Elizabeth City State University
Disciplinary Action Procedures for SPA Employees

Elizabeth City State University will attempt to provide a fair, clear and useful tool for its employees and management for the purpose of correcting and improving performance problems. This procedure is developed to provide a process to assist managers in handling cases of unacceptable personal conduct. Any disciplinary action taken in accordance with these procedures must be for just cause under one of the following bases:

- Discipline imposed on the basis of unsatisfactory job performance including gross inefficiency; and
- Discipline imposed on the basis of unacceptable personal conduct

When just cause exists, any career state employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointing authority.

The disciplinary actions that can be taken are:

- Written warning
- Disciplinary suspension without pay
- Demotion, and
- Dismissal

Disciplinary actions issued for unsatisfactory job performance, including gross inefficiency, or for unacceptable personal conduct are all subject to becoming inactive for the purposes of counting towards the number of prior disciplinary actions needed for further disciplinary action after the expiration of (18) eighteen month period without additional disciplinary action or extension, or if removed by the manager because of the determination that the issue addressed by the warning or other disciplinary action has been resolved.

**Written warnings must**

- Be in writing and state that it is a warning
- Tell the specific conduct or performance that generated the warning
- Tell the time frame in which the employee must show improvement (60 days for unacceptable job performance; immediate for grossly inefficient job performance and unacceptable personal conduct)
- Tell the consequences of failure to make improvements or corrections
- Tell the employee of any appeal rights provided

**Transfer of Disciplinary Action**

When an employee transfers to another department, unit or state agency, 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 as stated above.
**Disciplinary Action and the WPPR**

All active warnings and disciplinary actions will be deemed inactive if the employee receives an overall summary rating of Good or above on their performance plan and at least a Good or above in the performance area cited in the warning or disciplinary action.

**Waiver of Appeal Rights**

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

**Definition of Terms for Discipline and Dismissal**

- **Career Status**: 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.

- **Current Unresolved Incident**: An act of unacceptable personal conduct, unsatisfactory job performance for which no action has previously been taken by the agency/university management.

- **Disciplinary Demotion**: A personnel action that
  - lowers the salary of an employee within their current pay grade, or places the employee in a position at a lower pay grade with or without lowering the employee’s salary, and
  - the action was involuntary, and taken to discipline the employee.

- **Disciplinary Suspension Without Pay**: The removal of an employee from work for disciplinary reasons without paying the employee.

- **Dismissal**: 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)**: 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. 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.
**Inactive Disciplinary Action:** Any disciplinary action taken after October 1, 1995 can be deemed inactive and therefore cannot be counted towards the number of disciplinary actions when:

- the manager or supervisor notes in the employee’s personnel file that the reason(s) for the disciplinary action has been resolved or corrected; or
- following the disciplinary warning or action, the employee receives an overall summary rating of Good or above and at least a Good or above in the performance area cited in the warning or disciplinary action; or
- eighteen months (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 18 months and no extension has been granted.

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

**Unacceptable Personal Conduct:**

- conduct for which no reasonable person should expect to receive prior warning; or
- job related conduct with 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 know or written rules; or
- conduct unbecoming a state employee that is detrimental to state service; or
- the abuse of client(s), patient(s), student(s) or person(s) whom the employee has charge or whom the employee has a responsibility 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 in any other employment documentation.

**Unsatisfactory Job Performance:** 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 unit.
Basis for Disciplinary Action

There are three bases for discipline or dismissal of university employees. They are:

- Falsification of credentials or failure to maintain required license, certificate or registration.
- Unsatisfactory job performance, including grossly inefficient job performance which includes performance at the Below Good and Unsatisfactory levels on work plans as defined in the North Carolina Rating Scale of the Performance Management System; and
- Unacceptable personal conduct.

No disciplinary action shall be invalid solely because the action is labeled incorrectly.

When there is basis for disciplinary action, any SPA employee may be warned, demoted, suspended without pay or dismissed by the university.

In addition to falsification of credentials or the failure to maintain a required license, certificate or registration, the following are the only bases for disciplinary actions permitted under these procedures:

- **Job Performance** includes expectations of quality, quantity, timeliness, and procedural standards of performance; prompt, regular and consistent attendance; and adherence to safety and operational rules and practices. Employees disciplined for performance at the “Below Good” or “Unsatisfactory” levels (excluding grossly inefficient job performance) must receive notice of performance-related inadequacies and be given the resources and opportunity to improve.

- **Grossly Inefficient Job Performance** is just cause for disciplinary action, up to and including immediate dismissal. Grossly inefficient job performance is unsatisfactory job performance resulting from an employee’s failure to satisfactorily perform job requirements as specified in the job description, work plan or as otherwise directed by management.

Grossly inefficient job performance results in:

- the creation of the potential for death or serious bodily injury to employee(s), member(s) of the public, or to person(s) over whom the employee has responsibility, or
- the loss of or damage to university property or funds that results in a serious impact on the university and/or the work unit.
**Unacceptable Personal Conduct** involves serious behaviors for which no reasonable person would expect to be forewarned that the behavior is wrong and could result in severe discipline. Unacceptable personal conduct includes, but is not limited to: insubordination, stealing or misuse of university and state property, or involvement with alcohol and illegal drugs.

If an employee violates civil or criminal laws of the State, the violation(s) may or may not have an effect on his employment with the university. The violation(s) affect the employee’s university or state employment when or when the nature of the violation is such that the employee’s ability to perform his/her duties, according to standards expected, is compromised.

When there is a mixture of job performance and personal conduct problems with an employee, the supervisor must separate and document each circumstance. A supervisor may issue a separate warning for performance and a separate warning for personal conduct to an employee for omissions and/or commissions which are part of the same job related situation.

**Disciplinary Action for Grossly Inefficient Job Performance**

Disciplinary action on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. An employee may be dismissed without any prior disciplinary action. Alternatively, the employee may be issued a written warning, suspended without pay, or demoted on the basis of a single current incident of grossly inefficient job performance without any prior disciplinary action.

Prior to dismissal, disciplinary suspension without pay, or demotion of a permanent employee on the basis of grossly inefficient job performance, there must be a pre-disciplinary conference between the employee and the person recommending the disciplinary action. A representative from Human Resources must be present. Security personnel may be present at the management’s discretion. Attorneys may not be present in legal capacities.

Dismissals, demotions, and suspensions without pay for grossly inefficient job performance require written notification to the employee. The notification must include the specific reason(s) for the discipline and notice of the employee’s right to appeal.

**Disciplinary Action for Personal Conduct**

Disciplinary action for personal conduct need not be successive. Depending on the severity of the conduct, employees must be warned, suspended without pay, demoted, or dismissed on the basis of unacceptable personal conduct without any prior warning to the employee.

Written warnings are not recommended in cases of personal misconduct. However, if a written warning is issued for an instance of unacceptable personal conduct, the written warning shall remain active for 18 months from the end of the month in which the warning is given, unless a shorter period is specified. Other forms of discipline remain active for 18 months, unless a shorter period is specified.
Before disciplinary action is taken affecting a permanent employee’s pay (suspension, demotion, or dismissal), there should be management approval. The supervisor considering discipline should discuss the reason(s) for discipline with the Vice Chancellor or Chancellor. The supervisor should also consult with Human Resources to review the procedural and substantive basis for a recommendation for disciplinary action based on unacceptable personal conduct and receive approval from the Director of Human Resources to hold a pre-disciplinary conference. The Director of Human Resources or the Employee Relations Manager provides the guidance for arranging the conference to ensure compliance.

After the conference is held, if management determines that the recommended disciplinary action is justified, the employee will be demoted, suspended without pay, or dismissed. The decision to discipline the employee cannot be made or communicated prior to the beginning of the next work day following the pre-disciplinary conference. If the decision is not to discipline the employee, the supervisor, with higher-level management and Human Resources approval, must remove all documents that supported the recommendation for disciplinary action from the employee’s personnel file.

**Illegal Drugs**

The university’s Policy on Illegal Drugs requires all employees to comply with the North Carolina law that makes it a crime to possess, sell, deliver, or manufacture illegal substances. Any employee who violates the law may be subject to both prosecution and punishment by the civil authorities and to disciplinary action under these procedures. Employees who violate the Policy on Illegal Drugs will receive disciplinary action for unacceptable personal conduct up to and including dismissal.

**Credentials and Falsification**

If an employee has falsified qualifications (either on the original employment application or any subsequent application update) to obtain a position, he/she will be dismissed. When an employee is working in a position without the required qualifications (registration, licensures, certifications, or educational credential) he/she must be advised of the problem, and if appropriate, given time to acquire the necessary credential. The employee may be assigned to other duties until the necessary credential is obtained. If the employee fails to obtain the credential, he/she will be dismissed. This dismissal does not require prior written warnings, but does require a pre-disciplinary conference and a written notification of dismissal, with applicable appeal rights.

When credentials have been falsified, but are not required for the position held or sought, management in consultation with Human Resources, will investigate and determine the appropriate disciplinary action under the circumstances. When credential falsification is discovered prior to employment with the university, the application will be disqualified from consideration for employment with the university for no less than 12 months.