

This Emergency Regulation temporarily amends an existing regulation. These emergency amendments are being done to comply with Title IX rules recently adopted by the U.S. Department of Education and which take effect August 14, 2020. The emergency regulation procedure must be utilized to ensure the University is in compliance with federal law in a timely manner. The Board of Governors Regulation Development Procedure does not require a public notice and comment period prior to approval of emergency regulations/regulation amendments. The emergency amendments below will be effective for a period not to exceed ninety (90) days - during this time, the University will propose regulation amendments through the normal public notice and comment process. Therefore, please follow the UCF Regulations page for future notice of regulation development.

NOTICE OF EMERGENCY REGULATION AMENDMENT

Date: August 14, 2020

REGULATION TITLE:

University Support Personnel System Non-unit Grievance Procedure

REGULATION NO.:

UCF-3.0133

SUMMARY OF REGULATION AMENDMENT: This regulation is amended on an emergency basis to include changes necessary to comply with new Title IX regulations recently adopted by the U.S. Department of Education and which take effect on August 14, 2020.

AUTHORITY: BOG Regulation 1.001

NAME OF PERSONS WHO INITIATED PROPOSED REGULATION AMENDMENT: Regulations Administrator

COMMENTS CONCERNING THE PROPOSED EMERGENCY REGULATION AMENDMENT 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 AMENDMENT IS:

Regulations Administrator
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Millican Hall, Suite 360
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FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

UCF-3.0133 University Support Personnel System Non-unit Grievance Procedure.

(1) STATEMENT OF PURPOSE:

- (a) The primary purpose of this grievance procedure is to maintain sound employee relations by giving employees the opportunity to bring complaints and problems to the attention of management with the assurance that they will receive appropriate review. The intent of this grievance procedure is that, whenever possible, grievances should be resolved at the lowest level possible.
- (b) Questions regarding the procedure may be directed to the employee relations section of Human Resources. The time limits expressed in this procedure should be viewed as maximum and all efforts should be directed at resolving a grievance in the most timely manner possible. Extensions to these time limits will require the approval of the Chief Human Resources Officer ~~Director of Human Resources~~ or designee. When a management representative fails to communicate a required decision within the specified time limit, the employee is authorized to proceed to the next step. Failure to proceed to the next step shall be deemed a withdrawal of the grievance without resolution.

(2) GRIEVANCE GENERALLY:

- (a) A grievance is defined as a dispute concerning the university's interpretation or application of a law, Florida Board of Governors regulation, or a university regulation, policy, or procedure.
- (b) Limitations on grievances:
 - i. The term "grievance" shall mean a dispute concerning the interpretation or application of a university or State Board of Governors regulation or policy, except that the term "grievance" shall not include complaints regarding performance appraisals, discrimination alleged violations of Regulation 3.001 (Non-Discrimination; Affirmative Action Programs) and/or Policy 2-004 (Prohibition of Discrimination, Harassment and Related Interpersonal Violence), the Uniformed

Services Employment and Reemployment Rights Act (USERRA), or the Family and Medical Leave Act (FMLA). The provisions of University Regulation 3.0134 apply to allegations of discrimination violations of Regulation 3.001 (Non-Discrimination; Affirmative Action Programs) and/or Policy 2-004 (Prohibition of Discrimination, Harassment and Related Interpersonal Violence), and the employee will be expected to pursue a discrimination grievance under the at procedures outlined there. With respect to alleged violations of USERRA or FMLA, the employee must present the allegations in writing to Human Resources where such allegations will be subsequently investigated by Human Resources or by other university offices as may be deemed appropriate by Human Resources. The term “grievance” shall not include the appeal of or a dispute concerning a dismissal of a Title IX Sexual Harassment complaint or the decision-maker's determination and/or sanction following a Title IX Sexual Harassment live hearing under the University’s Title IX Grievance Policy, UCF XX-XX.

- ii. Involuntary reductions in pay for disciplinary reasons, , involuntary demotions for disciplinary reasons, suspensions without pay for disciplinary reasons, and discharges for disciplinary reasons shall not be considered as grievances under this process, and requested review of such actions shall be handled in accordance with the provisions of the University Regulation UCF-3.033.
 - iii. Terminations due to performance shall not be grievable under this process and shall be appealable only in the appraisal appeal process.
 - iv. An employee who receives a written Notice of Advance Separation under University Regulation UCF-3.038 may only grieve the decision because of an alleged violation of a specific University regulation or because of an alleged violation of law.
- (c) Employees who have not obtained regular status in the University Support Personnel System (USPS) may bring a grievance to the immediate supervisor.

If the decision of the immediate supervisor is not satisfactory, the employee may discuss the grievance with the next level supervisor. The decision of the next level supervisor shall be final and the employee shall not have the right to proceed further with the grievance.

- (d) The burden of proof shall be on the university in a grievance alleging violation of Regulation UCF-3.0191, entitled “Disciplinary Action – University Support Personnel System.” In all other grievances, the burden of proof shall be on the employee.
- (e) The ~~Director of~~Chief Human Resources Officer or designee shall make final determinations as to interpretation and implementation of this procedure, including but not limited to determinations as to grievance eligibility and grievance time frames.
- (f) It is the grievant’s responsibility to present witnesses, written documentation, or any other evidence that is relevant to the grievance at the appropriate grievance meeting.
- (g) Once a grievance is filed, no revisions or additions to the grievance are permitted in later steps of the grievance process.
- (h) The substance of a grievance and the grievance process are confidential while it is in process, except that either the university or the grievant may speak with witnesses. Discussion or communication of the circumstances involved in a grievance with employees who are not involved in the process or who otherwise do not need to know is strongly discouraged. Where such communication is threatening, defamatory, could be perceived as an attempt to influence decision makers and others or is widespread or inflammatory as to disrupt the process, such communication can be cause for discipline.
- (i) The filing of a grievance does not mean that an employee may engage in misconduct with impunity during the grievance process. Any misconduct at any time, including after a grievance is filed, can result in disciplinary action.
- (j) The filing or pendency of any grievance shall in no way operate to impede, delay, or interfere with the right of the university to take the action it proposes, subject to the final disposition of the grievance.

(k) Inactive status. A grievance or arbitration request that is not acted upon by the grievant or his/her representative for more than thirty (30) calendar days shall be deemed resolved in accordance with the decision issued at the prior step.

(3) STEP ONE: An employee must file a grievance with the employee's immediate supervisor either orally or in writing. It is suggested at this step that the grievance be handled orally. The employee must specifically request a grievance meeting within five work days (excluding official paid holidays) from the date that the employee becomes aware of the act or omission giving rise to the grievance. The immediate supervisor shall provide the employee with a response to the grievance within five work days of the date of the grievance meeting.

(4) STEP TWO:

(a) If the employee considers the immediate supervisor's grievance response unsatisfactory, believes the grievance discussed with the immediate supervisor still exists, and wishes to pursue resolution of the grievance, the grievance shall be reduced to writing, on the form entitled "University Support Personnel System (USPS), University Grievance Procedure, which is incorporated herein by reference and may be obtained from Human Resources. The employee should be specific in the written grievance and clearly state the following information: what regulation, policy, or procedure the employee believes has been violated; how that violation affects the employee; and what action the employee requests to resolve the grievance. The grievance shall be filed with the college dean or director within five work days after the employee receives the immediate supervisor's response at the informal step, with a copy sent to the ~~Director~~ Chief of Human Resources Officer.

(b) The college dean or director should confer with the aggrieved employee and others, as appropriate, in order to fully investigate the grievance. Human Resources will remain available to assist in any problem resolution and to ensure that no violation of applicable rules or regulations is involved. The college dean or director shall provide a written response to the grievance within ten work days after receiving the employee's written grievance and send a copy to the ~~Director of~~ Chief Human Resources Officer.

(5) STEP THREE:

- (a) If the employee considers the college dean or department director's response unsatisfactory and wishes to pursue resolution of the grievance, the employee may seek review of the response by filing the written grievance and response, along with a written statement of the reason(s) that the grievant believes the response is incorrect, with the appropriate vice president within five working days after receiving the college dean's or department director's decision. The employee must also send a copy to the appropriate college dean or department director (step two administrator) and the ~~Director of~~Chief Human Resources Officer.
- (b) If there is an intervening level of supervision between the step two administrator and the vice president, that supervisor shall be required to review the grievance utilizing the Step Two timelines before the vice president reviews the grievance at Step Three. The grievance must be filed with the intervening level supervisor in a timely manner consistent with timelines established for Step Two. At the Step Three level, the record submitted by the grievant must contain all relevant materials from Steps One and Two.
- (c) The vice president, within twenty work days after receiving the grievant's request for review, shall issue a final decision to the grievant, and send a copy to the appropriate college dean or department director (step two administrator), the intervening level supervisor (if applicable), and the ~~Director of~~Chief Human Resources Officer. Upon the vice president's or designee's request, the ~~Director of~~Chief Human Resources Officer or designee will appoint a Complaint Review Officer from another division to conduct a review of the grievance and provide written findings and a recommendation to the vice president. The vice president's decision shall be final and binding on all parties.

Authority: BOG Regulation 1.001. History—New 12-27-83, Formerly 6C7-3.133, Amended 11-8-87, 1-6-93, 4-23-03, 7-26-04, 10-18-05; Formerly 6C7-3.0133, Amended 6-11-09, 8-3-10, 6-25-12, _____-20.