

**ARTICLE 11
GRIEVANCE & ARBITRATION PROCEDURE**

11.1 Policy.

(a) The parties agree that all problems should be resolved, whenever possible, before the filing of a grievance but within the time limits for filing grievances stated elsewhere in this Article, and encourage open communications between administrators and employees so that resorting to the formal grievance procedure will not normally be necessary. The parties further encourage the informal resolution of grievances whenever possible. At each step in the grievance process, participants are encouraged to pursue appropriate modes of conflict resolution including the use of mediation. The purpose of this Article is to promote a prompt and efficient procedure for the investigation and resolution of grievances. The procedures hereinafter set forth be the sole and exclusive method for resolving the grievances of employees as defined in this Article.

(b) Reprisal. No reprisal of any kind will be made by the Board, the University, or the UFF against any grievant, any witness, any UFF representative, any University representative, or any other participant in the grievance procedure for such participation.

11.2 Definitions and Forms. As used in this Article:

(a) Definitions.

(1) The term "grievance" means:

- a. A dispute filed on a form referenced in Section 11.2(b) concerning the interpretation or application of a specific term or provision of this Agreement, subject to those exclusions appearing in other Articles of this Agreement.
- b. The grievance must specify:
 - 1. the act that allegedly violates this Agreement, including the name(s) of any individual(s) who committed the act;
 - 2. the term(s) of this Agreement that has allegedly been violated;
 - 3. how the act violates the term(s) of the Agreement, and;

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- 1 4. propose an appropriate and specific remedy.
- 2 (2) The term “grievant” means:
- 3 a. An employee or group of employees who has/have filed a grievance
- 4 in a dispute over a provision of this Agreement which confers rights
- 5 upon the employee(s).
- 6 b. The UFF chapter may file a grievance on behalf of a person, a group
- 7 of people, or the chapter itself, in a dispute over a provision of this
- 8 Agreement which confers rights upon the employee(s).
- 9 1. In order to process a chapter grievance submitted on behalf
- 10 of a group of employees, the grievance must identify the
- 11 group with sufficient specificity to allow the University to
- 12 identify the individual members that are affected by the
- 13 chapter grievance.
- 14 2. A chapter grievance shall identify the specific remedy
- 15 sought for the members.
- 16 c. A chapter grievance or a grievance of a decision made by the
- 17 President or Provost may be initiated at Step 2.
- 18 (3) The parties may agree in writing to consolidate grievances of a similar
- 19 nature to expedite the review process. However, the parties are not
- 20 obligated to any such consolidation.
- 21 (b) Forms.
- 22 (1) Grievance Form. Each grievance must be typed and submitted in writing on
- 23 the form attached to this Agreement as Appendix “C”, with all pertinent
- 24 information explaining the disagreement or controversy, identifying the
- 25 provision(s) at issue. The grievant’s signature, confirming the grievant’s
- 26 intent to proceed with the grievance, shall be provided prior to the grievance
- 27 hearing.
- 28 (2) Arbitration Form. Each notice of arbitration must be submitted in writing
- 29 on the form shown in Appendix “#” (Notice of Arbitration). All pertinent
- 30 information submitted with the Grievance Form, as well as the Grievance
- 31 Hearing decision, must be included as an attachment to the Notice of
- 32 Arbitration form. The Notice of Arbitration form must be signed by the
- 33 grievant and a UFF representative.

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- 1 (3) All grievance forms must be electronically filed via email with the Office
- 2 of the General Counsel (ogc@floridapoly.edu).
- 3 a. All grievance forms will be dated and assigned a case number when
- 4 the form is received by the Office of the General Counsel.
- 5 b. The date of receipt will be determined by the date in which the
- 6 grievance is received by the Office of the General Counsel and
- 7 assigned an identifying case number.
- 8 (4) If there is difficulty in meeting any time limit, the UFF representative may
- 9 sign such documents for the grievant; however, the grievant's signature
- 10 must be provided prior to the Grievance Hearing or the selection of an
- 11 Arbitrator under Section 11.7(a)(3).
- 12 (5) Time Limits. All time limits contained in this Article may be extended by
- 13 agreement of the parties, except that the time limits for the initial filing of a
- 14 grievance may be extended only by the University. Upon failure of the
- 15 University to provide a decision within the time limits provided in this
- 16 Article or as extended by agreement, the grievant or the UFF, where
- 17 appropriate, may proceed to the next step.
- 18 (6) Upon the failure of the grievant or the UFF to advance a grievance within
- 19 the time limits provided in this Article or as extended by agreement, the
- 20 grievance will be administratively closed pursuant to the decision at the
- 21 prior step or deemed withdrawn with prejudice.

22 **11.3 Burden of Proof.** In all grievances, except those challenging disciplinary actions ~~or as~~
23 ~~otherwise stated in this agreement~~, the grievant has the burden of proof.

24 **11.4 Appearances.**

25 (a) Grievant.

- 26 (1) When an employee participates during working hours in an arbitration
- 27 proceeding as the grievant, or in an official capacity during a grievance
- 28 meeting between the grievant or representative and the University, that
- 29 employee's compensation will neither be reduced nor increased for time
- 30 spent in those activities.
- 31 (2) Prior to participation in any such proceedings, conferences, or meetings, the
- 32 employee will make arrangements acceptable to the appropriate supervisor
- 33 for the performance of the employee's duties. Approval of such
- 34 arrangements will not be unreasonably withheld. Time spent in such

Commented [FPU-BOT1]: As discipline is the only instance, this is an unnecessary clause.

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activities outside regular working hours will not be counted as time worked.

(b) Grievance Representatives.

(1) UFF possesses the exclusive right to represent any in-unit employee in a grievance unless an employee elects self-representation or to be represented by legal counsel.

a. The UFF shall, on or before September 1 of each year, furnish to the University a list of all persons authorized to act as grievance representatives and will update the list as needed. The UFF grievance representative has the responsibility to meet all classes, office hours, and other duties and responsibilities incidental to the assigned workload.

b. Such representative has the right during times outside of those hours scheduled for these activities to investigate, consult, and prepare grievance presentations and attend grievance hearings and meetings.

c. Should any hearings or meetings with the Vice Provost of Academic Affairs, Provost, or their designees necessitate rescheduling of assigned duties, the representative may, with the approval of the appropriate administrator, arrange for the rescheduling of such duties or their coverage by colleagues. Such approval will not be unreasonably withheld.

(2) If an employee elects not to be represented by UFF, the University will promptly inform UFF in writing of the grievance, and when the grievance progresses from Step 1 to Step 2 and Step 2 to Step 3.

a. No resolution of any individually processed grievance will be inconsistent with the terms of this Agreement

b. The UFF will have the right to have an observer present at all meetings called to discuss such grievance and will be sent copies of all decisions at the same time as they are sent to the other parties.

(3) When the UFF determines that a grievance lacks merit, UFF may terminate an arbitration arising from that grievance.

11.5 Informal Resolution (IR) Procedure (Step 1). The University Administration and the UFF-FPU Chapter agree that problems should be resolved, whenever possible, before the filing

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1 of a grievance. Therefore, except as provided under Section 11.2(a)(2)c, no grievance may
2 be filed until the UFF or faculty member has timely requested an informal resolution. The
3 faculty member will have the right to representation by the UFF-FPU Chapter during
4 attempts at informal resolution. If the faculty member is not represented by UFF-FPU at
5 this point, the University will provide prompt notification to the chapter with a copy of the
6 request for IR.

7 (a) Faculty are encouraged to request informal resolution as early as practicable.
8 Faculty who wish to preserve their rights to file a grievance must file a request for
9 IR within twenty (20) days of the act or omission giving rise to the dispute, or the
10 date on which the faculty member knew or reasonably should have known of such
11 an act or omission if that date is later.

12 (b) If the informal resolution process has been timely requested, as provided below, the
13 later filed grievance will be considered to be timely filed, as long as the other
14 deadlines specified in Article are observed. If the informal resolution process has
15 not been timely requested, as provided below, the right to file a formal grievance
16 will be waived as time-barred.

17 (c) All requests for informal resolution must be in writing and submitted to Human
18 Resources (hr@floridapoly.edu) and the Office of the General Counsel
19 (ogc@floridapoly.edu) via email. The request must contain a brief, general
20 description of the dispute, identify the relevant provisions of this Agreement which
21 are at issue, and include dates, times, and locations of the action(s) giving rise to
22 the dispute.

23 (d) Upon receipt of a timely-filed request for informal resolution, the parties will have
24 thirty (30) days to attempt to informally resolve the dispute.

25 (1) The thirty (30) day period may be extended upon mutual agreement of the
26 parties.

27 (2) The faculty member may file a formal grievance prior to the expiration of
28 the thirty (30) day period, when:

29 a. Good faith attempts have been made by the grievant to achieve an
30 informal resolution;

31 b. The dispute is time-sensitive, or;

32 c. The parties mutually agree that informal resolution of the dispute is
33 not possible.

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(e) All informal resolutions will be reduced to writing, but will be without precedent or prejudice to the parties.

11.6 Formal Grievance Procedure (Step 2).

(a) Step 2 Filing.

(1) Within fifteen (15) days after the expiration of the thirty (30) day IR period, the grievant or UFF may file a Step 2 grievance consistent with the requirements described in Section 11.2.

a. The fifteen (15) days will be calculated from the date on which the grievance is emailed to, and confirmed as received by, the Office of the General Counsel.

b. The filing of a formal grievance at Step 2 constitutes a waiver of any rights to judicial review of agency action pursuant to Chapter 120, Florida Statutes, and to the review of such actions under other University procedures that may otherwise be available to address such matters.

(2) The grievance may be withdrawn at any time by the grievant or by the UFF President.

(b) Amended Step 2 Filing.

(1) The grievant may amend the Step 2 grievance one (1) time prior to the Step 2 meeting, no later than three (3) business days prior to the Step 2 meeting, so long as the factual basis of the complaint is not materially altered.

(2) Only those acts or omissions and sections of the Agreement specifically identified in writing at the initial Step 2 filing, or as amended prior to the Step 2 meeting, may be considered at Step 2 or Step 3.

(c) Request for Documents.

(1) Upon written request, the grievant and the grievant’s representative will be provided access to all documents relevant to the grievance, except as described in subsection (3).

(2) If the request is reasonable in scope and relevant to the grievance, these documents will be provided no less than three (3) business days prior to the Step 2 meeting.

(3) Written Authorization is required for the release of any Limited-Access

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Records to the UFF representative or the grievant’s legal counsel (if selected pursuant to Section 11.4), as defined under Florida Polytechnic University Rule 6C13-6.008.

(d) Step 2 Meeting.

(1) Timing. The Provost or University Representative and the grievant and the grievant’s representative shall meet no later than fifteen (15) days following the receipt of the Step 2 grievance.

(2) Procedure. During the Step 2 meeting, the grievant shall have the right to present any evidence in support of the grievance, and the grievant and/or the UFF representative or the grievant’s legal counsel (if selected pursuant to Section 11.4), and the Provost or University Representative will discuss the grievance.

(3) Decision.

a. The Provost or University Representative will issue a written decision, stating the reasons for the decision, including any objections to the procedural or substantive arbitrability of the grievance, to the grievant and the grievant’s Step 2 representative within thirty (30) days following the conclusion of the Step 2 meeting. Thirty (30) days shall be calculated as defined in Section 24.5.

b. In the absence of an agreement to extend the period for issuing the Step 2 decision, UFF may proceed to Step 3 if the grievant’s Step 2 representative has not received the written decision by the end of the 35th day following the conclusion of the Step 2 meeting.

c. Step 2 decisions in grievances not involving alleged procedural violations are final and binding.

d. A copy of the decision shall be sent to the grievant and to UFF if the grievant elected self-representation or representation by legal counsel.

11.7 Formal Grievance Arbitration Procedure (Step 3).

(a) Step 3 Filing. If a grievance alleging a procedural violation has not been satisfactorily resolved at Step 2, the UFF may proceed to arbitration by filing a written notice of the intent to do so (Appendix D).

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- 1 (1) Within fifteen (15) days after the date of the Step 2 decision, the notice of
- 2 intent to proceed to arbitration must be submitted to the Office of the
- 3 General Counsel (ogc@floridapoly.edu) consistent with the procedures
- 4 defined in Section 11.2(b). The fifteen (15) days will be calculated as
- 5 defined in Section 24.5.
- 6 (2) Only those acts or omissions and sections of the Agreement identified at the
- 7 initial Step 2 filing, or as amended prior to the Step 2 meeting, may be
- 8 considered by the Arbitrator.
- 9 (3) The parties shall stipulate to the issue(s) prior to the arbitration. In the event
- 10 a stipulation is not reached, the parties shall proceed to a hearing on
- 11 arbitrability pursuant to Section 11.7(d).

12 (b) Selection of Arbitrator.

- 13 (1) Arbitration Panel. Representatives of the University and UFF notice shall
- 14 meet within ninety (90) days after the execution of this Agreement for the
- 15 purpose of selecting an Panel of seven (7) members.
- 16 a. Each party shall submit six (6) arbitrators to create a selection list,
- 17 from which parties may mutually agree to, or alternatively strike
- 18 names until they select the Arbitration Panel.
- 19 b. The right of the first choice to strike shall be determined by a
- 20 coinflip.
- 21 c. The Arbitration Panel shall be operative until a successor
- 22 Agreement is ratified, or if two (2) or more arbitrators on the
- 23 selection list are no longer active, the parties may agree in writing
- 24 to replace the inactive arbitrators or select a new panel following the
- 25 same process.
- 26 (2) Step 3 Arbitrator. The parties shall either mutually agree upon the arbitrator
- 27 charged with hearing any grievance, or select, the arbitrator from the
- 28 Arbitration Panel as set forth in this subsection.
- 29 a. A mutually-agreed-upon arbitrator does not need to be a member of
- 30 the Arbitration Panel.
- 31 b. In the event the parties cannot mutually agree upon an arbitrator, and
- 32 no later than fourteen (14) days after receipt of a notice of intent to

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1 arbitrate, the parties shall confer for the purpose of selecting an
2 arbitrator from the panel.

3 c. The parties shall alternatively strike names from the list until one
4 name remains.

5 d. The right of the first choice to strike shall be determined by a
6 coinflip.

7 (c) Authority of the Arbitrator.

8 (1) The arbitrator shall neither add to, subtract from, modify, nor alter the terms
9 or provisions of this Agreement. Arbitrations shall be confined solely to the
10 application of this Agreement and the issue(s) submitted for arbitration. The
11 arbitrator shall refrain from issuing any statements of opinion or
12 conclusions not essential to the determination of the issues submitted.

13 (2) The arbitrator shall not substitute the arbitrator’s or another’s judgment for
14 that of the University in any matter involving the exercise of managerial
15 discretion.

16 (d) Arbitrability. Issues of arbitrability shall be separated from the substantive issue(s)
17 and, whenever possible, determined by means of a hearing conducted by conference
18 call.

19 (1) The arbitrator shall have ten (10) days from the hearing to render a decision
20 on arbitrability.

21 (2) If the issue is judged to be arbitrable, an arbitrator shall then be selected to
22 hear the substantive issue(s) in accordance with the provisions of Section
23 11.7(b)(1)a.

24 (e) Conduct of Step 3 Hearing.

25 (1) The hearing shall commence within sixty (60) days of the arbitrator’s
26 acceptance of selection, or as soon thereafter as is practicable.

27 (2) The arbitrator shall conduct the hearing at the University, unless otherwise
28 agreed by the parties.

29 (3) The arbitrator shall issue the decision within forty-five (45) days of the close
30 of the hearing or the submission of briefs, whichever is later, unless
31 additional time is agreed to by the parties.

32 (4) The decision shall be in writing and shall set forth findings of fact,
33 reasoning, and conclusions on the issues submitted.

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(5) Except as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the current Labor Arbitration Rules of the American Arbitration Association.

(f) Effect of Decision. The arbitrator’s decision shall be final and binding upon the Board, the University, the UFF, and the grievant, provided that either party may appeal to an appropriate court of law a decision that was rendered by the arbitrator acting outside of or beyond the arbitrator’s jurisdiction, pursuant to this Agreement and the Florida Arbitration Code as defined by law.

(g) Fees and Expenses.

(1) The parties shall equally divide all arbitration fees and expenses unless the arbitrator rules that the claim or defense was frivolous, in which case the nonprevailing party shall bear the cost of all fees and expenses associated with the arbitration, including, if awarded, attorney’s fees.

(2) Fees and expenses charged by an arbitrator for cancelation after the arbitrator’s deadline shall be borne by the party requesting the cancelation. However, if a grievance is resolved, and the cancelation of the arbitration results in any arbitration fees or expenses, such costs shall be divided equally between the parties.

(3) Each party shall bear the cost of preparing and presenting its own case including payment of expenses and compensation for its own representatives, attorneys, and witnesses.

(4) The party desiring a transcript of the arbitration proceedings shall provide notice to the other party of its intention to have a transcript of the arbitration made prior to the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype reporter to record the proceedings. The party originally requesting a transcript of the proceedings shall pay for any appearance fee of the court reporter.

11.8 Implementation of Remedy. Any formal remedy resulting from a decision at Step 2 or Step 3 will be implemented within fourteen (14) days, unless otherwise provided in the arbitrator’s decision or by mutual agreement of the parties.

11.9 Precedent. The resolution of a grievance, either informally or by decision rendered at Step 2, shall not constitute a precedent for any purpose unless agreed to in writing by the Board of Trustees or their representatives and the UFF acting through its president or representative.

Commented [FPU-BOT2]: Here is the current language: "...unless the arbitrator rules that the grievance was frivolous, in which case the filing party shall bear the cost of all fees and expenses associated with the arbitration, including, if awarded, attorney’s fees." We are willing to open the award of fees so that the University is likewise at risk. Currently, only the UFF is. The award is limited to a *frivolous* claim or defense, which is hopefully unlikely.

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1 **11.10** Records. All written materials pertinent to a grievance shall be maintained separately from
2 the evaluation file of the grievant or witnesses, except decisions resulting from arbitration
3 or settlement. Unless otherwise exempt under Florida law, grievance-related documents
4 are subject to disclosure as a public record.

5 **11.11** Processing.

6 (a) The filing or pendency of any grievance or arbitration proceedings under this
7 Article will not operate to impede, preclude, or delay the University from taking
8 the action complained of.

9 (b) Reasonable efforts, including the shortening of time limits when practical, will be
10 made to conclude the processing of a grievance prior to the expiration of the
11 grievant's employment, whether by termination or failure to reappoint. An
12 employee with a pending grievance will not continue to be compensated beyond
13 the last date of employment.

14 (c) The University may refuse consideration of a grievance not filed or processed in
15 accordance with this Article.

16 **11.12** Inactive Grievances. A grievance which has been filed at Step 2 or Step 3 and on which no
17 action has been taken by the grievant or the UFF for sixty (60) days shall be deemed
18 withdrawn and/or dismissed in accordance with the decision issued at the prior Step. This
19 provision does not apply to procedural or scheduling delays in Step 3 which are beyond
20 the control of the grievant or UFF.

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