

**NOTICE OF PROPOSED REGULATION AMENDMENT**

Date: March 1, 2016

**REGULATION TITLE:**

University Grievance Procedure for Faculty and Postdoctoral Associates: Definitions, General Information, and Procedures

**REGULATION NO.:**

7.042

**SUMMARY:** This regulation contains one of the grievance procedures for faculty not in the union. The amendment makes a clarifying change to subparagraph (4)(b)2d. This grievance procedure permits a faculty member in the Health Center or in IFAS to appeal a grievance decision by an applicable dean or director to the Senior Vice President for Health Affairs or the Senior Vice President for Agricultural Affairs respectively. In the event of such an appeal, the amendment clarifies that the applicable Senior Vice President will review the appeal under the same procedures utilized by a dean or director and not the procedures utilized by a grievance committee. The amendment also modifies how arbitrators are selected if a grievance proceeds to arbitration. The regulation currently requires that the parties go through the American Arbitration Association (AAA) for assignment of an arbitrator. The AAA charges a fee for this service and the University and the grieving faculty member share the costs of arbitration. The University has a panel of qualified and certified arbitrators who are utilized in arbitrations with faculty in the union, USPS and TEAMS employees. These arbitrators are also on AAA panels. By hiring these arbitrators privately without utilizing AAA, an unnecessary cost to the University and the faculty member is eliminated.

**AUTHORITY:** BOG Regulation 1.001

**COMMENTS CONCERNING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW.** The comments must identify the regulation you are commenting on.

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS:** Sandra L. Mitchell, Senior Administrative Assistant, 123 Tigert Hall, Post Office Box 113125, University of Florida, Gainesville, Florida 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

**NAME OF PERSON WHO APPROVED THE PROPOSED REGULATION:**

Paula V. Fussell, Vice President for Human Resources Services

**THE FULL TEXT OF THE PROPOSED REGULATION IS ATTACHED TO THIS NOTICE.**

REGULATIONS OF THE  
UNIVERSITY OF FLORIDA

7.042 University Grievance Procedure for Faculty and Postdoctoral Associates:

Definitions, General Information, and Procedures.

(1) Definitions.

(a) The term "grievance" as used in this regulation shall mean a dispute or complaint alleging a violation of the regulations of the University or the Board of Governors concerning tenure, promotion, non-renewal and termination of employment contracts, salary, work assignments, annual evaluation, lay-off and recall, and other benefits or rights accruing to a faculty member or postdoctoral associate pursuant to these regulations.

(b) A grievance must be filed in the Office of the President with a copy to the grievant's chief administrative officer (CAO) in the format described in section (5) below. The required information must be complete in order for the grievance process to begin.

(c) The term "grievant" shall mean a faculty member who is not a member of the collective bargaining unit or a postdoctoral associate whose benefits or rights, as defined in subsection (1)(a) above, have been directly affected by an act or omission of the University or its representative and who has filed a grievance.

(d) The term "days" shall mean calendar days. If a time limit expires on a non-business day, the limit shall be extended to 5 p.m. of the next business day.

(e) The term "Grievance Committee" shall apply to a committee selected by either a vote of the college faculty or by appointment of the CAO to review the grievance at Step I.

(f) The term "chief administrative officer" (cited as "CAO" in this regulation) shall mean the dean or director exercising authority over faculty in a college or budgetary unit, or the designee of such an individual. The CAO may also be the Senior Vice President for Health Affairs or Agricultural and Natural Resources, and/or the deans of the colleges within these budgetary units, including the functional Deans in IFAS, or for the purpose of this regulation the vice presidents or directors of major budgetary, academic or administrative units which are the organizational equivalent of colleges, such as Florida Museum of Natural History, University Libraries and Student Affairs.

(2) General Information

(a) Purpose of Grievance Procedure - The purpose of the procedure is to provide a prompt and efficient collegial method for the review and resolution of grievances filed by faculty members of the University who are not members of the collective bargaining unit. The procedure set forth in this regulation is also the exclusive procedure available for the review and resolution of grievances filed by postdoctoral associates.

(b) Time Limits

1. A grievance shall be filed no later than thirty (30) days from the date following the act or omission giving rise to the grievance, or thirty (30) days from the date the grievant acquires knowledge, or could reasonably have been expected to acquire knowledge, of the act or omission, if that date is later.

2. Extensions requested for the purpose of attempts to resolve the grievance may be granted upon the grievant's written request to the Office of the President, with a copy to the CAO.

3. Upon failure of the University or its representatives to provide a decision within the time limits provided in this regulation or any extension thereof, the grievance shall be deemed to have been transferred to the next step of the grievance process.

4. Upon the failure of the grievant to file a request for review within the time limits provided in this regulation, the grievance shall be deemed to have been resolved at the prior step, and the grievance file closed. The grievance shall not later be revived.

5. The University may refuse to entertain any grievance or request for review not filed within the applicable time limit or extension thereof.

(c) Burden of Proof - The burden of proof shall be on the grievant, who must support his or her position regarding the grievance by a preponderance of the evidence, except that the burden of proof shall be on the University in a disciplinary grievance alleging a violation or violations under University of Florida Regulation 7.048, to establish by a preponderance of the evidence that the violation occurred. Counseling is not considered disciplinary action.

(d) Limitations on Certain Remedies -

1. Backpay may be awarded to a grievant if a determination is made that the grievant is not receiving the appropriate salary from the University, but other monetary damages, interest, or penalties, including attorney's fees, shall not be awarded to a grievant.

2. A decision to award employment beyond the tenure probationary period, as defined in University of Florida Regulation 7.019 or the sixth (6<sup>th</sup>) year in the case of county extension faculty members, to a grievant shall not entitle the grievant to tenure or permanent status. In such case, the grievant shall have the right to an appropriate notice period, but is not entitled to any employment after the designated notice period.

(3) Appeal or Resolution Process.

(a) An aggrieved faculty member or postdoctoral associate is encouraged to arrange a meeting to discuss a possible resolution of the grievance with the appropriate administrator responsible for the act or omission giving rise to the grievance. This conference should be held within the thirty (30) day period, as described in subsection (2)(b)1. above, in which the grievance review procedure must be initiated. If such conference cannot be held within the thirty (30) day period, the aggrieved faculty member or postdoctoral associate must file a grievance in the Office of the President along with a written request for an extension of no more than thirty (30) days in order to continue to pursue resolution of the grievance.

(b) Upon the grievant's written request, additional thirty (30) day extensions may be granted, unless to do so would impede the resolution of the grievance. Approval of any request for extension shall be in writing to the Office of the President with a copy to the CAO. The grievant may at any time terminate the extension by giving written notice to the CAO with a copy to the Office of the President that the grievant wishes to proceed with the grievance review procedure in the manner described in subsection (4)(b) below.

(c) If an extension expires without a written request from the grievant for either a further extension or a Step I review, the grievance need not be processed further, and the grievance file will be closed. The grievance shall not later be revived.

(4) Initiation of Grievance Review Procedure.

(a) General Information.

1. The Grievance Procedure under this regulation shall commence upon the timely filing of a grievance in the Office of the President, which shall include all the information specified in "Step I Grievance", as described in subsection (5)(a) below, with a copy to the appropriate CAO. At the same time, a copy of the grievance shall be furnished to the grievant's

chair or unit supervisor. The President or designee or the CAO may refuse to consider a grievance not filed in accordance with this regulation upon written notice to the grievant of the reasons for the decision.

2. The grievant shall indicate on the Step I grievance request that the grievance review procedure begin with either a review by the Grievance Committee or a review by the CAO.

3. If the grievant is a dean, director, or vice president, the grievant shall request that the grievance procedure begin at the Step 1 level with a review by the appropriate CAO, e.g., a vice president or senior vice president. If the grievant is a senior vice president, the grievant shall request that the President designate the senior official who will fulfill the roles of the CAO under Step I and the Provost under Step II in a single review.

4. A college or unit shall establish a three (3)-member Grievance Committee consisting of faculty to hear grievances filed under this regulation. Committee members may be selected either by a vote of the college faculty or be appointed by the CAO. Committee members may serve for staggered terms of either two (2) or three (3) years and shall be eligible for reappointment. The Committee shall designate one (1) of its members as chair.

(b) Step I Review Procedures.

1. The STEP I Grievance Committee Meeting and Review Process -

a. The Committee shall as soon as practicable but no sooner than seven (7) and no later than fifteen (15) days following the receipt of the grievance by the CAO, schedule a Step I meeting with the grievant.

b. The Committee chair shall be responsible for notifying the grievant of the meeting.

The grievant may be represented by a university colleague at this meeting.

c. Before the Step I meeting, the grievant may make written request for copies of any identifiable documents relevant to the grievance and shall be furnished copies of such documents which may be lawfully disclosed to the grievant under University of Florida Regulations and state law. Charges for such copies shall be limited to the amounts that can be charged for copies under the Public Records Law, Ch. 119, Fla. Stat., except that the first \$25.00 worth of copying will be free.

d. At the Step I meeting, the grievant, or the grievant's collegial representative, shall have the right to present any evidence in support of the grievance to the Committee.

e. After the Step I meeting, the Committee shall establish, through conferences and review of appropriate documentation, the facts giving rise to the grievance.

f. The Committee may interview others in addition to the grievant and seek other evidence in order to recommend an appropriate resolution of the grievance to the CAO.

g. The Committee shall maintain the confidentiality of any "limited access records" as defined in University of Florida Regulation 1.019 during the conduct of its review.

h. The review shall be as collegial as possible, yet compatible with formulating a recommended resolution of the grievance.

i. The Committee shall, no later than thirty (30) days after meeting with the grievant, submit to the CAO a report containing its findings and recommendations with respect to the grievance, including any proposed resolutions thereof.

(I) The report shall indicate what evidence is deemed pertinent to the grievant's claims regarding the specific university regulations alleged to have been violated, and the factual basis for the Committee's recommendations.

(II) The Committee's review of an administrator's decision that involved the exercise of discretion, such as, but not limited to, a decision regarding tenure, promotion, non-renewal or merit salary increase, shall not substitute the Committee's judgment for that of the administrator, but shall be confined to determining whether the decision violated the regulations of the Board of Governors or of the University.

(III) All documents considered relevant to the grievant's claim or regulation violations by the Committee in its review of the grievance shall be attached to the Committee's report, along with a list of such documents. The Committee Chair may schedule a meeting to discuss the findings of fact and recommendations with the CAO.

j. Within thirty (30) days of the receipt of the Committee's report, the CAO shall render a CAO decision in writing which either accepts the Committee's findings and recommendations, or which modifies such recommendations based on the Committee's findings, provided the CAO's decision includes detailed reasons for departing from the Committee's report. Copies of the CAO's decision and the Committee's report shall be sent to those parties directly involved in the grievance including the members of the Committee. A copy shall also be sent to the Provost.

2. Step I Chief Administrative Officer (CAO) Review.

a. If the grievant elects to have the grievance review begin with the CAO, the CAO or a designee shall conduct the Step I review in accordance with the procedures outlined below. He or she shall review the evidence presented by the grievant in support of the alleged violations and conduct whatever review the CAO deems necessary, including interviewing of witnesses.

b. The CAO shall as soon as practicable but no sooner than seven (7) and no later than fifteen (15) days following the receipt of the grievance by the CAO, schedule a Step I meeting

with the grievant. Before the Step I meeting, the grievant may make written request for copies of any identifiable documents relevant to the grievance and shall be furnished copies of such documents which may be lawfully disclosed to the grievant under University of Florida Regulations and state law. Charges for such copies shall be limited to the amounts that can be charged for copies under the Public Records Law, Ch. 119, Fla. Stat., except that the first \$25.00 worth of copying will be free. At the Step I meeting, the grievant, or the grievant's collegial representative, shall have the right to present any evidence in support of the grievance. After the Step I meeting, the CAO shall establish, through conferences and review of the appropriate documentation, the facts giving rise to the grievance.

c. The CAO shall issue a written decision to the grievant stating the reasons for such decision no later than thirty (30) days after the Step I meeting. The CAO's review of an administrator's decision that involved the exercise of discretion, such as a decision regarding tenure, promotion, or merit salary increase, shall not substitute the CAO's judgment for that of the administrator, but be confined to determining whether the decision violated the regulations of the Board of Governors or of the University. All documents reviewed by the CAO in reviewing the grievance shall be attached to the CAO's decision, along with a list of such documents. A copy of the decision shall be sent to the parties directly involved in the grievance. A copy shall also be sent to the Provost.

d. The Step I review for grievants holding appointments in the Institute of Food and Agricultural Sciences or the J. Hillis Miller Health Science Center may include at the discretion of the University, a two (2)-level review by the dean or designee and the Senior Vice President for Agricultural and Natural Resources or the Senior Vice President for Health Affairs or designee of such Senior Vice President. If this two (2)-level procedure is to be used, the grievant

shall be so advised in writing and the matter shall proceed as follows: Review by the appropriate dean or designee shall be conducted in accordance with the procedures set forth in subsection (4)(b)2 above. If the grievant is not satisfied with the decision, he or she may make a written request to the appropriate vice president for a further review of the decision of the dean or designee. Such a written request shall be filed with the appropriate vice president no later than fifteen (15) days from the grievant's receipt of the decision of the dean or designee. The appropriate vice president or designee shall review the grievance in accordance with the procedures set forth in subsection (4)(c) below. The vice president or designee, shall issue a written Step I decision in the form set forth in subsection 4(c)3. below. Copies of this Step I decision and the attachments thereto shall be sent to those parties involved in the grievance. A copy shall also be sent to the Provost.

(c) STEP II Review Procedures - If the grievant is not satisfied with the decision in Step I the grievant may file with the Office of the Provost a written request for review at the Step II level. Such request shall include all the information specified in the "Request for Review of Step I Decision", described in subsection (5)(b) below. The written request for review at the Step II level must be filed with the Office of the Provost no later than fifteen (15) days from the grievant's receipt of the Step I decision. The grievant may be represented by a university colleague or by legal counsel in the review of the grievance at the Step II level.

1. The Provost or Provost's designee shall review all documentation considered during the Step I process, and the recommendations made by the Grievance Committee, if applicable, and the decision of the CAO.

2. The Provost or designee may at his or her discretion consider materials beyond those described in subsection (4)(b) above in reviewing the grievance. Copies of such materials shall

be furnished to the grievant. The Provost or designee shall meet with the grievant, the grievant's legal or collegial representative, and, if deemed necessary, the appropriate administrator, in an effort to resolve the grievance. Such a meeting shall be scheduled no later than fifteen (15) days following receipt of the request for review. The meeting shall afford the grievant, or the grievant's representative, an opportunity to present written and/or oral evidence relevant to the grievance.

3. Within thirty (30) days of the meeting, the Provost or designee shall issue a written decision with respect to the grievance, giving the findings of fact and the reasons for the conclusions reached. All documents reviewed by the Provost or designee in making the decision with respect to the grievance shall be attached to the decision, along with a list of such documents. Copies of the Step II decision and the attachments thereto shall be furnished to those parties involved in the grievance and to the University President.

(d) STEP III Review Procedures - If the grievant is not satisfied with the Step II decision, the grievant may file, no later than fifteen (15) days from the date of the grievant's receipt of the Step II decision, a written request for the Provost or designee to move the grievance to an arbitration hearing. Such request shall include all the information specified in "Request for Review of Step II Decision", as described in subsection (5)(c) below.

1. No later than fifteen (15) days after receipt of the request, the Provost or designee shall select an arbitrator on a rotational basis from an odd numbered panel of at least seven (7) arbitrators maintained by the University ~~request that an American Arbitration Association arbitrator be appointed by the Association~~ to hear the grievance. Arbitration proceedings shall be conducted in accordance with this regulation, supplemented by the Labor Arbitration Rules, published by the American Arbitration Association, as amended from time to time. ~~in~~

~~accordance with the Association's arbitration procedures. A copy of such request shall be furnished to the grievant.~~ The arbitrator's report shall be advisory to the University President,

who shall consider its contents together with the record of the arbitration proceedings, as well as the Step I and II decisions with documents attached thereto, prior to rendering a final decision.

2. The arbitrator shall not have the authority to either add to, subtract from, modify, or alter the terms or provisions of Board of Governors and University regulations . The subject of the arbitration shall be confined solely to the application and/or interpretation of these regulations with respect to the precise issues submitted for arbitration. The arbitrator shall have no authority to determine any other issue. Any statements of opinion or conclusions not essential to the determination of the issues submitted made by the arbitrator shall be of no force and effect.

3. In those instances in which an administrator has made a judgment involving the exercise of discretion, such as decisions regarding tenure, promotion, or merit salary increases, the arbitrator shall not substitute his or her judgment for that of the administrator, nor shall the arbitrator review such decision except to determine whether the decision violated the regulations of the Board of Governors or of the University. If the arbitrator determines that such regulations have been violated, the arbitrator shall submit a report to the President with the findings of fact and recommendations concerning what the arbitrator deems to be appropriate action.

4. If it is found that notice of the end of employment of a faculty member was given after the date such notice was required to be given, the arbitrator may advise the President to renew or reappoint the grievant only after a finding that the timing of the notice given was such that either the grievant was deprived of reasonable opportunity to seek other employment, or the grievant actually rejected an offer of comparable employment which the grievant otherwise would have accepted.

5. All fees and expenses of the arbitrator shall be divided equally between the grievant and the University. Each party shall bear the cost of preparing its own case. The cost of any transcript of proceedings before the arbitrator shall be divided equally between the parties, and any such transcript shall be provided to the arbitrator, and then to the President. The cost of any additional copies of such transcripts shall be borne by the party requesting same.

6. The President shall issue a final written decision with respect to the grievance within thirty (30) days after receipt of the arbitrator's report, or as soon thereafter as possible. The decision shall either adopt the arbitrator's report and its recommendations, modify the report, or reject the report, provided the decision includes detailed reasons for departing from the arbitrator's report. Copies of the President's decision shall be sent to those parties involved in the grievance.

(5) Requests for the review of a grievance at any of the steps shall be completed in the formats described in this section and filed in the Office of the President within the time limits described in this regulation. If the required information is not completed, the University shall not be responsible for initiating the review process.

(a) For Step I –

University Grievance Procedure under University of Florida Regulation 7.042  
REQUEST FOR A STEP I GRIEVANCE REVIEW

NAME OF GRIEVANT: \_\_\_\_\_

COLLEGE OR UNIT: \_\_\_\_\_

DEPARTMENT: \_\_\_\_\_

CAMPUS ADDRESS: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

Other address to which mailings pertinent to this grievance should be sent (if applicable): \_\_\_\_\_

1. University Regulations Violated: \_\_\_\_\_

2. Statement of Grievance (include specific date(s) of act(s) or omission(s))  
complained of: \_\_\_\_\_

3. Statement of Remedy Sought: \_\_\_\_\_

4. Type of Review requested (check one):

- Step I Review by the Grievance Committee.
- Step I Review by the Chief Administrative Officer(s).

5. I do  do not  want an extension of time to seek resolution of this grievance. I request an extension of \_\_\_\_\_ days. (No more than thirty (30) days can be requested with this grievance. A further extension may be requested in writing upon expiration of an approved extension.)

6. I will be represented in this grievance by: (check one)

- I will represent myself.
- I will be represented by a University colleague.

Name of colleague: \_\_\_\_\_

Address: \_\_\_\_\_

7. I understand and agree that by filing this grievance and initiating the grievance procedure provided in University of Florida Regulation 7.042, I waive any rights I might have to any other grievance resolution procedure described in University of Florida Regulation 7.041(3).

8. This grievance is hereby filed in the Office of the President on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The following method of delivery was utilized:

- Mail (certified or registered, with restricted delivery to the Office of the President, and return receipt requested).
- Personal delivery to the Office of the President.

\_\_\_\_\_  
Signature of Grievant

Copies: Provost  
Chief Administrative Officer  
Grievant's Department Chair/Unit Supervisor

(b) For Step II –

University Grievance Procedure under University of Florida Regulation 7.042  
REQUEST FOR A REVIEW OF STEP I DECISION

NAME OF GRIEVANT: \_\_\_\_\_

COLLEGE OR UNIT: \_\_\_\_\_

DEPARTMENT: \_\_\_\_\_

CAMPUS ADDRESS: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_

Other address to which mailings pertinent to this grievance should be sent (if applicable): \_\_\_\_\_

1. Date of Step I Decision: \_\_\_\_\_
2. I hereby request that the Provost or his or her designee review the attached decision at the Step II level because: \_\_\_\_\_

3. I will be represented in this Step of the grievance procedure by: (check one)

- Myself

- ( ) A colleague.  
Name \_\_\_\_\_  
Address \_\_\_\_\_
- ( ) Counsel  
Name \_\_\_\_\_  
Address \_\_\_\_\_

- 4. Copies of the following documents are attached to this request:
  - a. Original Step I grievance form filed with the University;
  - b. Step I decision issued by the Chief Administrative Officer; and
  - c. All attachments to the Step I decision.

5. I received the Step I decision on \_\_\_\_\_ and filed this request for review with the Office of the Provost on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The following method of delivery was utilized:

- ( ) Mail (certified or registered mail, with restricted delivery to the Office of the Provost and return receipt requested).
- ( ) Personal delivery to the Office of the Provost.

\_\_\_\_\_  
Signature of Grievant /Date

Copies: Office of the President  
Grievant's Chief Administrative Officer

(c) For Step III –

University Grievance Procedure under University of Florida Regulation 7.042  
REQUEST FOR A REVIEW OF STEP II DECISION

NAME OF GRIEVANT: \_\_\_\_\_  
 COLLEGE OR UNIT: \_\_\_\_\_  
 DEPARTMENT: \_\_\_\_\_  
 CAMPUS ADDRESS: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
 PHONE NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_  
 Other address to which mailings pertinent to this grievance should be sent (if applicable): \_\_\_\_\_

- 1. Date of Step II Decision: \_\_\_\_\_
- 2. I hereby request that the President or his or her designee initiate a review of the attached decision at the Step III level because:

\_\_\_\_\_

- 3. I will be represented in this Step of the grievance procedure by: (check one)
  - ( ) Myself
  - ( ) A colleague  
Name \_\_\_\_\_  
Address \_\_\_\_\_
  - ( ) Counsel

Name \_\_\_\_\_

Address \_\_\_\_\_

4. Copies of the following documents are attached to this request:
  - a. Original Step I grievance form filed with the University;
  - b. Step I decision issued by the Chief Administrative Officer;
  - c. All attachments to Step I decision;
  - d. Request for review of Step I decision filed with the University;
  - e. Step II decision issued by the Provost;
  - f. All attachments to Step II decision.
5. I received the decision on \_\_\_\_\_, filed the request for review at the Step III level on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The following method of delivery was utilized:
  - ( ) Mail (certified or registered, with restricted delivery to the Office of the President and return receipt requested).
  - ( ) Personal delivery to the Office of the President.

\_\_\_\_\_  
Signature of Grievant

Copies: Provost  
Grievant's Chief Administrative Officer

Authority: BOG Regulation 1.001.

History--New 3-26-80, Amended 2-23-82, 5-14-85, Formerly 6C1-7.42, Amended 6-28-98, 6-21-00, 7-19-05, Formerly 6C1-7.042, Amended 3-16-10, 6-8-12, \_\_\_\_\_.