

INDIANA UNIVERSITY BLOOMINGTON

Principles to Guide the Development of Procedures for Handling Complaints of Misconduct Against Faculty Members

(By Action of the Bloomington Faculty Council: April 16, 1996)

RESOLVED:

That the following "principles" shall guide the development of procedures for handling all complaints of misconduct against faculty members on the Bloomington campus.

While different classes of disputes may require differences in procedures due to the diverse subject matters and institutional contexts in which they arise, there are some fundamental standards to which complaint procedures should conform and which those administering them should understand. While these principles are not themselves procedures for handling complaints of misconduct against faculty members, they are meant to guide the development of such procedures. Any such procedures must conform to legal requirements and must be approved by the appropriate faculty governance body.

The proposed principles are divided into three sections: General Guidelines, Due Process Standards, and Guidelines for Procedures.

I. GENERAL GUIDELINES:

A. Complaints of faculty professional misconduct constitute an important concern for the Campus. Unless they are handled properly, they can seriously damage members of the Campus community and the Campus itself. The damage is aggravated when disputes are prolonged or never resolved.

B. Complaints of faculty professional misconduct are best avoided by education regarding principles of academic relationships, the University's regulations, and the dictates of law (State and Federal) bearing on faculty professional conduct. Work needs to be done to educate the campus community with respect to the principles of academic freedom, proper academic conduct, due process, free speech, and the balancing of these principles. This would include printed materials, forums, and resource people available to provide informed advice when complaints develop. It would also include clear information on the offices that serve as resources for dispute resolution.

C. Education can also avoid the damage which occurs from the mishandling of complaints. In particular, people assuming administrative roles should receive training in dispute resolution and the Campus' complaint processing procedures. Such training should help administrators to distinguish those decisions which require consideration of information relating to merit and other quality issues in order to make routine judgments, for example awarding salaries, from those decisions involving conflict situations that ought to invoke dispute resolution procedures.

D. The procedures should allow for complaints against faculty of professional misconduct to be fully, fairly and consistently processed. Any set of procedures should ensure that the University administrators can meet the University's legal obligations and its obligations to provide appropriate conditions of work and learning for students, faculty, and staff.

E. The parties to a dispute involving allegations of faculty professional misconduct may include (1) an individual complaining that he or she has been adversely affected by faculty misconduct (complainant); (2) the responsible administrator in the respondent's academic unit or another officer representing the Campus or University; and (3) the faculty member accused of misconduct (respondent).

F. Faculty respondents are prejudiced in their ability to defend themselves against complaints if they are not given full opportunity to confront the evidence against them.

G. Retaliation, whether by respondents or others, is professional misconduct. Every effort should be made to protect the complainant and other persons from retaliatory action.

H. All procedures for handling complaints of faculty misconduct shall be approved by the appropriate faculty governance body.

II. DUE PROCESS STANDARDS:

A. Respondents shall be informed promptly of the details of the complaint when:

1. An investigation of a complaint moves to the point of seeking other than cursory corroborating evidence, for example, by contacting witnesses; or
2. When information regarding a complaint becomes part of a respondent's personnel file.

B. Respondents should not be prejudiced in their status or terms or conditions of employment without respondents' consent or an appropriate due process opportunity to defend themselves, including the right to counsel or a representative of their choice, the opportunity to present witnesses or other evidence, the cooperation of the hearing panel in securing the attendance of witnesses, and the opportunity to confront the evidence against them. This provision will require that faculty respondents be told the identity of those who provide significant evidence against them and be given the full written statement of any complaint against them.

C. Provisional, emergency actions departing from the principles of II.A. or II.B., above, may be taken only by a senior University officer with the advice of University Counsel and must be followed as promptly as possible by steps providing respondents with the notice and opportunity to defend specified in II.A. and II.B.

D. Faculty respondents should not be obliged to respond to complaints unless the standards in II.A. and II.B., above, are met.

E. Professional misconduct is limited to violations of formal rules of the University or generally understood and accepted standards of professional conduct. Communication

and action protected by principles of academic freedom may not be judged professional misconduct.

F. A copy of these principles and a copy of the particular procedures for handling the complaint should be given to both the complainant and the respondent, so that both parties will be informed of the system to be followed in investigating and processing the complaint, as well as possible appeal procedures.

G. If resolution by negotiation is attempted, all parties shall be told that formal processes are available if a consensual disposition is not achieved.

H. Where formal processes are required, hearings should be before a board of tenured faculty members, which will be responsible for recommending dispositions of complaints. Such a board will be selected following procedures established by the appropriate faculty governance body. Particular procedures, approved by faculty governance, may provide for membership on a hearing board of another affected constituency, but tenured faculty should make up a majority of the board, in order to provide experience and independent judgment.

III. GUIDELINES FOR PROCEDURES:

A. Where appropriate, the procedures should afford opportunity to resolve disputes by negotiation, aiming at mutually agreeable, unrecorded settlements (referred to hereafter as "informal adjustment").

In cases where agreeable, unrecorded settlement is not achieved and in cases where informal adjustment is inappropriate, efforts to resolve complaints through negotiation of a mutually acceptable recorded settlement may be made before the initiation of hearing processes.

Some cases will be sufficiently serious that informal adjustment is not appropriate, and complainants and respondents should be informed of this at the outset.

B. Complainants and respondents should have confidential advice and representation available to them from the beginning of the process. Advice for complainants shall include information about procedures and possible options as well as the offer of continuing assistance if the complaint is carried further.

In the case of complainants, assistance could come from an appropriate campus advocacy or support office, but, if a complainant prefers, may be sought from a faculty member, a friend, or an attorney. In the case of respondents, assistance could be sought from a colleague, a professional organization, or an attorney.

C. The procedures should provide guidance to the responsible administrators of the respondents' academic units regarding acting on complaints or information suggesting professional misconduct.

D. Dispute resolution services involve several functions: (1) providing counseling/advocacy services to complainants; (2) providing mediation services by a disinterested third party to facilitate achieving mutually agreeable resolutions through

negotiation; (3) formally hearing cases and recommending dispositions in accordance with due process standards; (4) representing the interests of the University.

These functions should be kept separate and should be the responsibility of different offices. The procedures should specify which campus offices and instrumentalities will perform these functions.

For example, mediation should be carried out by a disinterested third party. Therefore, an advocacy office should not attempt to act as a mediator, although it might represent a complainant in negotiations. Nor should advocacy offices act to represent the university or undertake to be hearing tribunals. Similarly, mediation should not be undertaken by the unit's responsible administrator, who is an interested party.

E. Time limits shall be established to assure complainants and respondents of prompt disposition of their concerns, with adequate opportunity to be heard and for deliberation.

F. Dissemination of information relating to the case should be limited in accordance with specified standards, in order that the privacy of all individuals involved is safeguarded.

G. Each department, office, or committee providing assistance to the campus with dispute resolution shall define their record keeping procedures. These procedures should identify how the records will be kept, for what period, and who will have access to the records. This information should be clearly defined for both complainant and respondent. If the matter addressed affects the terms and conditions of employment, the record should be retained for a specified period in the respondent's personnel records. The respondent shall be provided a copy of any information placed in his/her employment record. The respondent shall be allowed to add his/her own statement to his/her record.