

- I. Policy**
- II. Objectives**
- III. Definitions**
- IV. Grievable Issues and Who May Grieve**
  - A. Issues grieved at the University level only
  - B. Issues which must first be grieved through the internal University process
- V. Grievance Process for all Grievable Issues**
- VI. Unlawful Discrimination, Harassment, or Retaliation Grievance Provisions**
  - A. Option 1 -- EEO Informal Inquiry Process for Unlawful Discrimination, Harassment or Retaliation
  - B. Option 2 – External Filing of a Discrimination Charge
  - C. Option 3 – Simultaneous Internal and External Filing of a Discrimination Charge
- VII. Informal Discussion**
- VIII. Formal Grievance – Step 1 Mediation**
  - A. Purpose of Mediation
  - B. Mediation Process
  - C. Location and Time Allocation
  - D. Office of State Human Resources-Approved Mediators
  - E. Mediation Attendees
  - F. Post Mediation
  - G. Confidentiality of Documents Produced in Mediation
  - H. Limitations on a Mediation Agreement
  - I. Mediation Agreement Approval
  - J. Mediation Responsibilities
- IX. Formal Grievance – Step 2 – Hearing Panel/Hearing Officer**
  - A. Hearing Process
  - B. Right to Challenge Appointed Hearing Officer or Panel Members
  - C. Hearing Attendees
  - D. Hearing Participant Responsibilities
  - E. Grievance Presentation
  - F. Hearing Report, Proposed Recommendation, and Final University Decision
  - G. Settlement Agreement
- X. Appeal to the Office of Administrative Hearings**
  - A. University Requirements to Notify Grievant of Appeal Rights
  - B. Grievant Access to the Office of Administrative Hearings
- XI. Responsibilities for the SHRA Employee Grievance Policy**
  - A. University Human Resources, AA/EEO Office Responsibilities
  - B. Office of State Human Resources Responsibilities
- XII. Savings Clause**
- XIII. Sources of Authority**



**I. POLICY**

It is the policy of The University of North Carolina that the grievance process exists to allow for prompt, fair and orderly resolution of disputes arising out of employment. The University of North Carolina has therefore adopted this University SHRA Employee Grievance Policy to further these goals as approved by the State Human Resources Commission.

**II. OBJECTIVES**

In establishing this University SHRA Employee Grievance Policy, the University seeks to achieve the following objectives:

- A. Provide procedural consistency across The University of North Carolina;
- B. Ensure SHRA employees have access to an internal process to address grievable issues timely, fairly, cost effectively, and without fear of reprisal; and
- C. Resolve workplace issues efficiently and effectively.

**III. DEFINITIONS**

The following are definitions of terms used in this policy:

TERM	DEFINITION
<b>Applicant</b>	A person (including a current State employee) who submits an application for an initial hire, promotion or reemployment for a SHRA position within the University.
<b>Career State Employee</b>	A State employee who is in a permanent position with a permanent appointment and has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the North Carolina Human Resources Act for the immediate 12 preceding months.  Employees who are hired by a State agency, department or university in a sworn law enforcement position and who are required to complete a formal training program prior to assuming law enforcement duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months.
<b>Complainant (EEO only)</b>	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates an informal complaint through the Equal Employment Opportunity (EEO) Informal Inquiry process.
<b>Contested Case Issue</b>	A grievable issue that may be appealed to the Office of Administrative Hearings (OAH).
<b>EEO/AA Officer</b>	The University Officer responsible for Equal Employment Opportunity / Affirmative Action.
<b>Equal Employment Opportunity Informal Inquiry (EEO Informal Inquiry)</b>	An informal process for addressing allegations of unlawful discrimination, harassment, or retaliation that may facilitate a resolution prior to the filing of a grievance. This process is equivalent to the institution’s internal complaint process for allegations of a violation of an institution’s non-discrimination and equal opportunity policy. <i>[Note: Complaints or reports of Title IX Sexual Harassment and appeals of Title IX determinations of responsibility are investigated and resolved through the institution’s Title IX complaint process.]</i>



TERM	DEFINITION
<b>Final University Decision (FUD)</b>	The final decision authorized by the Chancellor (or by the President for SHRA employees at the UNC System Office) or their designee that concludes the internal grievance process.
<b>Formal Internal Grievance Process</b>	The process available to an applicant, probationary State employee, former probationary State employee, career State employee or former career State employee to file a formal grievance based on issues that are defined as grievable by State statute.
<b>Formal Internal Grievance Process Timeframe</b>	The internal grievance process must be completed within 90 calendar days. Time spent in the Informal Discussion and the EEO Informal Inquiry process is not included in the 90 calendar day timeframe.
<b>Grievable Issue</b>	A statutorily defined workplace event or action as defined by State statute as grievable that allows an eligible employee to challenge the alleged workplace event or action through established grievance procedures for resolution.
<b>Grievant</b>	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates a grievance, including EHRA Law Enforcement Officers and applicants for EHRA Law Enforcement Officer positions.
<b>Hearing Officer</b>	An officer appointed by the Chancellor or designee to oversee the proceedings of a hearing and submit a proposed recommendation for a FUD.
<b>Hearing Panel</b>	A University appointed panel of no less than three members selected to conduct a hearing. The designated panel chair has the responsibility to oversee the proceedings of the hearing and submit a proposed recommendation for a Final University Decision.
<b>Impasse</b>	An Impasse occurs when Mediation does not result in an agreement.
<b>Informal Discussion</b>	An informal process for addressing grievable issues that may facilitate a resolution prior to the filing of a formal internal grievance and the process for addressing issues for which one may not file a formal internal grievance.
<b>Mediation</b>	The process in which the Grievant and Respondent use an approved Office of State Human Resources (OSHR) mediator to attempt to resolve a grievance in a mutually acceptable manner. Responsibility for resolving the grievance rests with the parties.
<b>Mediation Agreement</b>	The written agreement resulting from the successful resolution of a grievance reached in Mediation. The Mediation Agreement is legally binding on both parties.
<b>Mediator</b>	A neutral third party(s) approved by OSHR whose role is to guide the mediation process, facilitate communication, and assist the parties to generate and evaluate possible outcomes for a successful resolution. A Mediator does not act as a judge and does not render decisions.
<b>Probationary or Time-Limited State Employee</b>	A State employee who is exempt from certain provisions of the North Carolina Human Resources Act only because the employee has not been continuously employed by the State for the time period required to become a Career State Employee.



TERM	DEFINITION
<b>Respondent</b>	A designated University representative who will have the authority to negotiate an agreement on behalf of the University to resolve a grievance.
<b>Title IX Sexual Harassment</b>	<p>A type of unlawful discrimination which is described under Title IX of the Education Amendments of 1972 at 34 C.F.R. 106.30(a) (2020).</p> <p>Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:</p> <ul style="list-style-type: none"> <li>a) An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct;</li> <li>b) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution’s education program or activity; or</li> <li>c) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30). (34 C.F.R. 106.30(a) (2020)).</li> </ul> <p>This is distinct from sexual harassment as defined by Title VII of the Civil Rights Act of 1964. 42 U.S.C. 2000e</p>
<b>University</b>	A constituent institution or employer unit within the University of North Carolina System.

**IV. GRIEVABLE ISSUES AND WHO MAY GRIEVE<sup>1</sup>**

**A. The following issues may be grieved at the University level only and through the Informal Discussion process. The employee cannot proceed to the formal internal grievance process.**

WHO MAY FILE	GRIEVABLE ISSUE
<b>1) Career State employee or former career State employee</b>	<ul style="list-style-type: none"> <li>a) Overall performance rating of less than “meets expectations” or equivalent as defined in the University SHRA Performance Appraisal Policy</li> <li>b) Denial of request to remove inaccurate and misleading information from personnel or applicant file (excludes the contents of a performance appraisal and written disciplinary action)</li> <li>c) Items covered in the University’s AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2)</li> <li>d) Denial of National Guard preference as provided for by law</li> </ul>
<b>2) Probationary or former probationary state employee</b>	<ul style="list-style-type: none"> <li>a) Denial of request to remove inaccurate and misleading information from personnel or applicant file (excludes the contents of a performance appraisal and written disciplinary action)</li> </ul>

<sup>1</sup> Complaints or reports of Title IX Sexual Harassment and appeals of Title IX determinations of responsibility are investigated and resolved through the institution’s Title IX complaint process.



	<ul style="list-style-type: none"> <li>b) Items covered in the University’s AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2)</li> <li>c) Denial of National Guard preference as provided for by law.</li> </ul>
<b>3) Applicant for University employment (initial hire, promotion, or reemployment)</b>	<ul style="list-style-type: none"> <li>a) Denial of request to remove inaccurate and misleading information from applicant file (excludes the contents of a performance appraisal and written disciplinary action)</li> <li>b) Items covered in the University’s AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2)</li> <li>c) Denial of National Guard preference as provided for by law.</li> </ul>

**The following issues must first be grieved through the formal internal University process. If the Grievant is not satisfied with the Final University Decision, the Grievant may appeal to the Office of Administrative Hearings.**

WHO MAY FILE	GRIEVABLE ISSUE
<b>1) Career State employee or former career State employee</b>	<ul style="list-style-type: none"> <li>a) Dismissal, demotion or suspension without pay for disciplinary reasons without just cause</li> <li>b) Involuntary non-disciplinary separation due to unavailability</li> <li>c) All issues listed below that are grievable by a probationary or former probationary employee</li> <li>d) All issues listed below that are grievable by an applicant for University employment</li> <li>e) Denial of reemployment or hiring due to denial of reduction-in-force priority as required by law (NCGS 126-7.1)</li> <li>f) Denial of promotional opportunity due to failure to give priority consideration for promotion to a Career State employee as required by law (NCGS 126-7.1)</li> </ul>
<b>2) Probationary State employee or former probationary State employee</b>	<ul style="list-style-type: none"> <li>a) Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law)</li> <li>b) Denial of veteran’s preference as provided for by law</li> <li>c) Any retaliatory personnel action for reporting improper government activities (“whistle blower”) as contained in Article 14 of NCGS 126</li> <li>d) Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment</li> <li>e) Retaliation against an employee for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment</li> </ul>



<p><b>3) Applicant for University employment (initial hire, promotion, or reemployment)</b></p>	<p>a) Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law)</p> <p>b) Denial of veteran’s preference as provided for by law</p> <p>c) Unlawful discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation, if the applicant believes that he or she has been discriminated against in his or her application for employment</p> <p>d) Retaliation for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been retaliated against in his or her application of employment</p>
---	--

**V. GRIEVANCE PROCESS FOR ALL GRIEVABLE ISSUES<sup>2</sup>**

- A. A grievance or complaint must be initiated in accordance with this policy within **15 calendar days** of the alleged event or action that is the basis of the grievance.
  - a. Any grievance or complaint that alleges unlawful discrimination, harassment, or retaliation shall be addressed and completed through the University Equal Employment Opportunity (EEO) Informal Inquiry process before being considered in the formal internal grievance process.
  - b. All grievable issues, except for issues pertaining to discrimination, harassment, retaliation, disciplinary actions, and non-disciplinary separation due to unavailability, must first be discussed with the immediate or other appropriate supervisor in the employee’s chain of command or other appropriate personnel or agency or University that has jurisdiction regarding the alleged event or action that is the basis of the grievance prior to filing a formal internal grievance.
  - c. Informal Discussion shall not be part of grievances related to disciplinary action or to non-disciplinary separation due to unavailability; both shall proceed directly to the formal internal grievance process.
- B. Disciplinary action and non-disciplinary separation due to unavailability grievances shall bypass the Informal Discussion and proceed directly to the formal internal grievance process. Disciplinary action grievances (i.e., dismissal, suspension without pay, demotion) that include both an allegation of unlawful discrimination, harassment, or retaliation, and an allegation that the disciplinary action lacks just cause shall first be addressed through the University EEO Informal Inquiry process before proceeding to the formal internal grievance process. Likewise, a grievance that involves both a separation due to unavailability and an allegation of unlawful discrimination, harassment, or retaliation shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. After the EEO Informal Inquiry process is completed, the employee may pursue all remaining grievable issues that may be considered in the formal internal grievance process if pursued by the employee per the procedures below.
- C. Grievances that are untimely filed or do not contain a grievable issue as defined in Section IV of this policy shall not proceed through the grievance process. Grievable issues that have not been substantiated or responded to by the institution shall still be permitted to proceed through the grievance process.

<sup>2</sup> Complaints or reports of Title IX Sexual Harassment and appeals of Title IX determinations of responsibility are investigated and resolved through the institution’s Title IX complaint process.



D. Institutions have the discretion to administer grievances alleging:

- 1) denial of request to remove inaccurate and misleading information from personnel or applicant file, and/or
- 2) an overall performance rating of less than “meets expectations” or equivalent as defined in the University SHRA Performance Appraisal Policy,

through this University SHRA Employee Grievance Policy or to establish a separate dispute resolution process. These issues are not appealable to the Office of Administrative Hearings.

## VI. UNLAWFUL DISCRIMINATION, HARASSMENT, OR RETALIATION GRIEVANCE PROVISIONS

### A. Option 1 -- EEO Informal Inquiry Process for Unlawful Discrimination, Harassment or Retaliation<sup>2</sup>

An applicant for State employment, probationary State employee, former probationary State employee, career State employee, or former career State employee (hereafter referred to as Complainant) alleging unlawful discrimination, harassment, or retaliation shall first file a complaint with the University Equal Employment Opportunity (EEO)/Affirmative Action (AA) Officer or other designated personnel within **15 calendar days** of the alleged discriminatory, harassment or retaliatory act that is the basis of the complaint.

If the Complainant alleges facts that would constitute discrimination, harassment, or retaliation as prohibited by law or university policy, the complaint will be investigated under the institution’s existing non-discrimination/equal opportunity investigatory process (hereafter referred to as the EEO Informal Inquiry). The EEO/AA Officer or other designated personnel will investigate the complaint and determine if the facts related to the allegations support a finding of reasonable cause, or no reasonable cause, to believe that unlawful discrimination, harassment, or retaliation occurred.

The EEO Informal Inquiry should be completed in the timeframe defined by the institution’s non-discrimination/equal opportunity policy **not to exceed 90 calendar days**. The institution has **75 calendar days** from receipt of the complaint to investigate and respond to the complainant, unless the complainant and the employer mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension shall not exceed **15 calendar days**.

If there is reasonable cause to believe that discrimination, harassment, or retaliation as prohibited by law or university policy occurred, management shall appropriate action toward resolving the matter.

The EEO/AA Officer shall inform the Complainant in writing regarding the conclusions of the investigation, including applicable appeal rights.

If the complaint is successfully resolved, the complainant will sign a letter of agreement with the institution detailing the terms of the resolution. The institution shall ensure that the terms of the agreement under the control of the institution are implemented.

If the complaint is not successfully resolved, the Complainant has 15 calendar days from receipt of the conclusions of the investigation to file a formal internal grievance, which will commence with Step 1 mediation.

If the complainant has not received a response from the institution after 90 calendar days from the institution's receipt of the EEO Informal Inquiry request, then the complainant may continue the process by filing a formal internal grievance.

At any point in the grievance process, the Complainant/Grievant has the right to bypass discussions with or review by the alleged offender. Time spent in the EEO Informal Inquiry process is not part of the formal internal grievance process.



**B. Option 2 -- External Filing of a Discrimination Charge**

The Complainant alleging discrimination, harassment or retaliation as prohibited by law or university policy has the right, at any time, to bypass or discontinue the EEO Informal Inquiry process or the formal internal grievance process and file a charge directly with the Equal Employment Opportunity Commission (EEOC) or the Office of Administrative Hearings - Civil Rights Division (OAH-CRD). The Complainant may not, however, file a contested case with the Office of Administrative Hearings - Hearings Division if the internal process has not been completed. Filing deadlines may vary.

Information about filing an EEOC charge and deadlines for filling the charge can be found at: <http://www.eeoc.gov/employees/charge.cfm> or by calling the EEOC regional offices located in Raleigh, Greensboro and Charlotte at 1-800-669-4000.

Information about filing through the Civil Rights Division of the Office of Administrative Hearings can be found at: <http://www.ncoah.com/civil/> or by calling 984-236-1850.

**C. Option 3 – Simultaneous Internal and External Filing of a Discrimination Charge**

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee may file simultaneously with the EEOC at any point in either the EEO Informal Inquiry process or the formal internal grievance process.

**VII. INFORMAL DISCUSSION**

A request for an Informal Discussion must occur within **15 calendar days** of the alleged event or action that is the basis of the grievance. Prior to filing a grievance about any issue which does not involve an allegation of unlawful discrimination, harassment, or retaliation and does not involve a disciplinary action or a non-disciplinary separation due to unavailability, the employee shall first discuss the grievable issue with the immediate supervisor, other appropriate supervisor in the employee's chain of command, or other appropriate personnel or agency or University that has jurisdiction regarding the alleged event or action that is the basis of the grievance. The university institution's Human Resources Office ("the institution HR Office") may develop internal procedures to administer and coordinate any Informal Discussion process.

The employee must clearly declare to the supervisor or other appropriate personnel that the Informal Discussion request is regarding an alleged event or action that is the basis of a potential grievance. The supervisor or other appropriate personnel shall confirm the intention of the requested Informal Discussion with the employee before beginning the process.

The informal process should be completed within a **15 calendar day** after the employee requests the Informal Discussion. However, if progress is being made toward a successful resolution to the dispute or if unavoidable circumstances (e.g. illness, academic calendar) require an extension in the timeframe, both parties may agree to an extension. This extension must be agreed to in writing and approved by the institution HR Office.

The supervisor or other appropriate personnel shall notify the institution HR Office when an employee requests an informal discussion. The supervisor is responsible for attempting to resolve the grievable issue with the employee.

The institution HR Office will serve as a content and procedural resource advisor during these discussions, and work with both parties to strive for a timely resolution to the workplace dispute. The outcome of the informal discussions must be clearly communicated to the employee by the supervisor or other appropriate personnel in writing.

If the Informal Discussion is unsuccessful in resolving the grievable issue, or if no written response is provided by the supervisor within the **15 calendar day** timeframe (including any agreed-upon extensions), then the employee may proceed by filing a formal internal grievance, if eligible. Time spent in the Informal Discussion with Supervisor is not a part of the formal internal grievance process.



## VIII. FORMAL GRIEVANCE – STEP 1 MEDIATION

The formal internal grievance process begins when a Grievant files a formal internal grievance request in accordance with the University SHRA Employee Grievance Policy. The Grievant must begin the formal internal grievance process by filing a written grievance to the Human Resources Director or designee within the University. The Grievant must complete any required informal processes within the stated time frames before filing a formal internal grievance.

The University, upon approval by OSHR, has the discretion to bypass Step 1 and proceed directly to Step 2 in situations involving discipline for jeopardizing campus safety, personal misconduct, or other similar egregious workplace issues. A decision to request bypassing mediation must be approved by the University Human Resources Office and authorized by the Chancellor or President. The decision to bypass Step 1 only occurs after careful consultation with parties involved in the workplace dispute.

The employee must file a formal internal grievance request within 15 calendar days of the alleged event or action that is the basis of the grievance or within 15 days of receiving a response at the conclusion of any informal process(es).

### A. Purpose of Mediation

Mediation provides the Grievant and the University Respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution.

### B. Mediation Process

University Human Resources shall submit the request for mediation within **3 business days** of receipt of the grievance. The mediation process shall be concluded within **35 calendar days** from the filing of the grievance unless the Grievant and the University mutually agree in writing to extend the time due to extenuating circumstances. Any extension of Step 1 will not extend the **90 calendar day** timeline.

### C. Location and Time Allocation

Mediation shall be conducted in a location identified by the University. The manner in which the mediation is conducted, whether virtually, telephonic or in-person, shall be approved by the OSHR Statewide Mediation Coordinator or designee. The mediation shall be scheduled for an amount of time determined by the Mediator(s) to be sufficient. Mediation may be recessed by the Mediator(s) and reconvened at a later time.

### D. Office of State Human Resources-Approved Mediators

Only OSHR-approved Mediators will mediate SHRA (employees subject to the State Human Resources Act) grievances for Universities. OSHR will maintain a pool of qualified Mediators to facilitate mediations. Mediators will not be selected from the University requesting the mediation.

### E. Mediation Attendees

The following individuals may attend a mediation:

- 1) Grievant
- 2) Respondent
- 3) The OSHR-appointed Mediator(s).
- 4) The OSHR Statewide Mediation Coordinator and designees may attend Mediations as observers.

Emergency substitution of a Mediator must be approved by the OSHR Statewide Mediation Coordinator or designee. Attorneys and other advisors may not attend the mediation. Either the Grievant or Respondent may ask for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

**F. Post Mediation**

- 1) If an agreement is reached, the following shall occur:
  - a) The Grievant and the Respondent will sign a Mediation Agreement that states the terms of agreement and is a legally binding document.
  - b) The original signed Mediation Agreement is provided to the University Human Resources. A copy of the signed Mediation Agreement is provided to the Grievant, Respondent and the OSHR Statewide Mediation Coordinator.
  - c) Human Resources will review the provisions of the Mediation Agreement to assure that the terms comply with the State Human Resources Commission policies or rules, University policies or rules, and applicable State or federal law.
  - d) Human Resources will ensure that terms of the Mediation Agreement that are under the control of the University are implemented.
  - e) The Mediation Agreement shall be maintained on file for three years.
- 2) If an agreement is not reached (Impasse), the following shall occur:
  - a) The Grievant and the Respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
  - b) The original signed Notice of Impasse is provided to the University Human Resources Office. A copy of the signed Notice of Impasse is provided to the Grievant, the respondent and the OSHR Statewide Mediation Coordinator.
  - c) Prior to signing the impasse form, the University must provide the Grievant information regarding Step 2 of the formal internal grievance process and inform the Grievant that the Step 2 filing must be received by the University within **5 calendar days** of the date on which the mediation resulted in impasse.
  - d) The Notice of Impasse shall be maintained on file for three years or until any known litigation is completed.

**G. Confidentiality of Documents Produced in Mediation**

All documents generated during mediation and any communications shared in connection with mediation are confidential to the extent provided by law.

**H. Limitations on a Mediation Agreement**

The Mediation Agreement shall serve as a written record and shall:

- 1) Not contain any provision(s) contrary to State Human Resources Commission policies, administrative rules, University policies or rules, and applicable state and federal law;
- 2) Not contain any provision(s) that exceeds the scope of the parties' authority; and
- 3) Not be transferable to another state agency or University.
- 4) When Mediation resolves a grievance but it is determined upon review by University Human Resources or OSHR that one or more provisions of the Mediation Agreement do not comply with the State Human Resources Commission policies or rules, University policies or rules, or applicable State or federal laws, Mediation shall be reconvened to resolve the specific issue(s). This will not extend the **90 calendar day** formal grievance period. If the parties are unable to resolve the noncompliance issue(s), the mediation will reach impasse and the Grievant may proceed to Step 2 of the formal internal grievance process. The time resolving a mediation agreement does not extend the 90 calendar day timeframe for the formal internal grievance process.



- 5) Should additional information or clarification be needed to implement the terms of the Mediation Agreement, communication with all parties may occur remotely. In the event the Mediator that facilitated the mediation is not available, the OSHR Statewide Mediation Coordinator or designee will have the authority to stand in place of the Mediator in these communications.

**I. Mediation Agreement Approval**

The approval of the Director of State Human Resources or designee is required for mediation agreements that need a personnel transaction to be processed, except where the only personnel action is the substitution of resignation for dismissal. If a mediation agreement involves an exception to State Human Resources Commission policy, the approval of the Director of State Human Resources or designee is required. Mediation agreements requiring OSHR approval shall follow the OSHR Settlement Guidelines.

**J. Mediation Responsibilities**

1) Grievant Responsibilities

- a) Attending the mediation as scheduled by the University;
- b) Preparing for the mediation by being able to communicate clear and concise information regarding the issues surrounding the grievance and the remedies sought;
- c) Notifying and receiving approval from University Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the Grievant prevent attendance at the mediation; and
- d) Making a good faith effort to resolve the grievance.

**A Grievant who has an unexcused failure to attend mediation as scheduled forfeits the right to proceed with the internal grievance process.**

2) Respondent Responsibilities

- a) Attending the mediation as scheduled by the University;
- b) Preparing for the mediation by becoming knowledgeable regarding the issues surrounding the grievance and remedies sought;
- c) Notifying and receiving approval from University Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the respondent prevent attendance at the mediation;
- d) Consulting with management, Human Resources and/or legal counsel regarding possible areas of negotiation for grievance resolution; and
- e) Making a good a faith effort to resolve the grievance.

If a Respondent has an unexcused failure to attend mediation as scheduled, the Grievant may either proceed to Step 2 of the formal internal grievance process or reschedule the mediation if time allows as determined by the OSHR Mediation Coordinator. If the mediation is not rescheduled, the agency must provide notice of appeal rights to the grievant and the Step 2 Grievance Form must be filed within 5 calendar days of the original date of mediation. This will not extend the 90 calendar day timeframe of the formal grievance process.

3) University Human Resources Responsibilities

- a) Administering the mediation program within the University;
- b) Appointing a University Mediation Coordinator, and other personnel as needed, to manage and schedule mediations;

- c) Ensuring that the Grievant receives appropriate information about the mediation process;
  - d) Designating a qualified and informed University representative to serve as the Respondent for each mediation and who will have the authority to negotiate an agreement on behalf of the University that resolves the grievance;
  - e) Ensuring that the Respondent is adequately prepared for the mediation to understand possible areas of negotiation for grievance resolution;
  - f) Ensuring appropriate personnel (management, Human Resources or legal counsel) are available to respond to any issues that may arise during the course of the mediation;
  - g) Designating appropriate personnel to be available to review the terms of the draft agreement to ensure it is complete, complies with State Human Resources Commission policies or rules or with applicable State or Federal laws, and contains the necessary information for implementation;
  - h) Reinforce the expectations for confidentiality of the Mediation;
  - i) Identifying suitable locations for Mediations;
  - j) Using only OSHR-approved Mediator(s) for each mediation session;
  - k) Reimbursing Mediators for travel at state-approved rates;
  - l) Providing nominees for consideration that meet the qualifications set forth by OSHR to be trained as OSHR mediators; and
  - m) Assuming financial responsibility for the initial and ongoing training of University nominated mediators.
- 4) Office of State Human Resources Responsibilities
- a) Developing and maintaining mediation procedures and forms;
  - b) Establishing mediator eligibility and training requirements;
  - c) Maintaining a pool of qualified mediators;
  - d) Providing employment mediation training;
  - e) Maintaining a process for assigning mediators upon University request;
  - f) Ensuring that mediators adhere to the OSHR Mediator Code of Conduct; and
  - g) Conducting ongoing studies/analyses to evaluate program effectiveness.

## IX. FORMAL GRIEVANCE – STEP 2 – HEARING PANEL/HEARING OFFICER

### A. Hearing Process

If Mediation does not result in a resolution at Step 1, the Grievant has the ability to proceed to Step 2 of the internal grievance process. Human Resources will notify the Grievant of the opportunity to present the grievance orally to a Hearing Panel/Hearing Officer outside of the employee's chain of command. The Step 2 filing must be received by the University HR Office within **5 calendar days** of the date of the completion of mediation. The hearing process generally shall be concluded within **35 calendar days of filing Step 2 of the grievance**.

### B. Right to Challenge Appointed Hearing Officer or Hearing Panel Members

The Grievant has one opportunity to challenge the appointed Hearing Officer or up to 2 members of the Hearing Panel if the Grievant believes they cannot render an unbiased recommendation due to a real or perceived conflict of interest. The Grievant must submit the basis for the challenge in writing, in accordance with the institution's established process, within 5 calendar days of receiving notification of the name(s) of the Hearing Officer/Panelists. Human Resources will review the challenge and replace the member(s) as appropriate.

**C. Hearing Attendees**

- 1) The Grievant who initiated the grievance;
- 2) Hearing Officer or Hearing Panel members;
- 3) Witnesses, as approved by the Hearing Officer or Hearing Panel Chair in accordance with the University process; and
- 4) Appropriate University and HR representatives. Attorneys and other advisors cannot attend the hearing.

Stenographic recording, audiotape, videotape, recording devices, and transmission devices are not permitted during the hearing unless approved by the Chancellor or designee of a constituent institution, or unless approved by the President or designee for the UNC System.

**D. Hearing Participant Responsibilities**

- 1) Grievant Responsibilities
  - a) Attending the hearing as scheduled by the University;
  - b) Notifying and receiving approval from Human Resources, in advance of the scheduled hearing, if occurrences that are unavoidable or beyond the control of the Grievant prevent attendance at the hearing;
  - c) Preparing for the hearing by being able to present clear and concise information regarding the issues surrounding the grievance and remedies sought; and
  - d) A Grievant who has an unexcused failure to attend a hearing as scheduled forfeits the right to proceed with the internal grievance process.
- 2) Hearing Officer/Hearing Panel Chair Responsibilities
  - a) Calling the hearing to order and establishing the process for the proceedings;
  - b) Maintaining order and decorum;
  - c) Ensuring that all parties are allotted adequate time to present evidence and question witnesses; and
  - d) Submitting a proposed recommendation with documentation for a Final University Decision addressing all matters raised by the Grievant.
- 3) University Human Resources Responsibilities
  - a) Establishing the use of either a Hearing Panel/Hearing Officer;
  - b) Administering the hearing process within the University;
  - c) Providing that all parties receive appropriate information about the hearing process;
  - d) Establishing a process for the Grievant to challenge the appointed Hearing Officer or Hearing Panel members;
  - e) Consulting with OSHR on the proposed Final University Decision Recommendation; and
  - f) Issuing a Final University Decision

**E. Grievance Presentation**

- 1) The Hearing Officer or Hearing Panel Chair will preside over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which the grievance is based, and the remedies sought.
- 2) Each party shall be given a fair opportunity to present evidence on the issues to be heard and to question witnesses.
- 3) A hearing officer may not decline to hear a grievable issue raised by the grievant solely because the agency did not complete the informal inquiry process within the deadline stated in this Policy was not completed.



**F. Hearing Report, Proposed Recommendation, and Final University Decision**

- 1) The Hearing Panel Chair or Hearing Officer will draft a hearing report that includes a proposed recommendation for a Final University Decision (FUD), including justification to support the recommendation, and submit it to the Chancellor or designee.
- 2) The Chancellor or appropriate designee will forward the hearing report and the proposed FUD to UNC System Chief Human Resources Officer or designee for review.
- 3) The UNC System Chief Human Resources Officer or designee, in consultation with the Director of State Human Resources or designee, will review the hearing report and proposed FUD and will respond to the Chancellor or designee within **10 calendar days**.
- 4) The proposed FUD shall not be issued or become final until reviewed and approved by the Office of State Human Resources. Once approved, the Chancellor or designee must issue the FUD to the Grievant within **5 calendar days** of the approval and no later than **90 calendar days** from the date the grievance is filed.
- 5) For allegations of Title IX Sexual Harassment, the outcome of the Title IX complaint resolution process rather than this Formal Grievance Procedure, shall constitute the Final University Decision for an SHRA employee who is a Title IX complainant.

**G. Settlement Approval**

The approval of the Director of State Human Resources or designee is required for settlements that need a personnel transaction to be processed, except where the only personnel action is the substitution of a resignation for a dismissal. If a settlement involves an exception to State Human Resources Commission policy, the approval of the Director of State Human Resources or designee is required.

**X. APPEAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS**

**A. University Requirements to Notify Grievant of Appeal Rights**

The Final University Decision shall inform the Grievant in writing of any appeal rights through the Office of Administrative Hearings for contested case issues. The Grievant must be specifically informed of the following:

- 1) The appeal is made by filing a "Petition for a Contested Case" hearing with the Office of Administrative Hearings;
- 2) The appeal to the Office of Administrative Hearings must be filed within **30 calendar days** after the Grievant receives the Final University Decision; and
- 3) A fee is charged for filing a Petition for a Contested Case Hearing.

**B. Grievant Access to the Office of Administrative Hearings**

- 1) If the Grievant is not satisfied with the Final University Decision, the Grievant may file a Petition for Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.
- 2) A Petition for Contested Case Hearing must be filed within 30 calendar days after the Grievant receives the Final University Decision. The Grievant may file the appeal at:

Office of Administrative Hearings  
1711 New Hope Church Road (Mailing and Physical Address) Raleigh, NC 27609  
984-236-1850

- 3) Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: <http://www.ncoah.com/hearings/> or by calling 984-236-1850.

## **XI. RESPONSIBILITIES FOR THE UNIVERSITY SHRA EMPLOYEE GRIEVANCE POLICY**

### **A. University Human Resources, AA/EEO Office Responsibilities**

- 1) Adhere to the University SHRA Employee Grievance Policy;
- 2) Develop and communicate internal procedures as needed;
- 3) Provide current SHRA employees and new SHRA hires with access to the University SHRA Employee Grievance Policy;
- 4) Notify SHRA employees of any change to the internal University grievance process no later than 30 calendar days prior to the effective date of the change;
- 5) Provide employee grievance reports to OSHR as requested.

### **B. Office of State Human Resources Responsibilities**

- 1) Seek appropriate approval of the University SHRA Employee Grievance Policy any time modifications are made;
- 2) Notify institutions of changes to this policy once approved by the State Human Resources Commission.
- 3) Provide consultation and technical assistance to the UNC System as needed; and
- 4) Conduct ongoing studies/analyses to evaluate policy effectiveness and communicate results to improve the program effectiveness.

## **XII. Savings Clause**

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

## **XIII. SOURCES OF AUTHORITY**

- A. N.C.G.S. 126-1.1 defines the Career State Employee.
- B. N.C.G.S. 126-4(17) authorizes the State Human Resources Commission, to establish policies and rules for alternative dispute resolution procedures.
- C. N.C.G.S. 126-25 sets out the process for a State employee or applicant to object to material in their employee file.
- D. N.C.G.S. 126-35 authorizes the State Human Resource Commission to adopt rule subject to approval of the Governor for just cause for disciplinary actions and a process of appeal after the final agency decision.
- E. 25 NCAC 01J .0600 sets out the process for disciplinary actions such as suspension and dismissal for State employees.