

Fairmont State University Board of Governors
POLICY NO. 64

TITLE: PROGRESSIVE DISCIPLINE AND SEPARATION FROM EMPLOYMENT

EFFECTIVE DATE: On passage by the Board, February 15, 2018

GENERAL:

The purpose of this policy is to establish and define the general disciplinary and employment/separation procedures for Fairmont State University employees, whether Faculty or Staff.

Staff:

Non-classified employees may be terminated for any reason; however, the University may choose (but is not required) to implement progressive discipline to remediate the conduct of a will and pleasure employee. The University does not waive the employee's will and pleasure status by doing so.

In general, the University believes that progressive discipline for most employees is a bestpractice educational approach to correcting and improving employee behavior and will use progressive discipline in most cases. However, the President or her/his designee has the authority to determine if an employee's action or behavior is so egregious or damaging that it warrants disciplinary action outside the confines and parameters of the progressive discipline process.

At-Will Administrators:

Those administrators designated as will and pleasure/at-will appointees by the President (per Board of Governors Policy No. 63) may, at the President's discretion, be subject to either progressive discipline as defined in this Policy or immediate dismissal per at-will provisions.

Faculty:

Termination proceedings and causes for dismissal for faculty members are set forth in West Virginia Higher Education Policy Commission Series 9, Section 12. However, faculty members are expected to adhere to the general provisions of this procedure, are expected to comply with the standards of conduct herein and are expected not to engage in acts of gross misconduct and/or any other conduct proscribed by Series 9. Unacceptable conduct set forth in this procedure may serve as grounds for dismissal of a faculty member for cause in accordance with Series 9. The University may, but is not required to, implement progressive discipline to remediate the conduct and/or unacceptable job performance of a faculty member.

This procedure in no way supersedes Series 9 and does not impose upon the University an obligation to use progressive discipline when addressing misconduct of a faculty member unless otherwise required to do so by law.

GENERAL DISCIPLINE POLICY STATEMENT:

The University has a progressive disciplinary system which allows opportunities for correction of unacceptable workplace conduct and/or job performance while maintaining fair and equitable treatment of all employees. Employees may be disciplined for unacceptable conduct and/or poor job performance and the discipline may include termination of employment. In order to maintain and operate the University in the best interests of both the employee and the University, it is necessary that all employees adhere to certain standards of conduct designed to create a friendly, cooperative, safe and effective work atmosphere. This requires each employee to respect the rights and feelings of others as well as to ensure that each employee's personal conduct is not harmful to others or to the University. Employees are expected to act professionally during working hours, (including but not limited to lunch hours), when conducting University business, when performing their job duties, and/or when representing the University in their official capacity as a University employee. Employees are expected to perform their job duties effectively and to maintain satisfactory levels of job performance. Employees may be disciplined for failure to perform the duties of their position and for unacceptable job performance. Off duty conduct may also be the source of disciplinary action if the conduct adversely affects the employee's ability to perform his/her job duties and/or bears a rational nexus to the employee's job and the reputation of the University; for example, the University may decide to discipline an employee charged with embezzlement from a volunteer organization to which the employee belongs; or to prohibit an employee charged with driving under the influence from driving a van of students to an event. Employees found responsible for gross misconduct as described below may be terminated immediately. Determining what constitutes gross misconduct is the purview of the President. All disciplinary actions will be determined on a case-by-case basis; HR is charged with ensuring equitable treatment for comparable past disciplinary actions. The type of discipline imposed by the University may depend upon, but not be limited to, the seriousness of the performance/conduct issue(s) and the impact on the University's operations, credibility and reputation.

Misconduct

Misconduct is defined as any failure of an employee (faculty or staff) to comply with accepted standards of work or behavior. Breaches of discipline by an employee which are not of a similar nature may be added together and result in progression through the disciplinary procedure. Employees found responsible for gross misconduct may be terminated immediately without progressive discipline. Gross misconduct can be a single act or omission, or short course of conduct, or an accumulation of those things which, taken individually, would not amount to gross misconduct. Gross misconduct that could result in immediate employment termination includes, but is not limited to, the following (this list is not exhaustive):

- Stealing property of the University or of another person;
- Threat of violence or physical harm to any individual;
- Harassment or discrimination in any form;
- Damaging the property of the University or of another person;
- Reporting to work while under the influence of alcohol or drugs or consuming alcohol and/or drugs while at work in violation of University policy;
- Falsification of time records, including not reporting time off or using leave for purposes not covered under the leave definition used;
- Falsification of timecard and/or leave time, including not clocking out timely or reporting hours worked that were not;
- Lying in official matters;
- Failure to report to work for three (3) consecutive scheduled work days without notice;
- Gambling on University property or with University equipment or technology, either during or after work hours;
- Unauthorized possession or use of a firearm and/or deadly weapon and/or destructive device on University property;
- Falsification of employment application or official record;
- Insubordination in any form;
- Sexual harassment including but not limited to acts of sexual violence, discrimination or domestic violence, whether on or outside of work time;
- Unauthorized and excessive absence from work or tardiness;
- Engaging in sexual conduct or harassment in any form in University offices, classrooms, buildings, garages, grounds and/or property;
- Conviction of a crime (state of West Virginia, any other state and/or the federal government law);
- Loss of driver's license where driving on public roads is an essential part of the duties of the position;
- Failure to comply with the University's consensual relationship policy;
- Failure to comply with relevant federal, state and local laws, established Board policy and institutional rules and guidelines;
- Substantial and manifest neglect of duty;
- Failure to maintain in good repair institutional real or tangible property;
- Failure to effectively secure hazardous, medical, drug or other materials/supplies;
- Requesting that a University authority provide false information or testimony on one's behalf;
- Failure to sign a Notice of Appointment, contract or any other required institutional document;

Other serious infractions that may involve immediate termination will be handled on a case-by-case basis at the discretion of the University.

Types of Discipline

The following steps are typical of the procedure followed to counsel an employee; however, each situation is unique and the University reserves the right to choose the level of disciplinary action it deems appropriate at any time and given the infraction or event. No matter the type of discipline being applied as described following, an employee has the right to have an attendee of his/her choice in the meeting with him/her. This can be a co-worker, spouse or friend, but the employee must speak for him/herself. The employee may also bring legal representation, but because disciplinary conferences between the institution and the employee are not legal proceedings, the attorney may not speak for the employee but serve as an observer and/or consultant.

Verbal Counseling: If an employee's work performance or conduct is unsatisfactory, the supervisor or anyone in the employee's chain of command should communicate this information to the employee through counseling, preferably face-to-face, but email is an acceptable form of communication if timeliness is an issue/concern.

Written Warning: The supervisor or anyone in the employee's chain of command should consult with the Chief Human Resources Officer for the reasons for issuing the warning and to obtain approval to issue a written warning. HR shall interview the employee prior to the writing or issuance of any warning letter as part of the employee's due process. Once the written warning has been approved, the supervisor is required to meet with the employee regarding the deficiencies in performance and/or conduct. The written warning is a written summary of the unsatisfactory performance or conduct as well as any violations of University policy if applicable. The written warning and any attachments should be forwarded to the Chief Human Resources Officer for retention in the employee's official University personnel file. Employees will typically be asked to sign a written warning; the employee's signature is not an indication that the employee agrees with the contents of the letter, but rather that the letter has been received and discussed. Employees may add rebuttals to the letter or separately; these must be forwarded to Human Resources.

Suspension without Pay: If, after a reasonable time, performance or conduct deficiencies persist, the employee may be given a disciplinary suspension without pay. The supervisor or anyone in the employee's chain of command is required to consult with the Chief Human Resources Officer for approval prior to suspending an employee without pay. Nonexempt employees may be suspended without pay for a period varying from 1 to 15 working days, depending on the gravity of the offense and the employee's previous record. Exempt employees may be suspended without pay for a period of 1 to 15 working days and must be in week long increments to a maximum of three weeks. Human Resources is required to meet with the employee to explain the terms of the suspension and to answer the employee's questions.

Employment Termination: Employment termination may result after an employee's receipt of two (2) written warnings in one twelve (12) month period. The written warnings do not have to be for the same offense. A suspension without pay is not required prior to employment termination. Prior to terminating an employee, the University will issue the employee an intent to terminate employment letter and will provide the employee with an opportunity (within five

[5] working days) to rebut the charges set forth in the intent to terminate employment letter to the University's satisfaction. The supervisor or anyone in the employee's chain of command is required to consult with Human Resources prior to issuing an intent to terminate employment letter. The President makes the final decision on all employment terminations. Human Resources is required to meet with the employee to explain the termination and to answer the employee's questions.

Immediate Termination: Immediate termination of an employee without progressive discipline may result, without prior counseling or warning, where/when there are serious violations and/or gross misconduct. The University will issue the employee an intent to terminate employment letter and will provide the employee with an opportunity (within five [5] working days) to rebut the charges set forth in the intent to terminate employment letter, to the University's satisfaction. The supervisor or anyone in the employee's chain of command is required to consult with Human Resources prior to issuing an intent to terminate employment letter. The President makes the final decision on all employment terminations. Human Resources is required to meet with the employee to explain the termination and to answer the employee's questions.

Grievance Procedure

Any eligible employee may seek resolution of an employment related dispute through the Public Employees Grievance Procedure, established by the legislature in W. Va. Code § 6C-2-1, *et seq.* Information about the Grievance Procedure and grievance forms are available in the Human Resources Office and online at: <http://www.pegb.wv.gov/Pages/default.aspx>

Resignation

In accordance with the notification requirements of this section, an employee shall submit a signed and dated resignation letter or statement to his/her immediate supervisor, indicating the date when the resignation is to be effective. A written notice is required; an email from the employee's official assigned University email account is acceptable as written notice. Immediately following receipt of written notice, the employee's supervisor shall confirm acceptance of the resignation in writing to the employee (email is an acceptable format.) The supervisor or departmental business office shall immediately forward a copy of the signed written resignation letter or confirmation to the Human Resources Office for placement in the employee's personnel file so that the termination can be processed.

Notification Requirements/Restrictions on Leave Usage during Notice Period

Staff: A staff employee shall provide at least two (2) weeks' written notice of his/her resignation, whenever possible. A staff employee at the manager or administrator level is expected to give at least a four (4) week notice. A shorter period of notice may be accepted if authorized by the immediate supervisor and his/her VP or Dean. A staff employee is expected to be present and functioning at his/her position, as scheduled, throughout the two week notice period, unless this requirement is waived by the immediate supervisor. Benefits-eligible

employees are not to use sick leave during the notice period unless the need to use the leave is documented by the employee's medical provider and provided to the HR Benefits unit. **Faculty:** A faculty member shall give notice of resignation in writing at the earliest opportunity, giving due consideration of the institution's need to have a full complement of faculty throughout the academic year. Notice of resignation shall be forwarded by the Dean or business office to the Provost's Office immediately.

Part-time and Temporary Employees: Part-time and temporary employees are also required to submit resignations in writing to their immediate supervisors. Supervisors should consult with Human Resources immediately in the case of the resignation of a part-time or temporary employee so that the termination can be processed timely.

General Termination Procedures

Resignations shall be regarded as permanent and irrevocable and the employee shall forfeit all eligibility for continued services and benefits, in accordance with the currently existing policies of the Higher Education Policy Commission, the Fairmont State University Board of Governors or University, employment contracts, notices of appointment and/or federal and state laws.

- The employee shall contact Human Resources regarding health insurance benefits, COBRA, annual leave accruals, retirement accounts or other benefits in place for the employee at the time.
- The employee shall settle any outstanding bills or monetary commitments to the University, such as parking tickets, fines, tuition, etc., prior to the termination date.
- The employee shall surrender to his/her supervisor or the appropriate authority all University property, including but not limited to ID card, keys or key cards, computers or tablets, parking permits, other equipment, thumb drives, documents, e.g., on or before the employee's last day physically at work.
- A terminating employee may not "wipe" or erase any files from equipment provided to him/her by the University and must provide any passwords used to lock equipment or files to his/her supervisor and/or IT.
- Benefits-eligible employees will continue to earn leave accruals through their last day at work.
- Employees are not permitted to remain on payroll to exhaust any annual or sick leave balances. Terminating employees will be paid out their accumulated annual leave balances as of the termination date, which will typically be paid in the employee's last pay check, paid under the timelines and rules of the payroll system in place at the time of resignation.

Failure to Follow Resignation Procedures

Failure by an employee to meet the above responsibilities and/or the resignation-notice requirements may result in the employee's leaving the University in poor standing, the consequences of which may include ineligibility for re-hire at the University. It is the policy of the University to refer all requests for employment references on all former employees to the

Human Resources Office, which provides only dates of employment, job title and salary (which is public information.)

Expectations of Managers/Supervisors in the Progressive Discipline Process

Any University employee who serves as a supervisor or manager over other employees (including student workers) in any capacity will be required annually to take supervisory training offered by the University under the auspices and direction of Human Resources. Such training will include, at a minimum, the equitable and fair treatment of all employees, miscellaneous employment law, employee development principles and practices, basic leadership skills, the progressive discipline policy and procedure, employee performance management and evaluation, conflict management, and ethics. Failure to take such supervisory training timely and as mandated may result in progressive discipline for the supervisor/manager as outlined above.