

ARTICLE 16
DISCIPLINARY ACTION AND JOB ABANDONMENT

[Bold font indicates difference from BOT proposal #12, dated 05-07-2008]

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 may be disciplined only for activities which occur on University property or when the employee is acting as a University employee fall outside the scope of employment.~~

(c) An employee's activities which occur away from University property or when the employee is not acting within the scope of his or her employment shall be subject to discipline only when such activities impair the ability to perform his or her assigned job duties or constitute impermissible harassing or threatening conduct directed at a student or ~~eo-worker~~ university personnel.

~~———(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.~~

(d) 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 the 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. This notice may be provided within the document that notifies the employee of the investigation or that summons the employee for questioning.~~

~~(e) Any written directive from an administrator or office of a college or equivalent unit or of the University a Dean's Office, the Equal/Opportunity/Affirmative Action Office, or the Office of Faculty Relations, or their successors or equivalent administrative units, requiring that an employee answer questions as part of a formal investigation which may reasonably be expected to result in his or her discipline shall advise the employee of the right to have a UFF representative present during such questioning.~~

~~(f) When involuntary administrative 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 which the employee was scheduled to begin within thirty (30) days of the imposition of the leave. **On or before the thirtieth (30th) day of such leave, the University shall either (a) issue to the employee a written notice of proposed discipline in accordance with the provisions of this agreement, or (b) restore the employee to active service, or (c) demonstrate that continued administrative leave is necessary to protect the safety of students or University personnel. As an alternative to full administrative leave, an employee might be barred from the classroom or from contact with particular students or University personnel while otherwise being restored to active service. An employee who is on administrative leave shall have the right to contact University personnel as needed to defend him or herself against charges of misconduct, as long as such contact does not continue or result in impermissible harassing or threatening conduct.**~~

~~(g) When disciplinary action is taken, the burden of proof shall be on the University.~~

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

16.3 Just Cause.

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

~~(b) Just cause shall be defined as:~~

~~(1) incompetence, or~~

~~(2) misconduct.~~

~~(c) Criteria for Determining Incompetence:~~

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

~~(2) In determining whether or not an employee is incompetent, evaluators shall~~

look at the employee's job as a coherent whole and examine comprehensively, in the context of the employee's discipline, the individual's contributions in all areas of academic responsibility.

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

- ~~(1) Misrepresents professional credentials or job-related achievements;~~
- ~~(2) Fails to maintain professional licensure or clinical privileges necessary to perform assigned duties;~~
- ~~(3) Is convicted of crime relating to the employee's area of academic expertise;~~
- ~~(4) Intentionally falsifies data or intentionally misappropriates the writings, research, and findings of others;~~
- ~~(5) Is found to have committed discrimination or harassment, according to the process described in Article 6;~~
- ~~(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 shall ~~must~~ be appropriately related to the nature and circumstances of the offense ~~ease~~.

(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, ineligibility for supplemental summer employment not to exceed two summers, suspension with or without pay for a specified time of not more than one (1) semester for an employee on a 9-month contract or six (6) months for an employee on a 12-month contract two semesters, 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 disciplinary action is to be distinguished from involuntary leave with pay, which is a precautionary action.~~

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

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

16.4 Notice of Oral or Written Reprimand. or Ineligibility for Supplemental Summer Employment. ~~No notice of intent or employee response time is required when an employee receives an oral reprimand or written reprimand. An employee shall receive six (6) month's notice prior to being made ineligible for supplemental summer employment.~~

16.5 Fair Warning. Pre-determination Procedures for Suspension or Termination Discharge.

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

(1) The action proposed by the University and its proposed effective date;
 (2) A statement of the reasons for the proposed action;
 (3) A list ~~Copies~~ of all documents on which the University has based its proposed action and a statement that copies of these documents will be provided to the employee upon written request;

(4) A statement that the employee may, within ten (10) days of receipt of the notice or receipt of requested documents (see 16.4(a)(3)), whichever is later, submit a written response and the name, address, and telephone number of the person to whom such a response

should be sent;

(5) A statement that the University shall consider the employee's written response, if provided;

~~(6) A statement that the employee may, within ten (10) days of the receipt of the notice or receipt of requested documents (see 16.4(a)(3), whichever is later, make written request for a conference with the president or president's representative;~~

~~(7) A statement that the employee may grieve disciplinary ~~the proposed action, if any is taken,~~ using the procedure defined in Article 20 (Grievance Procedure and Arbitration); and~~

~~(8) Copies of this article and Article 20; and~~

~~(9) Notice that the employee may resign or retire, if eligible.~~

(b) ~~Conference. If the employee requests a conference, it shall be conducted by the president or president's representative as follows:~~

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

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

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

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

(be) ~~Deadline for notice of disciplinary action. The president or president's representative shall issue a notice of disciplinary action or a notice that the proposed ~~no~~ disciplinary action will not be taken~~

~~(1) within ~~twenty (20)~~ thirty (30) days after the employee receives notice of the proposed action, when the employee does not respond in writing within ten (10) days; or~~

~~(2) within ~~ten (10)~~ thirty (30) days of receipt of the employee's written response to the notice proposed action, if provided, unless the written response provides new information that requires further investigation and the employee is so informed in writing, ~~or~~~~

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

(cd) ~~No disciplinary action. If the proposed ~~no~~ disciplinary action is not taken, no mention of the proposed disciplinary action ~~it~~ shall be retained in the employee's evaluation file.~~

A separate file may be maintained by the University to show that the matter was investigated. The employee shall not later be disciplined for the conduct that led to the notice of proposed discipline; however, if similar conduct is repeated, the prior matter may be considered in determining whether a pattern or practice of behavior exists if and only if the prior matter resulted in an oral or written reprimand or letter of instruction, which the employee had the right to grieve.

16.6 Notice of **Ineligibility for Supplemental Summer Employment, Suspension or Termination** ~~Disciplinary Action.~~

(a) The president or president's representative shall notify the employee in writing of any ineligibility for supplemental summer employment, suspension or termination ~~any disciplinary action~~. The notice shall contain the heading "Notice of Disciplinary Action." The notice shall include a statement of the reasons for the action, ~~and a statement advising the employee that the action is subject to the Grievance Procedures in Article 20,~~ **the effective date of the action, and a statement that the "Notice of Disciplinary Action" serves as a Step 2 grievance decision allowing the matter to proceed directly to arbitration if the employee and the UFF wish to challenge the action.**

(b) No employee shall be deprived of pay or benefits resulting from a disciplinary action until after the grievance process ends with an outcome that allows the discipline, or until one hundred and sixty-five (165) days following receipt of the Notice of Disciplinary Action, whichever time period is sooner. Grievances and arbitration in cases involving disciplinary action shall be in accordance with the provisions in Article 20, Grievance Procedure and Arbitration, except that the following special conditions shall apply:

(1) The grievance must be filed no later than fifteen (15) days following receipt of the Notice of Disciplinary Action.

(2) When the grievance is filed, the Step 1 and Step 2 processes shall be waived and the Notice of Disciplinary Action shall serve as the university's Step 2 decision.

~~(b) An employee shall be given written notice of ineligibility for supplemental summer employment, suspension or termination at least thirty (30) days six (6) months in advance of the effective date of such action. termination. If the suspension or termination is challenged using the Grievance Procedures in Article 20, it shall not be effective until the arbitrator's decision is received or the grievance is voluntarily withdrawn. , except that in cases where the president or president's representative determines that an employee's actions adversely affect the functioning of the University or jeopardize the safety or welfare of the employee, colleagues, or students, the president or president's representative may give less than six months notice.~~

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

(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.

16.7 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.~~

16.8 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.