

FAYETTEVILLE STATE UNIVERSITY

PROCEDURES FOR THE REVIEW OF EMPLOYMENT DECISIONS AFFECTING CERTAIN EMPLOYEES EXEMPT FROM THE STATE PERSONNEL ACT (EPA)

- Authority:** Issued by the Chancellor.
- Category:** Employment – EPA Non-Faculty
- Applies to:** ● Administrators ● Staff
- History:** Latest Revision – May 17, 2012
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First Issued – December, 1994
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- Related Policies:** ● *Mediation*
● *Review of Personnel Actions Affecting Specified Employees Exempt for the State Personnel Act (EPA)* [The Code, Chapter 100.1 Section 611]
● *Senior Academic and Administrative Officers* [UNC Policy #300.1.1, Sections III.B. 1, 2 and 3]
● *Employees Exempt from the State Personnel Act* [UNC Policy #300.2.1]
● *Instructional and Research Staff Exempt from the State Personnel Act* [UNC Policy #300.2.5[G]]
- Contact for Info:** Office of Human Resources (910) 672-1146
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I. PURPOSE

The purpose of this grievance policy is to provide a prompt, orderly, and fair method for non-faculty employees exempt from the State Personnel Act to secure review of decisions affecting the employee's employment at Fayetteville State University (University).

II. COVERED POSITIONS

Employment positions that are covered by this Grievance Policy (*Policy*) include the following:

- *Senior Academic and Administrative Officers.* This category of employees is defined in Section I.B. of the UNC Board of Governors' 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
- *Instructional and Research Staff.* This category of employees is defined in UNC Board of Governors' 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.

III. PERSONNEL ACTIONS THAT MAYBE REVIEWED

Only the following may be reviewed in accordance with these procedures:

- A. **Failure to Provide Notice:** An allegation of a failure by the University to provide the required notice or severance for a discontinuation of an at-will employment, expiration of a term appointment or a termination of employment.
- B. **Discharge:** A response to intent to discharge for cause. An employee may be discharged for cause as a result of incompetence, unsatisfactory performance, neglect of duty or misconduct that interferes with the capacity of the employee to perform effectively the requirements of his or her employment. A review of intent to discharge shall not be allowed in the case of a discontinuation, expiration of a term appointment or a termination of employment without cause.
- C. **Illegal Action or Violation of Policy:** An allegation that the University's interpretation or application of a policy that led to an adverse personnel action was illegal or violated a policy of the UNC Board of Governors. A review shall not be allowed for allegations that a discontinuation, expiration of a term appointment or termination of employment, with notice, was an illegal action or violation of a policy of the UNC Board of Governors.
- D. **First Amendment Rights Violation:** An allegation that a personnel action was a violation of rights guaranteed by the First Amendment of the United States Constitution or Article I of the North Carolina Constitution (subject to any limitations on political activity as established under North Carolina law and relevant UNC Board of Governors and University Board of Trustees policies).
- E. **Discrimination:** An allegation of unlawful discrimination when an adverse employment action has been taken. The specific protected classes are covered in the University's non-discrimination statement.

IV. OTHER EMPLOYMENT MATTERS THAT MAY BE REVIEWED

Consideration of other employment matters that are not listed above are not reviewable through the hearing process outlined herein, but may be addressed by the employee with the employee's supervisor or with the departmental manager to whom the supervisor reports. If that discussion does not resolve the concern, the employee may seek to meet with the Vice Chancellor of the employee's division. Any decision by the Vice Chancellor, including a decision not to review a lower-level action, shall be final.

V. MEDIATION

Except in cases where a decision has been made to discharge, discontinue or terminate an employee's employment, an employee may seek mediation to resolve an employment related matter. Employees seeking to resolve an employment matter through mediation should consult the University's *Mediation* policy.

VI. DISCHARGE FOR CAUSE

Prior to an employee being discharged for cause, the Vice Chancellor in charge of the employee's division shall send the employee a written notice of the intention to discharge. The notice shall be sent by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the employee's right, upon request, to a hearing. If, within fourteen (14) calendar days after receiving the notice, the employee makes no written request for a hearing, the employee may be discharged without recourse to any institutional grievance or appellate procedure.

If the employee makes a timely written request for a hearing, the hearing shall be held in accordance with the procedures outlined in this *Policy*.

When an employee has been notified of the intention to discharge for cause, the Chancellor may suspend the employee's employment at any time and continue the suspension until the Chancellor has rendered a decision. Any suspension during this time period shall be with full pay. Once the Chancellor has rendered a discharge decision, such payment shall cease.

VII. REVIEW OF EMPLOYMENT DECISIONS

A. Pre-Hearing Procedures

1. Administrative Review

(Not applicable to personnel actions involving intent to discharge for cause)

Except in the case of an intent to discharge for cause, a formal request for a hearing may be filed only after an employee ("Grievant") covered by this *Policy* has attempted to resolve the complaint with the Grievant's departmental manager to whom the employee's supervisor reports without satisfactory results. A hearing cannot be requested until it has been determined that unsuccessful attempts have been made by the Grievant to resolve the Grievant's complaint with the administrative official previously mentioned.

2. Filing a Request for a Hearing

After the Grievant has unsuccessfully attempted to resolve the grievance or in the case of intent to discharge, once the Grievant has received the notice of intent to discharge, the Grievant may file a written request for a hearing with the University's Employee Relations Manager. The request must be filed within fourteen (14) calendar days of receipt of the decision of the departmental manager to whom the supervisor reports or within fourteen (14) calendar days of the receipt of the notice of intent to discharge. This filing deadline may be extended only if, in the judgment of the Employee Relations Manager, there are significant extenuating circumstances. If the employee does not timely file a written request for a hearing, the employee shall have waived the employee's right to a hearing and the action taken shall be considered final.

Except in the case of a discharge for cause, the employee's written request for a hearing shall include the following:

- a.** the exact nature of the grounds for review including what alleged violations, as provided in Section III, above occurred;

- b. the identity of all parties against whom the grievance is being filed, and;
- c. the redress sought.

Within fourteen (14) calendar days of receiving the Grievant's request for a hearing, the Employee Relations Manager shall (i) acknowledge the request, (ii) provide a copy of the request to the party against whom the grievance is being filed and (iii) provide all parties with a copy of this *Policy*.

3. Grievance Committee Members

The Grievance Committee (Committee) shall consist of the following:

a. Committee Chair

A chair shall be appointed by the Chancellor to serve a three-year term to begin on July 1st. Thereafter, on or before March 1st of the third year term, the Associate Vice Chancellor for Human Resources shall submit recommendations for chair to the Chancellor. The Chair shall be a standing and voting member of the Committee.

b. Voting Members

Upon the receipt of a written request for a hearing from the Grievant and after verifying that the required administrative review has been held (if required), the Employee Relations Manager shall meet with the Associate Vice Chancellor for Human Resources, within ten (10) calendar days of receiving the request, for the purpose of selecting four (4) EPA employees, excluding the Committee Chair, as members of the Committee.

The members of the Committee shall be selected from a pool of ten (10) EPA employees who have received training on this *Policy* and its grievance process. Employees who are employed in the Grievant's department, who will testify as witnesses, or who have any other conflict of interest, will be disqualified from participating in the hearing.

The Committee members shall be notified within ten (10) calendar days of their selection.

4. Initial Committee Meeting

Within ten (10) calendar days of notifying the Committee members of their selection, the Employee Relations Manager shall forward a copy of the Grievant's written request for a hearing to the Committee Chair and the selected Committee members, and subsequently convene the Committee for its initial meeting. Copies of this *Policy* shall be provided to the Committee Chair and each member of the Committee in advance of the initial meeting.

5. Scope of Review
(Not applicable to personnel actions involving intent to discharge for cause)

The Committee shall review only personnel actions subject to review in accordance with Section III above. Thus, at its initial meeting, the Committee shall review the Grievant's request for a hearing and determine whether the stated grounds for review are properly grievable. A matter is not considered properly grievable if, (a) the individual presenting the grievance is not an employee covered by this *Policy*, (b) if the subject matter does not concern a matter listed in Section III above, or (c) if the grievance was not filed in a timely manner.

If it is determined that the matter is properly grievable, the Employee Relations Manager shall review with the Committee members its role and responsibilities along with a review of the hearing process.

If the Committee determines that the matter is not properly grievable, the Committee Chair shall send a written statement to all parties stating that the grievance is being dismissed because it is a matter that is not properly grievable in accordance with this *Policy*.

6. Scheduling the Hearing

For Hearings other than an Intent to Discharge: If the Committee determines that the matter is properly grievable, the Employee Relations Manager shall proceed to schedule a hearing as soon as practical within twenty (20) calendar days. Only if the Committee Chair is aware of significant extenuating circumstances shall the opening date of the hearing be delayed beyond twenty (20) calendar days. The Employee Relations Manager shall notify the parties and Committee members, in writing, of the date and location of the hearing.

For a Hearing involving an Intent to Discharge: The Employee Relations Manager shall proceed to schedule a hearing as soon as practical within twenty (20) calendar days. Only if the Committee Chair is aware of significant extenuating circumstances shall the opening date of the hearing be delayed beyond twenty (20) calendar days. The Employee Relations Manager shall notify the parties and Committee members, in writing, of the date and location of the hearing.

7. Pre-Hearing Exchanges

The Committee Chair shall require the parties to exchange witness lists and copies of exhibits the parties wish to introduce as evidence, at least ten (10) calendar days in advance of the hearing. 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.

If a party wishes to introduce exhibit(s) at the hearing that were not included in the pre-hearing exchange, the Committee Chair shall determine whether such evidence shall be accepted.

Exhibits must be numbered sequentially and identified by party; e.g., *Grievant Exhibit No. 1, Respondent Exhibit No. 3, or Committee Exhibit No. 5*. The exhibit numbers should be written on the exhibits and pages numbered at the time the documents are first presented to the Committee. References to documents during the hearing should be by exhibit number with page references as applicable.

8. Third-Party Observers

The Grievant and the Respondent may each be accompanied by a third-party observer. A third-party observer may not be an attorney and may not participate in the hearing. No later than five (5) days prior to the hearing, the Grievant and Respondent shall notify the Employee Relations Manager of the name of their third-party observer, if any.

9. Arrangements for Court Reporter and Transcript

If a decision is made to grant the Grievant a hearing, the Employee Relations Manager shall contact the Office of Legal Affairs to arrange for the contracting of a court reporter. The court reporter shall make a verbatim record of the hearing. Either of the parties desiring a transcript may obtain one by making a request to the Office of Legal Affairs.

B. Hearing Procedures

1. Purpose of a Hearing

The primary purpose of a hearing is to give the Grievant the opportunity to (a) prove the Grievant's contention that the adverse personnel action was based upon one of the prohibited grounds covered under Section III above, or (b) to prove that the employee should not be discharged for cause. Conversely, the hearing provides an opportunity for the decision maker to respond to the Grievant's allegations.

2. Relevance of Evidence

The strict rules of legal evidence do not apply and the Committee Chair may admit any information determined to be pertinent. 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 evidence may not be considered.

3. Burden of Proof

The burden of proof rests with the Grievant and not with the Respondent. Thus, the presumption shall be that the decision made by the Respondent was properly made. That presumption continues unless and until the Committee is satisfied that the Grievant has proven otherwise.

The standard of proof, i.e., the degree of proof required, is proof by a preponderance of the evidence. Thus, the Grievant must prove that the Grievant's allegation is more likely true than not true. The Committee shall determine

whether this burden of proof has been met by weighing all of the evidence and the demeanor and credibility of the witnesses, in the light of experience and common sense judgments.

4. Control of Hearings

The Committee Chair shall call the hearing to order, determine whether a quorum exists, and explain the hearing process. A quorum consists of a simple majority of the total Committee membership.

The Committee Chair shall exercise complete control over all stages of the hearings and over pre-hearing matters.

5. Challenge to Committee Membership

Following the call to order, each party shall be given an opportunity to challenge a Committee member's qualifications to serve. The Committee (excluding the Committee member under challenge) shall decide whether to grant or deny that challenge based on a majority vote.

6. Conduct of Hearing

a. Opening Remarks

Starting with the Grievant, each party shall be given the opportunity to make opening remarks limited to five (5) minutes each. The purpose of opening remarks is to orient the Committee to the nature of the case and to the facts the parties intend to establish. Opening remarks shall not be considered evidence.

b. Grievant's Case

At the conclusion of opening remarks, the Grievant shall present evidence (witnesses, documents, his or her own testimony, etc.) in support of the Grievant's allegation(s). All witnesses may be questioned by members of the Committee, the Grievant and the Respondent.

c. Respondent's Case

The Respondent may present evidence (witnesses, documents, his or her own testimony, etc.) in support of the employment decision. All of Respondent's witnesses may be questioned by members of the Committee, the Respondent and the Grievant.

d. Closing Remarks

At the conclusion of all of the evidence, the Grievant may make closing remarks to the Committee, followed by the closing remarks of the Respondent. Closing remarks shall not exceed fifteen (15) minutes each.

7. 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 hearing to members of the Committee and persons who have a need to know as part of the process 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 Employee Relations Manager as to whether or not another Committee should be formed to hear the case.

C. Post-Hearing Procedures

1. Deliberations

After closing remarks are concluded, the Committee chair shall conclude the hearing and the Committee shall withdraw into closed session. If the Committee prefers to review the written transcript prior to deliberating, the Chair shall adjourn the hearing and reconvene the Committee after the transcript becomes available, otherwise, the Committee may begin its deliberations immediately.

The Committee's decision shall be by majority vote. The Grievant bears the burden of proving, by a preponderance of the evidence, his or her contention that the employment decision was impermissibly based.

2. Committee Report

The Committee shall prepare a written report of its findings and recommendations based solely on evidence presented at the hearing. The report shall include a separate finding for each particular issue of the grievance, include findings that resolve the material issues of fact that have been disputed, and recommend any corrective action(s).

The Committee Chair shall forward the Committee's report, together with the official record to the Chancellor and the Employee Relations Manager.

3. Official Record

The official record shall consist of all correspondence pertaining to the grievance and evidence 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.

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.

4. Chancellor's Decision

Upon receipt of the report, the Chancellor shall 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. seek clarifying information from the Committee.

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.

If the Chancellor concurs in a recommendation of the Committee that is favorable to the Grievant, the Chancellor's decision shall be final. If the Chancellor either declines to accept the Committee's recommendation that is favorable to the Grievant or concurs in a Committee recommendation that is unfavorable to the Grievant, the Grievant may appeal the Chancellor's decision.

Whatever the decision, the Chancellor shall notify the Grievant of the final decision by a method of delivery that provides proof of delivery. Copies of the decision shall be sent to the Respondent, the Committee, and the Employee Relations Manager.

D. Appeal of the Chancellor's Decision

Within fourteen (14) calendar days of receiving the Chancellor's written decision, the Grievant may appeal by filing with the Chancellor for transmission to the Board of Trustees a written notice of appeal by certified mail, return receipt requested, or by another means that provides proof of delivery.

A Grievant seeking a review of the decision of the Chancellor should consult the Board of Trustees *Appellate Policy and Procedures* for details on the Trustees' appellate process. The decision of the Board of Trustees is final with no further right to appeal.