



*University Staff/American Federation of State, County  
and Municipal Employees AFL-CIO (AFSCME)*

SUBJECT (R*)	EFFECTIVE DATE (R*)	POLICY NUMBER (O*)
NEUTRAL, INTERNAL RESOLUTION OF POLICY DISPUTES (AFSCME)	June 2, 2017	1725.194

**POLICY STATEMENT (R\*)**

1. Policy/Informal Resolution

The parties agree that all problems should be resolved, whenever possible, before the filing of a complaint and encourage open communications between administrators and employees so that resort to the formal neutral, internal policy dispute resolution (the "Policy Dispute Resolution Process") will not normally be necessary. The parties further encourage the informal resolution of complaints whenever possible. At each step in the Policy Dispute Resolution Process, participants are encouraged to pursue appropriate modes of conflict resolution. The purpose of this Policy is to promote a prompt and efficient procedure for the investigation and resolution of complaints relating to the Policies. The procedures set forth shall be the sole and exclusive method for resolving the complaints of employees as defined herein.

2. Resort to Other Procedures and Election of Remedy

The commencement of legal proceedings against University in a court of law or equity, or before the Public Employee Relations Commission, for misapplication or misinterpretation of the terms of any Policy, shall be deemed an election of remedy and shall be a waiver by the party commencing the proceeding of its/their right to resort to the Policy Dispute Resolution Process and any complaint that has already been filed over the same subject will be dismissed. The filing of a complaint under this Policy constitutes a waiver of any rights to judicial review of agency action pursuant to Chapter 120, Florida Statutes, or to the review of such actions under other University procedures available to address such matters. The commencement of proceedings pursuant to Section 120.57, Florida Statutes, for misapplication or misinterpretation of the terms of any Policy shall be deemed an election of remedy and shall be a waiver by the party commencing the proceeding of its/their right to resort to the Policy Dispute Resolution Process and any complaint that has already been filed over the same subject will be dismissed. Except as otherwise specifically provided, the Policy Dispute Resolution Process is the sole remedy for any alleged violations of any Policy.

In the event that the complaint involves an act or omission which could be handled by either this Policy or the Grievance and Arbitration Procedure set forth in the collective bargaining agreement, the filing of a complaint under this Policy constitutes a waiver of the filing of a grievance under the Article.

3. Definitions and Forms as used in this Policy:

- (a) Complaint. The term "complaint" shall mean a dispute concerning the interpretation or application of a specific term or provision of a policy, subject to those exclusions appearing in the Policy. A complaint shall be filed on the applicable Complaint Form, attached to this policy.
- (b) Complainant. The term "complainant" shall mean an employee or group of employees who has/have filed a complaint in a dispute over a provision of a Policy that confers rights upon the employee(s). AFSCME may file a complaint in a dispute over a provision of a Policy that confers rights upon a group of employees or upon AFSCME.
- (c) Complaint Forms. The "complaint forms" constitute the Complaint (the "Step 1 form"), Request for Step 2 Review (the "Step 2 form"), and Notice of Demand for Internal Policy complaints of a similar nature to expedite the review process. In a consolidated complaint, one appropriate Form may be attached, bearing the signatures of the complainants.
- (d) Days. The term "days" shall mean business days.
- (e) The end of the day. The term "end of the day" shall mean 5 P.M.
- (f) University Representative. The term "University Representative" means the Director of Employee Labor Relations or designee.

4. Burden of Proof. In all complaints, except disciplinary complaints in accordance with the BOT-AFSCME Policy on Disciplinary Actions, the burden of proof shall be on the complainant. In disciplinary complaints, the burden of proof shall be on the University.

5. Representation. AFSCME shall have the exclusive right to represent any employee in a complaint filed hereunder unless an

employee elects self-representation or to be represented by legal counsel. If an employee elects not to be represented by AFSCME, the University shall promptly inform AFSCME in writing of the complaint. No resolution of any individually processed complaint shall be inconsistent with the terms of any applicable Policy, and for this purpose, AFSCME shall have the right to have an observer present at all meetings called for the purpose of discussing such complaint and shall be sent copies of all decisions at the same time as they are sent to the other parties.

6. **Complaint Representatives.** AFSCME shall annually furnish to the University a list of all persons authorized to act as complaint representatives and shall update the list as needed. AFSCME complaint representative shall have the responsibility to meet all duties and responsibilities incidental to the assigned workload. Some of these activities are scheduled to be performed at particular times. Such representative shall have the right during times outside of those hours scheduled for these activities to investigate, consult, and prepare complaint presentations and attend complaint hearings and meetings. However, such investigations and consultations will not interfere with the normal operations of the University. Should any complaint hearings or meetings necessitate the rescheduling of assigned duties, the representative may, with the approval of their supervisor, arrange for the fulfillment of such duties. Such approval shall not be unreasonably withheld.
7. **Appearances.**
  - a. When a complainant and/or complaint representative participates in one of the steps in the Policy Dispute Resolution Process during scheduled hours or in a meeting among the complainant, the complainant representative, complainant's counsel or AFSCME representative and the University, the complainant and/or complaint representative's compensation shall neither be reduced nor increased for time spent in those activities.
  - b. Prior to participation in any such proceedings, conferences, or meetings, the complainant and/or complaint representative shall make arrangements acceptable to the applicable supervisor for the performance of the employee's duties. Approval of such arrangements shall not be unreasonably withheld. Time spent in such activities outside scheduled hours shall not be counted as time worked.
8. **Time Limits; Date of Receipt**

All time limits in this Policy may be extended by mutual agreement of the parties in writing. For the purpose of determining deadlines for actions as set forth in this Policy, the parties agree that, if said deadline falls on a weekend or University recognized holiday, the deadline for said action shall be on the following business day. Mutual agreement may be evidenced by email exchanges. Upon the failure of the complainant or AFSCME, where appropriate, to file an appeal within the time limits provided in this Policy, the complaint shall be deemed to have been resolved at the prior step.

The date of receipt shall not be included in the count of days. All complaint forms shall be dated when the complaint is received by the applicable University official described below depending on the step. Compliance with any time limit under this Policy shall be determined by the date-stamped receipt executed by the office receiving the complaint or the person receiving the decision. If there is difficulty in meeting any time limit in Step 1 or Step 2, the AFSCME representative may sign such documents for the complainant, however, complainant's signature shall be provided prior to the Step 2 meeting.
9. **Copy of Personnel File**

Copies of the personnel file may be furnished upon request at a cost of \$0.15 per page. However, in the event an employee files a complaint under the Internal Resolution Process Policy, the employee has the right to one (1) copy of his or her personnel records at no cost.

#### **POLICY PURPOSE (R\*)**

To establish and maintain a process for resolving disputes concerning BOT-AFSCME Policies attached to the BOT-AFSCME Agreement and applicable University Policies that impact the terms and conditions of employment of the AFSCME unit members (the "Policies"). This policy covers any discipline involving a written reprimand, suspension, demotion, or involuntary termination.

#### **DEFINITIONS (R\*)**

Definitions and Forms as used in this Policy:

- a. **Complaint.** The term "complaint" shall mean a dispute concerning the interpretation or application of a specific term or provision of a Policy, subject to those exclusions appearing in the Policy. A complaint shall be filed on the applicable Complaint Form, attached to this Policy.

- b. **Complainant.** The term “complainant” shall mean an employee or group of employees who has/have filed a complaint in a dispute over a provision of a Policy that confers rights upon the employee(s). AFSCME may file a complaint in a dispute over a provision of a Policy that confers rights upon a group of employees or upon AFSCME.
- c. **Complaint Forms.** The “complaint forms” constitute the Complaint (the “Step 1 form”), Request for Step 2 Review (the “Step 2 form”), and Notice of Demand for Internal Policy Dispute Resolution by a Panel (the “Step 3 form”). The parties may agree to consolidate complaints of a similar nature to expedite the review process. In a consolidated complaint, one appropriate Form may be attached, bearing the signatures of the complainants.
- d. **Days.** The term “days” shall mean business days.
- e. **The end of the day.** The term “end of the day” shall mean 5 P.M.
- f. **University Representative.** The term “University Representative” means the Director of Employee Labor Relations or designee.

### **PROCEDURES (O\*)**

**INFORMAL RESOLUTION.** The parties strongly encourage the informal resolution of issues that may be complaints. The complainant may (but is not required to) attempt to resolve his/her complaint with his/her supervisor. Discussions will be informal for the purpose of settling differences in the simplest and most effective manner. Should the complainant wish to pursue an informal resolution of a complaint, he/she must request a meeting with the supervisor within five (5) days from the act or omission giving rise to the complainant or the date on which the complainant knew or should reasonably have known of such act or omission if that date is later. The supervisor will respond with a meeting date and time within five (5) days of the request. If the supervisor determines that the Department action should be changed, the supervisor will offer the change to the complainant. If the complainant accepts the change, the matter will be considered resolved and there will be no further review. If the supervisor determines that the Department action was appropriate or the complainant does not accept the modification offer, the complainant will be informed that he/she can choose to use the Step 1 review process; the Department action will be unchanged. If the complainant chooses to appeal the Department action by initiating the Step 1 process, all parties agree that no one will mention any details about the informal resolution process at Step 1 or Step 2.

- 1. **Step 2.**
  - a. **Filing.** If the complaint has not been satisfactorily resolved through the informal resolution process or, if the complainant has chosen not to use the informal resolution process but wants to file a complaint, the complainant or AFSCME (upon request of the complainant) may proceed to Step 1 by filing a fully executed Step 1 form (attached). The Step 1 form must be filed with the Vice President of Human Resources or designee within seven (7) days after receipt of the Step 1 decision by the complainant and/or complainant’s representative or when the answer was due in the Step 1 process.
  - b. **Meeting.** The Vice President for Human Resources or designee shall investigate the alleged complaint and shall, within fifteen (15) days or other mutually agreeable date of receipt of the written complaint, conduct a meeting between the Vice President for Human Resources or designee, other University representatives as necessary, the complainant and/or the complainant’s Union representative. At the Step 2 meeting, the complainant shall have the right to present any evidence in support of the complaint. The parties present at the Step 2 meeting shall discuss the complaint. Any party bringing legal counsel to the Step 2 meeting shall provide at least five (5) days’ advance written notice to all other parties. The complainant may bring an interpreter to the Step 2 meeting at his or her own cost.
    - i. **Documents.** In advance of the Step 2 meeting, the complainant shall have the right, upon written request to the Vice President of Human Resources or designee, to a copy of any identifiable documents relevant to the complaint.
    - ii. **Decision.** The Vice President for Human Resources or designee shall notify the complainant of a decision in writing no later than seven (7) days following the meeting. A copy of the decision shall be sent to the complainant, the complainant’s representative, and AFSCME (if complainant elected self-representation or representation by legal counsel). Failure of the Vice President for Human Resources or designee to timely

respond shall be considered a denial of the complaint and shall entitle the complainant to appeal to Step 3. If the University fails to provide a Step 2 decision within the time limits provided in this Policy due to a University-caused delay, the University shall pay all costs of the Step 3 process should the employee or AFSCME elect to take the complaint to that step.

2. Step 3. Neutral, Internal Resolution of Policy Disputes by a Panel

a. Filing.

If the complaint has not been satisfactorily resolved at Step 2 or the Vice President of Human Resources or designee has failed to respond within the Step 2 deadlines, the complainant or AFSCME (upon the request of the complainant) may proceed to Step 3 by filing a fully executed Step 3 form (attached). The Step 3 form must be filed with the Vice President of Human Resources or designee within seven (7) days after receipt of the Step 2 decision by the complainant and/or complainant's representative or when the answer was due in the Step 2 process. The complaint may be withdrawn by the complainant or by the AFSCME representative at any point prior to issuance of the Panel's decision by providing written notification to the Vice President of Human Resources or designee.

b. Selection of the Panel Members.

Within seven (7) days after receipt of the Step 3 form, representatives of the University and AFSCME shall designate their representatives to the Panel using the method described below.

- i. The Vice President of Human Resources or designee shall appoint one member of the Panel who shall be a current or former University employee or University alumni.
- ii. The AFSCME President or designee shall appoint one member of the Panel who shall be a current or former University employee or University alumni.

- iii. The third member of the Panel shall be a professional labor mediator. Each party shall provide the other party with a list of five (5) potential members for the third member of the Panel. Each party shall alternatively strike a potential Panel member from the list until one remains with a coin toss used to determine which party strikes first. No person involved in any business, employment or other relationship with the University that could reasonably be presumed to create a conflict of interest with that person's obligations as a neutral mediator of disputes involving the University shall be eligible for inclusion as the third member of the Panel.

- c. All persons designated to be members of the Panel shall be able to serve on short notice. In addition, the University and AFSCME shall jointly provide all Panel members with orientation and training in the Policies including this Neutral, Internal Resolution of Policy Disputes procedure. The costs of such training will be shared equally by the University and AFSCME.

- d. The third member shall serve as the Chair of the Panel. The Panel shall be governed by the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

e. Authority of the Panel.

- i. Only complaints based on events or occurrences which occur after the date of the execution of the current collective bargaining agreement with the parties (the "Agreement") can be processed under this Policy. After the expiration of the current Agreement, there is no duty upon the University to process any complaint unless the facts upon which the complaint is based occurred prior to the expiration of the Agreement. The Panel shall not receive into evidence nor rely upon any past practices that occurred after the date of the execution of the current Agreement.

- ii. Unless the parties agree in writing to the contrary, only one complaint may be submitted to the Panel at any one hearing.

- iii. The Panel shall not add to, subtract from, modify, ignore, or alter the terms or provisions of any Policy, or the provisions of applicable law, rules, or regulations having the force and effect of law. Neutral, Internal Resolution of Policy Disputes by a Panel shall be confined solely to the application and/or interpretation of Policies and the precise issue(s) submitted for Neutral, Internal Resolution of Disputes. In rendering its decision, the Panel shall refrain from issuing any statements of opinion or conclusions not essential to the determination of whether the act or event giving rise to the complaint violated applicable University regulation or policy.

- iv. Where a University official has made a judgment involving the exercise of discretion, the Panel shall not substitute its judgment for that of the University official. Nor shall the Panel review such decision except for the purpose of determining whether the decision has violated a Policy.
- v. If the Panel determines that a Policy has been violated, the Panel shall direct the University to take appropriate action. The Panel may award back salary where the Panel determines that the employee is not receiving the appropriate salary from the University, but the Panel may not award other monetary damages or penalties. The Panel's award may be retroactive based on the equities each case may demand, but in no case shall an award be retroactive to a date earlier than thirty (30) days prior to the date the complaint was originally filed under this Policy.

f. Conduct of Hearing.

The Panel shall hold the hearing in Miami-Dade County unless otherwise agreed by the parties in writing. The hearing shall commence within sixty (60) days of all Panel members' acceptance of selection, or as soon thereafter as is practicable. The parties shall stipulate to the issue(s) prior to the hearing before the Panel. If the parties are unable to stipulate to the issue(s) prior to such hearing, the parties shall proceed to a hearing on applicability of this procedure based on either procedural or substantive concerns ("applicability"). Issues of applicability shall be bifurcated from the substantive issues and, whenever possible, determined by means of a hearing conducted by conference call. The Panel shall have ten (10) days from the hearing on applicability to render a decision on the applicability issues. If the process is judged to be applicable to the complaint, the Panel shall then proceed to hear the substantive issue(s) in accordance with the provisions of this Policy.

The Panel shall issue the decision within thirty (30) days of the close of the hearing on the substantive issue(s) or the submission of briefs, whichever is later, unless additional time is agreed to by the parties in writing. The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as expressly specified in this Policy, the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, shall not apply. Except as modified by the provisions of this Policy, Neutral, Internal Resolution of Policy Disputes by a Panel, proceedings shall be conducted in accordance with the Labor Arbitration Rules and Procedures of the American Arbitration Association.

g. Effect of Decision.

The decision or award of the Panel shall be final and binding upon the University, AFSCME, and the complainant provided that either party may appeal to an appropriate court of law a decision that was rendered by a Panel acting outside of or beyond the Panel's jurisdiction pursuant to Florida law concerning the right of appeal of a similar decision rendered in an arbitration.

h. Venue.

For purposes of venue in any judicial review of a Panel's decision issued under this Policy, the parties agree that such an appeal shall be filed in the courts in Miami-Dade County, Florida unless both parties specifically agree otherwise in a particular instance. In an action commenced in Miami-Dade County, neither the University nor AFSCME will move for a change of venue based upon the defendant's residence in-fact if other than Miami-Dade County.

i. Fees and Expenses.

All fees and expenses of the Neutral, Internal Resolution of Policy Disputes by a Panel shall be divided equally between the parties unless mutually agreed otherwise in writing. Each party shall bear the cost of preparing and presenting its own case. However, in the event the complaint is withdrawn after the selection of the Panel, the party withdrawing the complaint shall be responsible for the full cost of the Panel's fee (if any) unless otherwise mutually agreed by the parties in writing. The expense of obtaining a hearing room, if any, shall be equally divided between the parties. The cost of the written transcript, if requested by both parties, will be shared by both parties.

j. The complainant or AFSCME may abandon or settle a complaint.

k. The complainant or AFSCME shall have only one opportunity to amend or supplement the complaint. No complaint can be amended or supplemented after Step 2.

3. Provisions Applicability to the Policy.

a. Filings and Notification. All documents required or permitted to be issued or filed pursuant to this Policy may be transmitted by fax, United States mail by certified mail with return receipt requested, or any other recognized

delivery service that provides documentation of delivery to the recipient. An email is not an acceptable form of delivery unless otherwise noted in this Policy.

- b. Precedent. No complaint informally resolved or by using this Policy Dispute Resolution Process shall constitute a precedent for any purpose unless agreed to in writing by the University Vice President of Human Resources or designee, the complainant, and AFSCME.
  - c. Reprisal. No reprisal of any kind will be made by the University or AFSCME against any complainant, any witness, any AFSCME representative, or any other participant in the Policy Dispute Resolution Process by reason of such participation.
  - d. Records. All written materials pertinent to a complaint shall be maintained separately from the evaluation file of the complainant or witnesses, except (1) at the request of the complainant or witness that specific materials be included in his or her own evaluation file, or (2) where the terms of the decision or a settlement direct that a copy of the decision or settlement agreement be placed in the evaluation file of a complainant or witness. All decisions or settlement agreements resulting from complaints processed pursuant to this Policy shall specify whether or not a copy of the decision or settlement agreement is to be placed in the evaluation file(s) of any complainant or witness.
4. Expedited Dispute Resolution Procedure for An Alleged Violation of the Conflict of Interest/Outside Activity Policy.
- a. The period for informal resolution of a dispute alleging a violation of the provisions of the Policy on Conflict of Interest and Outside Activity shall be five (5) days from the date the complaint is filed. If not resolved by the supervisor by that date, the dispute shall be heard at Step 2 by the Vice President of Human Resources or designee no more than seven (7) days after a request for a Step 2 review has been filed. The Vice President of Human Resources or designee shall issue a Step 2 decision no more than three (3) days after the Step 2 meeting. A request for resolution by the Step 3 Panel shall be filed with the Vice President of Human Resources or designee within seven (7) days after receipt of the Step 2 decision or if the supervisor has failed to respond within the Step 1 deadlines. The Step 3 Panel shall be selected using the same process as for Step 3 no more than seven (7) days after a request for a resolution by a Neutral Panelist is received. The Step 3 Panel will hold a hearing within seven (7) days after being selected. The Sep 3 Panel shall issue a memorandum of decision within seven (7) days following the conclusion of the Step 3 hearing to be followed by a written opinion and award in accordance with the provisions of this Policy.
  - b. All other provisions of this Policy shall apply to these complaints except as noted above.

**HISTORY (R\*)**

Effective: November 14, 2008; Revised: August 19, 2013; Revised: June 2, 2017.

**RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT (R\*)**

Division of Human Resources  
Florida International University

**RESPONSIBLE ADMINISTRATIVE OVERSIGHT (R\*)**

Employee and Labor Relations  
11200 S.W. Eighth Street, PC 236  
Miami, Florida 33199  
Telephone: (305) 348-2181

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For any questions or comments, the “Document Details” view for this policy online provides complete contact information.

**\*R = Required \*O = Optional**