

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

REGULATION TITLES:	REGULATION NOS.
Bargaining Unit Employee Disciplinary Actions	FIU Emergency Reg. 2005-01
Bargaining Unit Faculty and Bargaining Unit Employees Vacancies, Selection, Appointments, Promotions, Internal Promotions, Reassignments, Transfers, and Demotions	FIU Emergency Reg. 2005-02
Nonreappointment and Resignation of Non-Tenured, Bargaining Unit Faculty	FIU Emergency Reg. 2005-03
Termination for Cause and Other Disciplinary Actions for Bargaining Unit Faculty and Bargaining Unit Employees	FIU Emergency Reg. 2005-04
Separation from Employment for Non-Bargaining Unit Employees	FIU Emergency Reg. 2005-05
Disciplinary Actions for Non-Bargaining Unit Employees and Certified Law Enforcement Personnel	FIU Emergency Reg. 2005-06

**STATEMENT OF FACTS AND REASONS FOR CONCLUDING THAT THE
PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES**

On June 29, 2005, The Florida International University Board of Trustees adopted the following proposed rules in accordance with the rulemaking procedure contained in the Florida Administrative Procedures Act ("APA Rulemaking Procedure"): Bargaining Unit Employee Disciplinary Actions (Rule 6C8- 4.006), Bargaining Unit Faculty and Bargaining Unit Employees Vacancies, Selection, Appointments, Promotions, Internal Promotions, Reassignments, Transfers, and Demotions (Rule 6C8-4.014), Nonreappointment and Resignation of Non-Tenured, Bargaining Unit Faculty (Rule 6C8-4.016), Termination for Cause and Other Disciplinary Actions for Bargaining Unit Faculty and Bargaining Unit Employees (Rule 6C8-4.019), Separation from Employment for Non-Bargaining Unit Employees (Rule 6C8-4.025), Disciplinary Actions for Non-Bargaining Unit Employees and Certified Law Enforcement Personnel (Rule 6C8-4.030) (collectively, "Personnel Rules"). The adoption of these Personnel Rules was part of a major revision of the University's personnel program regarding its non-bargaining unit employees that included the adoption of new personnel policies as well as these Personnel Rules by the Board of Trustees. The University commenced implementation of the new personnel program on July 1, 2005 and full implementation was scheduled for completion no later than mid-August 2005 with the inclusion of the Personnel Rules in the Florida Administrative Code.

On July 21, 2005, the Florida Board of Governors (BOG) adopted a Regulation Development Procedure for State University Boards of Trustees ("BOG Regulation Development Procedure"), which replaced the APA Rulemaking Procedure effective immediately. According to the BOG Regulation Development Procedure, rules that were in the process of completion pursuant to the

APA Rulemaking Procedure must be adopted pursuant to the BOG Regulation Development Procedure. Further, according to the new BOG procedure, the adoption of a regulation through the normal (i.e., non-emergency) procedure will take more than 45 days, taking into account that the Board of Trustees' next regular meeting is September 19, 2005. To avoid delay in the implementation of its personnel program, the Board of Trustees must act immediately and adopt its Personnel Rules as emergency regulations so that the University may move forward with the new personnel program for non-bargaining employees. Failure to adopt the emergency regulations will result in disruption to the personnel system of the University and create confusion for employees and Human Resources administrators.

The procedure is fair under the circumstances for several reasons. These emergency regulations on personnel matters are identical in substance to the proposed Personnel Rules adopted and authorized by the Board of Trustees at its June 29, 2005 meeting. As a result, the substance of these emergency regulations has been widely noticed to the University community and the public through several notices that are required under the APA Rulemaking Procedure. These notices include a Notice of Rule Development (including the right to request a rule workshop), and a Notice of Rulemaking published after the Board's adoption on June 29, 2005 (including a right to request a rule hearing). As a result of these notices, members of the University community requested and obtained copies of the Personnel Rules. Further, at the request of employees, both a rule workshop and rule hearing were held regarding the Personnel Rules. The Board of Trustees made changes to the Personnel Rules based on comments received from employees at the rules workshop. In addition, the Personnel Rules have been approved at public meetings of the Board, initially at the May 17, 2005 meeting of the Administration and Compensation Committee, and then at the full Board of Trustees meeting on June 29, 2005.

The emergency regulations can be viewed on the website of The Florida International University Board of Trustees or by following this link, <http://www.fiu.edu/trustees/regulations.htm>.

If you would like a copy of the emergency regulations, please contact Eli Deville, Coordinator, Administrative Services, Office of the General Counsel, (305) 348-2103.

THE EMERGENCY REGULATIONS TAKE EFFECT IMMEDIATELY UPON PUBLICATION OF THIS NOTICE.

DATE OF PUBLICATION: August 5, 2005.

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
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FIU Emergency Reg. 2005-04

**Termination for Cause and Other Disciplinary Actions
for Bargaining Unit Faculty, and Bargaining Unit
Employees.**

- (1) Definition: For purposes of this Regulation, "Bargaining Unit Employee" means all bargaining unit employees who are not certified law enforcement personnel.
- (2) Just cause shall be defined as:
 - (a) Incompetence; or
 - (b) Misconduct.
- (3) Termination or Suspension. Bargaining unit faculty, , and Bargaining unit employees may be terminated from employment or suspended with or without pay for just cause. An employee shall be given written notice of termination or suspension specifying the reason(s) and such action shall be in accordance with University policies and procedures, and applicable collective bargaining agreements. Following the issuance of termination or suspension notice, the employee may be reassigned.
- (4) Disciplinary action other than termination or suspension, with or without pay, may be imposed for just cause. Written notice of such disciplinary action, specifying the reason(s) therefor, shall be given to the bargaining unit faculty or bargaining unit employee by the President or representative. Any disciplinary action taken pursuant to this section shall thereafter be subject to applicable collective bargaining agreements, and University policies and procedures. Counseling shall not be considered disciplinary action.
- (5) Termination or Suspension Pending Hearing. Notwithstanding the provisions of subsection (2) above, when the President or representative has reason to believe that a bargaining unit faculty's or bargaining unit employee's presence on the job would adversely affect the functioning of the University or jeopardize the safety or welfare of any University employee or student, the President or representative may immediately suspend the bargaining unit faculty or bargaining unit employee from the performance of duties, with or without pay, pending an investigation or any requested grievance, arbitration or administrative hearing under University procedures or applicable collective bargaining agreements, and final administrative action pertaining hereto. If an employee suspended without pay under this section ultimately prevails in any grievance arising therefrom, the employee shall be reinstated with back pay.
- (6) Applicability. This Regulation does not apply to non-bargaining unit faculty, non-bargaining unit employees and employees who are certified law enforcement personnel.

Authority: 1001.74(19), FS.