



**University of North Carolina Wilmington Equal Employment Opportunity Plan
Attachments**

March 1, 2021

University of North Carolina Wilmington
Wilmington, North Carolina



08.140 REDUCTION IN FORCE AND PRIORITY RE-EMPLOYMENT CONSIDERATION FOR SHRA EMPLOYEES

Authority: Chancellor

History: Revised August 2017; revised October 28, 2010; revised July 31, 2009; revised March 10, 2009; originally effective July 1, 1997; supersedes former Policy No. HR 1.40

Source of Authority: UNC Policy Manual 300.3.1[R]

Related Links: [OSHR State Human Resources Manual](#); [N.C.G.S. § 126-7.1](#); [25 NCAC.01C.1004 \(Reduction in Force\)](#); [25 NCAC 01D.0507 \(Priority Reemployment Consideration\)](#); [Reduction in Force Checklist](#)

Responsible Office: Human Resources

I. Purpose

- A. To specify the conditions and process for identifying and separating SHRA employees due to shortage of funds, shortage of work, abolishment of a position, or other material change in duties and organization; and the process for priority re-employment consideration.
- B. UNC Wilmington, in accordance with federal and state legislation, has established this policy and procedure to ensure that potential reductions in force (RIF) shall be considered on a fair and systematic basis in accordance with defined factors. In all instances, reduction in force decisions are made without regard to race, gender, gender identity, sex (such as gender, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, genetic information, political affiliation, veteran status, or relationship to other university constituents -- except where sex, age, or ability represent bona fide occupational qualifications.
- C. This policy is not to be used for disciplinary measures. The process for separating employees due to either unacceptable performance or conduct is contained in [Policy 08.510 SHRA Disciplinary Action, Suspension and Dismissal](#).

II. Scope

This policy applies to all permanent university employees with a permanent appointment who are subject to the State Human Resources Act (SHRA) regardless of source of funds for the position. This policy does not apply to student workers, temporary employees, SHRA employees with time limited appointments, faculty, or

any other employees exempt from the State Human Resources Act (EHRA).

III. Policy

- A. The university makes reasonable effort to avoid involuntary separation of permanent employees. Therefore, temporary, probationary, or trainee employees in their first twelve months of employment in the same work unit (as determined by similarity of job content, unity of mission, or proximity of workers) shall not be retained in classes where permanent employees must be separated in the same or related classification band and competency level.
- B. Reduction in force is at the sole discretion of the university and is not a decision on the part of the employee(s).
- C. The effect of the analysis at the work unit level is that the employee in the targeted position possibly may not be the employee separated through the reduction in force. Following the analysis and priority determinations, another employee may be identified for reduction in force instead, and the resulting vacancy would be filled through reassignment of the employee who was in the original targeted position.
- D. If a position is reduced from full time to part time resulting in an economy in the State Budget, the employee in the position may choose to be reduced in force, with the rights and benefits provided by policy, in lieu of accepting the reduced hours.
- E. The reduction in force procedure for SHRA employees provides equitable treatment for the separation of SHRA employees when reduction in force becomes necessary. A reduction in force decision based on financial reasons should be reached only after measures such as a hiring freeze on vacant positions, limits on purchasing and travel, and job sharing or work schedule alternatives have been considered.
- F. If a general reduction in operating funds affects the university, UNCW may elect to meet its reduction obligation by prioritizing campus needs. For example, the university may first reduce staff positions in areas outside the academic core to preserve instruction, research, or student services positions. The university may also exempt safety, health, or other such critical positions from a reduction order.

IV. Work Unit Analysis and Recommendation

- A. To determine which position(s) within the identified work unit are subject to a reduction in force, a thorough analysis of the operational need for particular positions must occur (in consultation with Human Resources) in order to ensure the university can provide the highest level of service possible with a reduced workforce. Such an evaluation must include:
 - 1. Determination of the number of positions which must be abolished;
 - 2. Feasibility of eliminating entire programs or parts of programs;

3. Identification of areas where the number of positions must be reduced or eliminated; and
 4. Identification of the classification (banded classification and competency level) of positions to be eliminated and a determination of whether sufficiently similar vacant positions within the work unit exist to utilize employees who would otherwise be separated.
- B. After specific positions are identified, comparisons between employees in the same or related band are made. The analysis must include a systematic consideration, at a minimum, of the following factors:
1. Employees' types of appointments;
 2. Employees' relative efficiencies. This includes an evaluation of the relative competencies (knowledge, skills, and abilities) and documented performance evaluation of the recommended employee(s) and all others in related classification bands in the work unit in comparison to operational need.
 3. Employees' length of service (which may include up to five (5) years of eligible military service).
 4. An impact analysis of proposed reduction in force on the work unit's demographics.
- C. At least six weeks prior to the anticipated separation date of any employee for purposes of reduction in force, the director or department head must submit a written recommendation to Human Resources via the appropriate vice chancellor or chief of staff. Human Resources is responsible for further analysis before authorizing the final university decision.
- D. The written recommendation must include the analyses described in IV.A and B, a description of measures taken to avoid a reduction in force, and the method by which a specific employee or employees are identified for being reduced in force. The result may necessitate some reassignments within the work unit prior to the final recommendation regarding the identified employee(s).
- E. In addition to the recommendation to separate, the department prepares a letter of reference for the identified employee(s), addressing the employee's knowledge, skill, ability, performance, and positive standing in the department.

V. Endorsement of Vice Chancellor or Chief of Staff

- A. The division vice chancellor or chief of staff for the Chancellor's Division must decide whether to endorse the recommendation to separate the identified

employee(s) from his or her current position(s) under this policy. This would include the review of other employees within the identified work unit in like positions.

- B. The vice chancellor or chief of staff must then evaluate the education, experience, and competencies of the employee to be separated and determine if:
 - 1. Another position could be created within the division in order to avoid the reduction in force; or
 - 2. The employee could be transferred into a suitable vacant position (for which an offer has not been extended) within the division to avoid the reduction in force.
- C. If either of the options in V.B. are available, the employee is placed and the reduction in force is resolved. If neither option exists, the vice chancellor or chief of staff must document the basis for his or her decision to endorse the reduction in force, and forward the recommendation to Human Resources.

VI. Human Resources Final Review and Notice of Separation

- A. Upon receipt of an endorsement from the vice chancellor or chief of staff, Human Resources ensures:
 - 1. The justification for a reduction in force has considered all the necessary factors; and,
 - 2. The decision is made in compliance with the university's EEO/AA plan and policy, and applicable federal law.
- B. Upon completion of this review, the associate vice chancellor for Human Resources, on behalf of the chancellor, notifies the vice chancellor, chief of staff, or their designee of the decision.
 - 1. If the reduction in force is found to be compliant, Human Resources prepares the official notice of separation letter and authorizes the vice chancellor or delegate to issue the letter to the employee. The employee must receive the letter as soon as practicable, but at least thirty (30) calendar days before the date of separation.
 - 2. If the reduction in force is found to be non-compliant, Human Resources will discuss options and alternatives with the appropriate administrator.
- C. After delivery of the notification letter, a Human Resources representative will meet with the employee to inform him or her of priority re-employment rights, eligibility for severance or discontinued service retirement, unemployment insurance eligibility, leave payouts, and health insurance continuation.

VII. Reassignment to Avoid Separation

- A. Once the notice of separation letter from the division is issued to the employee, Human Resources attempts to find a suitable vacant position in any other division for the employee to avoid the separation. [The employee's salary level must be maintained in such reassignments unless the salary exceeds the maximum of the band set by state policy.] A suitable vacant position is one:
1. In the same banded classification at the same or lower competency level as is currently held or for positions in a different banded classification with the same or lower journey market rate as is currently held;
 2. For which the employee meets minimum qualifications;
 3. Where the employee could perform the job within nine months, including normal orientation and training given any new employee; and
 4. Is the same FTE.
- B. When Human Resources identifies a vacancy that appears to be suitable, Human Resources reviews the employee's qualifications against the position's requirements to determine if the employee meets the minimum qualifications.
1. If a vacancy is either not advertised or advertised but applications have not been referred, the employee's application is forwarded to the department. This referral requires more consideration than other applicants. The department is expected to interview and hire the employee if the employee meets the minimum qualifications for the position and can perform the job within nine months, with normal orientation and training given any new employee. If the department does not believe that the individual can perform the job duties, the department must document the reasons and forward this documentation to both the division vice chancellor or chief of staff and Human Resources for review and consideration.
 2. If a position has been advertised and applications have already been referred, but a recommendation for hire has not been received by Human Resources, Human Resources forwards the employee's application to the department. The employee has priority re-employment consideration over non-state employees. The department is expected to interview and hire the RIF candidate, over any non-state (non-SHRA) employee, if the RIF candidate meets the minimum qualifications for the position and can perform the job within nine months, with normal orientation and training given any new employee. If the department does not believe that the individual can perform the job duties, the department must document the reasons and forward this documentation to both the division vice chancellor or chief of staff and Human Resources for review and consideration.
 3. If, after reviewing the departmental documentation, the division vice chancellor or chief of staff and Human Resources determine that the employee meets the minimum

qualifications for the position and could perform the job within nine months, the university is required to place the employee in the position in order to avoid the reduction in force.

VIII. Priority Re-Employment following Separation

- A. Priority re-employment is only afforded to “career status” state employees who have received official written notification of imminent separation due to a reduction in force and have not retired or applied for retirement. Priority re-employment rights extend for twelve (12) months* from the date of written notification of a reduction in force (*unless legislatively extended). A career status state employee is one who is in a permanent position appointment *and* has been continuously employed by the state of North Carolina in a position subject to the State Human Resources Act for the immediate preceding twelve (12) months. An employee who is separated from a time-limited appointment is not eligible for priority unless the appointment extends beyond three years.
- B. A RIF state employee shall have priority for positions in the same banded classification at the same competency level or lower as held at the time of notification, or for positions in a different banded classification with the same or lower journey market rate as held at the time of notification.
- C. A RIF state employee with more than ten (10) years of service shall receive priority consideration over a RIF state employee with less than ten (10) years of service in the same or related position classification band competency level.
- D. Once the career state employee is separated (not retired) from the university, priority re-employment consideration over non-state (non-SHRA) applicants is afforded for the duration of eligibility. However, to receive this consideration, the employee must apply for the vacancy prior to the deadline date.
- E. Due to this stated required priority, if the RIF state employee meets minimum qualifications for the position, as that term is defined in N.C.G.S. § 126-7.1, the individual’s application is forwarded to the department along with those of other current SHRA employees with permanent or time-limited appointments. If the department does not hire the referred RIF priority candidate or any other current state employee, the department must document the reasons for non-selection. If such documentation is sufficient to meet state requirements, Human Resources would then refer the most qualified applications from among the pool of non-state (non-SHRA) applicants.

IX. Continuation of Priority Re-Employment Rights

- A. Priority consideration for an eligible employee is terminated when:

1. An employee applies for a position but declines an interview or offer of the position if the position is at a salary grade (or salary grade equivalency) or salary rate equal to or greater than that held at the time of notification; or
 2. An employee accepts a position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation; or
 3. An employee accepts a permanent or time-limited position with the State at the same salary grade (salary grade equivalency) or higher than the position held at the time of notification of separation; or
 4. An employee accepts a career banded position at the same or higher competency level in the same banded classification as held at the time of notification; or
 5. An employee accepts a career banded position in a different banded classification with the same or higher journey market rate than held at the time of notification; or
 6. An employee with priority status accepts a position at a lower salary rate or lower employee's salary grade (or salary grade equivalency) and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; or
 7. An employee has received 12 months' priority consideration; or
 8. An employee applies for retirement or retires from State employment.
- B. Priority reemployment consideration is not terminated when an eligible employee is placed in a position within 35 miles of the employee's original work station prior to the separation date due to reduction in force, if the position is at a lower salary grade (or salary grade equivalency) or salary rate less than that held at the time of notification, and if the position is at the same appointment status.
- C. When an employee applies for and accepts a permanent or time-limited position with a lower salary grade (or salary grade equivalency) and salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) up to and including that held at the time of the notification of separation.
- D. An employee may accept the following employment and retain priority consideration throughout the 12-month priority period:
1. employment outside State government;
 2. a State position not subject to the NC Human Resources Act;
 3. a temporary position; or
 4. a contractual arrangement.

X. Severance Salary Continuation

A permanent, full-time or part-time (20 hours per week and over) employee who does not obtain another permanent job as a state employee by the effective date of the reduction in force may be eligible for severance salary continuation provided reemployment is not available. Severance pay does not apply to employees who are probationary; who are separated at the end of time-limited appointments; whose reduction in force is temporary; or who are separated due to retirement. Years of service, age, reemployment, retirement, and funding as directed by the Office of State Budget and Management affect severance.

XI. Leave Balances

- A. Vacation Leave: Employees will be paid a lump sum for the balance of their vacation leave at the time of separation not to exceed 240 hours. If an employee has over 240 hours of vacation leave at the effective date of separation due to reduction in force, the excess leave will be reinstated if the employee is reemployed by the state within one year.
- B. Sick Leave: An employee's sick leave balance at the time of separation due to reduction in force will be reinstated if the employee returns to state employment within five years.

XII. Discontinued Service Retirement

Employees notified of a reduction in force with: (a) 20 or more years of creditable retirement service, and who are age 55 or older (no reduction in benefits); or (b) who have 20 or more years of creditable retirement service, and who are age 50 or older (benefits reduced by $\frac{1}{4}$ of 1 percent for each month under age 55), may be eligible for discontinued service retirement. Employees should contact the Director of Salary Administration & Benefits in Human Resources to obtain more information about their specific retirement eligibility.

XIII. Health Insurance

Employees with at least one year of state service who are participating in the State Health Plan at the time of separation due to a reduction in force will receive university-sponsored **individual** health insurance coverage for one year from the date of separation or until reemployed in another permanent state position, whichever is sooner. Dependent coverage is not included but may be purchased by the employee.

XIV. Appeals

A career state employee with priority status separated through a reduction in force may appeal that separation if it is alleged the separation is in retaliation for the employee's opposition to alleged discrimination on account of the employee's race, gender, gender identity, sex (such as gender, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, genetic information,

political affiliation, relationship to other university constituents or if it is alleged there was a denial of veterans preference. Such an appeal may be made in accordance with [Policy 08.520 SHRA Employee Appeals and Grievances](#).

Reduction in Force Priority Policy

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Policy

Legislation provides an employment priority to career state employees, subject to the North Carolina (NC) Human Resources Act, who have been officially notified in writing of Reduction in Force (RIF) to enable a State employee to return to state service.

Coverage

Employees with career status (as defined by GS 126-1.1), who have received official written notification of imminent separation due to reduction in force, are eligible for priority consideration under the provisions outlined below.

An employee who is separated from a time-limited appointment is not eligible for priority unless the appointment extends beyond three years.

Relationship to Other Priorities

The priority for employees separated by reduction in force (RIF) and the priority for employees with less than 10 years of service subject to the NC Human Resources Act separated from exempt policy-making or exempt managerial positions are equal.

Reduction in Force Priority Policy (cont.)

Appeals

A career State employee, as defined in G.S. 126-1.1, with priority consideration who has reason to believe priority consideration was denied in a selection decision, shall appeal through the agency grievance procedure in accordance with G.S. 126-34.01.

Period of Priority

An employee shall receive priority consideration for a period of 12 months from the date of the official written notification.

Employees who have priority status at the time of application for a vacant position and who apply during the designated agency recruitment period will be considered as priority applicants until the selection process is completed for that position.

Once an employee has been officially notified of separation by reduction in force, the employee's 12-month period of priority begins. Agencies may, however, if funds are identified to continue employment for the employee, delay the separation date beyond the date originally stated in order to continue employment as long as funds are available. Regardless, the 12-month priority period begins from the date of initial notification of reduction in force.

Priority Consideration

Within all State agencies, an employee officially notified of reduction in force shall receive priority consideration. If it is determined that an eligible employee and any other applicant have "substantially equal qualifications," then the eligible RIF employee must receive the job offer. However, the priority for employees separated by reduction in force (RIF) and the priority for employees with less than 10 years of service subject to the NC Human Resources Act separated from exempt policy-making or exempt managerial positions are equal.

"Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.

Reduction in Force Priority Policy (cont.)

The nature of the priority to be provided is as follows:

Employees in a permanent full-time position that are notified of reduction in force shall have priority consideration to permanent full-time and permanent part-time positions. Employees in a permanent part-time position that are notified of reduction in force shall have priority consideration to permanent part-time positions only.

Grade to Grade

RIF applicants shall have priority for positions at the same salary grade or below as held at the time of official written notification.

Grade to Band or Band to Grade

For RIF applicants applying for positions in a different classification system than their classification at the time of official written notification (i.e., from graded to career banded or vice versa), a salary grade equivalent will be assigned for each competency level within a career banded classification. Applicants shall have priority for positions at the same salary grade (or salary grade equivalency) or below.

Band to Band

The salary grade equivalent should not be used when determining the RIF priority for a RIF applicant who was in a banded class at the time of notification and is applying for a position in a banded class. RIF applicants shall have priority for positions in the same banded classification at the same competency level or lower as that held at the time of notification, or for positions in a different banded classification with the same or lower journey market rate as that held at the time of notification.

Employees do not have priority consideration to exempt policymaking or exempt managerial positions.

Reduction in Force Priority Policy (cont.)

RIF from Trainee Positions

For employees receiving notification of imminent separation from trainee positions, who are eligible for priority consideration, the salary grade for which priority is to be afforded is the salary grade of the full class.

RIF from Flat Rate Positions

For employees receiving notification of imminent separation from flat-rate positions, who are eligible for priority consideration, the salary grade for which priority is to be afforded is the salary grade which has as its maximum a rate nearest to the flat rate salary of the eligible employee.

Priority for Retiring Employees

An employee who, after receiving official written notice of imminent reduction in force, retires or applies for retirement prior to the separation date waives the right to priority.

Priority for Employees Currently Possessing Priority

An employee notified of imminent separation through reduction in force while actively possessing priority consideration from a previous reduction in force shall retain the initial priority for the remainder of the 12-month priority period. A new priority consideration period shall then begin at the salary grade (or salary grade equivalency), of the position held at the most recent notification of separation, and expires 12 months from the most recent notification of separation and shall expire 12 months from the most recent notification date.

Salary Requirements

The salary paid to a RIF applicant shall be calculated according to the salary administration policies. A RIF applicant shall not be paid a salary higher than the maximum of the salary grade (or banded salary range) of the position accepted.

Reduction in Force Priority Policy (cont.)

Probationary Period

An employee with reduction in force priority status is required to serve a new probationary period when there is a break in service.

Termination of RIF Priority Consideration

Priority consideration for an eligible employee is terminated when:

- an employee applies for a position but declines an interview or offer of the position if the position is at a salary grade (or salary grade equivalency) or salary rate equal to or greater than that held at the time of notification; or
- an employee accepts a position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation; or
- If an employee accepts a permanent or time-limited position with the State at the same salary grade (salary grade equivalency) or higher than the position held at the time of notification of separation; or
- an employee accepts a career banded position at the same or higher competency level in the same banded classification as held at the time of notification, or
- an employee accepts a career banded position in a different banded classification with the same or higher journey market rate than held at the time of notification; or
- an employee with priority status accepts a position at a lower salary rate or lower employee's salary grade (or salary grade equivalency) and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; or
- an employee has received 12 months priority, consideration; or
- an employee applies for retirement or retires from State employment.

Priority reemployment consideration is **not terminated** when an eligible employee is placed prior to the separation date due to reduction in force, if the position is at a lower salary grade (or salary grade equivalency) or salary rate less than that held at the time of notification, and if the position is at the same appointment status.

Reduction in Force Priority Policy (cont.)

Effect on Priority if Lower Level Position and Lower Salary Rate Accepted

When an employee applies for and accepts a permanent or time-limited position with a lower salary grade (or salary grade equivalency) and salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) up to and including that held at the time of the notification of separation.

RIF Priority Consideration and Other Employment

An employee may accept the following employment and retain priority consideration throughout the 12-month priority period:

- employment outside State government,
- a State position not subject to the NC Human Resources Act,
- a temporary position, or
- a contractual arrangement (see Advisory Note).

Any employee separated from State government and currently receiving severance wages shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of the UNC System and the constituent institutions of the N. C. Community College System, until 12 months have elapsed since the separation as provided by G.S. 126-8.5.

Notification to the Office of State Human Resources

State agencies shall notify the Office of State Human Resources when employees are officially notified in writing of the reduction in force. Also, state agencies shall notify the Office of State Human Resources when a RIF applicant is hired and when their priority is satisfied or terminated. Timely notification to the Office of State Human Resources is required to ensure the Priority Verification List is accurate. The Priority Verification List is a tool for agency HR staff to quickly assess priority status of applicants.



02.205 Unlawful Discrimination, Harassment, and Sexual Misconduct Policy

Authority: Chancellor

History: Revised August 14, 2020; Established January 3, 2017; replaces former Policies 02.200 Harassment Prevention and 02.210 Harassment Resolution Procedures

Sources of Authority: UNC Policy Manual, Chapter 100.1, Section 502; Code Section 103

Related Links: [UNCW Policy 02.230 Equal Employment Opportunity and Affirmative Action](#); [Policy 04.130 Student Gender-Based/Sexual Misconduct Policy](#); [Policy 02.220 Improper Relationships Between Students and Employees](#); [Policy 08.510 SHRA Disciplinary Action, Suspension and Dismissal](#); [Policy 08.540 Workplace Violence Policy and Protocol](#); [Policy 08.420 Employee Assistance Program](#); [02.210 Title IX Grievance Policy](#); [Code of Student Life](#); [Faculty Handbook](#); [Section 603 of the Code of the Board of Governors](#).

Responsible Offices: Office of Human Resources; Office of Title IX and Clery Compliance; Office of the Dean of Students

I. Purpose

The university promotes a learning, working, and social environment where all members of the campus community interact in a mutually respectful, professional, and fair manner. The university is committed to ensuring a workplace and academic environment free of unlawful discrimination, harassment, and sexual misconduct, as these behaviors may create a risk to health, safety or wellbeing, cause serious emotional distress, loss of productivity and morale, and potential legal risks.

II. Scope

- A. This Policy applies to the prohibited conduct described in Section III and includes acts communicated physically, verbally, in print, electronically or through other means by or against students and employees. The category of “employees” includes all SHRA and EHRA employees, including those who are in assignments that are full-time, part-time, probationary, non-career status, adjunct, and temporary.
- B. This Policy does not apply to protected speech, reasonable criticisms of work, fair and justified feedback, evaluations, or disciplinary actions deemed unfounded by Human Resources. This Policy applies only to behavior that a reasonable person would view as violating the rights of another.

- C. SHRA employees, former employees, and applicants for employment seeking to grieve unlawful discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation, if the individual believes that he or she has been discriminated against in the terms and conditions of employment, must follow the procedures in [Policy 08.520 SHRA Employee Appeals and Grievances](#). EHRA employees or former employees seeking to grieve unlawful discrimination when an adverse employment action is taken must follow the procedures in [Policy 08.521 EHRA Review and Appeal Procedures](#).
- D. The university will respond promptly to all complaints of unlawful discrimination, harassment, and sexual misconduct. When necessary, the university will institute discipline against the offending individual, which may result in a range of sanctions. For SHRA employees, disciplinary actions are explained in [Policy 08.510 SHRA Disciplinary Action, Suspension, and Dismissal](#). For EHRA employees, actions may include, but are not limited to: warning/reprimand, suspension without pay, demotion, or dismissal. For faculty, sanctions include those listed in the [Faculty Handbook](#). For students, sanctions include those listed in the [Code of Student Life](#).
- E. The university considers the filing of intentionally false reports of prohibited conduct as a violation of this policy and grounds for appropriate disciplinary action.

III. Confidentiality

A. Generally

The university shall protect the privacy and confidentiality of reporting individuals and individuals who are alleged to have discriminated or harassed, to the extent allowed by law. However, once a university official has actual knowledge of allegations that may be serious enough to constitute a violation of this Policy, the university's legal obligations require it to investigate under the procedures described below. If an individual requests complete confidentiality and does not want such an investigation, he or she should consult with individuals who by law have special professional status, such as mental health counselors, physicians, clergy, or private attorneys. Additionally, in accordance with [Policy 08.420](#), employees may pursue a confidential self-referral to the Employee Assistance Program.

B. Sexual Misconduct Victims

If a victim of sexual misconduct prefers that the details of an incident be kept confidential, they can speak to professional staff in the following offices:

- UNCW Collaboration on Assault Response & Education (CARE)
- UNCW Counseling Center (for students only)

- Abrons Student Health Center (for students only)
- Employee Assistance Program (for employees only)

Additionally, the Rape Crisis Center, Domestic Violence Shelter and Services and campus ministers will honor confidentiality. Confidential resources may need to share otherwise confidential information in a situation where an imminent danger to a victim or another individual exists in the opinion of the professional staff or administrator. In addition, all university resources are required by North Carolina law to report abuse or neglect upon a child or any disabled person and to report non-identifying statistical information as required by the Clery Act.

Public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the victim initiates a complaint with an appropriate campus official.

Research involving human subjects (which requires approval by UNCW’s Institutional Review Board for the Protection of Human Subjects) may ask subjects to provide personal information in a confidential setting. Information about an incident covered under this Policy may be disclosed by a research subject as part of participation in that research. Notwithstanding Section V.A.3 of this Policy, researchers involved in the research shall not report the incident to the Director of Title IX and Clery Compliance.

IV. Prohibited Conduct

A. Discrimination

1. Discrimination constitutes any unlawful distinction, preference, or detriment to an individual as compared to others that is based on one of the characteristics protected by federal law, state law or university policy, as listed in [Policy 02.230 Equal Opportunity and Affirmative Action](#). Those protected characteristics include race, sex (such as gender, gender identity, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, political affiliation, veteran status, military service member status, genetic information, or relationship to other university constituents – except where sex, age, or ability represent bona fide educational or occupational qualifications or where marital status is a statutorily established eligibility criterion for State funded employee benefit programs.
2. Students will be held to the standards of discriminatory conduct as defined in the [Code of Student Life](#), Section II-1-B.

3. Conduct based on a protected characteristic as defined above will constitute discrimination when it is sufficiently serious to unreasonably interfere with or limit:
 - a. An employee's or applicant for employment's access to employment or conditions and benefits of employment;
 - b. A student's or applicant for admission's ability to participate in, access, or benefit from educational programs, services, or activities;
 - c. An authorized volunteer's ability to participate in volunteer activity; or
 - d. A guest's or visitor's ability to participate in, access, or benefit from the University's programs.

B. Unlawful Harassment

1. Unlawful harassment can take the form of a variety of actions founded on one of the characteristics protected by federal law, state law or university policy, as listed in [Policy 02.230 Equal Opportunity and Affirmative Action](#). Those protected characteristics include race, sex (such as gender, gender identity, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, political affiliation, veteran status, military service member status, genetic information, or relationship to other university constituents – except where sex, age, or ability represent bona fide educational or occupational qualifications or where marital status is a statutorily established eligibility criterion for State funded employee benefit programs.
2. Students will be held to the standards of harassing conduct as defined in the [Code of Student Life](#), Section II-1-B.
3. Unlawful harassment is a form of discrimination and can consist of:
 - a. Quid pro quo harassment, which consists of unwelcome conduct based on a protected characteristic when:
 - i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, employment decisions, academic standing or receipt of a needed or legitimately requested university service or benefit; or
 - ii. Submission to, or rejection of, such conduct by an individual is used as a basis for decisions affecting such individual in matters of employment, employment decisions, academic decisions (such as grades) or receipt of a needed or legitimately requested university service or benefit.

- b. Hostile environment harassment, which consists of unwelcome conduct based on a protected characteristic when:
 - i. Such conduct is so severe, pervasive, and objectively offensive as to unreasonably interfere with an individual's work, academic performance, or living environment; or
 - ii. Such conduct is so severe, pervasive, and objectively offensive as to create an intimidating, hostile or offensive working, learning or living environment. Hostile environment harassment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct and its severity. A single, serious incident may be sufficient to constitute hostile environment harassment.

C. Sexual Misconduct

1. Definition of Terms

Acts of gender-based discrimination, harassment, and sexual misconduct, including dating violence, domestic violence, and stalking, will not be tolerated at UNCW. In order to provide a safe campus community within which all members are valued and respected, policies and procedures for addressing gender-based/sexual misconduct have been established in accordance with Title IX, VAWA, and other regulatory requirements and are detailed herein.

For definitions and procedures applicable to alleged instances of student-on-student sexual misconduct, refer to [Policy 04.130 Student Gender-Based/Sexual Misconduct Policy](#).

As a recipient of Federal funds, the university is required to comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities. Title IX-related incidents are covered in a separate grievance policy at [02.210 Title IX Grievance Policy](#). This policy covers other sexual misconduct not within the regulatory purview of Title IX and [02.210 Title IX Grievance Policy](#). Sexual misconduct, as defined in this policy, is a form of sex discrimination and can include gender-based misconduct, sexual misconduct, sexual harassment, dating violence, domestic violence and stalking. All such forms of misconduct are referred to generally as "gender-based/sexual misconduct" throughout this policy.

State law defines various violent and/or non-consensual sexual acts as crimes. Title IX further defines a limited number of sexual misconduct for coverage under the regulatory framework. Additionally, UNCW has defined categories of sexual misconduct, as stated below, for which disciplinary action under this policy may be imposed. Acts of sexual misconduct may be committed by any

person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Sexual misconduct occurs when sexual acts are attempted or committed without consent and/or by force, threat, coercion, or pressure, or through the use of the victim's mental or physical helplessness, of which the assailant was aware or should have been aware.

CONSENT

The definition of consent is central to the recognition of both sexual assault and sexual misconduct. The university defines consent as mutually voluntary permission to engage in sexual activity demonstrated by clear actions and/or words. This decision must be made freely, consciously, knowingly and actively by all participants, as shown by the totality of the circumstances.

Intoxication is not an excuse for failure to obtain consent.

Silence, passivity, acquiescence, or lack of active resistance does not constitute or imply consent on its own.

Previous participation in sexual activity, however recent, does not indicate current consent to participate, and consent to one form of sexual activity does not imply consent to another form of sexual activity.

Consent can be withdrawn at any time.

Consent has *not* been obtained in situations where the individual:

1. is forced, coerced (defined as a unreasonable amount of pressure), manipulated, or has reasonable fear as the result of a threat (such as, the individual or another will be injured if the victim does not submit to the act); or
2. is incapacitated by alcohol, other drugs, sleep, etc. Because consent must be given consciously, sexual activity is prohibited with someone one knows to be, or should know to be, incapacitated. Incapacitation means the individual cannot make rational, reasonable and informed decisions; or
3. has a mental or physical disability which inhibits or precludes his/her ability to give knowing consent.

In North Carolina, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, as well as a violation of this policy, even if the minor willingly engaged in the act.

OFFENSES:

The 2020 Title IX Regulations enact prescriptive standards for jurisdiction, and in particular, only covers offenses that happen during an "education program or activity," which includes locations, events, or circumstances over

which the university exercises substantial control that are within the United States. However, this policy and others may cover off-campus conduct when it implicates and impacts UNCW affiliates. Therefore, this policy covers off-campus sexual misconduct, including those offenses that may otherwise meet Title IX definitions but for geographic restrictions. Those offenses include:

- a. **Non-Consensual Sexual Intercourse** is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
- b. **Non-Consensual Sexual Contact** is defined as any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
- c. **Dating Violence**
Dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- d. **Domestic Violence**
Domestic violence is defined as a felony or misdemeanor crime of abuse or violence committed by:
 - i. a current or former spouse of the victim;
 - ii. a person with whom the victim shares a child in common; and/or
 - iii. a person who is cohabitating with or has cohabitated with the victim as a spouse.

Dating and domestic violence include, but are not limited to, sexual or physical abuse or the threat of such abuse.

The state definition of domestic violence can be found in [North Carolina General Statute § 50B-1](#), which is applicable to criminal prosecutions for domestic violence in North Carolina, but may differ from the definition used by the University to address policy violations.

- e. **Stalking**
Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to feel fear for his or her safety or the safety of others or suffer substantial emotional distress. Substantial

emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. “Course of conduct” is defined as a pattern of two or more acts over a period of time, however short, that evidence a continuity of purpose. Stalking behaviors include, but are not limited to, the following behaviors if they occur when it is known or reasonably should have been known that such behavior or one’s presence is unwanted by a recipient:

- i. non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on Web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
- ii. following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a victim; or
- iii. surveillance and other types of observation, whether by physical proximity or electronic means.

The state definition of stalking can be found in [North Carolina General Statute § 14-277.3A](#), which is applicable to criminal prosecutions for domestic violence in North Carolina, but may differ from the definition used by the university to address policy violations.

OTHER FORMS OF SEXUAL MISCONDUCT

- a. **Sexual Exploitation** refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, in situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-consensual Sexual Intercourse or Non-consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:
 - i. sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed);
 - ii. taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent);
 - iii. prostituting another employee or student;
 - iv. engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other

- sexually transmitted infections (STI) and without informing the other person of the infection;
- v. administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent.

b. Sexual Harassment

Sexual harassment is a form of sexual misconduct and is defined as any unwelcome conduct of a sexual nature. It may include, but is not limited to:

- i. unwelcome sexual advances;
- ii. requests for sexual favors; and/or
- iii. other verbal, non-verbal, or physical conduct of a sexual nature.

Sexual harassment may occur in a single incident, as well as in persistent behaviors. Both men and women are protected from sexual harassment, and sexual harassment is prohibited regardless of the sex of the harasser. There are two types of Sexual Harassment:

i. Hostile Environment

Hostile environment sexual harassment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive such that it alters the conditions of education or employment, from both a subjective (the alleged victim’s) and an objective (reasonable person’s) viewpoint. The determination of whether an environment is “hostile” must be based on the totality of the circumstances. These circumstances may include, but are not limited to:

- the frequency of the conduct
- the nature and severity of the conduct
- whether the conduct was physically threatening
- whether the conduct was humiliating
- the effect of the conduct on the alleged victim’s mental or emotional state
- whether the conduct was directed at more than one person
- whether the conduct arose in the context of other discriminatory conduct
- whether the conduct unreasonably interfered with the alleged victim’s educational or work performance
- whether the statement falls under an existing exception to the First Amendment, such as true threats and intimidation
- whether the speech or conduct deserves the protections of academic freedom

ii. Quid Pro Quo

Quid pro quo sexual harassment exists when:

- i. there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
- ii. submission to or rejection of such conduct results in adverse educational or employment action.

c. Intimidation

Intimidation is defined as implied threats or acts that cause a reasonable fear of harm in another and includes, but is not limited to:

- i. Threatening to commit a harmful or sexual act upon another person;
 - ii. Stalking; or
 - iii. Cyber-stalking.
- d. Other civil rights offenses, when the act is based upon gender or sex
Other offenses include, but are not limited to:

- i. Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class. Discrimination can also involve treating an individual less favorably because of his or her connection with an organization or group that is generally associated with people of a certain protected class.
- ii. Hazing, defined as acts, performed voluntarily or involuntarily, likely to cause physical or psychological harm or social ostracism to any person within the UNCW community, when related to the admission, initiation, pledging, joining or any other group-affiliation activity on the basis of actual or perceived membership in a protected class. Hazing is also illegal under North Carolina law.
- iii. Bullying, defined as repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class.

Violation of any other UNCW rules, when such violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class may be pursued using this policy.

D. Offenses under the Code of Student Life

The [Code of Student Life](#) lists offenses for which the Vice Chancellor for Student Affairs or designee may initiate disciplinary proceedings against a student, including those related to unlawful harassment and discrimination.

E. Retaliation

Retaliation against any person complaining of unlawful discrimination or sexual misconduct or against any person who is a witness to any prohibited conduct is strictly prohibited. Retaliation also qualifies as a violation of this Policy and is grounds for appropriate disciplinary action.

Retaliation is defined as any form, direct or indirect, including through third parties, of intimidation, threat, harassment, reprisal, interference, restraint, coercion or any other type of discrimination in response to an individual's complaint or participation in investigation or conduct processes.

V. Reporting and Resolution

A. Reporting

The university encourages prompt reporting of all perceived violations of this Policy, regardless of who the alleged offender may be.

1. Sexual misconduct, sex-based harassment, or related retaliation

In addition to violating university policy, some instances of sexual misconduct may also constitute criminal activity. Victims are encouraged to inform law enforcement authorities about instances of sexual misconduct. The chances of a successful law enforcement investigation or of successfully obtaining a civil or criminal protective order through the court system are greatly enhanced if evidence is collected and maintained by law enforcement immediately following the crime. Victims experiencing these forms of sexual misconduct are similarly strongly encouraged to seek medical attention. Victims are encouraged not to bathe, douche, brush their teeth, drink, change clothing or even comb their hair before seeking medical attention. It is only natural to want to do so, but doing so may destroy physical evidence that could be needed later if charges are pursued. Even if one bathes or washes, evidence can still be collected at the hospital, preferably within 72 hours of an assault. If clothes are removed in that time frame, they should be placed in a brown paper bag and brought to the hospital or to law enforcement, depending upon which resource the victim has chosen to utilize. Evidence collection is not essential for pursuing assistance through any campus process, but there are still good reasons to maintain evidence and obtain medical treatment, such as to address the possibility of pregnancy, detect and prevent sexually transmitted infections, and to treat any physical injuries. Evidence collection and emergency treatment is available 24 hours a day at the local emergency rooms. The North Carolina Rape Victims Assistance Program and Crime Victims Compensation Act cover most, if not all, medical costs related to rape. Law enforcement will be called to the hospital, but a victim is not obligated to talk to them.

Victims may inform law enforcement officers without making a criminal or university complaint. If a victim wishes to pursue criminal charges, they may

contact UNCW Police at 910-962-2222, or emergency 911. UNCW Police can assist victims in identifying and contacting the appropriate law enforcement agency. Victims who make a criminal complaint may simultaneously pursue a university complaint. The university can assist victims in making a complaint to law enforcement officials. The university can also assist victims with obtaining a court ordered protective order as well.

a. Complaints against students

Employees and students seeking to make a complaint of sexual misconduct by a UNCW student should contact the university's Director of Title IX and Clery Compliance, an advocate in the Collaboration for Assault Response and Education (CARE) Office, University Police, and/or the Office of the Dean of Students. Reports may also be made online at <http://uncw.edu/titleix/>. Alleged student-on-student incidents of gender-based/sexual misconduct will be handled in accordance with [Policy 04.130 Student Gender-Based/Sexual Misconduct](#) or [02.210 Title IX Grievance Policy](#).

b. Complaints against employees

Allegations of sexual misconduct against a university employee should be reported to the Director of Title IX and Clery Compliance, University Police, Human Resources, or if the complaining party is a student, to the Office of the Dean of Students. The university will follow the resolution procedures detailed in Section V.C., below.

c. Complaints against student workers

Allegations of sexual misconduct against a student worker may be reported to the Director of Title IX and Clery Compliance, University Police, Human Resources, or if the complaining party is a student, to the Office of the Dean of Students. The university will process the complaint using procedures applicable to the capacity in which the student worker was acting at the time of the alleged misconduct (*i.e.*, student or employee).

2. Discrimination, harassment or related retaliation

a. Complaints involving students

Students seeking to file complaints of discrimination or harassment against UNCW employees, or UNCW employees seeking to file complaints of discrimination or harassment against students, should contact the Office of the Dean of Students. Resolution and disciplinary procedures for complaints against students will be handled by the Dean of Students as detailed in the [Code of Student Life](#).

b. Employee-on-employee complaints

Employees seeking to file complaints of discrimination or harassment against another UNCW employee should contact the Office of Human Resources. The university will follow the resolution procedures detailed in Section V.C., below.

c. Complaints against student workers

Allegations of discrimination or harassment against a student worker may be reported to the Office of Human Resources or the Office of the Dean of Students. The university will process the complaint using procedures applicable to the capacity in which the student worker was acting at the time of the alleged harassment (*i.e.*, student or employee).

3. Responsibilities of employees

Any university employee, faculty/instructor, staff, administrator or person working on behalf of an officially sanctioned university office, event or activity, including resident assistants (“responsible employees”), receiving notice of suspected or potential sexual misconduct is required to file a report with the Director of Title IX and Clery Compliance within one (1) business day of receiving the notice, unless that notice was communicated to an official who can provide professional confidentiality (*see* “Confidentiality” above). Clery Act crime statistic and timely warning reporting duties must also be observed in accordance with [Policy 05.505 Crime Reporting, Timely Warning, and Emergency Response Procedures](#).

Vice Chancellors, deans, directors, department chairs, or supervisors who become aware of specific allegations of discrimination or harassment must report the allegations promptly to the Associate Vice Chair of Human Resources, if the alleged offender is an employee, or to the Dean of Students, if the alleged offender is a student.

B. Optional Informal or Initial Actions; Interim Measures

1. Depending on the type or severity of offense, initial actions may include the following:
 - a. Telling the alleged offender his or her behavior is unwelcome and must stop.
 - b. Asking for an apology and a commitment that the behavior will stop.
 - c. Sending a copy of this policy to the alleged offender.
 - d. Writing to the alleged offender regarding the conduct, pointing out the effects of such behavior, and explaining the behavior change desired.

- e. Having the pertinent supervisor counsel the alleged offender about appropriate behaviors and conduct expectations.
 - f. Requesting a fact-finding investigation.
2. Additionally, the university may provide interim measures to ensure that there is no interference with the educational or employment opportunities of the complaining party. These interim measures may include, but are not limited to, an institutional order of no contact, no trespass order, parking accommodation, transportation assistance or security escorts, and changes in academic or relocation of work space, among other options. The complaining party may also receive services including an EAP referral, assistance from the CARE office, as well as connections to community resources such as the Rape Crisis Center and the Domestic Violence Shelter and Services.
 3. In deciding whether to pursue informal means, including mediation, the complaining individual is encouraged to seek the assistance of the Director of Title IX and Clery Compliance, or representatives of the Office of the Dean of Students, Housing and Residence Life Staff, Student Health Services, the Counseling Center, or Human Resources, as appropriate. These offices are available to assist the complaining party in crafting the message to send to the offending individual, as well as recommending other informal mechanisms and setting up mediation. Whichever office the affected individual elects to discuss his/her concerns with, the issue of confidentiality should be addressed before specific facts or identities are disclosed due to the university's legal obligations to investigate all allegations that may constitute harassment as defined in this Policy.
 4. In response to allegations of sexual assault, dating violence, domestic violence, and stalking, the university shall refer employee-complainants to appropriate support resources such as CARE. Student-complainants shall be referred in accordance with [Policy 04.130 Student Gender-Based/Sexual Misconduct](#) or [02.210 Title IX Grievance Policy](#).

C. Formal Resolution of Complaints against Employees

1. Initiating a Formal Complaint
 - a. If the offending behavior continues after the initial response, or if the severity of the behavior warrants immediate initiation of a fact-finding investigation (such as alleged instances of sexual misconduct), the complainant or witness may make a formal complaint.
 - b. A complaint must be presented within ninety (90) calendar days of the alleged incident to the appropriate office as listed in Section V.A. above. Such office shall forward the complaint to Human Resources. If filed later

than ninety calendar (90) days, the Associate Vice Chancellor of Human Resources may extend the time limit based on extenuating circumstances and at his/her sole discretion.

- c. Complainants are not required to provide a signed, written statement describing their complaint, though such documentation is strongly encouraged. If the complainant conveys the allegations verbally, the Associate Vice Chancellor of Human Resources or designee shall document the complaint and have the complainant review and sign the documentation to indicate that it is accurate and complete. Upon receipt of allegations involving sexual misconduct, the Director of Title IX and Clery Compliance shall be notified.

2. Investigation

- a. The Associate Vice Chancellor of Human Resources or designee shall determine whether the complainant's allegations fall within the scope of this Policy. If so, the Associate Vice Chancellor of Human Resources or designee(s) shall investigate promptly. All proceedings will include a prompt, fair, and impartial process from the initial investigation to the final result. Proceedings should be completed within sixty (60) days of receiving a formal complaint. Reasonable extensions of time for good cause are permissible upon written notice to both parties of the delay and the reason for the delay.
- b. The Associate Vice Chancellor of Human Resources or designee shall form a fact finding team of two impartial and unbiased individuals who shall interview the complainant and the respondent. Witnesses should also be interviewed, and any relevant documentary evidence shall be reviewed. The fact finding team shall take notes of all individuals who are interviewed. The fact finding team shall instruct individuals that retaliation is prohibited and is a violation of university policy and the law. The individuals shall also be instructed about the confidentiality and privacy parameters of the investigation. In cases involving sexual assault, dating violence, domestic violence, and stalking, the fact finding team will undergo annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, as well as how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- c. In general, both the complainant and the respondent may be accompanied when interviewed by another member of the university community, so long as the individual does not participate in or interfere with the interview. This person's role is simply as an observer. Representation by legal counsel during the interview is prohibited, except in cases involving sexual assault, dating violence, domestic violence, and stalking, where both the complainant and respondent may be accompanied by any advisor of their choice,

including legal counsel, so long as the individual does not interfere with the interview. In no case may an advisor include any individual that could serve as a witness in the process.

3. Findings and Determination

- a. Upon completion of the investigation, the fact finding team shall prepare a written report of the factual findings. The Associate Vice Chancellor of Human Resources shall forward the report to the pertinent senior officer in the unit where the respondent is employed. The senior officer, in consultation with the General Counsel, shall make a determination of whether a policy violation has occurred. The standard of proof shall be a preponderance of the evidence, which means that there is greater than a 50% chance that the respondent is responsible for the alleged violation.
- b. In the event that a violation of this Policy is found, the pertinent senior officer shall determine the appropriate disciplinary action, in consultation with the Associate Vice Chancellor of Human Resources and General Counsel, in accordance with the appropriate disciplinary procedures pertaining to the affected individual. Any prior violations of this policy involving the respondent shall be considered in any disciplinary action.
- c. The complainant and the respondent shall be informed within three (3) business days by the Associate Vice Chancellor of Human Resources or pertinent senior officer, in writing, when a decision has been reached. Results of the investigation, the fact finding report, and any subsequent disciplinary action shall be kept confidential to the extent allowed by the North Carolina Human Resources Act (G.S. §§ 126-22 *et. seq.*) and the State Human Resources Commission Personnel Records Policy, or, in the case of student-workers, the Family Educational Rights and Privacy Act (“FERPA”). The administration of any disciplinary action will be the responsibility of the pertinent senior officer in the employee’s division, after consultation with the Director of Staff Development and Employee Relations in Human Resources and in accordance with applicable procedures.

VI. Record Keeping

The Office of Human Resources shall retain all investigation records of employees in a confidential file. The Office of the Dean of Students and/or the Office of Title IX and Clery Compliance shall retain all investigation records of students.

VII. Appeal Procedures

- A. The grounds for appealing a decision reached pursuant to the procedures in [Policy 04.130 Student Gender-Based/Sexual Misconduct](#) are detailed in that Policy.

- B. The grounds for appealing a decision reached pursuant to the procedures in [02.210 Title IX Grievance Policy](#) are detailed in that Policy.
- C. The grounds for appealing the decision reached pursuant to the procedures under Section V.C., by either the complainant or the respondent, may be for only these reasons:
 - 1. The behavior is ongoing;
 - 2. The remedy was not implemented;
 - 3. Material procedural irregularities occurred during the investigation; or
 - 4. New evidence has been discovered that had not been available during the investigation and that may have a substantial impact on the outcome of the investigation.
- D. Dissatisfaction with the university's decision from the formal resolution procedures is not grounds for an appeal.
- E. Parties seeking to appeal the decision on approved grounds must file a written appeal statement within thirty (30) calendar days after notice of the decision. Appeal statements must include a copy of the original complaint, a summary of efforts to resolve the behavior, and the grounds for the appeal.
- F. Respondents against whom disciplinary action has been taken must follow the appeal procedures in accordance with [Policy 08.520 SHRA Employee Appeals and Grievances](#), [Policy 08.521 EHRA Review and Appeal Procedures](#), or [Section 603 of the Code of the Board of Governors](#), as appropriate, to appeal the imposition of such disciplinary action.
- G. A Vice Chancellor unaffiliated with the investigation, or designee, shall review the appeal with General Counsel and the Associate Vice Chancellor of Human Resources. The Vice Chancellor's decision must be in writing and sent to the appellant as soon as practicable in a matter that ensures receipt. This decision constitutes a final university decision.



08.520

SPA Employee Appeals and Grievances

Authority: Chancellor

History: Revised February 1, 2016; Revised 7/1/09; originally effective September 1, 1999; supersedes former policy HR 6.20

Source of Authority: OSP State Personnel Manual Section 7; N.C.G.S. §126-34

Related Link: UNCW Policy 08.110 Recruitment and Selection plan for Permanent and Time Limited SPA Positions; UNCW Policy 08.140 Reduction in Force and Priority Re-Employment Consideration for SPA Employees; UNCW Policy 08.510 SPA Disciplinary Action, Suspension, and Dismissal

Responsible Office(s): Human Resources

I. Purpose

- A. Provide a grievance procedure to allow for the prompt, fair and orderly resolution of disputes arising between the supervisor and the employee.
- B. In establishing this Grievance Policy, the university seeks to achieve the following objectives:
 - 1. Provide procedural consistency across the UNC System;
 - 2. Ensure SHRA employees have access to an internal process to address grievable issues timely, fairly, cost effectively, and without fear of reprisal; and
 - 3. Resolve workplace issues efficiently and effectively.
- C. The intent of the UNC Wilmington policy is to provide a means of communication between supervisors, management, and employees and establishes principles of administration in compliance with rules and regulations set forth by the State Personnel Commission.

II. Scope

This policy applies to (i) applicants for SPA positions, (ii) current and former probationary SPA employees and (iii) current and former career SPA employees.

III. Definitions

The following are definitions of terms used in this policy:

- A. Applicant

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.

B. Career State Employees

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 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.

C. Complainant (EEO only)

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.

D. Contested Case Issue

A grievable issue that may be appealed to the Office of Administrative Hearings (OAH).

E. EEO/AA Officer

The University Officer responsible for Equal Employment Opportunity / Affirmative Action.

F. Equal Employment Opportunity Informal Inquiry

An informal process for addressing unlawful discrimination, harassment, or retaliation allegations that may facilitate a resolution prior to the filing of a grievance.

G. Final University Decision

The final decision authorized by the Chancellor (or President for SHRA employees at General Administration) that concludes the internal grievance process.

H. Grievable Issue

A statutorily defined workplace event or action as defined by NC State statute that allows the alleged workplace event or action to be grieved through established grievance procedures for resolution.

I. Grievant

An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates a grievance.

J. Hearing Officer

An officer appointed by the Chancellor or designee to oversee the proceedings of a hearing and submit a proposed recommendation for a Final University Decision.

K. Hearing Panel

A University appointed panel of no less than 3 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 University Decision.

L. Impasse

An Impasse occurs when Mediation does not result in an agreement.

M. Informal Discussion

An informal process for addressing grievable issues that may facilitate a resolution prior to the filing of a grievance.

N. Internal Grievance Process

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 NC State statute.

O. Internal Grievance Process Timeframe

The internal grievance process must be completed within 90 calendar days. Time spent in the Informal Discussion with supervisor and the EEO Informal Inquiry process is not included in the 90 calendar day timeframe.

P. Mediation

The process in which the Grievant and Respondent use an approved OSHR mediator to attempt to resolve a grievance in a mutually acceptable manner. Responsibility for resolving the grievance rests with the parties.

Q. 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.

R. 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.

S. 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.

T. Respondent

A designated University representative who will have the authority to negotiate an agreement on behalf of the University to resolve a grievance.

U. University

The University of North Carolina at Wilmington, as a constituent institution or employer unit within the 17 campus University of North Carolina System.

IV. Grievable Issues and Who May Grieve

A. The following issues may be grieved at the University level only.

1. Career State Employees or Former Career State Employees may grieve the following:
 - a) Overall performance rating of less than “meets expectations” or equivalent as defined in the Performance Management Policy;
 - 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); or
 - 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).
2. Probationary or Former Probationary State Employees may grieve the following:
 - 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); or
 - 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).
3. Applicant for University Employment (initial hire, promotion, or reemployment) may grieve the following:
 - a) Denial of request to remove inaccurate and misleading information from applicant file (excludes the contents of a performance appraisal and written disciplinary action); or
 - 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).

B. The following issues must first be grieved through the internal University process. If the Grievant is not satisfied with the Final University Decision, the Grievant may appeal to the Office of Administrative Hearings.

1. Career State Employees or Former Career State Employees may grieve the following:
 - 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); or
 - 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).
2. Probationary or Former Probationary State Employees may grieve the following:
 - 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) Any retaliatory personnel action for reporting improper government activities ("whistle blower") as contained in GS 126;
 - d) 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; or
 - e) 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.
3. Applicant for University Employment (initial hire, promotion, or reemployment) may grieve the following:
 - 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, political affiliation, if the applicant believes that he or she has been discriminated against in his or her application for employment; or

- d) Retaliation 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 applicant believes that he or she has been retaliated against in his or her application of employment.

V. Grievance Process for all Grievable Issues

A grievance or complaint must be filed 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 and completed through the University Equal Employment Opportunity (EEO) Informal Inquiry process before being considered in the formal internal grievance process.

Except as provided herein, 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.

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 University 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 University EEO Informal Inquiry process before proceeding to the formal internal grievance process. After the EEO Informal Inquiry process is completed, all grievable issues remaining (including that an unresolved disciplinary action lacks just cause or that an unresolved separation due to unavailability was improper, and any unresolved allegations of unlawful discrimination, harassment, or retaliation) may be considered in the formal grievance process if pursued by the employee as per the procedures below.

VI. Unlawful Discrimination, Harrassment or Retalian Grievance Provisions

A. Option 1 – EEO Informal Inquiry Process for Unlawful Discrimination, Harassment or Retaliation

1. 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 University Equal Employment Opportunity (EEO)/Affirmative Action (AA) Officer within **15 calendar days** of the alleged discriminatory, harassment 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 EEO Informal Inquiry process. The EEO/AA Officer will investigate the complaint and determine if the facts related to the allegations support a finding of reasonable cause or no reasonable cause to believe that unlawful discrimination, harassment or retaliation occurred.
2. The University has **45 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**.

3. At the conclusion of the investigation, the University shall communicate the outcome of the investigation in writing to the Complainant.
4. If there is reasonable cause to believe that unlawful discrimination, harassment, or retaliation occurred, management shall take appropriate action to resolve the matter. If the complaint is successfully resolved, the Complainant will sign a letter of agreement with the University detailing the terms of the resolution.
5. The University shall ensure that the terms of the agreement under the control of the University are implemented. If the complaint is not successfully resolved, then the Complainant may continue the process by filing a formal grievance within **15 calendar days** of the written response from the EEO Informal Inquiry process.
6. If the investigation results show no reasonable cause to believe that unlawful discrimination, harassment, or retaliation occurred, the EEO/AA Officer shall inform the Complainant in writing regarding the conclusions of the investigation. If the Complainant disagrees with the conclusions of the investigation, the Complainant may file a formal grievance within **15 calendar days** of receiving the conclusions of the investigation which will commence with Step 1 mediation.
7. 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 Equal Employment Opportunity Informal Inquiry process is not a part of the formal internal grievance process.

B. Option 2 – External Filing of a Discrimination Charge

1. The Complainant alleging unlawful discrimination, harassment or retaliation has the right, at any time, to bypass or discontinue the EEO Informal Inquiry process 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. Filing deadlines may vary.
2. Information about filing an EEOC charge and deadlines for filling the charge can be found at: <http://www.eeoc.gov/employees/charge.cfm> or by calling the EEOC regional offices located in Raleigh, Greensboro and Charlotte at 1-800-669-4000.
3. Information about filing through the Civil Rights Division of the Office of Administrative Hearings can be found at: <http://www.ncoah.com/civil/> or by calling 919-431-3036.

C. 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 EEOC at any point in either the EEO Informal Inquiry process or the formal internal grievance process.

VII. Informal Discussion

- A. 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 any issue which does not involve an allegation of unlawful discrimination, harassment or retaliation, or a disciplinary action, or a non-disciplinary separation due to unavailability, the employee shall first discuss the grievable issue with the

immediate supervisor, 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.

- B. 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.
- C. 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.
- D. The supervisor or other appropriate personnel shall notify Human Resources when an employee requests an informal discussion. The supervisor is responsible for attempting to resolve the grievable issue with the employee.
- E. The University 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.
- F. 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. Time spent in the Informal Discussion with Supervisor is not a part of the formal internal grievance process.

VIII. Formal Grievance – Step 1 Mediation

The formal internal grievance process begins when a Grievant files a formal grievance request in accordance with the SHRA Grievance Policy. The Grievant must begin the formal internal grievance process by filing a written grievance to the Human Resources Director or designee within the University in accordance with the SHRA Grievance Policy. The Grievant must complete the required informal processes before filing a formal grievance.

The University, upon approval by OSHR, has the discretion to bypass Step 1 and proceed directly to Step 2 in situations involving discipline for jeopardizing campus safety, personal misconduct, or other similar egregious workplace issues. A decision to request bypassing mediation must be approved by the University Human Resource Office and authorized by the Chancellor. The decision to bypass Step 1 only occurs after careful consultation with parties involved in the workplace dispute.

A. Purpose of Mediation

Mediation provides the Grievant and the University Respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution.

B. Mediation Process

University Human Resources 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 University mutually agree in writing to extend the time due to extenuating circumstances. Any extension of Step 1 will not extend the **90 calendar day** timeline.

C. Location and Time Allocation

Mediation shall be conducted in a location identified by the University and approved by the OSHR Mediation Director or designee. The mediation shall be 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.

D. Office of State Human Resources-Approved Mediators

Only OSHR-approved Mediators will mediate SHRA (employees subject to the State Human Resources Act) 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.

E. Mediation Attendees

1. Grievant
2. Respondent
3. The OSHR-appointed Mediator(s).
4. The OSHR Mediation Director and designees may attend Mediations as observers.
5. Emergency substitution of a Mediator must be approved by the OSHR Mediation Director or designee.

Attorneys and other advisors may not attend the mediation. Either the Grievant or Respondent may ask for a recess at any time in order to consult with an attorney or other advisor. Audiotape, videotape, recording devices, and transmission devices are not permitted during mediation.

F. Post Mediation

1. If an agreement is reached, the following shall occur:
 - a) The Grievant and the Respondent will sign a Mediation Agreement that states the terms of agreement and is a legally binding document.
 - b) The original signed Mediation Agreement is provided to the University Human Resources. A copy of the signed Mediation Agreement is provided to the Grievant, Respondent and the OSHR Mediation Director.
 - c) Human Resources will review the provisions of the Mediation Agreement to assure that the terms comply with the State Human Resources Commission policies or rules, University policies or rules, and applicable State or federal law.

- d) Human Resources will ensure that terms of the Mediation Agreement that are under the control of the University are implemented.
 - e) The Mediation Agreement shall be maintained on file for three years.
2. If an agreement is not reached (Impasse), the following shall occur:
- a) The Grievant and the Respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
 - b) The original signed Notice of Impasse is provided to the University Human Resources Office. A copy of the signed Notice of Impasse is provided to the Grievant, the respondent and the OSHR Mediation Director.
 - c) At the end of the mediation session, the University must provide the Grievant information regarding Step 2 of the internal grievance process and inform the Grievant that the Step 2 filing must be received by the University within 5 calendar days of the date of mediation.
 - d) The Notice of Impasse shall be maintained on file for three years or until any known litigation is completed.

G. Confidentiality of Documents Produced in Mediation

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

H. Limitations on a Mediation Agreement

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

- 1. Not contain any provision(s) contrary to State Human Resources Commission policies, administrative rules, University policies or rules, and applicable state and federal law;
- 2. Not contain any provision(s) that exceeds the scope of the parties' authority; and
- 3. Not be transferable to another state agency or University.
- 4. When Mediation resolves a grievance but it is determined upon review by University Human Resources or OSHR that one or more provisions of the Mediation Agreement do not comply with the State Human Resources Commission policies or rules, University policies or rules, or applicable State or federal laws, Mediation shall be reconvened to resolve the specific issue(s). This will not extend the **90 calendar day** formal grievance period. If the parties are unable to resolve the noncompliance issue(s), the mediation will reach impasse and the Grievant may proceed to Step 2 of the internal grievance process.
- 5. Should additional information or clarification be needed to implement the terms of the Mediation Agreement, communication with all parties may occur remotely. In the event the Mediator that facilitated the mediation is not available, the OSHR Mediation Director or designee will have the authority to stand in place of the Mediator in these communications.

I. Mediation Agreement Approval

The approval of the Director of 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.

J. Mediation Responsibilities

1. Grievant Responsibilities

- a) Attending the mediation as scheduled by the University;
- b) Preparing for the mediation by being able to communicate clear and concise information regarding the issues surrounding the grievance and the remedies sought;
- c) Notifying and receiving approval from University 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; and
- d) 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.

2. Respondent Responsibilities

- a) Attending the mediation as scheduled by the University;
- b) Preparing for the mediation by becoming knowledgeable regarding the issues surrounding the grievance and remedies sought;
- c) Notifying and receiving approval from University 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;
- d) Consulting with management, Human Resources and/or legal counsel regarding possible areas of negotiation for grievance resolution; and
- e) Making a good a faith effort to resolve the grievance.

3. University Human Resources Responsibilities

- a) Administering the mediation program within the University;
- b) Appointing a University Mediation Coordinator, and other personnel as needed, to manage and schedule mediations;
- c) Ensuring that the Grievant receives appropriate information about the mediation process;

- d) Designating a qualified and informed University representative to serve as the Respondent for each mediation and who will have the authority to negotiate an agreement on behalf of the University that resolves the grievance;
- e) Ensuring that the Respondent is adequately prepared for the mediation to understand possible areas of negotiation for grievance resolution;
- f) Ensuring appropriate personnel (management, Human Resources or legal counsel) are available to respond to any issues that may arise during the course of the mediation;
- g) Designating appropriate personnel to be available to review the terms of the draft agreement to ensure it is complete and contains the necessary information for implementation;
- h) Reinforce the expectations for confidentiality of the Mediation;
- i) Identifying suitable locations for Mediations;
- j) Using only OSHR-approved Mediator(s) for each mediation session;
- k) Reimbursing Mediators for travel at state-approved rates;
- l) Providing nominees for consideration that meet the qualifications set forth by OSHR to be trained as OSHR mediators; and
- m) Assuming financial responsibility for the initial and ongoing training of University nominated mediators.

4. Office of State Human Resources Responsibilities

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

IX. Formal Grievance – Step 2 – Hearing Panel/Hearing Officer

A. Hearing Process

If Mediation does not result in a resolution at Step 1, the Grievant has the ability to proceed to Step 2 of the internal grievance process. Human Resources will notify the Grievant of the opportunity to present the

grievance orally to a Hearing Panel/Hearing Officer outside of the employee's chain of command. The Step 2 filing must be received by the University HR Office within **5 calendar days** of the date of the completion of mediation. The hearing process shall be concluded within **35 calendar days of filing Step 2 of the grievance process** unless the Grievant and University mutually agree to extend the time. This will not extend the **90 calendar day** timeframe.

B. Right to Challenge Appointed Hearing Officer or Hearing Panel Members

The Grievant has 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. Human Resources 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 Hearing Officer/Hearing Panel.

C. Hearing Attendees

1. The Grievant who initiated the grievance;
2. Hearing Officer or Hearing Panel members;
3. Witnesses, as approved by the Hearing Officer or Hearing Panel Chair in accordance with the University process; and
4. Appropriate University and HR representatives. 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, for UNC General Administration.

D. Hearing Participant Responsibilities

1. Grievant Responsibilities

- a) Attending the hearing as scheduled by the University;
- b) 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;
- c) Preparing for the hearing by being able to present clear and concise information regarding the issues surrounding the grievance and remedies sought; and
- d) A Grievant who has an unexcused failure to attend a hearing as scheduled forfeits the right to proceed with the internal grievance process.

2. Hearing Officer/Hearing Panel Chair Responsibilities:

- a) Calling the hearing to order and establishing the process for the proceedings;

- b) Maintaining order and decorum;
- c) Ensuring that all parties are allotted adequate time to present evidence and question witnesses;
and
- d) Submitting a proposed recommendation with documentation for a Final University Decision.

3. University Human Resources Responsibilities:

- a) Establishing the use of either a Hearing Panel/Hearing Officer;
- b) Administering the hearing process within the University;
- c) Providing that all parties receive appropriate information about the hearing process;
- d) Establishing a process for the Grievant to challenge the appointed Hearing Officer or Hearing Panel members; and
- e) Consulting with OSHR on the proposed Final University Decision Recommendation.

E. Grievance Presentation

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

F. Proposed Recommendation

1. The Hearing Panel Chair or Hearing Officer will draft a proposed recommendation for a final University decision including justification to support the recommendation and submit to the Chancellor or designee.
2. The Chancellor or appropriate designee will forward the proposed recommendation to the Director of the Office of State Human Resources. This must be completed within the 35 calendar day timeframe for the Step 2 hearing process.
3. The Director of the Office of State Human Resources or designee shall review the proposed recommendation and will respond to the University within 10 calendar days.

G. Final University Decision

1. The University shall consider any input received from the Director of the Office of State Human Resources and issue its Final University Decision to the Grievant within 5 calendar days.
2. The proposed Final University Decision shall not be issued or become final until reviewed and approved by the Office of State Human Resources.

3. 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 any appeal rights.

H. 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.

X. Appeal to the Office of Administrative Hearings

A. University Requirements to Notify Grievant of Appeal Rights

The Final University Decision shall inform the Grievant in writing of any appeal rights through the Office of Administrative Hearings for contested case issues. The Grievant must be specifically informed of the following:

1. The appeal is made by filing a “Petition for a Contested Case” hearing with the Office of Administrative Hearings;
2. The appeal to the Office of Administrative Hearings must be filed within 30 calendar days after the Grievant receives the Final University Decision; and
3. A fee is charged for filing a Petition for a Contested Case Hearing.

B. Grievant Access to the Office of Administrative Hearings

1. If the Grievant is not satisfied with the Final University Decision, the Grievant may file a Petition for Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.
2. A Petition for Contested Case Hearing must be filed within 30 calendar days after the Grievant receives the Final University Decision. The Grievant may file the appeal at:

Office of Administrative Hearings
1711 New Hope Church Road (Physical Address) Raleigh, NC 27609
6714 Mail Service Center (Mailing Address) Raleigh, NC 27699-6700
(919) 431-3000

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 (919) 431-3000.

XI. Responsibilities for the SHRA Employee Grievance Policy

A. University Human Resources, AA/EEO Office Responsibilities

1. Adhere to the SHRA Grievance Policy;

2. Develop and communicate internal procedures as needed;
3. Provide current employees and new hires with access to the Employee Grievance Policy;
4. Notify employees of any change to the internal University grievance process no later than 30 calendar days prior to the effective date of the change;
5. Maintain grievance data in the Grievance Log provided by OSHR. Data must be entered as events occur; and
6. Provide employee grievance reports to OSHR as request.

B. Office of State Human Resources Responsibilities

The Office of State Human Resources shall:

1. Seek appropriate approval of the SHRA Grievance Policy any time modifications are made;
2. Provide consultation and technical assistance to Universities as needed; and
3. Conduct ongoing studies/analyses to evaluate policy effectiveness and communicate results to improve the program effectiveness.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

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Policy

The State of North Carolina provides equal employment opportunities to all employees and applicants for employment and prohibits discrimination, harassment or retaliation based on race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information, or disability. The State also recognizes that an effective and efficient government requires the talents, skills and abilities of all qualified and available individuals, and seeks opportunities to promote diversity and inclusion at all occupational levels of State government's workforce through equal employment opportunity (EEO) workforce planning initiatives.

The State is committed to ensuring the administration and implementation of all human resources policies, practices and programs are fair and equitable. State agencies, departments and universities shall be accountable for administering all aspects of employment, including hiring, dismissal, compensation, job assignment, classification, promotion, reduction-in-force, training, benefits and any other terms and conditions of employment in accordance with federal and State EEO laws and policies.

Employees shall not engage in harassing conduct, and if harassing conduct does occur, it should be reported. Managers and supervisors maintain a critical role and responsibility in preventing and eliminating harassing conduct in our workplace. See the Unlawful Workplace Harassment policy of the State Human Resources Manual for provisions related to unlawful harassment, including sexual harassment.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Acts of retaliation against an employee who engages in protected activity or the exercise of any appeal or grievance right provided by law will not be tolerated in our workplace.

Coverage

Individuals protected by provisions of this policy are:

1. current employees;
2. former employees; and
3. job applicants

Veterans

Job discrimination of veterans shall be prohibited, and affirmative action shall be undertaken to employ and advance in employment eligible veterans in accordance with Article 13 of G.S. 126 and G.S. 128-15.

See the Veteran's Preference policy in the State Human Resources Manual for provisions related to veteran's preference including the employment and advancement of protected veterans.

Office of State Human Resources Responsibilities

The Office of State Human Resources (OSHR) shall:

1. establish the EEO Plan Requirements and Program Guidelines in accordance with federal and state laws to be followed by all agencies, departments and universities, to ensure commitment to and accountability for equal employment opportunity throughout State government;
2. review, approve and monitor all EEO plans and updates;
3. provide services of EEO technical assistance, training, oversight, monitoring, evaluation, support programs, and reporting to ensure that State government's work force is diverse at all occupational levels;
4. develop and promote EEO programs and best practices to encourage consistent and fair treatment of all State employees; and
5. meet with agency heads, department heads, and university chancellors, Human Resources Directors and EEO Directors/Officers annually to discuss the progress made toward reaching program goals.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Agency, Department and University Responsibilities:

Each Agency Head, Department Head and University Chancellor shall:

1. adhere to the policies and programs that have been adopted by the State Human Resources Commission and approved by the Governor;
2. ensure the agency, department or university's commitment to EEO is clearly communicated to all employees;
3. ensure that Human Resources policies and employment practices are implemented consistently and fairly;
4. designate an EEO Officer/Director who has access to the agency head, department head or university chancellor to be responsible for the operation and implementation of the EEO Plan;
5. provide the necessary resources to ensure the successful implementation of the EEO Program;
6. ensure each manager and supervisor has, as a part of his or her performance plan, the responsibility to comply with EEO laws and policies, and assist in achieving EEO goals established by the agency, department or university;
7. ensure the EEO Plan is designed in accordance with the EEO Plan Requirements and Program Guidelines as specified by the Office of State Human Resources;
8. ensure the EEO Plan is submitted by March 1st of each year to the Office of State Human Resources for review and approval as required by G.S. 126-19;
9. ensure all employees are made aware of the EEO policy including the Unlawful Workplace Harassment Policy found in the State Human Resources Manual;
10. develop strategies to prevent unlawful workplace harassment and retaliation in the workplace;
11. ensure required employee notices describing Federal laws prohibiting job discrimination are posted in work locations where notices to applicants and employees are customarily posted and easily accessible to applicants and employees with disabilities;
12. maintain records of all complaints and grievances alleging discriminatory practices; and
13. ensure all newly hired, promoted, or appointed supervisors and managers complete required EEO training in accordance with G.S. 126-16.1. See the Equal Employment Opportunity Diversity Fundamentals policy located in the State Human

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Resources Manual for information related to EEO training.

Complaint Process

An individual covered by this policy who is alleging unlawful discrimination, harassment or retaliation may file a complaint following the process outlined in the Employee Grievance Policy located in the State Human Resources Manual. For the purpose of this policy, political affiliation is not a protected classification under federal EEO law but may be grieved pursuant to G.S. 126-34.02 as a contested case after completion of the agency grievance procedure and the Office of State Human Resources review.



UNIVERSITY OF NORTH CAROLINA WILMINGTON

Reaffirmation of Commitment

Diversity, Inclusion, Equal Education and Employment Opportunity

At the University of North Carolina at Wilmington (UNCW), our culture reflects our values of inclusion, diversity, globalization, ethics, integrity, and innovation, and we are committed to providing equality of educational and employment opportunity for all persons without regard to race, sex (such as gender, gender identity, marital status, childbirth, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, political affiliation, veteran status, military service member status, genetic information, or relationship to other university constituents – except where sex, age, or ability represent bona fide educational or occupational qualifications or where marital status is a statutorily established eligibility criterion for State funded employee benefit programs. UNCW believes that embracing the unique contributions of our faculty, staff and students is critical to our success and paramount in being recognized for our global mindset. This Policy prohibits all forms of discrimination based on a person's protected status as established by the laws listed below.

This affirmation is published in accordance with 41 CFR Part 60 and is implemented in accordance with the following laws and their amendments: Title IV, VI, VII of the Civil Rights Act of 1964; Title IX of the Education Amendments Act of 1972; Title II of the Genetic Information Non Discrimination Act of 2008; Age Discrimination in Employment Act; Age Discrimination Act of 1975; Equal Pay Act of 1963; Section 504 of the Rehabilitation Act of 1973; Executive Order 11246; Americans with Disabilities Act of 1990; ADA Amendments Act of 2008; Violence Against Women Act; Vietnam Era Veterans' Readjustment Act; the Civil Rights Restoration Act of 1988; The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime and N.C. General Statutes Chapters 116, 126, 127B, and 168A.

To ensure that equal educational and employment opportunity exists throughout the university, a variety of diversity and inclusion efforts and a results-oriented equal opportunity/affirmative action program have been implemented to overcome the effects of past discrimination, enhance our culture and to eliminate barriers to educational or employment opportunities for all qualified individuals. Copies of the equal opportunity/affirmative action program are available for review upon request in the Human Resources Department M-F, between 8:30 a.m. to 4:30 p.m. The University of North Carolina at Wilmington is committed this program and is aware that, with its implementation, positive benefits will be received from greater utilization and development of a diverse and inclusive environment.

Statement on Diversity and Inclusion in the University Community



UNIVERSITY OF NORTH CAROLINA WILMINGTON

- “Diversity” means the ways in which individuals vary, including, but not limited to, backgrounds, personal characteristics, ideas, beliefs, cultures, and traditions that distinguish one individual or group from another, which may include, but are not limited to, Federal, State, University, and constituent institution protected classes.
- “Inclusion” means the enablement of individuals, including those from underrepresented groups, to fully and equitably have access to, and participate in, the University’s programs, services, facilities, and institutional life.
- “Diversity and Inclusion (D&I)” collectively means the intentional efforts undertaken to create an institutional culture and a working and learning environment that offers acceptance, support, and respect for a diversity of individuals as they pursue their academic, research, and professional ambitions and interests.

Unlawful Harassment, Discrimination and Retaliation

The University of North Carolina at Wilmington affirms that students and employees are entitled to an educational and employment environment free from unlawful harassment or discrimination based on that individual's race, gender, gender identity, sex (such as marital status or pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, genetic information, political affiliation, veteran status, or relationship to other university constituents, and expressly prohibits unlawful harassment or discrimination of any individual among the university community engaged in educational or employment pursuits. Further, no student or employee shall be subject to retaliation for bringing a good faith complaint pertaining to unlawful harassment or discrimination or for protesting such behavior directed against another member of the university community.

For more information concerning ways in which our multicultural learning community may be nurtured and protected or complaint resolution procedures, contact the Office of Institutional Diversity and Inclusion, the Office of the Dean of Students, the Office of Academic Affairs, or the Office of Human Resources.

January 12, 2021

Jose V. Sartarelli, Chancellor

Date