

INDIANA UNIVERSITY KOKOMO
Due Process Procedures for
Handling Complaints of Misconduct against Faculty Members

Approved by the Indiana University Faculty Senate, November 2, 2015

This Due Process document is divided into three sections: Rationale, Due Process Standards, and Guiding Principles.

I. RATIONALE:

- 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. The office of the Vice Chancellor for Academic Affairs (VCAA) shall be responsible for educating 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 damages which occur from the mishandling of complaints. In particular, people assuming administrative roles should receive training in dispute resolution and the Campus's complaint processing procedures. The VCAA's office is responsible for ensuring administration is properly trained. Such training should help administrators to distinguish between those decisions which require disciplinary action consistent with these procedures as opposed to issues relating to merit and other quality issues in which routine judgements should be asserted. In other words, not all disputes or disagreements should rise to the level of a disciplinary action.
- D. The procedures should allow for complaints against faculty for professional misconduct to be fully, fairly, and consistently processed. 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 other officer representing the Campus or University; and (3) the faculty member accused of misconduct (respondent).
- F. Faculty respondents are disadvantaged in their ability to defend themselves against complaints if they are not given full opportunity to confront the evidence against them.
- G. Retaliation is itself professional misconduct. Every effort should be made to protect all 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. The initiation of a complaint against a faculty member shall begin with that faculty member's direct supervisor. 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 is to become part of a respondent's personnel file. Consistent with *IU University Policies* "<http://policies.iu.edu/policies/categories/academic-faculty-students/index.shtm>, and <http://policies.iu.edu/policies/categories/academic-faculty-students/conditions-academic-employment/Academic-Employee-Records.shtml>," respondents must be informed of complaints prior to any documentation being added to their personnel file.
- B. Respondents' rights include 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 evidence against them and be given the full written statement of any complaint against them. The above provision applies without regard to status or terms or conditions of employment. (See Article V of the Faculty Senate Constitution.)
- C. 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 Legal 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/codes of the University or generally understood and accepted standards of professional conduct as evidenced by department rules or policies. Administration must cite the specific rules/code alleged to be violated by the respondent and assert the facts that support the violation. For example, if an administrator believes the faculty member has violated "verbal abuse of another" they would cite to the Personal Misconduct on University Property Code, #21(a). Only rules/codes adopted by the IU Kokomo Faculty Senate or University Faculty Council may be used for disciplinary action. See: <http://policies.iu.edu/policies/categories/academic-faculty-students/conditions-academic-employment/Code-of-Academic-Ethics.shtml> for the Code of Ethics and Personal Misconduct on University Property. Faculty conduct shall not be judged as "generally unprofessional." Communication and action protected by the principles of academic freedom may not be judged as professional misconduct.
- F. A copy of these principles and a copy of the particular procedures for handling the complaint shall 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. Administration has an affirmative duty to ensure parties are made aware of their rights.

- 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 review consistent with Article V of the IU Kokomo Faculty Constitution.

III. GUIDING PRINCIPLES:

- A. Where appropriate, all actions against faculty members should afford opportunity to resolve disputes by negotiations, aiming at mutually agreeable settlements.
- B. Complainants and respondent should have confidential advice and representation available to them from the beginning of the process. It is recommended by the IU Kokomo Faculty Senate that an Ombudsman Office is created for this purpose.
- C. The training that the VCAA's office is to provide administrators should provide guidance regarding acting on complaints or information which suggests possible professional misconduct.
- D. Dissemination of information relating to the case should be limited in accordance with specific standards, in order that the privacy of all individuals involved is safeguarded.
- E. In accordance with IU Policy, 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, prior to the insertion of the document into the file. The respondent shall be allowed to add his/her own statement to his/her record. (See Policy Government Access to and Maintenance of Academic Employee Records, <http://policies.iu.edu/policies/categories/academic-faculty-students/conditions-academic-employment/Academic-Employee-Records.shtml>).