

ARTICLE 16
DISCIPLINARY ACTION AND JOB ABANDONMENT

16.1 ~~Just Cause. 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) ~~The purpose of this article is to provide a prompt and equitable procedure for disciplinary action taken with just cause.~~ Just cause shall be defined as:

- (1) incompetence, or
- (2) misconduct.

(b) An employee's activities which fall outside the scope of employment shall constitute misconduct only if such activities adversely affect the legitimate interests of the University.

(c) ~~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.~~

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

16.2 Progressive Discipline. Both parties endorse the principle of progressive discipline, ~~as applied to professionals.~~ ~~The employee has a right to union representation during investigatory questioning that may reasonably be expected to result in disciplinary action.~~

16.3 Notice of Intent.

(a) ~~Oral Reprimand and Written Reprimand. No notice of intent or employee response time is required when an employee receives an oral reprimand or written reprimand.~~ [moved from (b)]

~~(b) Suspension or Termination. When the president or president's representative has reason to believe that a suspension or termination should be imposed~~ Written notice. If the University intends to impose a suspension or termination, the president or president's representative shall provide the employee with a written notice of the proposed action and the reasons therefore. If possible, this ~~Such~~ 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 sent viaby certified mail, return receipt requested, to respond in writing to the president or president's representative before the proposed action is taken. The president or president's representative then may issue a notice of disciplinary action under Section 16.4 This notice shall be considered received by the employee even if refused. This notice shall contain 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 statement that ~~or delivered in person with written documentation of receipt obtained. The employee shall be given~~ may, within ten (10) days of receipt of the notice submit a written response and the name, address, and telephone number of the person to whom such a response should be sent;

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

(5) A statement that the employee may grieve disciplinary action, if any is taken, using the procedure defined in Article 20 (Grievance Procedure and Arbitration).; [repeated in 16.4]

(6) Copies of this article and Article 20; and

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

~~—The employee has a right to union representation during investigatory questioning that may reasonably be expected to result in disciplinary action. No notice of disciplinary action shall be retained in the employee's evaluation file if no disciplinary action is taken.~~

~~(b) — Oral Reprimand and Written Reprimand. No notice of intent or employee response time is required when an employee receives an oral reprimand or written reprimand. [moved to (a)]~~

16.4 Notice of ~~Suspension or Termination.~~Disciplinary Action. ~~Any~~

(a) The president or president's representative shall notify an employee in writing of a suspension or termination. The notice shall contain the heading "Notice of Disciplinary Action." It shall include a statement of the reasons therefore and for the action, a statement advising the employee that the action is subject to the Grievance Procedures in Article 20, and, in the case of a suspension, the effective date of the action. All such notices shall be sent via certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained.

~~16.5 —~~

(b) In the case of Termination, the ~~A tenured appointment or any appointment of definite duration may be terminated during its term for just cause. An~~ In the case of termination, the employee shall be given written notice ~~of termination~~ at least six 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.

(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.

(d) No disciplinary action. If the president or president's representative decides that the proposed suspension or termination should not be taken, no mention of the proposed disciplinary action 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 suspended or terminated for the conduct that led to the proposed notice of discipline. However, if similar conduct is repeated, the prior matter may be considered in determining whether a pattern or practice of behavior exists.

16.6-5 Other Disciplinary Action—Other than Termination. The University retains its right to impose other disciplinary action ~~other than termination~~ for just cause ~~including, but not limited to, suspension with or without pay.~~ Counseling, including letters of instruction or recommendations for participation in an Employee Assistance Program, shall not be considered disciplinary action.

16.76 Job Abandonment.

(a) If an employee is absent without authorization ~~leave~~ 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), 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, e-mail, and overnight mail before concluding that the employee has abandoned his or her position.

(~~bc~~) 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~~ possible, the employee will not be considered to have abandoned the position.

16.87 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.