

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.

~~(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. Counseling, including letters of instruction and recommendations for participation in an employee assistance program, shall not be considered disciplinary action.~~

~~(b) 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.~~

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

~~(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.~~

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

~~(e) Any written directive from Dor requiring that an employee answer questions as part of a formal investigation which may reasonably be expected to result in his/her discipline shall advise that the employee has of the right for the UFF to be present during such questioning.~~

~~(gf) 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 scheduled prior to the imposition of the leave if the employee has been issued a contract and it has been signed by the University and the employee.~~

~~(hg) 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 except in accordance with the processes set forth in this Article and, in Article 20 (Grievance Procedure and Arbitration).~~

~~16.34 Progressive Discipline. Both parties endorse the principle of progressive discipline as applied to professionals.~~

~~(a) If an employee becomes the subject of disciplinary action, the Board shall follow the principle of 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 case.~~

~~(c) The only 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 months, and termination.:~~

~~(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.~~

~~16.43 Oral or Written Reprimandi. No notice of intent or employee response time is required when an employee receives an oral reprimand or written reprimand. Notice of Intent to Discipline.~~

~~(a) Suspension or Termination. When the president or president's representative has reason to believe that a suspension or termination should be imposed, the president or president's representative shall provide the employee with a written notice of the proposed action and the reasons therefore. This notice shall be hand delivered to the employee and the employee shall acknowledge receipt in writing. Otherwise the notice shall be sent via certified mail, return receipt requested. This notice shall be considered received by the employee even if refused.~~

~~(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.~~

(c) The employee has a right to union representation during investigatory questioning that may reasonably be expected to result in disciplinary action.

16.4 Notice of Disciplinary Action. Any notice of disciplinary action shall include a statement of the reasons therefore and a statement advising the employee that the action is subject to the Grievance Procedure in Article 20. 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 Suspension or Termination

(a) **Written notice.** If the University intends to impose ~~disciplinary action more severe than a written reprimand, suspension or termination~~, the president or president's representative shall provide the employee with a written notice of the proposed action in accordance with Article 16.4. ~~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 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, 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 grieve disciplinary action, if any is taken, using the procedure defined in Article 20 (Grievance Procedure and Arbitration); ~~and that the University shall find a grievance of a proposed disciplinary action to be timely; and~~

~~(7)~~ Copies of this article and Article 20; and

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

~~(bc) —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 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 of proposed action, if provided, unless the written response provides new information that requires further investigation and the employee is so informed in writing; or~~

~~(cbb) No disciplinary action. If the University determines that it will proceed with the proposed suspension or termination, the president or president’s representative shall notify the employee in writing in accordance with Article 16.4. The notice shall state the effective date of the action. Employees who wish to challenge the suspension or termination may proceed directly to arbitration.~~

~~(c) No disciplinary action. If the president or president’s representative the University decides that the proposed discipline 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 ~~disciplined 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.** **There shall be no double jeopardy.**~~

~~16.6 Notice of Suspension or Termination Other Disciplinary Action. The University retains its right to impose other disciplinary action for just cause. Counseling, including recommendations for participation in an Employee Assistance Program, shall not be considered disciplinary action.~~

~~(a) The president or president’s representative shall notify the employee in writing of a suspension or termination any disciplinary action. The notice shall contain the heading “Notice of Disciplinary Action.” The notice it shall include a statement of the reasons for the action, a statement advising the employee that the action is subject to the Grievance Procedures in Article 20, and the effective date of the action.~~

~~—— (cb) 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, e-mail, 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.

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.