

DISCIPLINE AND TERMINATION FOR CAUSE

[NFA counter 6/25/18 to CSN “**Draft Response**” 3/12/18 to NFA “**Package 1**” proposal 1/26/18]

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.

This Article does not apply to nor modify NSHE Code sections 5.9.1 or 5.9.3 pertaining to notices of non-reappointment for non-tenured faculty.

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.

(b) “Discipline” means sanctions expressly identified as disciplinary by Section 4 of this article. It does not include oral counseling, which a supervisor ~~may choose to do~~ must perform and document under the circumstances before pursuing cases of alleged misconduct warranting Progressive Discipline, excluding cardinal offenses.

(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 misconduct cardinal offenses when an escalated and proportionate sanction up to and including termination may be pursued based on the alleged misconduct 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) A bargaining unit 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 clear and convincing evidence which establishes that it is more likely than not that cause exists for the Discipline.

(d) The decision to initiate discipline shall be made by the appropriate Dean or Director in consultation with the immediate supervisor(s) of the bargaining unit member and other internal resources at CSN such as the Human Resources Department and, Office of General Counsel, ~~etc.~~ A decision to initiate discipline shall also include the determination of the appropriate proposed

Commented [JSN1]: NFA accepts the deletion: “-before a more severe sanction is imposed.”

Commented [JSN2]: NFA changes reflect that such documented counseling, to ensure the bargaining unit member’s knowledge of ethical and professional behavior, is ALWAYS the precondition for Progressive Discipline. Escalated, proportionate discipline for cardinal offenses is exempt from the documented oral counseling requirement.

Commented [JSN3]: NFA accepts the deletion “violation of this Agreement, NSHE Code, or law.” and substitutes for “serious misconduct” the phrase “cardinal offenses” as a legally tested reference to objective and reasonable standards of intolerable behavior at work.

Disciplinary Sanction, by considering the severity of the [alleged](#) misconduct and following the principles of Progressive Discipline.

(e) Supervisors shall receive training in the application 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.~~

[\(g\)](#) 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 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 bargaining unit member has the right to place a response in the file.~~

[\(h\)](#) After two (2) years from the date of the written warning or reprimand, if no further Disciplinary Sanction has been imposed against the bargaining unit member, the notation of oral warning or written reprimand shall be removed from the member's personnel file, [but shall be retained by the Human Resources department for purposes of Progressive Discipline.](#)

Section 4. Disciplinary Sanction

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

- * oral [warning](#) with notation to the personnel file
- * written reprimand placed in the personnel file
- * written reprimand and requirement for restitution of property losses, as appropriate
- * 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. [Criminal acts, such as S sexual harassment, unlawful discrimination, theft, and violent, destructive, or threatening ~~criminal~~ behaviors, are constitute serious misconduct cardinal offenses](#) warranting an escalated [and proportionate](#) sanction up to and including termination.

Section 5. Disciplinary Process

~~(1a)~~ The bargaining unit member must receive written notice of intent to discipline by either hand delivery, [email, or US Mail with delivery confirmation or certified mail](#). The written notice shall include the charge(s), the proposed Disciplinary Sanction(s), [a proposed meeting date/time](#), and a copy of all reasonably available materials and records supporting the charge(s). The written notice

Commented [JSN4]: NFA accepts the "g," "i," and "j" deletions and corrects the letter sequencing of remaining provisions.

Commented [JSN5]: NB: "warning" is not "counseling"; "warning" presumes the employee has previously been educated (counseled) regarding workplace expectations.

shall also advise the bargaining unit member of his/her right to have a NFA representative at the meeting.

(2b) Within fifteen (15) calendar days after receipt of the written notice, the bargaining unit member, with or without a NFA representative being present, must meet with the Dean/~~Director~~ relevant Associate Vice President (AVP), with or without the supervisor, to review and discuss the charge(s) and Disciplinary Sanction.

(3c) ~~To resolve the disciplinary matter,~~ the bargaining unit member and the supervisor(s) may achieve consensus on 1) a course of remedial action(s) to improve the member's job performance and/or behavior, which must be documented as a "Performance Improvement Plan" (PIP) and 2) may or may not include the imposition of a Disciplinary Sanction, which if imposed must also be documented, to resolve the disciplinary matter. ~~The~~ This documentation of the disciplinary matter's informal resolution process must be completed and signed by the bargaining unit member and supervisor(s) within five (5) calendar days of the meeting and copies both placed in the member's personnel file and retained by the member. If created and mutually agreed by the bargaining unit member and the supervisor(s), the PIP's course of remedial action(s) shall include a target date of 30 to 90 days from date of signing when the member's performance will be re-evaluated; failure to achieve PIP goals may provide cause for further Disciplinary Sanction. The informal resolution process provided for in this sub-section shall not apply to disciplinary charge(s) alleging ~~serious misconduct~~ cardinal offense as outlined in Section 4b.

(4d) ~~If a disciplinary matter is not resolved through informal resolution—i.e., no Section 5(c) consensus is reached or no improved performance is achieved by the bargaining unit member upon the conclusion of the PIP agreement—or if serious misconduct cardinal offense is alleged, 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 process the next step is to process the case through a faculty discipline committee.~~

Section 6. Faculty Discipline Committee

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

a. Within ten (10) calendar days ~~of a Section 5(d) event of making the election,~~ an ad hoc faculty discipline committee shall be created by the Faculty Senate Chair by randomly selecting ~~nine~~ seven faculty members from a list of faculty who have expressed willingness to serve on such a committee. The bargaining unit member and the Dean/~~Director~~ relevant AVP ~~may~~ each preemptorily challenge ~~two~~ three selections. The remaining ~~three~~ committee members choose among themselves a chairperson.

b. The list of faculty who have expressed willingness to serve on an ad hoc disciplinary committee will be maintained by the ~~Human Resources department ('HR')~~ HR. Upon ratification of this ~~Agreement 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~~ his or her 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 or other advisor in presenting testimony, evidence, and witnesses.

e. The Dean/[relevant AVP](#) or other Administration appointee shall appear at the hearing and may be advised by a human resources representative or other advisor in presenting testimony, evidence, and witnesses.

f. The bargaining unit member or Dean/~~Director's~~[relevant AVP'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 an 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 **in private, closed session** 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 **its decision** ~~this determination~~. **Decisions shall be by a majority of the committee.**

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 Disciplinary Sanction than recommended, impose a greater Disciplinary Sanction than recommended, or order a new hearing. The President shall reach a written decision within a reasonable time after receipt of findings of fact and recommendation from the committee.

l. The bargaining unit member charged shall be provided the President's written decision taken in Section 6(k) either by personal delivery, **email, or US Mail with delivery confirmation.** ~~or by certified or registered mail, return receipt requested.~~

m. 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, and 4) all applicable and relevant provisions of the Regent Handbook Title 4, Chapter 8, Section 13.

Section 7. Appeal

- a. In the case of a president's decision to impose the sanction of termination, ~~the~~ the bargaining unit member charged may appeal the President's decision ~~taken~~ as provided in ~~per~~ Section 6(k-1) within ~~fifteen ten~~ (150) ~~calendar college-working~~ days of the receipt of the decision.
- b. The appeal must be in writing and shall be directed to the Chief Human Resources Officer. No later than ~~ten seven~~ (107) college working days after receipt of the appeal, the Chief Human Resources Officer will direct the appeal to the Board of Regents, together with the documentation from the faculty disciplinary committee hearing, including the committee's findings and the audio recording of the hearing, and a copy of the President's decision. ~~as well as any reply the Chief Human Resources Officer deems necessary provided a copy of the reply is sent to the charged bargaining unit member.~~
- c. The appeal shall be placed on the meeting agenda of the Board of Regents as soon as legally possible under Nevada law after receipt of the appeal. The Chair of the Board of Regents may request a personal appearance of the bargaining unit member charged, if the Chair is of the opinion that justice will be served by such appearance. The bargaining unit member charged must be informed that an appearance is not compulsory and a nonappearance will not prejudice the appeal.
- d. The criteria for evaluating the appeal is whether any of the following grounds have been reasonably established:
 1. The procedures under which the bargaining unit member was charged are invalid or were not followed.
 2. The bargaining unit member charged did not have adequate opportunity to prepare and present a defense to the charges.
 3. The evidence presented at the hearing was not substantial enough to justify the decision.
 4. The sanction imposed was not in keeping with the gravity of the violation.
- e. A decision on the appeal shall be made within a reasonable time after the Board of Regents meeting during which the appeal was considered. The Chair of the Board of Regents will give notification of the decision in the same manner as Section 6(l). The Board of Regents may: 1) Dismiss the charge; 2) Affirm the charge; 3) Impose a lesser sanction; or 4) Order a new hearing. ~~The decision must be in writing and include a description of the issues considered and the findings of fact supporting the determination.~~