



Policy #: XX  
Page: 1 of 8  
Approved by: AAA

Owner Dept: Human Resources  
Phone: XXXX

## Policies and Procedures

**Title:** Review Procedures for EPA Non-Faculty Employees - **Draft**

**Purpose:** The review procedures provide an internal university process through which EPA Non-Faculty employees may secure review of an employment decision that the employee believes may have been reached improperly or unfairly.

**Scope:** This policy applies to UNC Asheville's EPA (Exempt from the State Personnel Act) Non-Faculty employees.

**Definitions:** Request for Review – a formal complaint against an administrator alleging that a decision, which has adversely affected an individual employee's professional or academic capacity, has been reached improperly or unfairly.

Improperly – in violation of a specific university rule, regulation, policy or practice pertaining to the employment relationship between the employee and the university.

Unfairly – in an arbitrary or capricious manner or in an unlawfully discriminatory manner.

**Policy:** The University is committed to fair and equitable treatment for all employees. When there are concerns or problems arising out of employment, EPA Non-Faculty employees and their supervisors are strongly encouraged to find informal means of resolving them. Mediation and compromise should characterize the resolution of work-related problems, and employees are strongly encouraged to discuss any workplace concerns, problems or grievances with their supervisor.

Employees have the right to use these review procedures free from threats or acts of retaliation, interference, coercion, restraint, discrimination or reprisal. Employees may not be retaliated against for participating in a review as the employee requesting the review, a witness, a support person, or as a Review Board member. The Review Board has no power to reverse an administrator's decision, but can only recommend a reassessment of that decision if the Committee finds that the decision was reached improperly or unfairly.

### **Reviewable Matters**

The EPA Non-Faculty Review Procedures may be used for the review and attempted resolution of the following:

1. Complaints alleging discrimination on the basis of age, sex, race, color, national origin, religion, disability, creed, honorable service in the armed services of the United States, or sexual orientation.
  2. Complaints alleging violations of the First Amendment of the U.S. Constitution in matters resulting in serious sanctions, except to the extent of limitations on political activity established by Article 5 of the N.C.G.S. Chapter 126 and by the Board of Governors' policy in this regard and as it may be revised from time to time.
  3. Complaints related to discharge for cause (includes incompetence, unsatisfactory performance, neglect of duty, and misconduct).
  4. Complaints regarding the interpretation and application of any provision of the University's employment policies for EPA non-faculty employees in accordance with UNC Policies 300.1.1 and 300.2.1. *Note: A request for a review concerning discontinuation or termination of employment with notice, pursuant to UNC Policy 300.2.1, Sections III.A, III.B, or III.C, may be brought only upon allegation of violations of applicable notice requirements or items 1 and 2 above. Decisions reached pursuant to such review procedures concerning the discontinuation or termination of employment may be appealed to the Board of Governors in accordance with the provisions of Section 609 C<sup>1</sup> of The Code.*
  5. Request for review to seek the removal of alleged inaccurate or misleading material contained in the employee's personnel file. An employee also has the right to place a statement in his or her personnel file relating to the material considered to be inaccurate or misleading.
  6. Complaints by employees and applicants who are dissatisfied with the decision pertaining to his/her request for reasonable accommodation for an EPA Non-Faculty position.
- A. Complaints these procedures cannot be used for include:
1. Dissatisfaction with a general application of university policy challenged on the ground that the policy itself is unfair.
  2. Faculty matters. Individuals employed in faculty positions have separate review procedures.

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<sup>1</sup> Note: Section 609 C of The Code will be replaced with Section 611 effective January 1, 2009.

3. The attempted resolution of a matter that is already being reviewed with another established administrative procedure (e.g. research misconduct allegations, harassment complaints, etc.)
4. Review of or attempts at overturning a duly-made administrative decision (e.g. unit reorganization).

### **Procedures:**

A principle function of the Review Board is mediation. In considering a request for review, the Board will attempt first to ascertain the positions of the parties involved, to analyze their differences, and to seek a common ground for voluntary adjustment of the issue. The Board ordinarily will hold separate meetings with the employee requesting the review, and with the department chair, dean or other administrative official most directly empowered to adjust the decision or others that the Board determines appropriate.

Because the Committee believes that the purposes of mediation are best served by sharing information, the documents submitted by either party will be shared with the other party; however, documents that contain otherwise confidential information about parties not involved in the review may not be available to be shared. At meetings with the Committee, the employee may be accompanied by one person to serve in the support role. The Committee may also hear testimony from witnesses as it deems appropriate. The principal parties must be present at any discussions as appropriate and requested by the Committee.

Once a review is completed and any appeals have been resolved, all Review Board members shall transfer their materials from the review process to the Director of Employee Relations who will handle them in accordance with the University records retention and disposition schedule.

### **GENERAL GUIDELINES**

- It is the responsibility of managers and supervisors at all levels, consistent with the authority delegated to them to consider and take action promptly and fairly on any employee request for review presented to them under this policy and procedure.
- Upon initiation of a review procedure, a copy of this policy will be provided to the employee by Human Resources.
- For information about the review process, the employee may contact UNC Asheville's Director of Employee Relations in the Human Resources Department:  
228 Phillips Hall, CPO #1450  
(828) 251-6605

**Concerning preparation for a review...**

- Employees shall be allowed time off from regular duties as may be necessary/reasonable for the preparation of the internal review without loss of pay, vacation leave or other time credits. The employee must notify his/her supervisor in writing no later than five days in advance of the absence and receive prior approval for the absence. *The maximum time allowed away from work to prepare for an internal review is eight (8) hours.*
- Employees may consult with a fellow employee of their choice (a “support person”) in bringing and presenting a request for review, including the right to have the selected employee accompany them during any hearings that may be held as part of the review process. Such employees would serve as advisors, not as advocates or spokespersons.
- A support person in no way represents the employee requesting the review, rather the role of the support person is to provide assistance to the employee filing for the review in preparing his or her case. Discussions between an employee and his/her support person are considered confidential. A support person may not discuss the issue or concern with others without the approval of the employee.
- Neither the University nor the employee shall be represented by any outside parties (e.g. legal counsel, etc.) during the internal review procedure.
- An employee may access the personnel file by contacting the Office of Human Resources of the University. (Employees may examine any information in their personnel file except pre- employment letters of reference and information about a mental or physical disability a prudent doctor would not share.)

**Concerning timelines related to the review process...**

- The date of receipt of a notice, decision or other document required to be filed or submitted by this policy is the date the person to whom the submission is required *actually or constructively receives the decision or other document.* In the case of an unclaimed certified mailing, the date of the second notice of the mailing to the person from the U.S. Postal Service shall be deemed the date of receipt.
- An employee requesting a review that at any step of the process fails to comply with a reasonable request for information, or with any of the procedures set out in this policy, including failure to appear at a scheduled meeting, conference or hearing, may be deemed to have abandoned his/her appeal.
- If any deadline falls on a non-workday or any University approved holiday, the deadline shall be extended until the next business day.

**I. ALL REVIEWS EXCEPT REVIEWS CONCERNING DISCHARGE FOR CAUSE**

To file a formal request for review, the employee must complete an EPA Non-Faculty Request for Review Form and submit the form to his/her supervisor and a copy to the Director of Employee Relations in the Human Resources office.

A final University decision must be issued within 120 days from the date the request for review is filed:

- *The employee and the university may mutually agree to extend the time in either case. Any extensions of time lines should be documented, signed by employee and supervisor with a copy being submitted to the HR Department.*
- *Any University correspondence to the employee regarding the review will inform him/her of the next step in the appeals process.*

**Step 1 Discussion between Employee and Immediate Supervisor or the Appropriate Supervisor** (This step is skipped in the case of a dismissal or demotion because the immediate supervisor cannot overrule the dismissal or demotion decision.)

Employee Responsibility	University Responsibility
1. <i>Within 15 calendar days of the problem's occurrence, the employee should complete the EPA Employee Request for Review Form. The original should be submitted to the HR Department.</i>	
	2. If the request for review does not fall within the administrative or decision-making authority of the immediate supervisor, it should be referred to the lowest level supervisor with authority <i>within 48 hours (2 calendar days)</i>
	3. The supervisor may call higher-level supervisors into the discussion. The supervisor shall meet with the employee to discuss the complaint and submit a response in writing to the employee <i>within 10 calendar days</i> from the receipt of the request for review. A copy of the response should be submitted to the HR Department.

**Step 2 Discussion with Next Level Supervisor --Division director or designee** (If the immediate supervisor in Step One is the Vice Chancellor, the discussion may occur with the employee, the Vice Chancellor and the Director of Employee Relations.)

Employee Responsibility	University Responsibility
1. If the employee is dissatisfied with the outcome of Step 1, or did not receive a response within the time limits set for Step 1, he/she may request that the supervisor designated for Step 2 review the decision/ complaint. Completing the <i>EPA Employee Request for Review Form</i> makes this request. The original should be submitted to	

<p>the Step 2 supervisor and a copy submitted to the HR Department. This request must be made <i>within 10 calendar days</i> from the final date of Step 1.</p>	
	<p>2. The supervisor designated for Step 2 shall meet with the employee to discuss the request for review and will submit a response in writing to the employee <i>within 10 calendar days</i> from the date of the receipt of the <i>EPA Employee Request for Review Form</i> for Step 2. A copy of the response should be submitted to the HR Department.</p>

**Step 3 Review Board Hearing**

<b>Employee Responsibility</b>	<b>University Responsibility</b>
<p>1. If the employee is dissatisfied with the outcome of Step 2, or did not receive a response within the time limits set for Step 2, he/she may request a review by the Review Board. Completing the EPA Employee Request for Review Form makes this request. The original should be submitted to the Director of Employee Relations. This request must be made <i>within 10 calendar days</i> from the final date of Step 2.</p>	
	<p>2. The employee, the members of the Review Board and a representative of management will be notified of the date of the hearing <i>within 5 calendar days</i> of the receipt of the request for review. The notification of the date of the hearing will occur <i>10 calendar days in advance of the date of the hearing</i>.</p>
	<p>3. The hearing will occur <i>on the 15th calendar day (not to exceed the 20th calendar day of the final decision of Step 2.)</i></p>
	<p>4. <i>Within 10 calendar days of the hearing</i>, the Review Board shall forward a written summary and recommendation for the final university decision to the Chancellor.</p>
	<p>5. The employee shall be provided a written Final University Decision <i>10 calendar days</i> from the date the Chancellor receives the written summary and the recommendation from the Review Board, or be advised as to why a response within the 10 days is delayed and when a response can be expected.</p>
<p>6. The Chancellor's decision upon receipt of the Committee's recommendations is final. Review</p>	

thereafter may be had in accordance with the provisions of Section 609 C <sup>1</sup> of <i>The Code of The Board of Governors of The University of North Carolina</i> .	
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**Exceptions:**

- Reviews in which the Chancellor is a first or second step supervisor will bypass either Step 1 and/or 2 (as appropriate). In these circumstances, the Review Board will provide its recommendation to the UNCA Board of Trustee's Personnel Committee. This committee will render UNC Asheville's final agency decision and communicate this decision in writing to the respective parties.

**REVIEW BOARD**

At the beginning of each even-numbered year, the Chancellor (or the Chancellor's designee) forms a pool of qualified EPA Non-Faculty (EPA NF) employees by designating four (4) employees from each division. Upon receipt of a request for review, the Director of Employee Relations will appoint a Review Board from this pool of employees. The appointed Review Board will consist of five EPA NF employees, one from each division. A staff member who is employed within the same department as the employee filing the request for review may not be appointed to the Review Board. The demographics of the Review Board should reflect the demographics of the University personnel pool and the employee to the extent possible.

- Alternates will be selected if a primary Review Board member was involved in the actual problem or complaint, if a Board member does not believe he/she can remain objective, or if the employee filing the appeal requests removal of a primary member (the employee may disqualify one board member).
- The Director of Employee Relations will select replacements for disqualified members from the designated pool.
- The Chair is elected by the appointed Review Board and will preside over the hearing.
- The Director of Employee Relations serves as an advisor to the Review Board.

Upon receipt of the request for review, the Review Board will initiate an investigation of the alleged act. The Board's responsibilities are to:

1. Conduct an objective, thorough and timely investigation which may include requests for information and participation from all parties deemed relevant to the complaint;
2. Make a determination as to what happened in the particular incident(s);
3. Review relevant policies, procedures and practices for application and consistency; and
4. Provide a recommendation of findings and/or proposed correction(s) to the Chancellor.

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<sup>1</sup> Section 609 C will be replaced by Section 611 effective January 1, 2009. Appeals filed after January 1, 2009 will be subject to the provisions of Section 611.

Investigation - The Review Board, during its investigation, will notify the employee against whom the complaint has been filed of the specific nature of the complaint. The accused employee will be given the opportunity to respond to these charges (in writing or in person) before the Review Board. The Review Board may interview other individuals deemed relevant to the complaint while maintaining confidentiality. If, during the course of the investigation, other incidents are revealed through testimony, the employee against whom the request for review has been filed and/or the employee filing the request shall be given the opportunity to respond to the incidents.

Control of Hearings – The chair of the Review Board shall exercise complete control over all stages of the hearings, and over pre-hearing matters. Consistent with the principles of impartiality and equity, the committee chair shall determine, among other things:

- The order of testimony presentation.
- Any additional information or documentation that should be requested.
- The order of and procedure for questioning the parties and witnesses.
- The admissibility of all questions, evidence and compliance with procedures.
- Who may be allowed to attend a hearing. With the exception of persons specifically designated as third-party observers, review hearings are not open to spectators.

## **APPEALS**

The Chancellor's decision reached pursuant to UNC Asheville's review procedures concerning discontinuation, expiration of term appointment, termination or discharge for cause may be appealed in accordance with the provisions of Section 609 C<sup>2</sup> of The Code of the Board of Governors of The University of North Carolina.

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