

1 **Article 20**

2 **GRIEVANCE PROCEDURE AND DISPUTE RESOLUTION ARBITRATION**

3 20.1 Policy/Informal Resolution. The purpose of this article is to promote a prompt and efficient
4 procedure for the investigation and resolution of grievances. The procedures hereinafter set forth
5 shall be the sole and exclusive method for resolving the grievances of faculty members as defined
6 herein. The parties agree that all problems should be resolved, whenever possible, before the filing
7 of a grievance but within the time limits for filing grievances stated elsewhere in this article, and
8 encourage open communications between administrators and faculty members so that resorting to
9 the formal grievance procedure will not normally be necessary. The parties further encourage the
10 informal resolution of grievances whenever possible. At each step in the grievance process,
11 participants are encouraged to pursue appropriate modes of conflict resolution including the use
12 of mediation.

13 20.2 Resort to Other Procedures. It is the intent of the parties to first provide a reasonable
14 opportunity for resolution of a dispute through the grievance procedure and arbitration ~~arbitration~~
15 ~~dispute resolution~~ arbitration ~~dispute resolution~~ process. ~~Except as noted below, if prior to seeking~~
16 ~~resolution of a dispute by filing a grievance hereunder, or while the grievance proceeding is in~~
17 ~~progress, a faculty member requests, in writing, resolution of the matter in any other forum,~~
18 ~~whether administrative or judicial, the Board or the University shall have no obligation to entertain~~
19 ~~or proceed further with the matter pursuant to this grievance procedure.~~ Except as noted below, if
20 prior to seeking resolution of a dispute by filing a grievance hereunder, or while the grievance
21 proceeding is in progress, a faculty member requests, in writing, resolution of the matter in any
22 other forum, whether administrative or judicial, the Board or the University shall have no
23 obligation to entertain or proceed further with the matter pursuant to this grievance procedure. As
24 an exception to this provision, a grievant may file an EEOC charge while the grievance is in
25 progress when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C.
26 § 2000e et seq. Further, since the parties do not intend that this grievance procedure be a device
27 for appellate review, the President’s response to a recommendation of a hearing officer or other
28 individual or group having appropriate jurisdiction in any other procedure shall not be an act or
29 omission giving rise to a grievance under this procedure.

30 20.3 Definitions and Forms. As used herein:

31 (a) The term “grievance” shall mean a dispute filed on a form referenced in Section 20.3(c)
32 concerning the interpretation or application of a specific term or provision of this Agreement,
33 subject to those exclusions appearing in other Articles of this Agreement.

34 (b) The term “grievant” shall mean:

- 35 (1) a faculty member or group of faculty members who has/have filed a grievance in a
36 dispute over a provision of this Agreement which confers rights upon the faculty member(s);
37 (2) the UFF where it has filed a grievance without the aggrieved faculty member(s) in a
38 dispute over a provision of this agreement which confers rights upon such faculty members(s); or

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39 (3) the UFF where it has filed a grievance in a dispute over a provision of this Agreement.
40 A grievance filed by the FSU Chapter of the UFF which alleges a violation of its rights by the
41 University may be initiated at Step 2. A grievance of a decision made by the President or the
42 Provost is to be initiated at Step 2. The parties may agree to consolidate grievances of a similar
43 nature to expedite the review process.

44 (c) Grievance Forms. Each grievance, request for review, and notice of **peer panel request**
45 or post-grievance review arbitration (arbitration or Neutral Internal Resolution of Disputes [NIRD]
46 procedure) arbitration or Neutral Internal Resolution of Disputes [NIRD] procedure, must be
47 submitted in writing on the appropriate form attached to this Agreement as Appendix “C₁,” “D₁,”
48 or “E₁,” respectively, and shall be signed by the grievant. All grievance forms shall be dated when
49 the grievance is received. If there is difficulty in meeting any time limit, the UFF representative
50 may sign such documents for the grievant; however, the grievant’s signature shall be provided
51 prior to the Step 1 meeting or Step 2 meeting if filed directly at Step 2. The aforementioned
52 grievance forms, as well as Appendix “H₁,” may be filed by means of fax, United States mail, or
53 any other recognized means of delivery.

54 20.4 Burden of Proof. In all grievances except disciplinary grievances in accordance with Article
55 16, Disciplinary Action and Job Abandonment and any other exceptions stated elsewhere in this
56 Agreement, the burden of proof shall be on the faculty member. In disciplinary grievances, the
57 burden of proof shall be on the Board.

58 20.5 Representation. The UFF shall have the exclusive right to represent any faculty member in
59 a grievance filed hereunder, unless a faculty member elects self-representation or to be represented
60 by legal counsel. If a faculty member elects not to be represented by the UFF, the University shall
61 promptly inform the UFF in writing of the grievance. No resolution of any individually processed
62 grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall
63 have the right to have an observer present at all meetings called for the purpose of discussing such
64 grievance. The UFF Grievance Chair or representative shall be informed of the dates and times of
65 any such meetings at the same time as the other parties. The UFF Grievance Chair shall be sent
66 copies of all correspondence related to such, including grievance decisions at the same time as
67 they are sent to the other parties.

68 20.6 Grievance Representatives. The UFF shall annually furnish to the Board a list of all persons
69 authorized to act as grievance representatives and shall update the list as needed. The UFF
70 grievance representative shall have the responsibility to meet all classes, office hours, and other
71 duties and responsibilities incidental to the assigned workload. Some of these activities are
72 scheduled to be performed at particular times. Such representative shall have the right during times
73 outside of those hours scheduled for these activities to investigate, consult, and prepare grievance
74 presentations and attend grievance hearings and meetings. Should any hearings or meetings with
75 the dean or unit head, the provost, or their representatives necessitate rescheduling of assigned
76 duties, the representative may, with the approval of the appropriate administrator, arrange for the
77 rescheduling of such duties or their coverage by colleagues. Such approval shall not be
78 unreasonably withheld.

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79 20.7 Appearances.

80 (a) When a faculty member participates in an arbitration or in a~~an arbitration hearing or in~~
81 ~~a an arbitration hearing or in a~~ grievance ~~or post-grievance or post-grievance~~ meeting between the
82 grievant or representative and the Board or representative, that faculty member’s compensation
83 shall neither be reduced nor increased for time spent in those activities.

84 (b) Prior to participation in any such proceedings, conferences, or meetings, the faculty
85 member shall make arrangements acceptable to the appropriate supervisor for the performance of
86 the faculty member’s scheduled duties as defined in Article 9.1. Approval of such arrangements
87 shall not be unreasonably withheld. Time spent in such activities outside regular working hours
88 shall not be counted as time worked.

89 20.8 Formal Grievance Procedure.

90 (a) Facilitation. Consistent with the policy of informal resolution set forth in Section 20.1 of
91 this Article, no grievance shall be considered ripe for filing at Step 1 absent submission of a request
92 for facilitation. A request for facilitation shall be filed within forty-five (45) days of the date the
93 faculty member learned of the alleged act or omission giving rise to the dispute (or the most recent
94 in a series of alleged acts or omissions giving rise to the dispute). All requests for facilitation shall
95 be in writing by the affected faculty member(s) or the UFF, as appropriate, and submitted to the
96 Vice President for Faculty Development and Advancement or his/her designee. Such requests shall
97 contain a general description of the potential dispute, including dates, times, and locations, along
98 with copies of relevant documentation. Upon receipt of a request for facilitation, the Vice President
99 for Faculty Development and Advancement and the UFF shall engage in a process of facilitation
100 for a period of thirty (30) days, which may be modified by the parties’ mutual agreement, in an
101 effort to produce an informal resolution of the potential dispute. In matters designated in the
102 request for facilitation as time-sensitive, the facilitation period shall be fifteen (15) days. Such
103 fifteen (15) day facilitation period may be modified by the parties’ mutual agreement in writing.
104 All resolutions shall be reduced to writing, but shall be without precedent or prejudice to the
105 parties.

106 (b) Filing.

107 (1) Within fifteen (15) days from the conclusion of a facilitation period that failed to
108 produce an informal resolution, the grievant shall be entitled to file a Step 1 grievance with the
109 unit head, defined for the purpose of this Article as dean or comparable-level administrator, as
110 appropriate. The grievant may amend the Appendix “C” form up to and including Step 2 of the
111 grievance procedure so long as the factual basis of the complaint is not materially altered.

112 (2) A faculty member may seek redress of alleged salary discrimination by filing a
113 grievance under the provisions of Article 20. An act or omission giving rise to such a grievance
114 may be the faculty member’s receipt of the salary warrant for the first full-pay period in which the
115 annual salary increases referenced in Article 23 are reflected

116 (3) ~~The Where arbitration is allowed.~~ The Where arbitration is allowed. filing of a
117 grievance constitutes a waiver of any rights to judicial review of final agency action or to the
118 review of such actions under University procedures that may otherwise be available to address
119 such matters. This grievance and arbitration procedure shall be the sole review mechanism for

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120 resolving disputes regarding rights or benefits that are provided exclusively by this Agreement.
121 Except as otherwise provided herein, only those acts or omissions and sections of the Agreement
122 identified at the initial filing may be considered at a subsequent steps~~s~~.

124 (c) Time Limits. All time limits contained in this Article may be extended by mutual
125 agreement of the parties, except that the time limits for the initial filing of a grievance may be
126 extended only by agreement between the University and the UFF. Upon failure of the Board to
127 provide a decision within the time limits provided in this Article, the grievant or the UFF, where
128 appropriate, may appeal to the next step. Upon the failure of the grievant or the UFF, where
129 appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be
130 deemed to have been resolved by the decision at the prior step.

131 (d) Step 1.

132 (1) Meeting. The Chair/Dean/Unit Head or ~~his/her~~their representative and the grievant
133 and the grievant's representative shall meet at a mutually convenient time within fifteen (15) days
134 following receipt of the grievance. At the Step 1 meeting, the grievant shall have the right to
135 present any evidence in support of the grievance, and the grievant and/or the UFF representative
136 or the grievant's legal counsel (if selected pursuant to Section 20.5), and the Unit Head or
137 representative, shall discuss the grievance.

138 (2) Decision. The Chair/Dean/Unit Head or representative shall issue a written decision,
139 stating the reasons therefore, to the grievant's Step 1 representative within fifteen (15) days
140 following the conclusion of the meeting. Fifteen (15) days shall be determined by a receipt
141 executed by the office receiving the grievance, or by the date of mailing as determined by the
142 postmark. In the absence of an agreement to extend the period for issuing the Step 1 decision, the
143 grievant may proceed to Step 2 if the grievant's Step 1 representative has not received the written
144 decision by the end of the twentieth (20th) day following the conclusion of the Step 1 meeting. A
145 copy of the decision shall be sent to the grievant and to the local UFF grievance representative if
146 the grievant elected self-representation or representation by legal counsel.

147 (3) Documents. ~~Where practicable, Where practicable, ~~It~~~~The Step 1 reviewer shall
148 make available to the grievant, or grievance representative, documentation referenced in the Step
149 1 decision prior to its issuance. All documents referred to in the decision and any additional
150 documents presented by the grievant shall be attached to the decision, together with a list of these
151 documents. In advance of the Step 1 meeting, the grievant shall have the right, upon written
152 request, to a copy of any identifiable documents relevant to the grievance.

153 (4) Step 1 Meeting Waiver. The Step 1 meeting may be waived by mutual written
154 agreement between the Board and the UFF.

155 (e) Step 2.

156 (1) Review. If the grievance is not satisfactorily resolved at Step 1, the grievant may file
157 a written request for review with the Provost or ~~his/her~~their representative within fifteen (15) days
158 following receipt of the Step 1 decision by the grievant's Step 1 representative. Fifteen (15) days
159 shall be determined by a receipt executed by the office receiving the grievance, or by the date of
160 mailing as determined by the postmark.

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161 (2) Meeting. The Provost or the Vice President for Faculty Development and
162 Advancement representative and the grievant and the grievant's representative shall meet at a
163 mutually convenient date and time not later than fifteen (15) days following receipt of written
164 notice of request for a Step 2 review. At the Step 2 meeting, the grievant shall have the right to
165 present any evidence in support of the grievance, and the grievant and/or the UFF representative
166 or the grievant's legal counsel (if selected pursuant to Section 20.5), and the Provost or
167 representative, shall discuss the grievance.

168 (3) Personnel Actions or Decisions. In accordance with Section 1001.741, Florida Statutes,
169 personnel actions or decisions regarding faculty, including in the areas of evaluations, promotions,
170 tenure, discipline, or termination, may not be appealed beyond the level of a university president
171 or designee. Such actions or decisions must have as their terminal step a final agency disposition,
172 which must be issued in writing to the faculty member. If section 1001.741 limiting the use of
173 arbitration is struck or enjoined by a court of competent jurisdiction or amended by the legislature
174 to permit arbitrations of these decisions, such decisions may proceed as outlined below in Section
175 280.8-(e)(4) and Section 280.8-(f).

176 (4) Decision. The Provost or ~~his/her~~ Vice President for Faculty Development or
177 Advancement ~~their~~ representative shall issue a written decision, stating the reasons therefore, to the
178 grievant's Step 2 representative within fifteen (15) days following the conclusion of the review
179 meeting. Fifteen (15) days shall be determined by a receipt executed by the office receiving the
180 grievance, or by the date of mailing as determined by the postmark. In the absence of an agreement
181 to extend the period for issuing the Step 2 decision, the UFF may proceed to Step 3 (arbitration or
182 Peer Panel review, as appropriate ~~or to NIRD~~) ~~or to NIRD~~ if the grievant's Step 2 representative
183 has not received the written decision by the end of the twentieth (20th) day following the
184 conclusion of the Step 2 meeting. A copy of the decision shall be sent to the grievant and to the
185 UFF if the grievant elected self-representation or representation by legal counsel.

186 ~~Arbitration but may escalate to Step 3 NIRD Arbitration~~

187 (5) Documents. The decision shall not refer to any documents other than those presented
188 by the grievant and the Provost or representative at or prior to the Step 2 meeting, except by mutual
189 written agreement of the grievant and the Provost or representative. Documents referred to in the
190 decision and any additional documents presented by the grievant at or prior to the Step 2 meeting
191 shall be attached to the decision unless such documents are public and readily available, together
192 with a list of these documents.

193 (f) Step 3 Arbitration.

194 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF may,
195 upon the request of the grievant, proceed to arbitration by filing a written notice of the intent to do
196 so. Notice of intent to proceed to arbitration must be filed with the Office of the President within
197 fifteen (15) days after receipt of the Step 2 decision by the grievant's Step 2 representative and
198 shall be signed by the grievant and the state UFF President or representative, or state UFF Director
199 of Arbitration. Fifteen (15) days shall be determined by a receipt executed by the office receiving
200 the grievance, or by the date of mailing as determined by the postmark. The grievance may be
201 withdrawn at any time by the grievant or by the UFF President or Director of Arbitrations at any
202 point during Step 3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event

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203 a stipulation is not reached, the parties shall proceed to a hearing on arbitrability pursuant to
204 Section 20.8 (f)(4).

205 (2) Selection of Arbitrator. For the first filing of a notice of intent to arbitrate during the
206 term of this contract, representatives of the University and the UFF shall meet within fifteen (15)
207 days after receipt of a notice of intent to arbitrate, for the purpose of selecting an Arbitration Panel,
208 which will be used for any further arbitrations during the term of this contract. The parties will
209 meet to select an arbitrator from an Arbitration Panel consisting of no fewer than six (6) members.
210 Selection of an individual arbitrator shall be by mutual agreement or by alternately striking names
211 from the Arbitration Panel until one name remains. The right of the first choice to strike from the
212 list shall be determined by the flip of a coin. If the parties are unable to agree on a panel of
213 arbitrators, they shall follow the normal American Arbitration Association procedure for the
214 selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not
215 a member of the Arbitration Panel. The arbitration shall be held within sixty (60) days following
216 the selection of the arbitrator.

217 (3) Authority of the Arbitrator.

218 a. The arbitrator shall neither add to, subtract from, modify, nor alter the terms or
219 provisions of this Agreement. Arbitration shall be confined solely to the application and/or
220 interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator
221 shall refrain from issuing any statements of opinion or conclusions not essential to the
222 determination of the issues submitted.

223 b. Where an administrator has made a judgment involving the exercise of discretion,
224 such as decisions regarding tenure or promotion, the arbitrator shall not substitute the arbitrator's
225 judgment for that of the administrator. Nor shall the arbitrator review such decision except for the
226 purpose of determining whether the decision has violated this Agreement. If the arbitrator
227 determines that the Agreement has been violated, the arbitrator shall direct the University to take
228 appropriate action that the arbitrator shall specify. An arbitrator may award back salary where the
229 arbitrator determines that the faculty member is not receiving the appropriate salary from the
230 University, and any other payments to which a faculty member is entitled by the provisions of this
231 Agreement, but the arbitrator may not award other monetary damages or penalties. If notice that
232 further employment will not be offered is not given on time, the arbitrator may direct the University
233 to renew the appointment only upon a finding that no other remedy is adequate, and that the notice
234 was given so late that (a) the faculty member was deprived of reasonable opportunity to seek other
235 employment, or (b) the faculty member actually rejected an offer of comparable employment
236 which the faculty member otherwise would have accepted.

237 c. An arbitrator's decision awarding employment beyond the sixth year shall not of
238 itself entitle the faculty member to tenure; however, the decision shall not curtail their right to re-
239 apply for tenure. In such cases the faculty member shall serve during the seventh year without
240 further right to notice that the faculty member will not be offered employment thereafter. If a
241 faculty member is reappointed at the direction of an arbitrator, the President or representative may
242 reassign the faculty member during such reappointment.

243 (4) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive issue(s)
244 and, whenever possible, determined by means of a hearing conducted by conference call. The
245 arbitrator shall have ten (10) days from the hearing to render a decision on arbitrability. If the issue

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246 is judged to be arbitrable, an arbitrator shall then be selected to hear the substantive issue(s) in
247 accordance with the provisions of Section 20.8(f)(2).

248 (5) Conduct of Hearing. The arbitrator shall hold the hearing in Tallahassee, unless
249 otherwise agreed by the parties. The hearing shall commence within sixty (60) days of the
250 arbitrator’s acceptance of selection and the arbitrator shall issue the decision within forty-five (45)
251 days of the close of the hearing or the submission of briefs, whichever is later, unless additional
252 time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact,
253 reasoning, and conclusions on the issues submitted. Except as modified by the provisions of this
254 Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures
255 of the American Arbitration Association.

256 (6) Effect of Decision. The decision or award of the arbitrator shall be final and binding
257 upon the University, the UFF, and the grievant, provided that either party may appeal such award
258 to an appropriate court of law pursuant to the Florida Arbitration Code, Chapter 682, Florida
259 Statutes.

260 (7) Venue. For purposes of venue in any judicial review of an arbitrator’s decision issued
261 under this agreement, the parties agree that such an appeal shall be filed in the courts in Leon
262 County, Florida, unless both parties specifically agree otherwise in a particular instance. In an
263 action commenced in Leon County, neither the Board nor the UFF will move for a change of venue
264 based upon the defendant’s residence in fact if other than Leon County.

265 (8) Fees and Expenses. All fees and expenses of the arbitrator shall be divided equally
266 between the parties. Each party shall bear the cost of preparing and presenting its own case. The
267 party desiring a transcript of the arbitration proceedings shall provide written notice to the other
268 party of its intention to have a transcript of the arbitration made at least one week prior to the date
269 of the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype
270 reporter to record the proceedings. The parties shall share equally the appearance fee of the
271 stenotype reporter and the cost of obtaining an original transcript and one copy for the party
272 originally requesting a transcript of the proceedings. The requesting party shall, at its expense,
273 photocopy the copy of the transcript received from the reporter and deliver the photocopy to the
274 other party within five days after receiving the copy of the transcript from the reporter.

275 (9) Retroactivity. An arbitrator’s award may or may not be retroactive as the equities of
276 each case may demand, but in no case shall an award be retroactive to a date earlier than sixty (60)
277 days prior to the date the grievance was initially filed in accordance with this Article.
278

279 (g) Step 3 Peer Panel Recommendations. In accordance with Section 1001.741, Florida
280 Statutes, cases involving personnel actions or decisions regarding faculty, including in the areas
281 of evaluation, promotions, tenure, discipline, or termination, the faculty member shall be provided
282 with the opportunity for a review by an appropriate faculty committee as described in paragraph
283 20.8(g)(6) below (hereinafter referred to as the “Peer Panel” or the “Panel”) prior to issuance of
284 the Notice of Discipline or proposed administrative action. This peer panel shall serve as the peer
285 review panel specified in Regulation 6C2-1.004(6)(b)3, Florida Administrative Code (Article VI,
286 Section B, paragraph 8.a of the University Constitution.

287 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF may,

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288 upon the request of the grievant, proceed to the Peer Panel step by filing a written notice of the
289 intent to do so. Notice of intent to proceed to the Peer Panel step must be filed with the Office of
290 the President within fifteen (15) days after receipt of the Step 2 decision by the grievant's Step 2
291 representative and shall be signed by the grievant and the state UFF-FSU President or
292 representative. Fifteen (15) days shall be determined by a receipt executed by the office receiving
293 the grievance, or by the date of mailing as determined by the postmark. The grievance may be
294 withdrawn at any time by the grievant or by the UFF-FSU President at any point during Step 3.

295
296 (2) The process provided hereby consists of the opportunity to submit written materials
297 to the Peer Panel, whose members shall individually and independently consider the evidence and
298 submit separate recommendations reflecting their individual points of view to the President or
299 representative.

300 (3) Invoking tThis process shall not waive the right of a faculty member to file a
301 grievance in accordance with this CBA, or any other adjudicatory due process proceeding
302 following the issuance of a final Notice of Discipline or proposed action.

303 (4) Alternatives. As an alternative to the peer review panel, the faculty member may
304 elect to meet with the President or representative, in addition to submitting a written statement to
305 the President or representative. The faculty member may include in their response supporting
306 materials from other individuals. Such election must be made in writing and delivered to the office
307 of the President or representative within ten (10) calendar days of receipt of the notice of intent to
308 suspend, demote, or terminate.

309 (5) The faculty member's failure to timely request the peer panel or, in the alternative,
310 to follow through with a timely meeting with the President or representative, will constitute a
311 waiver by the faculty member of further proceedings under Section 20.8(g) Step 3 Peer Panel.
312 Failure of the faculty member to submit a timely written statement to the Peer Panel will constitute
313 a waiver of the opportunity to submit a written statement. In that event, the Panel will offer its
314 opinions based on the written material submitted by the President or representative.

315 (6) Peer Panel. Upon the timely request for a peer panel, the President or representative
316 will immediately inform the Chairperson of the Faculty Senate Grievance Committee (hereinafter
317 referred to as the "Chairperson"), who will within ten (10) calendar days of being informed shall
318 designate, from among the members of that Committee, three (3) faculty members who will
319 participate individually and independently as the Peer Panel. The Chairperson will notify the
320 President or representative, the UFF Grievance Chair, and the faculty member of the establishment
321 of the Peer Panel.

322 (7) Submission of Information. Upon establishment of the Panel, the President or
323 representative will submit to the Chairperson written materials to be considered by the Panel,
324 including the notice of the proposed action and the reasons therefore, with a copy to the faculty
325 member and the UFF Grievance Chair. Within ten (10) calendar days thereafter, the faculty
326 member may provide to the Chairperson, with a copy to the President or representative and the

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327 UFF Grievance Chair, a written statement or response to the President or representative's notice
328 and reasons, and any additional written documentation to be considered by the Panel. The
329 Chairperson will transmit copies of the foregoing information and/or documentation to the Panel
330 immediately upon receipt thereof. The Peer Panel may seek additional information from either
331 party as it deems necessary. The UFF Grievance Chair shall be provided with copies of any such
332 requests for additional information as well as the response.

333 (8) Recommendations. The members of the Panel will individually evaluate and
334 consider the notice of the proposed action and the reasons therefore and any additional
335 documentation submitted by the President or representative and the faculty member and, within
336 ten (10) calendar days of the deadline for submissions specified in 20.8(g)(6) above, will submit
337 to the President or representative individual written and signed recommendations, with copies
338 thereof to the faculty member and the UFF Grievance Chair. The recommendation shall express
339 the Panel members' individual opinions as to whether administrative action is warranted and, if
340 so, whether the proposed administrative action is appropriate under the circumstances or whether
341 an alternative proposed administrative action is warranted.

342 (9) Consideration of Recommendations. The President or representative will review
343 the Panel recommendations and take them into consideration in deciding whether the University
344 should initiate discipline and issue the Notice of Discipline pursuant to Section 16.6, or whether
345 other administrative action is appropriate. If the President or representative does not issue a notice
346 of disciplinary action, the notice of proposed disciplinary action shall not be retained in the faculty
347 member's evaluation file.

348 (10) Status of Records. By invoking in writing the Peer Panel process, the faculty
349 member will have consented to the disclosure to the Panel, for purposes of its process, evaluative
350 information. Records maintained for the purposes of any such investigation of misconduct,
351 including but not limited to a complaint against a faculty member and all information obtained
352 pursuant to the investigation of such complaint, shall be confidential until the investigation ceases
353 to be active or until the University provides written notice to the faculty member that the University
354 has either concluded the investigation with a finding not to proceed with disciplinary action or
355 other administrative action, concluded the investigation with a finding to proceed with disciplinary
356 action or other administrative action, or issued a Notice of Intent Letter.
357

358 20.9 Filings and Notification. With the exception of Step 1 and Step 2 decisions, all documents
359 required or permitted to be issued or filed pursuant to this Article may be transmitted ~~by fax,~~ United
360 States mail, or any other recognized delivery service (note: e-mail is not an acceptable form of
361 delivery). Step 1 and Step 2 decisions shall be transmitted to the grievant's representative(s) by
362 personal delivery with written documentation of receipt or by certified mail, return receipt
363 requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as referred to
364 in Section 17.5), the action will be considered timely if it is accomplished by 5:00 P.M. on the
365 following business day.

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366 20.10 Precedent. No complaint informally resolved, or grievance resolved at either Step 1 or 2,
367 shall constitute a precedent for any purpose unless agreed to in writing by the Board of Trustees
368 or representative and the UFF acting through its President or representative.

369 20.11 Processing.

370 (a) The filing or pendency of any grievance or ~~arbitration post-grievance~~ proceedings under
371 this Article shall not operate to impede, preclude, or delay the University from taking the action
372 complained of. Reasonable efforts, including the shortening of time limits when practical, shall be
373 made to conclude the processing of a grievance prior to the expiration of the grievant's
374 employment, whether by termination or failure to reappoint. A faculty member with a pending
375 grievance will not continue to be compensated beyond the last date of employment.

376 (b) Nothing herein shall be construed to authorize the ~~Chair/Dean~~/Unit Head, ~~the Dean~~, the
377 President, the Provost, or their representatives to refuse to respond to a grievance filed under this
378 Article.

379 20.12 Reprisal. No reprisal of any kind will be made by the University or the UFF against any
380 grievant, any witness, any UFF representative, or any other participant in the grievance procedure
381 by reason of such participation. In a grievance ~~or post-grievance procedure~~ ~~or post-grievance~~
382 ~~procedure~~ where the arbitrator ~~or panel~~ ~~or panel~~ has established that the grievant has made a prima
383 facie case of reprisal, the burden of proof shall be on the Board to demonstrate that there was no
384 reprisal.

385 20.13 Records. All written materials pertinent to a grievance shall be filed separately from the
386 evaluation file of the grievant or witnesses, except decisions resulting from arbitration, ~~post-~~
387 ~~grievance procedure, post-grievance procedure, final disposition,~~ or settlement.

388 20.14 Inactive Grievances. A grievance which has been filed at Step 2 or Step 3 and on which no
389 action has been taken by the grievant or the UFF for sixty (60) days shall be deemed withdrawn
390 and resolved in accordance with the decision issued at the prior Step.

391 20.15 Expedited Grievance Procedure for Conflict of Interest (Section 19.5).

392 (a) A grievance alleging a violation of Article 19 shall be heard at Step 1 by the ~~President or~~
393 ~~representative~~ Chief Compliance and Ethics Officer no more than seven (7) days after it has been
394 filed. The ~~President or representative~~ Chief Compliance and Ethics Officer shall issue a Step 1
395 decision no more than 7 days after the Step 1 meeting.

396 (b) A request for review of the Step 1 decision shall be filed ~~with the President Provost or~~
397 ~~representative~~ using Appendix "D₁"; no more than seven (7) days following the receipt of the Step
398 1 decision. The Step 2 meeting shall be held no more than 7 days after the receipt of Appendix
399 "D₁"; and the Step 2 decision shall be issued no more than 7 days after the meeting.

400 (c) A request for arbitration ~~or Peer Panel review or NIRD procedure or NIRD procedure~~
401 using Appendix "E" shall be filed within fourteen (14) days after receipt of the Step 2 decision.
402 An arbitrator ~~or Peer Panel~~ shall be selected by the ~~parties~~ or a Peer Panel shall be designated by

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403 the Faculty Senate Grievance Committee Chairperson, as appropriate, no more than fourteen (14)
404 days following the receipt of the Appendix “E₂”. The arbitrator or Peer Panel or NIRD Panel or
405 NIRD Panel shall issue a memorandum of decision or recommendations, as appropriate, within 7
406 days following the conclusion of the ~~dispute resolution arbitration arbitration dispute resolution~~
407 ~~arbitration or Peer Panel Review,~~ to be followed by a written opinion and award or
408 recommendation, as appropriate, in accordance with Section 20.8(f) ~~(5)~~ or 20.8(g), as appropriate.

409 (d) If Section 1001.741 limiting the use of arbitrations is struck or enjoined by a court of
410 competent jurisdiction or amended by the legislature to permit the arbitration of these decisions,
411 the parties shall establish a panel of three (3) experienced arbitrators to hear a grievance filed in
412 accordance with this Section. ~~Section 1001.741, Florida Statutes applies to this section as it~~
413 pertains to arbitration pursuant to Section 20.8(e)(3)(a).

414 ~~(d) For arbitrations, the parties shall establish a panel of three (3) experienced arbitrators~~
415 ~~to hear a grievance filed in accordance with this Section.~~

416 (e) All other provisions of Article 20 shall apply to these grievances, except as noted
417 above.

418 ~~20.16 — Neutral Internal Resolution of Disputes Procedure (NIRD). Florida Statute Sec.~~
419 ~~1001.741(2) prohibits arbitration on decisions relating to personnel actions or decisions~~
420 ~~regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or~~
421 ~~termination. Should this legal prohibition become invalidated, arbitration regarding such issues~~
422 ~~will be governed pursuant to 20.8(f). If the legal prohibition remains, the NIRD procedure~~
423 ~~replaces arbitration (20.8(f)) on decisions relating to personnel actions or decisions regarding~~
424 ~~faculty in the areas of evaluations, promotions, tenure, discipline, or termination.~~

425 ~~(a) Filing.~~

426 ~~—— (1) If the grievance has not been satisfactorily resolved at Step 2, the UFF may, upon~~
427 ~~the request of the grievant, proceed to the NIRD by a Panel by filing a written notice of the~~
428 ~~intent to do so. Notice of intent to proceed to NIRD by a Panel must be filed with the Office~~
429 ~~of the President within fifteen (15) days after receipt of the Step 2 decision by the grievant’s~~
430 ~~Step 2 representative and shall be signed by the grievant and the UFF-FSU President or~~
431 ~~representative. Fifteen (15) days shall be determined by a receipt executed by the office~~
432 ~~receiving the grievance, or by the date of mailing as determined by the postmark. The NIRD~~
433 ~~may be withdrawn at any time by the grievant or by the UFF during Step 3.~~

434 ~~—— (2) The parties shall stipulate to the issue(s) prior to the hearing before the Panel. If the~~
435 ~~parties are unable to stipulate to the issue(s) prior to such hearing, the parties shall proceed to~~
436 ~~a hearing on applicability of this procedure based on either procedural or substantive concerns~~
437 ~~(“applicability”). Issues of applicability shall be bifurcated from the substantive issues and,~~
438 ~~whenever possible, determined by means of a hearing conducted by conference call. The Panel~~
439 ~~shall have ten (10) days from the hearing to render a decision on applicability. If the process~~

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440 is judged to be applicable to the complaint, the Panel shall then proceed to hear the substantive
441 issue(s) in accordance with the provisions of this Procedure.

442 (b) — Creation of Pools for Selecting Panel Members.

443 —— (1) Representatives of the University and the UFF shall meet within ninety (90) days
444 after the start date of the BOT UFF FSU Collective Bargaining Agreement for the purpose of
445 creating two pools.

446 —— (2) One pool shall consist of University employees, defined as any University employee,
447 whether in a bargaining unit or not (“Employee Pool”). The Employee Pool shall consist of ten
448 (10) members, five of whom shall be appointed by the FSU President or designee and the
449 remaining five shall be appointed by the UFF FSU President.

450 —— (3) A second pool shall consist of FSU community members, defined as former
451 employees or alumni (“Neutral Pool”). The Neutral Pool shall consist of six (6) members appointed
452 by mutual agreement of the FSU President or designee and the UFF FSU President. If the
453 University and the UFF are unable to reach mutual agreement on six (6) Neutral Pool members,
454 selection shall be made from striking names from lists of six (6) names each submitted by the
455 University and the UFF until six (6) panel members are selected. The order of striking shall be
456 determined by the flip of a coin.

457 —— (4) The University and the UFF are encouraged to seek eligible Neutral Pool members
458 who are educators at other educational institutions, fully retired FSU faculty or administrators, or
459 professional mediators or arbitrators. Any member of the Neutral Pool who is not a professional
460 labor arbitrator shall be encouraged to complete training to qualify as a professional labor
461 arbitrator. The costs of such training will be shared equally by the University and the UFF. No
462 person involved in any business, employment or other relationship with the University that could
463 reasonably be presumed to create a conflict of interest with that person’s obligations as a neutral
464 arbiter of disputes involving the University shall be eligible for inclusion in the Neutral Pool.

465 —— (5) Members of the pools shall be able to serve on short notice and willing to serve for at
466 least one calendar year. In addition, the University and the UFF shall jointly provide all pool
467 members with orientation and training in the BOT UFF Collective Bargaining Agreement
468 including this NIRD by a Panel procedure. The costs of such training will be shared equally by the
469 University and the UFF.

470 —— (6) If at any time the number of members of the Neutral Pool drops below six (6), the
471 University and the UFF shall meet to select one or more additional Neutral Pool members through
472 the process outlined above. A new panel may be selected annually, at the initiation of the
473 University or the UFF, on written notice no later than November 30th.

474 —— (7) If at any time the number of members of the Employee Pool drops below ten (10),
475 the departing member’s vacancy shall be filled by the FSU President (or designee) or the UFF
476 FSU President, depending upon who appointed the departing member.

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477 (c) — Selection of a Panel.

478 —— (1) Within fourteen (14) days after receipt of a notice of intent to proceed to NIRD,
479 representatives of the University and the UFF shall meet for the purpose of selecting a Panel.

480 —— (2) The FSU President or designee shall appoint one (1) member of the Employee Pool
481 to serve on the Panel.

482 —— (3) The UFF-FSU President shall appoint one (1) member of the Employee Pool to serve
483 on the Panel.

484 —— (4) The appointees to the Panel pursuant to sections (2) and (3) above, shall select the
485 third member of the Panel from the Neutral Pool. Selection from among Neutral Pool members
486 shall be by mutual agreement or by alternately striking names from the eligible members of the
487 Neutral Pool list. Each side shall have two strikes. The right of the first choice to strike from the
488 list shall be determined by the flip of a coin. Unless the parties mutually agree to one of the
489 remaining two panelists, a flip of the coin will determine which of the remaining two Neutral Pool
490 members shall hear the complaint. The parties may mutually select as the third panel member an
491 individual who is not a member of the Neutral Pool.

492 —— (5) The third panel member, selected according to Article 20.16(c)(4), shall serve as the
493 Chair of the Panel and shall strive to follow the Code of Professional Responsibility for Arbitrators
494 of Labor Management Disputes of the National Academy of Arbitrators, the American Arbitration
495 Association, and the Federal Mediation and Conciliation Service.

496 —— (6) The hearing by the Panel shall be held within sixty (60) days following the selection
497 of the Panel.

498 (d) — Authority of the Panel.

499 —— (1) The Panel shall not add to, subtract from, modify, ignore, or alter the terms or
500 provisions of the BOT-UFF-FSU Collective Bargaining Agreement. NIRD by a Panel shall be
501 confined solely to the application and/or interpretation of the BOT-UFF-FSU Collective
502 Bargaining Agreement and the precise issue(s) submitted for NIRD. In rendering its decision, the
503 Panel shall refrain from issuing any statements of opinion or conclusions not essential to the
504 determination of whether the act or event giving rise to the complaint violated any applicable
505 Collective Bargaining Agreement provisions, University regulations or policies.

506 —— (2) Where an administrator has made a judgment involving the exercise of discretion,
507 such as decisions regarding promotion, the Panel shall not substitute its judgment for that of the
508 administrator. Nor shall the Panel review such decision except for the purpose of determining
509 whether the decision has violated the BOT-UFF-FSU Collective Bargaining Agreement.

510 —— (3) The Panel shall not have the power to award promotion or tenure.

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511 ~~_____ (4) If the Panel determines that the BOT-UFF-FSU Collective Bargaining Agreement has~~
512 ~~been violated, the Panel shall direct the University to take appropriate action. The Panel may award~~
513 ~~back salary where the Panel determines that the employee is not receiving the appropriate salary~~
514 ~~from the University, but the Panel may not award other monetary damages or penalties. If notice~~
515 ~~that further employment will not be offered is not given on time, the Panel may direct the~~
516 ~~University to renew the appointment.~~

517 ~~_____ (5) A Panel's decision awarding an Assistant Professor's employment beyond the sixth~~
518 ~~year shall not entitle the employee to tenure. In such cases the employee shall serve during the~~
519 ~~seventh year without further right to notice that the employee will not be offered employment~~
520 ~~thereafter. The Panel may decide to give the grievant another chance to go through the tenure~~
521 ~~process and be considered for tenure if the Panel decides that the correct process was not followed.~~

522 ~~(e) Conduct of Hearing. The Panel shall hold the hearing in Tallahassee, unless otherwise~~
523 ~~agreed by the parties. The hearing shall commence within twenty five (25) days of all Panel~~
524 ~~members' acceptance of selection, or as soon thereafter as is practicable, and the Panel shall issue~~
525 ~~the decision within thirty (30) days of the close of the hearing or the submission of briefs,~~
526 ~~whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing~~
527 ~~and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as~~
528 ~~expressly specified in this Procedure, the provisions of the Florida Arbitration Code, Chapter 682,~~
529 ~~Florida Statutes, shall not apply. Except as modified by the provisions of this Procedure, NIRD by~~
530 ~~a Panel proceedings shall be conducted in accordance with the Labor Arbitration Rules and~~
531 ~~Procedures of the American Arbitration Association.~~

532 ~~(f) Effect of Decision. The decision or award of the Panel shall be final and binding upon the~~
533 ~~University, the UFF, and the complainant, provided that either party may appeal to an appropriate~~
534 ~~court of law a decision that was rendered by a Panel acting outside of or beyond the Panel's~~
535 ~~jurisdiction pursuant to Florida law concerning the right of appeal of a similar decision rendered~~
536 ~~in an arbitration.~~

537 ~~(g) Venue. For purposes of venue in any judicial review of Panel's decision issued under this~~
538 ~~agreement, the parties agree that such an appeal shall be filed in the courts in Leon County, Florida,~~
539 ~~unless both parties specifically agree otherwise in a particular instance. In an action commenced~~
540 ~~in Leon County, neither the Board nor the UFF will move for a change of venue based upon the~~
541 ~~defendant's residence in fact if other than Leon County.~~

542 ~~(h) Fees and Expenses. All fees and expenses of the NIRD by a Panel shall be divided equally~~
543 ~~between the parties, unless mutually agreed otherwise. Each party shall bear the cost of preparing~~
544 ~~and presenting its own case. The party desiring a transcript of the Panel hearing shall provide~~
545 ~~written notice to the other party of its intention to have a transcript of the Panel hearing made at~~
546 ~~least one week prior to the date of the hearing. The party desiring such transcript shall be~~
547 ~~responsible for recording or scheduling a court reporter to record the proceedings. The parties shall~~
548 ~~share equally the appearance fee of the court reporter and the cost of obtaining an original transcript~~
549 ~~and one copy for the party originally requesting a transcript or recording of the proceedings. The~~

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550 ~~requesting party shall, at its expense, duplicate the recording or transcript received from the~~
551 ~~reporter and deliver the copy to the other party within five days after receiving the recording or~~
552 ~~transcript from the reporter.~~

553 ~~(i) — Retroactivity. A Panel’s award may or may not be retroactive as the equities of each case~~
554 ~~may demand, but in no case shall an award be retroactive to a date earlier than sixty (60) days prior~~
555 ~~to the date the grievance was initially filed in accordance with this Article.~~

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