

(Approved, 4/11/2011)

TO: Fort Wayne Senate

FROM: Indiana University Faculty Board of Review
Stanley Davis, Chairperson

SUBJECT: Establishment of Faculty Misconduct Policy

DATE: April 11, 2011

DISPOSITION: To the Presiding Officer for implementation

WHEREAS, Indiana University's "Guiding Principles for Faculty Review" require (IU document attached):

"3. Procedures, adopted by faculty governance, for review, remediation, and sanction (including sanction of dismissal) of faculty conduct that violates the rules of the University or fails to meet generally understood and accepted standards of professional conduct.

The procedures for review, remediation, and sanction of faculty conduct shall:

- A. Preserve academic freedom.
- B. Protect due process.
- C. Recognize situational differences of diverse faculty.
- D. Establish professional development as a goal.
- E. Define a mechanism for initiating the in-depth review process.
- F. Rely upon peer review at all steps in the process.
- G. Incorporate existing faculty review mechanisms.
- H. Include the concept of intermediate sanctions prior to dismissal proceedings.
- I. Establish dismissal process consequent to misconduct or incompetence.
- J. Specify outcome criteria for assessment of the effectiveness of the policy at the time of implementation of the policy"; and

WHEREAS, the additional procedures are beyond the current scope of procedures that are currently part of the IU Faculty Board of Review guidelines (5.3.1.1.1, attached); and

WHEREAS, this policy provides procedural protection to all parties involved;

BE IT RESOLVED, that the Senate approve the attached policy on procedures for the IU Faculty Board of Review to follow in resolving faculty misconduct.

**INDIANA UNIVERSITY - PURDUE UNIVERSITY FORT WAYNE (IPFW)
FACULTY MISCONDUCT POLICY**

I. Scope and Definition:

This policy provides procedures to review complaints against faculty members of substantial or chronic incompetence or misconduct, limited to violations of formal rules of the University, such as violations of the Code of Academic Ethics, or failure to meet generally understood and accepted standards of professional conduct. Communication and action protected by principles of academic freedom may not be judged misconduct.

When deficiencies are found pursuant to this policy, the Committee may recommend development of a program to remedy those deficiencies (see V.G.3 below) or a range of sanction, including dismissal (see V.G.4 below).

The faculty members covered by this policy shall include all Indiana University mission tenured and tenure-eligible faculty and librarians at IPFW.

II. Committee Membership:

As the need arises, the elected faculty representatives of the IPFW Faculty Senate shall elect five tenured members of the Indiana University voting faculty as the IPFW Faculty Misconduct Review Committee and five tenured members of the Indiana University voting faculty members to serve as alternates. The Indiana University Speaker, upon notification, will send ballots to all Indiana University voting faculty at IPFW to assure the timely election of committee members. The members of the Committee shall select their own presiding officer immediately following their election. The members and alternates shall hold office until they complete the review of any case which they have begun to consider. At least two years shall elapse between terms of office of members of the Committee. The Indiana University Speaker will serve as an ex officio member of the Committee.

In offering nominations for election to the Faculty Misconduct Review Committee, consideration should be given to representation across academic ranks and among divisions of IPFW.

III. Definitions:

For all purposes of this policy, the following terms shall have the meanings specified below:

A. "Chair" shall mean the presiding officer of the Committee.

B. "Committee" shall mean the IPFW Faculty Misconduct Review Committee, as duly constituted pursuant to this resolution.

C. "Dean" shall mean the person who submits a Request under V.A.1 herein for review of a Faculty Member's alleged misconduct.

D. "Faculty Member" is the person whose alleged misconduct is subject to a review by the Committee.

E. "FBR" shall mean the IPFW IU Faculty Board of Review, as duly constituted under Grievance and Review Procedures of the Indiana University mission tenured and tenure-eligible faculty and librarians at IPFW.

F. "Parties" shall mean the Dean and the Faculty Member.

G. "Procedures" shall mean the procedures set forth below in part V of this policy.

H. "Request" shall mean the written complaint by a Dean (or, in cases under V.D.1 herein, by the Vice Chancellor for Academic Affairs) to the Committee seeking a review of a Faculty Member's conduct pursuant to these Procedures.

I. "Working Day" shall mean any day during the semester other than a Saturday, Sunday or holiday on which the United States Postal Service is authorized to close.

IV. Conflict of Interest:

Members of the Committee shall recuse themselves from a review if they hold an appointment in the Faculty Member's department (or school in the case of units that are not organized by departments), or if there is any other relationship with the Faculty Member that constitutes, or that creates the appearance of constituting, a conflict of interest. If a member of the Committee cannot serve during a review, the Chair of the Committee shall select an alternate member from the pool of elected alternates.

V. Procedures:

A. Complaint Initiation and Notification

1. A Request for a review of complaints of misconduct shall be submitted to the Indiana University Speaker by the Dean of the Faculty Member's school. Such requests shall be in writing and be signed by the Dean. At the same time, the Dean shall give a copy of the Request to the Faculty Member.

2. Such Request shall set forth, in reasonable detail, the nature of the alleged misconduct, and shall include a statement as to prior efforts made to resolve the complaints by negotiation. The Request shall also contain notice if the Dean seeks dismissal of the Faculty Member based on the alleged misconduct.

3. The Committee shall notify the Faculty Member in writing of its receipt of a Request, and

shall provide to the Faculty Member, along with the notice, copies of:

- a. the IPFW Faculty Review of Misconduct Committee Policy and Procedures;
- b. an explanation of the Faculty Member's rights and responsibilities under these Procedures, and also of his or her right to submit a written response to the allegations;
- c. the current membership of the Committee, including alternates; and
- d. the Request.

4. The Faculty Member may submit a written response to the allegations in the Request within 15 Working Days of the date of the receipt of the notification under V.A.3 above.

5. Upon receipt of a Request, the Chair of the Committee, in consultation with the other members of the Committee, shall initiate efforts to have the Parties resolve the complaints raised by the Request using "informal adjustment." The term "informal adjustment" means alternative dispute resolutions, such as negotiation or mediation, to achieve mutually agreeable settlements. Any such settlement may be recorded at the request of the Faculty Member. In cases where the Parties cannot negotiate an informal adjustment, and in cases where the Committee determines such informal adjustment is not appropriate, the Committee shall provide written notification of such determination to the Dean and the Faculty Member within 30 Working Days from receipt of the Request.

6. The Committee, based on the Dean's Request and the Faculty Member's written response, may decline to proceed if it determines there is an insufficient basis to merit formal proceedings and shall, in that case, proceed to make its recommendation accordingly pursuant to V.G below. The Parties shall be notified in writing of such a decision within 10 Working Days after receipt of the Faculty Member's response, but in any case no later than 25 Working Days after the date of the Request.

B. Commencement of Review Hearings:

1. In the event that no informal adjustment is reached by the Parties, the Chair shall convene a hearing before the Committee to review the allegations presented in the Request. Such hearing shall begin within 20 Working Days after the expiration of the notification and response period under V.A.4. Notice of the date, time and place shall be given to all Parties, including the Faculty Member's counsel or advisor, if known.

2. The Faculty Member and the Dean may be represented by counsel or other advisors of his or her choosing during the proceedings, which counsel, in the case of the Dean, may be the University Counsel.

a. Counsel shall be entitled to fully participate in the hearing, including the examination of witnesses.

b. With the consent of the Faculty Member, a representative of a responsible educational association will be permitted to attend the proceedings as an observer.

3. The Faculty Member may object to the Committee membership on the grounds of Conflict of Interest or inability to render an unbiased judgment. Objections shall be made in writing to the Chair within 5 Working Days after notification of the membership, pursuant to V.A.3.c above. The Committee, acting without the participation of the members objected to, shall consider the objections and, if reasonable, the Chair shall replace the person(s) with alternate(s) who do not have a Conflict of Interest.

C. Due Process

1. In all of its proceedings the Committee shall be governed by principles of due process and orderly procedures for ensuring the impartial examination by the Committee of all pertinent facts, University policies and procedures, and the legitimate interests of all parties involved.

2. The Faculty Member shall be afforded an opportunity to obtain necessary witnesses, and documentary and other evidence.

a. The Faculty Member and the Dean will provide to the Committee and to each other the names of all persons he or she wishes to call to testify within 5 Working Days after notice of the date set for the hearing. Thereafter witnesses may be added only with the consent of the committee.

b. The Committee and the Administration will cooperate in securing witnesses and making available documents and other evidence.

c. The Parties shall have the right to examine all witnesses. Where the witnesses cannot or will not appear, but the Committee determines that the interests of justice require admission of their statements, the Committee will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories.

3. Hearings will be closed to the public unless the Faculty Member requests an open hearing. Requests for an open hearing shall be made to the Chair of the Committee in writing no later than 10 Working Days prior to the date set for the hearing. "Open" means any person may attend the proceedings; "Closed" means that the meetings shall be attended only by the Faculty Member, the Dean, representatives of the Faculty Member and the Dean, members of the Committee, approved observers, and any witnesses that the Parties may request to be present. The Committee, however, in its discretion, may require that witnesses be excluded from any hearing prior to their own testimony.

4. An audio or video tape recording of the proceedings shall be made, and a copy shall be provided to each Party. The audio or video tape shall be maintained as part of the record pursuant to V.I.

5. The Faculty Member may, in his or her sole discretion, waive the right to a hearing hereunder or stipulate to certain facts.

D. Emergency Cases:

1. In cases of alleged misconduct which the Vice Chancellor for Academic Affairs determines require immediate actions to protect the interests of members of the University community, the Faculty Member may be suspended with pay or reassigned. The Vice Chancellor for Academic Affairs shall give the Faculty Member notice of the emergency action and shall offer the Faculty Member the opportunity for an informal conference to discuss the emergency action.

2. If the Faculty Member objects to the propriety of the emergency action, the Faculty Member shall notify the Vice Chancellor for Academic Affairs and the Committee of that fact in writing. The Vice Chancellor for Academic Affairs shall, within 2 Working Days, provide the Committee and the Faculty Member a memorandum specifying the information on which the Vice Chancellor for Academic Affairs is acting and the reasons why that information justifies the emergency relief. The Faculty Member shall submit to the Committee and the Vice Chancellor for Academic Affairs a memorandum containing information and argument opposing the emergency relief within 2 Working Days of receipt of the Vice Chancellor for Academic Affairs' memorandum. The Committee shall furnish its recommendation on the propriety of the emergency action to the Vice Chancellor for Academic Affairs and the Faculty Member within 2 Working Days of receipt of the Faculty Member's memorandum.

3. When emergency action has been taken, the Vice Chancellor for Academic Affairs shall immediately submit a Request setting forth in reasonable detail the nature of the alleged misconduct and the sanctions the University seeks to impose. The Committee shall provide the Faculty Member with written notice of the Vice Chancellor for Academic Affairs' Request and with the documentation called for in V.A.3 above. The Faculty Member shall have 15 Working Days from the date of notice to provide a written response. The Chair shall convene a hearing to review the allegations presented in the Request within 25 Working Days after the date of the Request. Notice of the date, time and place of the hearing shall be given to all Parties, including the Faculty Member's counsel or advisor, if known. The Hearing will be governed by the provisions of V.B.2 and V.B.3 and V.C above. The Committee shall make its findings and recommendations pursuant to V.F. and V.G as soon as possible, but in any case within 10 Working Days of completion of the hearing.

E. Privacy:

Except in the cases of open hearings pursuant to V.C.3 above, and, except for simple announcements as may be required, such as the time of the hearing and similar matters, public statements and publicity about the case by either Party shall not be allowed until the proceedings have been completed, including consideration by the FBR. The members of the Committee and all persons contacted in connection with the Committee's review shall be reminded that they are responsible for maintaining confidentiality of the case.

F. Findings:

1. No deficiencies:

If the Committee finds that the Faculty Member has met accepted standards of conduct, the Committee shall make its recommendation accordingly pursuant to V.G below.

2. Some deficiencies, but deficiencies not substantial or chronic:

If the Committee identifies some deficiencies in the Faculty Member's conduct, but these deficiencies are not judged to be substantial or chronic, the Committee will state their findings, in writing as provided in V.G below.

3. Substantial or chronic deficiencies:

If the Committee determines that there are substantial or chronic deficiencies in the Faculty Member's conduct, the Committee will state their findings in writing as provided in V.G below.

G. Recommendations:

1. The Committee shall render its written findings and recommendations within 15 Working Days of completion of a hearing. Whether or not there was a hearing, the Committee shall document its findings in a report that specifies the allegations, summarizes relevant information, and states the conclusions reached and the evidence on which it reached those conclusions. It should make explicit findings of fact with respect to each allegation and list the evidence relevant to that finding. The decision should then state the Committee's recommendations. The report and other retained documentation must be sufficiently detailed to serve as a basis for the Dean's action on the Committee's recommendations and to permit a later review by the FBR, should the Faculty Member grieve the Dean's actions. The factual findings of the Committee shall be conclusive on any later FBR proceeding.

2. Findings of misconduct and recommendations of sanctions shall be based on substantial evidence developed in the hearing record considered as a whole. Based on its findings, the Committee may recommend that no action is warranted, that a remediation plan be developed pursuant to V.G.3 below, or that sanctions be imposed pursuant to V.G.4 below.

3. The Committee may recommend a plan designed to assist the Faculty Member in remedying the identified deficiencies.

a. The plan will be developed by the Dean, or other administrative officer appointed by the Dean, and the Faculty Member.

b. At the request of either the Faculty Member or the Dean or such other administrative officer, the assistance of a third party (a mediator or a professional expert in the problem area identified) will be provided to assist in the development of the plan.

c. A plan should identify the deficiencies to be addressed, define goals or outcomes that are needed to remedy the deficiencies, outline the specific activities and programs that should be completed to achieve these goals and outcomes and indicate the appropriate benchmarks to be

used in monitoring progress.

d. If agreement on the plan cannot be reached within three months of the date of the Committee's written recommendations, either party may petition the Committee, as provided for in V.H.1 hereof.

4. The Committee may recommend any of the following sanctions:

a. A written reprimand with a warning that additional sanctions will be imposed if there is a repetition or continuation of the misconduct.

b. Salary penalties.

c. A probationary period during which the Faculty Member must abide by certain specified conditions or be subject to the imposition of further sanctions.

d. A temporary suspension without pay.

e. Dismissal, provided, that the Faculty Member had notice of the possibility of dismissal pursuant to V.A.2 above.

5. On its completion, the Committee's report shall be forwarded to the Dean and the Faculty Member. In cases in which dismissal is recommended, the report shall also be sent to the Vice Chancellor for Academic Affairs.

6. Either Party shall have 10 Working Days to submit written comments to the Committee and the other Party. The Committee shall consider such comments and make any changes to its recommendations it determines are reasonable. Written notification of the Committee's decisions shall be given to both Parties.

H. *Further Proceedings:*

1. In the event that the Parties cannot agree on a remediation plan as recommended by the Committee within three months after the recommendation, either Party may petition the Committee in writing (with a written copy to the other Party) for a proceeding on the matter.

a. Such petition shall describe in detail the status of discussions and the terms of any plan presented and the areas of disagreement.

b. The other Party may submit a written response within 5 Working Days.

c. The Committee shall set a date for a proceeding not less than 15 Working Days after receipt of the petition for review.

d. The Committee, in its discretion, may meet with each of the Parties, alone or together. The Parties may have a representative with him or her, but such person may not participate in the

Committee's proceedings.

e. The Committee shall within 15 Working Days of the proceeding produce a remediation plan binding on the Parties or make such other recommendations it determines are warranted under these procedures, subject to review by the FBR.

2. In the event that a Faculty Member, previously sanctioned by the Committee pursuant to V.G.4, is allegedly not observing the conditions of the original sanction or is allegedly engaged in the same misconduct for which such Faculty Member was sanctioned, the Dean may submit a written petition for a re-hearing to the Committee, with a written copy given to the Faculty Member.

a. The Faculty Member may submit a written response to the allegations within 10 Working Days after receipt of the written petition.

b. The Chair shall convene a hearing before the Committee within 15 Working Days after receipt of the Faculty Member's response.

c. The hearing shall be conducted in accordance with the proceedings set forth in V.B and V.C of these Procedures.

d. The Committee shall render its written findings and recommendations as provided in V.F and V.G of these Procedures.

I. Records:

After completion of the case and all ensuing related actions, the Committee Chair shall prepare a complete file, including the original records of all proceedings and copies of all documents and other materials furnished to the Committee. Access to the materials in the file shall be available to the FBR, and to others only upon authorization by the Committee for good cause. The records of the Committee shall be kept and maintained at the faculty records office of the Vice Chancellor for Academic Affairs.

J. Waiver of Time Requirements:

Either Party may request an extension of time under these Procedures by written request given to the Committee and the other Party. Such extension shall be given if the other Party agrees in writing, or if, in its discretion, the Committee determines an extension is reasonable, it may also, grant such extension in writing given to each Party and notify the parties.

INDIANA UNIVERSITY
GUIDING PRINCIPLES FOR FACULTY REVIEW
(Approved: UFC, 2/9/99, 11/24/09; Trustees, 3/26/99)

The quality and integrity of academic programs depend upon the performance of individual faculty. Indiana University as an institution and its faculty members have a mutual and reciprocal commitment to ensure the ongoing productivity of individuals throughout their academic careers. Peer review is an essential aspect of continued improvement and faculty development.

Each campus shall have:

1. Procedures for annual merit review of faculty performance that comply with Principles Guiding Indiana University Faculty/Librarian Salary Policy (University Faculty Council, April 25, 1989)

<http://www.indiana.edu/~ufc/docs/policies/SalaryPolicy.pdf>

2. Procedures for evaluation of faculty performance on occasion of reappointment, appointment with tenure, and promotion in rank that comply with the provisions on Academic Advancement (standards, procedures, and annual review) in the *Academic Handbook*

http://www.indiana.edu/~vpfaa/download/acad_handbk_web_08.pdf

3. Procedures, adopted by faculty governance, for review, remediation, and sanction (including sanction of dismissal) of faculty conduct that violates the rules of the University or fails to meet generally understood and accepted standards of professional conduct.

The procedures for review, remediation, and sanction of faculty conduct shall:

- A. Preserve academic freedom.
- B. Protect due process.
- C. Recognize situational differences of diverse faculty.
- D. Establish professional development as a goal.
- E. Define a mechanism for initiating the in-depth review process.
- F. Rely upon peer review at all steps in the process.
- G. Incorporate existing faculty review mechanisms.
- H. Include the concept of intermediate sanctions prior to dismissal proceedings.
- I. Establish dismissal process consequent to misconduct or incompetence.
- J. Specify outcome criteria for assessment of the effectiveness of the policy at the time of implementation of the policy.

5.3.1.1.1 *Faculty Board of Review*. The review function of the Indiana University Faculty shall be exercised by a Faculty Board of Review.

5.3.1.1.1.1 *Membership*. The Senators of Indiana University affiliation shall select five tenured members of the Indiana University Faculty as the Board, and shall designate one of them as the presiding member. The members shall hold office from the first day of February for a term of one year, but they shall complete the review of any case which they have begun to consider. A member of the Board who is involved in a case before the Board, or is a member of a department from which a case arises, shall be disqualified from hearing or investigating the case. Members of the Board shall disqualify themselves from hearing or investigating a case whenever they believe they cannot render an impartial judgment. The Senators of Indiana University affiliation shall elect a temporary member to fill each vacancy created by disqualification; the temporary member shall serve during the particular case before the Board.

5.3.1.1.1.2 *Scope*. The Board shall hear cases concerning academic freedom, tenure, promotion, salary adjustment, and the nature or conditions of work. Any member of the Indiana University Faculty desiring a review of administrative action in these stated areas shall request in writing a hearing by the Board.

5.3.1.1.1.3 *Procedures*. In cases involving academic freedom or tenure, the Board shall fix a date for hearings and accord each party involved the rights to have counsel of choice, to present witnesses and other evidence, and to cross-examine opposing witnesses. Upon request of the Faculty member concerned, a closed hearing shall be held. Upon the evidence and arguments presented, the Board shall express its judgment and recommendation to the Chief Administrative Officer in a written report, a copy of which shall be mailed to the Faculty member concerned. Thirty days thereafter a confidential copy of the report shall be filed with the Secretary of the Faculty. The Chief Administrative Officer shall state in writing the University's final decision, with reasons therefor. This statement also shall be sent to the Faculty member concerned.

In cases involving promotion, salary, or the nature or conditions of work, the Board shall hear the Faculty member concerned and make such other investigation as it deems necessary or advisable in formulating its opinion and recommendation. This opinion and recommendation shall be forwarded in writing to the appropriate administrative official(s), and thirty days thereafter to the Faculty member concerned. The appropriate administrative official shall state a decision in writing, with reasons therefor. This statement shall also be sent to the Faculty member concerned.

Public statements by either faculty members or by administrative officials about cases before the Board should be avoided. Any announcement of the final decision should include either the complete statement or a fair abridgment of the recommendation of the Board, if it has not previously been released.