

ARTICLE NN

GRIEVANCE and ARBITRATION PROCEDURES

Section 11.1 – Grievance Overview

~~Section 1A.~~ Purpose. The parties agree that a prompt and efficient procedure for the investigation and resolution of grievances, in accordance with Chapter 447, Part II Florida Statutes, and a timely and just settlement of grievances can best promote a harmonious and cooperative relationship between the parties and thus is of mutual concern and interest. Therefore, the parties shall attempt to settle all grievances promptly and fairly at the point of origin. In order to achieve this, the Grievant, Union and the Administration shall make available to one another all known relevant facts and provide in a timely manner such public documents and public information as may be requested to enable the parties to resolve grievances and maintain harmony within the College environment. The orderly process set forth in this Article shall be the sole method for the resolution of grievances.

~~Section 2B.~~ Definitions

~~A1.~~ Grievance - a dispute concerning the interpretation, application, or claimed violation of a specific term or provision of this Agreement, or handbook, policies, or procedures referenced in this Agreement.

~~B2.~~ Days, Work Days, or Working Days- as used in this Article, unless otherwise stated herein, shall exclude official College holidays applicable to bargaining unit members but shall include a regular workweek (Monday-Friday) excluding weekends (Saturday – Sunday). A “day” shall conclude at 4:30 p.m.

~~C3.~~ Faculty Member – any member of the bargaining unit

~~D4.~~ Grievant– any bargaining unit member, group of members, or the Union that files a grievance as defined in this Article

~~E5.~~ Respondent – the College or the appropriate administrator

~~Section 3C.~~ Individual/ Union Grievances. The Union shall have the right to file and pursue grievances on behalf of individual Faculty Members or groups of Faculty Members, in accordance with this Article. The Union shall have the right to file and pursue grievances on behalf of itself, in accordance with this Article. The Union and Faculty Member grievances shall be filed on forms mutually agreed to by the parties. The Union and Faculty Member grievances shall be filed separately in separate grievance documents and if a grievance is filed on behalf of an individual it shall be signed by the individual grievant.

~~Section 4D.~~ Grievance Processing by an Individual or the Union. Bargaining unit members, including Union representatives and officers, shall not permit the investigation or processing of grievances to interfere with their normal work responsibilities.

~~Section 5E.~~ Representation. The Union shall have the right to represent, or not represent, any Faculty Member, upon the Faculty Member’s request, at any step of this grievance procedure,

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45 provided, however, that individual employees may, upon notice to UFF, initiate and represent
46 themselves in processing their own individual grievances. The Union reserves the right not to
47 represent non-members. The Union has the right to be present at any step of the Grievance
48 Procedure whether or not the union is representing the Grievant in the process.

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50 | **Section 6F.** Non-Applicability of Grievance Procedure. This grievance procedure cannot be used
51 by the Union or any Faculty Member to dispute a decision by the College that involves the
52 exercise of academic judgment including but not limited to decisions not to renew the contract of
53 an employee on annual contract or to dispute a decision by the College not to award a contract,
54 or a promotion, to a unit employee, except to the extent that a grievance alleges the failure by the
55 Administration to follow the procedures set forth in this Contract.

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57 | **Section 7G.** Time Limits and Contents of Grievance. The time limits set forth in this article are
58 of the essence and must be strictly complied with, but may be extended by mutual written
59 agreement of the parties. A Grievant's or the Union's failure to process a grievance within the
60 time limits set forth in this Article, or that fails to contain the required contents in the Grievance
61 as set forth below, shall mean that the Grievance shall be treated as withdrawn. Upon the failure
62 of the College to provide a response within the time limits provided in this Article, the Grievant
63 or the Union may appeal to the next grievance step. In the event a deadline for action by either
64 party should fall on a weekend, or College holiday, the deadline shall be extended to the next
65 working day. Due to the importance of processing a Grievance as rapidly as possible, the
66 number of days indicated at each level should be considered as a maximum, and every effort
67 should be made to expedite the process. In order to be eligible for processing, a Grievance must
68 be timely filed and contain the following:

- 69
70 | **A1.** The name of the Grievant, whether it is an individual employee or the Union.
71 | **B2.** The identification of the event or omission that gave rise to the Grievance and the
72 | time it occurred and a short, plain statement of the facts surrounding the grievance,
73 | with an explanation of how the contract was violated.
74 | **C3.** The citation of the particular sections and subsections of this Agreement (not articles
75 | alone) on which the Grievant relies.
76 | **D4.** A statement of the precise relief sought.
77 | **E5.** The signature of the Grievant(s).

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79 | **H.** Exceptions to Grievance and Arbitration. Unless specifically stated otherwise elsewhere in
80 this Agreement, the provisions of this Grievance and Arbitration Article shall apply to the entire
81 Agreement.

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83 | **Section 811.2. Grievance Process**

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85 Grievances, properly and timely filed, shall be processed in accordance with the following
86 procedure.
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89 A. Step I. Within twenty (20) working days of the occurrence of the event or omission giving
90 rise to the Grievance, or when the Faculty Member first knew or reasonably should have known
91 of such act or omission, if that date is later, an eligible Grievant shall file the Grievance
92 document with the Department Chair or immediate supervisor and provide a copy to the Director
93 of Human Resources. Within ten (10) working days of the receipt of the Grievance, the
94 Department Chair or immediate supervisor shall meet with the Grievant in an effort to resolve
95 the problem. The Department Chair or immediate supervisor will be allowed ten (10) working
96 days following the meeting to respond to the Grievance in writing. This written answer may
97 consist of a notation on the grievance document.

98

99 B. Step II. If the Grievance is not settled at Step 1, or if no written response is received by the
100 | ~~grievant~~ Grievant at Step I, or if the response is not acceptable to the Grievant at Step 1, the
101 Grievant may appeal the Grievance to Step II. Only those acts or omissions identified at Step II
102 of the Grievance procedure contained in this Agreement may be considered for arbitration under
103 this article. The appeal must be filed within ten (10) working days of the receipt of the answer
104 from the immediate administrative supervisor or, if no written answer is received, within ten (10)
105 working days after the expiration of the ten (10) working day period specified in Step I. Such
106 appeal shall be in writing and shall include a copy of the Grievance filed at Step I and the Step I
107 response, if any. The Step II filing shall be filed with the Grievant's Dean or Director and a copy
108 provided to the Director of Human Resources. Once the grievance document has been properly
109 filed at Step II, there shall be fifteen (15) working days in which to provide a written response to
110 the Grievant. The written response may consist of a notation on the grievance document. A
111 meeting to discuss the Grievance at Step II may be conducted at the discretion of the Dean or
112 Director.

113

114 C. Step III. If the Grievance is not settled at Step II, or if no written response is received at Step
115 II or if the disposition of the Grievance is unacceptable to the Grievant, the Grievant may appeal
116 the Grievance to Step III by filing an appeal with the President (or an individual designated to
117 hear Grievances at Step III) and a copy provided to the Director of Human Resources within ten
118 (10) working days after the receipt of the answer at Step II, or if no answer is received, within
119 ten (10) working days after the expiration of the fifteen (15) working day period applicable to
120 Step II. Once the grievance document has been properly filed at Step III, a meeting to discuss the
121 Grievance at Step III will be conducted by the President (or individual designated to hear
122 Grievances at Step III) within fifteen (15) days. . There shall be fifteen (15) working days in
123 which to provide a written response to the Grievant after the meeting. The written response may
124 consist of a notation on the grievance document.

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126 | **Section 911.3. Arbitration**

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128 Only those Grievances that have been processed through the grievance procedure in strict
129 compliance with all of its requirements may be taken to arbitration. If the Grievant is a union
130 | member, the Union may, at its sole discretion, appeal the grievance to arbitration. ~~–~~ However, in
131 the interest of time, the parties may mutually agree to expedite a Grievance directly to
132 arbitration. If the Grievant is not satisfied with the disposition of the Grievance at Step III, or if
133 no answer is received within the fifteen (15) working day period applicable to Step III, the

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134 Grievance may be submitted to arbitration. The arbitration procedure shall be initiated by filing a
135 written request for arbitration with the Director of Human Resources within fifteen (15) working
136 days after receipt of written disposition at Step III, or, if no answer is received, within fifteen
137 (15) working days after the expiration of the Step III fifteen (15) working day period. A copy of
138 the grievance document must be attached to the request. The filing or pendency of any Grievance
139 or of arbitration proceedings shall not operate to impede, preclude, or delay the College from
140 taking the action under consideration. In no event shall any Faculty Member, as a result of a
141 pending Grievance, receive compensation following cessation of employment.
142

143 A. Selection of Arbitrator. Representatives of the College and the Union shall confer within
144 ninety (90) days after the ratification of this Agreement for the purpose of selecting an
145 Arbitration Panel of seven (7) members. Within fifteen (15) days after receipt of a written
146 request for arbitration, representatives of the parties shall confer and select an arbitrator from the
147 Arbitration Panel. Selection shall be by mutual agreement or by alternatively striking names
148 from the Arbitration Panel until one name remains. The right of the first choice to strike from
149 the list shall be determined by the flip of a coin.
150

151 B. If an Arbitration Panel cannot be agreed upon within ninety (90) days after the ratification of
152 this Agreement then the parties shall request from the Federal Mediation and Conciliation
153 Service (FMCS), a list of seven (7) arbitrators for each separate written request for arbitration.
154 Arbitrations may be consolidated by mutual agreement. Selection from the FMCS arbitrator list
155 shall be made by alternatively striking names from the list until one name remains. The right of
156 the first choice to strike from the list shall be determined by the flip of the coin. Each party shall
157 have the right to reject one list of arbitrators from an FMCS panel in its entirety.
158

159 C. No arbitrator shall have simultaneously more than one Grievance involving this Agreement
160 without the parties' consent.
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162 D. The arbitration will then proceed in accordance with the reasonable orders and requests of the
163 arbitrator, but subject to the following conditions:
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- 165 1. If it is necessary to hold arbitration proceedings during duty hours, parties to the
166 Grievance shall be excused from their other College duties for the duration of the
167 time they are needed in the proceedings. Every effort shall be made to accommodate
168 class scheduling.
169
 - 170 2. The arbitrator shall not have the power to add to, subtract from, modify, or alter the
171 terms of this Agreement.
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 - 173 3. The arbitrator shall not have the power to abridge or curtail any rights reserved to the
174 College in this Agreement.
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 - 176 4. Arbitration shall be confined solely to the application and/or interpretation of this
177 Agreement. Arbitration shall be confined solely to the precise issue(s) submitted for
178 Arbitration. Only those acts or omissions identified at Step II of the grievance
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- 179 procedure contained in this Agreement may be considered for arbitration under this
180 article. The arbitrator shall have no authority to determine any other issue(s).
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- 182 5. In any arbitration involving a question of monetary liability, the parties shall have a
183 right to a reasonable time for briefing the case and a decision shall be due within
184 thirty (30) working days after the date set for filing briefs. Time limitations may be
185 adjusted by mutual agreement of the Parties.
186
- 187 6. Neither party will present evidence regarding offers to settle or compromise a
188 grievance.
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- 190 | 7. All costs of any arbitration, including the arbitrator’s fees and expenses, cost of
191 transcripts (which shall be made available at the request of either party), and cost of
192 meeting rooms shall be borne equally by the College and Grievant or the Union,
193 unless otherwise agreed by the parties.
194
- 195 8. An arbitrator’s award may or may not be retroactive as the equities of each case may
196 demand, but in no case shall an award be retroactive to a date earlier than 30 days
197 prior to the date the Grievance was initially filed in accordance with the grievance
198 procedure of the Agreement or the date on which the act or omission occurred,
199 whichever is earlier; provided however, that in no case will an award be made for an
200 act or omission occurring before the effective date of this Agreement.
201
- 202 9. Where an administrator has made a judgment involving the exercise of discretion the
203 arbitrator shall not substitute the arbitrator’s judgment for that of the administrator;
204 however, if the arbitrator determines that the Agreement has been violated, the
205 arbitrator shall direct the College to take appropriate action. The arbitrator shall have
206 no power to award continuing contract status.
207
- 208 10. The College shall not be required, as the result of any grievance resolution or
209 arbitration decision, to violate any law, regulation, accreditation requirement or rule
210 applicable to the operation of the College.
211
- 212 11. The arbitrator’s decision shall be final and binding, but only to the extent required by
213 applicable law. The decision of the arbitrator will be made in writing to both parties
214 at the same time. Either party may appeal to an appropriate court of law a decision
215 that was rendered by the arbitrator acting outside of or beyond the arbitrator’s
216 jurisdiction or powers, pursuant to Florida Statutes Chapter 682.
217
- 218 12. The arbitrator shall be empowered to make reasonable orders so that the matter can be
219 expeditiously resolved, but shall accommodate the parties within reason as to hearing
220 dates and continuances, where need is shown.
221
- 222 13. The arbitrator shall hold hearings in Manatee or Sarasota Counties, Florida unless
223 otherwise agreed by the parties.

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224 | 14. The College shall have the burden of proof by a preponderance of the evidence in all
225 | grievances involving the determination of just cause for imposing discipline. In other
226 | matters the Burden of Proof shall be on the grievant and/or Union.
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228 | ~~Section 10E.~~ Issues of Arbitrability
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230 | Issues of arbitrability shall be bifurcated from the substantive issues and will be initially decided
231 | by an arbitrator who is selected pursuant to the process outlined in this grievance procedure.
232 | Issues of arbitrability will be determined by means of hearing conducted by telephonic or
233 | videoconference methods, unless mutually agreed otherwise. The arbitrator shall have fifteen
234 | (15) days from the hearing to render a decision on arbitrability. If the issue(s) is judged to be
235 | arbitrable, a separate arbitrator shall then be selected to hear the substantive issue(s).
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237 | ~~Section 11F.~~ Election of Remedies
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239 | A Faculty Member's election to proceed through a resolution process provided by the College's
240 | internal policies or commencement of a proceeding against the College or any managerial
241 | employee of the College or any member of the Board of Trustees in a court of law or equity, or
242 | before the Florida Public Employees Relations Commission, or any other administrative agency,
243 | by the Union or any Faculty Member, alleging the same issue or seeking the same remedy, shall
244 | be deemed a waiver by said unit member(s) or the Union of the ability to resort to the grievance
245 | or arbitration procedure contained herein for the resolution of the alleged violations of this
246 | Agreement. In such instances the grievance or arbitration will be deemed withdrawn. A Grievant
247 | electing to have a discrimination complaint resolved through the grievance/arbitration provisions
248 | will execute a formal waiver reflecting that selection. As an exception to this provision, a
249 | Grievant may file a federal EEOC charge while the Grievance is in progress when such filing
250 | becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. 2000e, et seq.
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252 | ~~Section 12G.~~ Applicability of Grievance Procedure
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254 | Unless specifically and clearly excluded from grievability, this grievance procedure is applicable
255 | to any and all provisions of this Agreement.
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257 | ~~Section 13H.~~ Reprisal
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259 | No reprisals of any kind will be taken by the Administration of the College and/or the Union
260 | against any Faculty Member because of his/her participation in this grievance procedure.
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262 | ~~Section 14I.~~ Files
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264 | Grievance materials will be maintained in a file designated by the College and separate from
265 | personnel files as permitted by and in accordance with the Chapter 1012.81, and Florida Public
266 | Records Law. A copy of the arbitrator's decision shall be placed in the Grievant's personnel file.
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