

**FLORIDA BOARD OF GOVERNORS  
NOTICE OF PROPOSED REGULATION REPEAL**

**DATE:** June 19, 2008

**REGULATION TITLE(S) AND NUMBER(S):** 6C-5.950 Disciplinary Actions, Complaints, and Appeals

**SUMMARY:** The Board of Governors has delegated authority to the board of trustees to develop university personnel programs. Therefore, the obsolete Board of Regents rule regarding disciplinary actions, complaints, and appeals needs to be repealed.

**FULL TEXT OF THE REGULATION:** The full text of the regulation proposed for repeal is posted on Board of Governor's Web site at [www.flbog.org](http://www.flbog.org). In addition, the full text of the regulation is available upon request to the Office of the Chancellor, at (850) 245-0466.

**AUTHORITY TO REPEAL REGULATION(S):** Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006.

**THE BOARD OF GOVERNORS' OFFICIAL INITIATING REPEAL OF THE REGULATION(S):** Vikki Shirley, General Counsel.

**COMMENTS REGARDING THE REPEAL OF THE REGULATION(S) SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW.** The comments must identify the regulation(s) on which you are commenting:

Vikki R. Shirley, General Counsel, Board of Governors, State University System, 325 W. Gaines Street, Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or [generalcounsel@flbog.org](mailto:generalcounsel@flbog.org).

## **5.950 ~~Disciplinary Actions, Complaints, and Appeals.~~**

~~(1) Each University shall administer standards for performance and conduct to ensure timely and equitable disposition of disciplinary problems. Discipline ranging from written reprimands to dismissal may be imposed for just cause.~~

~~(2) Each University shall institute predetermination and appeal procedures for all employees with permanent or tenured status.~~

~~(3) The Chief Administrative Officer shall establish procedures for addressing employee complaints consistent with the following:~~

~~(a) A tenured or permanent status employee may file a complaint concerning employment or alleging that the University failed to comply with the University complaint procedure with the Chief Administrative Officer and request specific action by the Chief Administrative Officer.~~

~~(b) A nontenured or nonpermanent status employee may file a complaint concerning only nondisciplinary matters affecting the employee's terms and conditions of employment with the immediate supervisor and the next level supervisor.~~

~~(c) A complaint, for the purpose of this process, is the allegation by the employee that any condition affecting the employee's terms and conditions of employment is unjust, inequitable, or create a problem. An employee shall not have the right to file a complaint concerning evaluations of performance unless the employee alleges that the evaluation is based on factors other than performance.~~

~~(d) Suspensions, reductions in pay, transfers, layoffs, demotions, job abandonment, and dismissals for USPS employees shall proceed directly to review under Section (4) USPS Arbitration Appeal Procedures.~~

~~(4) USPS Arbitration Appeal Procedure — An employee who has earned permanent status in his/her current classification shall have the right to appeal to an arbitrator ay suspension, dismissal, layoff, demotion, job abandonment, transfer, or reduction in pay, provided that the employee has not signed a statement indicating the action was voluntary. An employee whose position is classified to a lower class shall have the right to appeal only the reduction in pay, if any, which has occurred as a result of the demotion appointment.~~

~~(a) Request for Processing.~~

~~1. If an employee requests an arbitration, the employee shall, within 14 working days after the receipt of notice of the employment action from the University, file with the Board Office a completed Arbitration Request form. This form is incorporated by reference and is titled Arbitration Request Pursuant to Rule 6C-5.950(4) dated November 1, 1995, and can be obtained from the University Personnel Director. A copy of the form must also be filed with the Chief Administrative Officer and the employee's immediate supervisor.~~

~~2. Failure to initiate an arbitration request within the time limits prescribed shall be deemed a waiver of the right to arbitration. In the event of a question regarding timeliness of any notice, the date of receipt if transmitted in person, or the postmark if transmitted by mail, shall be determinative.~~

~~3. After the Request for Arbitration has been received, the Chancellor will determine whether the request has been filed in accordance with the provisions of this section and shall notify the employee or his/her representative, the University, and immediate supervisor of this determination. Additionally, the employee will be mailed a copy of this rule.~~

~~4. The Chancellor shall select an arbitrator on a rotational basis from an odd-numbered panel of at least seven arbitrators maintained by the Board and shall notify the University representative and the employee or his/her representative of the arbitrator selected. If the parties do not agree on the arbitrator selected, the selection shall be made by alternatively striking names from the panel. The right of first strike shall be determined by a coin toss. The employee will receive notice of the identity of the arbitrator selected and may request disqualification of the arbitrator based on cause within five calendar days of receipt of the notice. Cause is present when it appears the arbitrator was chosen through corruption, fraud, or other undue means.~~

~~5. When an action is both appealable under this rule and grievable under a collective bargaining agreement, the employee shall have the option of using either procedure. The filing of the arbitration Request form constitutes a waiver of any rights to review of the matter under an applicable collective bargaining agreement, Chapter 120, F.S., or other SUS or University review procedures. If the employee seeks a review of a matter in an alternative forum after requesting arbitration under this rule or fails to appear at the scheduled arbitration hearing, the Board and the University shall have no obligation to proceed further.~~

~~(b) Fees and Expenses.~~

~~1. All fees and expenses for the arbitrator will be paid by the University. When an employee is represented by an employee organization, the arbitrator's fees and expenses shall be paid by the party who fails to prevail in the arbitration or evenly split if the award sustains the appeal in part and denies it in part.~~

~~2. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration and shall be responsible for scheduling a reporter to record the proceedings. The parties shall share equally the appearance fee of the reporter and the cost of obtaining an original transcript and one copy for the party originally requesting a transcript of the proceeding. The requesting party shall, at its expense, photocopy the copy of the transcript received from the reporter and deliver the photocopy to the other party within five calendar days after receiving the copy of the transcript from the reporter.~~

~~(c) The employee may self represent or be represented. If the employee elects to be represented, the employee must deliver or send to the Board office within five working days after filing a Request for Arbitration, a written statement indicating the name, address, telephone number and qualifications of the representative and confirming that the employee as well as the representative will be present during the arbitration hearing, and that the employee agrees to his representation.~~

~~(d) If the aggrieved employee participates during working hours in the arbitration, the employee's compensation will not be affected by the time spent at the arbitration hearing. The employee must notify the immediate supervisor seven days in advance of his/her anticipated absence. An employee will not be permitted to prepare the case during working hours.~~

~~(e) Hearing.~~

~~1. The arbitrator shall hold the hearing at the city where the main campus of the university is located, unless otherwise agreed by the parties. The hearing shall commence within 30 working days of the arbitrator's acceptance of selection, or as soon thereafter as is practicable. Arbitration proceedings shall be conducted in accordance with his rule, supplemented by the Labor Arbitration Rules published by the American Arbitration Association, as Amended and effective on September 1, 1993.~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ The arbitrator may subpoena witnesses and compel the production of documents pertinent to the appeal. All requests for subpoenas must be made to the arbitrator no later than 10 working days prior to the arbitration date and each party is responsible for providing its own witnesses and documents which it wishes to present.~~

~~\_\_\_\_\_ 3. \_\_\_\_\_ Within 60 calendar days, the arbitrator shall issue to the University and the employee a written order which may affirm, reverse, or alter the decision of the University.~~

~~\_\_\_\_\_ 4. \_\_\_\_\_ The employee and the University agree that the decision of the arbitrator shall be final and binding on both parties. No judicial review of the arbitration order is available except as provided by Chapter 682, F.S.~~

~~\_\_\_\_\_ (f) \_\_\_\_\_ Jurisdiction of Arbitrator.~~

~~\_\_\_\_\_ 1. \_\_\_\_\_ The arbitrator shall neither add to, subtract from, modify nor alter the provisions of these rules, University rules and policies or procedures, or an applicable collective bargaining agreement. Arbitration shall be confined solely to the application and/or interpretation of those provisions and limited to the matters in the Request for Arbitration Form submitted for arbitration. No statements of opinion or conclusions not essential to the determination of the matters submitted shall be permitted. The arbitrator shall not review managerial decisions other than to ensure that such actions are in accordance with the applicable procedures under review. In the case of suspension, dismissal, and reduction in pay taken as a disciplinary action, the arbitrator shall determine whether there is just cause for such action.~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ The burden of proof shall be on the employee in layoff, demotion, reduction in pay and transfer actions when not taken as a disciplinary action, and in job abandonment. The burden of proof shall be on the employer in suspension, dismissal, demotion, and reductions in pay when taken as disciplinary actions.~~

~~\_\_\_\_\_ 3. \_\_\_\_\_ The arbitrator's order and award may reinstate an employee, with or without back pay. The back pay award shall not exceed the amount of pay the employee would otherwise have earned at the employee's regular rate of pay and shall not be retroactive to a date earlier than the date of the occurrence of the event giving rise to the action at issue and in no event more than fourteen (14) working days prior to initiation of the arbitration request. In no situation will the award exceed the actual loss to the employee or provide attorney fees to either party.~~

~~\_\_\_\_\_ 4. \_\_\_\_\_ Punitive damages are not permitted.~~

~~\_\_\_\_\_ 5. \_\_\_\_\_ The arbitrator may reduce a dismissal to a suspension for such time as the arbitrator may fix, or reduce the period of suspension, which order shall be binding on the University and employee concerned.~~

Authority: Section 7(d), Art IX, Fla. Const., History—New 1-24-96