

## POL 11.35.01

### Grievance Process for Students Denied Reasonable Accommodations or Subjected to Discrimination Because of a Disability

**Authority:** Chancellor

**History:**

- First Issued: August 16, 2003.
- Revised: July 1, 2011; June 25, 2014.
- Last Revised: August 23, 2019

**Related Policies:**

- [Americans with Disabilities Act Amendments Act of 2008 \(ADAAA\)](#)
- [Rehabilitation Act of 1973 - Section 504](#)
- [UNCP Student Code of Conduct - Item 3.1](#)
- [UNCP Student Grievance Policy](#)

**Additional References:**

- [CFR 28:35.107- Designation of responsible employee and adoption of grievance procedures](#)
- [Family Educational Rights and Privacy Act \(FERPA\)](#)

**Contact Info:** ADA/504 Coordinator, Accessibility Resource Center, 910-521-6695.

## 1. PURPOSE

1.1 Students with disabilities are responsible for contacting the Accessibility Resource Center if reasonable accommodations are not implemented in an effective or timely manner. The staff at the Accessibility Resource Center works with faculty, staff, and students with disabilities to resolve disagreements regarding recommended accommodations. The Complaint, Grievance Hearing, and Appeals Process, as outlined below, will facilitate an internal informal and formal basis for filing a complaint, conducting a grievance hearing, and finally, appealing a denial of accommodations and for grieving instances of inappropriate discrimination in violation of the Americans with Disabilities Act Amendments Act ("[ADAAA](#)") or Section 504 of the [Rehabilitation Act of 1973 - Section 504](#) ("Section 504").

1.2 Any student with a disability who believes he or she has been discriminated against on the basis of that disability may use this process to file a grievance with the ADAAA grievance officer who is the director of the Accessibility Resource Center (DF Lowry, Room 107) at the University of North Carolina at Pembroke, or if the grievance is against the Accessibility Resource Center, with the unit supervisor who will serve as the ADAAA grievance officer, or with the U.S. Department of Education's Office of Civil Rights.

1.3 A student may pursue a grievance if he or she believes that a university employee (including faculty, staff, and agents--hereafter, referred to as "employee") has discriminated against the

student because of his/her disability or has improperly denied the student a reasonable accommodation. Upon request from any student, the director of the Accessibility Resource Center, as the ADA/AA grievance officer, will provide guidance about the appropriate process for redress of a particular complaint.

1.4 Throughout the grievance process, the ADA/AA grievance officer will provide guidance about the policy's procedures and requirements. The UNCP Office of the General Counsel, as legal counsel for the Student ADA/AA Grievance Committee and the hearing panel, will provide training at the beginning of each academic year. Once a formal complaint has been filed with the ADA/AA grievance officer, the UNCP Office of the General Counsel is to be notified immediately. Once notified, the general counsel will provide advice and counsel to the hearing panel throughout the grievance process with the objective of providing and assuring due process for all parties and the development of a complete and judicially sound hearing report to be submitted to the appropriate vice chancellor.

1.5 A grievance which is found to be intentionally dishonest or willfully disregards the truth is a violation of the [UNCP Student Code of Conduct Item 3.1](#). Students violating this code will be subject to disciplinary action.

1.6 The university prohibits retaliation against any student for filing, or participating in, a grievance under this process. Any retaliation directed to the complainant or witness as a result of the filing of a grievance under this process is against state and federal laws and UNCP Policy.

## **2. WHAT MAY BE GRIEVED**

2.1 An action or decision may be grieved only if it involves discrimination against a student because of his/her disability or if it results in the improper denial of a reasonable accommodation. This process may not be used to grieve:

2.1.a. claims based on purchases or contracts;

2.1.b. claims against an employee on matters that are unrelated to the employee's job or role at the university; and

2.1.c. decisions covered by other university policies (e.g. residency appeals).

## **3. WHO MAY GRIEVE**

3.1 Grievances may be initiated by any student currently enrolled at the University of North Carolina at Pembroke who (1) alleges he/she has suffered illegal discrimination because of his/her disability, or (2) has made a request for an accommodation on the basis of a disability, either to an individual faculty member, a department (either academic or administrative), a duly-appointed department head, or to the Accessibility Resource Center as a student seeking services under [Section 504 of the Rehabilitation Act of 1973](#), and been denied that accommodation.

## **4. INFORMAL RESOLUTION**

4.1 The Informal Resolution process is designed to reach an understanding of the situation and to resolve the differences in an informal and cooperative manner. While the ADAAA grievance officer will discuss the steps involved in the Informal Resolution process to all parties, neither Step 1 nor Step 2 is mandatory. Neither the student nor the employee is obligated to participate in either Step 1 or Step 2 and may refuse the offer of an Informal Resolution (mediation) of the grievance matter. The ADAAA grievance officer will immediately move to Step 3, Formal Resolution protocol.

4.2 Step 1. The student who has a grievance against a member of the university community is encouraged to meet with the employee. The purpose of the meeting is to reach a mutual understanding of the student's situation and the employee's actions and attempt a resolution of the grievance matter. The student has seven (7) calendar days from the action being grieved or the date the student should have known about the action to initiate this discussion.

4.3 Step 2. If the meeting with the employee is not satisfactory, does not occur, or if it is impractical for the student to meet with the employee, the student should request the assistance of the ADAAA grievance officer within seven (7) calendar days of the meeting with the employee or within fourteen (14) calendar days of the action. The purpose of this intervention is for the ADAAA grievance officer to attempt to work with both parties to reach a resolution to the grievance matter.

4.4 If the complaint is against the Accessibility Resource Center the student should seek immediate assistance from the unit supervisor, or their designee, who will become the ADAAA grievance officer for this grievance. The ADAAA grievance officer will conduct an informal investigation for resolution. If no resolution is achieved the student may proceed to the Formal Resolution process.

## **5. FORMAL RESOLUTION**

5.1 Step 3. If an informal resolution is not successful, the student may file a formal grievance by sending the ADAAA grievance officer a written request for a hearing by the Student ADAAA Grievance Committee. If the grievance is against the Accessibility Resource Center, the student may file a formal grievance by sending the unit supervisor, or their designee, a written request for a hearing by the Student ADAAA Grievance Committee. The student must file this formal grievance within fourteen (14) calendar days of the meeting with the ADAAA grievance officer or, if that office is the object of the complaint, within fourteen (14) calendar days of the initial meeting with the unit supervisor, or their designee, that began Step 2 of the Informal Resolution process as described above.

5.2 All complaints must be in writing and signed by the student. The grievance must contain:

5.2.a. a clear and precise statement of the complaint;

5.2.b. a statement regarding how the action is discriminatory or how the decision is unreasonable if it is a denial of a requested accommodation;

5.2.c. the name of the respondent parties (the person(s) against whom the grievance is filed);

5.2.d. a statement regarding how each respondent is responsible for the action or decision;

5.2.e. a statement of requested remedy;

5.2.f. a statement whether any witnesses will attend the hearing;

5.2.g. a statement whether a non-participating observer will attend the hearing; and

5.2.h. a [Grievance Statement of Authenticity Form](#) signed by the grieving student.

### 5.3 Dismissal of Grievance by ADAAA Grievance Officer

5.3.1 If it is evident the written grievance has not been filed according to this process (such as, but not limited to, timeframe, matter is not grievable under this process, the complaint is frivolous in the ADAAA grievance officer's judgment, or is from a person without grievance rights under this process), the ADAAA grievance officer shall issue a dismissal of the grievance complaint and state the reasons in a letter to the grievant. Once dismissed, the student shall be provided information to file a grievance with the appropriate state or federal agency external to the university.

5.3.2 If the grievance is not dismissed by the ADAAA grievance officer then within (7) seven calendar days of receiving the complaint he/she shall refer the grievance to the chair of the Student ADAAA Grievance Committee, from which a Hearing Panel will be appointed. The ADAAA grievance officer will inform the employee in writing that a grievance has been received and referred to the Hearing Panel of the committee.

### 5.4 Composition of the Student ADAAA Grievance Committee

5.4.1 The members of the Student ADAAA Grievance Committee shall be chosen by the chancellor and shall be appointed by and serve at the pleasure of the chancellor, who will also name the chair of the committee. In the event any person appointed to the committee or required to serve by virtue of his or her employment is unable to serve, the chancellor may appoint another to serve in his or her place. The composition of the Student ADAAA Grievance Committee shall be made up of three faculty members (nominated by the Faculty Senate), three staff members (nominated by the Staff Council), four upper classmen and/or graduate students (two SGA representatives and two nominated by SGA), and two students with disabilities nominated by the Delta Sigma Omicron president, advisor, or Director of the Accessibility Resource Center.

5.4.2 For the purpose of each grievance, the chair of the committee will select four (4) members of the committee to serve with him/her as the Hearing Panel. In addition to the chair, the Hearing Panel shall include one faculty member, one staff member, one SGA nominated student, and one student with a disability. The Hearing Panel members cannot be part of the same office or immediate administrative unit as the respondent employee. Hearing Panel members should have no personal interest in the outcome of the process, and should not have any personal involvement in earlier stages of the grievance. The chair may designate another member of the committee to

serve as interim Hearing Panel chair and the fifth member of the Hearing Panel when the committee chair is unavailable to serve due to emergencies or a conflict of interest. A decision of the Hearing Panel will be considered a decision of the committee.

5.4.3 The Hearing Panel members, parties and all persons involved in the grievance process shall maintain strict confidentiality regarding the grievance matter during all stages of this process. There shall be no ex parte communication between the parties and the grievance committee/hearing panel members concerning this grievance matter. State and federal laws govern the privacy rights of students and employees. Any questions about the disclosure of information should be directed to the Hearing Panel in writing, and the panel should consult with the Office of the General Counsel.

5.4.4 The chair of the Hearing Panel must convene the panel within fourteen (14) calendar days of being appointed and provide them with the written complaint and all supporting documents provided by either party. The chair of the committee (or his/her designee) will be responsible for facilitating the work of the Hearing Panel and will proceed with a hearing within fourteen (14) calendar days.

5.4.5 The chair of the Hearing Panel shall notify the parties of a hearing date, time and place at least five (5) calendar days in advance of the hearing. During a hearing, the grievant and the accused shall have the following rights:

5.4.5.a. the right to be afforded due process including a fair and timely hearing;

5.4.5.b. the right to have a non-participating observer present;

5.4.5.c. the right to present the testimony of witnesses and other evidence, relevant to the grievance;

5.4.5.d. the right to confront and cross-examine witnesses; and

5.4.5.e. the right to examine all submitted documents and other evidence.

## 5.5 Other Hearing Protocols

5.5.1 The Hearing Panel shall abide by the following hearing protocols:

5.5.1.a the Hearing Panel may request testimony from relevant non-parties;

5.5.1.b. legal counsel for the parties shall not participate in the proceedings unless the law or policy at issue provides for a broader right to counsel;

5.5.1.c. the Director of the Accessibility Resource Center shall appoint a neutral party (non-Hearing Panel member) to observe the proceeding, offer procedural advice as needed, and act as the official recorder (audio);

5.5.1.d. the chair of the Hearing Panel shall appoint a Hearing Panel member to also record the hearing;

5.5.1.e. the chair of the Hearing Panel shall appoint a grievance committee (non-hearing panel) member to take official notes;

5.5.1.f. both the audio recording and the official notes are for the Hearing Panel's use in deliberation and shall be held in strict confidence; and

5.5.1.g. the hearing will be recorded in such a manner so that all persons shall be clearly identified and heard.

5.5.2 At the discretion of the chair, and upon the advice of the general counsel, campus security may be present for the hearing.

## 5.6 Summer and Fast Track Review

5.6.1 Any grievant, at the beginning of the Formal Resolution stage (Step 3) of the grievance process, may elect to waive his/her right to a committee hearing and elect Fast Track Review. In the Fast Track process, the appropriate vice chancellor or senior administrator shall serve as the fact finder and conduct the review in place of the Hearing Panel. The Fast Track Review shall take place within seven (7) calendar days of the student's written request for Formal Resolution. The decision by the appropriate vice chancellor, or senior administrator, shall be final with the student having the right to file an appeal to the chancellor as outlined below in Section 7.

5.6.2 Every grievance filed AFTER APRIL 15 AND BEFORE AUGUST 25 of each year shall be decided through Fast Track Review, and the grievant shall have no right to a hearing before the committee.

## 6. THE DECISION

6.1 After hearing a student grievance, the Hearing Panel, in seclusion, shall deliberate and determine, by majority vote, whether the preponderance of the evidence shows that the employee has violated state or federal law and/or UNCP policy. Within fourteen (14) calendar days of the hearing, the Hearing Panel shall provide a written report to the ADAAA grievance officer or to the unit supervisor, if applicable. A dissenting Hearing Panel member may also file a minority report. The Hearing Panel's report (and any minority report) shall then be sent to the appropriate vice chancellor or senior administrator for a decision on the grievance matter.

6.2 The Hearing Panel's report shall include the following:

6.2.a. a summary of the proceedings;

6.2.b. a statement of the findings of fact;

6.2.c. recommendations;

- 6.2.d. a copy of all correspondence with the parties;
- 6.2.e. all evidence submitted to the Hearing Panel;
- 6.2.f. the audio recording (and transcript of the hearing, if available); and
- 6.2.g. anything else considered by the Hearing Panel.

6.3 The appropriate vice chancellor or senior administrator shall review the report(s) of the Hearing Panel and all submitted documentation and evidence, and issue a written decision to all parties within fourteen (14) calendar days of receiving the Hearing Panel's report(s). The appropriate vice chancellor or senior administrator may either adopt the Hearing Panel's report and recommendations in whole, modify it in part, or reject the report and reach different findings and/or conclusions for reasons expressly stated in the written decision. The decision shall be sent, subject to UNCP personnel policies and state and federal law, to all parties via certified mail, return receipt requested.

## **7. THE APPEAL**

7.1 The student who filed the grievance and the employee may appeal the decision (including any dismissal) of the appropriate vice chancellor to the chancellor within fourteen (14) calendar days of receiving the written decision. The chancellor, upon receiving the grievance appeal, has fourteen (14) calendar days to sustain the vice chancellor's decision in whole, modify it in part, or reject the decision and reach different findings and conclusions. The chancellor's decision shall be final and sent, subject to UNCP personnel policies and state and federal law, to all parties via certified mail, return receipt requested.

7.2 For grievances against vice chancellors, the chancellor (or his/her designee) will make decisions based on the Hearing Panel's report and recommendation, and may either adopt the report and recommendations in whole, modify it in part, or reject the report and reach different findings or conclusions. The chancellor's decision shall be final and sent, subject to UNCP personnel policies and state and federal law, to all parties via certified mail, return receipt requested.

7.3 Once the grievance matter is closed, all evidence used in the case, to include but not be limited to, documents and audio recordings, are to be placed in the custody of the ADA AAA grievance officer for three (3) years.

## **8. ACCESS TO OTHER COMPLAINT PROCEDURES**

8.1 At the conclusion of the chancellor's review during the appeal, if the denial of accommodation has been upheld or the employee's action otherwise sustained, the ADA AAA grievance officer shall inform the complainant where to get information about procedures to file grievances with the appropriate governmental agency.

8.2 Nothing in this policy should be construed to impede or prohibit a timely filing of an ADA AAA or discrimination complaint with the appropriate external governmental agency or an internal

complaint or grievance alleging discrimination, whether on the basis of disability or not, unrelated to the request for an accommodation.

## **9. FORMAL FEDERAL AGENCY GRIEVANCE PROCEDURES**

9.1 Students with grievances, or complaints against the university based upon violations of [Section 504](#) or the [ADAAA](#) shall be informed of the right to file a complaint with a designated federal agency.

For UNCP, this agency is:

Office for Civil Rights, Southern Division  
U. S. Department of Education  
400 Maryland Ave. SW  
Washington, DC 20202  
Telephone: 202-245-8300  
Fax: 202-245-8301; TDD: 877-521-2172  
Email: OCR.DC@ed.gov