

WINSTON
SALEM
STATE
UNIVERSITY

"SHRA"

State Human Resources Act

Grievance Committee Training 2016

Presented by the Office of Legal Affairs

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promptness

got fairness?

orderly

POLICY

WINSTON
SALEM
STATE
UNIVERSITY

- On **December 3, 2015**, the State Human Resource Commission approved Revisions to the former policy.
- Policy was Revised: **February 1, 2016**

First things First: Revisions to SHRA Employee Grievance Policy



- **Career/Probationary Status:**
 - **Previously:** 24-month probationary period
 - **NOW:** 12-month probationary period
- **Recording Hearings:**
 - **Previously:** Recording hearings was expressly prohibited by policy.
 - **NOW:** Audiotape, videotape, recording devices and transmission devices are not permitted **UNLESS** approved by the Chancellor, or designee, of a constituent institution, or approved by the President, or designee, for UNC General Administration.

Key Revisions



- **Data Entry:**
 - **Previously:** Data entry was due by end of each month.
 - **NOW:** Data must be entered **as events occur** providing greater ability for OSHR to have more accurate “**real time**” data.
- **SPA/SHRA:**
 - **SPA** has been replaced with **SHRA** to align with the change in G.S. 126 from “State Personnel Act” to “State Human Resource Act.”

Key Revisions



- Provide procedural consistency across The University of North Carolina system;
- Ensure SHRA employees have access to an internal process to address grievable issues timely, fairly, cost effectively, and without fear of reprisal; and
- Resolve workplace issues efficiently and effectively.

Objectives of the SHRA Employee Grievance Policy



EHRA	SHRA
Exempt from the State Human Resources Act of North Carolina (G.S. 126)	Subject to the State Human Resources Act of North Carolina (G.S. 126)
EHRA positions do not earn <i>over</i> or <i>comp</i> time. They are exempt from the federal Fair Labor Standards Act.	Human Resources determines whether or not an SHRA employee is subject to or exempt from the Fair Labor Standards Act based upon the responsibilities of the position. Those positions subject to the FLSA may earn <i>over</i> or <i>comp</i> time.
Certain EHRA employees may elect to participate in TSERS or may choose an optional retirement program.	Participation in Teachers' and State Employees' Retirement System (TSERS) is mandatory if an SPA employee is eligible to participate in a retirement program.
No classification or salary grade system.	State classification and salary grade system.
Subject to mandatory departmental performance review.	Performance Management Program is mandatory.
Personnel served by the Office of the Provost under the authority of the UNC Board of Governors (except in the administration of benefits)	Personnel served by the Department of Human Resource Services under the authority of the Office of State Human Resources

Why SHRA Employees and Not EHRA Employees?



	Who is that?
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 for the immediate 12 preceding months of the Grievance.
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.
Applicant for University Employment	A person (including a current State employee) who submits an application for an initial hire, promotion or reemployment for a SHRA position within the University.

There are 3 types of SHRA
Employees you may
encounter?



Grievable Issues and Who May Grieve

Who May File	Grievable Issue
Career State Employee or Former Career State Employee	<p>a. Overall performance rating of less than “meets expectations” or equivalent as defined in the Performance Management Policy</p> <p>b. Denial of request to remove inaccurate and misleading information from personnel or applicant file (excludes the contents of a performance appraisal and written disciplinary action)</p> <p>c. Items covered in the University’s AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2)</p>
Probationary or Former Probationary State Employee	<p>a. Denial of request to remove inaccurate and misleading information from personnel or applicant file (excludes the contents of a performance appraisal and written disciplinary action)</p> <p>b. Items covered in the University’s AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2)</p>
Applicant for University Employment (initial hire, promotion, or reemployment)	<p>a. Denial of request to remove inaccurate and misleading information from personnel or applicant file (excludes the contents of a performance appraisal and written disciplinary action)</p> <p>b. Items covered in the University’s AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2)</p>

University Level Only



Grievable Issues and Who May Grieve

Who May File	Grievable Issue
Career State Employee or Former Career State Employee	<ul style="list-style-type: none"> a. Dismissal, demotion or suspension without pay for disciplinary reasons without just cause b. Involuntary non-disciplinary separation due to unavailability c. All issues listed below which are grievable by a probationary or former probationary employee d. All issues listed below which are grievable by an applicant for University employment e. Denial of reemployment or hiring due to denial of reduction-in-force priority as required by law (G.S. 126-7.1) f. Denial of promotional opportunity due to failure to give priority consideration for promotion to a Career State employee as required by law (GS 126-7.1)
Applicant for University Employment (initial hire, promotion, or reemployment)	<ul style="list-style-type: none"> a. Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law) b. Denial of veteran's preference as provided for by law c. Unlawful discrimination or harassment based on race, religion, color, national origin, sex, 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 d. 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, 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
Probationary or Former Probationary State Employee	The Same Grievable Issues as Applicant for University Employment with the addition of <i>Any retaliatory personnel action for reporting improper government activities ("whistle blower") as contained in GS 126</i>

Must go through Internal
University Process



- Demotions
- Suspension
- Dismissal
- Reduction-in-Force (RIF)
- Illegal Discrimination
- Denial of Promotional Priority
- Denial of Priority Reemployment
- Denial of Veteran's Preference
- Denial of the removal of false and misleading information from the personnel file
- Performance Pay Disputes

Grievable Issues at a Glance



- Within **15 Calendar days** of the alleged event or action that is the basis of the grievance.
- Any grievance or complaint that alleges unlawful discrimination, harassment, OR retaliation shall be addressed through The *Office of Equal Employment Opportunity/Affirmative Action and Diversity* at 336-750-8759.
- ALL other grievable issues **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 grievance. Disciplinary action grievances as well as non-disciplinary separation due to unavailability shall proceed directly to the formal internal grievance process.

Grievance Process for ALL Grievable Issues



- 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. 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 the process.
- The informal process should be completed within a **15 calendar day timeframe**. However, if progress is being made toward a successful resolution to the dispute or if unavoidable circumstances (e.g. illness, academic calendar) require an extension in the timeframe, 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.
- WSSU's HR Office will serve as a content and procedural resource advisor during these discussions, and work with both parties to strive for a timely resolution to the workplace dispute. The outcome of the informal discussions must be clearly communicated to the employee by the supervisor or other appropriate personnel in writing.
- If the Informal Discussion is unsuccessful in resolving the grievable issue, the employee may choose to file a formal grievance. If no written response is provided by the supervisor within the 15 calendar day timeframe, the employee may proceed by filing a formal grievance.

Grievance Procedures: Informal Discussion



Mandatory Mediation: Step 1

- **Process**
 - WSSU's HR Office, *Employee Relations*, shall submit a request for mediation through the Office of State Human Resources (OSHR) within **3 business days** of receipt of the grievance. The mediation process shall be concluded within **35 calendar days**, unless it is mutually agreed to extend time. It cannot go beyond **90 days**.
- **Office of State Human Resources-Approved Mediators**
 - Only OSHR-approved mediators will mediate SHRA grievances for Universities. OSHR will maintain a pool of qualified mediators to facilitate mediations. Mediators will not be selected from the University requesting the mediation.
- **If there's an Impasse?**
 - If an agreement is not reached, an Impasse, the grievant will have **5 calendar days** to indicate they would like to proceed to the second step in the formal grievance process.

Formal Grievance



- **Hearing Process**

- If mediation does not result in resolution at **Step 1**, the grievant will have the opportunity to present the grievance to the WSSU's Grievance Committee outside the employee's chain of command. The hearing process shall be concluded within **35 calendar days** of filing Step 2 of the grievance process.
- Filing must be received by the University Office within **5 calendar days** of the date of completion of mediation.

Formal Grievance



- **Right to Challenge Committee Member**

- The grievant will have **one** opportunity to challenge **2 members** of the Committee 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. WSSU's Employee Relations or HR designee by Human Resource Director will review the challenge and replace the member(s) as appropriate. If the grievant wishes to make a challenge, it must be done within **5 calendar days** of receiving the notification of Grievance Committee members.

- **Hearing Attendees**

- Witnesses, as approved by the WSSU Grievance Committee Chair in accordance with the University processes may be eligible to attend the hearing for a designated period during the proceedings.
- Attorneys and other advisors may not attend the hearing.
- Audiotape, videotape, recording devices, and transmission devices are not permitted during the hearing **UNLESS** approved by the Chancellor, or designee, of a constituent institution, or approved by the President, or designee of UNC General Administration.

Formal Grievance



- **Grievant Responsibilities**

- Attend
 - *The Human Resources Department Determines the Time and Place of the Hearing and will inform both the Grievant and the Committee.*
- Must notify and receive approval for absence if occurrences are unavoidable or beyond the control of the Grievant.
- Be able to present **clear and concise information** regarding the issues surrounding the grievance and remedies sought; and
- A Grievant who has an **unexcused failure** to attend a hearing as **scheduled forfeits** the right to proceed with the internal grievance process.

Formal Grievance



- **WSSU Grievance Committee**
 - A **WSSU Grievance Committee Chair** will preside 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. Each party shall be given fair opportunity to present evidence on the issues to be heard and to question witnesses.
 - As the **Chair**
 - State the Sequence of Events
 - Give the Opening Statement
 - State the Time
 - Discuss the Conduct of Participants in the Hearing
 - And prepare the recommendation for the Chancellor

Formal Grievance



- **WSSU Grievance Committee**
 - **Burden of Proof**
 - Person with Burden:
 - Must persuade by Preponderance of Evidence
 - Opens and closes with rebuttal
 - Respondent/ Management
 - Just cause cases- demotion/suspension/ dismissal
 - Grievant/ Employee
 - Retaliation and discrimination

Formal Grievance

- **WSSU Grievance Committee**
 - *Listen to EVERY statement*
 - *Maintain Neutrality of ALL Facts*
 - *Assist the Chair in determining a recommendation to the Chancellor*

Formal Grievance



WSSU Grievance Committee Recommendations

- The WSSU Grievance Committee Chair will draft a proposed recommendation for a Final University decision including justification to support the recommendation and submit to the University designee.

All proposed recommendations shall be reviewed by OSHR prior to the University designee rendering the Final University Decision. The Final University Decision shall be issued in writing within 90 calendar days of the initial filing of the grievance.

The Final University Decision will include information about applicable appeal rights.

Formal Grievance



Administrative Issues to Consider

- Cross-Examination
 - Remember the witnesses are NOT under Oath
 - The Grievant may cross-examine the Respondent's witness
 - The Respondent may cross-examine the Grievant's witness
 - The Committee may cross-examine ALL witnesses
 - Witnesses are only in the hearing room during their TESTIMONY
- Exclusions
 - Talk or opinion of no discernable source
 - Statements and documents irrelevant to grievance
 - Statements and documents from person that is not present

Formal Grievance



Administrative Issues to Consider

- Labeling Exhibits
 - Grievant documents
 - G-X1
 - G-X2, etc.
 - Respondent documents
 - WSSU-1
 - WSSU-2
- Again NOTE that the ENTIRE PROCESS is CONFIDENTIAL

Formal Grievance



- NC General Statute 126
- North Carolina Central University Employee Relations
- Office of State Human Resources

Authoritative Sources

