



Item: PC: A-4

**PERSONNEL & COMPENSATION COMMITTEE**

Monday, June 15, 2015

**SUBJECT: REQUEST TO AMEND REGULATION 5.009, GRIEVANCE PROCEDURE**

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**PROPOSED COMMITTEE ACTION**

Recommend BOT approval of amendments to FAU Regulation 5.009, Grievance Procedure.

**BACKGROUND INFORMATION**

This personnel regulation was last reviewed in total and updated in March 2009. As part of a regular review with Human Resources and other administrators, these amendments to the regulation are recommended to update outdated provisions and implement current best practices. Specifically, the Regulation is being amended to update titles, reflect existing personnel policies, extend and clarify filing deadlines, and clarify the disciplinary processes and procedures to the reader.

**IMPLEMENTATION PLAN/DATE**

If approved by the Board, the regulation will be amended and effective as of July 1, 2015.

**FISCAL IMPLICATIONS**

N/A

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<b>Supporting Documentation:</b>	Text of proposed amended Regulation 5.009
<b>Presented by:</b>	David Kian, Vice President & General Counsel
<b>Phone:</b>	561-297-3007

# Florida Atlantic University

## **Regulation 5.009 Grievance Procedure**

### (1) GRIEVANCE POLICY STATEMENT

(a) Florida Atlantic University encourages a pro-active, collegial work environment in which employees have the opportunity to discuss and resolve work related concerns with the appropriate supervisor. In those cases where an employee has an unresolved dispute concerning that employee's terms or conditions of employment, the employee may choose to file a grievance. The purpose of this Regulation is to set out a procedure for the investigation and resolution of grievances filed by instructional and research faculty; administrative, managerial and professional staff; and support personnel employees, at Florida Atlantic University who are not subject to the terms of collective bargaining agreements.

(b) Job-related problems should be resolved, whenever possible, before the filing of a grievance. Open communication and informal resolution between the employee and supervisor are encouraged so as to avoid the necessity for formal grievances.

(c) The burden of proving a grievance by a preponderance of evidence shall be on the University for grievances concerning terminations for cause. In all other cases, the burden of proof shall be on the grievant.

(d) It is the purpose of this procedure to provide a complete response to a grievance and to discourage multiple processing of the same issue. Therefore, if prior to or while seeking resolution of a dispute under this Regulation, a grievant seeks resolution of the matter in any other forum, administrative or judicial, FAU shall have no obligation to entertain or proceed further with the matter pursuant to this Regulation. Final disposition of any grievance under this Regulation shall not be an act or omission giving rise to a grievance under this procedure.

(e) All time limits contained in this Regulation may be extended by mutual agreement of the parties. Upon failure of the grievant to file any step of the grievance within the time limits provided in this Regulation, the grievance shall be deemed to have been resolved at the prior step, or in the case of an untimely filing of the initial grievance, the grievance shall not be accepted. Upon failure of the University to act within the time limits provided in this Regulation, the grievant shall be permitted to proceed to the next step in the process, but is not entitled to substantive relief.

(f) Any decision made as a result of the grievance process will apply only to the individual who submitted the grievance, based on the specific unique facts of the matter, and will not serve as a precedent for future matters.

(g) Definitions: 1. The term "grievance" means a dispute concerning the grievant's rights regarding the terms and conditions of employment. The following actions may not be grieved:

a. Placement on administrative leave;

- b. Voluntary reduction in pay;
- c. Voluntary demotion;
- d. Receipt of Notice of Separation;
- e. Separation at the conclusion of a time limited position or notice period;
- f. Notice of layoff or furlough;
- g. Performance evaluations - unless it is alleged that the evaluation is based on factors other than performance.

2. The term “grievant” means a member of the instructional and research faculty; administrative, managerial and professional staff; or support personnel employee, not governed by a collective bargaining agreement, who has filed a grievance and whose rights have been directly affected by an act or omission of a supervisor or administrator at FAU. Only regular employees are eligible to file a grievance. Probationary, Acting, Visiting and Temporary employees do not have grievance rights.

3. The term “days” means calendar days. In the event an action falls due on Saturday, Sunday or a University holiday, the action will be considered timely if it is accomplished by 5:00 p.m. on the following business day.

4. The term “party” means FAU or the grievant.

## (2) GENERAL GRIEVANCE PROCEDURE

(a) This general procedure applies to any grievance as defined above except for a grievance concerning a suspension or termination

(b) The general procedure is as follows:

1. Step One – Employees are encouraged to seek informal resolution before the formal filing of a grievance. All grievances shall be filed with the Department of Human Resources on a Florida Atlantic University Request for Grievance form, within 7 days following the act or omission giving rise to the grievance, or the date on which the grievant knew or reasonably should have known of such act or omission if that date is later, unless an extension is granted in writing by the Human Resources Director or designee for the purposes of facilitating informal resolution. The written grievance shall contain the following information: The grievant’s name, specific provision(s) of FAU Regulations, policies, statute or agreement claimed to have been violated, a statement of the grievance, including the acts or omissions which are claimed to have given rise to the grievance, the remedy sought, and the grievant’s signature. The designated Step One Representative shall be the Dean, Director or other equivalent or higher level administrator to whom the grievant reports, or their designee. The Step One Representative shall arrange a meeting, to be held within 10 days of the filing date, for the purpose of resolving the grievance. In advance of the Step One meeting, the grievant shall have the right, upon request, to a copy of identifiable documents relevant to the grievance. The Step One Representative shall have 7 days from the meeting to resolve the dispute to the satisfaction of both parties. The Step One Representative shall notify the grievant in writing of the decision.

2. Step Two – If the grievant is not satisfied with the Step One decision, the grievant may request in writing that the grievance proceed to Step Two. This request must be made within

7 days of the date of the Step One decision. The Step Two Representative shall be the appropriate Vice President or Associate Provost or their designee. The Step Two Representative shall schedule a conference, to be held within 15 days of the written request, with the grievant and any other persons believed to be necessary to the equitable settlement of the grievance. The Step Two Representative will endeavor to settle the dispute and will notify the grievant of the Step Two decision in writing within 15 days of the conference. The Step Two decision is final and binding upon the parties.

### (3) GRIEVANCES PROCEDURES FOR SUSPENSIONS AND TERMINATIONS

(a) This procedure applies to all grievances concerning a suspension or termination

(b) All grievances for suspensions and terminations shall be filed at Step Two above. All grievances shall be filed with the Department of Human Resources on a Florida Atlantic University Request for Grievance form, within 7 days following the Notice of Suspension or Notice of Termination. The Step Two Representative shall be the Vice President for Financial Affairs, the Vice Provost for Academic Personnel, or their designee.

The Step Two Representative shall schedule a conference, to be held within 15 days of the written request, with the grievant, the Provost or the Vice President or their designee of the division in which the grievant reports, and any other persons believed to be necessary to the equitable settlement of the grievance. The grievant may make an oral or written statement or both, as a response to the charges, and may be accompanied by a representative. The representative may assist, advise and confer with the grievant but may not speak for the grievant. The conference shall be informal and shall not be in the nature of an evidentiary hearing. Discovery, cross-examination and other legal procedures are not permissible.

The Step Two Representative will endeavor to settle the dispute and will notify the grievant of the Step Two decision in writing within 15 days of the conference.

(c) Step Three – If the grievant is not satisfied with the decision of the Step Two Representative, the grievant may, within 7 days of the date of the Step Two decision, request in writing that the grievance proceed to Step Three for an administrative hearing. The request for Step Three must be submitted on a Florida Atlantic University Request for Grievance form and shall waive any other review procedures. The President or the President's designee shall serve as the hearing officer and schedule a closed hearing to be held no sooner than 5 days and no later than 30 days of the request for hearing. Formal rules of evidence or procedure shall not apply. The hearing officer shall determine the place and duration of the hearing and all procedures to be followed, and shall decide any procedural questions, objections, or issues if they arise. The President or the President's designee is the sole decision maker and shall issue a written decision within 30 days of the conclusion of the hearing, which shall be final and binding.

The employee shall have the right at the Step Three hearing to:

1. Review all evidence, testimony and argument against the employee.
2. Present evidence and argument on all issues.
3. Submit rebuttal evidence.
4. Present witnesses.
5. Be represented by counsel.

(d) The employee may submit a written statement to be placed in his/her personnel file at the conclusion of the grievance process and is entitled to all other rights provided by applicable law.

*Specific Authority: Article IX of the Florida Constitution, Florida Board of Governors Resolution dated January 7, 2003, 1001.706 FS., 1001.74(5) FS. History—New 7-6-81, Formerly 6C5-5.011, Amended 11-11-87, 11-9-05, 3-15-06, 3-18-09, 7-1-15.*