

## DISCIPLINE AND TERMINATION FOR CAUSE (NFA 2<sup>nd</sup> Proposal)

### Preamble Section 1. Introduction

~~The objective of this article is to establish a due process of progressive sanctions applicable to members of the bargaining unit whose conduct shows just cause for discipline and/or termination of employment.~~

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 1 2. Definitions

(a) ~~“Cause,” in addition to its widely accepted legal meaning, refers to~~ 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 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. 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.

(c) ~~“Progressive Discipline” means a system for administering disciplinary sanctions against a member of the bargaining unit charged with misconduct, in which—except in cases of serious violation of this contract, NSHE Code, or law—the least severe sanction is applied first, after which more severe sanctions are applied commensurate with the cause for 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 2 3. Rights

#### Bargaining Members’ Rights to Just Cause, Due Process, Notice, and NFA Representation:-

(a) No member of the bargaining unit shall be disciplined ~~or terminated without just cause and due process.~~ 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 ~~forum regarding discipline or termination.~~ hearing pertaining to discipline.

(c) ~~For severe sanctions, the evidence must show that the bargaining unit member committed the violation beyond a shadow of a doubt.~~

(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).

#### CSN Administration’s Authority to Discipline, Rights of Determination and Investigation, and Obligation to Inform:-

(d) ~~Administrative~~ supervisors (Department Chair, ~~or unit head~~ Director, Dean, or Vice President ~~of Academic Affairs~~) of bargaining unit members shall have the authority to issue ~~disciplinary warnings and reprimands and shall receive training for certification and periodic re-certification in the theory and practices of progressive discipline.~~ discipline. Supervisors shall receive training in the application of Progressive Discipline. Only Supervisors have the authority to issue discipline.

(e) ~~An administrator or supervisor shall determine the level of disciplinary sanction to be levied against any bargaining unit member within his/her purview by considering the misconduct charges, finding and documenting relevant facts;~~ 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.

(f) ~~CSN Administration~~ 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 ~~the administrator or supervisor conducts his/her fact finding and considers the sanction(s) to be imposed;~~ discipline under this article is pursued.

### **Section 3. ~~Prohibition against Secret Files/Records and Disparate Treatment~~**

(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 ~~initiating formal disciplinary procedures against that person in accordance with this Article;~~ 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.

### **Section 4. ~~Imposition of Disciplinary Sanctions~~**

(a) Under this Agreement, ~~“sanctions” are limited to~~ disciplinary sanctions consist of the following:

- oral warning with notation to the personnel file (written warning)
- written ~~letter of~~ 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) ~~Sanctions, when imposed, progress from minor in the first instance to severe for repeated failures to meet professional obligations. Misconduct determined to be sufficiently egregious—including, but not limited to, sexual harassment, unlawful discrimination, and violent, destructive, or threatening criminal acts—for the irreparable harm caused to the CSN community or its members may warrant imposition of escalated disciplinary sanction(s). 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 ~~this~~ process in Section 5.

### **Section 5. Disciplinary Process**

(1) ~~The bargaining unit member has received written notice of intent to discipline. Notice to the bargaining unit member shall include the charge(s), the proposed sanction(s), and all materials and records supporting the charge(s). The notice shall also advise the bargaining unit member of his/her right to have NFA representation at the meeting.~~ 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) At a time 15 to 30 calendar days after receipt of written notice described by Section 4 (d)(1), the bargaining unit member, with or without NFA representation, has met with the administrator or supervisor proposing discipline to review and discuss the charge(s).~~ 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, the NFA representative if present, and the administrator or supervisor have achieved consensus on a course of remedial action(s) to improve the member's job performance.~~ 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) Or, in case the bargaining member disputes the charge(s) or proposed sanction(s), the member may elect to:~~ a) refer the case to a faculty peer review/Discipline Oversight committee (described in Section 5), or; b) contest whether there is just cause for the charges and intended sanction by filing a grievance. If the bargaining unit member disputes the charge(s) or proposed disciplinary sanction(s), the bargaining unit 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.

~~(5) In the event that a notation of oral warning or written reprimand is placed in the bargaining unit member's personnel file, that individual shall have the right to place a response to that documentation in his or her file.~~

~~After one (1) year from the date of this meeting, if no further sanction has been imposed against the bargaining unit member, a notation of oral warning or written letter of reprimand issued on the basis of this meeting shall be removed from the member's personnel file~~

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, and the response if any, shall be removed from the member's personnel file.

#### **~~Section 5. Peer review / Discipline Oversight committee~~**

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

~~1. Within 14 calendar days an ad hoc Discipline Oversight committee shall be convened by the Faculty Senate Chair and/or the Ombudsman by randomly selecting seven faculty members from the campus of the bargaining unit member's choosing.~~ 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 preemptorily challenge two selections. The remaining committee members choose among themselves a chairperson.

~~2. The bargaining unit member and the administrator or supervisor may each preemptorily challenge two selections. The remaining committee members choose among themselves a chairperson.~~

2. 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.

3. 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. ~~A verbatim record~~ **An audio recording** of the hearing shall be made, **and provided to NFA upon request.**

4. The bargaining unit member may be accompanied and assisted by a NFA representative ~~or other advisor~~ in presenting testimony, evidence, and witnesses.

5. The ~~administrator or~~ supervisor shall appear at the hearing and may be ~~accompanied and advised by a human resources representative; the administrator or supervisor's failure to appear resolves the case in the bargaining unit member's favor and results in immediate dismissal of the proposed disciplinary sanction(s).~~ **may be advised by a human resources representative in presenting testimony, evidence, and witnesses.**

6. **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.**

7. The chairperson of the ~~ad hoc~~ 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.

8. 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.

9. Upon conclusion of the hearing, the ad hoc committee shall deliberate to render a **judgment 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 ~~administrator or~~ supervisor and to the human resources office for imposition or dismissal of the sanctions as written.

10. **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.**

## **DISCIPLINE AND TERMINATION FOR CAUSE (NFA 2<sup>nd</sup> Proposal)** **(clean copy)**

### **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, should 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 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. 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.

(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.

(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.

#### **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) 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.

(5) 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.

(6) 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 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. 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