



FLORIDA GULF COAST UNIVERSITY

NOTICE OF REGULATORY ACTION

December 3, 2010

REGULATION TITLE:

Grievance Regulation

REGULATION NO.:

FGCU-PR5.020

SUMMARY:

Amends the Regulation to specify that Presidential Direct Reports or the Vice-President for the Division in which the grievant is assigned is to act as the Step Two Representative for the General Grievance Procedure and the Step One Representative for the Grievance Procedure for Suspensions and Terminations. Revises the term used for the legal representative that may accompany the grievant to the termination appeal from "counsel" to "attorney".

FULL TEXT:

The full text of the regulation being proposed is attached and can also be found at <http://www.fgcu.edu/generalcounsel/promulgation.asp>

LAW IMPLEMENTED:

§1001.74, Florida Statutes

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:

Steven Belcher, Director of Human Resources

UNIVERSITY OFFICIAL APPROVING THE PROPOSED REGULATION:

Dr. Joseph Shepard, Vice President for Administrative Services and Finance

PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:

Diane St. John, Administrative Assistant, dstjohn@fgcu.edu; 239.590.7466 (Phone), 239.590.7470 (Facsimile); 10501 FGCU Blvd. S, Fort Myers, FL 33965-6565.

ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE DECEMBER 17, 2010 BY 5:00 P.M. THE COMMENTS MUST IDENTIFY THE REGULATION ON WHICH YOU ARE COMMENTING.

THIS NOTICE WAS POSTED ON THE FGCU WEBSITE ON: DECEMBER 3, 2010



Effective Date of
Regulation:

REGULATION: FGCU-PR5.020

~~10/21/08~~ _____

Grievance Regulation

A. ~~(1)~~ GRIEVANCE POLICY STATEMENT

1. ~~(a)~~ — Florida Gulf Coast University (FGCU) encourages a pro-active, collegial work environment in which employees have the opportunity to discuss and resolve work related concerns with the appropriate supervisor. In those cases where an employee has an unresolved dispute concerning that employee's terms or conditions of employment, the employee may choose to file a grievance. The purpose of this Regulation is to set out a procedure for the consideration and resolution of grievances filed by out-of-unit faculty, Administrative and Professional (A&P) staff, or support personnel employees, not governed by a collective bargaining agreement.
2. ~~(b)~~ — Job-related problems should be resolved, whenever possible, before the filing of a grievance. Open communication and informal resolution between the employee and supervisor are encouraged so as to avoid the necessity for formal grievances.
3. ~~(c)~~ — The burden of proof in grievances concerning disciplinary actions, including reprimands, suspension, and termination for cause, shall be on the University. In all other cases, the burden of proving a grievance, by a preponderance of evidence, shall be on the grievant.
4. ~~(d)~~ — All time limits contained in this Regulation may be extended by mutual agreement of the parties. Upon failure of the grievant to file any step of the grievance within the time limits provided in this Regulation, the grievance shall be deemed to have been resolved at the prior step, or in the case of an untimely filing of the initial grievance, the grievance shall not be accepted. Upon failure of the University or its representative to provide a decision within the time limits, the grievant may appeal to the next appropriate step.
5. ~~(e)~~ — Any decision made as a result of the grievance process shall apply only to the individual who submitted the grievance, based on the specific unique facts of the matter, and shall not serve as a precedent for future matters.

6. ~~(f)~~ Definitions:

a) ~~1.~~ The term “grievance” means a dispute concerning the grievant’s rights regarding the terms and conditions of employment and must specify an adverse employment action. The following actions shall not be grieved through the process:

1) ~~a.~~ Administrative leave with pay;

2) ~~b.~~ Voluntary reduction in pay;

3) ~~c.~~ Voluntary demotion;

4) ~~d.~~ Notice of layoff;

5) ~~e.~~ Performance evaluations - unless it is alleged that the evaluation is based on factors other than performance or conduct;

6) ~~f.~~ Assignment of work;

7) ~~g.~~ Reassignment of work space;

8) ~~h.~~ Complaints of discrimination, harassment, or retaliation based on a legally protected class.

b) ~~2.~~ The term “grievant” means employee or employees who are appointed to an out-of-unit faculty, Administrative and Professional (A&P), or support personnel position not governed by a collective bargaining agreement, who has filed a grievance and whose rights may have been directly affected by an act or omission of a supervisor or administrator at FGCU. In instances where the University determines that grievances filed are essentially the same, the University, at its sole discretion, may consolidate the grievances and notify the grievants in writing. Only employees who hold regular appointment status are eligible to file a grievance. A probationary employee may file a grievance concerning only non-disciplinary matters affecting the employee’s terms and conditions of employment. A grievance filed by a probationary employee shall be heard only by the immediate supervisor and the next level supervisor.

c) ~~3.~~ The term “days” means calendar days. In the event an action falls due on Saturday, Sunday or a University holiday, the action will be considered timely if it is accomplished by 5:00 p.m. on the following business day.

d) ~~4.~~ The term “party” means FGCU or the grievant(s).

e) ~~5.~~ Complaints of discrimination, harassment, related retaliation and protected activity are filed in the Office of Institutional Equity and Compliance.

B. ~~(2)~~ GENERAL GRIEVANCE PROCEDURE

1. ~~(a)~~ This procedure applies to any grievance as defined above except for a grievance concerning a suspension or termination.
2. ~~(b)~~ The procedure is as follows; and is administered by the Director of Human Resources or designee for all other eligible employees:
 - a) ~~(1)~~ Step One
 - 1) ~~a.~~ Employees are encouraged to seek informal resolution before the formal filing of a grievance. All grievances shall be filed with the Human Resources Department on a Request for Grievance form, within fourteen (14) days following the act or omission giving rise to the grievance, or the date on which the grievant knew or reasonably should have known of such act or omission.
 - 2) ~~b.~~ The written grievance shall contain the following information: The grievant's name, position, work unit, specific provision(s) of FGCU Regulations, policies, or statute claimed to have been violated, a statement of the grievance, including the acts or omissions which are claimed to have given rise to the grievance, the remedy sought, and the grievant's signature. The Director of Human Resources or designee, as applicable, will determine the sufficiency of the grievance consistent with this regulation. The determination shall be provided to the grievant(s) in writing within seven (7) days. This determination is not reviewable; however, if denied, the grievant has five (5) calendar days from the date of notice (excluding holidays or school closings) to resubmit the grievance to the decision maker with additional information or argument for reconsideration of the decision. The final determination shall be submitted in writing within five (5) days.
 - 3) ~~c.~~ For the purposes of this section, the designated Step One Representative shall be the Dean, Director or next level administrator, or their designees, to whom the grievant reports.
 - 4) ~~d.~~ The Step One Representative shall arrange a meeting, to be held within fourteen (14) days from notification that the matter is grievable, for the purpose of resolving the grievance. In advance of the Step One meeting, the grievant shall have the right, upon written request, to a copy of identifiable documents relevant to the grievance. The Step One Representative shall have seven (7) days from the meeting to make the determination. The Step One Representative shall notify the grievant in writing of the decision with copy to the President, the respective Vice President or President's Direct Report, as appropriate, and Director of Human Resources, or their designees.
 - 5) ~~e.~~ Upon request of the grievant, and if determined to be reasonable by the Step One Representative, such Representative may direct that the grievant proceed directly to Step Two.

b) 2.—Step Two

1) a.—If the grievant is dissatisfied with the Step One decision and wishes to pursue the matter, the grievant may request in writing that the grievance proceed to Step Two. This request must be made within seven (7) days of the date of the Step One decision. The Step Two Representative shall be, ~~as appropriate, the highest level supervisor under the President, or their designee~~ the President's Direct Report, the Vice President of the Division, or their designee, in which the grievant is assigned.

2) b.—The Step Two Representative shall schedule a meeting, to be held within seven (7) days of the written request for a Step Two meeting, with the grievant, and any other persons believed to be necessary to the settlement of the grievance. The Step Two Representative will make a determination and notify the grievant of the Step Two decision in writing within seven (7) days of the meeting. The Step Two decision is final and binding upon the parties.

C. (3)—**GRIEVANCE PROCEDURES FOR SUSPENSIONS AND TERMINATIONS**

1. (a)—This procedure applies to all grievances concerning a suspension without pay or termination with cause whether it is a proposed or immediate action.

2. (b)—Unless exigent circumstances require immediate suspension or termination, individuals will receive written notice of a proposed action.

3. (c)—All grievances shall be filed with the Director of Human Resources or designee on a Request for Grievance form – Suspensions or Terminations, within seven (7) days following the Notice of Suspension or Notice of Termination.

4. (d)—For the purposes of this section, ~~the~~ Step One Representative shall be, ~~as appropriate, the highest level supervisor under the President~~ the Presidential Direct Report or the Vice President of the Division, ~~or their designee, in which the grievant is assigned. In the case where the grievant reports directly to the President, the grievant shall immediately move to subsection C.5., below,~~ ~~or their designee.~~ The Step One Representative shall schedule a meeting, to be held within seven (7) days of the written request, with the grievant. The grievant must submit a written statement as a response to the suspension or termination action, and may be accompanied to the Step One meeting by a representative. The representative may assist, advise and confer with the grievant but may not speak for the grievant. The meeting is not a legal proceeding but shall be informal and shall not be in the nature of an evidentiary hearing. The Rules of Civil Procedure do not apply and discovery, cross-examinations and other legal procedures are not permissible. The Step One Representative will make a determination and notify the grievant of the Step One decision in writing within seven (7) days of the meeting. If the suspension or termination action is upheld by this Step One

decision, the University may implement the aggrieved action if it has not already done so. Upon request of the grievant, and if determined to be reasonable by the Step One Representative, such Representative may direct that the grievant proceed directly to Step Two.

5. (e)—Step Two - If the grievant is not satisfied with the decision of the Step One Representative, the grievant may, within seven (7) days of the date of the Step One decision, appeal such decision and request in writing that the grievance proceed to Step Two. The request for a Step Two Meeting must be submitted on a Request for Step Two Grievance form – Suspensions or Terminations. The President or the President’s designee shall schedule a meeting to be held no later than ten (10) days of the request for such meeting.

a) 1.—The employee shall have the right at the meeting to:

1) a.—A review of all allegations against the employee;

2) b.—Present a response to the allegations and provide a rationale on all the issues;

3) c.—Submit a rebuttal to the allegations;

4) d.—Be represented by counsel attorney (~~Again,~~ employee’s counsel attorney may not speak for the employee); and,

5) e.—Witnesses, at the sole discretion of the President or designee.

b) 2.—The President or the President’s designee shall issue a decision within fifteen (15) days of the conclusion of the Step Two Meeting, which shall be final and binding.

Law Implemented:

§1001.74, F.S.

History of Rule:

New 4/17/97; Amended 8/18/99

History of Regulation:

New 01/15/08; Amended 10/21/08; Amended

Effective Date of Regulation:

~~10/21/08~~