

ARTICLE 16
DISCIPLINARY ACTION AND JOB ABANDONMENT

16.1 The purpose of this Article is to provide a prompt and equitable procedure for disciplinary action, which shall be taken only for just cause.

(a) Just cause shall be defined as:

(1) incompetence, or

(2) misconduct.

~~The Board may impose for just cause disciplinary actions of varying severity, up to and including termination, providing that the punishment is modulated appropriately to fit the degree of misconduct. The set of potential disciplinary actions are specified in Section 16.3(c) below.~~

(b) University discipline, as distinguished from other forms of reproof or administrative action, shall be reserved for employee misconduct that is either serious in itself or is made serious through its repetition or its consequences. ~~(1) Admonitions, oral reprimands, and similar criticism shall not be considered disciplinary action.~~ (2) Counseling, including letters of instruction and recommendations for participation in an employee assistance program, shall not be considered disciplinary action.

(c) An employee shall not be disciplined for activities which fall outside the scope of employment.

(d) Statute of Limitation. In cases of alleged misconduct, no disciplinary process may commence if more than thirty (30) days have passed between the time when the Board knew or should have known about the alleged misconduct and the initiation of the investigatory or disciplinary process.

(e) No provision in this Article shall be interpreted in a manner that may abridge or violate an employee's academic freedom as defined in Article 5 or constitutional rights, nor shall an employee be disciplined for exercising such freedom or rights.

(f) Prior to investigatory questioning in a formal investigation in which the University has reason to believe that an employee may be disciplined, the that may reasonably be expected to result in disciplinary action, an employee shall receive written notice that he or she is entitled to UFF or other representation during such questioning.

(g) When involuntary leave with pay is imposed as a precautionary action, the employee shall receive all compensation and benefits that would have been received had the leave not been imposed, including compensation for any overload or supplemental employment scheduled prior to the imposition of the leave.

1 16.2 Due Process. The Board shall impose no disciplinary action for professional misconduct
2 except in accordance with the procedures for due processes set forth in this Article and, in Article
3 20 (Grievance Procedure and Arbitration), or in the Assignment Dispute Resolution procedure
4 detailed in Article 9. No disciplinary action shall be imposed until any formal hearing processes,
5 including grievances, have been completed.

6
7 16.3 Just Cause.

8
9 (a) No employee shall be subject to disciplinary action except for just cause.

10
11 (b) Just cause shall be defined as:

12
13 (1) incompetence, or

14
15 (2) misconduct.

16
17 (c) Criteria for Determining Incompetence.

18
19 (1) The Board and the UFF agree that: there are many ways to improve an
20 employee's performance, and that termination of an employee for incompetent
21 performance is an extraordinary remedy designed to address gross performance
22 deficiencies in extremely rare cases.

23
24 (2) In determining whether or not an employee is incompetent, evaluators shall
25 look at the employee's job as a coherent whole and examine comprehensively, in
26 the context of the employee's discipline, the individual's contributions in all areas
27 of academic responsibility.

28
29 (d) Criteria for Determining Misconduct. An employee may be disciplined for
30 misconduct only if the employee:

31
32 (1) Misrepresents professional credentials or job-related achievements;

33
34 (2) Fails to maintain professional licensure or clinical privileges necessary to
35 perform assigned duties;

36
37 (3) Is convicted of crime relating to the employee's area of academic expertise;

38
39 (4) Intentionally falsifies data or intentionally misappropriates the writings,
40 research, and findings of others;

41
42 (5) Is found to have committed discrimination or harassment, according to the
43 process described in Article 6;

44
45 (6) Grossly abuses authority or influence (e.g., discriminatory or retaliatory

actions, particularly where a pattern is evident);

~~(7) Commits theft of University property or intentionally damages or destroys University property; or~~

~~(8) Possesses or uses explosives, dangerous chemicals, ammunition, or weapons on campus or in areas controlled by the University, without the approval of the appropriate University authority.~~

16.34 Progressive Discipline.

(a) If an employee becomes the subject of disciplinary action, the Board shall follow the principle of implement progressive discipline as applied to professional employees.

(b) The type and severity of the discipline selected for a particular offense must be appropriately related to the nature and circumstances of the case.

(c) The only ~~formal~~ disciplinary actions that may be imposed on an employee are as follows, in order of increasing severity, oral reprimand, written reprimand, suspension with or without pay for a specified time of not more than six (6) months, and termination.:

(1) Written reprimand ~~censure consisting of a formal written expression of institutional rebuke, conveyed by the Board or representative, which contains a brief description of the censured conduct. The written reprimand shall include a statement that the disciplinary action is subject to the grievance procedure described in Article 20.~~

~~a. Written censure is to be distinguished from an informal written or spoken warning. An informal written or spoken warning is not an official disciplinary action.~~

~~b. The written censure shall be delivered confidentially to the employee and maintained in the employee's evaluation personnel file for no more than six (6) years, with the period of time specified in writing.~~

(2) Temporary reduction in salary of no more than ten percent and for no longer than one year, without change in rank or step. The written notice of temporary reduction in salary shall be delivered confidentially to the employee in writing and ~~The written notice shall specify the amount and duration of the reduced salary.~~

(3) Suspension without pay for a specified time of not more than six (6) months.
~~a. The terms of a suspension may include loss of normal academic privileges such as access to University property, participation in departmental governance, administration of grants, supervision of graduate students, and use of University administrative staff, and loss of other campus privileges such as parking and library privileges. b. The written notice of suspension without pay shall be specified in writing and delivered to the employee confidentially with the degree and duration of the suspension indicated therein. c. Suspension without pay as a~~

1 ~~disciplinary action is to be distinguished from involuntary leave with pay, which is a~~
 2 ~~precautionary action.~~

3
 4 ~~(4) Termination.~~ a. ~~A tenured appointment or any appointment of definite~~
 5 ~~duration may be terminated during its term only for just cause as described in Section 16.2,~~
 6 ~~above.~~ b. An employee shall be given written notice of termination at least six (6) months in
 7 advance of the effective date of such termination, except that in cases where the president or
 8 president's representative determines that an employee's actions adversely affect the functioning
 9 of the University or jeopardize the safety or welfare of the employee, colleagues, or students, the
 10 president or president's representative may give less than six months notice.

11
 12 (d) If an employee is found to have intentionally damaged or destroyed University
 13 property, the employee may be required to reimburse the University for the fair cost of repair or
 14 replacement of that property in addition to any other disciplinary action that may be imposed.

15
 16 16.45 ~~Fair Warning.~~ Pre-determination Procedures for Suspension or Discharge

17
 18 (a) Written notice. If the University intends to impose disciplinary action more severe
 19 than a written reprimand, the president or president's representative shall provide the employee
 20 with a written notice of the proposed action. If possible, this notice shall be hand-delivered to
 21 the employee and the employee shall acknowledge receipt in writing. Otherwise, the notice shall
 22 be mailed to the employee by certified mail, return receipt requested. This notice shall be
 23 considered received by the employee even if refused. This notice shall be signed by the president
 24 or president's representative and shall include the following:

- 25 (1) The action proposed by the University and its effective date;
 26 (2) A statement of the reasons for the proposed action;
 27 (3) A list ~~Copies~~ of all documents on which the University has based its proposed
 28 action and a statement that copies of these documents will be provided to the employee upon
 29 written request;
 30 (4) A statement that the employee may, within ten (10) days of receipt of the
 31 notice or receipt of requested documents (see 16.4(a)(3)), whichever is later, submit a written
 32 response and the name, address, and telephone number of the person to whom such a response
 33 should be sent;
 34 (5) A statement that the University shall consider the employee's written response,
 35 if provided;
 36 (6) A statement that the employee may, within ten (10) days of the receipt of the
 37 notice or receipt of requested documents (see 16.4(a)(3)), whichever is later, make written request
 38 for a conference with the president or president's representative;
 39 (7) A statement that the employee may grieve the proposed action using the
 40 procedure defined in Article 20 (Grievance Procedure and Arbitration) and that the University
 41 shall find a grievance of a proposed disciplinary action to be timely; ~~and~~
 42 (8) Copies of this article and Article 20; and
 43 (9) Notice that the employee may resign.

44
 45 (b) Conference. If the employee requests a conference, it shall be conducted by the

1 president or president's representative as follows:
2

3 (1) The person(s) conducting the conference shall convene it at a time and place
4 of mutual convenience. The person(s) conducting the conference shall not be the person(s)
5 responsible for handling Step 2 grievances for the University. Barring circumstances beyond the
6 employee's control, the employee must be available to meet at his or her normal workplace
7 within seven (7) days of making written request for the conference. The purpose of the
8 conference is to hear the employee's response to the proposed action and the reasons given for it.
9 The person(s) responsible for deciding whether the employee will be disciplined and what that
10 discipline will be shall attend the conference.

11 (2) The employee is entitled to UFF or other ~~personal~~ representation at the
12 conference.

13 (3) The conference shall be informal and shall not be in the nature of an
14 evidentiary hearing; therefore discovery, cross-examination, and similar legal procedures are not
15 permitted.

16 (4) The employee shall be permitted to submit relevant information, orally and in
17 writing, and shall be permitted to bring witnesses.
18

19 (c) Deadline for notice of disciplinary action. The president or president's
20 representative shall issue a notice of disciplinary action or a notice that no disciplinary action will
21 be taken

22 (1) within twenty (20) days after the employee receives notice of the proposed
23 action, when the employee does not respond in writing within ten (10) days;

24 (2) within ten (10) days of receipt of the employee's written response to the notice
25 proposed action, if provided, unless the written response provides new information that requires
26 further investigation and the employee is so informed in writing; or

27 (3) within ten (10) days following the completion of the conference, if one is
28 requested, unless the conference provides new information that requires further investigation and
29 the employee is so informed in writing.
30

31 (d) No disciplinary action. If no disciplinary action is taken, no mention of the
32 proposed disciplinary action shall be retained in the employee's evaluation file. A separate file
33 may be maintained by the University to show that the matter was investigated and resolved, but
34 the material in that file may shall not be used in future personnel decisions. There shall be no
35 double jeopardy.
36

37 16.56 Notice of Disciplinary Action. 38

39 (a) The president or president's representative shall notify the employee in writing of any
40 disciplinary action. The notice shall contain the heading "Notice of Disciplinary Action." The
41 notice shall include a statement of the reasons for the action and a statement advising the
42 employee that the action is subject to the Grievance Procedures in Article 20.
43

44 (b) When disciplinary action is taken, the burden of proof shall be on the president or
45 president's representative.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

(c) Notices of disciplinary action shall be delivered in person to the employee with written documentation of receipt obtained or be sent certified mail, return receipt requested.

~~16.67~~ Job Abandonment

(a) If an employee is absent without authorization for twelve (12) or more consecutive days (or seven (7) or more consecutive days for a 9-month employee employed under a supplemental summer contract), the employee shall be considered to have abandoned the position and voluntarily resigned from the University.

(b) The University shall make reasonable efforts to contact the employee by telephone, email, and overnight mail before concluding that the employee has abandoned his or her position.

(c) Notwithstanding paragraph (a), above, if the employee's absence is for reasons beyond the control of the employee and the employee notifies the University as soon as possible, the employee shall not be considered to have abandoned the position and shall not be disciplined.

~~16.78~~ Employee Assistance Program. Neither the fact of an employee's participation in an employee assistance program, nor information generated by participation in the program, shall be used as a reason for discipline under this Article, except for information relating to an employee's failure to participate in an employee assistance program consistent with the terms to which the employee and the University have agreed.