

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:

Grievance Procedure for Non-Unit A&P Employees

REGULATION NO.:

UCF-3.037

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
4365 Andromeda Loop N.
Millican Hall, Suite 360
Orlando, FL 32816-0015
Phone: (407) 823-2482
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FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

UCF-3.037 Grievance Procedure for Non-Unit A&P Employees.

- (1) The purpose of the grievance procedure is to provide a prompt and efficient procedure for the investigation and resolution of grievances filed by non-unit A&P employees of the University.
 - (a) All problems should be resolved, whenever possible, before the filing of a grievance, and open communication is encouraged so that resort to the formal grievance procedure will not be necessary. Informal resolution of grievances is encouraged, and may be sought throughout the process.
 - (b) The burden of proof shall be on the University in a grievance alleging violation of a University Regulation requiring that the University have just cause to discipline the grieving employee (see University Regulation UCF-3.0124). In all other grievances, the burden of proof shall be on the grievant.
 - (c) An employee who receives written notice of non-reappointment may only grieve the decision because of an alleged violation of a specific University regulation or because of an alleged violation of law.
- (2) Resort to Other Procedures. It is the intent of this procedure to provide a complete response to a grievance but not to encourage multiple processing of the same issue. Therefore, if, prior to seeking resolution of a dispute by filing a grievance under this regulation, or while the grievance proceeding is in progress, a grievant seeks resolution of the matter in any other forum, administrative or judicial, the University has no obligation to proceed further with the matter pursuant to this grievance procedure. It is not intended that the grievance procedure be a device for appellate review. The University shall not entertain a grievance based upon the same issue adjudicated in another forum. -Nor is it the intent of this procedure to serve as a route of appeal in relation to a Title IX Sexual Harassment matter under the University's Title IX Grievance Policy, UCF Policy 2-012; therefore, this procedure is not available as a mechanism to challenge a determination in a Title IX Sexual Harassment live hearing proceeding.
- (3) Time limits. All time limits contained in this regulation may be extended either upon approval by the Executive Director of Human Resources or by mutual written agreement of the parties. 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 grievant may appeal to the next appropriate step. Upon the failure of the grievant to file an appeal within the time limits provided in this regulation or any extension thereof, the grievance shall be deemed to have been resolved at the prior step.

(4) Definitions.

- (a) The term “grievance” shall mean a dispute concerning the interpretation or application of a university or Florida 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, govern the handling of alleged 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 that procedure~~ follow the procedures therein or, as applicable, the procedures of the University’s Title IX Grievance Policy, UCF Policy 2-012. 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 Title IX Grievance Policy, UCF Policy 2-012.
- (b) The term “days” shall mean calendar days. In the event an action falls due on Saturday, Sunday, university holiday, or a day on which the university is administratively closed, the action will be considered timely if it is accomplished by 5:00 p.m. on the following business day.

- (c) The term “grievant” shall mean a non-unit A&P employee who has been directly affected by an act or omission and who has filed a grievance. The term “grievant” shall not mean a former employee, except that a terminated employee may present a grievance within the time limit set forth below following his or her notice of termination.
 - (d) The term “Vice President” shall mean the University of Central Florida Vice President of the division in which the grievant is employed or the President in the case of the President’s Division. The term “Vice President” may also refer to the President if the grievant works in an area supervised by a vice president and it is that vice president against whom the grievant is filing his or her grievance.
 - (e) The term “Division” shall mean an area administered by a Vice President or the President’s Division in the case of an area administered by the President.
 - (f) The term “counsel” shall mean an attorney or lay advisor.
 - (g) The term “Dean or Director” shall mean the dean or director for the college or area in which the grievant works. In those instances where it is a vice-president that is over the area in which the grievant works, “Dean or Director” will refer to that vice president.
- (5) Presentation of a Grievance.
- (a) Informal resolution of grievances is encouraged, with resort to formalized procedures established by this regulation being utilized only when informal discussions and procedures at the appropriate lowest administrative level do not satisfactorily resolve differences.
 - (b) A Step One grievance within the meaning of these procedures shall be commenced upon filing with the Dean or Director a written grievance in a form approved by the Executive Director of Human Resources, as follows.

NON-UNIT A&P GRIEVANCE - STEP ONE

NAME: _____ DATE: _____

DIVISION: _____

DEPARTMENT: _____

HOME ADDRESS: _____

HOME PHONE: _____

CAMPUS ADDRESS & EMAIL: _____

CAMPUS PHONE: _____

University Policy or Regulation Violated:

Statement of grievance including date of act(s) or omission(s) complained of:

Remedy Sought:

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

Myself * Legal Counsel Other, specify _____ .

I understand that this grievance will not be processed if the act(s) or omission(s) complained of herein are, or become, the subject of any other administrative or judicial proceeding.

This grievance was filed with the Dean or Director of _____ on the _____ day of _____, 20____, by (check one)

certified or registered, restricted delivery, return receipt requested mail;

personal delivery

Signature of Grievant

Date Received: _____ Office of the Dean or Director of: _____

By: _____

* Please provide name, phone, and email address for Legal Counsel:

- (c) If the act or omission on which the grievance is based is alleged to have been made personally by the grievant's Dean or Director, the grievant may, in writing, request the Vice President to appoint a different university official for the grievance.
- (d) A Step One written grievance shall be filed no later than 25 days from the date following the act or omission giving rise to the grievance, or 25 days from the date the grievant acquires knowledge, or could have reasonably been expected to have acquired knowledge, of the act or omission.

(6) Step One Procedures.

- (a) If informal resolution is not successful and the grievant wishes to pursue the matter the grievance shall be committed to writing using the form outlined above. The grievance shall be filed with the Dean or Director after the employee receives the immediate supervisor's response at the informal step, with a copy sent to the Executive Director of Human Resources.
- (b) The 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 policies or regulations is involved. The Dean or Director shall provide a written response to the grievant within twenty business days after receiving the employee's written grievance. A copy of that written response will also be sent to the Executive Director of Human Resources.

(7) Step Two Procedures.

- (a) If the grievant considers the Dean or Director's response unsatisfactory and wishes to pursue resolution of the grievance, the grievant 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 Vice President within fourteen days after receiving the Dean or Director's Step One decision. The employee must also send a copy to the appropriate Dean or Director (Step One administrator) and the Executive Director of Human Resources.
- (b) If there is an intervening level of supervision between the Step One administrator

and the Vice President, that supervisor shall be required to review the grievance utilizing the Step One timelines before the Vice President reviews the grievance at Step Two. The grievance must be filed with the intervening level supervisor in a timely manner consistent with timelines established for the initiation of Step Two. At the Step Two level, the record submitted by the grievant must contain all relevant materials from Step One.

- (c) The Vice President or designee, within twenty business days after receiving the grievant's request for review, shall issue a final decision to the grievant, and send a copy to the Dean or Director (Step One administrator), the intervening level supervisor (if applicable), and the Executive Director of Human Resources. Upon the Vice President's or designee's request, the Executive Director of Human Resources 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.
- (d) Any grievance conference shall be informal and shall not be in the nature of an evidentiary hearing. While either party may present information, the rules of evidence shall not apply, and discovery, cross-examination, and similar legal procedures are not permissible. The decision of the Vice President or representative must be based on information presented in the grievance process.

(8) Once a grievance is filed, no revisions or additions to the grievance are permitted in later steps.

Authority: BOG Regulation 1.001. History—New 4-30-81, Amended 12-27-83, Formerly 6C7-3.132, Amended 3-16-03, 10-18-05; Formerly 6C7-3.0132, Amended 8-10-09, 7-9-12, 5-2-16, 2-20-17, _____-20.