

**EPA NON-FACULTY GRIEVANCE POLICY
OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL**

1. PURPOSE

The University is committed to fair and equitable treatment for all employees. Therefore, the University has established this Grievance Policy for the fair, orderly, and prompt resolution of work-related disputes for EPA non-faculty employees. This policy provides for a formal process in order to address allegations that actions taken by management are impermissible under University policies. The strict legal standards of evidence do not apply in the use of this process, and the burden is on a Complainant to establish by a preponderance of the evidence that s/he is entitled to relief and that there is an appropriate and reasonable remedy available to address their Grievance.

2. DEFINITIONS

- a. **“Chair”** means the Chairperson of the EPA Non-Faculty Grievance Committee as appointed by the Chancellor.
- b. **“Panel Lead”** means the individual designated by the Chair to lead a Panel appointed to hear evidence and rule on a specific Grievance filing. The “Chair” and “Panel Lead” may be the same individual when permitted by this policy.
- c. **“Committee Panel”** or **“Panel”** means a subset of the membership of the EPA Non-Faculty Grievance Committee selected by the Chair for the purpose of hearing matters brought before the Committee.
- d. **“Complainant”** means a Covered Employee who files a written Grievance under the provisions of this policy.
- e. **“Complainant Reply Form”** means the standard University form that is used by a Complainant either to appeal certain grievance decisions, amend the initial Grievance, or reply to proposed outcomes.
- f. **“Covered Employee”** means a permanent employee of The University of North Carolina at Chapel Hill who is exempt from the State Personnel Act and is covered by the Employment Policies for EPA Non-Faculty Research Staff, Instructional Staff, and Tier II Senior Academic and Administrative Officers of The University of North Carolina at Chapel Hill. Professional Librarians who are considered members of the General Faculty as set forth in the University’s Trustee Policies and Regulations Governing Academic Tenure ("Faculty Code") shall seek relief through the grievance process provided for faculty and not the procedures set forth in this policy.
- g. **“Deadline”** means 5 p.m. on the date on which a specific timeline as set forth in this policy is reached. In instances where a deadline falls on a non-University business day, the deadline shall mean 5 p.m. on the first University business day following the original deadline date.
- h. **“Grievance(s)”** means a formal complaint against an administrator or other official of The University of North Carolina at Chapel Hill by a Covered Employee alleging that a decision or action has adversely affected his/her conditions of employment due to

impermissible reasons and for which the Covered Employee is seeking one or more specifically identified outcomes.

- i. **“EPA Non-Faculty Grievance Form”** means the standard University form that is used by a Complainant to document his/her Grievance of an allegedly impermissible employment decision as covered under this policy.
- j. **“Observer/Support Person”** or **“Support Person”** is a person who is not acting as an attorney and who is not a necessary witness for either party, and who may assist either the Complainant or the Respondent during hearings or meetings in taking notes, organizing documentation, providing advice during breaks, or at the option of the parties, assisting with presentation of opening and closing statements in a Step 2 Hearing. For grievances concerning discharge for cause, the Complainant may have an attorney in addition to or in place of a support person, and either or both of these parties may actively participate in all aspects of the Step 2 Hearing with or on behalf of the Complainant.
- k. **“Grievance Committee”** or **“Committee”** means a group of Covered Employees appointed by the Chancellor as members of the EPA Non-Faculty Grievance Committee for the purpose of hearing Grievances brought under this policy.
- l. **“Grievance Coordinator”** or **“Coordinator”** means the University administrator in the Office of Human Resources who is designated to coordinate the EPA Non-Faculty grievance process and to provide support to the Grievance Committee in carrying out its responsibilities.
- m. **“Preponderance of the Evidence”** means a judgment based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence. It does not rely on establishing facts beyond reasonable doubt, which is a higher standard of evidence than preponderance.
- n. **“Respondent”** is generally the next-level University official who exercises oversight of the individual whom a Complainant alleges made a decision or took an action that adversely affected his or her conditions of employment and that is alleged to have had an impermissible basis. If the decision was made or action taken by multiple University officials, the principal official who most directly serves as the next-level decision maker with respect to the actions or decisions in question will be designated by the University to be the Respondent. When specifically permitted by this policy or its associated procedures, the Respondent may be a designee who has been assigned to act on behalf of the next-level University official. The Grievance Coordinator shall determine the appropriate Respondent and confirm the appropriateness of any Respondent designees, when permitted.
- o. **“Respondent Reply Form”** means the standard University form that is used by a Respondent to respond to a Complainant’s Grievance, appeal certain grievance decisions, or respond to certain actions as covered under this policy.
- p. **“University Counsel”** means an attorney who is either a member of the Office of the University Counsel or an outside attorney designated by the Vice Chancellor and General Counsel to assist the University in relation to a Grievance. For Grievances concerning discharge for cause in which the Complainant is accompanied by an attorney, University

Counsel may actively participate in all aspects of the Step 2 Hearing with or on the behalf of the Respondent.

3. NON-RETALIATION

Covered Employees have the right to use or participate in this procedure free from threats or acts of retaliation, interference, coercion, restraint, discrimination, or reprisal. Retaliation against a 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 strictly prohibited. Any person who retaliates against another person for exercising rights in good faith under this policy will be subject to appropriate and prompt administrative action by the University.

4. APPLICABILITY

This policy applies only to Covered Employees as defined in Policy Section 2.f. It does not apply to EPA temporary employees, SPA employees, faculty members who do not have primary EPA non-faculty appointments, EPA Professional Librarians who are considered members of the General Faculty as set forth in the Faculty Code, Tier I Senior Academic and Administrative Officer employees, student employees, or post-doctoral fellows.

5. CONSIDERATION OF GRIEVANCES

- a. The University provides a formal multi-step process by which a Grievance shall be considered once it is submitted within the deadlines established in Section 7. of this policy:
 1. “Step 1” provides an opportunity for a next-level University official to investigate and reply in writing to a Grievance within ten (10) calendar days of being provided the Grievance by the Grievance Coordinator. In the event the dispute is not satisfied at this step to the Complainant’s satisfaction, the Complainant has the opportunity to pursue an appeal to Step 2 of the process within ten (10) calendar days of being provided the reply from the Respondent. Grievances in regard to discharge for cause or subsequent to the completion of a harassment or discrimination administrative review shall bypass the Step 1 procedure and proceed immediately to Step 2.
 2. “Step 2” provides an opportunity for the Complainant to have a hearing before a Grievance Committee Panel with the Respondent present and any relevant witnesses called. The Complainant and the Respondent both have the option to have a Support Person present. For Grievances on discharge for cause, the Complainant also has the option to be represented by a privately-engaged attorney at the Step 2 hearing if they declare such intention at the time they file their initial Grievance. Step 2 also provides an opportunity for the Respondent to formally reply to any recommendations made by the Committee favorable to the Complainant resulting from the hearing process. In such instance, if the Complainant is not satisfied with the Respondent’s reply to the Committee’s recommendations, the matter is automatically referred to Step 3 unless the Complainant chooses to otherwise withdraw the Grievance. In the event the Committee makes no recommendations favorable to the Complainant or otherwise does not find a basis for the Grievance, the Complainant has the opportunity if desired to pursue an appeal to Step 3 of the process within ten (10) calendar days of receiving the Committee’s report.

3. "Step 3" provides an opportunity for the Chancellor to review the matter(s) in dispute. No new evidence is introduced in Step 3, but rather, it is a consideration of all information already on record from Steps 1 and 2 of the process. If the Chancellor does not accept a recommendation from the Grievance Committee that was in favor of the Complainant and this step does not otherwise result in a resolution that satisfies the Complainant, the Complainant has the opportunity to pursue their appeal to Step 4 of the process within fourteen (14) calendar days of receipt of the Chancellor's decision. If there is no recommendation from the Committee in favor of the Complainant at Step 2, the process ends at Step 3 and the decision of the Chancellor is final.
 4. "Step 4" provides an opportunity for the Chair of the Board of Trustees to review the matter(s) in dispute in the sole event that the Chancellor does not accept a recommendation from the Grievance Committee that was in favor of the Complainant. No new evidence is introduced in Step 4, but rather, it is a consideration of all information already on record from Steps 1 through 3 of the process. The decision of the Board of Trustees is final.
- b. The University's Office of Human Resources shall publish and update as necessary specific procedures by which the steps of the grievance process are carried out by all of the parties. This office shall also designate a Grievance Coordinator who shall be available to explain and answer questions regarding the grievance process and procedures to the Complainant and other involved parties. The preparation of a Grievance and the presentation of such Grievance at any hearing is the specific responsibility of the Complainant.

6. SCOPE OF GRIEVANCE PROCESS

Grievances submitted at all steps of this process are subject to the standards set out below, which define matters which may or may not be reviewed under this policy. A University official may choose to offer a proposed resolution to a dispute without such offer conferring jurisdiction under this Policy where such jurisdiction is not otherwise present.

- a. *Matters the Committee can review shall be limited to claims in regard to:*
1. Contested discharge for cause.
 2. Alleged violations of the employee's rights guaranteed by the First Amendment to 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).
 3. Harassment or discrimination as set forth in the University's Policy on Prohibited Harassment and Discrimination.
 4. Discontinuation without appropriate notice or without temporary extension of appointment in the absence of such notice as provided for in the EPA non-faculty Employment Policies.

5. Any other decision or action by a University official that adversely and materially affected the Covered Employee's terms and conditions of employment and that is alleged to have violated a specific university rule, regulation, or policy or violated a state or federal law pertaining to the employment relationship between the Complainant and the University.
 6. Retaliation as defined in Policy Section 3.
- b. *Matters outside the scope of the Committee's review:*
1. Dissatisfaction by a Covered Employee with the general application of a University, School/College or Department policy, regulation, or practice or with a University official's decision-making on the grounds it is undesirable or inadvisable absent a specific action over which the Committee has jurisdiction under Policy Section 6.a., above.
 2. Discontinuation with notice, non-renewal, non-reappointment, or non-extension of an EPA non-faculty appointment, unless the Complainant sufficiently alleges that the decision was based on a factor reviewable under Policy Section 6.a., above. Absent such a demonstration by the employee, the Committee has no jurisdiction to review the general advisability or soundness of a University official's decisions.
 3. Terminations of employment because of the exercise of a funding contingency or financial exigency or program curtailment or elimination.
 4. Complaints, grievances or appeals that are exclusively subject to another University procedure or are exclusively within the scope of another University committee such as intellectual property determinations, research ethics, Campus Police trespass appeals, parking appeals or assignments, and health and safety concerns. The outcome of such matters may be presented to and considered by the Grievance Committee when they have a direct relevance to a matter which otherwise is within the scope of the Grievance process subject to the specific disclosure and confidentiality rules of the other University procedure or committee.

7. GRIEVANCE FILING DEADLINE; COORDINATION WITH OTHER DISPUTE RESOLUTION PROCESSES

- a. *Grievance Submission and Deadline:* A Covered Employee must submit a completed "EPA Non-Faculty Grievance Form" to the Grievance Coordinator no later than thirty (30) calendar days from the date of the specific action giving rise to the Grievance. If there are multiple related actions in dispute, the Grievance must be filed no later than thirty (30) calendar days following the last or most recent of such actions. Once a Grievance is filed, claims regarding subsequent actions by the Respondent that are substantially similar to those already in the original Grievance will not serve to further extend the submission deadline nor may they be the subject of additional Grievances. At the sole option of the Committee/Panel, such subsequent actions may be consolidated into the Grievance already filed by the Complainant.

- b. *Late Filing:* If the Grievance Coordinator determines a Grievance is not filed within the submission deadline, the Coordinator shall notify the Complainant of this fact and the Grievance shall not continue. The Chair has the discretion to extend the filing period if s/he determines that unusual and extenuating circumstances warrant such an extension, provided that the Complainant requests the extension before the end of the normal filing period, except as provided below. The Chair's decision on extensions of the filing period is final and cannot be appealed.
- c. *Accessing Other Means of Dispute Resolution:* Covered Employees are encouraged to seek informal resolution of employment-related disputes through the University's Structured Mediation Program administered by the Office of Human Resources and/or the University Ombuds Office prior to seeking formal resolution under this policy. In matters involving prohibited harassment and discrimination, employees are encouraged to seek resolution first through the administrative review process as provided under the University's Policy on Prohibited Harassment and Discrimination.
 - 1. *Office of Human Resources Structured Mediation:* For issues other than discharge for cause, a Covered Employee who requests a structured mediation through the Office of Human Resources within thirty (30) calendar days of a specific action or decision that gives rise to a Grievance is provided an extension of the normal Grievance submission deadline. This extension enables the employee to file a Grievance within ten (10) calendar days following completion of the mediation by the Office of Human Resources or the normal Grievance filing deadline established in Policy Section 7.a. above, whichever shall be later. If the employee does not make use of the structured mediation program within the timeframe noted, the normal Grievance submission deadline shall apply. Documentation from the Office of Human Resources confirming the mediation and establishing the relevancy of the mediation to a Grievance must be included with the Grievance filing in order to utilize the extended deadline.
 - 2. *Administrative Review Process for Prohibited Harassment and Discrimination:* A Covered Employee who initiates a complaint under the administrative review process of the University's Policy on Prohibited Harassment and Discrimination within thirty (30) calendar days of a specific action or decision that gives rise to the Grievance is provided an extension of the normal Grievance submission deadline. This extension enables the employee to file a Grievance within ten (10) calendar days following completion of the administrative review process. Should a Grievance not be brought within this deadline, the administrative review process remains available as provided under the Policy on Prohibited Harassment and Discrimination, but without further recourse of this Grievance procedure. A copy of the completed administrative review must be included with the Grievance filing in order to utilize the extended deadline. If the provisions of Policy Section 7.c.1. are exercised in combination with provisions of Policy Section 7.c.2., the single longest applicable extension in favor of the employee shall apply, but the deadline extensions shall not be combined in any manner.

- d. *Permitted Delay of Grievance Procedure Pending Other Related Matters or Inquiries:* The Chair of the Grievance Committee may, at his/her discretion and upon written notice to the Complainant and the Respondent, delay the consideration of any Grievance filed under this Policy pending resolution of another University investigation, review, inquiry or proceeding when the outcome is estimated to have a material effect on the outcome of the Grievance. In no case shall such a delay extend beyond a period of one hundred eighty (180) calendar days unless approved by the Chancellor or his/her designee.

8. GRIEVANCE COMMITTEE AND CONDUCT OF BUSINESS

- a. *Composition:* The Grievance Committee is composed of ten (10) EPA non-faculty employees of the University who are Covered Employees under this policy appointed by the Chancellor on the recommendation of the Vice Chancellor for Human Resources. The Chancellor will also designate two appointed members as the Chair and Vice Chair. The Vice Chair will carry out the duties of the Chair if the Chair shall be unavailable for any reason.
- b. *Terms of Appointment:* All members of the Committee, including the Chair and Vice Chair, will serve three (3) year staggered terms and such individuals may be reappointed for additional terms by the Chancellor as deemed appropriate. The members designated as the Chair and Vice Chair shall serve a two (2) year term in these specific capacities in addition to their regular committee membership and may be reappointed to these positions by the Chancellor as deemed appropriate.
- c. *Replacement of Members:* Any member who is unable to continue his/her term will be replaced for the remainder of his/her term by a new member appointed by the Chancellor. The Chancellor may also remove a member of the Committee if, in the Chancellor's judgment, the member is unable to carry out his/her responsibilities in accordance with this Policy or if the member is no longer a Covered Employee under this Policy.
- d. *Conduct of Business:* Any business of the Grievance Committee may be conducted by the Committee as a whole or as a three (3) member Panel at the discretion of the Chair. A majority of members of the Committee or of a Panel, as applicable, must be in attendance in order for business to be conducted or evidence to be heard and considered. The Chair will be responsible for the conduct of any Committee meetings. When a Panel is convened, a panel member will be designated by the Committee Chair as the Panel Lead and will be responsible for the conduct of all Panel meetings. If the Committee Chair is serving on the Panel, he/she may serve as the Panel Lead. In the event a member of a convened Panel shall become unavailable for any reason, the Committee Chair shall designate a new member to the Panel in replacement.
- e. *Conflicts of Interest:* Any Committee member who has a direct or potential conflict of interest in any Grievance shall disclose the conflict to the Chair. If the Chair has a conflict, s/he shall disclose it to the Grievance Coordinator, and the Vice Chair shall serve in his/her place for the Grievance in question. Conflicts of interest may include having a personal relationship with a party to the Grievance or having had a role in the decision-making or actions that related to the Grievance. In such instances, the Committee member will be removed from any participation in the matter for which the conflict exists.

9. GRIEVANCES FILED OR IN PROGRESS BY INDIVIDUALS SUBJECT TO TERMINATION OR SUSPENSION OR TO EXPIRATION OF A TERM APPOINTMENT

- a. Grievances that are filed or in progress by a Covered Employee who is pending discharge for cause or suspended with or without pay may be temporarily put on hold at the discretion of the Chancellor or his/her designee pending the decision to discharge or suspend. If a Covered Employee is discharged for cause and files a Grievance for discharge, than any other Grievances filed or in progress for matters unrelated to the discharge will be dismissed.
- b. Grievances that are filed or in progress by a Covered Employee whose University employment is subject to a fixed term appointment and whose appointment expires before resolution of the Grievance may be dismissed unless resolution of the Grievance in the Covered Employee's favor would otherwise result in an extension or renewal of his/her appointment. Likewise, Grievances will be dismissed in the same manner when brought by either an at-will or fixed-term employee who has been otherwise notified of discontinuation of his/employment under the Employment Policies unless resolution of the Grievance in the Covered Employee's favor would otherwise result in his/her continued employment.

10. SUPPLEMENTAL FORMS AND PROCEDURES TO THIS POLICY

The Office of Human Resources shall publish on its publicly accessible web site, and update as appropriate, the following documents that facilitate the Grievance process. These documents shall also be made available in printed form to any Covered Employee on request:

- a. Procedures, by which any Grievance shall be pursued and handled by all parties to such a Grievance.
- b. Grievance Form, which must be used by Complainants to initiate Grievances under this process.
- c. Respondent Reply Form, which must be used by Respondents during the process.
- d. Complainant Reply Form, which must be used by the Complainant to reply to decisions during this process.
- e. A graphical representation (flow chart) of the Grievance process to aid all parties in understanding relevant deadlines and the various steps provided by the process.

11. POLICY EFFECTIVE DATE

This policy is effective October 1, 2009.

12. REVISION HISTORY

Revision 1 effective Oct. 13, 2009: A technical correction was implemented to the policy to reflect EPA Professional Librarians as being subject to the grievance procedures for General Faculty and not the procedures set forth for other EPA non-faculty employees on advice from the Office of University Counsel. Sections 2.f. and 4. were revised accordingly.