

# Indiana University Kokomo Faculty Grievance and Review Procedures

Approved by the Faculty, April 18, 2016

## **I: Procedure for the Establishment of a Case**

1. The appeal of a case to the Board of Review shall be initiated by the Petitioner or their legal counsel within a sixty (60) day period following the challenged action or upon reaching impasse in informal attempts to resolve the challenged action.
2. A Petitioner wishing to present a case to the Board of Review shall submit a written notice to the Board, with copies to the appropriate Dean or Division Chairperson, the Vice Chancellor for Academic Affairs, and the Chancellor. The written document shall, when appropriate, cite the alleged procedural irregularity or argument to support the lack of reasonableness of the action and state the Petitioner's evidence as to the existence of a case. Serious efforts made to resolve the issue at the appropriate level, whether formal or informal, shall be cited in detail. The document should contain a clear statement that the case has failed to be resolved at the appropriate level.
3. The chairperson of the Board shall request a written Response from the appropriate party (Dean, Division Chairperson, Vice Chancellor or Chancellor). Said Response shall include a review of procedures with sources, dates, and the reasons leading to the decision. The Response should be submitted within fifteen (15) business days of the request.
4. The Petitioner will be allowed to review said Response and file a Reply within fifteen (15) business days. This Reply is not required and should only address new information not previously addressed in the initial grievance. All documents submitted to the Board of Review shall be made available to all parties.
5. Within thirty (30) days of receipt of the Grievance, Response and Reply, the Board of Review shall, on the basis of the evidence submitted or gathered, decide whether sufficient justification for an appeal exists by a vote of at least three members of the Board. Notice of the date of the initiation of the formal study of the case, or its rejection, shall be sent to all parties concerned, within seven (7) days of the decision. If the case is rejected, the Board will give the reasons for the rejection in the Notice.
6. Extensions of time – The deadlines above may be extended at the discretion of the Board of Review.
7. The Petitioner's representative or faculty resource person shall be included in all aspects of the establishment and review, excluding the right to vote.
8. If a negotiated settlement is possible, the Chair of the Board may attempt to negotiate the case with the parties or the Board may appoint an ombudsman acceptable to both parties at dispute. The ombudsman shall conduct his or her deliberations consistent with the timetable established by the Board of Review.

9. If negotiations fail, then the Board of Review may call for a formal hearing of the matter.
10. The Petitioner shall have the right to withdraw the appeal at any time prior to the beginning of a formal hearing of the case. Once a formal hearing has begun, the appeal may be withdrawn only by the mutual consent of the parties and the Board.
11. If a case is filed against the Chancellor of Indiana University Kokomo, the Chancellor will be recused from the case and the role of the Chancellor will then be filled by the Chancellor's immediate supervisor within the administrative hierarchy of Indiana University.

## **II: Procedure for the Conduct of Reviews**

1. During the review of a case, before making any decisions, the Board of Review may, in its discretion:
  - a. obtain additional data from any party concerned,
  - b. interview either party separately,
  - c. interview witnesses suggested by either party,
  - d. conduct an informal review session with both parties, with cross-examination permitted and
  - e. request additional meetings with either party for further clarification.
2. Any additional information received as described in Section II.1.(a-e) above, shall be distributed to all parties.
3. After reviewing the documents filed by the parties, and additional evidence collected, the Board will vote to determine whether to accept or reject the case.
4. If a decision to reject the case is not reached after the initial study, the Board may continue with the informal review of the case, to include attempt to settle the case or the aggrieved Petitioner may request and receive a formal hearing. At a formal hearing the following procedures shall apply:
  - a. The Board may, with the consent of the parties, hold joint pre-hearing meetings with the parties in order to (a) simplify the issues, (b) effect stipulations of facts, (c) provide for the exchange of documentary or other information, and (d) achieve such other appropriate objectives as will make the hearing fair, effective, and expeditious.
  - b. Service of notice of hearing will be in writing at least twenty (20) days prior to the hearing.

- c. The Board, in consultation with the Petitioner, will exercise its judgment as to whether the hearing should be public or private. Strong deference shall be given to the desires of the Petitioner.
  - d. During the proceedings, the Petitioner will be permitted to have a representative or resource person of his or her own choosing to assist in the proceedings.
  - e. An audio recording of the hearing or hearings will be taken and a copy will be made available to the parties upon request.
  - f. The Board will grant continuances to enable either party to investigate evidence as to which a valid claim of surprise is made.
  - g. The Petitioner will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the Board in securing witnesses and making available documentary or other evidence.
  - h. The Petitioner and the administration will have the right to confront and cross-examine all witnesses. Where a witness cannot or will not appear, but the Board determines that the interests of justice require admission of his or her statements, the Board will identify the witness, disclose his or her statements, and if possible provide for interrogatories.
  - i. The Board will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.
  - j. The findings of fact and the decision of the Board will be based solely on the hearing record.
  - k. The chairperson of the Board shall keep the detailed accounts of the case, whether it is handled through settlement or hearing. These files shall be kept for at least five (5) years in a file cabinet that is maintained by the Faculty Senate President. A copy of the final report of each case shall be retained in the file and in the office of the Vice Chancellor for Academic Affairs. Future Boards of Review may refer back to previous cases for reference but cases by the Board of Review do not create controlling precedent for future Boards.
5. While a case is pending before the Board of Review, no adverse action may be taken against the Petitioner regarding the underlying appealed matter, except in the case of Dismissal. In such a case, the procedures found in Section IV of this document apply.

### **III: Procedures for Reporting Recommendations and Appealing Decisions**

1. The report of the Board shall be sent to the Chancellor, with copies to all parties deemed appropriate by the Board. The report should describe the general nature of the grievance, summarize the evidence presented, and state the findings of the Board. Upon the basis of

facts found by the Board and its stated interpretations of University policies, the Board shall state its conclusions and recommendations.

2. The Chancellor shall advise the parties concerned, in writing, of his or her decision and the reasons for said decision within thirty (30) days of receipt of the Board's recommendations. In the event that the Chancellor has recused him or herself, the Chancellor's immediate superior shall perform this duty.
3. Consistent with the University Faculty Council Constitution Article V.4., a further appeal may be made to the Chancellor's immediate superior, the President of the university and the Board of Trustees, who shall review the record and notify in writing the concerned faculty member and the campus provost or chancellor of their decision, with a copy to the Board of Review.
4. The Board of Review shall report to the Faculty Senate each September on the number and the general nature of the cases handled and whether the Board decided in favor of the grievant. Unless there was a public hearing, the confidentiality of the grievant shall be maintained.

#### **IV: Dismissal Procedure**

1. Dismissal shall mean the involuntary termination of a tenured faculty member prior to retirement or resignation, the termination of a non-tenured faculty member prior to the expiration of his or her term of appointment, or the involuntary termination of an administrator's position prior to the expiration of his or her term of appointment. Dismissal shall occur only for reason of (a) incompetence, (b) serious personal or professional misconduct, or (c) extraordinary financial exigencies of the University.
2. Adequate cause for a dismissal will be related, directly and substantially, to the fitness of the faculty member in his or her professional capacity as a teacher, researcher, or in the case of an administrator related to his or her administrative duties alone. Dismissal will not be used to restrain faculty members in their exercises of academic freedom or other legal rights. Substantial evidence shall be presented by the university showing an attempt to correct the faculty member/administrator's deficit prior to moving for Dismissal.
3. Dismissal of a faculty member with tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by: (a) documentation of the attempt by the university to correct the deficit, (b) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (c) inquiry by the Board of Review; and (d) a statement of charges, framed with reasonable particularity by the Chancellor or the Chancellor's designated representative.
4. Prior to the Dismissal action taking place, the individual concerned shall have a right to a formal hearing by the Board of Review provided for in Section II of this document.
5. Pending a final decision by the Board of Review, the faculty member shall be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to her or himself

or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the case through a formal hearing, the administration shall consult with the Faculty Affairs Committee concerning the propriety, the length, and any other conditions of the suspension. Salary will continue during the period of the suspension.

6. Service of notice of hearing with specific charges in writing shall be made at least twenty (20) days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member denies the charges or asserts that the charges do not support a finding of adequate cause, the Board of Review will evaluate all available evidence and base its recommendation upon the evidence in the record.
7. The burden of proof that adequate cause exists rests with the institution and shall be satisfied only by substantial evidence in the record considered as a whole. In a hearing concerning charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.
8. If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as a suspension for a stated period, the administration may institute a proceeding to impose such as severe sanction. The procedures outlined in Section II of this document shall govern such a proceeding.
9. If the aggrieved faculty member is not satisfied with the decision at this level, consistent with the University Faculty Council Constitution Article V.4., further appeal may be made to the Chancellor's immediate superior, the President of the university and the Board of Trustees, who shall review the record and notify in writing the concerned faculty member and the campus provost or chancellor of its decision, with a copy to the Board of Review.
10. If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, such as a reprimand, it shall notify the faculty member of the basis for the proposed sanction and shall provide him or her with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a sanction has been incorrectly or unjustly imposed under this paragraph may grieve the action under the procedures outlined in Sections II, III, and IV of this document.