

FLORIDA GULF COAST UNIVERSITY

NOTICE OF REGULATORY ACTION

September 19, 2008

REGULATION TITLE:

Grievance Regulation

REGULATION NO.: FGCU-PR5.020

SUMMARY:

The regulation, FGCU-PR5.020, Grievance Regulation, is being updated in order to apply to Out-of-Unit Faculty, Administrative & Professional (A&P) and Support Personnel employees. This change is in conjunction with the repeal of the regulation on Complaint Review Procedure for USPS Employees

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, F.S.

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:

Steve Belcher, Director 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) 590-1101 (Phone), (239) 590-7470 (Facsimile); 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565

ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE OCTOBER 3, 2008 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: SEPTEMBER 19, 2008.



REGULATION: FGCU-PR5.020

Grievance Regulation

Non-Unit Faculty and A&P

Effective
Date of
Regulation:
01/15/2008

- ~~(1) General. This grievance procedure is applicable to all Faculty and Administrative and Professional (A & P) employees who are not covered by the BOR/UFF Collective Bargaining Agreement. Grievances of bargaining unit faculty and A & P staff are governed by the BOR/UFF Collective Bargaining Agreement.~~
- ~~a. The purpose of this procedure is to promote a prompt and efficient process for the investigation and resolution of grievances filed by faculty and A & P staff.~~
 - ~~b. The University encourages the informal resolution of all problems whenever possible before the filing of a grievance, and encourages open communication so that resorting to the formal grievance procedure normally will not be necessary. The failure to resolve a matter informally prior to the filing of a grievance shall not be an act or omission giving rise to a grievance and shall not operate to extend the time limits for processing the grievance.~~
 - ~~c. The burden of proof shall be on the University in a grievance concerning reprimands, suspension, termination for cause, and other disciplinary actions. In all other grievances, the burden of proof shall be on the grievant.~~
 - ~~d. The intent of this procedure is to provide a complete response to a grievance but not to encourage multiple processing of the same issue. Therefore, except as noted below, if prior to, or while seeking resolution of, a dispute under this procedure, a grievant seeks resolution of the matter in any other forum, administrative or judicial, the University shall have no obligation to entertain or to proceed further with the matter pursuant to this procedure. The grievant shall immediately notify the University in writing if he or she has sought resolution of the matter in any other forum. As an exception to this provision, a grievant may file an EEOC charge while the grievance is in process when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. § 2000e et seq. Further, since it is not intended that the grievance procedure be a device for appellate review, the response of the president or representative to a recommended order of a presiding officer acting pursuant to Chapter 120, FS., or to any other individual or group having appropriate jurisdiction in any other procedure shall not be an act or omission giving rise to a grievance under this procedure.~~

- ~~e. A grievance shall be filed no later than twenty-five (25) days from the date following the act or omission giving rise to the grievance, or twenty-five (25) days from the date the grievant acquires knowledge, or could have reasonably been expected to have acquired knowledge, of the act or omission.~~
- ~~f. All time limits contained in this rule may be extended by mutual agreement of the parties. 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. Upon the failure of the grievant or counsel to file an appeal within the time limits, the grievance shall be deemed to have been resolved at the prior step.~~
- ~~g. A grievant whose substantial interests have been affected University action may file a petition for a hearing pursuant to and in accordance with Section 120.569, FS., unless a written grievance has been or is being filed under this procedure. Filing of a written grievance under this procedure constitutes a waiver of any right the grievant might otherwise have to request a hearing pursuant to Section 120.569, F.S.~~
- ~~h. The written grievance shall be filed on a STEP ONE GRIEVANCE FORM - NON-UNIT FACULTY AND A & P STAFF, Form HR-G200 (10/26). Form HR-G200 (10/26) which is incorporated by reference, has been approved by the University President and is available upon request at the Office of Human Resources, 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565. The grievance shall contain the following information: grievant's name; name and address of counsel, if any; specific provision(s) of BOG 5 and FGCU Regulations or other 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 date of such acts or omissions; remedy sought; signature of the grievant.~~

~~(2) Definitions:~~

- ~~a. Days The term "days" shall mean calendar days. In the event that the time f(1) taking an action falls on Saturday, Sunday or a state holiday, the action will be considered timely if it is accomplished by 5:00 p.m. on the following calendar day.~~
- ~~b. Grievance The term "grievance" shall mean a dispute concerning promotion, non-renewal and termination of employment contracts, discipline, salary, work assignment, annual evaluation, layoff and recall, and other rights accruing to grievants pursuant to BOG 5 and FGCU-PR5. The term "work assignment" does not include the reassignment or transfer to another campus of the University.~~
- ~~c. Grievant The term "grievant" shall mean a non-bargaining unit member or members of the University's faculty and Administrative and Professional staff~~

- ~~whose rights have been directly affected an act or omission of the University or representative, and who has timely filed a grievance.~~
- ~~d. Grievance Officer. The term "grievance officer" shall mean a University employee appointed to conduct the Step 1 meeting by the Vice President responsible for the division in which the grievant is employed.~~
- ~~e. Technical Advisor. The term "technical advisor" shall mean a representative of the Office of Human Resources appointed to assist the grievant and the grievance officer in administrative duties and interpretation of policies and procedures.~~

~~(3) Step 1 Procedures.~~

- ~~a. Upon receipt of the written grievance, the Vice President responsible for the division in which the grievant is employed shall appoint a University employee to serve as grievance officer. The Vice President may ask the Director of Human Resources to appoint a grievance technical advisor. The grievance officer and the technical advisor, if the grievance officer deems it necessary, shall within twenty-five (25) days following receipt of the grievance, meet with the grievant in informal conference(s) to establish the facts giving rise to the grievance.~~
- ~~b. The grievance officer shall consult with the parties directly involved in the grievance and interview others in addition to the grievant and seek any other material as necessary in order to determine an appropriate resolution of the grievance. The investigation shall be as informal as possible, yet compatible with the interest of resolving the grievance in a timely manner.~~
- ~~c. The grievance officer shall, within twenty five (25) days following the conclusion of the investigation and informal conference(s) with the grievant, issue a written decision to the grievant giving reasons for the conclusions reached and attaching all documents presented at the Step 1 meeting. The grievance officer will provide a copy of the written decision with attachments to the respective divisional Vice President.~~

~~(4) Step 2 Procedures.~~

- ~~a. If the grievant is dissatisfied with the decision in Step 1, and wishes to pursue the matter, the grievant shall send a letter to the President within twenty-five (25) days following receipt of the decision in Step 1 requesting a Step 2 review.~~
- ~~b. The President may conduct the Step 2 review personally or may refer the grievance to the appropriate Vice President for a Step 2 review.~~
- ~~c. The Step 2 review may be based solely on the Step 1 report or may include a meeting with the grievant as deemed necessary by the Step 2 reviewer.~~

~~d. A written decision shall be furnished to the grievant within twenty-five (25) days following completion of the Step 2 review. The decision of the President or Vice President conducting the Step 2 review shall be final.~~

(1) GRIEVANCE POLICY STATEMENT

(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.

(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.

(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.

(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.

(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.

(f) Definitions:

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:

a. Administrative leave with pay;

- b. Voluntary reduction in pay;
- c. Voluntary demotion;
- d. Notice of layoff;
- e. Performance evaluations - unless it is alleged that the evaluation is based on factors other than performance or conduct;
- f. Assignment of work;
- g. Reassignment of work space;
- h. Complaints of discrimination, harassment, or retaliation based on a legally protected class.

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.

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.

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

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

(2) GENERAL GRIEVANCE PROCEDURE

(a) This procedure applies to any grievance as defined above except for a grievance concerning a suspension or termination.

(b) The procedure is as follows; and is administered by the Director of Human Resources or designee for all other eligible employees:

(1) Step One

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.

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.

c. The designated Step One Representative shall be the Dean, Director or next level administrator, or their designees, to whom the grievant reports.

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.

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.

2. Step Two

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.

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.

(3) GRIEVANCE PROCEDURES FOR SUSPENSIONS AND TERMINATIONS

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

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

(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.

(d) The Step One Representative shall be, as appropriate, the highest level supervisor under the President, 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.

(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.

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

a. A review of all allegations against the employee;

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

c. Submit a rebuttal to the allegations;

d. Be represented by counsel (Again, employee's counsel may not speak for the employee); and,

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

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.

Specific Authority:

~~240.227(1) FS~~

Law Implemented:

~~240.227(5)FS~~§1001.74, F.S.

History of Rule:

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

History of Regulation:

New 01/15/08, Amended _____

Effective Date of Regulation:

~~August 18, 1999,~~ _____