

# Review Process and Procedure for EPA Non-Faculty Employees

## POL06.35.01 Current Version

**Authority:** Board of Trustees

**History:** Chancellor: October 12, 2005; Board of Trustees: December 16, 2005; Amended: January 1, 2009; Revised December 2, 2013; Board of Trustees approved January 13, 2014; Revised July 2014, Board of Trustees approved September 19, 2014.

**Related Policies:** [Section 611 of the Code of the University of North Carolina, "Review of Personnel Actions Affecting Specified Employees Exempt from the State Personnel Act \(EPA\)"](#)  
[UNC Policy Manual 300.1.1, Senior Academic and Administrative Officers](#)  
[UNC Policy Manual 300.2.1, Employees Exempt from the State Personnel Act](#)

**Additional Resources:** [ECU Policy for Employees Exempt from the State Personnel Act](#)  
[ECU Human Resources Benefits](#)  
[Human Resources](#)

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Archived Versions:  
[Version 1](#)

Compare Versions

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Review Process and Procedure for EPA Non-Faculty Employees<sup>(1)</sup>

Introduction

East Carolina University is committed to fair and equitable treatment for all employees. The University administration is charged by law and University policy with managing and directing its human resources, including but not limited to workforce size, recruitment, training, work assignments, hours of employment, promotion, demotion, transfer, or dismissal. Where there are concerns or problems related to employment, employees, their co-workers and their supervisors are strongly encouraged to find informal means of resolving them. Employees may pursue formal requests in accordance with the Review Procedure outlined in section 4 below.

## 1. General Considerations

1.1. The University has established this Review Process and Procedure for those actions stated in Section 3 below.

1.2. EPA Non-Faculty Employees (hereinafter "Employees") have the right to use this Review Process & Procedure ("Review Process & Procedure") free from threats or acts of retaliation, interference, coercion, restraint, discrimination, or reprisal. Employees and students may not be retaliated against for participating in a review as an employee, a witness, an employee assistant, or as a Review Committee member. Any person who retaliates against another person for exercising rights in good faith under this Review Process & Procedure will be subject to appropriate and prompt administrative action by the University.

## 2. The EPA Non-Faculty Employee Review Committee (the "Committee")

### 2.1. Roles and Responsibilities of the Committee

The Committee hears requests for reviews brought by Employees covered by the Review Process & Procedure.

### 2.2. Composition of the Committee

The Chancellor<sup>(2)</sup> shall appoint five (5) EPA Non-Faculty employees to serve as regular committee members representing EPA non-faculty employees across the divisions of the University. Additionally, the Chancellor shall appoint three (3) EPA Non-Faculty employees to serve as alternate Committee members. The Chancellor shall endeavor to have

each division have representation on the Committee. All regular and alternate members of the Committee must be subject to the Review Process & Procedure.

The three (3) alternates will be appointed to: fill the unexpired terms of regular members who may leave the Committee; or, to serve in the event that a regular member is not available to serve or must recuse him/herself because of a conflict of interest; or, if the Employee is a member of the regular member's division. If an alternate is appointed to fill the unexpired term of a regular member, the Chancellor shall appoint a new alternate member to represent the division previously served by the replaced regular member.

Upon expiration of a regular member's term, a new member of the Committee will be appointed from among the three alternates and a new alternate will be appointed to represent the division previously served by the regular member whose term has expired.

The Committee's membership year is July 1 through June 30. New appointees assume membership on July 1 and expiring terms end on June 30 of each year. Membership may continue in the event that the Committee is actively hearing a case, or there is a currently pending review.

A Committee member may not participate in a review he or she brings on his or her own behalf, in any case in which he or she has been materially involved or in any case that arose within that Committee member's department or division in instances where a Vice Chancellor or division head is the respondent.

### 2.3. Appointments to the Committee

The Assistant Vice Chancellor for Human Resources is responsible for facilitating the work of the Committee, including orienting new members and managing this appointment process. For initial appointments, and subsequently on an annual basis in May or as soon thereafter as practicable, the Chancellor may send a memorandum to the Vice Chancellors requesting nominees. The Chancellor will send a letter of appointment to the selected individuals to fill the expired terms of regular and alternate members. When a vacancy occurs during a regular or alternate member's term due to inability to continue through the remainder of the unexpired term, the Chancellor<sup>2</sup> will solicit a nomination from the head of the division represented by that regular or the alternate member, or another unrepresented division. The

Chancellor2 will send a letter of appointment to the individual(s) selected to fill the unexpired term of the regular or alternate member(s).

The regular members of the committee will elect the Chair of the Committee ("Committee Chair" or the "Chair") annually in July or as soon thereafter as practicable. The Committee will also elect a vice chair, who will preside in the event that the Chair is unable to fulfill the requirements of this position. The Chair and Vice Chair are permitted to serve multiple terms.

### 3. Committee Jurisdiction and Request for Review Statement.

3.1 Requests for review are subject to the standards set out below, which define matters which may or may not be reviewed under this Review Process & Procedure. A University official may choose to offer a proposed resolution to a dispute without such offer conferring jurisdiction under this Review Process & Procedure where such jurisdiction is not otherwise present. Matters that can be reviewed shall be limited to claims that:

3.1.1 Discharge for cause or other disciplinary action violated the interpretation and application of any provision of The University of North Carolina Policy Manual Section 300.2.1.

3.1.2 Discontinuation, expiration of term appointments, or terminations with notice upon allegations of violations of the notice requirements, or the Equal Employment Opportunity and Protected Activity provisions of the University of North Carolina Policy Manual Section 300.2.1

3.2 Matters outside the Committee's jurisdiction. Absent a demonstration by the employee that the decision was based on a factor reviewable under the University of North Carolina Policy Manual Section 300.2.1, the Committee has no jurisdiction to review pursuant to the Review Policy and Procedure:

3.2.1. Dissatisfaction by an Employee with the general application of a University, School/College or Department policy, regulation, or practice or with a University official's decision-making on the grounds it is undesirable or inadvisable.

3.2.2. Complaints, reviews or appeals that are exclusively subject to

another University procedure or are exclusively within the scope of another University committee such as, but not limited to, intellectual property determinations, research ethics, Campus Police trespass appeals, parking appeals or assignments, and health and safety concerns. The outcome of such matters may be presented to and considered by the Committee when they have a direct relevance to a matter which otherwise is within the scope of the process subject to the specific disclosure and confidentiality rules of the other University procedure or Committee.

### 3.3 Written Request for Review Statement Required

3.3.1 An Employee must file a written request review statement ("Statement") using the form available on the ECU HR website (link provided above) with the Chair of the Committee.

3.3.2 Absent exceptional circumstances, the signed, written Statement shall be submitted within 20 working days of the decision cited in the Statement. The deadline for submitting the Statement may be extended only if, in the judgment of the Chair, there are significant extenuating circumstances. The act of filing a Statement does not extend employment.

### 3.4 Referral to the Office for Equity and Diversity

If the Statement submitted by the employee includes an allegation of prohibited discrimination and/or harassment based on a protected class as set forth in the University's Equal Opportunity, Harassment, and Non-Discrimination Policies, the Statement is first referred to the University's Office of Equity and Diversity ("OED") for assessment. The Statement is held in abeyance during any preliminary review and/or investigation by the OED. The OED will conduct a preliminary review to determine if part or all of the concerns outlined in the Statement are in the purview of the OED. The OED shall endeavor to complete its preliminary review within 10 working days but may, depending upon the specifics of the issues involved, request the Chair of the Review Committee (the "Chair") to provide additional time, if/as necessary. If the preliminary review determines that part or all of the concerns outlined in the Statement are found to be within the purview of the OED, the OED will investigate those concerns in accordance with the review procedures outlined in the Equal Employment Opportunity Plan. If there are no findings by the OED that result in a violation of the University's Equal Opportunity, Harassment and Non-Discrimination Policies, the

OED will issue a notice of outcome to the Chair.

#### 4. Review Procedures

##### 4.1. Convening the Committee

Not later than 10 working days after receipt of the Statement, the Chair shall convene the Committee for its initial meeting. At this meeting or before, the Chair will provide the members of the Committee with an orientation covering the role and responsibilities of the Committee and a review of the process. At this meeting, the Committee shall review the Statement and determine whether the matter as stated falls within the jurisdiction of the Committee or not.

Relevant considerations include, but are not limited to, the employment status of the Employee and the subject matter of the concerns in the Statement.

If the matter is not eligible for review, the Committee may:

4.1.1 Allow the Employee to amend the Statement in writing within five working days of Employee's receipt of notice of an opportunity to amend his/her Statement. The Committee will review the amended Statement pursuant to Section 4.1 above; or

4.1.2 Dismiss the Statement, in writing, for failure to state a concern that is eligible for review under this Review Process and Procedure.

If the matter is eligible for review under the Policy, the Committee Chair shall, within 10 working days, forward a copy of the Statement to those named by the Employee as responsible ("Respondent(s)"), together with notice that a written response to the Statement concerns must be provided to the Committee Chair and the Employee within 10 working days. A copy of the Statement must also be submitted to the University Counsel and the appropriate Vice Chancellor.

##### 4.2. Challenges to a Committee Member

4.2.1. Challenge by the Committee. If, in the opinion of the Committee, the membership of the Committee is for any reason inappropriate, then the Chair shall submit a written recommendation to the Chancellor that changes in membership are necessary to ensure objective and timely review in that case. Upon such request, the Chancellor shall have the discretion to make any changes to the Committee necessary for the Committee to function effectively

including, but not limited to, replacement of the Chair. The decision of the Chancellor regarding the disposition of such a request must be in writing and shall be included in the Official Record.

4.2.2 Challenge by a party. Any party may request that a member of the Committee be removed. The party shall submit the request for removal of a Committee Member to the Chair in writing no later than five (5) working days after receipt of the Notice described at Section 4.5. The Chair shall forward the request to the Chancellor. The decision of the Chancellor regarding the disposition of the request is final, must be in writing, and shall be included in the Official Record.

#### 4.3 Assistants

This Review Process is not intended to be a formal legal process nor do the formal rules of evidence apply. Neither the Employee nor the Respondent(s) may have an attorney actively participate at the Review Hearing (the "Hearing"). (Attorney is defined as anyone with a Juris Doctorate, or other recognized law degree, regardless of whether or not that person is licensed to practice law in the State of North Carolina and/or whether or not that person is "representing" the employee.) However, the Employee and the Respondent(s) is/are entitled to have one assistant (the "Assistant") of the party's choice present at all meetings and at the Hearing to aid the party in developing their case. The Assistant may not be a witness or speak at the Hearing or otherwise actively participate in the Hearing. An attorney may serve as an Assistant. Information shared by a party with their Assistant is considered confidential and shall not be divulged except as required by law.

Each party shall confirm the identity of any Assistant who will attend the hearing to the Chair in writing no later than five (5) working days after receipt of the Notice described at Section 4.5.

Upon request of the Chair, the Office of the University Counsel ("OUC") may designate an attorney to provide procedural advice to the Committee.

4.4 Confidentiality. Members of the Committee, parties, Assistants and witnesses shall maintain strict confidence concerning all aspects of the review process. This is required by state law as well as University policy.

4.5 Notices of Meetings. The Chair shall send notices of the scheduled meetings to all Committee members, the Employee, and the Respondent(s). The Notice will

4.5.1 set the date for the Hearing not later than four weeks from the date that the Respondent(s) submitted the response to the Statement;

4.5.2 identify the review the Committee will be hearing, and the parties and the Committee members;

4.5.3 instruct the parties to exchange one copy of their proposed exhibits and witness lists at least five (5) working days in advance of the Hearing, and a sealed copy to the Chair for the Record, but in no case shall information be provided to the Committee prior to the Hearing. References to the documents during the Hearing shall be by exhibit number with page references as applicable;

4.5.4 inform the parties that, at least two (2) working days prior to the hearing, they must list whether or not there are any factual or other items that can be agreed upon and reduced to written stipulations signed by the parties prior to the Hearing. The parties shall present the stipulations to the Chair;

4.5.5 remind parties of any other applicable deadlines in accordance with this Review Process and Procedure (e.g., challenges to a Committee member at Section 4.2.2, identification of Assistants at Section 4.3); and

4.5.6 instruct the parties to bring to the Hearing at least one copy of each exhibit for each Committee member, one copy for the court reporter and one copy for each party.

The Chair of the Committee may consider and grant a reasonable extension of any deadlines established in this Review Process and Procedure at the request of one of the parties based on extenuating circumstances and/or at the recommendation of the Committee.

#### 4.6 The Hearing

4.6.1 Court Reporter. The Chair shall arrange a court reporter to record all Hearings and maintain the exhibits presented by the parties at the Hearing. The University shall bear the expense of the court reporter. No other recordings of the Hearing shall be allowed.

4.6.2 Amendment of Statement. Once the Hearing begins, the Employee shall not have the right to amend the Statement without the unanimous vote of the Committee. If any amendment to the Statement is allowed, the Chair shall promptly notify the Respondent(s) of this action and defer subsequent proceedings until the Respondent(s) have had the opportunity to respond to this revision. A respondent shall have 10 working days to respond to any amended Statement.

4.6.3 Attendance at the Hearing. The only persons allowed to attend the Hearing are the Committee, the Assistant Vice Chancellor for EPA Administration; counsel from the OUC, to advise the Committee; the court reporter, the Employee and the Employee's Assistant and the Respondent(s) and the Respondent(s)' Assistant. Any other persons who are witnesses shall only attend the Hearing while they are testifying.

#### 4.7 Guidelines for the Conduct of the Hearing

4.7.1 Committee Participation. Hearings shall be conducted with the Chair and all five (5) Committee members present.

4.7.2 Control of Hearings. The Chair shall preside over the Hearing. Consistent with the principles of impartiality and equity, the Chair shall determine, in consultation with the Committee, among other things, the following:

4.7.2.1. The order of testimony presentation, if it deviates from the standard order described below;

4.7.2.2 Whether a party has provided adequate justification for accepting evidence into the record at the Hearing;

4.7.2.3. The order and procedure for questioning the parties and witnesses;

4.7.2.4. Compliance with all procedures; and

4.7.2.5. The admissibility of all evidence

4.7.2.5.1 Whether evidence is relevant to the issues involved in the review and may rule that evidence not be considered.

4.7.2.5.2 If evidence is excluded, the Chair shall state the reasons for the exclusion on the record and the materials shall be included in the

Official Record; and

4.7.2.6 The appropriateness of all questions and the method of questioning. The Chair should not allow any questions that are irrelevant, immaterial, unduly repetitious, or abusive.

The Committee shall keep a copy of all exhibits, whether admitted or not, for inclusion in the Official Record.

4.7.3 Testimony. Parties shall have the right to testify, to present testimony of witnesses and other evidence, to hear and question witnesses offered by the other party, and to examine all documents and other information considered by the Committee. If a witness cannot or will not appear, and the Chair determines that testimony of the witness should be admitted into evidence, the Chair shall identify the witness, disclose the statement of the witness and, if possible, provide for questions. So long as it does not substantially delay the Hearing process, the Chair may, at his or her discretion, call a recess so that reasonable time is provided for the examination of all evidence and for the preparation of appropriate responses. The Committee will carefully consider the weight and credibility of any written witness statements, taking into account whether it is sworn and that the witness is not subject to cross-examination, either of which may reduce its credibility.

4.7.4 Order of presentation. The standard order of presentation is as follows :

4.7.4.1 The Employee may make an opening statement that does not exceed 10 minutes;

4.7.4.2 The Respondent may make an opening that does not exceed 10 minutes;

4.7.4.3 The Employee presents the Employee's case through the Employee's own testimony, exhibits and witnesses. The Respondent(s) may question the Employee and the Employee's witnesses after the Employee finishes testifying/examining each of the witnesses. The Committee members may ask questions of the Employee/each of the Employee's witnesses after the Employee and the Respondent(s) finish their questioning. The Employee's case shall not exceed two (2) hours, excluding cross-examination of the Employee's witnesses by Respondent(s) or questions by the Committee;

4.7.4.4 At the conclusion of the Employee's presentation, the Committee will recess to consider if the Employee has met the Employee's burden of demonstrating that, using the standard of preponderance of the evidence (which is the same as the "greater weight of the evidence.") the Employee has experienced an injury that would entitle the Employee to relief and that such injury is remediable. If the Committee decides that the Employee's evidence is insufficient to meet the preponderance of the evidence standard, then the Committee shall adjourn the Hearing and prepare a report as outlined below.

4.7.4.5 If the Committee does not adjourn the Hearing at the conclusion of Employee's presentation of evidence, then the Respondent(s) may present evidence through the testimony of parties, exhibits, and witnesses. The Employee may question the Respondent and the Respondent's witnesses after the Respondent(s) finishes testifying/examining each of the witnesses. The Committee members may ask questions of the Respondent and each of the Respondent's witnesses after the Respondent(s) and Employee finish their questioning. Each Respondent shall have two (2) hours to present their case excluding cross examination of Respondent(s)' witnesses by Employee or questions by the Committee

4.7.4.6 At the conclusion of the Respondent(s)' presentation, the Chair may allow the Employee and the Respondent(s) to present rebuttal evidence following the same format as set out above. Each party shall have an additional 30 minutes to present rebuttal evidence case, excluding cross examination by the other party(ies).

4.7.4.7 Once all of the evidence has been presented, the Employee may make a closing statement. The closing statement shall not include a discussion of information not presented in the Hearing and shall not exceed 20 minutes.

4.7.4.8 The Respondent(s) may make a closing statement. The closing statement shall not include a discussion of information not presented at the Hearing and each Respondent's closing statement shall not exceed 20 minutes.

4.7.4.9 The Chair shall adjourn the Hearing.

## 5. Deliberations and Report of the Review Committee

Upon the conclusion of the Hearing, the Committee shall deliberate and

decide based solely on material presented in the Statement, the evidence presented at the Hearing, and such written or oral arguments as the Committee, in its discretion, may allow. The Committee should be careful not to simply substitute its judgment for that of the Respondent(s). The Employee has the burden of proof and must show, using the standard of preponderance of the evidence (which is the same as the "greater weight of the evidence") that the Employee has experienced an injury that would entitle the Employee to relief and that such injury is remediable. The Chair will prepare a brief written report of the Committee's findings and recommendations for the Chancellor (the "Report").

## 6. Official Record.

The Chair shall prepare the record (the "Official Record") of the review as outlined here:

6.1 The Official Record of the review process shall consist of all correspondence between the Committee or the Chair and the Employee and/or Respondent(s) pertaining to the review, and every document and exhibit that was either submitted to or given consideration by the Committee, along with the court reporter's transcript of the Hearing and the Committee's Report. Documents offered but not admitted in evidence shall be clearly labeled to that effect and placed in a separate file for record-keeping purposes and possible reference in the event a point on appeal relates to failure to admit evidence offered. All documentation relevant to the Committee's procedural rulings, factual findings, recommendations, and any other aspects of its final report shall be included in the Official Record.

6.2 The Official Record should be forwarded to the Chancellor along with the Committee's final report.

6.3 Once the Official Record has been delivered to the Office of the Chancellor, or a review is terminated, Committee members shall destroy in a confidential manner any extra copies of documents, and any personal notes taken during the Hearing process, consistent with the University's records retention schedule. Any original or unique records must be forwarded to the Chair for maintenance in accordance with the records retention schedule.

6.4 Delivery of Committee's Report.

6.4.1 The Chair shall send the Committee's Report, along with the Official Record of the review to the Chancellor. A copy of the Report shall be sent to the parties.

6.4.2 The Report should describe any recommendation in favor of the employee, as appropriate. Separate from issuing the Report, the Committee, through its Chair, may communicate to the Chancellor changes to the process the Committee deems reasonable.

6.4.3 The Committee shall attempt to complete this task within six (6) weeks after the Hearing.

6.5 Withdrawal of Request for Review. The Employee may withdraw the request for review at any time during the review process.

6.5.1 If the Committee has been appointed, the Employee shall provide the written withdrawal to the Chair. The Chair shall notify the Committee and the Respondent(s), with a copy to the Employee, and the review process will be closed.

6.5.2 If the Committee has provided its Report to the Chancellor at the time of the Employee's decision to withdraw the request for review, then the Employee shall provide the written withdrawal to the Chancellor. The Chancellor shall notify the Respondent(s) and the review process will be closed.

## 7. Chancellor's Decision

Upon receipt of the Committee's Report of the Hearing, the Chancellor may accept or reject any or all findings and recommendations of the Committee, may remand the matter to the Committee for further consideration, or may seek clarifying information from the Committee (the "Chancellor's Decision"). Unless the Chancellor deems it necessary in the best interest of the University to adjust the deadline, within twenty (20) working days of the Chancellor's receipt of the Report, the Chancellor shall notify the Employee of the Chancellor's Decision by a method of delivery that requires a signature for delivery, which includes, but is not limited to the following: certified or registered mail, return receipt requested, Federal Express, or another commercial delivery service that obtains a signature. The Chancellor shall send copies of the Chancellor's Decision to the Respondent(s) and members of the Committee.

## 8. Appeal of the Chancellor's Decision

8.1 If the Chancellor's Decision is favorable to the Employee, his or her decision shall be final. If the Chancellor's Decision is unfavorable to the Employee in a case involving separation from employment or suspension without pay, the Employee will not receive further pay, without regard to whether there is an appeal to the Board of Trustees or the Board of Governors. The Employee may appeal an unfavorable Chancellor's Decision to the Board of Trustees (the "Board"), for the reasons outlined in Section 611 (1) (b) of The Code of The University of North Carolina. The appeal shall be transmitted through the Chancellor and be addressed to the Chair of the Board. No provision of this Policy shall be interpreted to extend an employee's right to pay beyond the expiration of the employee's term of appointment while an appeal is pending under this Review Process and Procedure.

8.2 If the Employee wishes to appeal an unfavorable Decision by the Chancellor, the Employee shall file a notice of appeal with the Chancellor, by certified mail, return receipt requested, or by another means that provides proof of delivery within 10 working days of the Employee's receipt of the Chancellor's Decision. The notice of appeal shall include a brief statement of the basis for the appeal, and allegations that the discharge, discipline or policy interpretation or application was illegal and violated a policy of the University or Board of Governors, or that the applicable notice requirements set forth in the Policy were violated.

8.3 The appeal to the Board shall be decided by the Board. The OUC shall provide an attorney to advise the Board of Trustees on procedural matters. The Board may delegate the duty of conducting a review to a standing or ad hoc committee of at least three (3) members. The Board, or its committee, shall consider the appeal on the Official Record. In all cases, review shall be limited to the question of whether the Chancellor committed clear and material error in reaching his or her decision.

8.3.1 The Board or board committee chair shall provide, by certified mail, return receipt requested, a written schedule (the "Schedule") to the Employee and to the Chancellor for the filing of objections to the Official Record and position statements. The Schedule, which may be altered as the Board chooses, may provide as follows:

8.3.1.1 the Employee shall have 10 working days after receipt of the Schedule to file objections to the Official Record with the Board, with a

copy to the Chancellor;

8.3.1.2. the Employee shall have 30 working days after receipt of the Schedule to file a position statement with the Board, with a copy to the Chancellor;

8.3.1.3. the Chancellor shall have 30 working days after receipt of the Employee's position statement to file the Chancellor's position statement and response to objections to the Official Record, with a copy to the Employee.

8.3.2 The decision of the Board shall be the final Agency decision.

(1): "EPA Employees" are "Employees Exempt from the State Personnel Act" which includes Senior Academic and Administrative Officers as defined in Section I.B and governed by Section III of the UNC policy 300.1.1, and employees designated within the non-teaching EPA Instructional or Research category under G.S. 126-5, and as defined in UNC Policy 300.2.1.

(2): The Chancellor may designate an individual to fulfill any responsibility of the Chancellor under this Review Process & Procedure if he or she chooses to delegate any assignment.