

Article 16
DISCIPLINARY ACTION AND JOB ABANDONMENT

16.1 Policy.

- (a) Employee discipline is an action that is to be undertaken with care, objectivity, and with full consideration of the rights and interests of both the employee and the University. This article will provide prompt and equitable procedures for disciplinary action taken with just cause. Just cause shall be defined as:
 - (1) incompetence, or
 - (2) misconduct
- (b) Both parties endorse the principle of progressive discipline as applied to professionals.
- (c) An employee's activities that fall outside the scope of employment shall constitute misconduct only if such activities adversely affect the legitimate interests of the University.

16.2 Types of Discipline.

- (a) Disciplinary actions include, ~~to, oral or written reprimands; restitution for the intentional damage or destruction of University property; suspension, with or without pay; and termination.~~
- (b) Letters of instruction or counseling, and counseling, including recommendations for participation in an employee assistance program, shall not be considered discipline.
- (c) Employees have a right to union representation during investigatory questioning that may reasonably be expected to result in disciplinary action.

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16.3 Notice Requirements.

- (a) For oral and written reprimands, or requirements of restitution, no prior notice or employee response time is required. However, the employee must be provided with a written statement of the reasons for the discipline and advised that the action is subject to the grievance procedure in Article 20.
- (b) For suspension or discharge, the employee shall be given prior written notice of such action and an opportunity to respond in accordance with the provisions of 16.4 below. The appointment of any employee can be suspended, with or without pay, or terminated for just cause during the term of the employee's appointment.

16.4 Pre-determination Procedures for Suspension or Discharge

- (a) Prior to suspension or termination, an employee must be provided written notice.

- (b) If the employee is available, the 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. The notice shall be considered received by the employee even if refused or ignored.
- (c) Contents of Notice—The notice shall be signed by the president or president’s designee and shall include the following:
- (1) The effective date of the University’s proposed action;
 - (2) A statement of the charges or reasons for the action;
 - (3) A list of documents, if any, on which the charges or other reasons are based.
 - (4) A statement that the employee may, within ten (10) days of receipt of the notice submit a request in writing for a pre-determination conference at which time the employee may make an oral or written statement, or both, to the University to refute or explain the reasons for the action; and the name, address, and telephone number of the person to whom the request for a pre-determination conference shall be directed;
 - (5) A statement that the requested predetermination conference must be held prior to the proposed effective date of the action, at a time and place to be determined by the University, normally during business hours, and that the employee is permitted to bring a UFF or other, personal representative to advise and assist;
 - (6) A statement that, if the employee does not wish to have a pre-determination conference, he or she may submit a written response and the name, address and telephone number of the person to whom such a response should be sent.
 - (7) A statement that the University will consider any employee response to the proposed action;
 - (8) A copy of Article 16; and
 - (9) Notice that the employee may resign.
- (d) Predetermination Conference—if a predetermination conference is requested by the employee, it will be conducted by the president or president’s designee as follows:
- (1) The person(s) conducting the predetermination conference shall convene the predetermination conference at the time and place set by the University, shall identify all the participants, and shall explain the purpose of the conference. The purpose of the predetermination conference is to hear the employee’s response to the proposed action, to afford the University an opportunity to reevaluate its proposed action after reviewing the information presented by the employee, and to thereafter affirm or alter the disciplinary action. The person(s) conducting the conference shall not be the person(s) responsible for handling the Step 2 grievances for the University.

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- (2) The predetermination conference shall be informal and shall not be in the nature of an evidentiary hearing. The employee is permitted to bring a representative to assist or advise him or her, but discovery, cross-examination, and similar legal procedures are not permissible.
- (3) The employee shall be permitted to submit relevant information, orally or in writing, or both, including through witnesses. If the employee chooses to make no response, the University will proceed with the proposed action.
- (4) After the predetermination conference is conducted, the person conducting the conference shall determine whether to proceed with the proposed final action, to revise the action, or that no action shall occur. The employee shall be notified of the University's decision in writing within thirty (30) days, unless the conference provides new information that requires further investigation. The notification will be made by personal delivery or by certified mail, return receipt requested. If the University determines that it will proceed with the proposed action, the notification will advise the employee of the date on which the action shall be effective and of his or her right to appeal under Article 20 of this Agreement.
- (e) Suspension Pending Investigation—Notwithstanding the provisions of 16.4(d)(1)-(4), if the president or president's representative has reason to believe that a faculty member's actions or presence on the job would adversely affect the orderly conduct and processes of the University, and/or jeopardize the safety or welfare of the faculty member, colleague(s), other employee(s), or student(s), the president or president's representative shall immediately suspend with pay the employee from the performance of duties pending the investigation and predetermination conference.
- (f) If the employee prevails in the predetermination conference or in the appeal process, all records concerning such disciplinary action shall be removed from the faculty member's personnel file and the decision and related documents shall be retained only in a separate file held by the appropriate dean, director, or department head, in order to record the results of the decision.

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16.5 Job Abandonment

- (a) If an employee is absent without authorized leave for seven (7) or more consecutive days under the provisions of Section 17.1, 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 and email 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 practicable, the employee will not be considered to have abandoned the position.

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- 16.6 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.