

DISCIPLINE AND TERMINATION FOR CAUSE (NFA 3rd Proposal)

Section 1. *Introduction*

This article establishes the procedures and sanctions applicable to bargaining unit members whose conduct shows just cause for discipline and/or termination of employment. Principles of Progressive Discipline as defined below, shall be followed in an effort to correct behavior before a more severe sanction is imposed. ~~Whenever possible, disciplinary actions should focus on correction before punishment.~~ In all instances, the dignity of the individual bargaining unit member should be respected. This article prohibits arbitrary discipline or dismissal of any member of the bargaining unit.

Section 2. *Definitions*

(a) The basis for discipline is “Prohibited Activity” and “Specific acts of misconduct” enumerated by NSHE Code, Title 2, Chapter 6, except as follows:

- “Insubordination” means willful disobedience of **legitimate** administrative or supervisory direction not infringing the bargaining unit member’s rights to academic freedom in teaching and research ~~or to due process and material compensation for unwelcome changes in working conditions.~~

(b) “Discipline” means sanctions expressly identified as disciplinary by **Section 4** of this article. It does not include Oral counseling, ~~oral warning without notation in the personnel file, remediation for a specific period of time, evaluations, and promotion and compensation decisions are not discipline.~~ 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 an escalated sanction may be pursued without first applying lesser sanctions.

Section 3. *Rights*

(a) No member of the bargaining unit shall be disciplined without just cause and the process as outlined in this Agreement.

(b) Bargaining unit members have the right to be accompanied by a NFA representative at any meeting or hearing pertaining to discipline.

(c) The standard of proof is a preponderance of evidence (i.e. the evidence establishes that it is much more likely than not that the misconduct occurred).

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

(e) A supervisor shall determine the level of disciplinary sanction by considering the severity of the misconduct and ~~evaluating the bargaining unit member’s personnel history.~~ following the principles of Progressive Discipline.

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

(g) No administrator or supervisor may create or maintain secret files or records regarding any alleged misconduct by a member of the bargaining unit.

(h) No administrator or supervisor may impose disparate treatment on any member of the bargaining unit in lieu of proceeding under the provisions of this Article.

(i) No bargaining unit member shall be disciplined for exercising his/her right to Academic Freedom, as defined in this Agreement, CSN policy, and NSHE Code Title 2 Chapter 2.

(j) 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.

Section 4. Disciplinary Sanction

(a) Under this Agreement, disciplinary sanctions consist of the following:

- * oral warning with notation to the personnel file ~~(written warning)~~
- * 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 Section 1, Progressive Discipline shall be followed. Sexual harassment, unlawful discrimination, theft, and violent, destructive, or threatening criminal acts, are serious misconduct warranting an escalated sanction.

(c) Except in cases of egregious misconduct determined under (b) above, at least one attempt shall be made to engage the bargaining unit member in non-disciplinary discussion of the particular issue of concern.

(d) Sanctions may be imposed upon completion of the process in Section 5.

Section 5. Disciplinary Process

(1) The bargaining unit 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.

(2) Within twenty calendar days after receipt of the written notice, the bargaining unit 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).

(3) The bargaining unit 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.

(4) If the bargaining unit member disputes the charge(s) or proposed disciplinary sanction(s), the bargaining unit member may elect within ten (10) calendar days after the meeting described in (2) 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.~~

(5) Faculty discipline committee

If a bargaining unit faculty member elects to contest discipline via the faculty discipline committee, the following procedures shall apply:

a. 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 list of faculty who have expressed willingness to serve on such a committee. The bargaining unit member and the supervisor may each peremptorily challenge two selections. The remaining committee members choose among themselves a chairperson.

b. The list of faculty who have expressed willingness to serve on a disciplinary committee will be maintained by HR. Upon ratification of this contract, and thereafter annually, HR will ask all bargaining unit members whether they wish to have their names added to the list. A bargaining unit member may remove their name from the list at any time via a written request to HR.

c. 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, and provided to NFA upon request.

d. The bargaining unit member may be accompanied and assisted by a NFA representative in presenting testimony, evidence, and witnesses.

e. The supervisor shall appear at the hearing and may be may be advised by a human resources representative in presenting testimony, evidence, and witnesses.

f. The bargaining unit member or supervisor's failure to appear resolves the case in the favor of the appearing party, unless the attendance of the party not appearing has been prevented by circumstances beyond his/her control.

g. 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.

h. 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.

i. 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, is binding and not subject to grievance, and the report shall be delivered to the supervisor and to the human resources office for imposition or dismissal of the sanctions as written.~~

j. In a case with a proposed sanction of oral warning with notation to the personnel file or written reprimand placed in the personnel file, the decision of the committee is final.

k. In a case with a proposed sanction more severe than an oral warning with notation in the personnel file or written reprimand placed in the personnel file, the committee's decision 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. If NFA disagrees with the President's decision, NFA may submit the case to arbitration to determine if there is just cause for the charges and sanction. The decision of the arbitrator shall be final.

l. For disciplinary sanctions that are proposed as a result of an alleged violation under Title IX to include gender-based discrimination or harassment, the disciplinary processes as set forth in this Section, 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 allegation 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.