

**SOUTH FLORIDA STATE COLLEGE
ADMINISTRATIVE PROCEDURES**

PROCEDURE NO. 1090

TITLE: FACULTY AND ADMINISTRATIVE GRIEVANCE PROCEDURE

BASED ON POLICY: 1.09 GRIEVANCE PROCEDURES

OFFICE OF PRIMARY RESPONSIBILITY: VICE PRESIDENT FOR ADMINISTRATIVE SERVICES/EQUITY

I. Purpose:

To establish procedures for due process that will ensure that a sincere and determined effort is made to satisfactorily resolve the complaints and grievances of the faculty and administrative employees

For the purpose of these procedures, grievance is defined as a disagreement involving the work situation in which an individual believes an injustice has transpired because of the lack of policy (procedure), because the policy (procedure) is unfair, because a deviation from policy (procedure) has occurred or because misinterpretation of policy (procedure) has been made.

II. Procedure (For nonrenewal of annual contract):

The South Florida State College District Board of Trustees (DBOT) or the president may determine not to renew the annual contract of an instructor or administrator in accordance with the following procedures:

A. Notice of nonrenewal

When a determination is made that an employee is not to be reappointed, that employee shall be notified in writing no later than April 30 prior to the expiration of the employee's contract, that upon expiration of his/her contract it will not be renewed. This requirement of notice does not prohibit dismissal for cause, in instances where the cause of dismissal occurs after the nonrenewal notification. This requirement of notice does not prohibit the notification of nonrenewal at a later date if funding is later determined to be unavailable to fund the position occupied by the employee. The notice of non-reappointment does not release the institution from the contractual commitment to compensation for the faculty member until the date the contract expires.

B. Reasons for nonrenewal

The reasons for the determination not to renew the employment contract need not be stated.

C. Expectancy of re-employment

The DBOT owes no further contractual obligation to the instructor or administrator at the expiration of his/her annual contract. The DBOT has no legal obligation to renew the contract of an instructor or administrator on annual contract. No employee of the College except the president is authorized to give express or implied assurances of employment beyond any current contract period to any employee of the DBOT. If an employee asserts that he/she has acquired an expectancy of re-employment, any such assertion including the basis therefore must be fully set forth in writing to the president within 15 days from the date of notice of nonrenewal and must be within the aforementioned limitations.

D. Constitutionally impermissible reasons for nonrenewal

The DBOT or the president shall not rely upon constitutionally impermissible reasons in making the determination not to renew an employment contract. If an employee asserts that his/her nonrenewal is based upon constitutionally impermissible reasons, such assertion including the basis therefore must be fully set forth in writing to the president within 15 days from the date of notice.

E. Hearing procedure upon an assertion by an instructor or administrator that there exists constitutionally impermissible reasons for the nonrenewal

1. The president shall appoint a faculty hearing committee or a hearing officer to hear the charges made by the instructor or administrator. In the case of an instructor, the committee shall be composed of five impartial tenured faculty not in the division of the faculty member requesting the hearing who are chosen by lot from a list of at least 10 tenured faculty submitted by the faculty council. In the case of an administrator, the committee shall be composed of three impartial administrators not in the division of the administrator requesting the hearing who are chosen by the president. The employee shall have the right to one preemptory challenge regarding the impartiality of a tenured faculty member or administrator to sit as a member of the hearing committee prior to presentation of the evidence. Both the institution and the employee may challenge for cause. The members of the hearing panel other than the member challenged shall determine whether he/she shall be excused. Any initial panel member who is excused upon challenge shall be replaced by lot as previously described. If a hearing examiner is assigned he/she shall be impartial and competent by reason of training or experience.

2. A notice of hearing shall be sent setting forth the time, place, and nature of the hearing pursuant to Florida Statute 120.
3. An attorney other than the board attorney will serve as legal advisor to the hearing committee or hearing officer, but shall not take part in deliberations.
4. Stenographic or mechanical device shall record the hearing and all testimony and exhibits shall be preserved.
5. The hearing shall be confined to a determination as to whether or not there exist facts that indicate that nonrenewal of the contending instructor or administrator is grounded on some unconstitutional basis or that he/she had an expectancy of re-employment. The instructor or administrator must bear the burden of proving his/her allegations.
6. The parties shall be afforded the following minimum rights to assure due process: oral and documentary evidence may be presented; the opportunity to confront and cross-examine adverse witnesses; representation by counsel at parties' own expense; and the opportunity to make opening and closing arguments.
7. Evidence: legal rules of evidence shall be adhered to except where reason and justice require waiver of strict compliance.
8. If the instructor or administrator makes a prima facie case, the institution must then come forward with facts to refute the claim and to support the reason or reasons for the decision not to offer reappointment.
9. The hearing body shall make written findings of fact, conclusions of law, and recommendations.
10. The transcript, together with the written findings, conclusions and recommendation of the hearing body, shall be delivered to the president. The president's decision whether to recommend the appointment or not recommend the appointment shall be final.

F. Procedure for termination of a contract for cause

1. The dismissal of instructional and administrative personnel for cause on either annual or continuing contract shall be conducted subject to the provisions of the State Board of Education regulations and Florida statutes, and in accordance with the following procedures.
2. The following shall constitute the grounds for termination of employment: (This list is representative but not all-inclusive.)

- a. Grounds for termination of employment for cause – all instructors or administrators:

Any instructor or administrator may be suspended, dismissed, or have his/her contract non-renewed by the DBOT upon the recommendation of the president, for any of the following reasons:

- 1) Consolidation, reorganization, or reduction of the College program that necessitates a decrease in the number of personnel employed
- 2) Immorality: defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the College or in the community
- 3) Misconduct in office: defined as deliberate, persistent, unlawful, or improper conduct by an individual which violates established rules, policies, directives, or guidelines for performing assigned duties; abusive or excessive use by an individual of alcohol or other debilitating intoxicants, drugs, or narcotics, which impair the effective performance of professional duties; participation by an individual in disruptive activities which interfere with the normal operation of the College; and/or a violation of the code of ethics of the education profession in Florida
- 4) Incompetency: defined as an inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity in one's assigned duties
 - a) In the determination of what constitutes inefficiency, the College may consider repeated failure to perform duties; repeated failure on the part of the instructor to communicate with and relate to students in the classroom to such an extent that students are deprived of minimum educational experience; or repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers and students under his/her supervision to such an extent that the programs for which he/she is responsible are seriously impaired.
 - b) In the determination of what constitutes incapacity, the College may consider a lack of emotional stability; a lack of adequate physical ability; a lack of general educational background; or a lack of adequate command of his/her area of specialization or job description.

- 5) Gross insubordination: defined as an intentional, constant, or continuing refusal to obey a direct order, reasonable in nature, and given by and with proper authority
- 6) Willful neglect of duty: defined as deliberate or negligent continued failure of an employee to perform the duties assigned to him/her; or a deliberate or negligent violation of the code of ethics of the education profession in Florida
- 7) Drunkenness: intoxication or habitual use of alcohol sufficient to impair the employee's job performance
- 8) Good and sufficient reasons, including but not restricted to instances where an instructor or an administrator:
 - a) Has refused to comply with State Board of Education regulations
 - b) Has refused to comply with the rules and regulations of the DBOT
 - c) Has been convicted of a felony
 - d) Has secured or maintained his/her position with the College through deceptive or fraudulent means
 - e) Has participated in disruptive activities that interfere with the normal operation of the College

3. Procedure for dismissal

- a. Notice: The president shall notify the instructor or administrator in writing of the intention to recommend the dismissal of said employee to the DBOT. The notice shall specify the charges made against the employee, the opportunity to request a hearing on said charges, and that the said request must be made in writing to the president within 14 calendar days of the date of the notice. When the instructor or administrator is notified, the president will furnish a copy of these procedures to said employee.
- b. If the employee requests a hearing, the president shall notify the DBOT in writing.
- c. Within seven work days of the date of request for hearing the president shall cause to be sent to the employee a written notification informing the employee of all the specific charges against him/her, the evidence which will be used to support the charges and a list of witnesses to be called with a brief statement as to what each witness shall testify. The president shall make available to the employee all

papers, statements, documents, or other tangible things deemed by the president to constitute evidence and shall inform the employee of his/her right to inspect, copy, photograph, or otherwise examine the same. The notice shall also inform the employee that he/she shall have the right to be heard in his/her own defense and to have with him/her an advisor of his/her own choosing who may act as counsel; that he/she or his/her counsel shall have the right to cross-examine adverse witnesses and to produce relevant witnesses and documents.

The employee shall determine whether his/her hearing shall be before the DBOT, or whether before a qualified hearing officer appointed by the DBOT, or before a review committee sitting as qualified officers. If the employee determines to have the charges heard by the DBOT, the DBOT shall schedule a public meeting to be held at least 15 calendar days after the date of notice and a notice specifying the date, time, and place of the hearing to be conducted upon the charges made by the president shall be sent to the employee. If the employee determines to have the charges heard by a qualified hearing officer or a review committee sitting as qualified hearing officers, the DBOT shall appoint a qualified hearing officer or review committee to sit as qualified hearing officers and cause to be sent to the employee and the hearing officer or hearing officers a notification of appointment. The hearing officers shall cause to be sent to the employee a notice of the date, place, and time of hearing to be conducted upon the charges preferred by the president, which shall not be less than 15 days from the date of notice.

4. Hearing officers

In the case of an instructor, the faculty review committee selected by the DBOT as hearing officers to hear charges against the employee shall consist of five impartial tenured faculty not in the division of the faculty member charged and they shall be selected by lot from a list of not less than 10 tenured instructors recommended by the faculty. In the case of an administrator, the committee shall be composed of three impartial administrators not in the division of the administrator charged and they shall be selected by lot from a list of not less than five administrators recommended by the president. The individual employee involved in any hearing shall have the right to one preemptory challenge regarding the impartiality of a tenured faculty member or administrator to sit as a hearing officer prior to presentation of the evidence. Both the institution and the employee may challenge for cause. The members of the hearing panel other than the member challenged shall determine whether he/she shall be excused. Any initial panel member who is excused upon challenge shall be replaced by lot as previously described. If a hearing officer is assigned, he/she shall be impartial and competent by reason of training or experience. Either party may request the appointment of a

hearing officer, or either party may object by filing an affidavit according to law.

5. Conduct of hearing

The hearing shall be conducted in accordance with Florida Statute 120, in the following manner:

- a. Stenographic or mechanical device shall fully and accurately record the hearing and all testimony and exhibits shall be presented.
- b. Formal hearings shall, in general, use the rules of evidence recognized by law in this/her state, but said rules shall not be strictly applied and shall be adapted to College circumstances when justice may require.
- c. The DBOT or hearing officers, upon the hearing of the cause, shall inform the parties of the following minimum rights and privileges and to afford same unto them to assure due process.
 - 1) Each party shall have the opportunity to make an opening statement.
 - 2) Each party shall have the opportunity to present his/her case or defense by oral and documentary evidence.
 - 3) Each party shall be afforded the opportunity to confront and cross-examine adverse witnesses.
 - 4) Each party shall be afforded the opportunity to be accompanied, represented, and advised by counsel, or to represent him/herself.
 - 5) Each party shall be afforded the opportunity to attain the assistance of the DBOT or hearing officers in obtaining the attendance to testify or the deposition of any witness, and in obtaining any other evidence.
 - 6) All witnesses shall be sworn or required to affirm to tell the truth prior to testifying.
 - 7) Each party shall be afforded the opportunity to make a final argument.
- d. All rulings as to the admissibility of evidence shall be made by the presiding member of the hearing panel, upon advice of counsel subject to objection by any member, any such objection to be determined by the majority vote of the members of the hearing panel.

- e. No public statements to news-gathering agencies or otherwise as to the cases pending before qualified hearing officers shall be made by any member thereof.
- f. The hearing is to determine whether or not the evidence has sustained the charges. The president must bear the burden of proving his/her charges.
- g. The DBOT shall appoint an attorney to act as legal advisor to the board. If hearing officers are to hear the charge, the DBOT shall appoint an attorney, other than the board attorney, to serve as legal advisor to the hearing committee. The attorney's role is that of procedural and technical advisor and he/she shall take no part in the deliberations of the hearing body. Upon request, he/she may assist in preparation of the written findings, conclusions, and recommendations or determination.

6. Hearing officers' determination

The hearing officers shall direct a thorough and prompt hearing. The DBOT shall provide the hearing officers with the time and resources necessary to conduct a fair and impartial hearing. At the conclusion of the hearing, the hearing officers shall make proposed findings of fact, conclusions of law, and recommendations as to the disposition to be made of the matter involved. The hearing officers shall make their determination solely upon legal rules of evidence adduced at the hearing. Within 10 days after receipt of such information, the parties shall have the right to submit written objections thereto, which objections shall be delivered to the presiding member for consideration by the hearing officers. An objecting party shall also have the right, upon request, to be heard by the hearing officers on such objections. After consideration by the hearing officers of any objections to its proposed findings of fact, conclusions of the law and recommendations, the hearing officers shall determine finally its findings, conclusion, and recommendations. Dissents from such determination shall be noted with dissenting hearing officers having the right to submit separate findings, conclusions, and recommendations, together with all evidence received, and the transcript of the proceedings shall be delivered by the presiding member to the chairman of the DBOT as soon as possible after determination is made, and a copy of the findings, conclusions, and recommendations delivered to each party.

7. District Board of Trustees' determination

- a. If the matter is heard by hearing officers, it shall receive and review the findings, conclusions, and recommendations of the hearing officers. The DBOT is not bound by the recommendations of the hearing officers and may take its own findings and conclusions from

the transcript and the evidence. The DBOT may hear oral argument upon request. The chairperson of the DBOT shall see that a final determination is rendered at the earliest possible date, but in no event should action be deferred more than 30 days from the time of receipt of the information from the hearing officers. In the event action is deferred more than 30 days, a written report stating reasons for the deferral shall be forwarded each party. The DBOT shall make final findings, conclusions, and a determination.

- b. If the DBOT hears the matter, it shall promptly conduct a fair and impartial hearing. At the conclusion of the hearing, it shall make proposed findings of fact, conclusions of law, and determination as to the disposition of the matter involved. The DBOT shall make their determination solely upon legal rules and evidence adduced at the hearing. Within 10 days after receipt of such information the parties shall have the right to submit written objections thereto to the chairperson and shall have the right, upon request, to be heard by the DBOT on such objections. After consideration of any objections to its proposed findings, conclusions, and determinations, the DBOT shall determine finally its findings, conclusions, and determination.
 - c. Action by the DBOT shall be final and becomes effective immediately.
 - d. In the event dismissal charges are sustained by a majority vote of the full membership of the Board and the employee is discharged, pay shall cease immediately and his/her contract of employment shall be canceled. In the event of suspension, pay shall be withheld as of the day of suspension. If the employee is found not guilty, salary payments shall be retroactive to the date of its suspension.
8. Appeal from decision of the DBOT.
- a. If the employee is under annual contract, the decision of the DBOT is the final administrative procedure available.
 - b. If the employee is under continuing contract, any such decision adverse to him/her may be appealed by him/her in writing to the State Board of Education through the commissioner for review; provided such appeal is filed within 30 days after the decision. The decision of the State Board shall be final as to sufficiency of the grounds for dismissal.

G. Non job-retention grievance procedures:

- 1. Informal
 - a. If a faculty member has a grievance, he/she should consult with his/her immediate supervisor within five work days of the grievance's

occurrence. No written record is to be made of this informal step in the grievance procedures.

- b. Before filing a formal grievance and as a part of the informal procedure, any aggrieved faculty member may seek the advice and counsel of the Faculty Council as it relates to resolution of said grievance through the informal administrative channel(s) or advice and counsel as to whether a formal grievance should be filed.

Such advice and counsel is in no way to be construed as a part of the formal grievance procedure nor is such advice and counsel intended to constitute an investigative hearing.

2. Formal

- a. If no satisfactory solution is obtained by the faculty member in the informal step, he/she may initiate a formal grievance procedure within 10 work days of the informal step by filing a written statement of the grievance, the foundation for the grievance, and the remedy requested with his/her immediate supervisor.
- b. At each step in the formal grievance procedure, the aggrieved faculty member may have anyone present at all meetings if he/she so chooses.
- c. Each step in the formal grievance procedure shall be documented in writing and copies of the correspondence initiating and resolving the grievance shall be placed in the faculty member's permanent personnel file. Copies of all other correspondence relating to the grievance shall be placed in a separate file in the Office of Human Resources pending resolution of the grievance.
- d. The immediate supervisor has five work days within which to reply in writing to the faculty member's grievance.
- e. If the aggrieved faculty member does not obtain satisfaction at Step 4 within five work days of his/her immediate supervisor's reply, he/she may file his/her grievance with their dean or the vice president for academic affairs. The dean/vice president has seven work days to meet with the faculty member (if they so choose) and to reply in writing to the faculty member.
- f. If the aggrieved faculty member does not obtain satisfaction at Step 5 within five work days of his/her receipt of the director's reply, he/she may appeal to a fact-finding committee composed of the director, human resources (as chair), the dean of his/her department, the chair of the Faculty Council, one other administrator, and one other faculty member chosen by the other three. The fact-finding

committee has 10 work days within which to meet. This committee shall review the matter diligently, endeavoring to find all facts related to the matter, and shall forward a complete report and recommendation to the president within 10 work days of its meeting.

- g. The president shall have 10 work days to make a final decision and forward it to the faculty member and to the faculty member's personnel file. The decision of the president is the final College response to the faculty member's non-job retention grievance.

H. Employees selected to testify

Employees who are selected to testify in the course of fact-finding efforts as provided under a DBOT policy or procedure, shall be required to present all information known to them and requested of them. Any actions to intentionally withhold or willfully alter the information requested/presented shall be considered insubordination. The matter shall then be referred to the director, human resources for action.

HISTORY: Last Revised: 10/6/20

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