

## Grievance Policy

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## Grievance Policy (cont.)

### § 1. Policy

It is the policy of North Carolina State government that a grievance process exists to allow for prompt, fair and orderly resolution of grievances arising out of employment. Each agency shall adopt this Employee Grievance Policy as approved by the State Human Resources Commission. Agencies may supplement this policy by developing additional internal procedures beyond the informal discussion process for issues that may only be grieved at the agency level.

### § 2. Objectives

In establishing this Employee Grievance Policy, the State Human Resources Commission seeks to achieve the following objectives:

- Provide procedural consistency across the agencies of North Carolina State government;
- Ensure employees have access to grievance procedures to address grievable issues timely, fairly, and without fear of reprisal; and
- Resolve workplace issues efficiently and effectively.

### § 3. Definitions

The following are definitions of terms used in this policy:

Term	Definition
Agency	A State department, office, board, or commission.
Alleged Event or Action	The precipitating workplace event or action, or the receipt of notice of an event or action that is the basis for filing a grievance or complaint.
Applicant	A person who submits an application for initial hire, promotion or reemployment for a position in a State agency.
Career State Employee	A State employee who is in a permanent position with a permanent appointment and has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the North Carolina Human Resources Act for the immediate 12 preceding months.  Employees who are hired by a State agency, department or

**Grievance Policy (cont.)**

	<p>university in a sworn law enforcement position and who are required to complete a formal training program prior to assuming law enforcement duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months.</p>
Complainant	<p>An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates an informal complaint through the Equal Employment Opportunity (EEO) Informal Inquiry process.</p>
Contested Case Issue	<p>A grievable issue that may be appealed to the Office of Administrative Hearings.</p>
Equal Employment Opportunity Informal Inquiry	<p>An informal process for addressing allegations of unlawful discrimination, harassment and retaliation that may facilitate a resolution prior to the filing of a grievance.</p>
Final Agency Decision	<p>The final decision issued by the Agency Head that concludes the internal grievance process.</p>
Formal Internal Grievance Process	<p>The process available to an applicant, probationary State employee, former probationary State employee, career State employee or former career State employee to file a formal grievance based on issues that are defined as grievable by State statute.</p>
Formal Internal Grievance Process Timeframe	<p>The internal grievance process must be completed within 90 calendar days. Time spent in the Informal Discussion and the EEO Informal Inquiry is not included in the 90-calendar day timeframe.</p>
Grievable Issue	<p>A workplace event or action as defined by NC State statute as grievable that allows an eligible employee to challenge the alleged workplace event or action through established grievance procedures for resolution.</p>
Grievant	<p>An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates a grievance.</p>

**Grievance Policy (cont.)**

Hearing	A proceeding overseen by a Hearing Officer or Hearing Panel that allows a grievant to present information relevant to the nature of the grievance and the remedies sought.
Hearing Officer	An officer appointed by an agency to oversee the proceedings of a hearing and submit a proposed recommendation for a Final Agency Decision (FAD).
Hearing Panel	An agency appointed panel of no less than three members selected to conduct a hearing. The designated panel chair has the responsibility to oversee the proceedings of the hearing and submit a proposed recommendation for a Final Agency Decision.
Impasse	An impasse occurs when mediation does not result in an agreement.
Informal Discussion	An informal process for addressing a grievable issue that may facilitate a resolution prior to the filing of a formal grievance and the process for addressing issues for which one may not file a formal grievance.
Mediation	The process in which the grievant and the agency respondent use a neutral third party(s) to attempt to resolve a grievance in a mutually acceptable manner. Responsibility for resolving the grievance rests with the parties.
Mediation Agreement	The written agreement resulting from the successful resolution of a grievance reached in mediation. The Mediation Agreement is legally binding on both parties.
Mediator	A neutral third party(s) approved by the Office of State Human Resources (OSHR) whose role is to guide the mediation process, facilitate communication, and assist the parties to generate and evaluate possible outcomes for a successful resolution. A mediator does not act as a judge and does not render decisions.
Probationary State Employee	A State employee who is exempt from the provisions of the North Carolina Human Resources Act only because the employee has not been continuously employed by the State for the time period required to become a career State employee.

## Grievance Policy (cont.)

Respondent	A designated agency representative who has the authority to negotiate an agreement, as appropriate, on behalf of the agency to resolve a grievance.
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### § 4. Grievable Issues and Who May Grieve

The following tables list all issues that may be grieved by an applicant for State employment, a probationary State employee or former probationary State employee, and a career State employee or former career State employee.

The following issues may be grieved at the **agency level only** through the Informal discussion process outlined in Section 7 of this policy, however the employee shall not proceed to the formal internal grievance process. If applicable, employees may follow any supplemental agency procedure for issues that may be grieved at the agency level only.

Applicant for State employment (initial hire, promotion or reemployment)	<ol style="list-style-type: none"> <li>1. Denial of request to remove inaccurate and misleading information from applicant file (excludes the contents of a performance appraisal and written disciplinary action)</li> <li>2. Denial of National Guard preference as provided for by law.</li> </ol>
Probationary State employee or former probationary State employee	<ol style="list-style-type: none"> <li>1. Denial of request to remove inaccurate and misleading information from personnel file (excludes the contents of a performance appraisal and written disciplinary action)</li> <li>2. Denial of National Guard preference as provided for by law.</li> </ol>
Career State employee or former career State employee	<ol style="list-style-type: none"> <li>1. Denial of request to remove inaccurate and misleading information from personnel file (excludes the contents of a performance appraisal and written disciplinary action)</li> <li>2. Denial of National Guard preference as provided for by law.</li> <li>3. Overall performance rating of less than “meets expectations” or equivalent as defined in the Performance Management Policy</li> </ol>

The following issues must first be grieved through the formal internal grievance process. If the grievant is not satisfied with the Final Agency Decision (FAD), the grievant may appeal to the Office of Administrative Hearings.

**Grievance Policy (cont.)**

Who May File	Grievable Issues
<p>Applicant for State employment (initial hire, promotion or reemployment)</p>	<ul style="list-style-type: none"> <li>• Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law)</li> <li>• Denial of veteran’s preference as provided for by law</li> <li>• Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been discriminated against in his or her application for employment</li> <li>• Retaliation for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been retaliated against in his or her application for employment</li> </ul>

## Grievance Policy (cont.)

<p>Probationary State employee or former probationary State employee</p>	<ul style="list-style-type: none"> <li>• Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law)</li> <li>• Denial of veteran’s preference as provided for by law</li> <li>• Any retaliatory personnel action for reporting improper government activities (“whistle blower”)</li> <li>• Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment.</li> <li>• Retaliation against an employee for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment</li> </ul>
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## Grievance Policy (cont.)

<p>Exempt Managerial employee</p>	<ul style="list-style-type: none"> <li>• Denial of veteran’s preference as provided for by law</li> <li>• Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment.</li> <li>• Retaliation against an employee for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment</li> </ul>
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Advisory Note: Certain statutory exempt employees may be able to grieve denial of veteran’s preference as provided for by law. Refer to N.C.G.S. § 126-82(d) and § 126-83 for details.

In addition to the grievable issues listed above, a career State employee or former career State employee may also grieve the following issues.

<p>Career State employee or former career State employee</p>	<ul style="list-style-type: none"> <li>• Dismissal, demotion, or suspension without pay for disciplinary reasons without just cause</li> <li>• Involuntary non-disciplinary separation due to unavailability</li> <li>• Denial of reemployment or hiring due to denial of reduction in-force priority as required by law (N.C.G.S. § 126-7.1)</li> <li>• Denial of promotional opportunity due to failure to give priority consideration for promotion to a Career State employee as required by law (N.C.G.S. § 126-7.1)</li> </ul>
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## Grievance Policy (cont.)

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### § 5. Grievance Process for All Grievable Issues

- A. A grievance or complaint must be initiated in accordance with this policy within **15 calendar days** of the alleged event or action that is the basis of the grievance.
1. Any grievance or complaint that alleges unlawful discrimination, harassment or retaliation shall be addressed and completed through the Equal Employment Opportunity (EEO) Informal Inquiry process before being considered in the formal internal grievance process.
  2. All grievable issues, except for issues pertaining to discrimination, harassment, retaliation, disciplinary actions, and non-disciplinary separation due to unavailability must first be discussed with the immediate or other appropriate supervisor in the employee's chain of command or other appropriate personnel or agency or university that has jurisdiction regarding the alleged event or action that is the basis of the grievance prior to filing a formal internal grievance. The informal discussion shall not be part of grievances related to disciplinary actions as well as non-disciplinary separation due to unavailability.
- B. Disciplinary action and non-disciplinary separation due to unavailability grievances shall bypass the Informal Discussion and proceed directly to the formal internal grievance process. Disciplinary action grievances (i.e., dismissal, suspension without pay, demotion) that include both an allegation of unlawful discrimination, harassment, or retaliation and an allegation that the disciplinary action lacks just cause shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. Likewise, a grievance that involves both a separation due to unavailability and an allegation of unlawful discrimination, harassment or retaliation shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. After the EEO Informal Inquiry process is completed, the employee may pursue, under the procedures below, all remaining grievable issues that are eligible to be considered in the formal grievance process.
- C. Grievances that are untimely filed or do not contain a grievable issue as defined in Section 4 of this policy shall not proceed through the grievance process. Grievable issues that have not been substantiated or responded to by the agency shall still be permitted to proceed through the grievance process.
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## Grievance Policy (cont.)

### § 6. Unlawful Discrimination, Harassment, or Retaliation Grievance Procedures

#### § 6.1. Option 1: EEO Informal Inquiry for Unlawful Discrimination, Harassment or Retaliation<sup>1</sup>

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee (hereafter referred to as complainant) alleging unlawful discrimination, harassment or retaliation shall first file a complaint with the agency Equal Employment Opportunity (EEO) Officer or other designated personnel within **15 calendar days** of the alleged discriminatory or retaliatory act that is the basis of the complaint.

If the complainant alleges facts that would constitute unlawful discrimination, harassment, or retaliation as prohibited by law, the complaint will be investigated as a part of the agency's EEO Informal Inquiry. The investigation will determine if the facts related to the allegations support a finding of reasonable cause, or no reasonable cause, to believe unlawful discrimination, harassment, or retaliation occurred.

The EEO Informal Inquiry should be completed in a prompt timeframe **not to exceed 90 calendar days**. The agency has **75 calendar days** from receipt of the complaint to investigate and respond to the complainant, unless the complainant and the employer mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension shall not exceed **15 calendar days**.

If there is reasonable cause to believe that unlawful discrimination, harassment, or retaliation occurred, management shall attempt to take appropriate action to resolve the matter. The agency shall inform the Complainant in writing regarding the conclusions of the EEO Informal Inquiry, including applicable appeal rights. If the complaint is successfully resolved, the complainant will sign a letter of agreement with the agency detailing the terms of the resolution. The agency shall ensure that the terms of the agreement under the control of the agency are implemented. If the complaint is not successfully resolved, the Complainant has 15 calendar days from receipt of the written conclusions of the EEO Informal Inquiry to file a formal grievance, which will commence with Step 1 mediation. If the complainant has not been sent a response from the agency after 90 calendar days from the

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<sup>1</sup> Any employee, regardless of whether they are exempt from the SHRA, may utilize the EEO Informal inquiry process to raise a complaint related to discrimination, retaliation, or harassment. This does not allow employees exempt from the provisions of N.C.G.S. § 126-34.01 and § 126-34.02 to proceed to the formal internal grievance process.

## Grievance Policy (cont.)

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agency's receipt of the EEO Informal Inquiry, the complainant may continue the process by filing a formal grievance.<sup>2</sup>

At any point in the grievance process, the complainant/grievant has the right to bypass discussions with or review by the alleged offender. Time spent in the EEO Informal Inquiry is not a part of the formal internal grievance process.

### § 6.2. Option 2 - External Filing of a Discrimination Charge

The complainant alleging unlawful discrimination, harassment or retaliation has the right, at any time, to bypass or discontinue the EEO Informal Inquiry or the formal internal grievance process and file a charge directly with the Equal Employment Opportunity Commission (EEOC). The complainant may not, however, file a contested case with the Office of Administrative Hearings if the internal process has not been completed. Information about filing an EEOC charge and deadlines for filing the charge can be found at: <https://www.eeoc.gov/filing-charge-discrimination> and the EEOC Public Portal at <https://publicportal.eeoc.gov> or by calling the EEOC regional offices located in Raleigh, Greensboro and Charlotte at 1-800-669-4000.

Information about filing through the Civil Rights Division of the Office of Administrative Hearings can be found at: <https://www.oah.nc.gov/civil-rights-division> or by calling 984-236-1850.

### § 6.3. Option 3 - Simultaneous Internal and External Filing of a Discrimination Charge

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee may file simultaneously with the Equal Employment Opportunity Commission at any point in either the EEO Informal Inquiry or the formal internal grievance process.

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## § 7. Informal Discussion

A request for an Informal Discussion must occur within **15 calendar days** of the alleged event or action that is the basis of the grievance. Prior to filing a grievance about

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<sup>2</sup> The 15 calendar day period in which a complainant must file a formal grievance to continue the process does not begin until a written response is received by the complainant.

## Grievance Policy (cont.)

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any issue, excluding unlawful discrimination, harassment or retaliation, disciplinary actions, and non-disciplinary separation due to unavailability, the employee shall first discuss the grievable issue with the immediate, or other appropriate supervisor in the employee's chain of command, or other appropriate personnel or agency that has jurisdiction regarding the alleged event or action that is the basis of the grievance.

The employee must clearly declare to the supervisor or other appropriate personnel that the Informal Discussion request is regarding an alleged event or action that is the basis of a potential grievance. The supervisor or other appropriate personnel shall confirm the intention of the requested Informal Discussion with the employee before beginning discussions.

This informal process shall be completed within **15-calendar days** after the request for an Informal Discussion is made by the employee. However, if progress is being made toward a successful resolution to the dispute or if there are occurrences that are unavoidable or beyond the control of either party (e.g. illness), both parties may agree to an extension. This extension must be agreed to in writing and approved by HR.

The supervisor or other appropriate personnel shall notify Human Resources when an employee requests an Informal Discussion. The supervisor or other appropriate personnel is responsible for attempting to resolve the grievable issue with the employee. Human Resources shall serve as a content and procedural resource during these discussions and will work with both parties to strive for a timely resolution.

The outcome of the Informal Discussion shall be communicated to the employee and Human Resources by the supervisor or other appropriate personnel in writing. If the issue is not successfully resolved or if no written response is provided within the **15 calendar day** timeframe, the employee may proceed by filing a formal grievance. An employee has **15 days** from the date the informal discussion process concludes (either by receiving a written response or by the time frame, including agreed upon extended timeframes, ending with no written response) to file a formal internal grievance. Time spent in the Informal Discussion is not a part of the formal internal grievance process.

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## Grievance Policy (cont.)

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### § 8. **Grievance Process for Disciplinary Actions**

Disciplinary action grievances, to include dismissal, demotion, suspension without pay, as well as non-disciplinary separation due to unavailability shall bypass the Informal Discussion and proceed directly to the formal internal grievance process.

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### § 9. **Formal Internal Grievance Process**

The employee must begin the formal internal grievance process by filing a written grievance request to the Human Resources Director or designee within the agency in accordance with the Employee Grievance Policy. The employee must complete any of the required informal processes within the stated time frames. The employee must file a formal grievance within 15 calendar days of the alleged event or action that is the basis of the grievance or within 15 days of receiving a response at the conclusion of any informal process(es). Mediation is Step 1 in the formal internal grievance process.

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### § 10. **Step 1 - Mediation**

Mediation is the process in which a grievant and an agency respondent use a neutral third party(ies) to attempt to resolve a grievance. Mediation provides the grievant and the agency respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution.

#### § 10.1. **Mediation Process**

OSHR maintains a process to assign mediators to grievances upon agency request. The agency shall submit the request for mediation within **3 business days** of receipt of the grievance. The mediation process shall be concluded **within 35 calendar days** from the filing of the grievance unless the grievant and the agency mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party.

Any extension of Step 1 will not extend the **90-calendar day** timeline.

#### § 10.2. **Location and Time Allocation**

Mediation shall be conducted in a location identified by the agency. The manner in which the mediation is conducted, either virtually, telephonic or in-person, shall be approved by the OSHR Mediation Coordinator or designee. The mediation shall be

## Grievance Policy (cont.)

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scheduled for an amount of time determined by the mediator(s) to be sufficient. Mediation may be recessed by the mediator(s) and reconvened at a later time.

### § 10.3. **Limited to Office of State Human Resources-Approved Mediators**

Only OSHR-approved mediators will mediate grievances for State agencies. OSHR will maintain a pool of qualified mediators to facilitate mediations. Mediators will not be selected from the agency requesting the mediation.

### § 10.4. **Mediation Attendees**

The following individuals may attend a mediation:

- The grievant;
- The designated agency representative serving as the respondent who has the authority to negotiate an agreement, as appropriate, on behalf of the agency; and
- The OSHR-appointed mediator(s).
- The OSHR Statewide Mediation Coordinator or designees may attend mediations as observers.

Emergency substitution of a mediator must be approved by the OSHR Mediation Coordinator or designee. Attorneys and other advisors may not attend the mediation. Either the grievant or respondent may ask for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.<sup>3</sup>

### § 10.5. **Post Mediation**

When an agreement is reached, the following shall occur:

- The grievant and the respondent will sign a Mediation Agreement that states the terms of agreement and is a legally binding document.

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<sup>3</sup> Rules of Mediation for Matters Before the Clerk of Superior Court, Rule 4: (d)

## Grievance Policy (cont.)

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- The original signed Mediation Agreement is provided to the agency Human Resources Office. A copy of the signed Mediation Agreement is provided to the grievant, respondent and the OSHR Mediation Coordinator.
- The agency shall ensure that terms of the mediation agreement under the control of the agency are implemented.

When an agreement is not reached (impasse), the following shall occur:

- The grievant and the respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
- The original signed Notice of Impasse is provided to the agency Human Resources Office. A copy of the signed Notice of Impasse is provided to the grievant, the respondent and the OSHR Mediation Coordinator.
- Before signing the impasse form, the agency shall inform the grievant of the Step 2 grievance process, the corresponding Step 2 grievance form and that the filing must be received by the agency within 5 calendar days of the date on which mediation resulted in an impasse.

### § 10.6. **Limitations on a Mediation Agreement**

The Mediation Agreement shall serve as a written record and shall:

- Not contain any provision(s) contrary to State Human Resources Commission policies, administrative rules, and applicable State and Federal law;
- Not contain any provision(s) that exceeds the scope of the parties' authority; and
- Not be transferable to another State agency.

When mediation resolves a grievance but it is determined upon agency or OSHR review that one or more provisions of the Mediation Agreement do not comply with the State Human Resources Commission policies or rules or applicable State or Federal laws, the mediation shall be reconvened to resolve the specific issue(s). If the parties are unable to resolve the noncompliance issue(s), the mediation will impasse and the grievant may proceed to Step 2 of the internal grievance process. This will not extend the **90 calendar day** timeframe of the formal internal grievance process.

Should additional information or clarification be needed to effectuate the terms of the agreement, communication with all parties may occur remotely. If the mediator who

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facilitated the mediation is not available, the OSHR Mediation Coordinator or designee will have the authority to stand in place of the mediator in these communications.

### § 10.7. **Confidentiality of Documents Produced in Mediation**

All documents generated during mediation and any communications shared in connection with mediation are confidential to the extent provided by law.

### § 10.8. **Mediation Agreement Approval**

The approval of the Director of the Office of State Human Resources or designee is required for mediation agreements that need a personnel transaction to be processed, except where the only personnel action is the substitution of resignation for dismissal. If a mediation agreement involves an exception to State Human Resources Commission policy, the approval of the Director of the Office State Human Resources or designee is required.

Mediation agreements requiring OSHR approval shall follow OSHR Settlement Guidelines.

### § 10.9. **Mediation Responsibilities**

#### § 10.9(a) **Grievant Responsibilities**

The grievant is responsible for:

- Attending the mediation as scheduled by the agency;
- Notifying and receiving approval from Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the grievant prevent attendance at the mediation;
- Preparing for the mediation by being able to provide clear and concise information regarding the issues surrounding the grievance and the remedies sought; and
- Making a good faith effort to resolve the grievance.

A grievant who has an unexcused failure to attend mediation as scheduled forfeits the right to proceed with the internal grievance process.



## Grievance Policy (cont.)

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### § 10.9(b) Respondent Responsibilities

The respondent is responsible for:

- Attending the mediation as scheduled by the agency;
- Notifying Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the respondent prevent attendance at the mediation;
- Preparing for the mediation by becoming knowledgeable regarding the issues surrounding the grievance and remedies sought;
- Consulting with management, Human Resources and/or legal counsel regarding possible areas of negotiation for grievance resolution; and
- Making a good a faith effort to resolve the grievance.

If a respondent has an unexcused failure to attend mediation as scheduled, the grievant may either proceed to Step 2 of the Formal Grievance Process or reschedule the mediation if time allows as determined by the OSHR Mediation Coordinator. If the mediation is not rescheduled, the agency must provide notice of appeal rights to the grievant and the Step 2 Grievance Form must be filed within 5 calendar days of the original date of mediation. This will not extend the 90 calendar day timeframe of the formal grievance process.

### § 10.9(c) Agency Human Resources Responsibilities

The agency is responsible for:

- Administering the mediation program within the agency;
- Appointing an agency mediation coordinator, and other personnel as needed, to manage and schedule mediations;
- Ensuring that the grievant receives appropriate information about the mediation process;
- Designating a qualified and informed agency representative to serve as the respondent for each mediation who will have the authority to negotiate an agreement, as appropriate, on behalf of the agency that resolves the grievance;
- Ensuring that the selected respondent is adequately prepared for the mediation and has had discussions with management and Human Resources to identify possible areas of negotiation for grievance resolution;

## Grievance Policy (cont.)

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- Ensuring appropriate personnel (management, Human Resources and/or legal counsel) are available to respond to any issues that may arise during the course of the mediation;
- Designating appropriate personnel to be available to review the terms of the draft agreement to ensure it is complete, complies with State Human Resources Commission policies or rules or applicable State or Federal laws, and contains the necessary information for implementation;
- Ensuring confidentiality of the mediation to the extent provided by law;
- Identifying suitable locations for mediations;
- Using only OSHR-approved mediator(s) for each mediation session;
- Reimbursing mediators for travel at state-approved rates;
- Providing nominees for consideration who meet the qualifications set forth by OSHR to be trained as OSHR mediators; and
- Working with agency management to obtain funding for the initial and ongoing training of agency nominated mediators.

### § 10.9(d) **Office of State Human Resources Responsibilities**

The Office of State Human Resources is responsible for:

- Developing and maintaining mediation procedures and forms;
- Establishing mediator eligibility and training requirements;
- Maintaining a pool of qualified mediators;
- Providing employment mediation trainings;
- Maintaining a process for assigning mediators upon agency request;
- Ensuring that mediators adhere to the OSHR Mediator Code of Conduct; and
- Conducting ongoing studies/analyses to evaluate program effectiveness.

## § 11. **Step 2 – Hearing**

### § 11.1. **Hearing Officer or Hearing Panel Process**

If mediation does not result in a resolution at Step 1, the grievant is entitled to proceed to Step 2 of the internal grievance process. The Step 2 grievance form must be received by the agency within **5 calendar days** of the date on which mediation resulted in an impasse. Human Resources will notify the grievant of the opportunity to present

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the grievance to a reviewer(s) outside of the grievant's chain of command, e.g., Hearing Officer or Hearing Panel. The hearing process shall be concluded within **35 calendar days** of filing Step 2 of the grievance process unless the grievant and the agency mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension of Step 2 will not extend the **90 calendar day** timeline.

### § 11.2. **Right to Challenge Appointed Hearing Officer or Hearing Panel Members**

The grievant shall have one opportunity to challenge the appointed Hearing Officer or up to 2 members of the Hearing Panel if the grievant believes they cannot render an unbiased recommendation due to a real or perceived conflict of interest. The grievant must submit the basis for the challenge in writing pursuant to their agencies' established process, within **5 calendar days** of the date the grievant receives notification of the name(s) of the Hearing Officer or Hearing Panel. Management will review the challenge and replace the Hearing Officer or Hearing Panel members as appropriate.

### § 11.3. **Hearing Attendees**

- The grievant who initiated the grievance;
- The Hearing Officer or Hearing Panel members;
- Witnesses giving testimony, as approved by the Hearing Officer or Hearing Panel Chair; and
- Appropriate agency and HR representatives.

Attorneys and other advisors may not attend the hearing. Either party may ask the Hearing Officer or the Hearing Panel Chair for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the hearing by any participant, except as approved by management in accordance with agency process. .

### § 11.4. **Grievance Presented to Hearing Officer or Hearing Panel**

The Hearing Officer or Hearing Panel Chair will preside over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which

## Grievance Policy (cont.)

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the grievance is based and the remedies sought. Each party shall be given a fair opportunity to present evidence on the issues to be heard and to question witnesses.

### § 11.5. **Proposed Recommendation for Final Agency Decision**

The Hearing Officer or Hearing Panel Chair will draft a proposed recommendation, including an explanation and justification to support the recommendation, for a Final Agency Decision. The proposed recommendation will be submitted to the Agency Head or designee. The Agency Head or designee shall submit their proposed recommendation for a Final Agency Decision to the Director of the Office of State Human Resources (Director) or designee within the **35 calendar day** timeframe for the Step 2 hearing process. The Agency Head may provide a memorandum with comments on the proposed recommendation to the Director or designee.

### § 11.6. **Office of State Human Resources Review**

The Director of the Office of State Human Resources or designee shall review the proposed recommendation for a Final Agency Decision based on established criteria. The Director or designee may approve as written or may provide recommendations for modification or reversal within **10 calendar days** of the receipt of the proposed recommendation. The proposed Final Agency Decision shall not become final or be issued until reviewed and approved by the Office of State Human Resources.

### § 11.7. **Final Agency Decision**

The agency shall issue the Final Agency Decision to the grievant within **5 calendar days** of receipt of the Office of State Human Resources review of the proposed recommendation. The Final Agency Decision shall be issued in writing **within 90 calendar days** of the initial filing of the grievance.<sup>4</sup> The Final Agency Decision shall include information about applicable appeal rights.

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<sup>4</sup>The requirement to issue the Final Agency Decision (FAD) within 90 calendar days of the filing date is met when the agency transmits the FAD to the grievant within 90 calendar days. The grievant does not have to receive the FAD within 90 days to meet the requirement.

## Grievance Policy (cont.)

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### § 11.8. **Settlement Approval**

The approval of the Director of the Office of State Human Resources or designee is required for settlements that need a personnel transaction to be processed, except where the only personnel action is the substitution of a resignation for a dismissal. If a settlement involves an exception to the State Human Resources Commission policy, the approval of the Director of the Office of State Human Resources or designee is required.

### § 11.9. **Hearing Responsibilities**

#### § 11.9(a) **Grievant Responsibilities**

The grievant is responsible for:

- Attending the hearing as scheduled by the agency;
- Notifying and receiving approval from Human Resources, in advance of the scheduled hearing, if occurrences that are unavoidable or beyond the control of the grievant prevent attendance at the hearing; and
- Preparing for the hearing by being able to present clear and concise information regarding the issues surrounding the grievance and remedies sought.

A grievant who has an unexcused failure to attend a hearing as scheduled forfeits the right to proceed with the internal grievance process.

#### § 11.9(b) **Hearing Officer/Hearing Panel Chair Responsibilities**

The Hearing Officer/Hearing Chair is responsible for:

- Calling the hearing to order and establishing the process for the proceedings;
- Maintaining order and decorum;
- Presiding over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which the grievance is based, and the remedies sought
- Ensuring that all parties are allotted adequate time to present evidence and question witnesses; and

## Grievance Policy (cont.)

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- Submitting a proposed recommendation for a Final Agency Decision on all grievable matters raised by the grievant.<sup>5</sup>

### § 11.9(c) Agency Human Resources Responsibilities

The agency is responsible for:

- Establishing the use of either a Hearing Officer or a Hearing Panel;
- Administering the hearing process within the agency;
- Ensuring that all parties receive appropriate information about the hearing process;
- Establishing a process for the grievant to challenge the appointed Hearing Officer or Hearing Panel members;
- Consulting with OSHR on the proposed Final Agency Decision recommendation; and
- Issuing a Final Agency Decision.

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## § 12. Appeal to the Office Of Administrative Hearings

### § 12.1. Agency Requirements to Notify Grievant of Appeal Rights

The Final Agency Decision shall inform the grievant in writing of any applicable appeal rights through the Office of Administrative Hearings for contested case issues.

The grievant must be informed of the following:

- The appeal is made by filing a “Petition for a Contested Case” hearing with the Office of Administrative Hearings;
- The appeal to the Office of Administrative Hearings must be filed within 30 calendar days after the grievant receives the FAD; and
- A fee is charged for filing a Petition for a Contested Case Hearing.

### § 12.2. Grievant Access to the Office of Administrative Hearings

If the grievant has completed the internal grievance process and is not satisfied with the Final Agency Decision, the grievant may file a Petition for a Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be

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<sup>5</sup> A hearing officer may not decline to hear a grievable issue raised by the grievant solely because the agency did not complete the informal inquiry process within the deadline stated in this Policy.

## Grievance Policy (cont.)

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appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.

A Petition for Contested Case Hearing must be filed within 30 calendar days after the grievant receives the FAD. The grievant may file the appeal at:

Office of Administrative Hearings  
1711 New Hope Church Road (mailing and physical address)  
Raleigh, NC 27609  
984-236-1850

Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: <http://www.ncoah.com/hearings/> or by calling 984-236-1850.

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### § 13. Responsibilities for the Employee Grievance Policy

#### § 13.1. Agency Human Resources Responsibilities

Each agency shall:

- Adhere to the Employee Grievance Policy as adopted by the State Human Resources Commission;
- Develop and communicate internal grievance procedures as needed;
- Provide current employees and new hires with access to the Employee Grievance Policy;
- Notify all employees of any change to the agency grievance process no later than 30 calendar days prior to the effective date of the change;
- Enter all grievance data in the State's HR/Payroll System as events occur; and
- Provide employee grievance data to OSHR as requested.

#### § 13.2. Office of State Human Resources Responsibilities

The Office of State Human Resources shall:

- Present the Employee Grievance Policy to the State Human Resources Commission for approval at any time modifications are made;
- Notify agencies of changes to this policy once approved by the State Human Resources Commission.
- Provide consultation and technical assistance to agencies as needed; and

## Grievance Policy (cont.)

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- Conduct ongoing studies/analyses to evaluate policy effectiveness.
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### § 14. Written Responses

When required to provide a written response, it is advisable for agency human resources staff to confer with agency legal counsel regarding customized, appropriate content of the various responses to the employee.

Agencies should confer with their legal counsel on when a letter would be considered received by the employee.

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### § 15. Savings Clause

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

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### § 16. Sources of Authority

- N.C.G.S. § 126-4(9) authorizes the State Human Resources Commission to establish policies and rules on “[t]he investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.”
- N.C.G.S. § 126-34.01 states that employees with a grievance “shall follow the grievance procedure approved by the State Human Resources Commission.”
- N.C.G.S. § 126-34.02 is the statute establishing the grievance appeal process.
- N.C.G.S. § 126-4(17) and § 126-34.2 authorize the State Human Resources Commission, to establish policies and rules for alternative dispute resolution procedures.



## Grievance Policy (cont.)

- N.C.G.S. § 126-25 sets out the process for a State employee or applicant to object to material in their employee file.
- N.C.G.S. § 126-35 authorizes the State Human Resource Commission to adopt rules subject to approval of the Governor defining just cause for disciplinary actions.
- 25 NCAC 01J .1302 sets grievance procedure requirements for agencies and universities.

### § 17. History of This Policy

Date	Version
October 1, 2001	Revised to include as grievable issues violation of the FLSA, Age Discrimination Act, FMLA or ADA. (Delete "Failure to follow systematic procedures in reduction in force (not alleging discrimination)."
February 1, 2011	The 2010 General Assembly passed House Bill 961 which, among other things, made the disciplinary letter public information. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.
June 1, 2012	Revised to reflect the changing roles of the State Personnel Commission and the Office of Administrative Hearings in rendering a Decision and Order in contested cases. The Alternative Dispute Resolution Procedures were removed from the policy. There were also other minor editorial and policy clarification changes.
December 1, 2013	(Approved at the October 17 Commission Meeting) Policy replaces two grievance policies (Employee Appeals and Grievances and Employee Mediation and Grievances Process)..Policy was change to comply with the law change that resulted from ratification of HB 834. <ul style="list-style-type: none"> <li>• Creation of two informal grievances processes for alleged unlawful discrimination, harassment or retaliation and for policy violations</li> </ul>

## Grievance Policy (cont.)

	<ul style="list-style-type: none"> <li>• Mediation is the first step of the internal grievance process.</li> <li>• Step 2: Review by a Hearing Officer or Hearing Panel</li> <li>• Hearing Officer/Panel drafts recommendation for Final Agency Decision</li> <li>• Recommendation will be reviewed by the Director of the Office of State Human Resources</li> <li>• Final agency decision shall be issued in writing within 90 calendar days of the initial filing.</li> </ul>
December 1, 2013	<p>(Approved at the December 12 Commission Meeting) As a result of feedback received from various agencies concerning the Dec 1 policy changes approved at the Oct 17 commission meeting, additional changes were made to strengthen and provide additional clarity to the grievance policy. The commission approved a 12-1-2013 retroactive effective date to replace the previous policy they approved effective on that same date. This replaces the previous approved policy.</p>
August 6, 2020	<p>Policy reviewed by Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on August 6, 2020.</p> <ul style="list-style-type: none"> <li>• Policy was updated to include the protected classes of gender identity and sexual orientation following the U.S. Supreme Court decision in Bostock vs. Clayton County.</li> <li>• Term Mediation Director changed to Mediation Coordinator.</li> </ul>
February 16, 2023	<ul style="list-style-type: none"> <li>• Expand the timeline for the EEO Informal inquiry to 90 days total to be consistent with the Administrative Code. Agencies would have <b>75</b> calendar days from receipt of the complaint to complete an investigation plus 15 additional calendar days if the complainant agrees.</li> <li>• If the complainant has not been sent a response by the agency within 90 calendar days after agency received the complaint, complainant may continue the process by filing a formal grievance.</li> </ul>

## Grievance Policy (cont.)

	<ul style="list-style-type: none"><li>• Adding “attempt to”: If the letter finds reasonable cause to believe that unlawful actions occurred, “...management shall <u>attempt to</u> take appropriate action to resolve the matter.”</li><li>• Clarify that agency grievance policies are supplemental in nature.</li><li>• Add National Guard preference to list of issues that may be grieved at the agency level only.</li><li>• Add a section identifying the limited set of situations where an exempt managerial employee can file a grievance to OAH. These situations are specified by law (N.C.G.S. § 126-5(c7) and § 126-34.1(a)(2)), and would now be mentioned expressly in the policy. Specifically state that any employee, regardless of whether they are exempt from the SHRA, may utilize the EEO Informal Inquiry process to raise a complaint related to discrimination, retaliation, or harassment. This does not allow employees exempt from the provisions of N.C.G.S. § 126-34.01 and § 126-34.02 to proceed to the formal internal grievance process.</li><li>• Adding language to clarify time periods in which employees have to act to move through steps of the grievance process.</li><li>• Changed language re: prohibition of recording in mediations to match the Rules of Mediation.</li><li>• Adds language to clarify what occurs if the respondent has an unexcused failure to attend a mediation.</li><li>• Adds sources of authority.</li></ul>
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