

## Appalachian State University Grievance Policy and Procedures

The purpose of the grievance policy is to provide a means of communication between supervisors and employees and to establish principles of administration to insure a prompt, orderly, and fair response to an employee's grievance or complaint as provided for State Personnel Commission rules and policies.

However, please note that this process is a pre-legal process and expressly prohibits representation by attorneys for either party during the grievance process. Employees can seek legal counsel if they choose to at their own expense, but are prohibited from participating in the actual grievance proceedings.

This policy meets all requirements and is consistent with all policies as established by the North Carolina State Personnel Commission and is administered in a totally equitable manner and is free of any unlawful discrimination.

Career State employees are employees who are in a permanent position appointment and have been continuously employed by the State of North Carolina in a position subject to the State Personnel Act for the immediate twenty-four (24) preceding months. All Career State employees have a right to present a grievance free from interference, restraint, coercion, or reprisal.

### Actions Covered

Covered Persons	Grievable Issues
Career State employees or former career State employees	<ul style="list-style-type: none"> <li>•Dismissal, demotion, or suspension without pay without just cause</li> <li>•Denial of promotion due to failure to post</li> <li>•Failure to give promotional priority over outside applicants</li> <li>•Failure to give RIF* re-employment consideration</li> <li>•Failure to give policy-making/confidential exempt status priority re-employment consideration</li> <li>•Failure to follow systematic procedures in reduction in force (not alleging discrimination)</li> <li>•Denial of veteran's preference in connection with RIF</li> </ul>
Any State employee or former State employee	<ul style="list-style-type: none"> <li>•Denial of request to remove inaccurate or misleading information from personnel file</li> <li>•Policy-making designation</li> <li>•Discrimination in denial of promotion, transfer, or training; or retaliation in selection for demotion, RIF, or termination</li> </ul>
Any applicant for State employment	<ul style="list-style-type: none"> <li>•Denial of veteran's preference in initial state employment</li> <li>•Denial of employment on the basis of illegal discrimination</li> </ul>
Any State employee	<ul style="list-style-type: none"> <li>•A false accusation about political threats or promises</li> <li>•Violation of the FLSA, ADEA, FMLA, or ADA (except for employees in exempt policy-making positions).</li> </ul>

\*RIF (Reduction-In-Force)

\*\*FLSA (Fair Labor Standards Act); ADEA (Age Discrimination Employment Act); FMLA (Family Medical

Leave Act); and ADA (Americans with Disabilities Act)

Performance rating disputes can be appealed within Appalachian State University by a separate policy. Such disputes cannot be appealed outside the University.

## **Written Warnings**

Written warnings may be issued by departmental supervisors/management to employees and must have just cause for either of the following two (2) reasons: 1) Unsatisfactory Job Performance including Grossly Inefficient Job Performance and/or 2) Unacceptable Personal Conduct.

### ***Requirements for Issuing a Written Warning:***

The supervisor should schedule a meeting with the employee to deliver a letter of written warning. Letter of written warning.

### ***A Letter of Written Warning Must:***

- Inform the employee that the action is indeed a written warning, and not some other form of non-disciplinary process such as counseling;
- Include specific issues that are the basis for the warning;
- Inform the employee of specific improvements that must be made to correct these specific issues;
- Inform the employee of the time frame allowed for making the required improvements and/or corrections. Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct.

**Note:** If the warning does not include an improvement or correction timeframe, the timeframe is sixty (60) days for Unsatisfactory Job Performance and immediately for Grossly Inefficient Job Performance or Unacceptable Personal Conduct.

- Inform the employee of the consequences of failing to make the required improvements or corrections.

### ***Written Warnings Become Inactive:***

- After eighteen (18) months, unless there has been additional written disciplinary action since the date the written warning was originally issued. If so, the 18-month time frame will be extended from the date of the most recent written warning.
- At any time if the supervisor or other authorized management representative concludes that the problem that gave rise to the warning has been resolved or is unlikely to reoccur, the employee must be notified in writing that the written warning is being removed from the employee's personnel file. A copy of this action must also be sent to the Office of Human Resource Services.

An employee may request the removal of a written disciplinary action at anytime. An active written warning may remain in an employee's personnel file, but cannot be used for further progressive disciplinary action.

Written warnings are not grievable under this policy and pursuant to State Commission rules and policies.

### **Suspension Without Pay**

Before an employee is placed on disciplinary suspension without pay, the supervisor must schedule and conduct a pre-disciplinary conference with the employee. The supervisor must give the employee advance verbal or written notice of the conference. The notice must tell the employee the type of disciplinary action (disciplinary suspension) being considered, the conference time and location, and the facts that led to the recommendation. Advance notice should be as much as practical under the circumstances. During the pre-disciplinary conference, the employee must be given by the supervisor a statement in writing explaining the acts, or failure to act, that are the reason for the suspension. Following the pre-disciplinary conference, suspension without pay is usually effective immediately based upon the decision of the supervisor.

The time period for a disciplinary suspension without pay for an SPA employee who is subject to the Fair Labor Standards Act (FLSA) must be for at least one (1) full work day, but cannot exceed more than two (2) work weeks. However, if an SPA employee who is exempt from FLSA is suspended without pay, the time period must be for at least one (1) full workweek, but cannot be for more than two (2) full weeks.

### **Illegal Discrimination**

Any employee (regardless of length of service) who has reason to believe that employment, promotion, training or transfer was denied the employee; or that demotion, Reduction-in-Force or termination of employment was forced upon the employee because of age (above 40), gender, race, color, national origin, religion, creed, political affiliation, disabling condition, or retaliation except where specific age, sex, or physical requirements constitute a bonafide occupational qualification necessary to proper and efficient administration shall have the right to appeal through the University grievance procedure within fifteen (15) calendar days of the alleged discriminatory action or may appeal directly to the State Personnel Commission. An employee who chooses to bypass the University's internal grievance procedure and appeal directly to the State Personnel Commission must do so in writing within thirty (30) calendar days of notice of the alleged discriminatory action.

### **Reasonable Accommodation to Disabilities**

Effective November 1, 2006, the State Personnel Commission adopted a policy on requests for reasonable accommodation to disabilities. As part of that policy, employees and applicants have the ability to file a grievance if they are dissatisfied with a decision on a request for reasonable accommodation.

Those who wish to file a reasonable accommodation grievance may do so within the agency or university grievance process, or they may also file directly with the Office of Administrative Hearings. The grievance right applies to part-time or full-time employees, temporary employees, employees in a probationary status, non-career status employees, and employees with career status.

### **Unlawful Workplace Harassment**

An employee who alleges that he/she has been subjected to unlawful workplace harassment or retaliation in the workplace must submit a written complaint to Appalachian State University within thirty (30) calendar days of the alleged harassing or retaliatory action. If the employee elects to utilize the University grievance procedure, he/she has the right to bypass any step in the University grievance procedure involving discussions with or review by the alleged harasser. Unlawful workplace harassment issues must reach a final University decision within sixty (60) days of the triggering complaint.

For cases alleging or involving Unlawful Workplace Harassment issues, the Appalachian State University contact is as follows: Equity Office, (828) 262-2144.

### **Filing a Grievance**

An employee who chooses to file a grievance against his/her department must file the grievance within fifteen (15) calendar days of the date the employee received official written notice of the action against him/her. Usually actions constituting the filing of a grievance include employee dismissal, demotion, denial of promotional opportunity, suspension from employment, etc.

### **Grievance Rights and How to Obtain Information Regarding Grievance Policy and Procedures**

The Assistant Director for Employee Relations is available to provide information and answer questions for Appalachian State University employees regarding Grievance Rights and the University's Grievance Policy and Procedures. Grievance information is also available on the HRS website at [www.hrs.appstate.edu](http://www.hrs.appstate.edu).

An employee who files a grievance will be furnished a printed copy of Appalachian State University's Grievance Policy and Procedures. All new SPA employees will be made aware of the Grievance Policy and Procedures during orientation training sessions.

### **Employee Time Off For Grievance Proceedings**

Employees shall be allowed up to eight (8) hours of time off from their regular job duties for the preparation of their grievance case without loss of pay, vacation leave, or other time credits. Employees must notify their supervisor in advance and receive prior approval of the necessity to be absent from work for preparation of the grievance.

The employee shall further be allowed to attend the grievance hearing with no penalty of loss of pay, vacation leave, or other time credits unless they have been otherwise terminated from employment.

### **Role of Human Resource Services**

Human Resource Services plays a vital role in the entire grievance process. The Director of Human Resource Services or designee(s) will interpret the grievance policy for managers and employees, answer questions pertaining to said policy, and outline procedural matters of the grievance hearing process.

The Director of Human Resource Services or designee(s) has the responsibility to appointment of the SPA grievance hearing committee and providing instructions, training, and guidance to the committee. The Director of Human Resource Services or designee (s) will facilitate the all SPA Grievance Hearings and will be available for procedural consultation throughout the hearing, but shall not participate in the deliberations of the committee.

## **STEPS IN THE UNIVERSITY GRIEVANCE PROCESS**

### **Step 1—Employee Notice of Grievance/Supervisor Response**

To initiate a grievance, the employee must file a written Notice of Grievance within fifteen (15) calendar days of the contested action to the immediate supervisor explaining the act or acts which are being challenged and the relief requested. The employee should send a copy of the Notice of Grievance to the Assistant Director of Human Resource Services/Employee Relations.

The supervisor must respond to the employee/grievant in writing within ten (10) calendar days of the date that the supervisor receives the Notice of Grievance. This written response to employee/grievant by supervisor must state the departmental intent to uphold their original decision to dismiss, etc., or state that the department will reconsider their position in the matter. Notification of employee grievance rights to appeal the departmental action must be included with this correspondence to employee/grievant.

### **Step 2—Appeal to the Department Head if Supervisor Level Fails**

If communication and subsequent decision of the supervisor are not satisfactory to the employee, or if the employee fails to receive a written response from the supervisor within ten (10) days of the time that the employee filed the grievance, the employee can request the consideration of the immediate supervisor's manager or supervisor. This will normally be the department head.

An appeal to the department head may be presented either verbally or in writing within five (5) days of the Step 1 decision, and a written response to the employee's Notice of Grievance should normally be given within ten (10) days of that date. Notification of employee grievance rights to appeal the departmental action must be included.

### **Step 3—Appeal to the Chancellor Through the Grievance Committee**

If the communication and subsequent decisions at the Step 1 or Step 2 levels are not satisfactory to the employee, or if the decision is not received within the established time frame, or if the decision is not properly implemented, the matter may be appealed to a University grievance committee.

To proceed with the appeal to the University grievance committee, the grievant must submit this request in writing to the Director of Human Resource Services within five (5) calendar days after Steps 1 and 2 have been determined to be yet unresolved.

The grievant must provide a written summary detailing the facts of his/her complaint with copies of this summary being furnished to all parties involved.

The Director of Human Resource Services or designee(s) will appoint the University grievance committee. The committee members may not be from the same operational unit as the grievant. Five (5) members will be appointed by the Director of Human Resource Services or designee(s) to serve on the committee plus two (2) alternates, making a total of seven (7). However, the University grievance committee shall consist of only five (5) members. The grievant shall be allowed the opportunity to eliminate up to two (2) members of the committee if the employee believes that those persons cannot render an unbiased decision. Once a member is eliminated, he/she will be replaced with one of the two alternate(s).

The committee shall not be made up entirely of supervisory or administrative personnel but should also include a group of peers. The demographics of the committee should reflect the demographics of the University personnel pool. In cases where illegal discrimination is alleged, it is recommended that at least one or more committee members be representative of the minority group in question.

The chairperson or a designated member of the grievance committee will preside over the grievance hearing. For the sole purpose of answering procedural questions and/or questions pertaining to personnel policy, the Director of HRS or designee(s) must be in attendance at the grievance hearing, but shall not participate in the deliberations of the committee. The Director of Human Resource Services or designee(s) will select someone to record the minutes of the grievance hearing.

#### **Responsibility of the Chancellor in the Grievance Hearing Process and the Final University Decision**

At the conclusion of the hearing, the grievance committee chairperson will furnish to the Chancellor a summary of the case along with the committee's recommendation for the final University decision. The committee chairperson must submit a confidential copy of the committee's recommendation to the Director of Human Resources Services at the same time it is delivered to the Office of the Chancellor.

***The Chairperson and the Director of Human Resource Services will meet with the Chancellor to discuss the committee's recommendation and answer any questions the Chancellor may have regarding the committee's proceedings and recommendation.***

***It is the responsibility of the Chancellor to review the committee's recommendation and issue to the grievant a final University decision within twenty-one (21) calendar days of the recommendation of the grievance committee.***

The Chancellor must keep in mind the overall time period of the grievance process as governed by the Office of State Personnel, stating that a final University decision must be delivered to the grievant in writing within a reasonable time from the date that the grievance was initiated. A reasonable time is no more than ninety (90) days for dismissals and demotions and no more than one hundred and twenty (120) days for all

other issues. The time limit may only be extended, if necessary, with the written consent of the grievant. Notification of grievant appeal rights to the State Personnel Commission must be included.

### **Appeal of the Final University Decision**

If the grievant disagrees with the final University decision and has attained career status (24 immediate continuous months of permanent employment), he/she may appeal this decision within thirty (30) days after receipt of the decision or action. An appeal to the State Personnel Commission is made by filing a petition for a contested case hearing with the Office of Administrative Hearings at the following address:

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

Telephone: (919) 733-2698

### **University Responsibilities**

By January 1 of each even-numbered year, the University shall:

1. File its grievance procedure with the Office of State Personnel.
2. File for approval by the State Personnel Commission, any modification(s) to the University grievance procedure prior to the procedure becoming effective.
3. Submit a certified statement that no changes have been made to the grievance procedure since the last approved submission if such is the case.
4. Include in the grievance procedure the effective date of the procedure and the effective date of any changes to the procedures.
5. Continuously evaluate the grievance procedure's effectiveness in achieving the University's goals.
6. Compile information on employee grievance semi-annually and as otherwise requested by the Office of State Personnel. These reports shall be submitted prior to the first business day of January and July.

This grievance procedure/policy is effective September 2009.