

ARTICLE 16  
DISCIPLINARY ACTION AND JOB ABANDONMENT

[Bold font indicates difference from previous BOT proposal]

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(e) 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.**

**(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.**

(e) 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.**

**(g) When involuntary 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**

1 **employment scheduled prior to the imposition of the leave.**

2  
3 (h) When disciplinary action is taken, the burden of proof shall be on the University.

4  
5 16.2 Due Process. The Board shall impose no disciplinary action for professional misconduct  
6 except in accordance with the ~~procedures for due processes~~ set forth in this Article **and, in**  
7 **Article 20 (Grievance Procedure and Arbitration)**, ~~or in the Assignment Dispute Resolution~~  
8 ~~procedure detailed in Article 9. No disciplinary action shall be imposed until any formal hearing~~  
9 ~~processes, including grievances, have been completed.~~

10  
11 ~~16.3 Just Cause.~~

12  
13 ~~(a) No employee shall be subject to disciplinary action except for just cause.~~

14  
15 ~~(b) Just cause shall be defined as:~~

16  
17 ~~(1) incompetence, or~~

18  
19 ~~(2) misconduct.~~

20  
21 ~~(c) Criteria for Determining Incompetence.~~

22  
23 ~~(1) The Board and the UFF agree that: there are many ways to improve an~~  
24 ~~employee's performance, and that termination of an employee for incompetent~~  
25 ~~performance is an extraordinary remedy designed to address gross performance~~  
26 ~~deficiencies in extremely rare cases.~~

27  
28 ~~(2) In determining whether or not an employee is incompetent, evaluators shall~~  
29 ~~look at the employee's job as a coherent whole and examine comprehensively, in~~  
30 ~~the context of the employee's discipline, the individual's contributions in all areas~~  
31 ~~of academic responsibility.~~

32  
33 ~~(d) Criteria for Determining Misconduct. An employee may be disciplined for~~  
34 ~~misconduct only if the employee:~~

35  
36 ~~(1) Misrepresents professional credentials or job-related achievements;~~

37  
38 ~~(2) Fails to maintain professional licensure or clinical privileges necessary to~~  
39 ~~perform assigned duties;~~

40  
41 ~~(3) Is convicted of crime relating to the employee's area of academic expertise;~~

42  
43 ~~(4) Intentionally falsifies data or intentionally misappropriates the writings,~~  
44 ~~research, and findings of others;~~

45  
46 ~~(5) Is found to have committed discrimination or harassment, according to the~~

1 process described in Article 6;

2  
3 ~~(6) Grossly abuses authority or influence (e.g., discriminatory or retaliatory~~  
4 ~~actions, particularly where a pattern is evident);~~

5  
6 ~~(7) Commits theft of University property or intentionally damages or destroys~~  
7 ~~University property; or~~

8  
9 ~~(8) Possesses or uses explosives, dangerous chemicals, ammunition, or weapons~~  
10 ~~on campus or in areas controlled by the University, without the approval of the~~  
11 ~~appropriate University authority.~~

12  
13 16.34 Progressive Discipline.

14  
15 (a) If an employee becomes the subject of disciplinary action, the Board shall follow the  
16 principle of implement progressive discipline as applied to professional employees.

17  
18 (b) The type **and severity** of the discipline selected for a particular offense **shall** ~~must~~ be  
19 appropriately related to the nature and circumstances of the offense ease.

20  
21 (c) The only ~~formal~~ disciplinary actions that may be imposed on an employee are as  
22 follows, in order of increasing severity, oral reprimand, written reprimand, suspension with or  
23 without pay for a specified time of not more than six (6) months, and termination.:

24  
25 ~~(1) Written reprimand censure consisting of a formal written expression of~~  
26 ~~institutional rebuke, conveyed by the Board or representative, which contains a brief description~~  
27 ~~of the censured conduct. The written reprimand shall include a statement that the disciplinary~~  
28 ~~action is subject to the grievance procedure described in Article 20.~~

29  
30 ~~a. Written censure is to be distinguished from an informal written or spoken warning. An~~  
31 ~~informal written or spoken warning is not an official disciplinary action.~~

32  
33 ~~b. The written censure shall be delivered confidentially to the employee and maintained in the~~  
34 ~~employee's evaluation personnel file for no more than six (6) years, with the period of time~~  
35 ~~specified in writing.~~

36  
37 ~~(2) Temporary reduction in salary of no more than ten percent and for no longer~~  
38 ~~than one year, without change in rank or step. The written notice of temporary reduction in~~  
39 ~~salary shall be delivered confidentially to the employee in writing and The written notice shall~~  
40 ~~specify the amount and duration of the reduced salary.~~

41  
42 ~~(3) Suspension without pay for a specified time of not more than six (6) months.~~  
43 ~~a. The terms of a suspension may include loss of normal academic privileges such as access to~~  
44 ~~University property, participation in departmental governance, administration of grants,~~  
45 ~~supervision of graduate students, and use of University administrative staff, and loss of other~~  
46 ~~campus privileges such as parking and library privileges. b. The written notice of suspension~~

1 ~~without pay shall be specified in writing and delivered to the employee confidentially with the~~  
2 ~~degree and duration of the suspension indicated therein. c. Suspension without pay as a~~  
3 ~~disciplinary action is to be distinguished from involuntary leave with pay, which is a~~  
4 ~~precautionary action.~~

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

13  
14 (d) If an employee is found to have intentionally damaged or destroyed University  
15 property, the employee may be required to reimburse the University for the fair cost of repair or  
16 replacement of that property in addition to any **other** disciplinary action that may be imposed.

17  
18 16.4 Oral or Written Reprimand. No notice of intent or employee response time is required  
19 when an employee receives an oral reprimand or written reprimand.

20  
21 ~~16.5 Fair Warning. Pre-determination Procedures for Suspension or Discharge~~

22  
23 (a) Written notice. If the University intends to impose disciplinary action more severe  
24 than a written reprimand, the president or president's representative shall provide the employee  
25 with a written notice of the proposed action. If possible, this notice shall be hand-delivered to  
26 the employee and the employee shall acknowledge receipt in writing. Otherwise, the notice shall  
27 be mailed to the employee by certified mail, return receipt requested. This notice shall be  
28 considered received by the employee even if refused. This notice shall be signed by the  
29 president or president's representative and shall include the following:

30 (1) The action proposed by the University and its proposed effective date;

31 (2) A statement of the reasons for the proposed action;

32 (3) A list Copies of all documents on which the University has based its proposed  
33 **action** and a statement that copies of these documents will be provided to the employee upon  
34 written request;

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

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

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

44 (7) **A statement that the employee may grieve the proposed action using the**  
45 **procedure defined in Article 20 (Grievance Procedure and Arbitration) and that the**  
46 **University shall find a grievance of a proposed disciplinary action to be timely; and**

- 1 (8) Copies of this article **and Article 20;** and  
2 (9) Notice that the employee may resign.

3  
4 (b) Conference. If the employee requests a conference, **it shall be conducted by the**  
5 **president or president's representative** as follows:

6  
7 (1) The person(s) conducting the conference shall convene it at a time and place  
8 of mutual convenience. The person(s) conducting the conference shall not be the person(s)  
9 responsible for handling Step 2 grievances for the University. Barring circumstances beyond the  
10 employee's control, the employee must be available to meet at his or her normal workplace **(or**  
11 **at the main campus, if acceptable to the employee and the University)** within seven (7) days  
12 of ~~making~~ receipt of the written request for the conference. The purpose of the conference is to  
13 hear the employee's response to the proposed action and the reasons given for it. The person(s)  
14 responsible for **deciding** whether the employee will be disciplined and what that discipline will  
15 be shall **attend** the conference.

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

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

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

23  
24 (c) **Deadline for notice of disciplinary action. The president or president's**  
25 **representative shall issue a notice of disciplinary action or a notice that no disciplinary**  
26 **action will be taken**

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

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

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

36  
37 (d) No disciplinary action. If no disciplinary action is taken, no mention of the  
38 proposed disciplinary action shall be retained in the employee's evaluation file. A separate file  
39 may be maintained by the University to show that the matter was investigated and resolved, but  
40 **the material in that file shall not be used in future personnel decisions. There shall be no**  
41 **double jeopardy.**

42  
43 16.6 Notice of Suspension or Termination ~~Disciplinary Action.~~

44  
45 (a) The president or president's representative shall notify the employee in writing of a  
46 suspension or termination ~~any disciplinary~~ action. The notice shall contain the heading "Notice

1 of Disciplinary Action.” The notice shall include a statement of the reasons for the action and a  
2 statement advising the employee that the action is subject to the Grievance Procedures in Article  
3 20.

4  
5 **(b) An employee shall be given written notice of termination at least six (6) months**  
6 **in advance of the effective date of such termination, except that in cases where the**  
7 **president or president’s representative determines that an employee’s actions adversely**  
8 **affect the functioning of the University or jeopardize the safety or welfare of the employee,**  
9 **colleagues, or students, the president or president’s representative may give less than six**  
10 **months notice.**

11  
12 ~~(b) When disciplinary action is taken, the burden of proof shall be on the president or~~  
13 ~~president’s representative.~~

14  
15 **(c) Notices of disciplinary action shall be delivered in person to the employee with**  
16 **written documentation of receipt obtained or be sent certified mail, return receipt**  
17 **requested.**

#### 18 19 16.7 Job Abandonment

20  
21 (a) If an employee is absent without **authorization** for twelve (12) or more consecutive  
22 days (or seven (7) or more consecutive days for a 9-month employee employed under a  
23 supplemental summer contract), the employee shall be considered to have abandoned the  
24 position and voluntarily resigned from the University.

25  
26 (b) The University shall make reasonable efforts to contact the employee by telephone,  
27 email, and **overnight mail** before concluding that the employee has abandoned his or her  
28 position.

29  
30 (c) Notwithstanding paragraph (a), above, if the employee's absence is for reasons  
31 beyond the control of the employee and the employee notifies the University as soon as **possible**,  
32 the employee **shall** not be considered to have abandoned the position **and shall not be**  
33 **disciplined.**

34  
35 16.8 Employee Assistance Program. Neither the fact of an employee's participation in an  
36 employee assistance program, nor information generated by participation in the program, shall  
37 be used as a reason for discipline under this Article, except for information relating to an  
38 employee's failure to participate in an employee assistance program consistent with the terms to  
39 which the employee and the University have agreed.