

**Agreement Between Vermont State Colleges and
Vermont State Colleges United Professionals
Professional, Administrative and Technical Unit**

July 1, 2007 – June 30, 2011

**Agreement Between Vermont State Colleges and
Vermont State Colleges United Professionals
Professional, Administrative and Technical Unit**

July 1, 2007 – June 30, 2011

ARTICLE 13

DISCIPLINE AND DISCHARGE

1. **Discipline**

- a. Except for those employees who may be terminated during their probationary period, the College shall not discipline or discharge any employee for disciplinary reasons except for just cause. "Just cause" shall be interpreted in accordance with the decisional guidance of the Vermont Supreme Court and Labor Relations Board. Factors considered by the Labor Board in considering the level of discipline to be imposed are listed in Appendix B.
- b. An employee who has completed probation may not be discharged for disciplinary reasons without just cause. However, the just cause provision does not apply to the discharge of an employee due to the cessation of funding from a grant nor does it apply to discharges for unsatisfactory job performance. The President shall be responsible for making all final discharge decisions. Discharges may be for disciplinary reasons or for job performance reasons. A discharge resulting from unsatisfactory job performance must follow the procedures set forth in Section 4. below and, such judgment shall not be arbitrary or capricious.
- c. As used in this *Agreement*, "discipline" shall include written letters of reprimand; suspensions without pay of varying lengths; and discharge for reasons other than job performance. Discipline shall not include oral counseling or oral reprimands from a supervisor. Such matters are not grievable under this *Agreement*. Discipline also does not include annual reviews, performance evaluations or other documentation or actions relating to the job performance of an employee. Such matters are grievable only to the extent specified elsewhere in this *Agreement*.
- d. While not listing every potential reason for disciplinary action, the parties agree that discipline generally may be invoked against an employee for failure to follow rules, regulations, and policies of the College(s), insubordination and other misconduct. The College will use as a guide the twelve (12) factors listed in Appendix B when deciding upon the level of discipline in any given case.
- e. Where appropriate, the College may also require as part of disciplinary action: restitution, appropriate training or counseling or other remedial action.
- f. The College reserves all rights to itself and/or third parties to initiate civil actions or criminal prosecutions for conduct or misconduct that is believed to constitute a violation of law.
- g. It is understood that, in any case involving discipline or discharge for disciplinary reasons under this Article, the College bears the burden of proving that there was just cause for such action.

2. **Investigations of misconduct or other bases for discipline.** In disciplinary situations, the College will need to determine the surrounding facts and events that may be the basis for disciplinary action. In situations when discipline beyond the level of a written warning is being considered, the College will take the following steps:

- a. The College will notify the employee in writing that suspension or discharge is being considered for certain alleged conduct and will schedule a meeting with the employee as part of the investigation into the matter.

- b. An employee may be placed on immediate administrative leave with pay while the investigation is conducted. Placement on paid administrative leave is part of the investigative process and is not considered discipline.
 - c. An employee may ask for and shall have the right to have a union representative present whenever the employee is asked to participate in an investigatory interview which he or she reasonably believes may lead to disciplinary action. Nothing in these provisions requires the College to notify the employee of such right.
 - d. The College shall advise the employee under investigation of the allegations and allow the employee to respond to such allegations at the investigatory meeting. The employee is also free to provide a written response and any supporting documentation, if any, to the College, either before the meeting and/or within five (5) days of the meeting held with the employee. At the meeting, the employee may bring witnesses who have information related to the issues being investigated. However, this does not preclude the College from conducting other interviews with employees and others to determine the facts.
 - e. Within seven (7) days following the final investigatory meeting, the College will notify the employee by letter of any final decision, or, in the case of potential discharge, any recommended action. If a union representative accompanied the employee at the meeting(s) referred to above, then such representative will receive a copy of the letter.
 - f. If there is a recommendation for discharge, the procedures in Section 3. will be followed. In all other cases, upon receipt of the letter indicating what final action was taken, the employee may exercise his or her rights under the grievance procedure. Any challenge by an employee or the Union to the discipline decision must be processed under the grievance and arbitration provisions of this *Agreement*.
3. **Discharge for Disciplinary Reasons.** Prior to the disciplinary discharge of an employee for just cause, the following procedure shall be followed:
- a. The President will first provide written notification to the employee that discharge is being contemplated. Such statement shall include a summary of the basis for the contemplated action and, when such basis includes allegations of violations of policy or procedure, a reference to any such policy or procedure. The statement shall also include copies of investigative reports, if any, that may have been provided to the President, unless they have already been provided. Such written notification shall be delivered by hand, by certified mail or by overnight delivery.
 - b. The employee shall be provided with an opportunity to formally respond to the allegations made by the President. Except in extenuating circumstances, such a response must be made within seven (7) days of the President's notification letter.
 - c. The employee shall be provided with an opportunity to meet with the President to discuss the contemplated action. He or she shall be entitled to have a union representative present at such meeting. In the event the employee or Union chooses to do so, such meeting shall be held within fifteen (15) days of the written statement referred to in Section a. above. The President is free to have another supervisor or manager present at the meeting as well. General Counsel for the Colleges may also be present provided that the Union is notified at least forty-eight (48) hours before the meeting.
 - d. Within seven (7) days following such meeting, the President shall notify the employee by letter of the final action taken. If a union representative accompanied the employee at the meeting referred to in Section c. above, then such representative shall receive a copy of the letter.
 - e. Upon receipt of the letter indicating what final action was taken, the employee may exercise his or her rights under the grievance procedure.
4. **Discharge Due to Unsatisfactory Performance**

- a. An employee may also be discharged for unsatisfactory job performance reasons. Cessation of employment for such reasons is not considered disciplinary action.
- b. A judgment to discharge an employee for unsatisfactory job performance reasons shall not be arbitrary or capricious. Neither this standard nor the just cause standard for disciplinary discharges shall apply to the termination of an employee due to the cessation of funding from a grant.
- c. In any case in which a College is contemplating the discharge of an employee for performance reasons the following procedure will apply:
 - i. If the employee has not previously received any written warnings regarding his or her performance, or there has been no prior attempt at remediation, the College will provide a twenty (20) day period for the employee to improve his or her performance including the opportunity to request a remediation plan.
 - ii. After such opportunity, or after previous receipt of written warning or prior attempt at remediation, if discharge is still contemplated, the President shall provide written notification to the employee that discharge is being contemplated. Any such statement that discharge is being contemplated shall include a summary of the basis for the contemplated action. Such written notification to the employee shall be delivered by hand, by certified mail or by overnight delivery, with notification to the Union.
 - iii. The employee will be provided with an opportunity to meet with the President to discuss the contemplated action. She or he will be entitled to have a union representative present for such meeting.
 - iv. Within seven (7) days following such meeting, the President will notify the employee by letter of the final action taken. If a union representative accompanied the employee at the meeting with the President, such representative will receive a copy of the letter.
5. Any challenge by an employee or the Union to any disciplinary or discharge decision must be processed under the grievance and arbitration provisions of this *Agreement*.
6. The Colleges or any individual College may promulgate rules, regulations or policies governing employee conduct and work expectations.
7. Nothing in this article shall apply to terminations under the layoff article. Employees who are laid off shall be entitled to whatever rights are specified in that article.

ARTICLE 16

CLASSIFICATION AND RECLASSIFICATION

1. Through a classification process, each position in the Colleges is assigned a title, a grade level, an employment status (exempt/nonexempt; administrator/ administrative staff) and a salary range. Position classification and employment status is based upon a systematic assessment of the duties and responsibilities of each position, using the formal job evaluation system created by Palmer and Associates and codified in a manual.
2. The Human Resources Office of each College will keep a printed copy of the *Palmer and Associates Manual* and make it available to unit members upon request. If the Colleges decide to use a different job evaluation system, they shall notify the Union and meet and discuss any implementation of such a new system.
3. When the duties and/or the responsibilities of a position change substantially, a classification review of an existing position may be requested by the supervisor or by the employee. The request will be reviewed by the President and the College Human Resources Officer (or President's designee). A systematic assessment based on the criteria in the *Palmer and*

Associates Manual will be done by the Chancellor's Office to determine whether the change in duties and responsibilities warrant reclassification of the position to another grade level. The final decision on position classification and reclassification rests with the Chancellor. The Chancellor's Office will give the employee, supervisor, and the Union President a copy of the decision. Upon request, the employee, supervisor, or Union President may request a copy of the assessment leading to the decision.

4. Except for unusual circumstances, a request for reclassification will be approved or denied within forty-five (45) days of the initial request.
5. If a position is reclassified to a higher grade level, the incumbent shall receive a salary increase to the minimum of the new pay grade if his/her salary is below minimum salary for the new classification. If the position is reclassified to a lower grade level, and the current salary of the incumbent is above the maximum of the lower position classification, the incumbent's salary shall be "red circled" until such time as the salary range of the lower position classification may accommodate the employee's salary.
6. In cases where moving to the minimum of the new pay grade does not result in a salary increase of at least three percent (3%) for an incumbent employee, the President shall determine a total salary increase of no less than three percent (3%) for the employee. An employee whose position is reclassified will continue to seamlessly accrue seniority and benefits.
7. Position reclassification requests for any one position at the same college will not be considered more than twice within twelve months.

ARTICLE 17

EVALUATION

1. **Purpose.** Evaluations serve to promote, maintain, and enhance excellence in job performance and are also used by the College as an aid in making various personnel decisions. To these ends, each College shall conduct written evaluations on each bargaining unit member at least once a year. Each evaluation shall be based on applicable evaluation criteria that shall be related to the skills, abilities, knowledge, performance, and other factors relevant to the employee's position and any goals established by the supervisor the preceding year. Evaluations are not to be used for disciplinary purposes.
2. **Procedure.** Annual evaluations shall normally be conducted between February 15 and May 15 of each year. The period for which performance is being evaluated is defined as the period since the date of the prior annual evaluation. This shall not preclude evaluative commentary on preceding evaluations. Informal follow-up consultations during the year are encouraged.
 - a. The evaluation will be done on a form developed in accordance with Section 3. and a copy of the form will be given to each employee in January of each year.
 - b. The employee will use the form to evaluate her/his own performance, including how she or he has met any performance goals that may have been set previously by the supervisor. The employee will give this self-evaluation to her/his supervisor by a date specified by the supervisor but no earlier than February 15 and no later than April 15. If the employee fails to submit the self-evaluation, the supervisor will proceed with her/his assessment of the employee's performance.
 - c. The supervisor, or other College designee, will then write an evaluation of the employee's performance. The employee will be evaluated by measuring her or his performance over the preceding year against the position responsibilities delineated in

the position description. The evaluation may also consider progress towards meeting any performance goals that may have been set previously by the supervisor.

- d. If VSC employees other than the evaluator oversee any of the employee's duties, the evaluator may get input from those people as to the employee's performance in the relevant area(s). The supervisor may also consider any signed commentary by students and/or peers concerning the employee's performance.
 - e. The evaluation process will include a meeting between the employee and the supervisor at which the supervisor's draft evaluation will be discussed. The supervisor shall provide a copy of the draft evaluation to the employee no less than two (2) days prior to the meeting. As a result of the meeting, the supervisor may or may not amend the draft evaluation. In addition to providing the opportunity for discussing the evaluation itself, the meeting between the supervisor and the employee may be used for other purposes such as providing an opportunity for mutual feedback and for establishing future goals for the employee.
 - f. The supervisor will finalize the evaluation and give a copy to the employee within five (5) days after the meeting. The employee may attach any written comments that s/he wishes to make. Both the employee and the supervisor will sign and date the final evaluation.
 - g. The supervisor will give a copy of the final evaluation to the Dean or other manager responsible for the department. That manager will also sign and date it and place a copy showing the three sets of signatures in the Employee Record File.
3. **Evaluation Form and Contents.** The Colleges and the Union will create a joint committee, with an equal number of union representatives and administrators (not to exceed six (6) for each side) to develop a standard evaluation form for the Colleges to use in evaluating all members of the bargaining unit. The committee will begin work no later than six (6) weeks after ratification of this *Agreement* and will set a target of three (3) months for the completion of its work. The Colleges will retain the right of final approval of the form.
 4. Upon completion of the approval of the evaluation form, the Colleges will provide training to supervisors on how to conduct evaluations and will periodically update such training.
 5. Evaluations are not subject to the grievance procedure unless there is a claimed violation of the procedures under Section 2 of this article or unless an adverse personnel action is taken as a result of such evaluation.
 6. The use of annual evaluations shall not in any way preclude the issuance of disciplinary actions, written reprimands or commendations, or other written commentary that may result from an employee's performance at any time throughout the year.

ARTICLE 18

REMEDIATION

1. **Purpose**
 - a. Remediation serves to foster clear communication, skills development, and employee retention, and to provide an option to a supervisor when she or he confronts a performance issue with an employee. When supervisors identify performance problems, the remediation process may offer a solution by providing opportunities for employees to raise their performance to acceptable levels.

- b. Placing an employee on a remediation plan in accordance with this Article is an option and not a requirement for a supervisor dealing with an employee performance problem.

2. **Process**

- a. Remediation applies only to employees who have completed their probationary period. The placement of an employee on such a plan will follow prior oral and/or written warnings regarding performance issues that identify the nature of the problem. If those warnings do not lead to improvement satisfactory to the supervisor within thirty (30) days of the first such warning, the supervisor, in consultation with the employee, will create a remediation plan.
- b. The supervisor will give a copy of the plan to the employee, who must sign it to show s/he has received it. The employee has the right to consult with a union representative before signing the plan. The supervisor will then place a copy of the signed plan in the Employee Record File.
- c. Nothing herein shall preclude an employee from requesting placement on a remediation plan. The College, at its discretion, may honor the request. A decision to deny a request for placement on a remediation plan is not subject to the Grievance and Arbitration provisions of this *Agreement*.

3. **Contents of the Remediation Plan**

- a. The remediation plan will include the following:
 - i. A statement as to the nature of the performance problem(s) and the expected improvement;
 - ii. Measures for improvement where possible; and
 - iii. A reasonable time frame for the evaluation of progress.
- b. A remediation plan may call for training at no expense to the employee.

4. **Results**

The supervisor shall assess the employee's performance at the end of the plan period and decide if further action is necessary. The supervisor shall meet with the employee to discuss the employee's performance at the end of the plan period. In cases where the supervisor is not satisfied with the employee's performance under the plan, there is no obligation for the supervisor to place an employee on a second remediation plan, although the supervisor retains the right to do so. If the supervisor is not satisfied with the employee's performance at the conclusion of the plan period, or if performance continues to be a problem in the future, s/he may take further action, including termination, without having to place the employee on another remediation plan.

- 5. Being under a remediation plan does not exempt the employee or the supervisor from participating in and completing the annual evaluation process. The employee's performance under the remediation plan may be assessed and considered as part of the annual evaluation.
- 6. The placement of an employee on a remediation plan shall not be subject to the Grievance and Arbitration provisions of this *Agreement*, except for violations of process in Section 2. above.

APPENDIX B

TWELVE FACTORS FOR JUST CAUSE

Under case law, each disciplinary action is considered in the context of twelve factors which are typically relevant to evaluating the appropriateness of a penalty. Since such factors will be used to evaluate the propriety of an action which is the subject of a grievance, it is helpful for the employer to take them into consideration before a disciplinary action is imposed.

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public and prominence of the position.
3. The employee's past disciplinary record.
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisors' confidence in the employee's ability to perform assigned duties.
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
7. Consistency of the penalty with any applicable agency table of penalties. (The State does not currently use any form of table of penalties.)
8. The notoriety of the offense or its impact upon the reputation of the agency.
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
10. Potential for the employee's rehabilitation.
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.