

	FGCU POLICY 3.050	Responsible Unit: Human Resources
	Appeal of Disciplinary Actions	

A. POLICY STATEMENT

All Employees are encouraged to seek and obtain answers to questions or concerns relating to their employment and working conditions informally through normal, day-to-day supervisory contacts and channels. However, there are occasions where informal discussions do not suffice, especially when it relates to disciplinary actions. This Policy addresses and allows an Employee to appeal a proposed disciplinary action, and provides the Employee an opportunity to be heard and present evidence.

B. REASON FOR POLICY

The purpose of this Policy is to provide a fair, efficient, and equitable formal process for an Employee to appeal a proposed disciplinary action.

C. APPLICABILITY AND/OR ACCOUNTABILITY

This Policy applies to all out-of-unit faculty, administrative and professional (A&P), and support personnel (SP) Employees, not governed by a collective bargaining agreement. The President’s direct reports may not appeal an employment action covered by this Policy.

D. DEFINITION OF TERMS

1. *Advisor*: Anyone, of the Employee’s choosing, who provides advice and support to the Employee.
2. *Days*: Refers to calendar Days. In the event an action falls due on a Saturday, Sunday, University holiday, or University closing, the action shall be considered timely if it is accomplished by 5:00 p.m. on the following business day.
3. *Designee*: An Employee with no personal involvement in the matter(s) giving rise to the disciplinary action, and no predetermined opinion on the appropriateness of the proposed disciplinary action. Designees shall also be trained to review and objectively assess evidence and convey a written recommendation based on the information received.
4. *Employee*: Person, as it relates to this Policy, classified as out-of-unit faculty, A&P, or SP personnel, not covered by a collective bargaining agreement.
5. *Notice of Intent (Notice)*: Written notice of the intent to impose a disciplinary action as defined in FGCU Regulation 5.016, Disciplinary Actions.

6. *Witness*: An individual who has firsthand knowledge about facts relating to the circumstances leading to the proposed disciplinary action under appeal. Only individuals capable of providing relevant evidence will be called upon. Character evidence, personal opinions, and speculation are generally not considered relevant.

E. GENERAL MATTERS OF OPERATION

1. Except for disciplinary actions alleged to be due to discrimination or retaliation based on a protected activity or class, actions appealable under this Policy do not include:
 - a. Positions eliminated due to loss of soft funding;
 - b. Administrative leave with pay;
 - c. Dismissal of probationary Employees;
 - d. Dismissal of OPS Employees;
 - e. Issues related to wages; salary or benefits; performance evaluation, unless based on factors other than performance or conduct; reassignment of duties; demotions; or promotions, that do not concern an alleged violation of regulation or policy;
 - f. Management decisions related to the manner in which an Employee's work is classified or conducted, such as decisions about position classification or reclassification; assignment or reassignment of office space or location; work schedule; work assignments; work supervision or work resources; reorganization of a unit or department;
 - g. Layoff;
 - h. Financial exigency; or
 - i. Separation without cause.
2. Non-Discrimination, Anti-Harassment, and Sexual Misconduct

While allegations of a violation of FGCU Regulation 1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct, and its corresponding Policy are not addressed under this Policy, disciplinary actions arising out of a determination that it is more likely than not that a violation(s) of FGCU Regulation 1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct, and its corresponding Policy, occurred may be appealed under this Policy.

3. Records of Disciplinary Actions

Copies of all documents pertaining to disciplinary actions, except those otherwise protected or exempt by law, are a public record and shall be filed with Human Resources.

4. Time Limits

After the Notice has been sent, all time limits contained in this Policy may be extended for good cause by the Associate Vice President, Human Resources. The procedure indicated in this Policy shall be conducted as soon as practical and completed not later than twenty-one (21) Days following the date of the Notice, unless extended consistent with this Policy.

5. Records Request

The Employee may request institutional records, as permitted by law. The requested records shall be furnished within a reasonable time based upon the circumstances including the scope of the request. Any cost associated with the Employee's request for records shall be borne by the Employee prior to production of the records.

6. Witnesses

As the University has no subpoena power, no Employee can be compelled to speak regarding the incident at issue. Notwithstanding, an Employee may be subject to disciplinary action for failure to cooperate.

7. Right to Representation

An Employee has the right to be accompanied at any meeting covered under section F. by an Advisor. Notwithstanding, the Advisor is there to advise the Employee and may not speak for the Employee. The Employee must speak for him or herself.

8. Burden of Proof

The University has the burden of proving, by a preponderance of credible evidence, that good cause exists for the disciplinary action.

F. PROCEDURES

1. Oral or Written Reprimand

- a. When a supervisor believes or has reason to believe an Employee should be subjected to disciplinary action that involves an oral or written reprimand, the supervisor who is at a Director level or higher to whom the Employee reports shall provide the Employee with written Notice of the potential disciplinary action to be imposed. Such

Notice must state with particularity the basis for the disciplinary action. The Notice may be sent certified mail return receipt requested to the Employee's address on file, by U.S. Mail, hand delivery, email, or any other reasonable method through which delivery can be achieved.

- b. Within ten (10) Days from the date of the Notice, the Employee may, if desired, respond to the Notice, in writing, before a final decision is made on the proposed disciplinary action. The Employee should respond in writing to whomever issued the Notice and be provided an opportunity to meet with them in person, regarding the proposed disciplinary action. The issuer of the Notice may also speak with Witnesses with knowledge of the circumstances surrounding the proposed disciplinary action, if available, and review any documents relevant to the circumstances which prompted the potential disciplinary action. If the issuer of the Notice needs any assistance, such request may be made to the Associate Vice President, Human Resources.
- c. After considering any response, additional information, and evidence provided by the Employee, and affording an opportunity to meet with the Employee, if requested, the issuer of the Notice, in consultation with the Vice President and General Counsel, or designee, may decide whether or not to impose the disciplinary action.
- d. After ten (10) Days from the date of the Notice, if there is no response from the Employee, the supervisor may proceed with the proposed disciplinary action without further input from the Employee.

2. Suspension or Dismissal

- a. When a supervisor believes or has reason to believe an Employee should be subjected to disciplinary action that involves suspension or dismissal, the Vice President to whom the Employee reports, or the President, as appropriate, shall provide the Employee with a written Notice of the proposed disciplinary action. Such Notice must state with particularity the basis for the proposed disciplinary action. The Notice may be sent certified mail return receipt requested to the Employee's address on file, by U.S. Mail, hand delivery, email, or any other reasonable method through which delivery can be achieved.
- b. Within ten (10) Days from the date of the Notice, the Employee may, if desired, respond to the Notice, in writing, before a final decision is made on the proposed disciplinary action. The Employee should respond in writing to the Vice President, or President, as appropriate and, if desired, request to meet with the Vice President or President, in person, regarding the proposed disciplinary action.
- c. After considering any response, additional information, and evidence provided by the Employee, and affording an opportunity to meet with the Employee, if requested, the Vice President or President, in consultation with the Vice President and General Counsel or designee, may decide whether or not to impose the disciplinary action.

Alternatively, the Vice President or President may submit the Employee's response to the Associate Vice President, Human Resources, to assign the matter, as outlined in section F.2.e. below, to a Designee for review of the circumstances surrounding the proposed disciplinary action.

- d. After ten (10) Days from the date of the Notice, if there is no response from the Employee, the Vice President, or President, as appropriate, may proceed with the proposed disciplinary action without further input from the Employee.
- e. If a Designee is utilized, upon receipt of the Designee's report and recommendation, the Vice President or President shall, in consultation with the Vice President and General Counsel, or designee, within five (5) Days determine whether the disciplinary action shall be imposed. At that time, such decision shall be presented to the Employee in writing. The decision of the Vice President or President, as appropriate, is the final agency action.
- f. Designee Appointment

- 1) Assignment

If the Vice President or President chooses to have a Designee review the circumstances which prompted the proposed disciplinary action, the Associate Vice President, Human Resources, shall assign a Designee to consider any response and evidence provided by the Employee, and meet with the Employee in the event a meeting is requested. Such Designee shall be selected from a pool of Employees trained and familiar with reviewing evidence to determine if it is more likely than not that the disciplinary action should be imposed. The name of the Designee shall be furnished to the Employee as soon as practical after the selection is made.

- 2) Process Through a Designee

- a) The Designee shall review the Employee's statement submitted to the Vice President or President, speak with Witnesses with knowledge of the circumstances surrounding the proposed disciplinary action, if any, and review any relevant evidence. The Designee shall also provide for an opportunity to meet directly with the Employee facing the disciplinary action, provided such a request is made.
- b) Upon review of all the information received by the Designee, the Designee shall provide a written report, with findings and recommendations, to the Associate Vice President, Human Resources, for distribution to the Vice President, or President, as appropriate, as well as the Employee.

g. Administrative Leave in Conjunction with Dismissal

- 1) Any Employee whose disciplinary action may result in dismissal shall, as of the date of the Notice, be placed on administrative leave with pay until the disciplinary action, if any, is imposed.
- 2) An administrative leave with pay utilized as part of the potential disciplinary action cannot be used by the Employee in place of sick leave or annual leave. Consequently, an Employee on administrative leave with pay, in conjunction with an appeal under this Policy, must be physically available to appropriate University personnel to meet, as necessary. Failure to be physically available may result in a deduction of leave time from other applicable and/or available forms of leave or placement on sick leave or annual leave without pay.

Authority

Section 1001.706, Florida Statutes

BOG Regulation 1.001, University Board of Trustees Powers and Duties

FGCU Regulation 5.020, Appeal of Disciplinary Actions

History of Policy

New 01/10/19; Format Changed 09/10/19

APPROVED

*s/Michael V. Martin
Michael V. Martin, President

January 10, 2019
Date