

Hearing Officer/Hearing Panel Chair Guideline

PURPOSE AND SCOPE

In accordance with applicable North Carolina law and policy, the first step in the grievance process requires that the grievant and agency/university representative attend a Step 1 mediation. Following an impasse or unsuccessful mediation, a grievant is permitted to proceed to Step 2 of the grievance process—a Hearing.

The purpose of these guidelines is to set forth procedures for the Step 2 hearings held within agencies and universities following the unsuccessful mediation of a filed grievance. These guidelines are applicable to both hearing officers and hearing panels.

It is the State of North Carolina's objective that the adjudicatory hearing process provides a meaningful opportunity for parties to present their grievances. By establishing these guidelines, it is our intent to ensure that fundamental fairness is accorded all parties in a manner consistent with carrying out the requirements of law and policy.

Confidentiality

These guidelines shall be interpreted and implemented in a manner that ensures that confidential information is not disclosed to unauthorized persons.



THE HEARING OFFICER/HEARING PANEL

The Hearing Officer/Panel's primary goal is to establish findings of fact based on the preponderance of the evidence provided by the grievant and respondent to properly apply policy to the facts and make a sound recommendation to the Agency Head/University Chancellor or designee. Following a filing by a grievant for a Step 2 Hearing, the Human Resources Office of an Agency/University must appoint a Hearing Officer or Hearing Panel outside of the grievant's chain of command. This individual or panel may only preside over the hearing if:

1. The individual(s) are fair, unbiased, and have no personal or financial interest, direct or indirect, in the hearing or its outcome, and
2. The individual(s) have not been involved directly or indirectly in the action or failure to act which is the subject matter of the hearing.

A Hearing Officer or Panel Member may also decide to recuse him/herself from presiding over a hearing if he/she determine that he/she cannot under the circumstances be fair, impartial and unbiased.

Duties of Hearing Officer/Hearing Panel Chair

The Hearing Officer/Hearing Panel Chair should understand the proper application of the policy to various employee issues. The Officer or Chair, in consultation with the Human Resources, may request additional documentation and/or witnesses as deemed necessary and appropriate. The Hearing Officer or Panel Chair may be given access to additional confidential materials that may not be available to the grievant and/or respondent. The Hearing Officer or Chair ensures that the Hearing Report and recommendations are written with the assistance of the Panel and delivered to the Agency Head/University Chancellor or designee within the respective time allotted in the Step 2 Hearing procedure.

The following is a list of duties for a Hearing Office or a Hearing Panel Chair:



Duties of Hearing Officer:

1. Limit attendance at the hearing to: the grievant, the hearing officer/panel members, witnesses giving testimony, appropriate agency and HR representatives (attorneys and other advisors shall not attend the hearing – time may be provided for consultation).
2. Regulate the course of the hearing and ensure an orderly presentation of evidence.
3. Ensure that all parties have a full and fair opportunity to present their claims orally, present witnesses and evidence to establish their claims.
4. Render a fair, independent and impartial decision (or recommendation) resolving the material issue(s) of the case, based upon the evidence presented during the hearing.
5. Ensure that a complete record is made of the hearing and submitted to the appropriate authority.
6. Maintain confidentiality and shall not disclose information concerning the case to others, including any information that may have been presented before, during and after the Hearing, except as allowed by policy or required by law.

The Hearing Office/Hearing Panel Chair may:

1. Decide to sequester witnesses;
2. Require the parties to specify issues;
3. Regulate the presentation of evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensive record of the proceedings;
4. Ask additional questions to witnesses to ensure that relevant evidence is secured and introduced;
5. Continue the hearing to a subsequent time;
6. Rule on any request made during the hearing;
7. Determine the credibility of witnesses and decide what weight to give their testimony; and
8. Allow recess at any time to allow either party to consult with an attorney or another advisor.



Composition of the Hearing Panel:

The Hearing Panel is composed of no more than five members, including both managers and employees, with representation agency/university wide. The Panel should reflect the various demographic groups of the organization and occupational categories to increase the Panel's sensitivity to the issue(s).

The Hearing Panel will nominate the Hearing Panel Chair. The Chair shall exhibit professional conduct and encourage mutual respect between all parties. The Chair shall be impartial in the execution of their duties, without any appearance of bias or favoritism. The Chair shall disclose to Human Resources any potential conflict of interest with any parties in the Grievance and shall withdraw from the role of Chair if such a conflict is determined to exist.

A Hearing Officer or Panel Member may also decide to recuse him/herself from presiding over a hearing if he/she determine that he/she cannot under the circumstances be fair, impartial and unbiased.

Challenge of an Appointed Hearing Officer or Panel Member by Grievant/Recusal:

A grievant has one opportunity to challenge the appointed Hearing Officer or up to two 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 their basis for the challenge in writing to be reviewed by Management. If management finds that the challenge is supported, management is responsible for replacing the Hearing Officer or panel members as appropriate.

EX-PARTE COMMUNICATIONS

No agency/university members authorized to take final action or presiding hearing officers designated by the agency/university to make findings of fact and conclusions may communicate directly or indirectly with any party or other person interested in the outcome of the proceeding regarding any issue of fact, law or procedure unless notice and opportunity has been given to all parties to participate.

When sending information or documents to a Hearing Officer, a party to a hearing must also send copies of the information/documents to all other parties.



OTHER REQUIREMENTS OF STEP 2 HEARINGS:

Requirement of Hearing Report

The Hearing Office/Panel Chair involved in the case must complete a Hearing Report following the hearing. The Hearing Report shall encompass all information presented by both parties at the hearing.

The Effect of Failing to Appear

If a party who requests a Hearing fails to appear at the Hearing, the Hearing Officer/Panel shall notify the absent party in writing that his/her request for hearing has been dismissed.

Participation at Hearing

During the hearing, the grievant and respondent shall both have the opportunity to:

1. Give an opening and closing statement;
2. Present witnesses;
3. Examine and introduce evidence;
4. Present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
5. Advance any pertinent arguments without undue interference;
6. Question or refute any testimony;
7. Confront and cross-examine adverse witnesses;
8. Request an opportunity to consult with attorney or advisor.

Evidence

Generally, evidence will be admitted if it is evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or repetitious evidence will be excluded. Evidence that may reasonably be construed as relevant and that is not unduly repetitious shall be admitted. The fact that evidence is admitted shall not limit the authority of the Hearing Officer/Panel Chair in determining the appropriate weight to be given to such evidence.



Burden of Proof

After opposing parties have presented their cases, the Hearing Officer/Panel Chair is to consider and compare each piece of evidence presented at the hearing. Each finding of fact made by the Hearing Officer/Panel Chair shall be supported by a preponderance of the evidence unless a different standard of proof is required. Preponderance of the evidence is that the evidence which, in light of the record as a whole, leading the hearing officer to believe that the finding is more likely to be true than not true.

Decision

The decision made by the Hearing Officer/Panel Chair must be based on the agency/university's policies and the evidence presented. In deciding the outcome, the Hearing Officer/Panel Chair shall consider law, rule, as well as Agency/University policy and precedence.

Content of the Hearing Report

1. The Hearing Report must include a clear and precise statement of the issues as well as a summary of the evidence presented by both sides.
2. The Hearing Report shall include the date, location and participants in the hearing.
3. The Hearing Report shall include all material, reports, records and documents placed into evidence during the hearing. These documents shall be attached to the Hearing Report.
4. The findings of fact deduced from the Hearing and written in the Hearing Report must be sufficient to apprise the parties of the basis for the decision.
5. Conflicting evidence on an issue that is necessary to resolve the case must be documented in the Hearing Report as well as the reasoning used in resolving the issue with the conflicting evidence that was introduced.
6. The Hearing Report must contain a clear explanation of the reasoning underlying the decision.
7. The Hearing Report prepared by the Hearing Officer/Panel and must be submitted to the appropriate personnel within the Agency/University for the issuance of a Final Agency/University Decision.
8. The proposed recommendation will be submitted to the Agency head/University Chancellor or designee and the Director of the Office of State Human Resources or designee within the 35-calendar day timeframe for the Step 2 Hearing process.