



State of North Carolina
Department of Public Safety
POLICIES & PROCEDURES

Division: ADMINISTRATION
Chapter: HUMAN RESOURCES
Policy: HR 5.2 EMPLOYEE GRIEVANCE AND MEDIATION POLICY

HUMAN RESOURCES

Issue Date: SEPT 1, 2013
Revised:

Purpose

It is the policy of the North Carolina Department of Public Safety (DPS) to provide a means of communication between supervisors and employees and establish principles of administration to ensure a prompt, orderly, and fair response to an employee's grievance or complaint. Employees have the right to present a grievance free from interference, restraint, coercion, or reprisal.

Career State Employee

According to G.S. 126-1.1, a **career state employee** means a state employee 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 Personnel Act for the immediate 24 preceding months.
Note: See exception to this rule found under 'Eligibility and Exceptions to the Career Status Rule.'

Grievance Rights and Process Overview

Any **eligible employee** having a grievance arising out of or due to employment:

- Shall first discuss the problem or grievance with his/her supervisor, or the appropriate supervisor in the employee's chain of command, and follow the DPS Employee Grievance and Mediation Procedure approved by the State Personnel Commission.
- Any eligible employee under the above stated guidelines who is not satisfied with the decision of the immediate supervisor may obtain a copy of the appeal rights and the DPS Employee Grievance and Mediation Procedure from the Human Resource Office, his/her work unit or at the website at the following link:
<http://www.ncdps.gov/Index2.cfm?a=000002,000056,002186>
- If the grievance involves alleged illegal discrimination, the procedure set out for such complaints shall be followed. This process can be found later in this policy and at:
<http://www.ncdps.gov/Index2.cfm?a=000002,002195>

Note: This policy does not apply to employees who are subject to N.C. General Statute 115C-325, System of employment for public school teachers. This statute can be found at:

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-325.html.

Eligibility and Exceptions to the Career Status Rule

This policy does not apply to:

- Probationary employees
- Temporary employees
- Employees with a trainee appointment (who have not attained career status)
- Employees who have not attained career status, except as required by law
- Employees in positions designated as exempt policy-making/confidential and exempt managerial

The following grievances may be initiated without regard to the type of appointment or length of service:

- **Alleged discrimination** (G.S. 126-16 and G.S. 126-36). This type of grievance may be:
 - Initiated through the DPS EEO Procedure, which can be found at <http://www.ncdps.gov/Index2.cfm?a=000002,002195>; or
 - Filed directly with the Office of Administrative Hearings (OAH) as later described in this procedure. (An employee who chooses to bypass the Department's internal grievance process and appeals directly to the OAH must do so **within thirty (30) calendar days** of notice of the alleged discriminatory action).
- **Alleged inaccurate or misleading information in personnel file** (G.S. 126-25).

This type of grievance must be initiated through the internal agency grievance procedure.

- **Denial of Veteran's Preference**

This type of grievance must be initiated through the internal agency grievance procedure.

Grievable Issues

The following issues may be grieved through the DPS internal grievance procedure. If the employee disagrees with the Final Agency Decision (FAD), the employee may appeal by filing petition for a contested case hearing at the OAH.

The following are issues that may be grieved categorized by who may grieve.

Career State Employee or Former Career State Employee

- Dismissal, demotion or suspension without pay for lack of just cause
- Denial of promotion due to failure to post
- Failure to give priority reemployment rights after a reduction in force
- Failure to give employees in exempt policy-making or exempt managerial status priority reemployment consideration or reassignment after removal from an exempt position
- Denial of request to remove inaccurate or misleading information from personnel file
- Denial of veteran's preference regarding reduction in force, and other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers
- Any retaliatory personnel action for reporting improper government activities (G.S. 126-85/whistle blower)
- Violation of the Fair Labor Standards Act (FLSA), Age Discrimination in Employment Act (ADEA), Family and Medical Leave Act (FMLA), or Americans with Disabilities Act (ADA)
- Unlawful workplace harassment based upon age, sex, race, color, national origin, religion, creed, or disabling condition, including both quid pro quo and hostile work environment (See "Unlawful Workplace Harassment or Retaliation Provisions".)

At the employee's option, the following issues may be grieved through the internal agency grievance process or may be grieved directly to the OAH without completing the internal agency grievance procedure.

Career State Employee or Former Career State Employee

- Denial to give promotion or reemployment priority over non-state employees
- Denial of promotion where it is alleged that the selection was not from among the most qualified persons because the hiring decision was based upon political affiliation or influence

At the employee's option, the following issues may be grieved internally through the Department's Equal Employment Opportunity Office or may be grieved directly to the OAH without completing the internal agency grievance procedure.

Career State Employee or Former Career State Employee

- Denial of employment and compensation because of discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation or disabling condition
- Discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation, or disabling condition in the denial of promotion, training, or transfer
- Discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation, or disabling condition when an employee is the subject of demotion, reduction in force, transfer, or termination
- Retaliation against an employee for protesting an alleged violation on the basis of age, sex, race, color, national origin, religion, creed, political affiliation, unlawful workplace harassment, disabling condition or reasonable accommodation

The following issues may be grieved through the DPS internal grievance procedure. If the applicant disagrees with the Final Agency Decision, the applicant may appeal by filing a petition for a contested case hearing at the OAH.

Any Applicant for State Employment

- Denial of request to remove inaccurate or misleading information from personnel file
- Denial of veteran's preference regarding initial employment

The following issue may be grieved through the internal agency grievance process or may be grieved directly to the OAH without completing the internal agency grievance procedure.

Any Applicant for State Employment

- Denial of employment where it is alleged that the selection was not from among the most qualified persons because the hiring decision was based upon political affiliation or influence

At the applicant's option, the following issues may be grieved internally through the Department's Equal Employment Opportunity Office or may be grieved directly to the OAH without completing the internal agency grievance procedure.

Any Applicant for State Employment

- Denial of employment and compensation because of discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation or disabling condition

Note: An applicant cannot appeal non-selection for an exempt policy-making position, chief deputy position, chief administrative assistant position, or a confidential assistant or confidential secretary position.

The following issues may be grieved through the DPS internal grievance procedure. If the employee disagrees with the FAD, the employee may appeal by filing a petition for a contested case hearing at the Office of Administrative Hearings (OAH).

State Employee or Former State Employee

- Denial of veteran's preference regarding reduction in force, and other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers
- Denial of request to remove inaccurate or misleading information from personnel file
- Any retaliatory personnel action for reporting improper government activities (G.S.126-85)
- Violation of the Fair Labor Standards Act (FLSA), Age Discrimination in Employment Act (ADEA), Family and Medical Leave Act (FMLA), or Americans with Disabilities Act (ADA)
- Unlawful workplace harassment based upon age, sex, race, color, national origin, religion, creed, or disabling condition, including both quid pro quo and hostile work environment (See "Unlawful Workplace Harassment or Retaliation Provisions".)

At the employee's option the following issues may be grieved through the internal agency grievance process or may be grieved directly to the OAH without completing the internal agency grievance procedure.

State Employee or Former State Employee

- Denial of promotion where it is alleged that the selection was not from among the most qualified persons because the hiring decision was based upon political affiliation or influence

At the employee's option, the following issues may be grieved internally through the Department's Equal Employment Opportunity Office or may be grieved directly to the OAH without completing the internal agency grievance procedure.

State Employee or Former State Employee

- Discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation, or disabling condition in the denial of promotion, training, or transfer
- Discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation, or disabling condition when an employee is the subject of demotion, reduction in force, transfer, or termination
- Retaliation against an employee for protesting an alleged violation on the basis of age, sex, race, color, national origin, religion, creed, political affiliation, unlawful workplace harassment, disabling condition or reasonable accommodation
- Unlawful workplace harassment based upon age, sex, race, color, national origin, religion, creed, or disabling condition, including both quid pro quo and hostile work environment (See "Unlawful Workplace Harassment or Retaliation Provisions".)

Non-Appealable/Non-Grievable Issues

Issues that are not appealable include the following:

- Matters relating to written warnings
- Assignment to investigatory leave with pay
- Duration of assignment of investigatory leave with pay

Matters relating to the decisions management must make to discharge its responsibilities are not subject to appeal under this policy. These matters include, but are not limited to, areas such as:

- The programs and functions of the department
- Standards of service
- Agency budget
- Utilization of technology
- Assignment and reassignment of staff to positions, duty stations, posts, rotation, and shifts except where such transfers include a demotion to a lower classification.

Any other matters not specifically made appealable by the State Personnel Act may not be appealed.

Performance Pay Disputes

Performance pay disputes may be filed only for the following issues:

- Failure to receive an increase when eligible
- The amount of performance increase
- Overall summary rating
- Career-banding competency level (individual assignment within the banded classification title, not the position's competency level).

Performance pay issues shall be mediated at Step 1 of the Employee Grievance and Mediation Process. If the parties are unable to reach resolution during the Step 1 mediation process, the employee may proceed to the Performance Pay Dispute Process for Step 2. For more information, refer to the DPS Performance Management Process. Performance pay disputes are not appealable to the OAH.

Discrimination or Retaliation Provisions

- An employee who alleges illegal discrimination or retaliation (not including Unlawful Workplace Harassment) may file a complaint with the DPS Equal Employment Office (EEO) or may file directly with the OAH, or may file with the Equal Employment Opportunity Commission (EEOC). (An employee may file simultaneously with EEOC while pursuing an appeal through the agency internal grievance process or through the OAH.) The employee must file the allegation of discrimination or retaliation **within thirty (30) calendar days** of the alleged occurrence of the event or action.
- If the employee also is grieving an issue that does not involve discrimination or retaliation, the employee must file that grievance **within fifteen (15) calendar days** of the grieved agency action.
- If the employee chooses to appeal directly to the OAH, the employee must file a petition for a contested case hearing alleging illegal discrimination or retaliation **within thirty (30) calendar days** of the alleged occurrence of the event or action. For information about illegal discrimination or retaliation, the provisions of the EEO policy may be found at:
http://www.osp.state.nc.us/manuals/1_EEO/eo.htm.
- There is a fee for filing a petition for a contested case hearing.
- Information about filing an EEOC charge and the deadline for filing may be found at:
<http://www.eeoc.gov/employees/charge.cfm>.

Americans with Disabilities Act Issues

Employee grievances filed under the Americans with Disabilities Act shall follow the same procedure as EEO/discrimination issues located at:

<http://www.ncdps.gov/Index2.cfm?a=000002,002195>

Unlawful Workplace Harassment or Retaliation Provisions

Any current or former state employee alleging unlawful workplace harassment or retaliation must first follow the DPS internal Unlawful Workplace Harassment Policy in order to bring a subsequent appeal to the OAH. That policy includes the right to bypass any step in the internal grievance procedure involving discussions with or review by the alleged harasser. In order to file an appeal, the employee must file a written complaint to the EEO section **within thirty (30) calendar days** after the alleged occurrence of the event or action. The DPS is required to complete processing of an allegation of unlawful workplace harassment or retaliation **within sixty (60) calendar days** unless both parties agree in writing to extend the time period. The provisions of this policy may be found at:

http://www.osp.state.nc.us/Guide/Policies/1_EEO/Unlawful%20Workplace%20Harassment.pdf

Communication of Policy to Employees

This policy shall be communicated to all employees through the internal DPS web page, through copies provided by the Department's Human Resources Employee Relations Section and electronically. New employees will be informed of the Employee Grievance and Mediation Policy and Procedure during orientation. All current employees will receive notice of revised grievance policies and procedures when changes are made. All employees shall be notified no later than **thirty (30) calendar days** prior to the effective date of the change(s). The policy can be accessed at the website at the following link:

<http://www.ncdps.gov/Index2.cfm?a=000002,000056,002186>

Time to Prepare for Grievance

- Employees shall be allowed time off from regular duties as may be necessary and reasonable up to a maximum of **eight (8) hours** for the preparation of the internal grievance without loss of pay, vacation leave, or other time credits.
- Employees must notify their supervisor in writing no later than **five (5) calendar days** in advance of the absence and receive prior approval for the necessity to be absent from work for preparation of the internal grievance.

Time to Prepare for Contested Case Hearing

- Upon request, the employee's supervisor shall grant reasonable leave for participation as a party in a contested case hearing in the OAH in connection with employment, without loss of pay, vacation leave, or other time credits.
- The employee must submit in writing a request for leave to the appropriate supervisor no later than **five (5) calendar days** in advance of the proceeding. Approval is required and the employee must document the time needed for this purpose.

Guidelines

- **Internal Assistance**
 - The DPS Grievance Intake Coordinator is designated to provide information about the process and schedule mediations and hearings. At no time does the DPS Human Resources Employee Relations Manager, staff or Grievance Intake Coordinator advocate for the employee or for management.
- **Outside Representation**
 - Attorneys and other advisors may not attend the mediation or hearing. Either party may ask for a recess at any time in order to consult with their attorney or other advisor.
 - In accordance with the Americans with Disabilities Act of 1990, an employee may have an individual present during the mediation or hearing to provide assistance, e.g., organizing documents to be presented, serve as an interpreter due to a communication challenge, etc.; however, this individual shall not be an attorney and may not present the employee's case. The grievant shall submit a written request in advance of this individual's anticipated presence at the mediation or hearing for approval and it shall be approved by the Director of Human Resources or designee.
- **Deadlines**

If any deadline for filing a grievance falls on a non-workday or any State Personnel Commission approved holiday, the deadline shall be extended until the next business day.

Procedure for Internal Grievances

- If an employee has a problem or issue, it should be discussed first with the employee's immediate supervisor or the appropriate supervisor within the employee's chain of command. DPS encourages direct communication between employees and supervisors to attempt to address grievances in the spirit of cooperation and compromise before initiating Step 1 of the Grievance Process.
- If the communication with the supervisor does not resolve the issue, the employee may file a written grievance. The grievance must be submitted by using the **Step 1 Grievance Filing Form HR 555** found at the end of this document or provided by the Human Resources Office.
- The employee must submit the grievance **within fifteen (15) calendar days** of the alleged occurrence of the event or action that is the basis of the grievance. Time spent in informal efforts to resolve the grievance with the immediate or other appropriate supervisor in the employee's chain of command is considered part of the **fifteen (15) calendar day period**. It does not delay the deadline for appeal unless both parties agree in writing to a longer period of time.
- Submit the grievance to the following address:

Grievance Intake Coordinator
Department of Public Safety
512 N Salisbury Street
4201 Mail Service Center
Raleigh, NC 27699-4201

- In addition, to hand delivery or by U.S. Mail, a grievance may be filed by sending the properly filled out form to the following email address: Grievance.Appeals@ncdps.gov
- Filing by email is considered proper only if a completed form is submitted **within the fifteen (15) calendar day period** to the correct email address.

Grievance Process

The DPS maintains a two-step process for resolution of employee grievances. Each step in the process is designed to maximize communication and resolution of workplace issues.

Step 1 Mediation

Mediation is a structured process where parties involved in a conflict or dispute use the assistance of a neutral third party to attempt to resolve their conflict(s) or dispute(s) in a mutually acceptable manner.

- Mediation is the first step in the grievance process and involves the services of an Office of State Personnel approved mediator(s) who serves as a neutral third party and whose role is to guide the process and facilitate communication. Mediation provides an opportunity for the two parties to openly discuss the grievance in a less adversarial environment with the goal of reaching a mutually acceptable resolution.
- A designated agency representative will attend the mediation serving as the respondent and in this role will have the authority to negotiate an agreement on behalf of the agency within the parameters set out by management.
- When mediation resolves the grievance, the grievant and the respondent will sign a Mediation Agreement that states the terms of agreement and becomes a legally binding document.
- When mediation does not resolve the grievance, the grievant and the respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
- Attorneys and other advisors may not attend the mediation. Either party may ask for a recess at any time in order to consult with their attorney or other advisor.
- Except for the Mediation Agreement or the Notice of Impasse, which are considered to be public documents in accordance with G.S. 132-1.3, all other documents generated during the course of mediation and any communications shared in connection with mediation are confidential to the extent provided by law.
- The mediation process shall be concluded **within forty-five (45) calendar days** from the filing of the grievance unless the parties agree in writing to a longer period of time.
- The employee has the right to proceed to Step 2 of the DPS grievance policy when an impasse occurs.

Step 2 Grievance Presented for Hearing by Hearing Officer or Employee Advisory Committee

- In situations where mediation does not produce an agreement at Step 1, the grievance may be appealed to the Secretary of the DPS. This step will include a hearing with either a Hearing Officer or an Employee Advisory Committee. Management shall determine which option applies based on the grievance involving specialized/technical issues or the business need (e.g., volume of grievances, employee availability, funding). The selection by management of a Hearing Officer or an Employee Advisory Committee is not a grievable issue.

- The request to appeal shall be made in writing by completing the **Step 2 Grievance Filing Form HR 556** and submitting it to the Grievance Intake Coordinator **within five (5) calendar days** of receipt of the Step 1 form 'Notice of Mediation Impasse' indicating the grievance was not resolved.
- The grievant shall provide a written summary of the specific facts of the grievance.
- Submit the grievance to the following address:

Grievance Intake Coordinator
Department of Public Safety
512 N Salisbury Street
4201 Mail Service Center
Raleigh, NC 27699-4201

- In addition to hand delivery or by U.S. Mail, a grievance may be filed by sending the properly filled out **Step 2 Grievance Filing Form HR 556** to the following email address: Grievance.Appeals@ncdps.gov
- Filing by email is considered proper only if a completed form is submitted **within (5) calendar days** to the correct email address.
- The Grievance Intake Coordinator shall transmit the request to appeal to the Hearing Officer or the Employee Advisory Committee, whichever applies. Each party shall be notified **at least ten (10) calendar days** in advance of the scheduled date of the hearing.
- If a Hearing Officer is to be assigned, he/she shall be appointed by the Director of Human Resources Management or designee.
- The grievant shall be allowed the opportunity to challenge the appointment of the Hearing Officer and request a replacement if the grievant believes the Hearing Officer cannot render an unbiased recommendation. The request must be submitted in writing and received by the Grievance Intake Coordinator **within five (5) calendar days** of notification of the appointment of the Hearing Officer. The Director of Human Resources Management or designee shall assign the replacement.
- If an Employee Advisory Committee is used, it shall consist of three (3) members (one of whom shall serve as the chairperson) from various functional areas of responsibility within the agency. Committee members for a particular hearing are selected by the Grievance Intake Coordinator from a pool of employees trained in the agency's Disciplinary and Grievance Policy and Procedures. Members of the pool of employees are recommended by Agency management and include subject

matter experts. The Employee Advisory Committee must consist of supervisory and non-supervisory personnel.

- If the grievant believes that any of the assigned members cannot render an unbiased recommendation, the grievant may request to remove one (1) of the Committee members. The request must be received by the Grievance Intake Coordinator **within five (5) calendar days** of notification of the assigned Committee members. The request must specify the reason(s) that the designated committee member cannot render an unbiased recommendation. The request shall be reviewed and, if approved, a replacement shall be designated. The employee shall have one opportunity to challenge the impartiality of a Committee member and may not challenge the replacement. The employee shall be notified of the decision.
- Although the hearing is a formal process with rules, these rules are not the same as those found in a court of law. Sworn testimony and recording of the hearing are not permitted.
- The Employee Relations Section shall:
 - Act as an advisor on personnel policy to the Hearing Officer or the Employee Advisory Committee
 - Not participate in the decision of the Hearing Officer or the deliberations of the Employee Advisory Committee.
- At the conclusion of the hearing, it will be the responsibility of the Hearing Officer or the Chairperson of the Employee Advisory Committee to document in writing the details of the Hearing and provide a recommendation for the FAD. This written summary shall include reasons why the grievance was not resolved at the preceding step and shall be forwarded to the Grievance Intake Coordinator. The Grievance Intake Coordinator shall forward the final completed recommendation to the Secretary or designee **within ten (10) calendar days** after the conclusion of the hearing.
- The employee shall be provided the FAD in writing **within ten (10) calendar days** from the date the Secretary or designee receives the report of the Hearing Officer or the Employee Advisory Committee.
- The FAD will be issued in writing and include a statement of any applicable appeal rights.

Time Limits for the Final Agency Decision

- For cases involving dismissal, demotion or suspension without pay of a career State employee for disciplinary reasons, the reasonable period of time is **ninety (90) calendar days** from the initial filing of the grievance to the issuance of the FAD.

- For cases involving all other issues, the reasonable period of time is **one hundred-twenty (120) calendar days** from the initial filing of the grievance to the issuance of the FAD.
- If the Agency Head does not deliver the FAD within the time limits of this policy, the grievant and the agency may mutually agree to extend the time or the grievant can appeal to the OAH.

Appeal to the Office of Administrative Hearings

A grievant who has a grievance eligible for appeal and who is not satisfied with the FAD may file a petition for a contested case to OAH **within thirty (30) calendar days** from receipt of the FAD.

- There is a fee for filing a petition for a contested case hearing.
- Additional information about filing a petition with OAH may be found at: <http://www.ncoah.com/admin/admin.html>.
- Such appeal is made by filing a petition for a contested case hearing (Form H-06A) with the:

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

Note: The employee must also serve a copy of the appeal by certified mail to the DPS registered agent:

General Counsel's Office
NC Department of Public Safety,
4201 Mail Service Center
Raleigh, NC 27699-4201

Responsibilities

- It is the responsibility of the DPS to ensure that all managers, supervisors, and employees are informed of the Department's Employee Grievance and Mediation Policy and Procedures and their rights and obligations. Employees can contact the Employee Relations Section for specific information concerning their grievance rights.
- The Employee Relations Section will continuously evaluate the DPS's Employee Grievance and Mediation Procedure's effectiveness in achieving its stated goals and make recommendations for changes as needed.
- It is the responsibility of the Employee Relations Section to notify current employees of any substantive changes in the policy **no later than thirty (30) calendar days** prior to the effective date of the changes. Copies of the Employee Grievance and

Mediation Policy shall be available in the Human Resources Office, at all work locations and at the website at the following link:

<http://www.ncdps.gov/Index2.cfm?a=000002,000056,002186>

- It is the responsibility of the employee to attend the mediation and/or the hearing as scheduled by the agency and notify agency personnel in advance if an emergency circumstance prevents the employee from attending a scheduled mediation or hearing. The employee will need to submit documented proof of the emergency situation. An employee who has an unexcused failure to attend the mediation or hearing as scheduled forfeits the right to proceed with the grievance process.

This policy is effective thirty (30) calendar days from the date of issuance and supersedes all other policies in effect prior to and following the formation of the Department of Public Safety.