

POLICY: 6Hx28: 3E-09



Responsible Official: Vice President,
Organizational Development and Human
Resources

Specific Authority: 1001.64, F.S.
Law Implemented: 1001.64, F.S.

Effective Date: 02-26-2014

Employee Dispute Resolution

Policy:

- I. Valencia College recognizes that employees should have the opportunity to express differences of opinion in a professional manner and as a result, disputes may occur in the workplace. The College has established a dispute resolution process as a resource for employees to resolve workplace-related disputes at the earliest opportunity to promote productive working relationships. There are two avenues for this process: informal and formal dispute resolution.
- II. The informal dispute resolution process is available for all College employees. It is a collection of common methods used to resolve conflict in the workplace; informal dispute resolution does not involve the use of a formal system of steps or require the completion of forms. This approach is often the most effective method for dispute resolution because it encourages the healthy and respectful exchange of ideas. The informal dispute resolution process provides three options for an employee:
 - A. Interpersonal discussions
 - B. Discussions with supervisor
 - C. Engaging Employee Relations
- III. The formal dispute resolution process is available for full-time College employees as an additional avenue for resolving more serious disputes. (Full-time employees are personnel as defined in Policies 6Hx28:3A-02.2 and 6Hx28:3A-02.4.) The College expects that every effort will be made on the part of the eligible parties to a workplace dispute to reach an amicable and rational solution to issues through the informal process prior to entering the formal dispute resolution process. The formal process provides a pair of methods to resolve conflict in the workplace involving forms and designated steps to enter, document, and close the process, and usually involves an opportunity for disputing parties to present the case for review by themselves or others. The formal dispute resolution process provides two options for a full-time employee:

- A. Facilitative Mediation - This approach manages the dispute beyond informal interpersonal discussions and provides additional opportunities to find mutually agreeable solutions.
- B. Grievance - The grievance process is where a panel of College representatives reviews the circumstances of a given situation and renders a recommendation. This approach may be necessary to address some disputes that have not been successfully resolved in other dispute resolution processes.

IV. Grievances, complaints, and appeals that can be presented, pursued, and reviewed under a more specific policy or procedure provided by the District Board of Trustees will not be presented or processed under this policy. It is the purpose of this policy to secure, at the earliest possible level, solutions to alleged disputes through procedures that allow such employees to present them free from coercion, interference, restraint, discrimination, or reprisal and by which personnel are afforded adequate opportunity to resolve such disputes. In addition, no retaliation of any kind will be made by the College or those engaging in any of the processes due to participation in any of the dispute resolution processes. Please note that employees who choose to use any dispute resolution processes are expected to continue to follow the reasonable directions of the supervisor before, during, and after the conclusion of the process.

Procedure:

I. Informal Dispute Resolution Procedure

The College encourages clear and collegial communication to promptly resolve disputes. An employee is encouraged to initiate discussions through any of the three available options (i.e., interpersonal discussions, discussions with supervisor, or engaging Employee Relations) as soon as reasonably possible from the date of the incident giving rise to the concern.

A. Definitions

1. Interpersonal Discussions – Informal discussion/communication is highly encouraged for all individuals seeking a resolve to a conflict or concern. Parties engage in open meaningful discussions in good faith and work with one another toward mutual resolution that is in the best interest of all involved. Addressing disagreements and differences directly with the individual with whom the conflict is occurring can be the most effective approach to solving a problem. Interpersonal discussions occur when parties involved in a dispute have one-on-one conversations in which both parties can reach mutual understanding and resolution. These discussions may take place over several conversations and may require or be improved by seeking assistance from a neutral party such as an Ombuds representative or someone from Employee Relations.

2. Discussions with Supervisor – If, for any reason, the employee does not feel comfortable, would like assistance in raising the concern with the other party, or if interpersonal conversations have not been successful, the employee(s) may bring the concern to the attention of their supervisor or next level of supervision. Supervisors may assist in providing additional information about the issue at hand, provide a sounding board and feedback for employees attempting to resolve a difference, and can provide an alternative perspective on the circumstances and/or possible solutions.
3. Engaging Employee Relations – The College offers a voluntary process of dispute reconciliation in which a neutral party from the Office of Employee Relations assists the parties in reaching a mutually-agreeable resolution. The role of Employee Relations in the informal dispute resolution process is to assist parties in resolving interpersonal conflicts and disagreements. It may include the coordination and support of the activities of the Employee Dispute Resolution System and the preparation and maintenance of necessary records. Based upon the information provided, the Office of Employee Relations may have sufficient reason to recommend referrals to the formal dispute resolution process or to the equal opportunity office, or to conduct an investigation in order to bring resolution to the issues presented.
4. Ombuds Representative – Ombuds representatives are colleagues/peers in the College who are trained to provide support, guidance, and feedback to employees who are having difficulty resolving conflicts. Ombuds representatives serve as advocates for the dispute resolution process, ensuring that employees are aware of and have access to the tools, processes, and policies in place to resolve disputes. An Ombuds representative may be engaged at any point in any of the three available options mentioned above. Ombuds representatives do not see nor do they create records, make decisions, or recommendations to anyone other than the party with whom they are engaged. Employees with concerns can select an Ombuds representative from the team with whom to work as they resolve their concerns/differences. Employees may select any member of the Ombuds team and are not limited to the representative from the employee’s location or employee groups.

II. Formal Dispute Resolution Procedure (Full-Time Employees)– Based upon the information provided, there may be sufficient reason to engage the formal dispute resolution process (i.e., facilitative mediation or grievance), equal opportunity office, and/or to conduct an investigation in order to bring resolution to the issues presented. When such hearings or conferences are held during working hours, all employees whose presence is required shall be excused from their regular duties for the purpose of attending such hearings or conferences and be considered “on duty” for purposes of overtime, travel reimbursement, etc.

A. Definitions

1. Facilitative Mediation (Formal Dispute Resolution)– Facilitative mediation is a process for full-time employees in which an internal or external third-party, neutral, trained professional assists parties to reach a mutually agreeable resolution to their dispute. This process is best utilized for resolving interpersonal disagreements and conflicts.

2. This process is not intended for alleged violation, misinterpretation, or misapplication of established College policies or practices; employee behavior concerns; or employee performance concerns. The facilitator sets the agenda for discussion, facilitates the meeting through exploration and validation of each party's point of view, searches for interests underlying each parties' position, manages group dynamics, summarizes and records information discussed, and assists with building consensus and finding solutions to their dispute. Facilitative mediation is a voluntary process and usually does not involve substantive issues; either party can decide to end the mediation at any time.
 3. Grievance (Formal Dispute Resolution)– Another option in the formal dispute resolution process is the Grievance Process, which provides the opportunity for full-time employees to register a complaint concerning adverse employment actions (including written warning, suspension, demotion, or termination), allegations of violations of academic freedom, arbitrary and capricious treatment, and/or assignment of work outside the scope of the job description, arising from a failure to observe established College policies or procedures; or which results from a misinterpretation or misapplication of said policies or practices. The formal grievance process at Valencia allows the employee to receive a hearing on the issue, receive an impartial recommendation and involves four steps including 1) if appropriate, the attempt to resolve differences using informal or less formal means; 2) the qualification for hearing (review of the case to determine whether or not it will be heard); 3) the hearing, and 4) the review of the hearing panel's recommendation by the designated College official.
 4. Grievance Coordinator – Representatives from the Office of Employee Relations/Human Resources are responsible for implementing the Grievance Process and ensuring that all elected hearing committee members are properly trained before they participate in the grievance process. In addition, Employee Relations representatives strive to provide neutral support and guidance to all participants in the process. The Employee Relations Office, acting as a neutral party, may render advisory assistance regarding procedural matters and interpretation of applicable policies to either/both the employee or respondent.
- B. Facilitative Mediation Procedure– A full time employee may contact the Office of Employee Relations/Human Resources for to discuss the appropriateness of facilitative mediation in a given dispute. The Employee Relations representative will then evaluate the circumstances to determine if the matter is suited to move forward toward facilitative mediation or should be recommended toward other means (i.e., equal opportunity officer, informal dispute resolution, grievance, etc.). If the Employee Relations representative determines that the matter should be addressed using facilitative mediation, the Employee Relations representative will be responsible for the coordination and logistics of the process.
1. Mediation sessions are confidential, except as required by law, and closed to the public. The parties are expected to speak for themselves and representatives are not

allowed to be present or to participate. While solutions are encouraged, the mediation outcome must comply with College policies.

- C. Grievance Procedure- If informal attempts to resolve a conflict are not successful or are not appropriate given the nature of the issue, full-time employees may file a formal written grievance. The person filing a grievance may not simultaneously maintain two separate grievance procedures on the same issue nor can he or she initiate another formal process if the other results in a decision not favorable to the person submitting the grievance.
- D. Grievable Actions (Matters eligible to be considered by the grievance committee, including but not limited to):
 - 1. Disciplinary actions including Written Warning, Suspension (without pay), Demotion, Termination of Employment (for employees not employed with a contract), or Termination of Employment Contract/Return to Annual Contract (in accordance with Policy 6Hx28:3F-03).
 - 2. Allegations of violations of academic freedom
 - 3. Arbitrary and capricious treatment or assignment of work outside of the scope of the job description (For example, an employment decision is arbitrary if it is not supported by logic or made without regard for the facts and circumstances presented; an employment decision is capricious if it is made without thought or a reasonable basis or in the absence of a rational connection between the facts of the matter and the choice made. Typically, arbitrary and capricious decision making involves bad faith or the failure to exercise honest judgment.)
- E. Non-Grievable Matters: matters listed below are not eligible to be addressed under this Formal Dispute Resolution Procedure and are either addressed by other policies as referenced or may be clarified by contacting the Office of Employee Relations for additional guidance on other applicable avenues for addressing concerns.
 - 1. Allegations of harassment, discrimination, retaliation – Refer to College Policy 6Hx28:2-03 (Investigating and Resolving Discrimination, Harassment and Sexual Harassment Complaints)
 - 2. Improper Activities (Refer to College Policy 6Hx28:10-1 Policy Against Improper Activities; Whistleblower Protection)
 - 3. Counseling (Refer to College Policy 6Hx28:3E-08 Disciplinary Action.)
 - 4. Annual performance review process or performance improvement plans (PIP)
 - 5. Involuntary Administrative Leave or suspension with pay
 - 6. Interpersonal disagreements or treatment that falls short of arbitrary and capricious

7. Contract renewals or decisions pertaining to the award of continuing contracts (tenure) – Refer to College Policy 6Hx28:3F-03 (Suspension, Dismissal, or Non-Renewal of Administrative, Professional, or Instructional Employees Under Continuing Contracts or on Annual Contracts)
8. Benefits
9. Selection or non-selection for a position
10. Work assignments and schedules that are within established job descriptions and qualifications
11. Abandonment of position as defined in College Policy 6Hx28:3F-05.2
12. Requests for discipline of another employee
13. Remedies requested as part of a grievance that are outside the College's scope of authority, ability or control
14. Voluntary demotions or reductions in pay
15. Correction of overpayment
16. Allegations of improper activities or retaliation involving whistleblowers - Refer to College Policy 6Hx28:1-10 (Policy Against Improper Activities; Whistleblower Protection)

F. Grievance Committee Structure and Responsibilities:

1. An impartial grievance panel is responsible for hearing grievances. The composition of the review committee, selected by the Grievance Coordinator from a pool of duly elected and trained panelists, will include five members plus a Committee Chair who are regular full-time Valencia employees as defined in Policies 6Hx28:3A-02.2 and 6Hx28:3A-02.4. In addition, each elected member shall have an alternate(s) available in the pool to ensure availability and that hearings are conducted in a timely manner. The committee members shall be elected by their respective employee groups for a two-year term with elections held January of the election year. In order to be eligible to serve, all committee members shall participate in the training program as developed and implemented by the Human Resources Office. The composition is as follows:
 - a. The Committee Chair, or designee, will serve as chair without voting privileges. The chair will be an eligible representative from the same employee group as the grievant (career, professional, faculty or administrative) and will be appointed for each grievance in accordance with these procedures by the Grievance Coordinator.

- b. The five (5) committee representatives will be one member from each employee group (career, professional, faculty, and administrative) plus one additional member from the grievant's employee group (career, professional, faculty, or administrative). Before the hearing, one of the committee members will also be identified as alternate Chair for the respective grievance should the Committee Chair become unable to complete his/her duties. The alternate Chair will be based upon the same employee classification as the grievant.
 - c. In the case of a grievance filed by a tenured faculty member with respect to the termination of the employment contract or return to annual contract, the Committee Chair shall be an eligible faculty member and the five (5) committee representatives will be three (3) faculty members and two (2) administrative members.
2. If a conflict of interest or perceived conflict of interest raises questions about a committee member's ability to remain impartial, the committee member may be recused from further participation by the chair (in consultation with the grievance coordinator). Any member of the committee may recuse him/herself by notifying the chair and the grievance coordinator. Should any member be recused, it is the responsibility of Office of Employee Relations/Human Resources to designate an alternate member from the affected employee group and notify the grievant.

G. Grievance Rules: The following rules will govern the conduct of the hearing:

1. The grievant is responsible for supporting his/her complaint that a College policy or procedure has been violated by a preponderance of the evidence.
2. The respondent will be permitted to present evidence in support of his/her actions regarding the issue.
3. Only the grievant and respondent(s) will be permitted to present evidence. Either party may request a witness(es) who may provide additional testimony to support his/her claim. The grievant may have a representative present at the hearing; however, the representative may not participate in the hearing and may be excused if his or her presence disrupts the hearing in any way. If either party wishes to have a representative present, he or she must advise the College via Office of Employee Relations/Human Resources at least three (3) business days prior to the hearing. The Grievance Committee may request specific documentation, additional information, or call witnesses as necessary.
4. The conduct of the hearing will be kept confidential to the extent permissible by law and as necessary and appropriate to protect the rights of the parties.
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H. Grievance Process Steps:

1. To ensure the opportunity for timely and equitable solutions to alleged grievances of full-time personnel, the College requires the following procedural steps be followed:

- a. Step 1 – A grievance must be filed in writing using the designated “HR Full-Time Grievance” form (HR Form #301), which must be signed (electronic or handwritten) and dated by the grievant in the designated area. The employee must submit the grievance along with required documents to the Office of Employee Relations/Human Resources through hard copy or sent scanned via email and received by the close of regular business hours within ten (10) working days after the date the employee had knowledge of or should have had knowledge of the incident, act, or omission that is the basis for the grievance. (Working day is defined as a day where the College is open for business. It shall exclude Saturdays, Sundays, and College holidays.)
 - i. If the employee attempted to go through any of the informal options, then the employee has ten (10) working days after the date of the final attempt through which informal means were not successful to submit the grievance along with required documents. If the form and related documentation are scanned and sent via email, the date/time of the sent email will be identified as the filing date/time of the grievance. The grievance form must include the following information (attach supporting documentation as needed):
 - a) a detailed, factual written description of the issue(s) that includes the incident, act, or omission the grievant alleges is the basis for the grievance, including date(s) of occurrence; if informal means were attempted, include a description of the attempts made and parties involved, including date(s);
 - b) the specific policy(ies) or procedure(s) alleged to have been violated, misapplied, or misinterpreted to include how the policy(ies) or procedure(s) has(ve) been violated or believed to be violated;
 - c) names and contact information of any witness(es) or those who have direct knowledge of the alleged incident, act or omission;
 - d) steps taken to date to resolve the complaint;

- e) the resolution the grievant is seeking to resolve the matter or remedy the situation; and
 - f) other documents the grievant believes support the grievance.
- ii. Grievances that are determined by the Grievance Coordinator to be eligible to be presented, pursued, and reviewed under a more specific policy or procedure provided by the District Board of Trustees may not be presented or processed under this policy. The grievant will be notified of such determination and provided more detailed information as to the process regarding the applicable policy.
 - iii. Thereafter, the decision to accept the grievance for consideration in a grievance hearing resides with the chair (in consultation with the grievance coordinator and Vice President of Organizational Development and Human Resources). Grievances that do not include the required information or are not filed by the deadline date may not be processed. If the item(s) presented in the grievance fall under the parameters of non-grievable matters, they do not include the required information, or the grievance is not submitted by the deadline date, the grievant will be notified of such determination and the grievance not processed. This determination is final.
 - iv. All notifications to the grievant will be communicated through a representative of the Office of Employee Relations/Human Resources.
- b. Step 2 – Formal written notifications of a hearing date will be made within ten (10) working days from receipt of initial filing of the grievance. The Office of Employee Relations is responsible for coordinating the grievance date, time, and location with the grievant, appropriate supervisory personnel and/or respondent, witnesses, and grievance committee. Notification of the scheduled hearing date is delivered via email to the respective parties.
- i. Document Requests - The grievant or College representative may request relevant document(s) to support his/her position in preparing for the hearing. The employee should request documents from the grievance coordinator. The request(s) should be specific and provide the date by which said documents are needed. Confidential, information may be redacted. The College will make reasonable efforts to accommodate the document requests; however, requests for documents with a response time of less than one (1) working day/24 hours may not be possible to

honor. The grievant may request the documentation prior to and independent of placing it on his/her evidence list that is submitted to the committee. Note: With the exception of documents requested by and presented by the grievance committee, only documents listed on their respective evidence lists may be presented by the grievant or the College representative at the hearing.

- ii. Grievance Information and Evidence to Be Presented – A representative from the Office of Employee Relations will supply the committee and respondent with the grievance information and a list of evidence to be presented at the hearing no later than three (3) working days prior to the scheduled hearing date. The list may include witnesses.
- c. Step 3 – The grievance committee will hear the grievance during which the grievant and respondent have an opportunity to clarify the evidence supporting their cases. Each party will have an opportunity to provide opening statements, responses, and closing statements. The grievance committee and/or grievance coordinator may ask questions of the grievant, respondent, and any witness(es). In addition, the grievance committee and/or grievance coordinator may request additional documentation from either party to include additional witnesses at any time during the process. The grievance committee and/or grievance coordinator may request additional documentation or witnesses prior to or during the course of the hearing. Prior to and during the hearing, the committee chair may rule that evidence or testimony presented is not applicable to or relevant to the basis of the hearing.
- i. After the hearing is completed, the grievance committee has ten (10) full working days to provide recommendations to the appropriate College representative. The report and recommendation(s) will be provided to the Vice President/Campus President responsible for the respective area. If the grievance involves the Vice President/Campus President responsible for the respective area, or the termination of a tenured faculty member, the report and recommendation(s) will be provided to the College President. The recommendation(s) must be supported by a preponderance of evidence provided (more probable than not), affirmed by a majority of the committee members, and signed by all committee members. The grievance committee may consult with the grievance coordinator regarding the content and composition of the recommendation prior to submittal to the Vice President/Campus President; however, the grievance committee determines the recommendation for the case.
 - ii. Step 4 – Based upon the initial recommendation, the respective Vice President/Campus President (or College President, if

applicable) has the authority to accept or modify the recommendation(s). Upon receiving the Panel's recommendation(s), the respective Vice President/Campus President (or College President, if applicable) will issue the final written decision to the grievance coordinator, who will distribute the decision to all relevant parties within ten (10) working days. In the case of termination of a contract of employment, the grievant may appeal the final written decision to the College President for consideration (or reconsideration). This appeal must be submitted in writing to the College President within five (5) working days of the grievant's receipt of the final written decision. Following the issuance of the final written decision, or the College President's decision in the case of an appeal of a termination of a contract of employment, as the case may be, the decision is the final action of the College's grievance process on the matters presented. If the Vice President/Campus President (or College President, if applicable) accepts a recommendation of an employee's termination of employment at the college, this recommendation will be placed on the Human Resources agenda for the next regular meeting of the District Board of Trustees for its appropriate action.

Related Documents/Policies:

None

Policy History:

Adopted 2-26-14; Formerly 6Hx28:8-03; Formerly 6Hx28:08-14, Amended 2-26-14; Formerly 6Hx28:3E-09.1 and 6Hx28:3E-09.2

Procedure History:

Adopted 2-26-14; Amended 3-27-14; Amended 2-26-14; Formerly 6Hx28: 3E-09.1 and 6Hx28:3E-09.2
