

OFFICE OF THE GENERAL COUNSEL: USF REGULATIONS

NOTICE: PROPOSED AMENDED REGULATION

DATE: April 26, 2011

Regulation No: USF10.113

Title: Faculty Grievances

Summary:

Florida Board of Governors Regulation 1.001 (9-16-10) provides that “Each board of trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors,” (7-21-05). Such regulations must be consistent with law, and the regulations and strategic plan of the Board of Governors. BOG Regulation 1.001 further provides that “Each board of trustees shall provide for the establishment of the personnel program for all the employees of the university...which may include...appeals and grievance procedures.”

The Regulation Development Procedure requires that the University Board of Trustees periodically review existing regulations to ensure they are current and consistent. The proposed amendments eliminate the option for a hearing on the merits under Chapter 120, Administrative Procedures Act, Florida Statutes, as an out-dated practice that has not been used for over ten (10) years. All faculty and staff employees will continue to have access to the existing and active arbitration hearing process, which provides review by an independent third party neutral empowered to hear the grievance. In addition, procedural revisions have been proposed to make the Faculty and Staff/Administration/Temporary employee grievance Regulations 10.113 and 10.213 more consistent with each other.

This Regulation has been reviewed by the ACE Advisory Council (March 28, 2011) and the Academics and Campus Environment Workgroup (April 21, 2011) and will be placed for adoption on the Agenda of the Board of Trustees Meeting (June 8, 2011).

End of Summary.

Full text of the proposed Regulation follows:

1 | **USF10.113, Faculty Grievances**

2 |
3 | (1) Faculty grievances.

4 | (a) Faculty members may file grievances in accordance with this Regulation if they believe
5 | that:

6 | 1. A term or condition of employment is unjust;

7 | 2. A Regulation, Policy or Procedure has been wrongfully applied to them;

8 | 3. A Regulation, Policy or Procedure has been applied to them in a manner that violates the
9 | Regulation, Policy or Procedure;

10 | 4. A disciplinary action, including reprimand, is inappropriate; or

11 | 5. They have been wrongly denied permission to pursue outside activities or political office.

12 | (b) Performance evaluations cannot be grieved under this Regulation unless the faculty
13 | member believes the evaluation is based on factors other than performance. Grievances on the
14 | basis of performance, layoffs, and non-disciplinary matters may be grieved only to the chief
15 | academic officer of the faculty member's campus or USF Health, as appropriate ~~Provost or the~~
16 | ~~appropriate Vice President.~~

17 | (c) Administrative leave with pay or pending investigation, voluntary reductions in pay, or
18 | oral or written counseling are not disciplinary actions and may not be grieved.

19 | (d) Claims of illegal discrimination are to be filed with the Office of Diversity and Equal
20 | Opportunity of the USF System and any grievance or part of a grievance that makes such claims
21 | will not be processed as grievances under this Regulation.

22 | (2) The USF System is committed to open communication between faculty and supervisors
23 | to address concerns through Informal Resolution before a grievance is necessary.

24 | (3) At any and all stages of the grievance process, grievants may choose to represent

25 themselves, or may designate any person to assist or represent them.

26 (4) To maintain their rights, faculty members attempting to resolve a grievance informally
27 must file a written Step 1 grievance by the deadline (as specified in Section (8) of this Regulation).
28 By filing a Step 1 grievance, a faculty member consents to a thirty (30) day Informal Resolution
29 period to be conducted in accordance with requirements of the USF System.

30 (5) The initial thirty (30) day Informal Resolution period may be extended for a specific
31 period of time by mutual written agreement between the Grievant and the USF System. This
32 agreement will specifically state any deadline(s) to submit documents or information required for
33 processing the grievance. In the appropriate circumstances, the parties may agree to an indefinite
34 extension of the Informal Resolution period.

35 (6) The USF System must engage in Informal Resolution unless the Grievant specifically
36 requests a Step 1 meeting, which the grievant must do in writing.

37 (7) In accordance with this Regulation, a grievance filed by any faculty member that
38 involves any disciplinary action may proceed after Step 1 to ~~Administrative Review~~arbitration.

39 (8) Grievance Process: Step 1

40 (a) An employee must file a Step 1 grievance by the close of regular business hours no more
41 than thirty (30) calendar days after the act or omission which the faculty member knows or
42 should have known constitutes the basis for an alleged violation or upon receiving the written
43 notice of disciplinary action. The faculty member must file the Step 1 grievance form with the
44 chief academic officer of the faculty member's campus or USF Health, as appropriate
45 ~~administrator in the Office of the Provost or the appropriate Vice President or USF System~~
46 ~~authority who is designated to accept the Step 1 form.~~

47 (b) The Step 1 grievance must be in writing, signed by the Grievant, and contain the
48 following information:

- 49 | 1. Name of the Grievant, and the name and address of the Grievant's representative, if any;
- 50 | 2. Statement specifying which Regulations, Policies or Procedures the employee believes
- 51 | were violated;
- 52 | 3. A brief factual narrative of the act(s) or omission(s) which the Grievant alleges led to the
- 53 | violation and the date(s) on which the violation occurred;
- 54 | 4. The names (including contact information) of any witnesses; and
- 55 | 5. A statement identifying what the employee is seeking to resolve the matter.

56 | A Grievant may also provide any documents that he/she believes support their grievance,

57 | and they are encouraged to do so.

58 | (c) It is the Grievant's obligation to file the Step 1 grievance in accordance with this

59 | Regulation. If he or she fails to file the Step 1 grievance by the deadline, to sign the Step 1

60 | grievance document, or to include all of the information required in a Step 1 grievance document,

61 | the Grievant has no right to further processing of the Step 1 grievance. The USF System will be

62 | under no further obligation to process the grievance and will notify the Grievant of the reasons

63 | for not processing the grievance.

64 | (d) If the grievance is not resolved in accordance with the Informal Resolution provisions

65 | of this Regulation, then [the chief academic officer of the faculty member's campus or USF](#)

66 | [Health, as appropriate, ~~the Provost or the appropriate Vice President or USF System authority~~](#)

67 | will designate the USF System's Step 1 Representative.

68 | (e) The Step 1 Representative will meet the Grievant within fourteen (14) calendar days of:

69 | 1. Receipt of the Step 1 form, if the required period of Informal Resolution stipulated in

70 | Section (4) of this Regulation has been waived; or

71 | 2. The end of Informal Resolution. At the Step 1 meeting, the Grievant may, if he or she

72 | chooses, present additional information or documents for consideration by the Step 1

73 Representative. A Step 1 Representative may review and/or use any additional business records
74 of the USF System they believe are relevant to their review of the Step 1 grievance.

75 (f) The Step 1 Representative must issue a written decision no later than thirty (30) calendar
76 days after the Step 1 meeting. This decision must discuss the reasons for the decision and what
77 documents supported the Step 1 Representative's review, a statement about what actions are or
78 are not to be taken by the USF System and/or faculty member, and a copy of all documents used
79 in reaching the decision.

80 (9) Grievance Process: Step 2

81 (a) If the Grievant is not satisfied with the Step 1 resolution, the Grievant may ~~request an~~
82 ~~Administrative Review (A/R)~~ submit a request for arbitration in accordance with this Regulation.

83 ~~(b) A Grievant must file a~~ A request for ~~an Administrative Review~~ arbitration must be filed
84 by the close of regular business hours no more than fourteen (14) calendar days after the
85 Grievant ~~receives~~ the written Step 1 decision. The ~~Administrative Review~~ request must be
86 ~~filed with the Agency Clerk in~~ submitted in writing to the Office of the General Counsel, with a
87 copy to the chief academic officer of the faculty member's campus or USF Health, as appropriate
88 ~~Provost or the appropriate Vice President.~~

89 ~~(b)~~ The ~~A/R~~ request for arbitration must be ~~in writing~~, signed by the Grievant, and contain
90 the following: (i) a copy of the Step 1 grievance document; (ii) a copy of the Step 1 response; (iii)
91 if applicable, a list of the Regulations and/or Policies the grievant believes may have been
92 misapplied in the Step 1 decision; and (iv) a brief statement or outline of the basis for challenging
93 the Step 1 decision. A faculty member may also provide any documents they believe support
94 their request for an ~~A/R~~ arbitration.

95 ~~(c) The Grievant may initiate a proceeding to be conducted in accordance with the~~
96 ~~provisions of Chapter 120, Administrative Procedure Act, Florida Statutes, and Chapter 28-106,~~

97 ~~Florida Administrative Code, Decisions Determining Substantial Interests, by submitting a~~
98 ~~petition to the Agency Clerk in the Office of the General Counsel, with a copy to the President,~~
99 ~~within fourteen (14) calendar days of receipt of the Step 1 decision.~~

100 (dc) It is the Grievant's obligation to file the ~~A/R-review~~ request for arbitration in
101 accordance with this Regulation. If an employee fails to file the ~~A/R~~ request by the deadline, to
102 sign the ~~A/R~~ request document, or to include all of the information required for ~~an A/R~~
103 ~~review~~the request, the Grievant has no right to further processing of the ~~A/R-review~~ request.
104 The USF System will be under no further obligation to process the ~~A/R~~request and will notify
105 the Grievant of the reasons for not processing the grievance.

106 (ed) ~~The election of one type of A/R in accordance with this Regulation constitutes the~~
107 ~~Grievant's waiver of any right to avail himself/herself of any of the process, rights and/or~~
108 ~~remedies that may be available in any other process. Once the election is made, a Grievant may~~
109 ~~not withdraw his/her request to initiate another type of A/R; a~~ A Grievant's withdrawal at any
110 point after filing a request for ~~A/R~~arbitration will constitute a dismissal of the action with
111 prejudice.

112 (10)(a)1. Within ~~ten (10)~~ twenty (20) calendar days of ~~the faculty member's election of an~~
113 ~~Administrative Review by arbitration~~the filing of the request for arbitration, the USF System will
114 notify the Grievant of the name of the next scheduled arbitrator. ~~the parties will meet to follow the~~
115 ~~American Arbitration Association procedure for the selection of an arbitrator. The arbitration shall~~
116 ~~be held within sixty (60) days following the selection of the arbitrator.~~

117 2. Either party may object to the appointment of this arbitrator and request the name of the
118 next available arbitrator within ten (10) calendar days.

119 3. Upon the appointment of this arbitrator, the previously non-objecting party may file an
120 objection within ten (10) calendar days.

121 | 4. Unless both parties mutually object to the third arbitrator appointed, this arbitrator will
122 | conduct the arbitration.

123 | (b) The USF System and the grievant will coordinate with the arbitrator to arrange the
124 | arbitration date, time and place, and such communications will not be deemed to be an
125 | inappropriate, unethical or *ex parte* communication.

126 | (c) For purposes of this section only, all notices and/or objections must be received by the
127 | other party within the ten (10) day time period unless extenuating circumstances interfere with
128 | the ability to comply.

129 | (11)(a) In any non-disciplinary matter or in any non-disciplinary aspect of a case involving
130 | multiple issues, the Grievant has the burden of proof ~~and going forward~~ at all times.

131 | (b) In any disciplinary matter or in any disciplinary aspect of a case involving multiple
132 | issues, the USF System has the burden of proof ~~and going forward~~ at all times.

133 | (c) The arbitrator's authority is to determine whether the USF System had just cause to
134 | impose discipline ~~and whether the discipline imposed was appropriate~~ or, for matters not
135 | involving discipline, whether the action was appropriately taken by the USF System.

136 | (12) The arbitrator may use the Florida Rules of Civil Procedure to govern the arbitration.
137 | If the arbitrator intends to use any other rules, he/she must notify the parties no later than ten
138 | (10) calendar days before the hearing.

139 | (13) The arbitrator must issue his/her decision within sixty (60) calendar days of the
140 | completion of the arbitration. The arbitrator's decision is binding.

141 | (14) Neither party may appeal the arbitrator's decision except in accordance with Florida
142 | law.

143 | (15) In the event a Grievant is represented by any employee representative entity, the USF
144 | System and that entity will equally bear any fees and/or costs charged for the ~~Administrative~~

145 | ~~Review process~~arbitration. In all other cases, the losing side will ~~bear the cost of~~be charged any
146 | such fees and/or costs for the ~~Administrative Review process~~arbitration.

147 | (16) Time limits in this Regulation will be calculated in accordance with the Florida Rules of
148 | Civil Procedure, unless otherwise specified in this Regulation. In the case of grievances claiming
149 | arbitrarily-denied permission to pursue outside activities or political office, an expedited process
150 | will be used, wherein time deadlines will be shortened by a factor of one-half.

151 | (17) No reprisal of any kind will be made by ~~the Board or~~ the USF System or Grievant
152 | against any grievant, witness, or designated representative, or any other participant in the
153 | grievance procedure by reason of such participation in the grievance process.

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155 | *Authority: Art. IX, Sec. 7, Fla. Constitution, Fla. Board of Governors Regulation 1.001. History: New 10-5-*
156 | *03. Formerly 6C4-10.113, F.A.C., Amended 11-17-09, XX-XX-11.*
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AUTHORITY TO ADOPT/REPEAL REGULATION(S): Art. IX, Sec. 7, Fla. Constitution, BOG Regulation 1.001.

**UNIVERSITY OFFICIAL INITIATING PROPOSED AMENDMENT OF REGULATION:
Steven D. Prevaux, General Counsel.**

**WRITTEN COMMENTS CONCERNING PROPOSED REGULATIONS MAY BE
SUBMITTED WITHIN 14 DAYS AFTER THE POSTING DATE OF THIS NOTICE TO:**

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