



Authority State Personnel Commission
Title Disciplinary Action Policy
Responsible Office Human Resources
Subject Employee Relations
Applies to SPA Permanent Employees

History: First issued:

Additional References:

Related Policies: Performance Management, Office of State Personnel Disciplinary Action Policy

1. POLICY STATEMENT

It is the intent of North Carolina A&T State University to provide for its employees and management a fair, clear and useful tool for correcting and improving performance problems, as well as to provide a process to assist management in handling cases of unacceptable personal conduct. Any disciplinary action taken in accordance with this policy must be for just cause under one of the following bases:

- Discipline imposed on the basis of unsatisfactory job performance including gross inefficiency, or
- Discipline imposed on the basis of unacceptable personal conduct.

When just cause exists, any non-career or career status employee may be warned, demoted, suspended without pay, or dismissed by NC A&T State University.

2. DEFINITIONS

Career Status is attained by an employee that is in a permanent position and has been continuously employed by the State of North Carolina in a SPA position for 24 months or more.

A **Current Unresolved Incident** is an act of unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance for which no action has previously been taken by university management.

A **Disciplinary Demotion** is a personnel action that:

- Lowers the salary of an employee within his/her current pay grade or band, or places the employee in a position at a lower pay grade or band with or without lowering employee's salary, AND
- The action was involuntary on the part of the employee, AND
- The action was taken to discipline the employee.

A **Disciplinary Suspension Without Pay** is the removal of an employee from work for a period of time for disciplinary reasons without paying the employee.

Dismissal is the involuntary termination of the employment of an employee for disciplinary reasons or failure to obtain/maintain necessary job credentials.

Gross Inefficiency (Grossly Inefficient Job Performance) is a type of unsatisfactory job performance that occurs when an employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by management AND the failure results in:

- Death or serious bodily injury or creates conditions that increase the chance for death or serious bodily injury to an employee(s) or members of the public or to a person(s) over whom the employee has responsibility, OR
- Loss of or damage to state property or funds that results in a serious impact on the state or work unit.

An **Inactive Disciplinary Action** is an disciplinary action that can no longer be counted towards the number of disciplinary actions. A disciplinary action becomes inactive when:

- The manager or supervisor notes in the employee's personnel file that the reason(s) for the disciplinary action has been resolved or correct, or
- Following the disciplinary warning or action, the employee receives an overall summary rating of Good or better and at least a Good or better in the performance area cited in the warning or disciplinary action, or
- Eighteen (18) months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last eighteen (18) months, and no extension has been granted, or
- Management specifies a period of less than eighteen (18) months.

Insubordination is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.

Unacceptable Personal Conduct is:

- Conduct for which no reasonable person should expect to receive prior warning, or
- Job related conduct which constitutes a violation of state or federal law, or
- Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the state, or
- The willful violation of known or written work rules, or
- Conduct unbecoming a state employee that is detrimental to state service, or
- The abuse of client(s), student(s) or persons whom the employee has charge or whom the employee has a responsibility for or of an animal owned by the state, or
- Absence from work after all authorized leave credits and benefits have been exhausted, or
- Falsification of a state application or other employment document.

Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the university.

3. JUST CAUSE FOR DISCIPLINARY ACTION

The two reasons (just cause) for the discipline or dismissal of employees are:

- Unsatisfactory job performance, including grossly inefficient job performance, and
- Unacceptable personal conduct.

Some actions may fall under both reasons. No disciplinary action shall be invalid solely because the disciplinary action is labelled incorrectly.

The degree and type of action taken shall be based upon the sound and considered judgment of the university. When just cause exists, the disciplinary actions that can be taken are:

- Written Warning
- Disciplinary Suspension Without Pay
- Demotion
- Dismissal

4. UNSATISFACTORY JOB PERFORMANCE

Any work related performance problem may establish just cause to discipline an employee for unsatisfactory job performance. Just cause for discipline occurs when an employee fails to satisfactorily meet job requirements. The determination of unsatisfactory performance is made by the supervisor. The supervisor's determination should be reasonable, proper and factually supported.

First incident of unacceptable job performance: Written Warning may be issued based on any current unresolved incident of unsatisfactory job performance.

Second incident of unacceptable job performance: Second Written Warning, Disciplinary Suspension Without Pay or a Demotion may be issued. If a Disciplinary Suspension Without Pay or a Demotion is considered, it must be based on a current unresolved incident of unsatisfactory job performance and preceded by at least **one** prior active warning or other disciplinary action and a pre-disciplinary conference.

Third or subsequent incidents of unacceptable job performance: Additional Written Warning, a Disciplinary Suspension Without Pay, a Demotion or Dismissal may be issued. If Dismissal is considered, it must be based on a current unresolved incident of unsatisfactory job performance and preceded by at least **two** prior active warnings or other disciplinary actions, and a pre-disciplinary conference.

5. GROSSLY INEFFICIENT JOB PERFORMANCE

Just cause to take disciplinary action for grossly inefficient job performance exists when job performance is so unsatisfactory that it causes or results in death or serious injury to employees, members of the public or to persons for whom the employee has responsibility OR when job performance is so unsatisfactory that it causes or results in a serious loss of or damage to state property or funds adversely impacting the university.

Disciplinary action for Grossly Inefficient Job Performance may be taken based on a current unresolved incident of grossly inefficient job performance. Prior to issuing a Disciplinary Suspension Without Pay, a Demotion or a Dismissal, a pre-disciplinary conference is required.

6. UNACCEPTABLE PERSONAL CONDUCT

Just cause to take disciplinary action for unacceptable personal conduct may be created by intentional or unintentional acts. The conduct may occur on the job or when the employee is off duty, provided that there is a sufficient connection between the conduct and the employee's job. Insubordination is a type of unacceptable personal conduct.

Disciplinary action for Unacceptable Personal Conduct may be taken based on a current unresolved incident of unacceptable personal conduct. Prior to issuing a Disciplinary Suspension Without Pay, a Demotion or a Dismissal, a pre-disciplinary conference is required.

7. DISCIPLINARY PROCEDURES

Supervisor's Role

The supervisor has the duty to review and encourage satisfactory job performance by employees of his/her work unit. A supervisor also has the duty to address cases of unsatisfactory job performance or unacceptable personal conduct. In determining whether to take disciplinary action or the appropriate type of disciplinary action, the supervisor should consider whether more investigation is needed, the employee's work history, the disciplinary actions received by other employees within the university or work unit for comparable performance or behaviors and any other relevant factors. In the case of disciplinary action for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee may receive. After the first warning, a supervisor may give additional warnings or a higher level of disciplinary action. For grossly inefficient job performance or unacceptable personal conduct, the supervisor may give a written warning; however, a written warning is NOT required before the supervisor takes other types of disciplinary action.

Written Warning

In a private discussion, the supervisor must inform the employee that he/she is being disciplined and specify the reason for the discipline. Under very limited circumstances, at management's discretion, another management representative or representative of the Department of Human Resources may be present to facilitate communication.

If, following the discussion, management decides to issue a Written Warning, the Written Warning shall:

- Be in writing and state clearly that it is a warning,
- Tell the specific conduct or performance that is the reason for the warning,
- Tell the specific performance or conduct improvement that must be made,
- Tell the time within which the employee must show improved performance or conduct. (If the Warning does not include a time frame, the default time frame is sixty (60) days for unacceptable job performance and immediately for grossly inefficient job performance or unacceptable personal conduct.
- Tell the consequences of failing to make the required improvements/corrections
- Tell the employee of any appeal rights provided. In the case of Written Warnings, appeal rights are not provided, so the warning should state that Written Warnings may not be appealed.

A copy of the Written Warning must be sent to Human Resources at the time the warning is issued.

Disciplinary Suspension Without Pay

An employee may be suspended without pay for disciplinary reasons based on a current unresolved incident of unsatisfactory job performance after the receipt of at least one prior disciplinary action, or without prior warning or disciplinary action for any form of unacceptable personal conduct or grossly inefficient job performance. A supervisor considering a Disciplinary Suspension Without Pay must consult with his/her supervisor to receive approval for the action and with the Employee Relations Manager to review and receive approval of the procedural and substantive basis for the recommendation.

A pre-disciplinary conference must be scheduled and conducted prior to any disciplinary suspension without pay. Information about pre-disciplinary conference requirements can be found below.

The supervisor must give advance written notice of the conference to the employee. The notice must tell the employee the acts or failure to act that are the reason for the suspension, the type of disciplinary action being considered, the conference time and location, the facts that led to the recommendation, and his/her appeal rights. Advance notice should be as much as practical under the circumstances.

A disciplinary suspension without pay must be for at least one full work day, but may not be for more than two work weeks. The work week begins on Sunday and ends on Saturday. Earned leave may not be used to offset any disciplinary suspension without pay.

A copy of the Disciplinary Suspension Without Pay notice must be sent to the Department of Human Resources at the time it is issued.

Demotion

An employee may be demoted as a disciplinary measure based on either unsatisfactory job performance after the receipt of at least one prior disciplinary action, or without prior warning or disciplinary action for any form of unacceptable personal conduct or grossly inefficient job performance. A supervisor considering a Demotion must consult with his/her supervisor to receive approval for the action and with the Employee Relations Manager to review and receive approval of the procedural and substantive basis for the recommendation.

A pre-disciplinary conference must be scheduled and conducted prior to any demotion. Information about pre-disciplinary conference requirements can be found below.

A disciplinary demotion may be accomplished by any of the following methods:

- Lowering the salary grade but retaining the salary. (The salary shall not exceed the maximum of the salary schedule for the new lower grade.)
- Lowering the salary grade and lowering the salary. (The salary shall not exceed the maximum of the salary schedule for the new lower grade.)

- Retaining the salary grade but lowering the salary. (The salary shall not be less than the minimum of the salary schedule for that grade or the special entry rate if in effect.)

Prior to a demotion, the supervisor must tell the employee if the demotion will change the employee's salary rate and/or pay grade and, if so, what change will occur.

A copy of the demotion letter must be sent to the Department of Human Resources at the time it is issued.

Dismissal

An employee may be dismissed as a result of unsatisfactory job performance after the receipt of at least two prior warnings and/or disciplinary actions, or without prior warning or disciplinary action for any form of unacceptable personal conduct or grossly inefficient job performance. A supervisor considering a dismissal must consult with his/her supervisor to receive approval for the action and with the Employee Relations Manager to review and receive approval of the procedural and substantive basis for the recommendation.

A pre-disciplinary conference must be scheduled and conducted prior to any dismissal. Information about pre-disciplinary conference requirements can be found below.

A copy of the dismissal letter must be sent to the Department of Human Resources at the time it is issued.

Pre-Disciplinary Conference

A Pre-disciplinary conference is required before a supervisor suspends, demotes or dismisses an employee. The supervisor must give advance written notice of the conference to the employee. The notice must tell the employee the type of disciplinary action being considered, the conference time and location, and the facts that led to the recommendation. As much advance notice as is practical under the circumstances shall be given.

The attendees at the pre-disciplinary conference are:

- The supervisor or other person chosen by university management to conduct the conference
- A representative of the Department of Human Resources
- The employee
- If the person conducting the conference chooses, security may be present

No attorney shall represent either side at the conference.

During the conference, the person conducting the conference must:

- Give the employee oral or written notice of the recommendation for suspension, demotion or dismissal including the specific reasons for the proposed disciplinary action and a summary of the facts supporting the recommendation
- Give the employee an opportunity to respond with information against the recommended disciplinary action, offer facts that are different from those offered by management and offer facts in support of the employee's case.

After the conference, management shall:

- Review and consider the response of the employee and make a decision on the recommended disciplinary action.
- Not communicate the decision before the start of the next business day after the conference or after the end of the second business day following the completion of the conference.
- If management decides to discipline the employee, the employee shall receive a written letter communicating the decision to suspend, demote or dismiss the employee either in person or by certified mail with return receipt requested. The letter must include:
 - The reason for the suspension, demotion or dismissal
 - The effective date of the action
 - The employee's right to appeal including a copy of the grievance procedure

In the case of dismissal, the effective date of the dismissal shall be no sooner than the date of the written notice and no later than fourteen (14) calendar days after the written notice. When dismissal is for unsatisfactory job performance, management may, with prior approval from the Office of State Personnel, give an employee pay in lieu of the fourteen (14) day notice or any part of that notice.

Failure to give written reasons for the disciplinary action, written notice of appeal rights, or to conduct a pre-dismissal conference is a procedural violation. If the university fails to follow procedure, the university shall be subject to the rules of the State Personnel Commission dealing with procedural violations.

The time period for filing a grievance as a result of a suspension, demotion or dismissal does not start until the employee receives a written notice of any applicable appeal rights.

8. SPECIAL PROVISIONS

Investigatory Status with Pay

An employee may be placed on investigatory status with pay only:

- To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action,
- To provide time within which to schedule and conduct a pre-disciplinary conference, or
- To avoid disruption of the work place and/or protect the safety of persons or property.

Management must consult with and receive approval from the Department of Human Resources prior to placing an employee in investigatory status with pay. If approved, management may place an employee in investigatory status with pay for no more than thirty (30) calendar days without written approval of extension by the Chancellor and the State Personnel Director. When an extension beyond the thirty (30) day period is needed, the university must advise the employee in writing of the extension, the length of the extension and the specific reasons for the extension. If no action has been taken by the university by the end of the thirty(30) day period and no extension has been granted, the university must either take appropriate disciplinary action on the basis of the findings of the investigation or return the employee to active work status. Under no circumstances is it permissible to use placement on investigatory status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

Management must notify an employee in writing of the reasons for the investigatory placement no later than the second scheduled work day after the beginning of that status. A sample letter placing an employee on investigatory status with pay is available on the Human Resources website.

If management places an employee in investigatory status, management should immediately retrieve the employee's keys, ID badges, ID cards, and all equipment that belongs to the university. The purpose of this action is to protect university property and staff.

If the issue is resolved without disciplinary action, the letter notifying the employee of the investigatory status must be removed from all files and returned to the employee.

Credentials

By statute, regulation, and administrative rule, some duties assigned to positions in the State service may be performed only by persons who are duly licensed, registered or certified as required by the relevant law or policy. All such requirements are specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission.

Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law, rule or regulation. Failure to obtain or maintain the

legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct. An employee may be dismissed without prior warning following a pre-disciplinary conference. The employee shall be given a written letter of dismissal with the specific reasons for the dismissal and written notice of the right of appeal.

Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with the university, disciplinary action shall be administered as follows:

- If an employee was determined to be qualified and was selected for a position based on falsified work experience, education, registration, licensure or certification information that was a requirement of the position, the employee may be dismissed without prior warning following a pre-disciplinary conference. The employee shall be given a written letter of dismissal with the specific reason for the dismissal and written notice of the right of appeal.
- In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the university head.
- When credential or work history falsification is discovered before employment with the university, the applicant shall be disqualified from consideration for the position in question.

9. APPEAL RIGHTS

Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights. Warnings, extensions of disciplinary actions and periods of placement on investigatory suspension, and placement on investigatory suspension with pay are not grievable. Absent an allegation of a violation of G.S. 126-25, warnings are not appealable to the State Personnel Commission.

The university shall furnish to the employee, as an attachment to the written documentation of any grievable disciplinary action, a copy of the university grievance procedure.

If a disciplinary action is grievable within the university or to the State Personnel Commission and the employee fails to timely grieve the warning or disciplinary action, the employee is deemed to have waived the right to contest the validity of the warning or disciplinary action.

10. TRANSFER OF DISCIPLINARY ACTIONS

When an employee transfers to another department or unit, any active written warnings or disciplinary actions will transfer with the personnel file of the employee and will remain

in full force at the new work unit until removed by the new employer or made inactive by the operation of this policy.

11. POLICY DISSEMINATION

This policy shall be made available to employees on the NC A&T SU website. In addition, copies of this policy are available from the Department of Human Resources.

12. PERSONNEL FILES

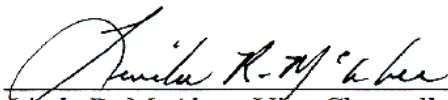
Any written warning or documentation of disciplinary action taken under this policy is considered to be a part of an employee's personnel file. Copies of all written warnings of documentation of disciplinary actions taken must be sent to the Director of Human Resources.

An employee has the right to review his/her personnel file. To review a personnel file, an employee should contact Human Resources Records Manager.

12. REPORTING

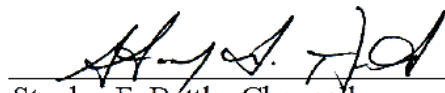
The university shall maintain records of disciplinary actions issued and provide information and statistics annually to the Office of State Personnel in the form prescribed by the Office of State Personnel.

Approved:



Linda R. McAbee, Vice Chancellor for Human Resources

Date: 1/10/08



Stanley F. Battle, Chancellor

Date: 1/10/08