

ARTICLE 30
DISCIPLINARY ACTION AND JOB ABANDONMENT

30.1 Policy. 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. No faculty member shall be subject to disciplinary action except for just cause. Just cause shall be defined as misconduct or incompetency.

(b) A faculty member's activities that fall outside the scope of employment shall constitute misconduct only if such activities adversely affect the legitimate and compelling interests of the university.

(c) Disciplinary Action Other than Termination. The Trustees, acting through their representatives, retains the right to impose disciplinary action other than termination for just cause including, but not limited to, suspension with or without pay, provided that the punishment is appropriate to the degree of misconduct. Admonitions, oral reprimands, letters of counseling (including recommendations for participation in an Employee Assistance Program), and similar criticism shall not be considered disciplinary action and shall not be subject to the grievance procedure.

(d) Due process.

(1) Disciplinary action shall be imposed by the Trustees only in accordance with the principles of due process as described in this Agreement.

(2) No faculty member shall be deprived of pay or benefits resulting from a disciplinary action until after the grievance process ends with an outcome that allows the discipline, or until one hundred and sixty-five (165) days following receipt of the Notice of Discipline, whichever time period is sooner.

(e) No provision in this Article shall be interpreted in a manner that violates a faculty member's rights conferred by this Agreement or by law, nor shall a faculty member be punished for exercising such rights in the performance of University duties.

30.2 Progressive Discipline. Both parties endorse the use of progressive discipline when imposing disciplinary sanctions upon a faculty member for just cause.

(a) The sanctions for disciplinary action that may be imposed on a faculty member may include but are not limited to the following:

(1) Written reprimand — a formal written expression of institutional rebuke, which shall contain a description of the misconduct.

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1 a. Written reprimand is distinguished from an informal written or
2 spoken warning.

3 b. A written reprimand shall be delivered to the recipient and
4 maintained in the faculty member's designated personnel file.

5 (2) Suspension with pay for a period of time specified in writing.

6 a. The written statement of suspension shall include the precise terms
7 of the suspension. Those terms may include, for example, some or all of the following: loss of
8 normal faculty privileges such as access to University property, participation in departmental
9 government, voting rights, administration of grants, supervision of graduate students, loss of
10 parking or library privileges, and use of University administrative staff.

11 b. Suspension as a disciplinary action is to be distinguished from
12 involuntary leave, which is a precautionary action.

13 (3) Suspension without pay for a period of time specified in writing along the
14 same lines indicated in subsection 30.2(a)(2), above.

15 (4) Demotion to the next lower rank or step with corresponding reduction in
16 salary. A faculty member with tenure or with security of employment shall not be demoted to a
17 lower rank without tenure or security of employment.

18 (5) Termination with or without pay.

19
20 30.3 Investigation. The investigation of alleged misconduct shall be conducted in as
21 confidential a manner as possible, and in the process of the investigation the alleged misconduct
22 shall be considered in the context of the entire circumstances.

23 (a) The investigation shall include interviewing the complainant, the accused, any
24 pertinent witnesses, and reviewing any relevant documentation. The accused faculty must be
25 informed that the faculty member has a right to union representation during investigatory
26 questioning that may reasonably be expected to result in disciplinary action. A failure to provide
27 such notice shall not constitute grounds to reverse a disciplinary action; however, it may be used
28 as a factor that the arbitrator may consider in determining whether the disciplinary action imposed
29 is appropriate.

30
31 (b) Assigned Duties During the Investigation. In the event that there is a reasonable
32 basis to conclude that the faculty member's continued assignment to regular duties or presence at
33 the campus may threaten the safety and welfare of others or impede the investigation of the
34 alleged misconduct, the faculty member may be reassigned or relieved of duties with pay.

35
36 30.4 Notice of Intent. When the Trustees' representative has reason to believe that a suspension
37 or termination should be imposed, the Trustees' representative shall provide the accused faculty
38 member with a written notice of the proposed action and the specific reasons for it.

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1 (a) Such notice of intent shall be sent by certified mail, return receipt requested, or
2 delivered in person with written documentation of receipt obtained.
3

4 (b) The faculty member shall be given ten (10) business days from delivery of the
5 notice in which to respond in writing to the Trustees' representative before the proposed action is
6 taken. The Trustees' representative then may issue a notice of disciplinary action under Section
7 30.5.
8

9 (c) If the Trustees' representative does not issue a notice of disciplinary action, no
10 record of the allegation or the investigation shall be retained in the faculty member's evaluation
11 file. If an applicable law requires the University to keep for a specified period the record of a
12 complaint that does not result in disciplinary action, once the end of that period is reached the
13 Trustees shall destroy the records of the complaint.
14

15 30.5 Notice of Discipline. If, after the investigation and notice of intent process, the Trustees'
16 representative believes that a suspension or termination should be imposed, the Trustees'
17 representative shall provide the faculty member with a written notice of disciplinary action.

18 (a) All such notices shall be sent certified mail, return receipt requested, or delivered in
19 person to the faculty member with written documentation of receipt obtained.
20

21 (b) All notices of disciplinary action shall include a statement of the reasons for the
22 disciplinary action and a statement advising the faculty member that the action is subject to Article
23 31, Grievance Procedure and Arbitration.

24 (1) The Notice of Discipline shall:

- 25 a. be headed "Notice of Discipline";
- 26 b. provide notice to the faculty member of the discipline imposed;
- 27 c. include the date on which the discipline will become effective,

28 provided that in the case of suspension or termination without pay, such pay and benefits shall not
29 be denied until the period for filing a grievance has elapsed and the faculty member has not filed a
30 grievance; and

31 d. contain a statement that if the faculty member wishes to contest the
32 discipline, the faculty member must file a grievance within fifteen (15) days after receipt of the
33 notice, and the provisions of Sections 30.1 and 30.6-30.8 of this Agreement shall apply.

34 (2) A copy of the Notice of Discipline and attachments shall be simultaneously
35 provided to the UFF.
36

37 30.6 Grievances and Arbitrations in Disciplinary Cases. Grievances and arbitration in cases
38 involving disciplinary action shall be in accordance with the provisions in Article 31, Grievance
39 Procedure and Arbitration, except that the following special conditions shall apply:

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1 (a) The grievance shall be initiated by filing the form shown in Appendix “C” with the
2 Vice President for Human Resources no later than fifteen (15) days following receipt of the Notice
3 of Discipline.

4
5 (b) When the grievance is filed, the Step 1 Grievance Hearing and the Step 2
6 Grievance Review shall be waived, and an automatic postponement of thirty (30) days shall be
7 implemented while the UFF decides whether or not it will file for arbitration. If the UFF chooses
8 to submit the grievance to arbitration, the Notice of Arbitration form shown in Appendix “D” must
9 be filed with the office of the Vice President for Human Resources within thirty (30) days after the
10 filing of the grievance.

11
12 30.7 Parameters for Arbitrator’s Decision or Award.

13 (a) A finding of just cause for discipline must be based only on the evidence presented
14 at the arbitration hearing.

15
16 (b) If the arbitrator does not find that the disciplinary action was based on just cause,
17 the discipline imposed shall be annulled. If the arbitrator concludes that just cause for a
18 disciplinary action has been established but that a different penalty than that proposed would be
19 more appropriate, the arbitrator shall determine a different penalty, which may be more or less
20 severe, with supporting reasons.

21
22 (c) The decision of the arbitrator shall be binding upon the Trustees, the UFF, and the
23 grievant, provided that either party may appeal to an appropriate court of law, pursuant to Chapter
24 682, Florida Statutes.

25
26 (d) No Further Jeopardy. Following the decision, the faculty member shall not be
27 disciplined again for charges arising from the same incident unless new facts or evidence
28 materialize that were not known or reasonably available for discovery prior to the arbitrator’s
29 decision.

30
31 30.8 Trustees’ Waiver of Discipline. Any time between the Notice of Discipline and the
32 imposition of any disciplinary action, the Trustees or designee(s) may waive or limit that action on
33 the condition that the disciplined faculty member performs some reasonable action(s), which shall
34 be specified in writing, to address the harm or to prevent future harm.

35 (a) Such actions may include, but are not limited to, monetary restitution, repayment of
36 misappropriated resources, compliance with a commitment not to repeat the misconduct, or other
37 action designed to make whole the injury caused by the faculty member’s professional misconduct
38 or to prevent future misconduct.

39
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1 (b) The Trustees shall designate a fixed time period for compliance with the terms of
2 the waiver.

3
4 (c) If the imposition of a disciplinary action is waived, the subsequent failure to
5 perform the required act or otherwise comply with the conditions of the waiver shall immediately
6 subject the faculty member to the implementation of the underlying discipline without an
7 additional hearing.

8
9 30.9 Employee Assistance Program. Neither the fact of a faculty member's participation in an
10 Employee Assistance Program (EAP), nor information generated by participation in the program,
11 shall be used as a reason for discipline under this Article. However, where the faculty member
12 and Trustees have agreed that the faculty member would participate in an EAP, a faculty
13 member's failure to cooperate in the EAP consistent with the terms to which the faculty member
14 and the Trustees or representatives have agreed may serve as ground for disciplinary action.

15
16 30.10 Job Abandonment

17 (a) If a faculty member is absent without leave authorized under the provisions of
18 Section 22.1 for ten (10) or more consecutive business days, the faculty member may be
19 considered to have abandoned the position and voluntarily resigned from the University.

20
21 (b) Notwithstanding paragraph (a), above, if the faculty member's absence is for
22 reasons beyond the control of the faculty member and the faculty member notifies the University
23 as soon as practicable, the faculty member will not be considered to have abandoned the position.
24

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