

CSN counter-proposal to the NFA's proposal on Discipline and Termination

The NFA proposal is untenable for these major reasons:

- The proposed standard of proof is 'beyond a shadow of a doubt';
- The faculty member chooses all of the hearing panel members;
- Faculty hearing panel decision is final (the President is the hiring authority, and the President's authority cannot be removed to discipline, suspend, or terminate an employee);
- It fails to provide key provisions required by Dept. of Ed for Title IX violations

DISCIPLINE AND TERMINATION FOR CAUSE

I. Introduction

This article establishes the procedures and sanctions applicable to academic faculty members whose conduct shows just cause for discipline and/or termination of employment. Principles of Progressive Discipline, as defined below, should be followed whenever possible in an effort to correct behavior before a more severe sanction is imposed.

II. Definitions

(a) "Cause," in addition to its widely accepted legal meaning, refers to "Prohibited Activity" and "Specific acts of misconduct" enumerated by **NSHE Code, Title 2, Chapter 6**, except as follows:

"Insubordination," in addition to its widely accepted meaning, refers to willful disobedience of supervisory direction. It does not affect academic freedom or the exercise of the rights provided under this agreement."

(b) "Discipline" means Disciplinary Sanctions expressly identified as disciplinary by Section 4 of this article. It does not include oral or written counseling to initially seek correction of behavior which a supervisor may choose to do under the circumstances before pursuing Discipline.

(c) "Progressive Discipline" is the process of using increasingly severe steps in the order set out in Section 4 of this article, except in cases of serious violation of this agreement, NSHE Code, or law when the most serious sanction may be pursued without first applying lesser sanctions.

III. Rights

(a) No academic faculty member shall be Disciplined without Cause and the process as outlined in this agreement.

(b) An academic faculty member has the right to be accompanied by a NFA representative at any meeting or hearing pertaining to Discipline.

(c) All decisions must be based in evidence which establishes that it is more likely than not that Cause exists for the Discipline.

(d) Supervisors (Department Chair or unit manager, Dean, or Vice President-Academic Affairs) of academic faculty members have the authority to issue Discipline. Supervisors shall receive training in the application of Progressive Discipline.

(e) A supervisor shall determine the level of Disciplinary Sanction by considering the severity of the misconduct.

(f) No supervisor may impose disparate treatment on an academic faculty member in lieu of proceeding under the provisions of this article.

(g) The President or designee may place an academic faculty member on administrative leave with pay and/or impose other conditions on a bargaining unit member that do not involve the loss of pay while Discipline under this article is pursued.

IV. Disciplinary Sanctions

(a) Under this agreement, Disciplinary Sanctions consist of the following:

- written warning placed in the personnel file
- written reprimand placed in the personnel file
- denial of salary increase
- written reprimand and requirement for restitution of property losses
- exclusion from assigned duties without pay (suspension)
- reduction in pay, position, or contract period
- loss of tenure
- termination

(b) As noted in the Introduction, Progressive Discipline should be followed whenever possible. Serious misconduct includes, but is not limited to, sexual harassment, unlawful discrimination, theft, and violent, destructive, or threatening criminal acts.

V. Disciplinary Process

(a) The academic faculty member must receive written notice of intent to Discipline by either hand delivery or certified mail. The written notice shall include the charge(s), the proposed sanction(s), and a copy of all reasonably available materials and records supporting the charge(s). The written notice shall also advise the academic faculty member of his/her right to have a NFA representative at the meeting.

(b) Within twenty (20) calendar days after receipt of the written notice, the academic faculty member, with or without a NFA representative being present, must meet with the supervisor who is proposing the discipline to review and discuss the charge(s).

(c) The academic faculty member and the supervisor may achieve consensus on a course of remedial action(s) to improve the member's job performance which may or may not include the

imposition of a Disciplinary Sanction. The informal resolution provided for in this sub-section shall not apply to disciplinary charge(s) alleging sexual assault or violence.

(d) If the academic faculty member disputes the charge(s) or proposed Disciplinary Sanction(s), the academic faculty member may elect within ten (10) days to: a) process the case through a faculty discipline committee, or b) contest whether there is just cause for the charges and intended sanction by filing a grievance through the supervisory chain with final decision, as needed, by the President.

(e) In the event that a notation of oral warning or written reprimand is placed in the personnel file, the academic faculty member has the right to place a response in the file. After two (2) years from the date of the written warning or reprimand, if no further sanction has been imposed against the academic faculty member, the written letter of warning or reprimand shall be removed from the member's personnel file.

(f) If an academic faculty member elects to contest Discipline via the faculty discipline committee, the following procedures shall apply:

1. Within ten (10) calendar days of making the election, an ad hoc faculty discipline committee shall be created by the Faculty Senate Chair by randomly selecting seven faculty members from a larger panel of faculty who have expressed willingness to serve on such a committee. The academic faculty member and the supervisor may each preemptorily challenge two selections. The remaining committee members choose among themselves a chairperson.
2. A hearing shall be held within twenty-one (21) calendar days of the committee's selection. The hearing shall be open unless closed by request of the bargaining unit member or requirement of law. An audio recording of the hearing shall be made.
3. The academic faculty member may be advised by a NFA representative or other advisor in presenting testimony, evidence, and witnesses.
4. The supervisor shall appear at the hearing and may be advised by a human resources representative or other advisor in presenting testimony, evidence, and witnesses.
5. The academic faculty member's or supervisor's failure to appear resolves the case in the favor of the appearing party.
6. The chairperson of the committee shall preside at the hearing and over the committee's deliberations. The chairperson shall have the authority to rule upon questions of admissibility of evidence and to exclude irrelevant, untrustworthy, and unduly repetitious evidence.
7. Both parties shall be provided opportunity to present brief opening and closing statements, to present evidence and testimony, and to call and cross-examine witnesses.
8. Upon conclusion of the hearing, the ad hoc committee shall deliberate to render a decision on the matter and within seven calendar days shall prepare a written report of its decision that includes description of the issues considered and the findings of fact supporting this determination. The committee's decision, whether unanimous or simple majority, shall

constitute a recommendation to the President for resolution of the matter. The President shall review the findings of fact and recommendation and may: dismiss the charge, affirm the recommendation of the committee, impose a lesser sanction than recommended, impose a greater sanction than recommended, or order a new hearing. The President's decision is not subject to further appeal, and the President's decision shall be delivered to the supervisor and to the human resources office for imposition or dismissal of the sanctions as written.

(g) For Disciplinary Sanctions that are proposed as a result of a violation under Title IX to include gender-based discrimination or harassment, the disciplinary processes as set forth in subsections d-f, above, shall adhere to the applicable regulations set forth under Title IX of the Educational Amendments Act of 1972. These processes shall include but are not limited to: 1) notifying the CSN Title IX Coordinator of the faculty member's decision to dispute and/or appeal the Disciplinary Sanction and the basis for the dispute/appeal, 2) providing the CSN Title IX Coordinator the opportunity to participate, as needed, in the disciplinary proceedings, and 3) providing the complainant raising the original Title IX violation with the opportunity to appeal, either in writing or in-person, the appropriateness of the Disciplinary Sanction on the grounds that the Disciplinary Sanction is not adequately severe in relation to the violation.