



## REGULATION: FGCU-PR5.020

*Effective Date  
of Regulation:*

### Grievance

04/21/2015

#### A. GRIEVANCE POLICY STATEMENT

1. 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 forth a procedure for the consideration and resolution of Grievances filed by out-of-unit faculty, Administrative and Professional (A&P), or Support Personnel (SP) employees, not governed by a collective bargaining agreement. The President's direct reports may not grieve an employment action covered by this Regulation.
2. 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. 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 employee.
4. After the initial Grievance has been filed, all time limits contained in this Regulation may be extended by mutual written agreement of the parties. Upon failure of the employee 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 employee may appeal to the next appropriate step.
5. 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.

#### B. DEFINITIONS

1. *Days*: Refers to calendar days. In the event an action falls due on a Saturday, Sunday, University holiday, or University closing, the action will be considered timely if it is

accomplished by 5:00 p.m. on the following business day. In the event the time for the Step One or Step Two Representative to issue a decision falls during the University winter break, that Representative shall have an additional five (5) days to issue a decision.

2. *Designee*: The term “designee” as used in this Regulation will generally be an employee in the Division to which the Grievant is assigned. However, in cases involving extenuating circumstances, such as clear conflict of interest, a designee may be an employee outside the Grievant’s assigned Division or another objective third party.
3. *Grievance*: 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 workspace.
  - h) Complaints covered under FGCU-PR1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct Regulation. Such complaints must be filed with the Office of Institutional Equity and Compliance.
4. *Grievant*: Employee(s) who are appointed to an out-of-unit faculty, Administrative and Professional (A&P), or Support Personnel (SP) 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 University supervisor or administrator. Only employees who hold regular 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.

5. *Grievant's Representative*: Any individual the employee chooses with whom the employee may confer, or seek advice or assistance.
6. *Meeting*: The term "meeting" under the Grievance Procedure, as it relates to a disciplinary action, means a disciplinary proceeding brought to address the imposition of such action.

### **C. GRIEVANCE PROCEDURE**

1. The following applies to all Grievances:
  - a) The written Grievance shall contain the following information:
    - 1) Grievant's name;
    - 2) Position;
    - 3) Work unit;
    - 4) Specific provision(s) of FGCU Regulations or Policies claimed to have been violated;
    - 5) A statement of the Grievance, including the acts or omissions, which are claimed to have given rise to the Grievance, as well as the dates such acts or omissions are to have occurred;
    - 6) Remedy sought; and
    - 7) Grievant's signature and date.
  - b) The Assistant Vice President and 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) days from the date of notice to resubmit the Grievance with additional information or argument for reconsideration of the decision. The final determination shall be issued in writing within five (5) days.
  - c) The role of the Step One Representative is to:
    - 1) Review the actions of the University as it relates to the Grievance;
    - 2) Review the Grievance against the disciplinary action to be imposed;

- 3) Act as an objective third party and fact finder; and
  - 4) Request documents and/or speak directly with any person deemed, by the Step One Representative, to be relevant or necessary in the grievance process. Notwithstanding, the Step One Representative has no authority to compel the appearance of witnesses.
- d) Grievant's Representative may not speak for the Grievant or otherwise participate directly in the meeting.

## 2. General Grievance Procedure

The General Grievance Procedure applies to any Grievance, as defined above. A Grievance concerning a suspension or termination with cause is governed by the grievance procedures described in Section C.3. of this Regulation.

The General Grievance Procedure is as follows and is administered by the Assistant Vice President and Director of Human Resources or designee for eligible employees:

### a) Step One

- 1) Employees are encouraged to seek informal resolution before the filing of a formal 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. In instances where multiple Grievances have been filed by the same employee, the University, at its sole discretion, may consolidate the Grievances and will notify the Grievant in writing.
- 2) For the purposes of this section, the designated Step One Representative shall be the Dean, Director or next level administrator, or their designee, to whom the Grievant reports.
- 3) 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 a copy to the President, the respective Vice President or President's Direct Report, as appropriate, and the Assistant Vice President and Director of Human Resources, or their designee.

- 4) Upon written request of the Grievant, and within seven (7) days of the date of the Step One Representative's decision, if determined to be reasonable by the Step One Representative, such Representative may direct that the Grievant proceed to Step Two.
  - 5) The determination of the reasonableness of a Grievant's request to proceed to Step Two shall be based on, but not limited to, allegations of due process, the production of new evidence not previously available at the Step One meeting, or disciplinary action was excessive. Grievant's dissatisfaction with the Step One Representative's decision, without more, is insufficient to warrant the progress of a Grievance to the next level.
- b) Step Two
- 1) If the Grievant's request to proceed to Step Two has been approved, a Step Two Representative will be assigned to the Grievance. The Step Two Representative shall be the President's Direct Report or the Vice President for the Division, or their designee, in which the Grievant is assigned.
  - 2) 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 resolution 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

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

- a) Unless exigent circumstances require immediate suspension or termination, individuals will receive written notice of a proposed action, with the opportunity to respond to the allegations in the suspension or termination notice prior to the imposition of the disciplinary action.
- b) All Grievances shall be filed with the Assistant Vice President and Director of Human Resources or designee on a Request for Step One Grievance form – Suspensions or Terminations, within seven (7) days following the Notice of Suspension or Notice of Termination.
- c) For the purposes of this section, the Step One Representative shall be the President's Direct Report or the Vice President for the Division in which the Grievant is

assigned, or their designee. The Step One Representative shall schedule a meeting with the Grievant to be held within seven (7) days of the written request. 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 Grievant's representative may assist, advise, and confer with the Grievant. However, discovery, cross-examination, and similar legal procedures are not permissible. Additionally, the Grievant's representative is not permitted to testify or 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. Neither the Rules of Civil Procedure nor the Rules of Criminal Procedure apply to this meeting. 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.

- d) Upon request of the Grievant, and within seven (7) days of the date of Step One Representative's decision, if determined to be reasonable by the Step One Representative, such Representative may direct that the Grievant proceed to Step Two.
- e) The determination of the reasonableness of a Grievant's request to proceed to Step Two shall be based on, but not limited to, allegations of due process violation(s), the production of new evidence not previously available, or the disciplinary action was excessive. Grievant's dissatisfaction with the Step One Representative's decision, without more, is insufficient to warrant the progress of a Grievance to the next level.
- f) Step Two - If the Grievant's request to proceed to Step Two has been approved, a Step Two Representative will be assigned to hear the Grievance. The request for a Step Two Meeting must be submitted on a Request for Step Two Grievance form – Suspensions or Terminations. The President or designee shall schedule a meeting to be held no later than ten (10) days of the request for such meeting.

The Grievant shall have the right at the meeting to:

- 1) A review of all allegations against the employee;
- 2) Present a response to the allegations and provide a rationale on all the issues;
- 3) Submit a rebuttal to the allegations;
- 4) Be accompanied by his or her representative; and
- 5) Witnesses, at the sole discretion of the Step Two Representative. (Note: Step Two Representative has no authority to compel appearance of witnesses.)

- g) The President or designee shall issue a decision within fifteen (15) days of the conclusion of the Step Two Meeting, which shall be the final decision and binding. In cases where the Grievant failed to file a request for a Step Two review in a timely manner, or the request for a Step Two review is denied, then the Step One decision shall be the final decision and binding.

*Action by Florida Gulf Coast University Board of Trustees*

*Approved 04/21/2015*

*Specific Authority*

*§1001.706, Florida Statutes, Board of Governors Regulation 1.001(5)(a)*

*History of Regulation*

*New 01/15/08; Amended 10/21/08; 01/18/11; 06/19/12; 04/21/15*

*Effective Date of Regulation*

*04/21/2015*