

## **DISCIPLINE AND TERMINATION FOR CAUSE**

### **Preamble**

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. 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. Definitions**

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

### **Section 2. 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.
- (b) Bargaining unit members have the right to be accompanied by a NFA representative at any meeting or forum regarding discipline or termination.
- (c) For severe sanctions, the evidence must show that the bargaining unit member committed the violation beyond a shadow of a doubt.

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

- (a) Administrative supervisors (department chair or unit head, 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.
- (b) 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, and evaluating the member’s personnel history.
- (c) CSN Administration 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.

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

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

(b) 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.

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

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

- oral warning with notation to the personnel file
- written letter of reprimand
- denial of salary increase
- restitution of property losses
- exclusion from assigned duties without pay
- 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).

(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:

(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.

(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).

(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.

(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.

(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.

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

If a bargaining unit faculty member elects to contest discipline via the peer review/Discipline Oversight 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.
2. The bargaining unit member and the administrator or supervisor may each peremptorily challenge two selections. The remaining committee members choose among themselves a chairperson.
3. A hearing shall be held within 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 of the hearing shall be made.
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).
6. 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.
7. 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.
8. Upon conclusion of the hearing, the ad hoc committee shall deliberate to render a judgment 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.