I. Dispute Resolution Process

The Dispute Resolution process is designed to facilitate the resolution of conflicts between regular employees within the College when initial conflict resolution attempts have failed. (All non-regular employees are encouraged to use the resources discussed in policy 5800 "Conflict Resolution" for problem resolution.) This process supports the exploration of issues and problem-solving in an orderly manner within the College, using both informal and formal procedures. The process begins with Preliminary Actions and then moves through a series of Steps. It is the expectation of the College that employees use the Dispute Resolution Process before contacting outside parties and/or agencies to address their complaints.

A flow chart and definitions are provided in this policy for reference.

A. No Retaliation

No employee shall be subject to reprisal for using or participating in the Dispute Resolution Process. If it is determined that an employee has committed acts of retaliation in response to participation or perceived participation in this process, that person may be subject to disciplinary action up to and including termination.

B. Mediation

One conflict resolution option which can be utilized at any Step in the Dispute Resolution Process is mediation – Transformative Mediation and/or Directive Mediation. Both parties must voluntarily agree to mediate. In mediation, the parties use the assistance of a trained mediator in a good-faith attempt to resolve conflict. Mediators do not answer complaints or decide for or against either party, nor do they provide legal advice or participate in a grievance hearing. No written records of mediation discussions are kept, although the outcome – such as a mediation agreement – shall be documented and signed by the parties. While innovative solutions are encouraged, the mediation agreements must comply with College policies and procedures. Any agreement reached voluntarily by the parties may not be used as evidence in any subsequent Dispute Resolution Process. Parties are required to sign a mediation agreement which addresses confidentiality. Parties may choose that details about the mediation remain confidential unless all participants consent to their disclosure, although mediators have an obligation to report statements revealing illegal conduct or conduct that may endanger the participants or others. Failure to abide by a signed mediation agreement may result in disciplinary action.

C. Definitions

1. **Advocate:** An advocate assists the Complainant or Respondent with advice and support. An advocate may not attend discussions during Preliminary Actions or Steps A and B. The advocate must be a College employee and may be present but not represent the Complainant or Respondent during Steps C-F. The advocate cannot be part of the Grievance Panel.

2. **Complainant:** A Complainant is a College employee who is presenting the issue to be resolved through the Dispute Resolution Process.

3. **Complaint:** A Complaint is a work-related disagreement between two parties that they have been unable to resolve.

4. **Compliance Officer:** The Compliance Officer is the College employee who is responsible for coordinating the College's fair employment practices and who advises the Dispute Resolution Officer (DRO) and Grievance Panels on applicable laws and regulations.

5. **Confidentiality:** Information provided to and obtained by the DRO and Grievance Panel shall remain confidential except as both the Complainant and Respondent mutually agree to waive those rights. The DRO, Compliance

Officer, or Grievance Panel is empowered to obtain or exchange information relating to the investigation and resolution of the Grievance. Failure for anyone to keep this information confidential may lead to disciplinary action up to and including termination from employment.

6. **Conflict of Interest:** A conflict of interest is a set of circumstances or relationships that could potentially affect someone's ability to make an unbiased decision or act in an unbiased manner.

7. **Days:** Days in this policy are defined as work days, per the College's standard work week and calendar of official holidays. Under the discretion of the DRO, timelines may be increased due to extenuating circumstances (e.g. medical leave, prior authorized/planned vacation, etc.).

8. **Dispute Resolution Officer:** The Dispute Resolution Officer (DRO) is the College employee who takes on several roles during the Dispute Resolution Process. The DRO guides the parties through the Dispute Resolution Process and Steps. Another role is to act as facilitator of problem-solving meetings in Step A and Step B. The DRO is also responsible for determining grievance eligibility. The DRO administers and facilitates the formal procedures of the Dispute Resolution Process Steps C-F. It is the responsibility of the DRO to maintain a neutral position and ensure that neither the rights of the party(s) nor the College's policies and procedures are violated. The DRO serves as the official custodian of all records during the Dispute Resolution Process. The College President, in consultation with the Compliance Officer, shall appoint a designee in place of the DRO if, for some reason, the DRO is unavailable or otherwise cannot fulfill his/her responsibilities.

9. **Grievant:** In order to file a grievance, ***the Complainant must be a regular employee who is not in a provisional status***. Interim employees who were originally hired through a search process and are in an interim position are also eligible to be a Grievant. If the complaint becomes an eligible grievance, the Complainant is considered a Grievant.

10. **Grievance:** A grievance is a complaint of violation, unfair application, or misapplication of written College policies or written procedures where negative and tangible employment action has occurred to the Complainant using the "reasonable person standard". It must be brought forward by an eligible Grievant and involve an eligible Respondent. Only actions which qualify as a grievance may proceed to a hearing.

11. **Grievance Committee:** This group forms a pool of prospective members in the event a Grievance Hearing Panel must be seated. This committee consists of a total of 30 members, ten representing the Faculty, ten representing the Professional Staff, and ten representing the Classified Staff. The committee members shall reflect the diversity of the campus. The College President, in consultation with the constituent group leadership, shall appoint these individuals to committee membership for a period of one year beginning the day after spring graduation.

12. **Grievance Panel:** Five members, selected from the Grievance Committee, shall be activated in the event that a dispute progresses to a grievance hearing. The constituency groups of both parties in the grievance must be represented on the panel. No person shall be permitted to serve on the Grievance Panel if a conflict of interest exists. If any party thinks there is a conflict of interest, it needs to be brought to the attention of the DRO, who shall determine whether a conflict of interest exists.

13. **Reasonable Person Standard:** A fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something. (Source: Merriam-Webster's Law Dictionary.

Retrieved June 28, 2019, from: https://www.merriam-webster.com/legal/reasonable%20person).

14. **Received or Receipt:** To be considered "received" or a party to be "in receipt" there must be proof of receipt. Examples of proof include a signature by the person in receipt, postal confirmation, or email with a "read" receipt.

15. **Regular Employee:** A College employee who was originally hired through a formal search process (see policy 5110 "Employee Recruitment").

16. **Representation:** An employee who chooses legal assistance from outside the College does so at his or her own expense. The employee's attorney may advise the employee but shall not be permitted to be present or participate directly in any of the dispute resolution processes. The College's legal counsel is available to the College under the same conditions.

17. **Respondent:** The Respondent is a College employee who is alleged by the Complainant to be the other party in the conflict. In order to be named in a grievance, the Respondent must be a regular employee who is not in a provisional status. Interim employees who were originally hired through a search process and are in an interim position are also eligible to be a Respondent.

D. General Considerations

1. **Interested Parties**
   Should the Compliance Officer, the DRO, or any other involved person be party to the grievance or the College President determines that there is a conflict of interest with any of these individuals; the College President shall appoint a disinterested, qualified person to act in his/her stead. If the conflict of interest involves the College President, the Board President shall make the appointment of a disinterested, qualified person to act in the place of the College President. This person (or these persons) shall assume the powers and responsibilities of these roles as it relates to the Grievance Process.

2. **Other Considerations**
   Time limits are indicated in this document to provide for timely resolution of Grievances. However, the DRO may extend these time limits when extensions are thought to be in the best interest of a fair hearing.

   At the end of the Dispute Resolution Process, the DRO's and Compliance Officer's confidential record(s) of Steps C-F, including all evidence, shall be maintained in the Human Resource Office outside of the Complainant's and Respondent's personnel file for a minimum of 4 years.

II. Dispute Resolution Process and Steps

The Dispute Resolution Process includes several Steps during which a conflict may be resolved—the Preliminary Actions and Steps A-B are considered informal procedures, and Steps C-F are considered formal procedures. Resolution can take place at any step of the process with the mutual consent of the parties. During informal procedures, timelines and documentation of the complaint are not required, except that the Preliminary Actions to resolve complaints shall be initiated **within thirty (30) days** following the time at which the Complainant could reasonably have been aware of the complaint, but, in any event, **not after 90 calendar days** from the date of the occurrence. During formal procedures—Steps C-F, timelines and documentation of the complaint are required. The Dispute Resolution Officer (DRO) takes on several roles during the Dispute Resolution Process, one of which is to guide the parties through the Dispute Resolution process and steps.

Preliminary Actions - Informal

Step A Parties meet with DRO
Step B Parties meet with Supervisors and DRO

Formal Actions
Step C Parties enter Grievance Fact Finding Process
Step D Grievance Hearing
Step E Appeal to the College President
Step F Appeal to Board of Trustees

Preliminary Actions—Informal Procedure
The parties in conflict attempt to resolve the issue between themselves. Employees are encouraged to avail themselves of a variety of conflict resolution resources—articles, online training modules, and other informational sources are available on the College portal under "Conflict Resolution Resources" or through Human Resources. Human Resources also provides conflict resolution ideas and coaching for difficult situations. Another option is for the employee to discuss the problem or issue with his/her supervisor. The supervisor may be able to offer effective solutions or new ideas, as well as facilitate resolution depending on the situation. The supervisor provides another perspective on the issue(s) and College policies. Or, the employee may want to talk things over with a higher level manager instead of, or in addition to, his/her supervisor.

If the parties remain unsuccessful in achieving resolution between themselves, the parties move to Step A.

Step A: Meeting with the DRO—Informal Procedure
Step A begins when a party contacts and meets with the DRO. The DRO schedules a meeting between the parties. During this meeting, the DRO explains the Steps in the Dispute Resolution Process. The DRO consults on the mediation processes available—Transformative Mediation or Directive Mediation—as options available at **ANY TIME** during the Steps of the Dispute Resolution Process. The DRO then facilitates a problem-solving discussion with the parties. If unsuccessful in achieving resolution with the DRO's involvement in Step A, the DRO shall ask the parties to consider using the mediation processes available. If either party does not want to attempt mediation, the DRO shall direct the parties to Step B or Step C.

Step B: Discussions with the Dispute Resolution Officer (DRO) and Supervisors—Informal Procedure
If appropriate, the DRO schedules and facilitates a problem-solving discussion with the parties and their supervisors. If unsuccessful in achieving resolution with the DRO's and supervisors' involvement, the DRO shall again ask the parties to consider utilizing the mediation processes available. If they do not want to attempt mediation, the DRO shall direct the parties to Step C.

Step C: Grievance Fact Finding Process—Formal Procedure
Step C begins the formal components of the Dispute Resolution Process. Timelines and documentation of the complaint are key components of the formal procedures. Failure on the part of the Respondent to comply with the time limits of Step C shall cause the DRO to make a decision based solely on the information provided by the Complainant. Failure on the part of the Respondent to comply with the time limits of Step D shall allow the grievance to proceed in accordance with the policy. If the Complainant fails to initiate movement to the next level, the grievance is considered terminated. All parties shall be notified by the DRO of the status of the complaint if either of these situations apply.

Advocates may be utilized during Steps C-F. Not all complaints proceed to a hearing. In order to file a grievance, ***the Complainant must be an eligible Grievant***.

Step C is initiated by the Complainant informing the DRO in writing that she/he has not achieved resolution informally (including through Transformative Mediation and/or Directive Mediation) and wishes to proceed to the formal grievance

fact finding process.

- **Within 5 days** of receiving this notice, the DRO shall meet with both parties and explain the formal grievance procedure, which includes:
  - Grievance Fact Finding Process
  - Grievance Hearing
  - Appeal to College President
  - Appeal to Board of Trustees

- **Within 10 days** of this meeting, if the Complainant desires to continue, she/he shall file the *Complaint Summary for Grievance Fact Finding Process Form* (located on the HR Portal) with the DRO and the Respondent. To be considered "received" or in receipt, there must be proof of receipt by each party. This form requires the Complainant to describe the violation, unfair application, or misapplication of written College policies or written procedures, the negative and tangible employment action which has occurred to the Complainant, details about the situation, and the desired outcome.

- **Within 10 days** of the receipt of the *Complaint Summary for Grievance Fact Finding Process Form* by the DRO and the Respondent, the Respondent shall file a written response to the complaint to the DRO and the Complainant, which shall:
  - State the facts as alleged by the Respondent
  - Confirm or deny each fact alleged in the complaint
  - Agree or disagree to comply with the desired outcome stated in the complaint, or propose an alternative resolution.

- **Within 10 days** of the DRO's receipt of the Respondent's written response, the DRO shall research to determine if the complaint is eligible for a hearing. This determination shall be made by using the "reasonable person standard" – only complaints that a reasonable person would consider grievable under the grievance definition shall result in a hearing. The DRO shall notify the Complainant and Respondent of the eligibility determination in writing and the reasons for disqualification. If the DRO determines that the complaint is not eligible for a hearing, the Complainant and/or Respondent may request a review by the College President **within 5 days** from the receipt of the DRO's decision. This request for review must contain an explanation of why the Complainant and/or Respondent believes the DRO's eligibility determination is wrong and not in accordance with the grievance definition. If the College President is the Complainant or the Respondent, the review shall be conducted by the Board of Trustees Human Resources Committee. The College President, or the Board of Trustees Human Resources Committee in the case of the College President as Complainant or Respondent, shall render a written decision to the Complainant, DRO, and Respondent **within 10 days** from the receipt of the request for review. If the Complainant and/or Respondent does not agree with the College President's decision, he/she may provide a written appeal to the Board of Trustees Human Resources Committee **within 5 days** from the receipt of the College President's decision. This Committee shall make a decision **within 10 days** from the receipt of the appeal request. All eligibility review decisions by the Board of Trustees Human Resources Committee are final.

If the complaint is determined to be ineligible for a grievance hearing, both parties may choose to enter or re-enter Transformative Mediation and/or Directive Mediation to come to a resolution and/or return to Preliminary Action or Steps A and B.

Grievance: A grievance is a complaint of violation, unfair application, or misapplication of written College policies or written procedures where a negative and tangible employment action has occurred to the Complainant using the

"reasonable person standard." It must be brought forward by an eligible Grievant and involve an eligible Respondent. Only actions which qualify as a grievance may proceed to a grievance hearing.

Grievances are not applied to situations where other written processes are in place to handle disputes or appeals (e.g., Rank and Tenure Committee has an appeal process, policy 3630 "Rank and Tenure Process," section III.D.).

A grievance is designed as a venue to determine whether there has been an inconsistent application of rules and/or the misinterpretation or failure to follow written policies or written procedures where a negative and tangible employment action has occurred to the Complainant using the "reasonable person standard." In general, those actions which violate process and a negative and tangible employment action has occurred would qualify for a grievance. The decisions that are made are not grievable actions; only the way those decisions are determined may be deemed grievable. For example (this list is illustrative but not exhaustive):

Actions Which MAY Qualify as a Grievance

- An employee may grieve the application (or lack of application) of a policy where a negative and tangible employment action has occurred to the Complainant, but may not grieve a policy. There are internal procedures to address policy changes and modifications through employment policy review committee(s).
- A dispute between employees is grievable if there is a violation of written policy or written procedure where a negative and tangible employment action has occurred. Conflicts between individuals where there is no violation, unfair application or misapplication of written policy or written procedures and/or negative and tangible employment action may be resolved by using the resources listed in policy 5800 "Conflict Resolution" but are not grievable.
- A grievance may qualify when alleging a violation, unfair or misapplication of a process by which decisions were determined where a negative and tangible employment action has occurred to the Complainant, but cannot be used to question or challenge decisions relating to actions on promotions, classification, compensation issues, non-re-appointment, etc. – see Actions Which DO NOT Qualify as a Grievance.

Actions Which DO NOT Qualify as a Grievance

- An employee may not grieve the establishment or revision of wages, salaries, position or job classifications, or general benefits.
- An employee may not grieve the contents of state or federal constitutions, statutes, ordinances, personnel policies, procedures, rules, and regulations.
- An employee may not grieve the hiring, promotion, transfer, assignment, and retention of employees.
- An employee may not grieve a layoff, demotion, or suspension from duties because of lack of work, reduction in workforce, or job abolition.
- An employee may not grieve a termination.
- An employee may not grieve a situation where there are other written processes in place to handle disputes or appeals.

If the complaint is determined to be eligible for a hearing, **within 5 days** of the notification that the complaint is eligible, the Complainant may make a written request to the DRO and copy to the Respondent that she/he wishes to proceed to Step D, the Grievance Hearing. Both parties may choose to enter or re-enter Transformative Mediation and/or Directive Mediation to come to a resolution and/or return to Preliminary Actions, or Steps A and B.

Step D: Grievance Hearing—Formal

If the Complainant requests a grievance hearing at the end of Step C, the DRO shall arrange the hearing to be held **within 20 days** from the receipt of the hearing request.

The Grievance Panel shall be selected. The selection shall begin with the Grievant and Respondent alternately removing individuals from the list of 30 Grievance Committee members, with the Grievant beginning the process. Each party is entitled to remove members from the list without cause, except that at no time shall there be fewer than five members of each constituency group remaining on the list. When a list of 20 members remains, or both Grievant and Respondent are satisfied with the remaining members, the DRO shall select, by lot, one member from each constituency group of the Panel to ensure that the constituency groups of both the Grievant and the Respondent are represented. Once these first three are selected, the DRO shall select two more members by lot from the combined remaining list for a total of five panel members. The DRO shall then notify these members of their selection. If any selected member has a conflict or a conflict of interest related to the grievance, the Grievant, or the Respondent, she/he shall notify the DRO in writing. If the DRO perceives a conflict of interest involving any of the panel members, she/he may also require that individual be removed from the panel. The DRO shall then notify both Grievant and Respondent, and another selection shall be made by lot from the remaining list of members not stricken by the Grievant and Respondent, and without a conflict of interest. The DRO shall ensure that all of the constituency groups are represented. Because the Administrators are few in number, the members are not part of the Grievance Committee from which the Panel is selected. To address this lack of representation, the DRO shall appoint a member of the Administrative group to the five member Panel if the grievance is against a member of the Administrative constituency group. In other words, if the Grievant or Respondent is a Vice President or College President, then a Vice President shall be chosen by the DRO as one of the five panel members, otherwise members of the Administrative constituency group shall not participate on Grievance Panels.

Members of the Grievance Panel shall receive copies of pertinent records prior to the hearing. The DRO shall facilitate the Panel until the Panel has a chance to elect a chairperson from its own ranks. At this point the DRO shall act in an advisory capacity and be ex-officio and non-voting. In addition, the Panel shall elect a recorder from its ranks. The Grievant, Respondent, and any witnesses shall be administered an oath by the Compliance Officer.

The Grievance Hearing shall be a closed hearing unless all parties agree to an open hearing.

General Procedures of a Grievance Hearing

- The Chair shall ensure a fair, orderly, and expeditious hearing.
- Either party may bring an advocate, provided she/he informs the other party **at least 5 days** in advance of the hearing. Witnesses may also be presented by either party and the other party must be informed **5 days in advance** of the hearing unless necessitated by an intervening development. Attorneys (including the College's attorney) are specifically excluded from being present or directly participating in the hearing. The DRO and Compliance Officer shall attend.
- The hearing shall be confined to those issues related to the subject matter presented in the written complaint filed in Step C and issues reasonably necessitated by intervening development, and shall not be allowed to develop into a general inquiry into the policies and operation of a department or the College.
- If a party does not appear at the hearing, the Grievance Panel may base its decision on consideration of the documents provided and on the presentation of the case by the party present.
- To provide for an accurate record, all proceedings shall be audio recorded. The College's audio recording of the proceedings shall serve as the one official recording.
- Each side shall be given an opportunity to present its case, starting with the Grievant. Following presentations by both sides, the panel may ask questions or request additional verbal evidence. Any witness who testifies shall be open to questions from the panel and from the other side.

When the Panel is satisfied that it has sufficient information to render a decision, the Panel may adjourn the hearing and retire to a private conversation. The DRO and the Compliance Officer shall be present during this private discussion as ex-officio, non-voting representatives to solely act as procedural resources. The decision of the Panel shall be arrived at

by a majority vote. Based on its finding, the Panel shall render a written decision to the DRO, with copies to the Grievant and the Respondent **within 5 days** of the decision. The decision shall include a statement of pertinent facts, vote tally, and the reasons for the Panel's decision.

The Panel's decision may be appealed (see Step E).

Step E: Appeal to the College President—Formal
If the College President is party to the grievance, Step E shall be bypassed and the parties proceed to Step F.

Either party may appeal the Panel's decision by submitting a written appeal to the College President **within 10 days** of the Panel's written decision. Additional evidence shall not be permitted at this stage. The College President shall review the record of the proceedings and the Panel's written decision and may request a meeting of the Grievant and Respondent. The College President may also confer with the DRO and the Grievance Panel Chair. Based on the review of the Panel's decision and/or the meeting, the College President shall accept or reject the decision of the Grievance Panel or attempt to reach an alternate solution that is agreeable to both parties. The College President may, upon his/her sole discretion and for the benefit of the institution, attempt to facilitate this mutually agreeable solution that differs from the Grievance Panel's decision. However, if such attempt fails to gain the Grievant's and Respondent's approval, the College President shall approve or reject the Grievance Panel's decision as written. The College President's decision and the reasons for it shall be made in writing and distributed to the DRO, Grievant, and Respondent **within 20 days** of receiving the written appeal.

Step F: Appeal to the Board of Trustees—Formal
Either party may appeal the College President's decision by submitting a written appeal to the Board **within 10 days** of receipt of the College President's decision. Additional evidence shall not be permitted at this stage. The Board shall receive a full and complete record of all previous proceedings, beginning with Step C. If the Board is unable to render a decision based on the existing information, a meeting with the Grievant and the Respondent may be convened.

The Board shall draft a written decision based upon its findings, either accepting or rejecting the College President's decision or offering an alternative solution which is agreeable to both parties **within 20 days** of receiving the written appeal. The Board may, upon its sole discretion and for the benefit of the institution, attempt to facilitate this mutually agreeable solution that differs from the Grievance Panel's decision. However, if such attempt fails to gain the Grievant's and Respondent's approval, the Board shall approve or reject the College President's or the Grievance Panel's decision as written.

There is no internal provision for appeal of Board decisions.

Dispute Resolution Process Flow Chart

Revised & Adopted 08/13/2012
Revised & Adopted 08/11/2014
Revised & Adopted 11/09/2015