

## Employee Appeals and Grievances

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### Policy

It is the policy of the State Personnel Commission that a grievance procedure shall exist to allow for the prompt and orderly resolution of problems and differences arising between the supervisor and the employee.

Each agency shall establish a grievance procedure which includes the minimum requirements as outlined in this policy. The agency may also elect to establish an alternative dispute resolution (ADR) procedure as an alternative to the grievance procedure.

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### Objectives

In establishing this policy, the State Personnel Commission seeks to achieve the following objectives:

- Assure employees can get their problems or complaints considered rapidly, fairly and without fear of reprisal,
- Take steps to ensure costs to process grievances are contained, and

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- Resolve workplace issues and problems efficiently and cost effectively.

### Definitions

Following are definitions used in this policy:

Term	Definition
<b>Agency</b>	A department, university, office, board or commission
<b>Alternative dispute resolution (ADR)</b>	An informal non-adversarial procedure for resolving a grievance without using the formal internal agency grievance procedure
<b>Alternative dispute resolution agreement</b>	The written agreement resulting from the successful resolution of a grievance through use of an ADR procedure
<b>Career State employee</b>	A State employee who meets the requirements specified in the State Personnel Act
<b>Contested case issues</b>	Issues which are defined in the State Personnel Act as being appealable to the State Personnel Commission
<b>Final agency decision (FAD)</b>	The written decision rendered by the agency head or designee resulting from an internal grievance or a failed ADR
<b>Neutral party</b>	An individual or body of persons who meet the requirements for conducting an ADR procedure under the rules of the State Personnel Commission

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### Covered Issues

Following are issues that may be grieved and who may grieve:

Covered Persons	Grievable Issues
Career State employees or former career State employees	<ul style="list-style-type: none"> <li>• Dismissal, demotion, or suspension without pay without just cause</li> <li>• Denial of promotion due to failure to post</li> <li>• Failure to give promotional priority over outside applicants</li> <li>• Failure to give RIF reemployment consideration</li> <li>• Failure to give policy-making/confidential exempt status priority reemployment consideration</li> <li>• Denial of veteran's preference in connection with RIF</li> </ul>
Any State employee or former State employee	<ul style="list-style-type: none"> <li>• Denial of request to remove inaccurate or misleading information from personnel file</li> <li>• Policy-making designation</li> <li>• Discrimination in denial of promotion, transfer, or training; or retaliation in selection for demotion, RIF or termination</li> </ul>
Any applicant for State employment	<ul style="list-style-type: none"> <li>• Denial of veteran's preference in initial State employment</li> <li>• Denial of employment on the basis of illegal discrimination</li> </ul>
Any State employee	<ul style="list-style-type: none"> <li>• A false accusation about political threats or promises</li> <li>• Violation of the FLSA, Age Discrimination Act, FMLA or ADA (except for employees in exempt policy-making positions).</li> </ul>

Advisory Note: The list of covered persons above is based on those defined by the State Personnel Act as having the right of appeal. No agency can prevent these *covered persons* from filing a grievance based on the issues listed above. However, agencies may also permit grievances to be filed that are based on issues other than those listed. These grievances would not be appealable to the State Personnel Commission. The agency grievance procedure must

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provide information on what other issues that are grievable, how to file a grievance for those issues and the timeframes which apply.

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### Discrimination Special Provisions

An employee alleging illegal discrimination has the right to bypass the internal agency grievance procedure and/or ADR procedure and appeal directly to the State Personnel Commission. In order to appeal to the Commission, the employee must file a petition for a contested case hearing with the Office of Administrative Hearings 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 by the agency grievance procedure.

**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, shall have the right to bypass any step involving discussions with or review by the alleged harasser.

Advisory Note: Because unlawful workplace harassment is a form of sex discrimination, the employee also has the right to bypass the agency grievance procedure and appeal directly to the State Personnel Commission.

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### Leave

To prepare for participation in the internal agency grievance procedure or an ADR procedure, an employee shall be allowed up to a maximum of 8 hours of leave time off from the employee's duties. This leave is granted without loss of the employee's pay, vacation or other time credits.

For participation in contested case hearings, or other administrative hearings, the employee may request necessary time away from work without use of vacation or other

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time credits. This request is subject to the supervisor or personnel officer's approval. The supervisor or personnel officer determines if the leave is necessary and reasonable. Documentation of the time required by the presiding official may be requested by the supervisor before leave approval is granted.

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### AGENCY GRIEVANCE PROCEDURE

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#### Minimum Requirements

The following are the minimum requirements for an agency grievance procedure to be approved by the State Personnel Commission:

1. The agency grievance procedure shall require an employee not alleging unlawful discrimination to first discuss the problem with the supervisor.
2. The agency grievance procedure shall state the issues which, in addition to those listed in the State Personnel Act, can be grieved at the agency level.
3. After the discussion with the immediate supervisor or other appropriate supervisor where the immediate supervisor has no authority over the action being grieved, the employee shall have the option at one or more of the subsequent steps, to present the grievance orally and to present to a reviewer or reviewers outside of the chain of command, e.g., hearing officer or employee grievance committee.
4. All decisions issued by the agency after the discussion with the immediate supervisor shall be in writing.
5. The employee shall have the right to challenge whether the person, or body of persons outside of the chain of command review level, can render an unbiased recommendation. The agency procedure shall establish a process for the challenge as well as the procedure for selection of a replacement reviewer, when necessary.
6. The agency grievance procedure shall outline the ways of notifying all existing employees and new hires of any change to the agency grievance procedure, no later than 30 days prior to the effective date of the change.
7. The effective date of the agency grievance procedure and any changes to it shall be stated in the procedure.

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8. The agency shall set up time limits for appeal and for the employee and the agency to respond to each other during the grievance procedure. The agency may not set any time limit for itself that is more than twice the time limit established for employees. An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the grievance unless the internal agency procedure provides for a longer period.
  9. Neither party to the grievance can be represented by attorneys or other persons during the internal agency grievance procedure or ADR procedure.
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### Settlements

If a grievance is settled and the settlement requires a personnel transaction to be processed, except where the only personnel action is the substitution of a resignation for a dismissal, the approval of the State Personnel Director is required.

AND

If the settlement involves an exception to any State Personnel Commission policy, the approval of the State Personnel Commission is also required.

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### Appeal of Final Agency Decision

The agency shall issue the final agency decision (FAD) in writing. If the employee has the right to appeal the decision, the employee shall be informed:

- that appeal to the State Personnel Commission (SPC) must be filed within 30 days after the employee receives the FAD or after the action which triggers the right of appeal directly to the SPC, and
- that the appeal to the SPC is made by filing a petition for a contested case hearing with the Office of Administrative Hearings. The address is:

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, North Carolina 27699-6714

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### Time Limits

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A final agency decision (FAD) must be issued within a reasonable period of time from the date the grievance is filed or the employee may, if eligible, appeal to the State Personnel Commission without receiving a FAD.

For cases involving discharge or demotion of a career State employee for disciplinary reasons, the reasonable period of time is 90 days from the filing of the grievance to the issuance of the FAD. For all issues except demotion or dismissal, a reasonable period of time for an employee to receive a FAD is 120 days from the time the grievance was filed. The employee and the agency may mutually agree to extend the time in either case.

Advisory Note: If the employee cannot obtain the FAD within a reasonable period of time, the employee's right of appeal shall be governed by G.S. 126-34.1 and G.S.150B-23(f).

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### Dismissal Letter – Public Information

If an employee does not appeal his dismissal through the agency grievance procedure within 15 days, the initial letter of dismissal setting forth the specific acts or omissions that are the basis of the dismissal shall become the agency's final agency decision. If an employee appeals his dismissal through the agency grievance procedure, then the initial dismissal letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure.

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### ALTERNATIVE DISPUTE RESOLUTION PROCEDURE (ADR)

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### Purpose of ADR Procedure

The purpose of the ADR procedure is to provide an informal, non-adversarial way of resolving grievances through the use of techniques such as mediation. It is hoped that the ADR process will require less time than the formal procedure.

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### Agency Option

Agencies have the option of adopting an alternative dispute resolution (ADR) procedure as a part of the agency grievance procedure.

The ADR procedure is an alternative to the grievance procedure for resolving contested case issues. However, the agency may also elect to allow use of the ADR procedure for non-contested case issues.

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### Agency/Employee Agreement

Any employee who has filed a grievance may request to use the ADR procedure if the agency has adopted one. Use of the ADR procedure requires the agreement of both the employee and the agency.

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### Minimum Requirements of the ADR Procedure

The following are the minimum requirements for approval of an agency ADR procedure by the State Personnel Commission:

1. The ADR procedure shall state the point or points at which the employee may request use of the ADR procedure for resolving an issue.
2. The agency shall use a qualified neutral party to conduct the ADR procedure. The neutral party shall meet certain qualifications to be eligible. The qualified neutral party shall:
  - Have no personal, financial, or business interest or relationship to anyone participating in the dispute or to the dispute itself, except that employment by the agency alone does not preclude service as a neutral party.



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- Have no prior knowledge of or have conducted no prior review of the evidence and/or facts concerning one of the participants or of the merits of the dispute itself that would impact the decision rendered by the neutral party;
  - Complete 40 hours of training in basic mediation or in another ADR medium; and
  - Complete the Office of State Personnel discipline/dismissal and grievance training.
3. The ADR procedure shall include the following provisions:
- Any employee may request to use the ADR procedure to resolve issues made grievable by the agency. Other parties to the dispute shall be notified in writing of the request,
  - The circumstances under which the ADR agreement may be binding or non-binding, and
  - That neither party can be represented by attorneys or other persons as a part of the ADR procedure.

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### How does an employee access the ADR procedure?

The employee has the right to request the use of the agency ADR procedure to resolve the dispute at any point in the process designated by the agency grievance procedure.

The minimum steps to enter the ADR procedure are as follows:

- The employee requests to use the ADR procedure;
- The employee and the designated agency representative sign the ADR consent form;
- The employee and the designated agency representative agree on a neutral party to conduct the ADR procedure; and
- If the employee and designated agency representative fail to agree on a neutral party to conduct the ADR procedure within 10 days after signing the ADR consent form, the ADR procedure will be considered abandoned and the dispute will return to the appropriate level of the formal grievance procedure.

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### What happens when resolution is reached through the ADR procedure?

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When a resolution is reached through the ADR procedure, the following shall occur:

- The employee and the designated agency representative sign the ADR resolution agreement.
- Each party receives a copy of the signed ADR resolution agreement within 5 working days after the end of the ADR procedure.
- The ADR resolution agreement shall be maintained in an agency file for not less than 3 years.

Advisory Note: ADR resolution agreements are considered public documents under G.S. 132-1.3.

- The ADR agreement does not transfer to another agency should the employee transfer.

Advisory Note: Any resolution achieved through the ADR procedure, to the extent that it involves a grievance or a contested case issue, is to be treated as a settlement/consent agreement and, as such, is subject to approval by the State Personnel Director and/or the State Personnel Commission as outlined in the above section entitled "Settlements."

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### What happens if the dispute is not resolved through the ADR?

If the ADR fails to resolve the issue, the selected neutral party prepares a summary of the issues and submits them to the agency head or designee for a final decision. Within 5 days of notification of failure, a FAD must be issued. This FAD is appealable as provided in G.S. 126-34.1.

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### What happens to the other documents used in the ADR procedure?

Except for the resolution agreement itself, all other documents generated during the conduct of the ADR procedure and any communications shared in connection with the ADR procedure are not admissible as evidence in any proceedings subsequent to the ADR procedure. Examples of these documents are:

- Request to use the ADR procedure
- Notification of failure of the ADR procedure

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- The elements or components of any discussions, sessions, hearings, investigations, or other activities generated in connection with the ADR procedure
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### RESPONSIBILITIES

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#### Agency Responsibilities

Each agency shall:

- Create and maintain a grievance policy which is in compliance with the Office of State Personnel policy and shall:
    - File the agency grievance procedure by January 1 of each even-numbered year for approval by the State Personnel Commission,
    - OR
    - File any modification(s) since the last approved procedure prior to the changes becoming effective,
    - OR
    - Submit a certified statement that no changes have been made to the agency grievance procedure since the last approved procedure.
  - Include in its procedure the effective date of the procedure and the effective date of any changes to the procedure.
  - Submit the procedure to the State Personnel Commission at least one month before the meeting at which approval is sought.
  - Continuously evaluate the agency grievance procedure's effectiveness in achieving stated goals.
  - Submit a grievance report semiannually or as requested by the Office of State Personnel. These reports are due the first business day of January and July. The report shall be submitted in the format specified by the Office of State Personnel.
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#### Office of State Personnel Responsibilities

The Office of State Personnel shall:

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- Review each proposed grievance procedure for conformity with applicable laws, rules, policies and contemporary employee relations practices.
  - Present the procedure to the State Personnel Commission for consideration and approval at its next available scheduled meeting.
  - Provide consultation and technical assistance to the agencies in developing materials for training and/or communicating with supervisors and employees, and assist, as requested, in training grievance committees.
  - Review grievance reports submitted by the agencies and forward to the State Personnel Director.
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