

## **ARTICLE 27**

### **DISCIPLINARY ACTION AND JOB ABANDONMENT**

27.1 Policy. The purpose of this Article is to provide a prompt and equitable procedure for disciplinary action.

(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 University retains the right to impose disciplinary action other than termination including, but not limited to, suspension with or without pay, provided that the punishment is appropriate to the degree of misconduct. The degree of discipline may be related to behavior or actions subject to discipline. Admonitions, oral reprimands, letters of counseling (including recommended or mandatory 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 University in accordance with the principles of due process as outlined in this Article and in Article 11.3.

(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.

(e) No provisions 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.

27.2 Progressive Discipline. Outlined below are the steps for faculty progressive discipline.

(a) The University may combine or skip steps depending upon the facts of the situation, the nature of the conduct, and any documented past incidents.

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

- (1) Written reprimand containing a description of the just cause.
  - a. Written reprimand is distinguished from an informal written or spoken warning.
  - b. A written reprimand shall be delivered to the recipient and maintained in the faculty member's designated personnel file.

(2) Suspension with or without pay for a period of time specified in writing.

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

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

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

(4) Termination.

27.3 Investigation. The investigation of alleged misconduct shall be conducted in as confidential a manner as possible, and in the process of the investigation the alleged misconduct shall be considered in the context of the circumstances.

(a) The investigation shall include interviewing the complainant, the accused, any pertinent witnesses, and reviewing any relevant documentation. The accused faculty must be informed that the faculty member has a right to union representation during investigatory questioning that may reasonably be expected to result in disciplinary action. A failure to provide such notice shall not constitute grounds to reverse a disciplinary action; however, it may be used as a factor that the arbitrator may consider when determining whether the disciplinary action imposed is appropriate. The accused shall (1) be informed of the complaint, the complainant, and the time frame of the alleged incident or actions; (2) be provided any documents under review in the investigation and redacted as required by law; (3) be informed within seven (7) days of any expansion of the complaint under review; and (4) have the right to respond to any report of the investigation.

(b) Administrative Leave. In the event that the University has reason to believe that the faculty member's actions or presence on the job would adversely affect the orderly conduct and processes of the university, and/or jeopardize the safety or welfare of the faculty member, colleagues, other employees, or students, the faculty member may be reassigned or relieved of duties with pay during the investigation. Administrative leave is not discipline.

27.4 Notice of Intent. When the University has reason to believe that a suspension or termination should be imposed, the University shall provide the accused faculty member with written notice of the proposed action and the specific reasons for it.

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

(b) The faculty member shall be given fifteen (15) days from delivery of the notice in which to respond in writing to the University before the proposed action is taken. The University then may issue a notice of disciplinary action under Section 27.5.

(c) If the University does not issue a notice of disciplinary action, no record of the allegation or the investigation shall be retained in the faculty member's personnel file. If an applicable law requires the university to keep for a specified period the record of a complaint that does not result in disciplinary action, once the end of that period is reached the University shall destroy the record of the complaint.

27.5 Notice of Discipline. If after the investigation and notice of intent process, the University believes that a suspension or termination should be imposed, University shall provide the faculty member with a written notice of disciplinary action.

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

(b) All notices of disciplinary action shall include a statement of the reasons for the disciplinary action and a statement advising the faculty member that the action is subject to Article 28, Grievance Procedure and Arbitration.

(1) The Notice of Discipline shall:

- a. Provide notice to the faculty member of the discipline imposed;
- b. Include the date on which the discipline will become effective,

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

c. Contain a statement that if the faculty member wishes to contest the discipline, the faculty member must file a grievance within fifteen (15) days after receipt of the notice.

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

27.6 Parameters for Arbitrator's Decision or Award.

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

(b) If the arbitrator does not find that the disciplinary action was based on just cause, the discipline imposed shall be annulled. If the arbitrator concludes that just cause for the disciplinary action has been established but that a different penalty would be more appropriate, arbitrator shall determine a different penalty, which may be more or less severe.

(c) The decision of the arbitrator shall be binding upon the University, UFF, and the grievant provided that either party may appeal to an appropriate court of law.

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

27.7 Waiver of Discipline. Any time between the notice of discipline and the imposition of any disciplinary action, the University may waive or limit that action on the condition that the disciplined faculty member performs some reasonable action(s), which shall be specific in writing, to address the harm or to prevent future harm.

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

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

27.8 Employee Assistance Program.

(a) Neither a faculty member's participation in an Employee Assistance Program (EAP), nor information generated by participation in the program, shall be used as a reason for discipline under this Article.

(b) However, a mandatory EAP may serve as ground for disciplinary action.

27.9 Job Abandonment.

(a) If a faculty member is absent without leave for fifteen (15) or more consecutive days, the faculty member may be considered to have abandoned the position and voluntarily resigned from the University. The University will make all good faith efforts to contact the faculty member.

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