



NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY

SEC. III- SPA GRIEVANCES 1.0

SPA MEDIATION AND GRIEVANCE POLICY AND PROCEDURES

ADMINISTRATIVE POLICY

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Section II. Policy Statement

The University is committed to fair and equitable treatment for all employees. Within this context of equity and fair treatment, the University administration is responsible for managing and directing its human resources, including workforce size, recruitment training, work assignments, work schedules, promotion, demotion, transfer, or dismissal, all according to State and University policy. Therefore, the University has established this SPA Mediation and Grievance Policy and Procedures for the fair, orderly, and prompt resolution of work-related disputes for employees subject to the State Personnel Act (“SPA Employees”).

Where there are concerns or problems arising out of employment, Staff employees and their supervisors are encouraged to find informal means of resolving them. Mediation and compromise should characterize the resolution of work-related problems, and employees are strongly encouraged to talk over any workplace concerns, problems, or grievances with their supervisor. This policy has been adopted to assist supervisors and employees in resolving their differences, and is available through the Division of Human Resources (DHR) main office and is also available on the DHR website.

Any resolution resulting from a mediation pursued as part of a grievance process must be approved in advance by DHR for confirmation that it is in compliance with State policy, and a copy of the agreement must be submitted to the Office of State Personnel. Should mediation not result in an acceptable resolution, the grievance process will continue as defined in this policy.

Section III. General Provisions

Protection from Retaliation

Employees have the right to use this procedure free from threats or acts of retaliation, interference, coercion, restraint, discrimination, or reprisal. Employees may not be retaliated against for participating in the grievance process as a grievant, a witness, a support person, or as a Grievance Committee member.

Allegations of retaliation are addressed through the processes established with this Grievance Policy. Any person found to have retaliated against another person who in good faith files a grievance or who cooperates or otherwise participates in an investigation of a grievance is in violation of this Policy and is subject to appropriate and prompt administrative action by the University.

Alternative Dispute Resolution

Mediation and compromise should characterize the resolution of work-related problems, and employees are strongly encouraged to discuss any workplace concerns with their supervisors. Formal mediation services are available to assist supervisors and employees

in resolving their differences. Information on the formal mediation program is available from the Director of ER/AAO. Additionally, the Director of ER/AAO is available to assist employees and supervisors in resolving their differences.

Employees may participate in the grievance process and alternative dispute resolution processes simultaneously. The Director of ER/AAO may allow related deadline extensions as deemed appropriate.

Section IV. Roles and Responsibilities

- A. **Chancellor:** The University's Chief Executive Officer responsible for appointment of the SPA Grievance Committee and rendering the Final Agency Decision (FAD) for all internal grievances.
- B. **Director of Employee Relations and Affirmative Action Officer (Director of ER/AAO):** Responsible for the overall management and coordination of the SPA grievance process in accordance with the terms and conditions set forth in State policy. Also serves as the University liaison on all matters related to the SPA Mediation and Grievance Policy and Procedures, including administering the mediation program, ensuring confidentiality of the entire grievance process to the extent provided by law, coordinating the Grievance Support Person and SPA Grievance Committee member training program, serving as a source of information and advisement for employees and supervisors.
- C. **Mediator:** A certified neutral third party assigned by the Office of State Personnel (OSP) to guide the mediation process, facilitate communication and help both parties generate and evaluate possible outcomes.
- D. **Grievance Support Person:** A permanent University employee chosen by or provided to a grievant or a respondent to assist them during the grievance process as allowed under this Policy. No employee of DHR or the Office of Legal Affairs may serve as a support person. The respondent may use a support person only if the grievant elects to be assisted by a support person. A support person may be selected from DHR's list of trained support persons or may be any permanent University employee who is not an attorney. However, any proposed support person must complete training through DHR before he or she can serve in this role.
- E. **SPA Grievance Committee:** A body of 15 University employees appointed by the Chancellor to hear grievances and render recommendations to the Chancellor in each case. This Committee has responsibility for ensuring hearings are conducted fairly and orderly in accordance with established guidelines provided by DHR and OSP.

Section V. Covered Employees and Issues for Grievances

The following employee types and issues are covered by this policy:

Covered Persons	Grievable Issues
Career State employees or former career State employees (employees with 24 consecutive months of State service in a permanent SPA position)	<ul style="list-style-type: none"> • Dismissal, demotion, or suspension without pay without just cause • Denial of promotion due to failure to post • Failure to give promotional priority over outside applicants • Failure to give RIF reemployment consideration • Failure to give policy-making/confidential exempt status priority reemployment consideration • Performance pay disputes, which include contested overall ratings of Good, Below Good or Unsatisfactory (may not appeal beyond NC A&T State University's internal grievance process).
Any State employee or former State employee	<ul style="list-style-type: none"> • Denial of request to remove inaccurate or misleading information from personnel file • Policy-making designation • Discrimination in denial of promotion, transfer, or training; or retaliation in selection for demotion, RIF or termination • Denial of veteran's preference regarding initial employment and other employment actions
Any applicant for State employment	<ul style="list-style-type: none"> • Denial of veteran's preference in initial State employment • Denial of employment on the basis of illegal discrimination
Any State employee	<ul style="list-style-type: none"> • A false accusation about political threats or promises • Violation of the FLSA, Age Discrimination Act, FMLA or ADA (except for employees in exempt policy-making positions). • Denial of veteran's preference on all employment actions.

In addition to the employee types and issues defined by the State above, the following employee types and issues are also covered under this policy:

Temporary Employees

Temporary SPA employees are covered by this Policy only if alleging denial of reasonable accommodation of a disability and if alleging discrimination. Temporary employees are not covered by the Policy for any other issues.

Probationary Employees

Probationary SPA employees are covered by this Policy **only** if alleging:

- violation of FLSA, Age Discrimination Act, FMLA or ADA (except for employees in exempt policy-making positions)
- discrimination in employment on the basis of age, sex, sexual orientation (may not be appealed beyond the University's internal grievance process), race, color, creed, religion, national origin, handicapping condition, or political affiliation, genetic information; or
- unlawful workplace harassment based upon age, sex, race, color, creed, religion, national origin, or handicapping condition, genetic information; or
- denial of reasonable accommodation of a disability

Permanent Part-Time or Full-Time Employees

All full-time or part-time permanent SPA employees are eligible to use this Policy if alleging:

- discrimination in employment on the basis of age, sex, sexual orientation (*may not be appealed beyond the University's internal grievance process*), race, color, creed, religion, national origin, handicapping condition, or political affiliation, genetic information; or
- unlawful workplace harassment based upon age, sex, race, color, creed, religion, national origin, or handicapping condition, genetic information; or
- denial of reasonable accommodation of a disability; or
- an alleged violation or misapplication of Federal / State law or State / University policy that adversely affects the grievant's employment status; or
- an alleged violation or misapplication of applicable laws or regulations, including anti-discrimination laws, the Family Medical Leave Act, the Americans With Disabilities Act, the Age Discrimination in Employment Act, or the Fair Labor Standards Act

Special Provisions for Allegations of Discrimination

An employee alleging illegal discrimination has the right to bypass this internal grievance process and appeal directly to the Office of Administrative Hearings. In order to appeal to the Commission, the employee must file a petition for a contested case hearing with the Office of Administrative Hearings (OAH) within 30 calendar days after receipt of notice of the alleged discriminatory action. However, if the employee chooses to use the agency's internal grievance procedure, the employee must appeal the alleged discriminatory act within the time frames set forth in this grievance procedure.

The North Carolina OAH, Civil Rights Division is the North Carolina state equivalent of the federal EEOC. As a designated Fair Employment Practices Agency (FEPA), the North Carolina OAH, Civil Rights Division may coordinate operations with the EEOC under a work-share agreement. Furthermore, the North Carolina Office of Administrative Hearings, Civil Rights Division investigates state claims that are not covered by federal law or exceed the basic protections of federal law. Individuals complaining of employment discrimination in North Carolina should file a charge of discrimination with the EEOC and with the OAH, Civil Rights Division.

For instructions on how to file a Petition for a Contested Case Hearing with the OAH, please refer to the section of this policy entitled “**Step 3 – Appeal to the Office of Administrative Hearings.**”

Exception for Unlawful Workplace Harassment

An employee alleging unlawful workplace harassment which results in denial of employment, promotion, transfer, or training, or in selection for demotion, RIF, or termination, has the right to bypass any step involving discussions with or review by the alleged harasser. Additionally, because unlawful workplace harassment is a form of discrimination, the employee also has the right to bypass the agency grievance procedure and appeal directly to the Office of Administrative Hearings.

Issues Not Covered

Generally, matters not specifically set out in this policy as those which can be grieved cannot be grieved. Specific questions on what is and what is not considered grievable should be directed to the Director of ER/AAO.

Written warnings are not grievable under this policy, and employees must be advised of this at the time the written warning is issued. Should an employee wish to contest a written warning, they may write a letter of rebuttal stating their point of view and forward it to the Director of ER/AAO. The letter will be attached to the written warning and remain in the employee’s personnel file as long as the written warning remains active.

It is critical that management set clear, realistic, and measurable expectations for employees around job performance and personal conduct. This can be achieved through updated position descriptions and work plans, as well as regular meetings with employees to discuss goals and provide ongoing feedback. Before taking any formal disciplinary action, including written warnings, management must determine that just cause for disciplinary action exists. When just cause exists, written warnings may be given for either unsatisfactory job performance or unacceptable personal conduct, and they must be administered in accordance with State and University disciplinary policies. Additional information regarding the State’s policies on discipline, appeals and grievances can be found at <http://www.osp.state.nc.us/manuals/man7.html>.

Matters of inherent management rights are also not grievable 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.

Section VI. Filing a Grievance

In the spirit of cooperation and compromise, the University encourages employees to first attempt to resolve the matter with his or her supervisor or the employee most directly involved before filing a grievance.

Filing Deadline

To file a grievance under this policy, an employee must complete the University's SPA Grievance Form and submit it to DHR within **15 calendar days** from the date the employee becomes aware (or with reasonable effort should have known) of the matter giving rise to the grievance or after unsuccessfully attempting to resolve the grievance informally, whichever is longer. All grievances, appeals, or responses may be filed electronically, by mail or in person with the Director of ER/AAO. The University's SPA Employee Grievance Form can be found on the DHR website at:
<http://www.ncat.edu/hr/documents/EEO-ER/SPAEmployeeGrievanceForm.pdf>

Exception

An employee who alleges unlawful workplace harassment may file a written complaint with the Director of ER/AAO within 30 days of the last alleged action or conduct or may file directly to the OAH within 30 days of the last alleged action or conduct.

Grievance Statement

The written statement must include a description of what led to the grievance and must include information concerning attempts made by the employee or supervisor or other involved parties, if any, to negotiate, compromise, and resolve the grievance with the supervisor or involved parties. Additionally, the statement should describe the desired outcome or resolution being sought by the employee. At the employee's request, the Director of ER/AAO or any other person of the grievant's choosing may provide assistance in writing or otherwise preparing the grievance statement.

Review of Grievance Statement

The Director of ER/AAO has the responsibility for reviewing grievances initially to determine whether or not the grievance states a concern that can be remedied through the grievance process and if the grievance meets the timeframes and requirements set out above. If it is determined that the grievance is not properly filed, the Director of ER/AAO will communicate in writing the basis for this determination to the employee, including appeals rights.

Section VII. Step 1: Mediation

Mediation is an optional first step of the grievance process and is a non-adversarial method of resolving issues in which the parties involved are encouraged to reach a mutually acceptable resolution to the grievance. If the grievant chooses not to engage in mediation at Step 1, then the grievance automatically proceeds to Step 2.

Should the grievant decide to engage in mediation as the first step of the grievance process, a mediation session is scheduled through the Office of State Personnel and will be completed within 45 days of the date the initial grievance is filed unless both parties agree in writing to a longer period of time.

The parties permitted to attend the mediation session include the mediator(s) assigned by the Office of State Personnel, an agency representative with the authority to reach an agreement on behalf of the University, and the grievant. As referenced earlier in this policy, attorneys may not represent an employee at, participate in or be present at any mediation session. However, because a mediation that resolves an employee's grievance will result in a Mediation Agreement signed by both parties, either party may ask for a recess at any time during the mediation in order to obtain legal advice regarding the terms of the Mediation Agreement. Once finalized and signed, a copy of the Mediation Agreement will be provided to both parties, as well as the Office of State Personnel, and DHR, where the agreement will remain on file for a period of 3 years. Breaching the terms and conditions of the Mediation Agreement may subject the offending party to disciplinary action up to and including dismissal.

Should the mediation session result in an impasse, the Director of ER/AAO will notify the grievant in writing of his or her further appeal rights to Step 2 of the grievance process, in which the grievance will be reviewed by 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
- If the employee chose to engage in mediation at Step 1 of the grievance procedure, demonstrate a good faith effort to resolve the grievance by attending the scheduled mediation session

In order to appeal to Step 2 after an unsuccessful mediation session, the grievant must notify the Director of ER/AAO within **5 calendar days** of the session. If the grievant chooses not to engage in mediation at Step 1, then the grievance automatically proceeds to Step 2.

Grievance Support Person Role at Step 1

The role of the grievance support person is to provide assistance to the grievant or the respondent (if the grievant also has a support person). At Step 1 in the grievance process, a support person may assist the grievant or respondent in preparing for meetings, keeping track of documents, etc. The support person will in no way represent the employee or respondent. In assisting the grievant or respondent, a support person may not ask or answer any questions, make any presentation, or otherwise participate in any mediation session, meeting or discussion.

Section VIII. Step 2: Review by the SPA Grievance Committee

Review of Appeal Statement

The Director of ER/AAO will review an appeal to Step 2 to ensure it meets the requirements of this grievance procedure and will process the grievance accordingly. If the appeal is not properly filed, the grievant will be notified in writing of the basis for this determination.

SPA Grievance Committee Members

The SPA Grievance Committee will consist of fifteen (15) total members (14 members plus one Committee Chair) appointed by the Chancellor with input from the Executive Committee of the Staff Senate, the Chancellor's Executive Cabinet and DHR. All members of the SPA Grievance Committee, including the Chair, must be permanent employees of the University who are representative of the diversity of the employees of this campus. Each member will be appointed to serve a two-year term and may not serve more than two consecutive terms.

All activity related to hearing and resolving a grievance is considered work time for Committee members and the Committee Chair. No employee of DHR or the Office of Legal Affairs may serve as a Committee member or Chair.

The Director of ER/AAO will provide training for all panel members and the Chair, and will also provide any administrative support necessary to the Chair and the Committee for each hearing. The Director of ER/AAO will also provide advice on procedural matters to Committee members, grievants, and respondents upon request.

Appointment of the SPA Grievance Committee to Hear an Appeal

The SPA Grievance Committee, when convened for appeals, will minimally consist of five (5) members who are not from the same operational group as the grievant, and the Committee will not be made up entirely of supervisory or administrative personnel. The Committee should reflect the demographics of the University's employee population and the employee, particularly where illegal discrimination is alleged. Should the Chair be unavailable to serve for a hearing, the Chair will, in consultation with the Director of ER/AAO, assign one of the members of the Committee to serve as Chair for that particular hearing. The Director of ER/AAO may not serve in any capacity on the SPA Grievance Committee, except as an advisor on personnel policy, nor may the Director of ER/AAO participate in the deliberations of the Committee.

Objections to Proposed Grievance Committee Member(s)

The grievant and the respondent will be allowed the opportunity to eliminate up to (2) members of the SPA Grievance Committee when there is an issue of whether the members can render an unbiased decision. The grievant or respondent must notify the Director of ER/AAO within three (3) calendar days of receiving the names of the Committee members to serve at the hearing. Failure to do so within this timeframe will be a waiver of this opportunity. Additionally, if a Committee member feels they will not be able to render an unbiased decision due to potential conflict of interest, then they may recuse themselves from serving at the hearing. Once a Committee member is eliminated or recuses themselves, the Director of ER/AAO will immediately work to identify another member as a replacement on the Committee.

Pre-Hearing Conferences

The Chair and/or the Director of ER/AAO may hold pre-hearing conferences and, if so, may hold a pre-hearing conference separately with the grievant and the respondent or jointly with both parties to determine what information is needed and to offer advice to

the employee and to the supervisor or person in charge, on documents and witnesses that may be needed. If approved in advance by the Chair and/or the Director of ER/AAO, a support person for the grievant or respondent also may be present at the pre-hearing conference.

After the pre-hearing conference, the Chair and/or the Director of ER/AAO will prepare a brief statement of the issues which he or she will transmit along with any grievance documentation to the other panel members and the grievant and respondent.

Scheduling a Committee Hearing

The Director of ER/AAO or their designee will schedule the hearing and will inform the grievant and the respondent in writing of the hearing schedule and location.

The hearing will be scheduled and held within 30 calendar days of receipt of the Step 2 appeal from the grievant, unless medical conditions or other personal emergencies prevent a party, Committee member or key witness from attending. The Chair and/or the Director of ER/AAO will rule on any requests for delay. The Chair and/or the Director of ER/AAO retain the authority to either dismiss the grievance or proceed with the hearing in the absence of enough information to support a request for a delay. If either the grievant or the respondent fails to attend a scheduled hearing and fails to present adequate medical documentation or other valid reasons for the absence, the Committee will proceed to review the matter and issue its recommendation(s) on the grievance based on the information provided.

In the case of a grievance alleging discrimination or unlawful workplace harassment, the Committee hearing should be scheduled and held within 30 calendar days of the filing of the grievance whenever possible.

Support Person Role at Step 2

The role of the support person at Step 2 is to provide assistance to the grievant or the respondent (if the grievant also has a support person) in preparing for the hearing and in making a presentation to the SPA Grievance Committee. At Step 2, a support person may assist the grievant or respondent in preparing for hearings, keeping track of documents, etc., but may not speak for or represent the grievant or respondent.

SPA Committee Hearing Procedure

The conduct of the hearing is under the control of the Chair and/or the Director of ER/AAO. In the event a Committee member is unable to continue a hearing, the Chair will notify the Director of ER/AAO, who will select another replacement Committee member.

All hearing proceedings will be recorded for the use of the SPA Grievance Committee and the Chancellor. The services of a court reporter obtained through the Office of Legal Affairs or an audio recording device will be used for this purpose. One copy of the 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 and one copy will

be kept in the grievance file in the Division of Human Resources along with all documents filed prior to Step 2. A copy of this report will be made available to the grievant or the respondent upon request.

SPA Grievance Committee Deadlines

Following the Committee hearing, the Chair will transmit the Committee's report to the Chancellor within **10 calendar days** after the conclusion of the hearing. If meeting this deadline is not possible, the Chair will advise the employee and the respondent of the revised date.

Committee Report and Recommendations

The Committee report will consist of a summary of the testimony, findings of fact, and recommendations for the Final Agency Decision. This summary will also include reasons why the grievance was not resolved at the preceding steps in the process. The Committee's recommendations for resolving the grievance will be separated from those that provide suggestions or comments on the operations or management of the unit (if any), so as to specify clearly those sections of its decision that relate to the resolution of the specific grievance and those that relate to operations.

Final Agency Decision

The Chancellor will issue the University's final decision within 10 calendar days after receiving the Committee's recommendation and will communicate the decision, along with any applicable appeal rights, in writing to all parties concerned. If meeting this deadline is not possible, the Chancellor will advise the Director of ER/AAO of a revised date. The Director of ER/AAO will in turn advise the grievant and respondent of the revised date. Grievants who are eligible for an appeal to the state OAH will be so notified in writing as part of the Final Agency Decision.

Section IX. Step 3 – Appeal to the Office of Administrative Hearings after Completion of the Internal Grievance Process

If an employee is a career state employee who has completed the University's internal grievance procedure and finds the Final Agency Decision, or if the employee does not receive a Final Agency Decision within the required time period without an agreement to extend the time for response, the employee may appeal the following adverse employment actions to the Office of Administrative Hearings, according to State Personnel Commission rules:

- dismissal
- demotion
- suspension without pay
- a failure to post a vacancy or to accord promotional priority consideration over outside applicants
- a denial of veteran's preference in connection with RIF
- failure to give policy-making/confidential exempt status priority or RIF re-employment consideration, and/or

- failure to follow RIF procedures
- Inaccurate or Misleading Information in Personnel File

Any permanent employee or applicant who seeks removal of material from his/her personnel file because the employee or applicant considers it inaccurate or misleading must first complete the University grievance procedure before going to the OAH. An employee who wishes to access his or her personnel file may contact DHR at Suite 101 of 1020 East Wendover Ave., or by telephone at (336) 334-7862.

To appeal the Final Agency Decision, a Petition for a Contested Case Hearing must be filed with the OAH, in accordance with North Carolina General Statute 150B-23(a). In addition, a copy of the Petition and certificate of service must be mailed, delivered or faxed to the registered agent for the University named on the Petition as the Respondent. In order to file a Petition for a Contested Case Hearing with the OAH, the following steps must be taken:

1. Contact the OAH at (919) 431-3000 to request the form. You may request that the Petition form be mailed or faxed to you or you can obtain the form online at <http://www.ncoah.com>. The certificate of service is included on the bottom of the Petition form. The OAH will also include with the form a page titled, *Instructions for Form H-06 "Petition for a Contested Case" and "Certificate of Service."*
2. Once you receive the Petition and instruction sheet, read the instructions carefully and complete the top and bottom portions of the form.
3. The original plus one copy of the Petition and certificate of service must be received by the OAH within thirty (30) days after the Final Agency Decision is received. The physical and mailing addresses for the OAH can be found on the instruction sheet provided by the OAH. **If a petition is not filed within this timeframe, the right to appeal may be lost.**
4. A copy of the completed Petition and certificate of service must also be mailed, delivered, or faxed to the registered agent of the University named in the Petition as the Respondent. **Failure to do so may result in the dismissal of the appeal.** A copy of the request should also be sent to the Director of ER/AAO.
5. The OAH charges a filing fee for each petition filed. Please contact their office at (919) 431-3000 to obtain information regarding the amount of the filing fee and accepted forms of payment.

Procedure to File a Charge with the EEOC

State employees must file a charge within 300 calendar days from the date of the alleged act(s) of discrimination. The charge form may be completed by contacting the local Greensboro office at:

Greensboro EEOC Office
2303 West Meadowview Road, Suite 201
Greensboro, NC 27407
Phone: 1-800-669-4000
Fax: (336) 547-4032

Section X. Confidentiality / Timely Processing of Grievances

Confidentiality

Any employee or supervisor who has a work-related problem is encouraged to discuss the problem informally and confidentially with the Director of ER/AAO, who will serve as a source of information and advice for the employee and/or supervisor, and as a sounding board for ideas, rather than as an advocate for an employee or supervisor in a particular problem.

Employees and supervisors are encouraged to discuss matters as fully and freely as they wish. Any such discussion with the Director of ER/AAO will be confidential. To the extent permitted by law, no contact with the employee's supervisor or others about the issue or concern will occur without the approval of the individual employee or supervisor. Discussions between a grievant or respondent and his/her support person also are considered confidential. A support person may not discuss the issue or concern with others without the approval of the grievant or respondent.

Timely Processing of Grievances

The University's SPA Grievance Policy is designed to comply with the State's completion time frames:

- **For Mediation:** within 45 days of the date the initial grievance filing.
- **For Harassment:** within 60 calendar days of the initial grievance filing.
- **For Dismissal or Demotion:** within 90 calendar days of the initial grievance filing.
- **For All Other Cases:** within 120 calendar days of the initial grievance filing.

In every case, maximum time limits for filing of statements and decisions are stated in terms of calendar days. If a deadline falls on a weekend or scheduled holiday, the deadline will be the next scheduled workday of the University. All employees, supervisors, panel members, and DHR are responsible for minimizing delay and proceeding through the grievance process as quickly as possible, including using less than the maximum stated time limits whenever possible.

Deadline Extensions

Deadlines set by this policy may be extended if both parties agree to the extension in writing. Barring an extenuating circumstance, extensions should not exceed 30 calendar days. If a minor delay is required for the Chancellor in issuing the Final Agency Decision, the Director of ER/AAO will communicate the delay to the Grievant. Other procedural deadlines set by the Director of ER/AAO that are not expressly defined by this

policy may be extended at the Director of ER/AAO's discretion. The Director of ER/AAO's decision on these extensions is final and cannot be appealed.

Section XI. Grievance Files, Legal Representation and Time Available for Grievance Preparation

Grievance Files

The Director of ER/AAO will maintain all files and records for grievances filed under this policy for a period of at least three (3) years after the resolution of the grievance. Grievances filed and all related information will be analyzed on an annual basis by demographics, group, and nature of issues grieved to ensure University policies and procedures are administered fairly and consistently and follow best employee relations practices. The Director of ER/AAO will respond to all requests for information regarding grievances and appeals and will report this and other relevant information as requested to the appropriate authorities. Copies of documentation submitted as part of the grievance process that are relevant to the requestor are available by request to the grievant or the respondent by contacting the Director of ER/AAO in DHR at (336) 334-7862.

Legal Representation

In accordance with State regulations, a person serving as an attorney may not represent a grievant or respondent at, participate in, or be present at any mediation session, internal grievance meeting, process or hearing on behalf of the grievant or the respondent. This prohibition does not prevent either party from consulting with an attorney at their own expense. Regardless, all grievance-related correspondence will be addressed directly to the grievant.

Because a mediation that resolves an employee's grievance will result in a Mediation Agreement, either party may ask for a recess at any time during the mediation in order to obtain legal advice regarding the terms of the Mediation Agreement. The grievant is allowed to have legal representation, at their own expense, for any appeal to the OAH.

Time Off for Grievance Preparation

With advance supervisory approval, an employee or grievance support person will be granted up to a maximum of eight (8) hours of Administrative Leave during their regular work schedule to apply to their grievance (e.g. meetings with their support person or time spent preparing supporting documentation) under this Policy, without any loss of pay or leave time. Administrative Leave to be used for this purpose may be requested by completing the University's Request for Leave Form PD-109 and submitting it to their supervisor. Additionally, the employee or grievance support person may also request the leave through their department's established internal leave request process. The University's Request for Leave Form PD-109 can be found on the DHR website at: <http://www.ncat.edu/hr/documents/banner-hr/pd-109-leave-request.doc>.

Time spent participating in meetings that are required as part of the grievance process (e.g., formal mediation, the Step 2 Hearing, or other meetings requested by the Director of ER/AAO) is considered paid work time without charge to leave. Grievants who are not

currently employed by the University are not eligible for paid work time during the grievance process.

For other administrative hearings under the State Personnel Act, an employee may request necessary time away from work without any loss of pay or leave time. Advice concerning what “necessary” means is available from the Director of ER/AAO and will depend on particular circumstances.

Section XII. Covered Employees / Issues for External Grievances

General Information

By State law, a state employee or applicant must meet certain conditions in order to be eligible to file grievances with the OAH. For direct appeals for (see chart next page):

Appeal Type	Process
Discrimination	Within 30 calendar days from the date of alleged discriminatory action, any permanent employee may either file a grievance directly with the OAH or choose to use the University’s internal grievance procedure if the grievance alleges discrimination on the basis of age, sex, race, color, creed, political affiliation, religion, national origin, disability, genetic information in either (1) the denial of a promotion, a transfer, or training, or (2) the demotion, reduction in force, or termination of an employee in retaliation for the employee’s opposition to alleged discrimination on the above-listed bases. An applicant who alleges a denial of employment based on illegal discrimination also may file a grievance directly with the OAH.
Reasonable Accommodation of Disabilities	Within 30 calendar days from the date of alleged denial of reasonable accommodation of a disability, any permanent employee (including probationary) or temporary employee may file a grievance directly with the OAH or choose to use the University’s internal grievance procedure. Applicants for employment who allege denial of reasonable accommodation for a disability during the hiring process may file a grievance directly with the OAH within 30 calendar days of the alleged denial of accommodation.
Veteran’s Preference in Initial Employment	An applicant who grieves denial of veteran’s preference in initial University employment may appeal directly to the OAH.

Alleged Violation of Certain Federal Laws	An employee or former employee who alleges a violation of the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act, or the Fair Labor Standards Act (FLSA) may appeal directly to the OAH.
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Section XIII. Appeals After a Certain Time Period

Unlawful Workplace Harassment

An employee who alleges unlawful workplace harassment and who wants to preserve his or her rights to proceed to the OAH must file a written complaint with the University within 30 days of the last alleged action or conduct. The University has 60 calendar days in which to respond to an employee's written complaint of unlawful workplace harassment on the basis of age, sex, race, color, creed, religion, national origin, handicapping condition, or genetic information. After 60 calendar days has been reached, if the employee is not satisfied with the University's response, he/she may appeal to the OAH within 30 calendar days. If the University issues a written decision in fewer than 60 calendar days and waives additional time in writing, and the employee acknowledges in writing his/her receipt of the decision and the waiver, then the employee may appeal to the OAH within 30 calendar days.

Section XIV. Information About and Changes to the Mediation and Grievance Procedure

The Director of Employee Relations and Affirmative Action Officer (Director of ER/AAO) is responsible for providing information and answering questions about this Policy and all associated procedures. This policy will be posted in a permanent and conspicuous location in work areas and, along with grievance-related forms, is available on the DHR website at <http://ncat.edu/hr/policies/index.html>

New SPA employees shall be informed of the policy and related procedures during New Hire Orientation. In situations where formal disciplinary action is being administered, the supervisor is responsible for notifying the employee of any applicable appeal rights and providing the employee with a copy of this policy.

The Director of ER/AAO will submit this policy for review to the Office of State Personnel (OSP) on July 1 of each even-numbered year to ensure that it is in compliance with current State policies. Additionally, this Policy may be reviewed and revised on an as needed basis. Prior to submission to OSP, the Director of ER/AAO will solicit input from the Staff Senate and the SPA Grievance Committee. Should the policy change or be modified in any way, employees will be notified of any changes no later than 30 days prior to the effective date of the change through all available employee communication venues, including but not limited to University Administrator and employee listservs, the DHR Website, designated computer kiosks in select work areas and, when necessary for employee groups with limited online access, hard copy notification.

Section XV. Questions

If you have questions about this policy, please contact the Director of ER/AAO in DHR at (336) 334-7862. Additionally, information regarding the State's policies on discipline, appeals and grievances can be found at <http://www.osp.state.nc.us/manuals/man7.html>.

Section XVI. Definitions

- A. **“Agency”** is a department, University, office, board or commission.
- B. **“Alternative Dispute Resolution Process”** is an informal non-adversarial procedure for resolving a grievance without using the formal internal agency grievance procedure.
- C. **“Certified Mail, Return Receipt Requested”** is used when the sender of an article wishes to have proof of mailing and delivery, as the recipient is required to certify upon receipt by signature and date.
- D. **“Chair” or “Committee Chair”** is a member of the SPA Grievance Committee appointed by the Chancellor to lead the SPA Grievance Committee and to submit to the Chancellor on behalf of the Committee a written report and recommendation regarding a Step 2 Grievance.
- E. **“Deadline”** means 5 p.m. on the date on which a specific action is due as required in this Policy. Should a deadline fall on a weekend, University holiday, or any other day or time that the University's DHR is officially closed, the deadline shall mean 5 p.m. on the first University business day following the original deadline date.
- F. **“Director of Employee Relations and Affirmative Action Officer” or “Director of ER/AAO”** is the administrator in DHR designated to coordinate the SPA grievance process and to provide support and guidance to all participants in the process.
- G. **“Final Agency Decision” or “FAD”** is the written decision rendered by the Chancellor resulting from an internal grievance, which serves as the University's final decision on the grievance.
- H. **“Grievance”** means a formal complaint by a grievant regarding a decision or action covered by this Policy that has adversely affected the grievant's conditions of employment and for which the grievant is seeking one or more specifically-identified outcomes.
- I. **“Grievant”** is a covered employee as defined in this Policy who files a written grievance under the provisions of this Policy.
- J. **“Hearing Committee”** is a subset of at least five (5) SPA members of the SPA Grievance Committee who participate in hearing a specific Step 2 Grievance.
- K. **“Just Cause”** is the substantive basis for the discipline or dismissal of an employee.
- L. **“Performance Pay Dispute”** is failure to receive a performance increase / bonus when eligible and / or failure to receive the amount of the increase / bonus as provided under a State directive.

- M. **“Preponderance of the Evidence”** means a judgment based on the more convincing evidence and its probable truth or accuracy.
- N. **“Protected Status”** is the basis for an allegation of harassment or discrimination because of the grievant’s race, color, creed, national origin, religion, political affiliation, veterans’ status, disability, age, sex, genetic information, as established in University policy, (*sexual orientation, gender identity, and/or gender expression may not be appealed beyond the University’s internal grievance process*).
- O. **“Respondent”** is a permanent employee of North Carolina A&T State University who is a key decision-maker for management in a particular grievance. The Director of ER/AAO shall determine the appropriateness of any identified Respondent at each Step.
- P. **“Retaliation”** is an intentional action by management upon an employee (e.g., prohibited harassment or a loss of position, status, pay, promotional/developmental opportunities, or other equitable workplace amenities associated with the position) because the employee has engaged in some sort of protected conduct (specifically: alleged prohibited harassment or discrimination; alleged improper government activities (whistleblower protection); or participated in the grievance process).
- Q. **“SPA Grievance Committee”** is a volunteer group of permanent employees of North Carolina A&T State University appointed by the Chancellor to hear formal appeals filed by SPA employees.
- R. **“Support Person”** is a permanent University employee chosen by or provided to a grievant or a respondent to assist them during the grievance process as allowed under this Policy.
- S. **“Witness”** is a person who has direct and relevant knowledge or information of events pertaining to the matter of the grievance and who voluntarily participates in the grievance process during the Step 1 Review and/or Step 2 Hearing.

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