

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: February 13, 2009

REGULATION TITLE:
Methods for Review and Resolution of Faculty Grievances

REGULATION NO.:
6C1-7.041

SUMMARY: The grievance processes have been updated to reflect collective bargaining and other legal changes. An administrative proceeding under Section 120.57 is no longer available. Mediation in the appeal process has been removed.

AUTHORITY: BOG Resolution dated January 7, 2003

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: Rebecca J. Holt, 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: Joseph Glover, Provost and Senior Vice President for Academic Affairs

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

REGULATIONS~~RULES~~ OF
UNIVERSITY OF FLORIDA

6C1-7.041 ~~Academic Affairs~~; Methods for Review and Resolution of Faculty Grievances.

(1) As used in this regulation~~rule~~, the terms listed below shall have the following meanings:

(a) The term "grievance" shall mean a dispute or complaint 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 pursuant to the regulations~~rules~~ of the Board of Governors~~Regents~~, of the regulations of the University of Florida or by law.

(b) The term "appeal" shall mean a process by which a university decision or action directly affecting a faculty member may be brought to the attention of the faculty member's chair or supervisor responsible for the decision or action who may then review and/or modify the decision or action. As used in this regulation~~rule~~ "appeal" means an attempt to resolve the action being grieved through review by appropriate administrator(s) in order to reach resolution prior to the initiation of a grievance process.

~~—(c) The term "mediation" shall mean a process of reaching a voluntary resolution of a dispute with the aid of a neutral. Each party must agree to the process and remains in control of the process until a final agreement is reached; the mediator shall have no powers to impose a resolution or agreement.~~

(c~~d~~) The term "days" as used in this ~~regulation~~rule 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.

(d~~e~~) The terms "elect" or "election" shall mean the filing of the request for a specific review of a grievance as provided in (3) below in the Office of the President, ~~or the Clerk of the University in the case of proceedings conducted pursuant to Section 120.57, Florida Statutes.~~

(2) Informal Resolution and Appeal Process.

(a) Faculty members are encouraged to seek resolution of their grievances prior to filing under a specific review procedure through use of the appeal process. An appeal shall be initiated by the aggrieved faculty member with the faculty member's immediate supervisor and may proceed through the appropriate administrative structure to the next ranking administrator or the administrator's designee, i.e. (chair, dean or director, appropriate vice president, and/or Provost or their designees).

(b) The faculty member's use of the appeal process or any other form of resolution does not automatically suspend the applicable time limit for requesting a particular grievance procedure, as set out in ~~section (3)(c)~~ below. At the time the grievance is filed, ~~in the Office of the President~~, the faculty member may request in writing an extension of the applicable time limit for initiating the elected grievance review procedure in order to facilitate the resolution of a grievance. Notwithstanding the foregoing, failure to elect a method for a review of a grievance prior to the applicable time limit, or prior to an extension thereof as approved by the University, shall constitute a waiver of the faculty member's right to any method for grievance resolution as set out in sections (3)(a) and (b) below.

~~—(c)— Faculty members are encouraged to use mediation in the appeal process. In such case, when a grievance is filed in the Office of the President with a request for an extension, the grievant may request either the dean or director of his or her academic unit or the Office of Academic Affairs to pursue arranging and scheduling the mediation process. The mediator shall be agreeable to both parties. If resolution is reached through the mediation, the parties shall draft the terms of the agreement which they shall sign before the medication session ends. The agreement shall be binding on the parties and shall not be subject to further review in any forum. A copy shall be placed in the grievance file indicating that the grievance is resolved and the grievance file closed.~~

(3) Procedures for Grievance Review -- Faculty members at the University of Florida may elect one of the procedures for review and resolution of a grievance described in this ~~regulation~~rule. Unless stated otherwise in these ~~regulations~~rules, an election of any one of these procedures shall constitute a waiver of all other procedures provided.

(a) Faculty members in the collective bargaining unit ~~must~~may elect ~~either~~ the grievance procedures in the Collective Bargaining Agreement between the United Faculty of Florida and the University of Florida Board of Trustees for grievances arising under the terms of the Agreement, ~~or the procedure described in Section 120.57, Florida Statutes, for those matters involving a substantial interest. Procedures for instituting a Section 120.57 proceeding are described in section (4) of this rule.~~ The time limit for the election of such grievance process and the procedures for filing are as set forth in the Collective Bargaining Agreement.

(b) Faculty members not in the collective bargaining unit may elect one of the following methods for a review of a grievance:

1. University Faculty Grievance Procedure, ~~Regulation~~ Rule 6C1-7.042, F.A.C., for those matters involving University or Board of ~~Governors~~ Regents ~~regulations~~ rules; or

~~2. Administrative Proceeding, Section 120.57, Florida Statutes, for those matters involving a substantial interest, as described in section (4) of this rule; or~~

23. Faculty Senate Committee on Academic Freedom, Tenure, Professional Relations and Standards ~~Committee~~ for those matters which are within the jurisdiction of the Committee, as provided in section (5) of this rule.

~~4. A proceeding under the provisions of Section 120.57, Florida Statutes, must be initiated within twenty one (21) days of receipt of written notice of a decision or action, which does or may affect a substantial interest of the faculty member, or within twenty one (21) days of receipt of written notice of intent to render such decision.~~

~~5. An election of any other procedure for grievance review must be initiated by filing the grievance with the Office of the President 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 faculty member acquires knowledge, or could reasonably have been expected to acquire knowledge, of the act or omission, if that date is later.~~

~~(4) Grievance Proceeding under Section 120.57, Florida Statutes.~~

~~(a) A faculty member requesting a proceeding under Section 120.57, Florida Statutes, on a decision which does or may determine a substantial interest, such as termination for cause or denial of tenure, of the faculty member, shall file his or her petition within twenty one (21) days of receipt of written notice of the decision. The petition shall be addressed to the Clerk of the University and shall be filed with the Clerk of the University. The provisions of Chapter 28-106, Part II, F.A.C., shall govern such proceedings.~~

~~——(b)—— A faculty member who receives written notice of a University decision or action, and who fails to request a proceeding under the provisions of Section 120.57, Florida Statutes, prior to the twenty one (21) day limit, or prior to an extension thereof as approved by the University, shall be deemed to have waived the right to request a Section 120.57, Florida Statutes, proceeding.~~

~~——(c)—— Upon receipt of a petition for an administrative proceeding under Section 120.57, Florida Statutes, the University shall either accept or deny the petition. If the petition is accepted, and a disputed issue of material fact is alleged, the University shall elect to conduct the hearing provided under Section 120.57(1), F.S., through either the University's President or an Administrative Law Judge from the Division of Administrative Hearings.~~

~~——1.—— A petition may be denied if the faculty member does not state a substantial interest in the University's determination, or if the petition is untimely.~~

~~——2.—— The University shall promptly give written notice to all parties of the action taken on the petition, and shall state with particularity its reasons therefor.~~

~~——3.—— If the University elects to request that a Administrative Law Judge from the Division of Administrative Hearings be assigned to conduct the hearing, the University shall forward the petition and all materials filed with the University to the Division of Administrative Hearings, and shall notify all parties of its action.~~

~~——(5)—— Grievance review before the Faculty Senate Committee on Academic Freedom, Tenure, Professional Relations and Standards Committee.~~

~~(a.) A faculty member may elect to commence a grievance review before the Faculty Senate Committee on Academic Freedom, Tenure, Professional Relations and Standards. The Faculty Senate Committee on Academic Freedom, Tenure, Professional Relations and Standards~~

shall have jurisdiction in matters involving University practices bearing on academic freedom, tenure, professional ethics, or the general welfare of the faculty when such matters are placed before it by the President or designee, or through charges filed by the same or faculty members as set forth in Regulation~~Rule~~ 6C1-7.0441,~~F.A.C.~~ The Committee shall have the right to reject the grievance, or require modification of the grievance, if it is not filed in accordance with the time limits set forth in section ~~(5)3(b)5~~ or it is not within jurisdiction of the Committee.

(b.) A faculty member who has elected to commence a review before the Faculty Senate Committee must address a written complaint to the President of the University. The complaint must be signed by the faculty member, and the following must be included therein: "I understand and agree that by filing this complaint initiating the formal method for grievance resolution provided by Regulation~~Rule~~ 6C1-7.041~~(35)(b)2~~,~~F.A.C.~~ I waive any right I might otherwise have to any other formal method for grievance resolution, as set out in Regulation~~Rule~~ 6C1-7.041(3),~~F.A.C.~~" The faculty member should furnish any relevant documentary evidence with the complaint to the President.

(c.) The President or the President's designee shall then refer the complaint and any documentary evidence submitted with the complaint to the Chairperson of the Faculty Senate Committee for review. The Committee shall follow its procedures and rules as established by the Faculty Senate or the Committee itself. See Regulation~~Rule~~ 6C1-7.0441,~~F.A.C.~~ The Committee shall submit its findings and recommendations to the President. The President may adopt, modify, or reject the Committee's report. Copies of the President's decision shall be sent to the parties involved in the grievance. The action of the President shall be final.

3. Time Limit. The election of any procedure for grievance review for a faculty member not in the collective bargaining unit must be initiated by filing the grievance with the

Office of the President 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 faculty member acquires knowledge, or could reasonably have been expected to acquire knowledge, of the act or omission, if that date is later.

(46) Discrimination complaints - A faculty member may utilize as appropriate the grievance process set forth in section (3) above or ~~Regulation~~ Rule 6C1-1.0063, F.A.C., for the resolution of a complaint of alleged discrimination in employment practices. A faculty member who files a written complaint under Regulation 6C1-1.0063 ~~one of these processes~~ waives any right he or she might otherwise have to file a grievance under section (3) of this regulation based on the same facts ~~under either section (5) of this rule~~. Notwithstanding the foregoing, the faculty member does not waive the right to use the grievance procedures set out in section (35) of this regulation ~~rule or in the University Faculty Grievance Procedure, Rule 6C1-7.042, F.A.C.~~, to grieve the same subject matter on a basis other than discrimination provided the applicable time limit, or any extensions thereof which have been granted, are met.

~~(7) Misconduct in Research. Rule 6C1-1.0101, F.A.C., sets forth the University's policy for dealing with complaints of "research misconduct" as that term is defined in the rule.~~

~~(8) Complaints Against Faculty Members. Rule 6C1-7.036, F.A.C., sets forth the University's policy for dealing with general complaints against faculty members.~~

Specific Authority: BOG Resolution dated January 7, 2003-~~240.227(1)~~ FS.

~~Law Implemented 120.54(5), 240.227(5), (19) FS.~~

History--New 3-6-80, Amended 2-23-82, 5-14-85, Formerly 6C1-7.41, 4-30-95, 7-27-98, 3-31-2006 (technical changes only), _____.