

FAYETTEVILLE STATE UNIVERSITY

DISCIPLINE AND DISMISSAL POLICY FOR EMPLOYEES SUBJECT TO THE STATE PERSONNEL ACT (SPA)

Authority:	Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor.
Category:	Employment – SPA
Applies to:	● Administrators ● Staff
History:	Last Revised – May 15, 2009 First Issued – February 1, 2002
Related Policies:	SPA Grievance Policy <i>Discipline/Appeal/Grievances</i> [State Personnel Manual, Section 7]
Contact for Info:	Office of Human Resources (910) 672-1146

I. PURPOSE

This policy is intended to provide employees subject to the State Personnel Act (SPA) and their supervisors 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 basis:

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

When just cause exists, any non-career or career status employee may be warned, demoted, suspended without pay, or dismissed by Fayetteville State University (the “University”).

II. DEFINITIONS

A. Career Status

Career Status is attained by an employee who is in a permanent position and has been continuously employed by the State of North Carolina in a SPA position for twenty-four (24) months or more. *NOTE: While this policy by law applies to employees who have attained career status, the University has exercised its option to apply the same policy for "non-career status" permanent employees in an effort*

to promote uniformity and consistency in its handling of matters involving discipline.

B. Current Unresolved Incident

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.

C. Disciplinary Demotion

A disciplinary demotion is a personnel action that involves all of the following:

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

D. Disciplinary Suspension Without Pay

A disciplinary suspension without pay involves the removal of an employee from work for a period of time for disciplinary reasons without paying the employee.

E. Dismissal

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

F. Gross Inefficiency (Grossly Inefficient Job Performance)

Gross inefficiency 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 either of the following:

- 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.

G. Inactive Disciplinary Action

An inactive disciplinary action is a disciplinary action that can no longer be counted towards the number of disciplinary actions. A disciplinary action becomes inactive when any one of the following occurs:

- The manager or supervisor notes in the employee's personnel file that the reason(s) for the disciplinary action has been resolved or correct;
- 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;
- 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.

H. Insubordination

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.

I. Unacceptable Personal Conduct

Unacceptable personal conduct involves any of the following:

- Conduct for which no reasonable person should expect to receive prior warning;
- Job related conduct which constitutes a violation of state or federal law;
- Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the state;
- The willful violation of known or written work rules;
- Conduct unbecoming a state employee that is detrimental to state service;
- The abuse of client(s), student(s) or person(s) whom the employee has charge or whom the employee has a responsibility for or of an animal owned by the state;
- Absences including tardiness;
- Falsification of a State application or other employment document;
- Engaging in unlawful workplace harassment or discrimination; or
- Retaliation for complaints of unlawful workplace harassment or discrimination as defined by University and State policy.

J. Unsatisfactory Job Performance

Unsatisfactory job performance involves 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.

III. JUST CAUSE FOR DISCIPLINARY ACTION

Grounds (just cause) for the discipline or dismissal of employees are as follows:

A. 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.

The degree and type of disciplinary action that may be taken for unsatisfactory job performances includes the following:

1. A written warning may be issued based on any current unresolved incident of unsatisfactory job performance;
2. A disciplinary suspension without pay or a demotion may be issued but 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; or
3. A dismissal 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.

B. 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.

Unlike disciplinary action taken for unsatisfactory job performance, disciplinary action taken for grossly inefficient job performance can be based solely on a current unresolved incident of grossly inefficient job performance. However, prior to issuing a disciplinary suspension without pay, a demotion or a dismissal

based upon grossly inefficient job performance, a pre-disciplinary conference must be held.

C. Unacceptable Personal Conduct

Just cause to take disciplinary action for unacceptable personal conduct may be warranted 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.

Similar to disciplinary action taken for grossly inefficient job performance, disciplinary action for unacceptable personal conduct may also 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 based upon unacceptable person conduct, a pre-disciplinary conference must be held.

Some actions may fall under one or more grounds, and thus no disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

IV. DISCIPLINARY ACTIONS AND PROCEDURES

A. Role of the Employee's Supervisor

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 supervisor may consider the employee's work history, performance evaluations, work plans, 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 must receive. After the first warning, a supervisor may give additional warnings or a higher level of disciplinary action be given. 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.

B. Written Warning

In a private discussion, the supervisor must inform the employee that s/he is being disciplined and specify the reason(s) for the discipline. Under very limited

circumstances, at management's discretion, another management representative or representative of Human Resources may be present to facilitate communication.

If, following the discussion, management decides to issue a written warning, the written warning shall state the following:

- That it is a warning;
- The specific conduct or performance that is the reason for the warning;
- The specific performance or conduct improvement that must be made;
- 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);
- The consequences of failing to make the required improvements/corrections;
- Any appeal rights provided. (In the case of written warnings, appeal rights are not provided, so the warning should state that written warnings shall not be appealed);

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

C. 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 is detailed in Section IV.F.

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 Monday and ends on Sunday. 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 Human Resources at the time it is issued.

D. Demotion

Any 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 who will review and provide 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 is detailed in Section IV.F.

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

- Lowering the salary banded class but retaining the salary. (The salary shall not exceed the maximum of the salary schedule for the new lower grade.)
- Lowering the salary banded class and lowering the salary. (The salary shall not exceed the maximum of the salary schedule for the new lower grade.)
- Retaining the salary banded class 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 inform the employee whether the demotion will change the employee's salary rate and/or pay band and, if so, what change will occur.

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

E. 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 is detailed in Section IV.F.

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

If management dismisses an employee, management should immediately retrieve the employee's keys, ID badge, ID card, and all equipment that belongs to the University.

F. Pre-Disciplinary Conference

1. Notice

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 state 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.

2. Attendees

The attendees at the pre-disciplinary conference shall be as follows:

- a. The supervisor or other person chosen by University management to conduct the conference;
- b. The employee;
- c. A representative from the Office of Human Resources;
- d. An employee support person who shall not be allowed to participate in the conference (the employee must make a written request to the Office of Human Resources to allow the person to attend the conference); and
- e. A police officer (f the person conducting so requests).

Neither management nor the employee may have an attorney present at the conference.

3. Conference Procedures

During the conference, the supervisor or person conducting the conference shall do the following:

- a. Provide 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; and
- b. Provide the employee with an opportunity to respond to the recommended disciplinary action, to offer facts that are different

from those offered by management and to offer facts in support of the employee's case.

4. Post-Conference Procedures

After the conference, management shall do the following:

- a. Review and consider the response of the employee and make a decision on the recommended disciplinary action;
- b. 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; and
- c. If management decides to discipline the employee, provide the employee with a letter communicating the decision to suspend, demote or dismiss the employee either in person or by certified mail with return receipt requested. The letter shall include the following information:
 - The reason for the suspension, demotion or dismissal;
 - The effective date of the action; and
 - The employee's right to appeal including a copy of the University's grievance policy.
- d. In the case of a dismissal, the effective date of the dismissal shall be no sooner than the date of the letter and no later than fourteen (14) calendar days after the date of the letter. 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) calendar day notice or any part of that notice.

5. Procedural Violations

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.

6. Time Period for Filing an Appeal

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. Refer to the University's SPA Grievance Policy for specific policy and procedure for filing a grievance.

V. SPECIAL PROVISIONS

A. Investigatory Status with Pay

An employee may be placed on investigatory status with pay only as per the following:

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

Management must consult with and receive approval from 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 an extension by the Chancellor and the Director of the Office of State Personnel. When an extension beyond the thirty (30) day calendar 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) calendar 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.

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, a letter indicating how the issue was resolved shall be attached to the notification of disciplinary action and shall be placed into the Office of Human Resources inactive disciplinary action files.

B. 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.

1. Failure to Obtain/Maintain Credentials

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.

2. Falsification of Credentials

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:

- a. 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.
- b. 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 recommendation of the department head with the approval of the division 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.

VI. APPEAL RIGHTS

Only SPA employees who have achieved “career status” may appeal a disciplinary action. 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 with pay may not be appealed. Absent an allegation of a violation of North Carolina General Statute 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 policy.

If a disciplinary action is appealable 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 appeal.

VII. 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.

VIII. POLICY DISSEMINATION

This policy shall be made available to employees on the University’s policy website. In addition, copies of this policy are available from Human Resources.

IX. 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 Human Resources.

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

X. REPORTING

The University shall maintain records of disciplinary actions issued and provide information and statistics annually to the Office of State Personnel.