

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) 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 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 disciplinary process.

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

(f) Prior to investigatory questioning 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.

16.2 Due Process. The Board shall impose no disciplinary action for professional misconduct except in accordance with the procedures for due process set forth in this Article, 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.

1 (b) Just cause shall be defined as:

2
3 (1) incompetence, or

4
5 (2) misconduct.

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7 (c) Criteria for Determining Incompetence.

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

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

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

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

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24 (2) Fails to maintain professional licensure or clinical privileges necessary to
25 perform assigned duties;

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

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29 (4) Intentionally falsifies data or intentionally misappropriates the writings,
30 research, and findings of others;

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

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35 (6) Grossly abuses authority or influence (e.g., discriminatory or retaliatory
36 actions, particularly where a pattern is evident);

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

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

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45 16.4 Progressive Discipline.

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1 (a) If an employee becomes the subject of disciplinary action, the Board shall implement
2 progressive discipline.

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

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7 (c) The only formal disciplinary actions that may be imposed on an employee are as
8 follows, in order of increasing severity:

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10 (1) Written censure consisting of a formal written expression of institutional
11 rebuke, conveyed by the Board or representative, which contains a brief
12 description of the censured conduct.

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

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

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22 (2) Temporary reduction in salary of no more than ten percent and for no longer
23 than one year, without change in rank or step.

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25 a. Written notice of temporary reduction in salary shall be delivered
26 confidentially to the employee in writing.

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28 b. The written notice shall specify the amount and duration of the reduced
29 salary.

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31 (3) Suspension without pay for a specified time of not more than six (6) months.

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33 a. The terms of a suspension may include loss of normal academic
34 privileges such as access to University property, participation in departmental
35 governance, administration of grants, supervision of graduate students, and use of
36 University administrative staff, and loss of other campus privileges such as
37 parking and library privileges.

38
39 b. The notice of suspension without pay shall be specified in writing and
40 delivered to the employee confidentially with the degree and duration of the
41 suspension.

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43 c. Suspension as a disciplinary action is to be distinguished from
44 involuntary leave with pay, which is a precautionary action.

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46 (4) Termination.

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2 a. A tenured appointment or any appointment of definite duration may be
3 terminated during its term only for just cause as described in Section 16.2, above.
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5 b. An employee shall be given written notice of termination at least six (6)
6 months in advance of the effective date of such termination, except that in cases
7 where the president or president's representative determines that an employee's
8 actions adversely affect the functioning of the University or jeopardize the safety
9 or welfare of the employee, colleagues, or students, the president or president's
10 representative may give less than six months notice.
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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.
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16 16.5 Fair Warning.

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

- 24 (1) The action proposed by the University and its effective date;
25 (2) A statement of the reasons for the proposed action;
26 (3) Copies of all documents on which the University has based its proposed
27 action;
28 (4) A statement that the employee may, within ten (10) days of receipt of the
29 notice, submit a written response and the name, address, and telephone number of the person to
30 whom such a response should be sent;
31 (5) A statement that the University shall consider the employee's written
32 response, if provided;
33 (6) A statement that the employee may, within ten (10) days of the receipt of the
34 notice, make written request for a conference with the president or president's representative;
35 (7) A statement that the employee may grieve the proposed action using the
36 procedure defined in Article 20 (Grievance Procedure and Arbitration) and that the University
37 shall find grievance of a proposed disciplinary action to be timely; and
38 (8) Copies of this article and Article 20.
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40 (b) Conference. If the employee requests a conference, it shall be conducted by the
41 president or president's representative as follows:
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43 (1) The person(s) conducting the conference shall convene it at a time and place
44 of mutual convenience. The person(s) conducting the conference shall not be the person(s)
45 responsible for handling Step 2 grievances for the University. Barring circumstances beyond the
46 employee's control, the employee must be available to meet at his or her normal workplace

1 within seven (7) days of making written request for the conference. The purpose of the
2 conference is to hear the employee's response to the proposed action and the reasons given for it.
3 The person(s) responsible for deciding whether the employee will be disciplined and what that
4 discipline will be shall attend the conference.

5 (2) The employee is entitled to UFF or other, personal representation at the
6 conference.

7 (3) The conference shall be informal and shall not be in the nature of an
8 evidentiary hearing.

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

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

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

17 (2) within ten (10) days of receipt of the employee's written response to the notice
18 proposed action; or

19 (3) within ten (10) days following the completion of the conference, if one is
20 requested.

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22 (d) No disciplinary action. If no disciplinary action is taken, no mention of the
23 proposed disciplinary action shall be retained in the employee's evaluation file. A separate file
24 may be maintained by the University to show that the matter was resolved, but the material in
25 that file may not be used in future personnel decisions. There shall be no double jeopardy.

26 27 16.6 Notice of Disciplinary Action.

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

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

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

39 40 16.7 Job Abandonment

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

1 (b) The University shall make reasonable efforts to contact the employee by telephone,
2 email, and overnight mail before concluding that the employee has abandoned his or her
3 position.
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5 (c) Notwithstanding paragraph (a), above, if the employee's absence is for reasons
6 beyond the control of the employee and the employee notifies the University as soon as possible,
7 the employee shall not be considered to have abandoned the position and shall not be disciplined.
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9 16.8 Employee Assistance Program. Neither the fact of an employee's participation in an
10 employee assistance program, nor information generated by participation in the program, shall
11 be used as a reason for discipline under this Article, except for information relating to an
12 employee's failure to participate in an employee assistance program consistent with the terms to
13 which the employee and the University have agreed.