

North Carolina Agricultural And Technical State University

DEPARTMENT OF HUMAN RESOURCES

**MEDIATION AND GRIEVANCE POLICY
AND PROCEDURES
FOR SPA EMPLOYEES**



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(336) 334-7167**

North Carolina A&T State University Mediation and Grievance Policy and Procedure For SPA Employees

Purpose

The purpose of this policy is to provide a means of communication between University supervisors and employees and establish principles of administration to ensure a prompt, orderly, and fair response to an employee's grievance or complaint.

Policy

Any career State employee having a grievance arising out of or due to employment shall first discuss the problem or grievance with his/her supervisor or the appropriate supervisor, and follow the grievance procedure established by this University. Employees that allege discrimination because of age, sex, race, color, national origin, religion, creed, handicapping condition (disability) or political affiliation shall have the right to appeal through the University grievance procedure within the time frame established, or may appeal directly to the State Personnel Commission.

Covered Employees

This policy covers career State employees and those employees with permanent position appointments. A career State employee is one who is in a permanent position appointment, and has been continuously employed by the State of North Carolina in a position subject to the State Personnel Act (SPA) for the immediate 24 preceding months. Employees with permanent position appointments who have not yet attained career status may appeal final University decisions only to the extent that the Office of State Personnel's (OSP) policy allows.

This policy does **not** apply to policy-making exempt employees. Likewise, it does **not** cover probationary employees or trainee employees who have not yet attained one year of continuous State service. Probationary or trainee employees in their first year of service however, can file a grievance under this policy if alleging discrimination or if alleging that information in the employee's personnel file is inaccurate or misleading.

Types of Actions Covered

University employees have a right to present a grievance free from interference, restraint, coercion, or reprisal. Issues that may be grieved through the University policy include the following:

- Demotion
- Denial of promotional priority (for State employees competing with non-State employees for a job vacancy)
- Denial of priority re-employment for Reduction-in-Force (RIF) applicants
- Disciplinary suspension without pay
- Dismissal
- Discrimination
- Failure to give policy-making/confidential exempt status employees priority consideration
- Improper application of the University's RIF Policy
- Erroneous and misleading information in the personnel file
- Violation of the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), the Family Medical Leave Act (FMLA), or the Americans with Disabilities Act (ADA)
- Performance pay disputes and any issues made grievable by the State Personnel Act
 - Performance pay disputes include only the following issues:
 - failure to receive an increase ,
 - the amount of performance increase, or
 - overall performance appraisal rating
 - Performance pay disputes can be appealed within the University under a separate policy. Such a dispute cannot be appealed outside of the University.

Inaccurate or Misleading Information in a Personnel File. Any employee, regardless of length of service, who alleges that written information in the employee's personnel file is inaccurate or misleading, may file a grievance. In the grievance, the employee should specify the information that is false or misleading and indicate why. **Any employee may examine his/her personnel file by making a request to the Human Resources Associate Director any work day between the hours of 8:00 a.m. and 5:00 p.m.**

Matters of inherent management rights are not subject to appeal under this policy. These matters include, but are not limited to, such areas as the program and functions of the University, standards of service, utilization of technology, and the assignment and re-

assignment of staff to positions, duty stations, and shifts, except where such transfers include a demotion to a lower classification.

Written Warnings. The employee must be advised that a written warning is not grievable. Should an employee wish to contest the written warning, he/she may write a letter "To The File" stating his/her point of view in the matter. This document shall be forwarded to Human Resources and the Employee Relations Officer to be placed in the employee's permanent file along with the warning.

Generally, matters not specifically set out in this policy as those which can be grieved cannot be grieved. Specific questions on what is and is not considered grievable may be directed to the University Employee Relations Officer.

Filing a Grievance

Any employee who has adverse action taken against him/her will be given written notice of any applicable appeal rights.

An eligible employee who wishes to file an appeal internally, under the University Mediation and Grievance Policy and Procedures, must file the grievance within **15 calendar days** of the date the employee learned (or with reasonable effort should have known) of the action being contested. **See the attached Employee Grievance and Appeal Filing Form.**

How to Obtain Information About the Mediation and Grievance Policy

The Employee Relations Officer will provide information and answer questions about the Mediation and Grievance Policy. This policy shall be posted in a permanent and conspicuous place in work areas and will be placed on the Human Resources website - <http://facultypages.ncat.edu/hr/>. New employees will be informed of the policy and grievance procedure during orientation sessions. All employees will be notified of grievance policy and procedure changes through e-mail and/or through inserts attached to employee direct deposit slips. Employees shall be notified no later than 30 days prior to the effective date of a change. **The Supervisor must inform the employee of applicable appeal rights and give him/her a copy of the University Mediation and Grievance Policy.** For additional information regarding this policy, contact the University Employee Relations Officer at (336) 334-7167.

Time Off for Processing Grievances

Employees shall be allowed time off from regular duties as may be necessary and reasonable up to a maximum of **eight hours** for the preparation of the internal grievance without loss of pay, vacation leave, or other time credits. Employees must notify their

supervisor in advance and receive prior approval to be absent from work for preparation of the internal grievance.

Upon request, the employee's supervisor shall grant reasonable leave for participation as a party in a contested case hearing and other administrative proceedings outside the University in connection with employment without loss of pay, vacation leave or other time credits. Prior notification and approval are required and employees must document the time needed for this purpose. The University Employee Relations Officer shall provide guidance to employees and supervisors in case of disagreement as to a reasonable amount of time off for the purpose of preparing for a grievance. Employees may request assistance from the EEO Officer (Human Resources Director) in preparing a written summary of the facts regarding the grievance.

The Employee Relations Officer will maintain all records on grievances filed within the University for a period of at least 18 months. Grievances filed and all related information will be analyzed on an annual basis by demographics, group, and nature of issues grieved to ensure that University policies and procedures are administered fairly and consistently and follow good employee relations practices. The University Employee Relations Officer will respond to all requests for information regarding grievances and appeals and will report this and other relevant information as requested to the other appropriate authorities.

The University Employee Relations Officer shall submit this policy for review by OSP on July 1 of each even-numbered year to ensure that it is in compliance with current State laws and rules.

This plan will be reviewed annually to determine implementation of goals and procedures.

Mediation and Grievance Procedure

Non-Discrimination Grievances

Informal Meeting with Supervisor

The University encourages direct communication between employees and supervisors as the first method of attempting to address grievances in the spirit of cooperation and compromise.

Step 1 - Mediation

Mediation is the first step in the grievance process and involves the services of a neutral third person that assists an employee and the University representative in resolving an employee grievance in a mutually acceptable manner. Attorneys are not permitted to participate at Step 1 of the grievance process. However, because mediation that resolves an employee's grievance will result in an agreement, either party may ask for a recess at any time during the negotiation in order to obtain legal advice regarding the terms of the Mediation Agreement.

To initiate a grievance, the employee must complete entirely and submit the **Employee Grievance and Appeal Filing Form** to the Employee Relations Officer **within 15 calendar days** of the contested action or after attempting and unsuccessfully resolving the grievance informally, whichever is longer.

Mediation provides opportunity for the two parties to openly discuss the grievance and reach a resolution that is mutually acceptable to both employees. When mediation results in a resolution of the grievance, both parties will sign a Mediation Agreement. The mediation process shall be concluded **within 45 calendar days** from the filing of the grievance unless the parties agree in writing to a longer period of time.

Step 2 - Appeal to the Chancellor Through the SPA Grievance Committee

Employees must comply with the following University requirements before proceeding to Step 2:

- Meet with the immediate supervisor or other appropriate supervisor in the chain of command to attempt to resolve the grievance; and
- Demonstrate a good faith effort to resolve the grievance by attending mediation (Step 1).

In situations where mediation does not produce an agreement, employees may appeal to

the SPA Grievance Committee appointed by the Chancellor. Any request for review by the SPA Grievance Committee shall be submitted to the Employee Relations Officer **within 5 calendar days** of agreement that mediation has not resolved the grievance. The employee filing the grievance will provide the **Employee Grievance and Appeal Filing Form**, copies of which shall be provided at the same time to all other parties concerned. The employee may ask the Employee Relations Officer for help in preparing the Form for the appeal. The Employee Relations Officer shall transmit the Employee Grievance and Appeal Filing Form to the SPA Grievance Committee. Each party shall be notified at least **10 calendar days** in advance of the scheduled date of the hearing. Neither the employee nor management may be represented by an attorney during the process. In cases where an employee has a disability, he/she may request reasonable accommodations as defined by the Americans with Disabilities Act (ADA) applicable law.

The SPA Grievance Committee, when convened for appeals shall minimally consist of five (5) members who are not from the same operational group as the employee appealing. The Committee shall not be made up entirely of supervisory or administrative personnel. It shall reflect the demographics of the University's personnel pool and the employee, particularly where illegal discrimination is alleged. The Committee shall elect a chair from among the Committee membership appointed by the Chancellor to facilitate the process at all appeals. In the absence of the chair at any hearing, the members present shall select a chair from among the members present to facilitate the process. The Employee Relations Officer shall not serve in any capacity on the SPA Grievance Committee, except as an advisor on personnel policy, nor shall he/she participate in the deliberations of the Committee.

The employee shall be allowed the opportunity to eliminate one (1) member of the SPA Grievance Committee when there is an issue of whether the members can render an unbiased decision. The grievant must notify the Employee Relations Officer within two (2) days of receiving the names of the employees to serve at the appeal. Once the member is eliminated, the Employee Relations Officer shall select another member as a replacement on the Committee immediately.

The hearing will be recorded for the use of the SPA Grievance Committee and the Chancellor. One report of the hearing will be kept with the grievance file in the Office of the Chancellor for access by those responsible for further deliberations on the grievance. One copy will be filed with the Employee Relations Officer's file with all documents filed prior to Step 2.

At the conclusion of the review by the SPA Grievance Committee, it is the responsibility of the chair to inform the Chancellor, in writing, of the details of the grievance, share the dissenting opinions of the employee, and provide a recommendation for the ***final agency decision (FAD)***. The written summary shall include reasons why the problem was not resolved at the preceding steps and shall be forwarded to the Chancellor within **10 calendar days** after the conclusion of the review. The Chancellor will issue a final agency decision within **10 calendar days** of receipt of the recommendation from the SPA Grievance Committee.

A FAD must be delivered to the employee, in writing (informing him/her of the right to appeal), within a reasonable time from the date that the grievance was initiated. A

reasonable time is no more than 60 calendar days for employees alleging unlawful workplace harassment; no more than 90 calendar days for dismissals and demotions, and no more than 120 days for all other issues. If there are extenuating circumstances, both parties may agree to an extension.

Step 3 – Appeal to the State Personnel Commission

Any career State employee, who does not agree with the final agency decision (FAD) ***and*** has attained career status as defined earlier in this policy, may appeal this decision within **30 calendar days** to the State Personnel Commission. An Administrative Law Judge will render a recommended decision to the State Personnel Commission, who will issue a Final Decision and Order.

*For more information regarding appeal to the State Personnel Commission, see section titled "Procedure For Appeal To The State Personnel Commission".

The employee will be given a copy of the University Mediation and Grievance Policy and Procedures along with the FAD.

EXCEPTION: Allegations of illegal discrimination or unlawful workplace harassment are exceptions. Grievances alleging discrimination may, at the grievant's choice, proceed either through the University procedure, or may proceed directly to the Office of Administrative Hearings (OAH). Complaints of unlawful workplace harassment must proceed through the University's Unlawful Workplace Harassment procedure.

Grievance and Appeal Procedure

Discrimination Grievances

Any ***applicant*** for employment at the University, or any ***present*** (regardless of length of service), or ***former employee*** who has reason to believe that employment, promotion, training, or transfer was denied him/her; or, that demotion, Reduction-in-Force, or termination of employment was forced upon him/her due to age, sex, race, national origin, religion, creed, political affiliation, or handicapping condition, except where specific age, sex or physical requirements constitute a bonafide occupational qualification (BOQ) necessary for proper and efficient job performance, shall have the **right to appeal through the University grievance procedure or may appeal directly to the State Personnel Commission**. The right to appeal shall be without fear of reprimand, reprisal, or retaliation. An employee who chooses to bypass the University's internal grievance procedure and appeal directly to the State Personnel Commission must do so **within 30 calendar days** of notice of the alleged discriminatory action.

Grievances that allege discrimination may, at the election of the employee, proceed through the University procedure or proceed directly to the State Personnel Commission for a hearing by the Office of Administrative Hearings and a decision by the Commission.

An employee who alleges unlawful workplace harassment shall have the right to bypass any step in the University grievance procedure involving discussions with or review by the alleged harasser. If the employee elects to bypass the supervisor, who is the alleged harasser, the employee should go to the next higher supervisory level and follow the steps outlined in the University grievance procedure.

Employees who decide to exhaust the University grievance procedure must abide by all the requirements as noted in the Mediation and Grievance Procedure: Non-Discrimination Grievances. A direct appeal to the State Personnel Commission alleging discrimination must be filed with the Office of Administrative Hearings **within 30 calendar days** after receipt of the final decision. Grievances filed on an untimely basis must be dismissed. Allegations of discrimination raised **more than 30 calendar days** after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed as untimely.

Procedure for Appeal

To the State Personnel Commission

A petition for a Contested Case Hearing (Form H-06A) must be filed (received by) within 30 calendar days of the final agency decision or within 30 calendar days of the action or omission giving rise to the right of appeal at:

Office of Administrative Hearings
424 North Blount Street
Capehart-Crocker House
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698

Form can be secured from the Office of Administrative Hearings (OAH) or the State Personnel Commission (SPC):

State Personnel Commission
116 West Jones Street
Administration Building
1331 Mail Service Center
Raleigh, NC 27603-1331
(919) 733-3182

The hearings are conducted by the Office of Administrative Hearings. Hearing procedures may be obtained by contacting:

Chief Hearings Clerk
Office of Administrative Hearings
424 North Blount Street
Capehart-Crocker House
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698

Procedure To File A Charge With EEOC

State employees and local government employees must file a charge within six months (180 calendar days) from the date of the alleged act(s) of discrimination. The charge form may be completed by contacting:

Intake Coordinator
Office of Administrative Hearings
Civil Rights Division
1203 Front Street, Building B
Raleigh, NC 27609
(919) 733-0431

