ARTICLE 16
DISCIPLINARY ACTION AND JOB ABANDONMENT

[Bold font indicates difference from BOT proposal #10, dated 02-18-2008]

16.1 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 shall be defined as:

(1) incompetence, or

(2) misconduct.

The Board may impose for just cause disciplinary actions of varying severity, up to and including termination, providing that the punishment is modulated appropriately to fit the degree of misconduct. The set of potential disciplinary actions are specified in Section 16.3(c) below.

(b) University discipline, as distinguished from other forms of reproof or administrative action, shall be reserved for employee misconduct that is either serious in itself or is made serious through its repetition or its consequences. (1) Admonitions, oral reprimands, and similar criticism shall not be considered disciplinary action. (2) Counseling, including letters of instruction and recommendations for participation in an employee assistance program, shall not be considered disciplinary action.

(c) An employee's activities which occur away from University property or when the employee is not acting within the scope of employment fall outside the scope of employment.

(c) An employee's activities which occur away from University property or when the employee is not acting within the scope of his or her employment shall be subject to discipline only when such activities impair the ability to perform his or her assigned job duties or constitute impermissible harassing or threatening conduct directed at a student or co-worker.

(d) Statute of Limitation. In cases of alleged misconduct, no disciplinary process may commence if more than thirty (30) days have passed between the time when the Board knew or should have known about the alleged misconduct and the initiation of the investigatory or disciplinary process.

(d) No provision in this Article shall be interpreted in a manner that may abridge or violate an employee's academic freedom as defined in Article 5 or constitutional rights, nor shall an employee be disciplined for exercising such freedom or rights.

(f) Prior to investigatory questioning in a formal investigation in which the University has reason to believe that the employee may be disciplined, the that may reasonably be expected to result in disciplinary action, an employee shall receive written notice that he or she is entitled
to UFF or other representation during such questioning. This notice may be provided within the
document that notifies the employee of the investigation or that summons the employee for
questioning.

(e) Any written directive from an administrator or office of a college or equivalent
unit or of the University a Dean’s Office, the Equal/Opportunity/Affirmative Action Office, or
the Office of Faculty Relations, or their successors or equivalent administrative units, requiring
that an employee answer questions as part of a formal investigation which may reasonably be
expected to result in his or her discipline shall advise the employee of the right to have a UFF
representative present during such questioning.

(f) When involuntary administrative leave with pay is imposed as a precautionary action,
the employee shall receive all compensation and benefits that would have been received had the
leave not been imposed, including compensation for any overload or supplemental employment
which the employee was scheduled to begin within thirty (30) days of the imposition of the
leave. On or before the thirtieth (30th) day of such leave, the University shall either (a) issue
to the employee a written notice of proposed discipline in accordance with the provisions of
this agreement or (b) restore the employee to active service.

(g) When disciplinary action is taken, the burden of proof shall be on the University.

16.2 Due Process. The Board shall impose no disciplinary action for professional misconduct
except in accordance with the procedures for due processes set forth in this Article and, in Article
20 (Grievance Procedure and Arbitration), or in the Assignment Dispute Resolution procedure
detailed in Article 9. No disciplinary action shall be imposed until any formal hearing processes,
including grievances, have been completed.

16.3 Just Cause.

(a) No employee shall be subject to disciplinary action except for just cause.

(b) Just cause shall be defined as:

(1) incompetence, or

(2) misconduct.

(e) Criteria for Determining Incompetence:

(1) The Board and the UFF agree that: there are many ways to improve an
employee’s performance, and that termination of an employee for incompetent
performance is an extraordinary remedy designed to address gross performance
deficiencies in extremely rare cases.

(2) In determining whether or not an employee is incompetent, evaluators shall
look at the employee’s job as a coherent whole and examine comprehensively, in
the context of the employee’s discipline, the individual’s contributions in all areas
of academic responsibility.

(d) Criteria for Determining Misconduct. An employee may be disciplined for
misconduct only if the employee:

(1) Misrepresents professional credentials or job-related achievements;

(2) Fails to maintain professional licensure or clinical privileges necessary to
perform assigned duties;
(3) Is convicted of crime relating to the employee’s area of academic expertise;
(4) Intentionally falsifies data or intentionally misappropriates the writings, research, and findings of others;
(5) Is found to have committed discrimination or harassment, according to the process described in Article 6;
(6) Grossly abuses authority or influence (e.g., discriminatory or retaliatory actions, particularly where a pattern is evident);
(7) Commits theft of University property or intentionally damages or destroys University property; or
(8) Possesses or uses explosives, dangerous chemicals, ammunition, or weapons on campus or in areas controlled by the University, without the approval of the appropriate University authority.

16.34 Progressive Discipline.

(a) If an employee becomes the subject of disciplinary action, the Board shall follow the principle of implement progressive discipline as applied to professional employees.

(b) The type and severity of the discipline selected for a particular offense shall must be appropriately related to the nature and circumstances of the offense ease.

(c) The only formal disciplinary actions that may be imposed on an employee are as follows, in order of increasing severity, oral reprimand, written reprimand, suspension with or without pay for a specified time of not more than one (1) semester for an employee on a 9-month contract or six (6) months for an employee on a 12-month contract two semesters, and termination:

(1) Written reprimand censure consisting of a formal written expression of institutional rebuke, conveyed by the Board or representative, which contains a brief description of the censured conduct. The written reprimand shall include a statement that the disciplinary action is subject to the grievance procedure described in Article 20.
   a. Written censure is to be distinguished from an informal written or spoken warning. An informal written or spoken warning is not an official disciplinary action.
   b. The written censure shall be delivered confidentially to the employee and maintained in the employee’s evaluation personnel file for no more than six (6) years, with the period of time specified in writing.

(2) Temporary reduction in salary of no more than ten percent and for no longer than one year, without change in rank or step. The written notice of temporary reduction in salary shall be delivered confidentially to the employee in writing and specify the amount and duration of the reduced salary.

(3) Suspension without pay for a specified time of not more than six (6) months.
   a. The terms of a suspension may include loss of normal academic privileges such as access to University property, participation in departmental governance, administration of grants, supervision of graduate students, and use of University administrative staff, and loss of other campus privileges such as parking and library privileges. b. The written notice of suspension without pay shall be specified in writing and delivered to the employee confidentially with the
degree and duration of the suspension indicated therein. c. Suspension without pay as a
disciplinary action is to be distinguished from involuntary leave with pay, which is a
precautionary action.

4) Termination. a. A tenured appointment or any appointment of definite
duration may be terminated during its term only for just cause as described in Section 16.2,
above. b. An employee shall be given written notice of termination at least six (6) months in
advance of the effective date of such termination, except that in cases where the president or
president’s representative determines that an employee’s actions adversely affect the functioning
of the University or jeopardize the safety or welfare of the employee, colleagues, or students, the
president or president’s representative may give less than six months notice.

(d) If an employee is found to have intentionally damaged or destroyed University
property, the employee may be required to reimburse the University for the fair cost of repair or
replacement of that property in addition to any other disciplinary action that may be imposed.

16.4 Oral or Written Reprimand. No notice of intent or employee response time is required
when an employee receives an oral reprimand or written reprimand.

16.5 Fair Warning. Pre-determination Procedures for Suspension or Termination Discharge.

(a) Written notice. If the University intends to impose disciplinary action more severe
than a written reprimand, the president or president’s representative shall provide the employee
with a written notice of the proposed action. If possible, this notice shall be hand-delivered to
the employee and the employee shall acknowledge receipt in writing. Otherwise, the notice shall
be mailed to the employee by certified mail, return receipt requested. This notice shall be
considered received by the employee even if refused. This notice shall be signed by the
president or president’s representative and shall contain include the following:

1. The action proposed by the University and its proposed effective date;
2. A statement of the reasons for the proposed action;
3. A list Copies of all documents on which the University has based its proposed
action and a statement that copies of these documents will be provided to the employee upon
written request;
4. A statement that the employee may, within ten (10) days of receipt of the
notice or receipt of requested documents (see 16.4(a)(3)), whichever is later, submit a written
response and the name, address, and telephone number of the person to whom such a response
should be sent;
5. A statement that the University shall consider the employee’s written
response, if provided;
6. A statement that the employee may, within ten (10) days of the receipt of the
notice or receipt of requested documents (see 16.4(a)(3), whichever is later, make written request
for a conference with the president or president’s representative;

7. A statement that the employee may grieve the proposed action using the
procedure defined in Article 20 (Grievance Procedure and Arbitration) and that the
University shall find a grievance of a proposed disciplinary action to be timely; and

[Note: this issue disappears if we are able to come to terms on retaining the employee’s
right to follow the grievance process through before imposition of the leave without pay or
termination.]

(87) Copies of this article and Article 20; and
(98) Notice that the employee may resign or retire, if eligible.

(b) Conference. If the employee requests a conference, it shall be conducted by the
president or president’s representative as follows:
   (1) The person(s) conducting the conference shall convene it at a time and place
of mutual convenience. The person(s) conducting the conference shall not be the person(s)
responsible for handling Step 2 grievances for the University. Barring circumstances beyond
the employee’s control, the employee must be available to meet at his or her normal workplace
(or at
the main campus, if acceptable to the employee and the University) within seven (7) days of
making receipt of the written request for the conference. The purpose of the conference is to
hear the employee’s response to the proposed action and the reasons given for it. The person(s)
responsible for deciding whether the employee will be disciplined and what that discipline will
be shall attend the conference.
   (2) The employee is entitled to UFF or other personal representation at the
conference.
   (3) The conference shall be informal and shall not be in the nature of an
evidentiary hearing; therefore discovery, cross-examination, and similar legal procedures are not
permitted.
   (4) The employee shall be permitted to submit relevant information, orally and in
writing, and shall be permitted to bring witnesses.

(bc) Deadline for notice of disciplinary action. The president or president’s
representative shall issue a notice of disciplinary action or a notice that the proposed disciplinary action will not be taken
   (1) within twenty (20) thirty (30) days after the employee receives notice of the
proposed action, when the employee does not respond in writing within ten (10) days; or
   (2) within ten (10) thirty (30) days of receipt of the employee’s written response
to the notice proposed action, if provided, unless the written response provides new information
that requires further investigation and the employee is so informed in writing; or
   (3) within ten (10) thirty (30) days following the completion of the conference, if
one is requested, unless the conference provides new information that requires further
investigation and the employee is so informed in writing.

(cd) No disciplinary action. If the proposed disciplinary action is not taken, no
mention of the proposed disciplinary action shall be retained in the employee’s evaluation file. A separate file may be maintained by the University to show that the matter was investigated. The employee shall not later be disciplined for the conduct that led to the notice of proposed discipline; however, if similar conduct is repeated, the prior matter may be considered in determining whether a pattern or practice of behavior exists if and only if the prior matter resulted in an oral or written reprimand or letter of instruction, which the employee had the right to grieve.
16.6 Notice of Suspension or Termination Disciplinary Action.

(a) The president or president’s representative shall notify the employee in writing of any disciplinary action. The notice shall contain the heading “Notice of Disciplinary Action.” The notice shall include a statement of the reasons for the action, and a statement advising the employee that the action is subject to the Grievance Procedures in Article 20, and the effective date of the action.

(b) An employee shall be given written notice of termination at least six (6) months in advance of the effective date of such termination, except that in cases where the president or president’s representative determines that an employee’s actions adversely affect the functioning of the University or jeopardize the safety or welfare of the employee, colleagues, or students, the president or president’s representative may give less than six months notice.

(b) When disciplinary action is taken, the burden of proof shall be on the president or president’s representative.

(c) Notices of disciplinary action shall be delivered in person to the employee with written documentation of receipt obtained or be sent certified mail, return receipt requested.

16.7 Job Abandonment

(a) If an employee is absent without authorization for twelve (12) or more consecutive days (or seven (7) or more consecutive days for a 9-month employee employed under a supplemental summer contract), the employee shall be considered to have abandoned the position and voluntarily resigned from the University.

(b) The University shall make reasonable efforts to contact the employee by telephone, email, and overnight mail before concluding that the employee has abandoned his or her position.

(c) Notwithstanding paragraph (a), above, if the employee's absence is for reasons beyond the control of the employee and the employee notifies the University as soon as possible, the employee shall not be considered to have abandoned the position.

16.8 Employee Assistance Program. Neither the fact of an employee's participation in an employee assistance program, nor information generated by participation in the program, shall be used as a reason for discipline under this Article, except for information relating to an employee's failure to participate in an employee assistance program consistent with the terms to which the employee and the University have agreed.