee shall be selected once the Employee Relations Manager is in receipt of a request for a hearing. The members shall be selected as follows:

- Three (3) members shall be appointed by the Employee Relations Manager or his or her designee. The grievant shall be allowed to challenge the participation of one (1) member of the Committee selected by the Employee Relations Manager. The Employee Relations Manager shall select a replacement from the pool for any member removed due to a grievant's challenge.

- Three (3) members shall be appointed by the grievant.
  - The Committee shall include at least two (2) SPA employees.
  - No Committee member shall be employed in the same operational unit as the grievant and no two members from the same operational unit may serve on the Committee.
  - The demographics of the Committee shall reflect the diversity of the University's employee population and shall have both supervisory and non-supervisory personnel.
- c. The Associate Vice Chancellor for Human Resources and/or the Employee Relations Manager may serve the Committee as advisors on personnel policy and procedures, but shall not participate in the deliberations or decisions of the Committee or advise the Committee on the merits of a case.

**4. Scheduling of the Hearing**

The Employee Relations Manager shall be responsible for scheduling SPA grievance hearings. A hearing must be held within twenty (20) calendar days of the Employee Relations Manager's receipt of an appeal to the Committee, unless otherwise agreed to by both parties. The Employee Relations Manager shall notify the grievant, the respondent, the Committee members, and any witnesses who may be called of the time and place of the hearing. Such notification shall occur no later than ten (10) calendar days in advance of the scheduled date of the hearing.

**5. Preparation for the Hearing**

It shall be the responsibilities of the grievant and the respondent to provide written statements and to identify all pertinent witnesses to the Employee Relations Manager before the hearing begins. The grievant and the respondent shall also provide to the Employee Relations Manager written statements that include the name and contact information of all pertinent witnesses that may be called during the hearing. This information shall be provided to the Committee Chair for review prior to the hearing. The Committee Chair shall determine which witnesses are needed for a full and complete hearing on the matter. The Committee Chair shall review the list of requested witnesses and may refuse to call any witnesses if it is determined the individual's testimony has no significant bearing on the issues of the grievance.

## 6. **Conducting the Hearing**

The Committee Chair shall be responsible for ensuring that the hearing is conducted in an orderly, timely, fair and equitable manner. The Committee Chair has full authority to terminate or suspend the hearing, determine relevancy of witness testimony and make other decisions regarding the hearing process. The Employee Relations Manager shall assist the Committee Chair in ensuring that the proceedings are properly recorded.

The grievant and the respondent may each elect to have one (1) support person, who is not an attorney, accompany them during the proceeding. The support person(s) is not permitted to speak or communicate with the grievant or respondent during the proceedings and the Chair may require a support person to leave the proceeding for failing to adhere to this policy. The Committee Chair shall have discretion in the conduct of each hearing; however, the following general guidelines apply:

- The grievant and the respondent shall each have an opportunity to present facts and information regarding the nature of the grievance.
- All materials must be submitted at least two (2) business days prior to the scheduled hearing date.
- Each Committee Member shall have an opportunity to ask questions of the grievant, respondent and witnesses as deemed necessary.
- Questions asked by the grievant or respondent must be directed to the Committee Chair.
- The Chair may determine which witnesses are called and may decline to call any witness that he/she determines has no bearing on the issues of the case.

At the conclusion of the hearing, the Committee shall deliberate in closed session. Within seven (7) calendar days of the hearing, the Committee shall submit a written report to the Chancellor that includes its findings and recommendation(s). The Employee Relations Manager shall ensure that all documentary evidence presented to the Committee is attached to the Committee's report along with the tape recording of the proceedings.

## 7. **Final Agency Decision**

After reviewing the Committee's report, the Chancellor may adopt the Committee's recommendation in whole or in part or may choose any other course of action that she or he deems appropriate. The Chancellor shall provide a written FAD within thirty (30) calendar days from the date the Chancellor receives the Committee's report. If this deadline will not be met, the Chancellor shall advise the grievant and respondent as to the

conditions that prevent a FAD within the required thirty (30) calendar days and when such a decision may be expected.

The Chancellor's written response shall include the grievant's appeal rights and advise the grievant that an appeal to the State Personnel Commission must be filed with the Office of Administrative Hearings within thirty (30) calendar days of receipt of the FAD.

The decision of the Chancellor shall be immediately implemented, regardless of whether the grievant plans to appeal beyond the University.

### **VIII. APPEAL TO THE STATE PERSONNEL COMMISSION**

If the grievant is not satisfied with the University's FAD, or if the decision is not received within the designated period provided in Section VII.E.7 of this Policy (provided the grievant has not been notified of an extension of the deadline), the grievant may appeal to the State Personnel Commission within thirty (30) calendar days of receipt of the FAD or the date the grievant should have received the FAD, provided the grievant meets the eligibility requirements for appeal to the State Personnel Commission. An appeal to the State Personnel Commission must be filed directly with the Office of Administrative Hearings at:

Office of Administrative Hearings  
6714 Mail Service Center  
1711 New Hope Church Road  
Raleigh, NC 27699-6714  
Phone: (919) 431-3000

The grievant must comply with the following minimum University requirements before appealing to OAH:

- Attempt to resolve an issue with their immediate or other appropriate supervisor(s) in the grievant's chain of command;
- Present the case to the University SPA Grievance and Appeal Committee/Hearing Review Panel. The Chair of the University SPA Grievance and Appeal Committee must have been afforded the opportunity to forward a recommended decision to the Chancellor; and
- The Chancellor must have been afforded a reasonable period of time to render a FAD.

An appeal to the State Personnel Commission is the final step in the administrative review process. The decision rendered by the State Personnel Commission is binding. If either party objects to the Commission's decision, that party may appeal the Commission's decision to the Superior Court.