

OFFICE OF THE GENERAL COUNSEL: USF REGULATIONS

NOTICE: PROPOSED AMENDED REGULATIONS

DATE: April 26, 2011

Regulation No: USF10.213

Title: Grievances (Administration, Staff and Temporary Employee)

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 | **USF10.213, Administration, Staff, and Temporary Employee Grievances**

2 | (1)(a) Grievances can occur when an employee believes that: a term(s) and/or condition(s) of
3 | his/her employment is unjust; in non-disciplinary matters, a USF System Regulation or Policy has
4 | been wrongfully applied to him/her or applied in a manner that violates the Regulation or Policy; or
5 | a disciplinary action taken against him/her is inappropriate.

6 | (b) An employee may file a grievance in accordance with these Regulations if he/she believes
7 | that:

8 | 1. A term(s) or condition(s) of employment is unjust;

9 | 2. In non-disciplinary matters, a USF System Regulation or Policy has been wrongfully
10 | applied to him/her or applied in a manner that violates the Regulation or Policy; or

11 | 3. A disciplinary action is inappropriate.

12 | (c) Non-permanent employees (Temporary employees or Staff employees without permanent
13 | status in any class) and temporary Administration employees may file a grievance only if they believe
14 | that a USF System Regulation or Policy has been wrongfully applied to them or applied in a manner
15 | that violates the Regulation or Policy. Such employees may not grieve any action beyond the
16 | Informal Resolution process, as defined below.

17 | (d) Except as noted in (1)(c) above, grievances regarding layoffs from established positions as
18 | defined in these Regulations, non-disciplinary matters, reprimands, and/or actions that do not
19 | involve a substantial interest are grievable only through the Informal Resolution process, as defined
20 | below.

21 | (e) Except for non-permanent employees and temporary Administration employees, a
22 | grievance filed by any employee for disciplinary actions that involve a suspension without pay,
23 | involuntary reduction in pay, involuntary demotion, or dismissal, or a grievance filed for other

24 matters involving a substantial interest, may be processed after the waiver or completion of the
25 Informal Resolution process to the next stage of Step 1, as defined below.

26 | (f) Administrative leave, voluntary reductions in pay, voluntary demotions, and oral and
27 | written counseling are not disciplinary actions and may not be grieved by any employee.

28 | (g) Removal of pay additives or temporary pay increases, correction of overpayments, or
29 | reduction to the maximum of the pay range do not constitute a reduction in pay action and may not
30 | be grieved by any employee.

31 | (h) The following employees do not have a right to grieve termination:

32 | 1. Non-permanent employees or temporary Administration employees;

33 | 2. Administration employees when their appointment ends after they have received a written
34 | notice of non-reappointment or have received a written notice upon appointment that employment
35 | will cease on the date indicated with no further notice of cessation of employment required; and

36 | 3. Employees who voluntarily resign from employment with the USF System.

37 | (i) Non-permanent employees or temporary Administration employees do not have the right
38 | to grieve layoff, as defined in these Regulations.

39 | (j) A performance evaluation cannot be grieved unless it is alleged that the evaluation is based
40 | on factors other than performance. Such evaluation is grievable only through the Informal
41 | Resolution process, as defined below.

42 | (k) Claims of illegal discrimination are to be filed with the Office of Diversity and Equal
43 | Opportunity and any grievance or part of a grievance that makes such claims will not be processed
44 | under this Regulation.

45 | (2) Step 1 of the Grievance Process

46 | (a) To maintain his/her rights under these Regulations, an employee must file a Step 1
47 | Grievance by the close of regular business hours no later than thirty (30) calendar days after the

48 act(s) or omission(s) which the employee knows, or should know, constitutes the basis for the
49 grievance. The employee must submit the Step 1 Grievance to the Division of Human Resources.

50 | (b) The Step 1 Grievance must be in writing signed by the Grievant, and must include the
51 | following information, at a minimum:

52 | 1. The name of the Grievant and of the Grievant's representative, if any, including contact
53 | information;

54 | 2. A statement specifying which Regulation(s) or Policy (s) the Grievant believes was violated,
55 | if any;

56 | 3. A brief description of the act(s) or omission(s) which the Grievant alleges is the basis for
57 | the grievance;

58 | 4. The names (including contact information) of any witnesses or of those who have direct
59 | knowledge of the alleged act(s) or omission(s); and

60 | 5. An explanation of what the Grievant is seeking in order to resolve the matter. A Grievant
61 | may also provide any documents that he/she believes support the grievance and is encouraged to do
62 | so.

63 | (c) If the Grievant fails to file the signed Step 1 Grievance by the deadline or to include all of
64 | the information required for a Step 1 Grievance, the Grievant has no right to further processing of
65 | the grievance. The USF System will be under no further obligation to process the grievance and will
66 | notify the Grievant that the grievance will not be processed.

67 | (d) The USF System encourages open communication between employees and supervisors to
68 | address employee concerns before an employee believes it is necessary to file a grievance. The USF
69 | System is committed, whenever possible, to address employee concerns through Informal
70 | Resolution. By filing a Step 1 Grievance, a Grievant consents to a mandatory thirty (30) calendar
71 | day Informal Resolution process.

72 | (e) The initial thirty (30) calendar day Informal Resolution time period may be extended for a
73 | specific period of time by mutual written agreement between the Grievant and the USF System.
74 | This agreement will specifically state any deadline(s) for submitting documents or information
75 | required to process the grievance. Upon mutual agreement, the parties may agree to an indefinite
76 | extension of the Informal Resolution period.

77 | (f) Notwithstanding Section (2)(d), of this Regulation, the Grievant may specifically request a
78 | waiver of the Informal Resolution process for matters involving a substantial interest. This request
79 | must be made in writing at the time of filing the Step 1 Grievance and must fully explain the reasons
80 | or extenuating circumstances in support of the request for a Step 1 meeting without participating in
81 | the Informal Resolution process. For matters involving a substantial interest, the Informal
82 | Resolution process will be waived by the Division of Human Resources, without the Grievant's
83 | request or consent, when determined to be in the best interests of the USF System.

84 | (g) If the Grievant takes no action on the grievance during the Informal Resolution process,
85 | the USF System will treat the grievance as if it is resolved in a satisfactory fashion and accepted by
86 | the Grievant at the end of the Informal Resolution period. The USF System will discontinue any
87 | and all further processing of the grievance and will notify the Grievant that all processing of the
88 | grievance has ceased.

89 | (h) If the grievance is not resolved in accordance with the Informal Resolution process
90 | provided for in these Regulations, and the grievance is eligible for processing at the next stage of
91 | Step 1, as defined above, the Division of Human Resources will designate the USF System's Step 1
92 | Representative.

93 | (i) The Step 1 Representative will meet with the Grievant within fourteen (14) calendar days
94 | after:

95 | 1. The- USF System’s acceptance of the Grievant’s request for waiver of the Informal
96 | Resolution process;

97 | 2. The Division of Human Resources’ waiver of the Informal Resolution process; or

98 | 3. The end of the Informal Resolution process.

99 | At the Step 1 meeting, the Grievant may, if he/she chooses, present additional information or
100 | documents for consideration by the Step 1 Representative. The Step 1 Representative may review
101 | and/or use any additional business records of the USF System that are believed to be relevant to the
102 | processing of the grievance.

103 | (j) The Step 1 Representative must issue a written decision no later than thirty (30) calendar
104 | days after the Step 1 meeting, unless the Step 1 Representative and the Grievant mutually agree to an
105 | extension in writing.

106 | (3) Step 2 of the Grievance Process - ~~Administrative Review~~ Arbitration

107 | (a) If the Grievant is not satisfied with the Step 1 decision and the matter involves a
108 | substantial interest, the Grievant may submit a request a Step 2 Administrative Review for arbitration
109 | in accordance with this Regulation. ~~The Step 2 Administrative Review may be conducted by~~
110 | ~~arbitration or an administrative hearing in accordance with Chapter 120, Florida Statutes, as defined~~
111 | ~~in (3)(b)1. or (3)(b)2. below.~~

112 | (b)~~1.~~ A request for ~~a Step 2 Administrative Review by~~ arbitration must be filed by the close of
113 | regular business hours no later than fourteen (14) calendar days after the Grievant receives the
114 | written Step 1 decision. The request must be submitted in writing to the Office of the General
115 | Counsel with a copy to the Division of Human Resources. The request must be signed by the
116 | Grievant and must include the following:

117 | a. A copy of the Step 1 Grievance and all associated documents;

118 | b. A copy of the Step 1 decision;

119 | c. If applicable, a list of the Regulation(s) and/or Policy(s) the Grievant believes may have
120 | been misapplied in the Step 1 decision; and

121 | d. A brief description of the basis for challenging the Step 1 decision.

122 | The Grievant may also provide any documents that he/she believes will support the request
123 | for ~~an Administrative Review~~arbitration.

124 | ~~2. The Grievant may request a Step 2 Administrative Review conducted in accordance with~~
125 | ~~the provisions of Chapter 120, Administrative Procedure Act, Florida Statutes, and Chapter 28-106,~~
126 | ~~F.A.C., Decisions Determining Substantial Interests, by submitting a request to the Office of the~~
127 | ~~General Counsel, with a copy to the CAO and the Division of Human Resources, by the close of~~
128 | ~~regular business hours no later than fourteen (14) calendar days after the Grievant receives the Step~~
129 | ~~1 decision.~~

130 | (c) It is the Grievant's obligation to file the Step 2 ~~Administrative Review~~ request for
131 | arbitration in accordance with this Regulation. If a Grievant fails to file the request by the deadline,
132 | to sign the request, or to include all of the information required for the request, the Grievant has no
133 | right to further processing of the ~~Administrative Review~~ request. The USF System will be under no
134 | further obligation to process the ~~Administrative Review~~ request and will notify the Grievant of the
135 | reasons why the ~~Administrative Review~~arbitration will not be conducted.

136 | (d) ~~The election of one type of Administrative Review in accordance with this Regulation~~
137 | ~~constitutes the Grievant's waiver of any right to avail himself/herself of any of the processes, rights,~~
138 | ~~and/or remedies that may be available in any other process. Once the election is made, a Grievant~~
139 | ~~may not withdraw his/her request to initiate another type of Administrative Review.~~ A Grievant's
140 | withdrawal at any point after filing a request for ~~an Administrative Review~~arbitration will constitute
141 | a dismissal of the action with prejudice.

142 | (4)(a)1. Within ~~ten (10) calendar~~ twenty (20) days of the filing of the request for

143 | ~~arbitration~~~~employee's election of an Administrative Review by arbitration~~, the USF System will
144 | notify the Grievant of the name of the next scheduled arbitrator.

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

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

149 | 4. Unless both parties mutually object to the third arbitrator appointed, this arbitrator will
150 | conduct the ~~Administrative Review~~ arbitration.

151 | 5. The USF System will coordinate with the arbitrator to arrange the date, time, and place of
152 | the arbitration, and such communications will not be deemed to be an inappropriate, unethical, or ex
153 | parte communication.

154 | 6. For purposes of this section only, all notices and/or objections must be received by the
155 | other party within the required time period, unless extenuating circumstances interfere with the
156 | party's ability to comply.

157 | (b)1. In any non-disciplinary matter or in any non-disciplinary aspect of a case involving
158 | multiple issues, the Grievant has the burden of proof ~~and going forward~~ on those non-disciplinary
159 | issues at all times.

160 | 2. In any disciplinary matter or in any disciplinary aspect of a case involving multiple issues,
161 | the USF System has the burden of proof ~~and going forward~~ on those disciplinary issues at all times.

162 | (5)(a) The arbitrator's authority is to determine whether the USF System had just cause to
163 | impose discipline or, for matters not involving discipline, whether the action was appropriately taken
164 | by the USF System.

165 | (b) The arbitrator may use the Florida Rules of Civil Procedure to govern the arbitration. If
166 | the arbitrator intends to use any other Rules, he/she must notify the parties no later than ten (10)
167 | calendar days before the arbitration.

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

170 | (d) Neither party may appeal the arbitrator's decision except in accordance with Florida law.

171 | (6) In the event a Grievant is represented by any employee representative entity, the USF
172 | System and that entity will equally bear any fees and/or costs charged for the ~~Administrative Review~~
173 | ~~process~~arbitration. In all other cases, the losing side will ~~bear the cost of~~be charged any such fees
174 | and/or costs for the ~~Administrative Review~~arbitration process.

175 | (7) Time limits in this Regulation will be calculated in accordance with the Florida Rules
176 | of Civil Procedure unless otherwise specified in this Regulation.

177 | (8) No reprisal of any kind will be made by the USF System or Grievant against any
178 | Grievant, witness, or designated representative, or any other participant in the grievance procedure
179 | by reason of such participation in the grievance process.

180 | *Authority: Art. IX, Sec. 7, Fla. Constitution, Fla. Board of Governors Regulation 1.001. History: New 10-05-*
181 | *03, Formerly 6C4-10.213, F.A.C., Amended 8-27-09, XX-XX-11.*

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:

Dee Brown, Agency Clerk
Office of the General Counsel

University of South Florida
4202 East Fowler Avenue, Suite CGS 301
Tampa, FL 33620-4301
Phone: (813) 974-7150;
FAX: 813-974-5236;
E-MAIL: usflegal@admin.usf.edu