



NORTH CAROLINA A&T STATE UNIVERSITY

PRE-HEARING AND HEARING PROCEDURES FOR EHRA NON-FACULTY EMPLOYEES

Appendix A to University Policy 160, EHRA Non-Faculty Grievance

Section 1.0 Initial Meeting of Hearing Panel

The Chair of the designated EHRA Non-faculty Grievance Committee Hearing Panel, in conjunction with the Director of Employee Relations shall convene the Hearing Panel for its initial meeting no later than 10 business days after the Chair's receipt of the grievance from the Office of Employee Relations OER. The meeting may be conducted in person, by teleconference, or by video conference.

At this meeting or before, the Chair and/or Director of Employee Relations shall provide the panel members with an orientation regarding their responsibilities and a review of the grievance process.

- If the grievance states an impermissible issue for hearing, the Chair may:
 - Allow the Complainant to amend the grievance within five business days of the EHRA Non-faculty Grievance Committee's (Committee's) written notification to the Complainant of an opportunity to amend the grievance; or
 - Dismiss the grievance in writing for failure to state a concern that the Committee is authorized to hear under University Policy 160, EHRA Non-faculty Grievance.
- If the Complainant is given an opportunity to amend the grievance, the amended grievance must be delivered to the Director of Employee Relations and Chair for review.
 - If the amendment still fails to articulate permissible issues for hearing, the Committee shall dismiss the grievance.
 - If the grievance alleges facts that raise permissible issues for the Committee's consideration, the Chair shall forward a copy of the Complainant's statement to the persons named by the Complainant as responsible, along with notice that a written response to the allegations raised in the statement must be provided to the Director of Employee Relations, Chair, and Complainant within 10 business days.
- The Director of Employee Relations shall also forward a copy of the Complainant's grievance to the Office of Legal Affairs and the appropriate Vice Chancellor or Cabinet member.

Section 2.0 Notice of Hearing

The Director of Employee Relations, in consultation with the Chair, shall schedule a hearing date and send written notice to all panel members, the Complainant, the Respondent, and the Office of Legal Affairs. The hearing notice shall:

- Identify the parties and hearing panel members;
- Inform the parties that they may submit a written request to OER to remove up to two panel members as specified in Appendix B: EHRA Non-faculty Grievance Committee to University Policy 160, EHRA Non-faculty Grievance.
- Set the date for the hearing within 45 calendar days (unless there is good cause for delay) from the date that the Respondent submitted or should have submitted a response to the grievance;
- Identify the issue to be heard by the panel;
- Instruct the parties to exchange one copy of their proposed exhibits and witness lists at least five business days before the hearing;
- Instruct the parties to provide a sealed copy of their proposed exhibits and witness list to the Chair;
- Remind the parties of any applicable deadlines with regard to the hearing; and
- Instruct the parties to bring at least one copy of each exhibit to the hearing for each panel member, one copy for the court reporter, and one copy for each Respondent.

The Chair may consider and grant a reasonable extension of any deadlines established in this process for good cause.

Section 3.0 Recusal of Committee Member

A Committee member shall voluntarily recuse and shall not participate on a Hearing Panel if the member:

- (a) Holds an appointment in the department of a party or witness directly involved in a hearing;
- (b) Served on a Hearing Panel that previously considered the matter;
- (c) May testify as a witness at the hearing;
- (d) Is the Complainant; or
- (e) Has any other conflict of interest, bias, or is unable for any reason to assess the evidence fairly, impartially, and without prejudice.

The Director of Employee Relations shall assist the Committee in selecting one of its members to replace the recused member.

Section 4.0 Court Reporter

OER shall arrange for a court reporter to record all hearings and maintain the exhibits presented during the hearing.

- The University shall bear the expense of the court reporter.
- Any and all other recordings of the hearing are prohibited.

Section 5.0 Standard and Burden of Proof

The standard of proof in these hearings is preponderance of the evidence. The Complainant must prove by the greater weight of the evidence that the allegations set forth in the grievance are true.

Section 6.0 Request to Postpone Hearing

A party may submit a written request to postpone a hearing for good cause. Requests to postpone a hearing shall be made to the Chair, and shall specifically state and explain the reasons for the request.

Section 7.0 Amendment of Grievance Statement

A Complainant shall not be permitted to amend the grievance without the unanimous vote of the Hearing Panel once the hearing has commenced. If an amendment to the grievance statement is allowed, the Chair shall promptly notify the Respondent and postpone subsequent proceedings until the Respondent has had an opportunity to respond to the amended grievance. The Respondent shall have 10 business days to respond to any amendment.

Section 8.0 Attendance at the Hearing

Hearings are not open to the public. The only persons permitted at hearings are:

- Complainant and attorney or other person of choice;
- Respondent and attorney or other person of choice;
- Hearing panel members and assistants;
- Witnesses while testifying;
- Court Reporter; and
- Attorney from University's Office of Legal Affairs.

If the Complainant fails to appear for the hearing and a postponement had not been previously granted, the Chair shall issue an order dismissing the grievance unless the Complainant submits written proof of good cause or extenuating circumstances within five calendar days. Any dismissal shall set forth the reasons for dismissal and appeal rights.

Section 9.0 Conduct of Hearing

Hearings shall be conducted with the Chair and designated panel members present. The conduct of hearings need not conform to common law or statutory rules of evidence or technical or formal rules of procedure. Panel members may question the parties or witnesses at any time during the hearing.

The Chair shall preside over the hearing and consistent with the principles of impartiality and equity, determine:

- The order and allotted times in which parties will present opening statements, testimony, and closing arguments;
- The order in which witnesses will testify;
- The order and procedure for questioning the parties and witnesses;
- Whether evidence is relevant to the permissible issues raised in the grievance;
- The admissibility of evidence. If evidence is excluded, the Chair shall state the reasons for the exclusion on the record and shall clearly identify and include the proposed evidence in the Official Record; and

- Compliance with procedures and the appropriateness of questions and the method of questioning. The Chair shall not allow any questions that are irrelevant, immaterial, unduly repetitious, or abusive.

A copy of all exhibits, whether admitted or not, shall be maintained for inclusion in the Official Record.

Documents should be clearly labeled by exhibit and/or page numbers. References to documents during the hearing shall be by exhibit number with page references as applicable.

Section 10.0 Rights of the Parties

Parties have the right to testify, to present relevant testimony and other evidence, to hear and question witnesses offered by the other party, and to examine all documents and other information considered by the panel.

Panel members may ask questions of parties and witnesses to develop the record as to the relevant facts, circumstances, and issues presented at the hearing.

The Chair shall allow cross-examination to the extent necessary to afford the parties due process.

All issues relevant to the grievance shall be considered.

The Chair may recess the hearing to allow a reasonable amount of time for the examination of evidence and preparation of appropriate responses as long as the recess does not cause undue delay.

Section 11.0 Case Presentation

Unless the Chair, in the Chair's discretion, alters the presentation of or time allotted to present evidence, the standard order of presentation will be:

- Opening Statements;
 - Maximum of 5 minutes for each Complainant and Respondent.
- Complainant's Evidence;
 - Presentation of the Complainant's testimony and direct questioning of each of the Complainant's witnesses by the Complainant shall not exceed two hours;
 - The two hours shall not include time that the Respondent or Panel use to question the Complainant's witnesses;
 - Complainant may testify and offer exhibits;
 - Respondent may question Complainant;
 - Panel may question Complainant;
 - Complainant may present witness testimony and offer exhibits;
 - Respondent may question each Complainant witness after the Complainant concludes direct questioning of each; and
 - Complainant may use up to 20 additional minutes to present own or witness testimony to clarify any points from Respondent's or Panel's questioning.
- Respondent's Evidence;

- Presentation of the Respondent's testimony and direct questioning of each of the Respondent's witnesses by the Respondent shall not exceed two hours;
- The two hours shall not include time that the Complainant or Panel use to question the Respondent's witnesses;
- Respondent may testify and offer exhibits;
- Complainant may question Respondent;
- Respondent may present witnesses testimony and offer exhibits;
- Complainant may question each Respondent witness after the Respondent concludes direct questioning of each; and
- Respondent may use up to 20 additional minutes to present own or witness testimony to clarify any points from Complainant's or Panel's questioning.
- Rebuttal Evidence
 - At the conclusion of the Respondent's presentation, the Chair may allow the parties to present rebuttal evidence;
 - Each party shall have an additional 20 minutes to present rebuttal evidence;
 - The 20 minutes shall not include cross examination by the other party or Panel.
- Closing Arguments
 - Maximum of 10 minutes for each Complainant and Respondent;
 - Shall not include discussion of evidence that was not presented during the hearing;
 - Respondent may make a closing argument that summarizes the evidence presented during the hearing and why the Panel should recommend a decision in the Respondent's favor. The closing argument may include references and applicability or non-applicability of specific laws or policies; and
 - Complainant may make a closing argument to have the last word. The closing argument should summarize the evidence presented during the hearing and why the Panel should recommend a decision in the Complainant's favor. The closing argument may include references and applicability or non-applicability of specific laws or policies.
- Adjournment of Hearing
 - The Chair shall conclude the hearing.
- Panel Deliberations
 - At the conclusion of the hearing, the Panel shall go into a closed session to deliberate and consider the evidence presented to make a recommendation as to whether the Complainant met the required burden of proof.
 - In reaching a determination on which its written recommendations to the Chancellor will be based, the Panel shall consider only the grievance statement, evidence presented at the hearing, and the parties' written and oral arguments.
 - The Panel shall give appropriate weight to the evidence and consider only the evidence that it considers fair and reliable.

Section 12.0 Committee Report

The Chair shall prepare a written report of the panel's findings and recommendations for the Chancellor (Committee Report). The Committee Report shall set forth:

- The procedural history of the matter;
- A summary of the incident that gave rise to the grievance;
- Relevant findings of fact considered by the Panel;

- Relevant policies, procedures, and practices, including whether they were applied appropriately and consistently; and
- A recommendation of proposed action, including a description of any recommendation in favor of the Complainant, as appropriate.

Section 13.0 Official Record

The Chair shall prepare the record (Official Record) of the hearing for transmittal to the Chancellor. The Official Record shall consist of:

- All documentation relevant to the Committee's procedural rulings, factual findings, and recommendations;
- All correspondence between the Chair, Committee or Panel, and/or the Employee;
- All correspondence between the Chair, Committee or Panel, and each Respondent;
- Every document that was either submitted to or considered by the Committee or Panel;
- An official transcript of the hearing with marked exhibits attached from the Court Reporter; and
- The Committee Report.

The Chair shall transmit the Official Record to the Chancellor within 15 business days of the conclusion of the hearing or receipt of the hearing transcript, whichever occurs last.

Documents offered by either party that was not admitted into evidence shall be placed in a separate file and clearly labeled to show that they were not admitted into the record. The file shall be maintained in accordance with the records retention schedule applicable to the Official Record in the event that an appeal relates to failure to admit evidence offered.

Once the Official Record has been delivered to the Office of the Chancellor, or a review is terminated, Committee members shall destroy all notes taken during the hearing process and duplicates of documents or exhibits included in the Official Record.

Section 14.0 Chancellor's Decision

The Chancellor may accept or reject any or all of the Committee's findings and recommendations set forth in the Report, remand the matter to the Committee to take additional evidence, for further consideration, or seek clarifying information from the Committee (Chancellor's Decision).

After review of the record and the Committee's recommendations, the Chancellor shall seek to issue a written decision within 15 business days unless the Chancellor determines that the deadline should be extended.

If the Chancellor accepts a Committee recommendation that is favorable to the Complainant, the Chancellor's Decision shall be final.

The Chancellor's Decision shall be sent to the:

- Complainant by certified or registered mail, return receipt requested, Federal Express, or another commercial delivery service that obtains a signature;

- Respondent;
- Director of Employee Relations;
- Cabinet member;
- Committee Chair; and
- General Counsel.

Section 15.0 Appeal of Chancellor’s Decision to Board of Trustees

If the Chancellor either declines to accept a Committee recommendation that is favorable to the Complainant or accepts a Committee recommendation that is unfavorable to the Complainant, the Complainant may file a written appeal within 14 calendar days after receiving the Chancellor’s Decision.

The appeal shall be addressed as follows:

North Carolina A&T State University Board of Trustees
 c/o Office of the Chancellor
 Appeal of Chancellor’s Decision-EHRA Non-Faculty
 1601 East Market Street
 Dowdy Building, Suite 418
 Greensboro, NC 27411

The appeal must contain a statement of the reasons for the appeal and be sent by certified mail, return receipt requested, or by another means that provides proof of delivery. The appeal must allege discrimination or denial of due process in accordance with one or more of the following as permitted under UNC Code Chapter VI, § 611:

- (a) For Tier II-SAAO:
 - (1) UNC Policy 300.1.1.III.b.1, Discontinuation of appointment with notice or severance pay (violation of notice requirements);
 - (2) UNC Policy 300.1.1.III.b.2, Expiration of term appointment (violation of notice requirements);
 - (3) UNC Policy 300.1.1.III.b.3, Termination of employment because of financial exigency or program curtailment or elimination (violation of notice requirements);
 - (4) UNC Policy 300.1.1.III.c., Discharge for cause or other disciplinary action, or for interpretation or application of policy (including incompetence, unsatisfactory performance, neglect of duty, or misconduct);
 - (5) UNC Policy 300.1.1.III.d, Equal employment opportunity (pursuant to University Policy 204, Equal Opportunity and Nondiscrimination; University Policy 207, Sexual Harassment, Discrimination or Misconduct; University Policy 209, Unlawful Discrimination and Harassment. and/or other applicable policy) (violations of law or policy protections);
 - (6) UNC Policy 300.1.1.III.e, Protected activity (violations of law or policy protections);
- (b) For other EHRA non-faculty employees set forth in UNC Policy 300.2.1.I.:

- (1) UNC Policy 300.2.1.III.a, Discontinuation of appointment with notice or severance pay (violation of notice requirements);
- (2) UNC Policy 300.2.1.III.b., Expiration of term appointment (violation of notice requirements);
- (3) UNC Policy 300.2.1.III.c, Termination of employment because of financial exigency or program curtailment or elimination (violation of notice requirements);
- (4) UNC Policy 300.2.1.IV, for discharge for cause or other disciplinary action, or for interpretation and application of a policy provision;
- (5) UNC Policy 300.2.1.V, Equal employment opportunity(pursuant to University Policy 204, Equal Opportunity and Nondiscrimination; University Policy 207, Sexual Harassment, Discrimination or Misconduct; University Policy 209, Unlawful Discrimination and Harassment; and/or other applicable policy) (violations of legal or policy protections); or
- (6) UNC Policy 300.2.1.VI, Protected activity (violations of legal or policy protections).

The appeal to the Board of Trustees shall be decided by the full Board of Trustees. The Board of Trustees shall review the Official Record and Chancellor's Decision, and issue a written decision (Board of Trustees Decision). The Board of Trustees may affirm, modify, or set aside the Chancellor's Decision based on the Official Record before it, hear other evidence as it deems necessary, or may direct the taking of additional evidence by a standing or ad hoc committee of at least three (3) members. The Board of Trustees shall issue its written decision within 120 calendar days. The Board of Trustees Decision shall be final with no further right of appeal.