

# CSN's third counter-proposal to the NFA's 5/5/2017 counter-proposal on Discipline and Termination

## DISCIPLINE AND TERMINATION FOR CAUSE

### I. Introduction

This article establishes the procedures and Disciplinary Sanctions applicable to ~~academic faculty bargaining unit~~ members whose conduct shows just cause for Discipline, ~~and/or termination of employment~~. Principles of Progressive Discipline, as defined below, ~~should~~ shall be followed whenever possible in an effort to correct behavior before a more severe Disciplinary Sanction is imposed.

This Article does not apply to nor modify Code sections 5.9.1 or 5.9.3 pertaining to notices of non-reappointment or to the provisions of the Faculty Tenure policy addressing circumstances prior to the grant of tenure.

### II. 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," in addition to its widely accepted meaning, refers to willful disobedience of supervisory direction. It does not affect academic freedom or the exercise of the rights provided under this Agreement."

(b) "Discipline" means Disciplinary Sanctions expressly identified ~~in a disciplinary by~~ Section 4-IV(a) of this article. It does not include oral ~~or written~~ counseling to initially seek correction of behavior which a supervisor may choose to do under the circumstances before pursuing Discipline.

(c) "Progressive Discipline" is the process of using increasingly severe steps in the order set out in Section 4-IV of this article, except in cases of serious violation of this Agreement, NSHE Code, or law when ~~the most serious an escalated~~ Disciplinary Sanction up to and including termination may be pursued based on the alleged misconduct without first applying lesser Disciplinary Sanctions.

### III. Rights

(a) ~~(a)~~ No ~~academic faculty bargaining unit~~ member shall be Disciplined without Cause and the process as outlined in this agreement.

(b) 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 Dept., Office of General Counsel, etc. A decision to initiate discipline shall also include the determination of the

appropriate proposed Disciplinary Sanction.

~~(c)~~ An ~~academic faculty~~bargaining unit member has the right to be accompanied by a NFA representative at any meeting or hearing pertaining to Discipline.

~~(e)~~ ~~(d)~~ All decisions must be based in evidence which establishes that it is more likely than not that Cause exists for the Discipline.

~~(e)~~ ~~Supervisors (Department Chair or unit manager, Dean, or Vice President Academic Affairs) of academic faculty members have the authority to issue Discipline.~~ Supervisors shall receive training in the application of Progressive Discipline.

~~(e)~~ ~~A supervisor shall determine the level of Disciplinary Sanction by considering the severity of the misconduct.~~

(f) No supervisor may impose disparate treatment on an ~~academic faculty~~bargaining unit member in lieu of proceeding under the provisions of this article.

(g) The President or designee may place ~~aa bargaining unit~~academic faculty member on administrative leave with pay and/or impose other conditions on a bargaining unit member that do not involve the loss of pay while Discipline under this article is pursued.

#### IV. Disciplinary Sanctions

(a) Under this agreement, Disciplinary Sanctions consist of the following:

- ~~written-oral~~ warning with notation placed in the personnel file
- written reprimand placed in the personnel file
- ~~denial of salary increase~~
- 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 the Introduction, Progressive Discipline ~~should~~shall be followed whenever possible. Serious misconduct warranting an escalated Disciplinary Ssanction up to and including termination includes, but is not limited to, sexual harassment, unlawful discrimination, theft, and violent, destructive, or threatening criminal acts.

#### V. Disciplinary Process

(a) The ~~academic faculty~~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 Disciplinary Ssanction(s), and a copy of all reasonably available

materials and records supporting the charge(s). The written notice shall also advise the ~~academic faculty bargaining unit~~ member of his/her right to have a NFA representative at the meeting.

(b) Within ~~fifteen~~twenty (15~~20~~) calendar days after receipt of the written notice, the ~~academic faculty bargaining unit~~ member, with or without a NFA representative being present, must meet with the Dean/Director, with or without the supervisor ~~who is proposing the discipline~~ to review and discuss the charge(s) and Disciplinary Sanction.

(c) The ~~academic faculty bargaining unit~~ member and the supervisors may achieve consensus on a course of remedial action(s) to improve the member's job performance and/or behavior which may or may not include the imposition of a Disciplinary Sanction. The informal resolution process provided for in ~~this~~ sub-section (b) above shall not apply to disciplinary charge(s) alleging serious misconduct as outlined in IV (b) sexual assault or violence.

(d) If the ~~academic faculty bargaining unit~~ member disputes the charge(s) or proposed Disciplinary Sanction(s), the ~~academic faculty 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 Disciplinary sSanction by filing a grievance through the supervisory chain with the final decision, as needed, by the President.

(e) In the event that a notation of oral warning or written reprimand is placed in the personnel file, the ~~academic faculty bargaining unit~~ 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 Disciplinary Ssanction has been imposed against the ~~academic faculty bargaining unit~~ member, the written letter of warning or reprimand shall be removed from the member's personnel file.

## VI. Discipline Hearing Process through Faculty Discipline Committee

~~(f)~~ If an ~~academic faculty bargaining unit~~ member elects to contest Discipline via the faculty discipline committee, the following procedures shall apply:

~~(a)1.~~ 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 larger panel of faculty who have expressed willingness to serve on such a committee. The ~~academic faculty bargaining unit~~ member and the Dean/Directors supervisor ~~must~~stay each peremptorily challenge two selections. The remaining three (3) committee members choose among themselves a chairperson.

~~(b)2.~~ 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.

~~(c)3.~~ The ~~academic faculty bargaining unit~~ member may be advised by a NFA representative or other advisor in presenting testimony, evidence, and witnesses.

~~(d)4.~~ The Dean/Directors supervisor 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.

~~(e)5.~~ The ~~academic faculty member's or supervisor's~~ failure to appear by either party resolves the case in the favor of the appearing party.

~~(f)6.~~ 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.

~~(g)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.

~~(h)8.~~ 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.

1) The committee's decision, whether unanimous or simple majority, shall be final in the instance of a proposed Disciplinary Sanction up to and including a written reprimand.

2) In all other cases not included in subsection (1) above, ~~the~~ the committee's decision, whether unanimous or simple majority, shall constitute a recommendation to the President for resolution of the matter. The President shall review the findings of fact and recommendation and may, in writing: dismiss the charge, affirm the recommendation of the committee, impose a lesser Disciplinary sSanction than recommended, impose a greater Disciplinary Ssanction than recommended, or order a new hearing. The President's decision is not subject to grievance procedure or further appeal, and the President's decision shall be delivered to the supervisors and to the ~~h~~Human ~~R~~esources ~~Department~~office for action as directed in the President's decision.~~imposition or dismissal of the sanctions as written.~~

~~(ig)~~ For Disciplinary Sanctions that are proposed as a result of a violation under Title IX to include gender-based discrimination or harassment, the disciplinary processes as set forth in subsections d-f, above, 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 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.