



University Staff/ Florida Nurses Association (FNA)

| SUBJECT (R*) | EFFECTIVE DATE (R*) | POLICY NUMBER (O*) |
|-------------------------------------|---------------------|--------------------|
| Neutral Internal Resolution Process | June 12, 2014 | 1770.003 |

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 “Neutral Internal Resolution Process”) will not normally be necessary. The parties further encourage the informal resolution of complaints whenever possible. At each step in the Neutral Internal 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 the 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 Neutral Internal 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. Excepted as otherwise stated, the Neutral Internal 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. **Burden of Proof**
 In all complaints, except disciplinary complaints in accordance with the BOT-FNA Policy Disciplinary Actions, the burden of proof shall be on the complainant. In disciplinary complaints, the burden of proof shall be on the University.

4. **Representation**
 FNA 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 FNA, the University shall promptly inform FNA in writing of the complaint. No resolution of any individually processed complaint shall be inconsistent with the terms of any applicable Policy, and this purpose, FNA 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 other parties.

5. **Complaint Representatives**
 FNA shall annually furnish to the University a list of all persons authorized to act as complaint representatives and shall update the list as needed. FNA 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 hearing or meeting 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.

6. **Appearances**
 - a. When a complainant and/or complaint representative participates in one of the steps in the Neutral Internal Resolution Process during scheduled hours or in a meeting among the complainant, the complainant representative, complainant's counsel or FNA 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.

7. **Time Limits; Dates 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 FNA, 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 FNA representative may sign such documents for the complainant, however, complainant's signature shall be provided prior to the Step 2 meeting.

8. **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 Neutral Internal Process Policy, the employee has the right to one (1) copy of his or her personnel records at no cost.

9. **Provisions Applicability to the Policy**

All documents required or permitted to be issued or filed pursuant to this Policy may be transmitted via email, 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.

No complaint informally resolved or by using this Neutral Internal 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 FNA.

No reprisal of any kind will be made by the University or FNA against any complaint, any witness, any FNA representative, or any other participant in the Neutral Internal Resolution Process by reason of such participation.

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 decision or settlement agreements resulting from complaints processed pursuant to this Policy shall specify whether or not copy of the decision or settlement agreement is to be placed in the evaluation file(s) of any complainant or witness.

10. **Expedited Dispute Resolution Procedure for An Alleged Violation of the Conflict of Interest/Outside Activity Policy.**

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 resolution by the Step 3 Panel shall be filed with the Vice President of Human Resources or designee within seven (7) days after a request for a resolution by a Neutral Panelist is received. The Step 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.

All other provisions of this Policy shall apply to these complaints except as noted above.

REASON FOR POLICY (O*)

RELATED INFORMATION (O*)

DEFINITIONS (R*)

- 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 the Policy as Appendix A.
- 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). FNA may file a complaint in a dispute over a provision of a Policy that confers rights upon a group of employees or upon FNA.
- 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 Neutral Internal 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 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. 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*)

Step 1

An employee having a complaint about the application of Policy provision shall file a fully executed Step form 1 form with his/her supervisor within seven (7) days of the act or omission giving rise to the complaint or the date on which the employee knew or reasonably should have known of such act or omission if that date is later. Step 1 form (attached in appendix A) must be submitted in writing and shall be signed by the complaint(s).

Discussions will be informal for the purpose of setting differences in the simplest and most effective manner. The supervisor shall communicate a decision in writing to the complainant and/or complainant’s representative within ten (10) days from the date the complaint was presented to him/her. Failure of the supervisor to timely respond shall be considered a denial of the complaint and shall entitle the complainant to appeal to Step 2.

Step 2

If the complaint has not been satisfactorily resolved at the Step 1 or if the supervisor has failed to respond within the Step 1 deadlines, the complainant or FNA (upon request of the complainant) may proceed to Step 2 by filing a fully executed Step 2 form (attached). The Step 2 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.

The Vice President of 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 meeting between the Vice President for Human Resources or designee, other University representatives as necessary, the complaint 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.

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.

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 FNA (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 FNA elect to take the complaint to that step.

Step 3

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 FNA (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 at any point prior to issuance of the Panel's decision by providing written notification to the Vice President of Human Resources or designee.

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

1. 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.
2. The FNA President or designee shall appoint one member of the Panel who shall be a current or former University employee or University alumni.
3. 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.

All persons designated to be members of the Panel shall be able to serve on short notice. In addition, the University and FNA 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 FNA.

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.

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.

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

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.

Where a University official has made a judgement involving the exercise of discretion, the Panel shall not substitute its judgement 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.

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.

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 be set forth findings of fact reasoning, and 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.

The decision or award of the Panel shall be final and binding upon the University, FNA, and the complainant. If any party believes that the Panel acted outside or beyond the Panel's jurisdiction, that party may appeal the decision to an appropriate court of law pursuant to Chapter 682 of the Florida Statutes.

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 FNA will move for a change of venue based upon the defendant's residence in-fact if other than Miami-Dade County.

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 even the complaint is withdrawn after the selection of the Panel, the party withdrawing he 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.

The complainant or FNA may abandon or settle a complaint.

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

RESPONSIBILITIES (O*)

HISTORY (R*)

Adopted June 12, 2014

RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT (R*)

Division of Human Resources
Florida International University

RESPONSIBLE ADMINISTRATIVE OVERSIGHT (R*)

Employee and Labor Relations
Florida International University
11200 S.W. Eighth Street – PC 236
Miami, Florida 33199
Telephone: (305) 348-2079

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

FORMS/ONLINE PROCESSES (O*)

Links to the above referenced Form(s) available in the "Document Details" Section of the online version of this policy document.

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