

INDIANA UNIVERSITY BLOOMINGTON
FACULTY MISCONDUCT AND INCOMPETENCE REVIEW POLICY
(Approved: BFC 4/6/99, 12/01/2009, Revised Date 8/18/2015)

I. Scope and Definition:

The faculty members covered by this policy shall include all and only Bloomington tenured and tenure-eligible faculty (including librarians).

A. Commitment to tenure

Tenure is valued and protected by the university as stated in policy E-2 which recognizes the reciprocal obligations tenure entails: “The principle of faculty tenure imposes reciprocal responsibilities on the University as a body politic and on the faculty member. In order to meet its responsibilities to its students and to society, the University must attract and retain a faculty of outstanding quality. To that end the University safeguards academic freedom and economic security by its policy of faculty tenure. The faculty members, on their part, are obligated to maintain high standards of teaching, research, service, and professional conduct.” Dismissal (of a tenured faculty member) “shall occur only for the reason of (a) incompetence; (b) serious personal or professional misconduct; (c) extraordinary financial exigencies of the University.” The present policy sets forth procedures for reviewing cases where faculty members may be guilty of “incompetence” or “serious personal or professional misconduct.” Except in cases of extraordinary financial exigency as defined in the Indiana University Bloomington policy on Creation, Reorganization, Elimination, and Merger of Academic Programs (insert policy #), no tenured faculty member or librarian shall be dismissed or sanctioned without following the procedures set forth in this policy. In certain circumstances detailed in [section I.C.1](#), this policy requires following procedures set forth in separate policies mandated by federal law.

B. Exclusions

The purpose of tenure is to protect and preserve academic freedom and to provide economic security. Communication that is protected by the tenets of academic freedom is not misconduct or incompetence. Indiana University supports the right of faculty members to speak and write on matters of public concern and to criticize policies and practices freely. The IU policy on academic freedom ([ACA 32](#)) defines academic freedom as “full freedom of investigation.” This means not only freedom to investigate topics that are politically unpopular, but also the freedom to engage in high risk research where results are neither immediate nor guaranteed. University and campus policies shall be observed, particularly those concerning equal opportunity, academic freedom, academic ethics, and discrimination.

Once exonerated, a faculty member or librarian shall not be required to answer repeated charges based on substantially the same facts.

C. Definitions of misconduct and incompetence

1. Serious personal or professional misconduct

Serious personal or professional misconduct concerns active malfeasance. The following acts exemplify, but do not exhaust, the sort of activity that might constitute misconduct: flagrant breaches of University rules, substance abuse during discharge of professional duties, theft or misuse of University resources, or egregious violations of the Code of Academic Ethics (**Policy I, section 1.1**). Misconduct or criminal activity outside the context of the University is only misconduct for this purpose if it prevents the individual from effectively carrying out his or her duties as a faculty member. Criminal charges within a political context must be viewed with great scrutiny since issues of academic freedom may be involved. Some forms of personal or professional misconduct are governed by separate university or campus policies mandated by federal law, e.g., sexual misconduct or research misconduct (UA-03, ACA-30). In those cases, complaints will be heard under those policies and may not be brought again under this one.

2. Incompetence

In contrast to serious personal or professional misconduct, incompetence concerns gross failure to perform professional duties: For example, the persistent neglect of duties or persistent failure to carry out the tasks reasonably to be expected of a person holding the position involved. A more detailed definition of incompetence is contained in the Faculty Advancement Policy (insert policy number). In all but emergency cases of incompetence, the Faculty Advancement Policy (insert policy number) must be used and exhausted prior to any complaint of incompetence brought under the present policy.

II. Formation of the Faculty Misconduct and Incompetence Review Committee (FMIRC)

A. Membership of the FMIRC

The FMIRC shall be composed of five tenured IUB faculty members at the rank of full professor who are nominated by the Bloomington Faculty Council's Nominations Committee and elected by the BFC's elected representatives no later than June 1 of each year and five alternate members chosen in the same manner. Members shall serve for staggered terms of two years, so that no more than three members should be newly elected each year. Members will take office immediately after the election and shall then meet within 1 week of the beginning of the fall semester to choose, from among FMIRC members, a committee chair. If the review of a case is pending when the election occurs, the members of the FMIRC who began consideration of that case shall complete their work on it, even if some of them have come to the ends of their terms on the FMIRC.

In offering nominations for election to the FMIRC, consideration should be given to representation among divisions of the campus.

B. Conflict of Interest

If a case is brought to the FMIRC that involves a faculty member from the same academic unit as a member of the FMIRC, the committee member shall recuse himself/herself and an alternate member shall sit on the committee for the duration of the case. The committee chair will ask for volunteers from among the alternates; if more than one alternate agrees to serve, the committee will vote on which alternate will serve. A committee member must also recuse himself/herself if s/he has any relationship with the faculty member that could be perceived as a conflict of interest, such as (but not limited to) a shared research grant, membership on the same community organization board, a close personal friendship, or a romantic relationship. The same process for selecting an alternate will be followed.

III. Procedures

A. Standards of evidence and assumption of merit

In recognition of the high standards a faculty member must meet to achieve tenure, challenges to his or her tenured appointment must also meet a high bar. While these are not judicial hearings, evidence should prove misconduct or incompetence beyond a reasonable doubt and the burden of demonstrating misconduct and/or incompetence will, in all cases, lie with the University.

B. Complaint initiation and notification

1. A complaint shall originate with the Dean of the College or School. In the case of misconduct only, the Vice Provost for Faculty and Academic Affairs (VPFAA) may also make a complaint. Such a complaint shall set forth, in reasonable detail and in writing, the nature of the alleged misconduct or incompetence, and shall include a statement as to prior efforts made to resolve the complaints by negotiation. If the complaint is of incompetence, the complaint shall include documentation that the provisions of the Faculty Advancement Plan (insert policy #) have been followed and exhausted. If dismissal of the faculty member based on alleged incompetence or misconduct is sought, the written statement must clearly set out this intent.
2. Anyone contemplating initiating processes under this policy shall notify the VPFAA and the Provost and obtain their acknowledgement before the process begins. For cases of incompetence the VPFAA and the Provost shall be notified and acknowledgement obtained after the Faculty Advancement Plan is exhausted and before departmental consideration of the case.
3. After VPFAA has acknowledged a case of misconduct, complaints shall be submitted to the FMIRC chair, who will convene a meeting of the FMIRC to review the complaint. In cases of incompetence, the procedures outline below in III.D will be followed and only at the end of those will the complaint and the accompanying dossier be submitted to the FMIRC chair. All reasonable efforts shall be made to keep and protect the privacy of the faculty member and keep his/her name confidential.

C. Emergency cases

Procedures in emergency cases are different from non-emergency cases. For the latter, see (III.D and III.E).

1. In cases of alleged misconduct or incompetence which the VPFAA or the Provost determines requires immediate action to protect the interests of members of the University community, the faculty member may be suspended with pay or reassigned, and shall remain suspended or reassigned pending the review process detailed herein. The VPFAA or the Provost shall give the faculty member written notice of the emergency action and shall offer him/her the opportunity for an informal conference to discuss the emergency action.
2. If the faculty member objects to the propriety of the emergency action, he/she shall notify the VPFAA, the Provost, and the FMIRC in writing. The VPFAA or the Provost shall, within two (2) days, provide the FMIRC and the faculty member with a memorandum specifying the information on which the VPFAA or the Provost is acting and the how that information justifies the emergency action. The faculty member may submit to the FMIRC, the VPFAA, and the Provost a memorandum containing information and argument opposing the emergency action within two (2) days of receipt of the Provost's memorandum. The FMIRC shall furnish its recommendation on the propriety of the emergency action to the VPFAA, the Provost and the faculty member within two (2) days of receipt of the faculty member's memorandum.
3. When emergency action is taken, the VPFAA or the Provost shall immediately submit to the FMIRC chair a complaint setting forth, in reasonable detail, the nature of the alleged misconduct and the sanctions the University seeks to impose. The FMIRC shall provide the faculty member with written notice of the VPFAA or the Provost's complaint. The faculty member shall have fifteen (15) days from the date of notice to provide a written response. In emergency cases of incompetence, the FMIRC will decide which of the proceedings in [section III.D](#) shall be followed and will decide on a reasonable period of time for those procedures to take place. All reasonable effort shall be made to allow the proceedings described in [section III.D](#) to take place so that the review of incompetence can be grounded in local, disciplinary knowledge.
4. The Chair of the FMIRC shall convene a hearing to review the allegations presented in the complaint within twenty-five (25) days. 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. Following the completion of the hearing, the FMIRC Committee shall make its findings and recommendations known as soon as possible or within fifteen (15) days. The faculty member and the Provost shall be entitled to pursue appeals as detailed later in this policy.

D. Cases of incompetence (non-emergency)

1. In the case of non-emergency incompetence, the Faculty Advancement Plan must be followed and exhausted before the complaint can be brought to the FMIRC.
2. If and only if the FAP review committee's final report finds that "*substantial chronic deficiencies*" remain at the conclusion of a faculty advancement plan, (Faculty Advancement Policy Section IV.D.2.I), the faculty member's Dean may initiate incompetence proceedings. The Dean must clearly state at the outset whether dismissal is sought, and the VPFAA and Provost shall be notified and acknowledge notice of all cases where dismissal is sought. As the duties of professors and librarians are diverse and discipline specific, and as the process of earning tenure is arduous, rigorous, and complex, the procedures for removing tenure due to a failure to perform duties need to begin at the local level, be situated in disciplinary knowledge, and be as rigorous as the original tenure review. The initial phases of the review thus do not involve the FMIRC and that committee will not be informed of the review until a later phase.
3. The first step in the review takes place at the department or unit level. The Dean shall provide the faculty member written notice that he or she is initiating incompetence proceedings under this policy and outlining the reasons for doing so by reference to the ad hoc faculty review committee's final report from the faculty advancement process. In no instance should administrative failure to document performance be taken as a failure of performance on the part of the faculty member. The Dean shall assemble a review dossier that includes the text of the Dean's complaint and the sanction sought, the review committee final report, and the faculty member's dossier originally assembled for the faculty advancement process (FAP policy section IV.C). The faculty member shall have 90 days to add rejoinders or to revise or add material to this dossier (including, if s/he chooses, personally solicited letters from external reviewers).
4. Step 2: The dossier shall be returned to the ad hoc review committee for the faculty advancement plan. Within 10 days, that committee shall recommend whether dismissal or another sanction is justified by the degree of incompetence. In cases where the committee members are not unanimous in their judgment concerning either incompetence or sanction, this shall be indicated clearly in their recommendation. This recommendation shall be added to the dossier.
5. Step 3: At the faculty member's option and request, the review dossier may be shared with the entire tenured faculty in the department or unit for purposes of a departmental vote. The same procedures for protecting confidentiality in tenure cases shall be applied. If a faculty member has appointments in multiple units, the "home" unit of the faculty member for tenure and promotion purposes will be designated the home unit for purpose of this policy; other units shall send their review reports and recommendations to the chair/dean of the home unit, who includes them in the dossier for consideration by the home unit. The tenured faculty in the department or unit shall

- review the dossier and meet to discuss the case within 15 days. Following the meeting and discussion, the tenured faculty (excluding those with administrative appointments at the rank of Chair or above) shall vote on the case by anonymous ballot within three (3) days following the meeting. The vote shall be recorded and added to the review dossier.
6. If at least 60% of the eligible faculty vote that *no* incompetence has occurred, the departmental committee's report shall be added to the personnel file of the faculty member or librarian along with a record of the vote and the proceedings shall halt immediately. If more than 40% of the eligible faculty vote that incompetence has occurred, the case shall be forwarded to the school policy committee.
 - a. If the proceedings halt in this manner, under no circumstances should the faculty member or librarian be subject to another complaint of incompetence without substantial new evidence and without first being subject to an advancement plan under the Faculty Advancement Policy. If a faculty member or librarian feels as though he/she is being harassed by iterated, failed use of these policies, he/she may appeal to the Faculty Board of Review.
 - b. In cases where dismissal is sought, the eligible faculty shall vote on whether or not incompetence has occurred, and separately on whether or not dismissal is warranted. These votes will occur simultaneously. If at least 60% of eligible faculty vote against dismissal the penalty of dismissal cannot be applied. Vote counts shall be recorded and reported forward at all further stages of the process, along with the report generated previously by the departmental or unit.
 7. If the faculty member's unit for **section D.4** above is not the faculty member's school, then there is a review at the school level as well. When the smallest unit per **section D.4** is the school, this step does not occur. This review shall be conducted by the elected Policy Committee of the school or other larger unit within 21 days of the departmental vote or within 21 days of the decision not to hold a departmental vote. The Dean or other unit administrator shall not be present during these deliberations. If the unit or school has voted not to have a Policy Committee (per the BFC Elected Policy Committee Statement), then the school tenure committee may serve instead. As above, if at least 60% the Policy Committee finds no grounds for incompetence, the review is stopped at this level; similarly if at least 60% of the Policy Committee finds no grounds for dismissal, dismissal is no longer possible as a sanction. Should more than 40% of the Policy Committee find that incompetence has occurred, the case is then forwarded to the FMIRC with its written recommendation and the entire dossier assembled to this point. In this case the review now follows all procedures for cases of personal or professional misconduct.

8. Any case of incompetence that is brought to a departmental or school-level vote but does not reach the FMIRC shall be reported in writing to the VPFAA by the department or unit head pursuing the case as well as, in the event of school-level review, by the unit committee reviewing the case. The VPFAA shall annually send to the BFC a written report of the number and type of these cases as well as the phase of review at which they concluded. As at all phases, confidentiality shall be preserved.

E. FMIRC proceedings (non-emergency cases of misconduct or incompetence)

1. The faculty member shall be notified in writing by the FMIRC that a complaint has been filed with the Committee. The notification will include a copy of the review dossier (in the cases of complaints of incompetence) or (in the case of misconduct) the complaint from the Dean of the academic unit. In all cases the faculty member shall simultaneously receive a copy of this policy, an explanation of the faculty member's rights and responsibilities under this policy, and a list of FMIRC members and alternates. The faculty member will have twenty (20) days from receipt of the notification to file a written response with the BFC Chief of Staff. The faculty member may also request, with stated cause, that any member of the FMIRC be barred from hearing his/her case. The FMIRC chair will have the final decision as to whether the reasons provided appear justified and will make the final decision. In complaints of incompetence, the next two steps are skipped, as it is presumed that any possible informal adjustment would have taken place at an earlier phase of review, and a hearing is scheduled as in [section III.E.4](#) below.
2. After the FMIRC has received the faculty member's response, an ad hoc committee comprised of at least three members of the FMIRC, appointed by the chair of the FMIRC, will meet with the complainant or a representative appointed by the complainant and the faculty member to attempt to find a mutually agreeable informal adjustment that resolves the complaint. "Informal adjustment" means alternative dispute resolutions, such as negotiation or mediation, to achieve mutually agreeable settlements.
3. The ad hoc committee will meet with the parties within thirty (30) days after the FMIRC chair appoints the ad hoc committee and will develop a written plan for informal adjustment within ten (10) days after its final meeting with the complainant and the faculty member. Both parties have ten (10) days to accept or reject this plan.
4. If the informal adjustment process has failed to resolve the dispute between the complainant and the faculty member, the FMIRC will hold a hearing no sooner than twenty (20) and no more than thirty (30) days after the ad hoc committee has reported in writing that informal adjustment did not resolve the issues. The hearing date shall be set within five days of the failure of informal adjustment with notice to all parties.

5. During the hearing, the complainant shall present his/her case first, after which the faculty member will present his/her case. The full presentation by each party shall take place within a ten (10) day period.
6. Each side may call witnesses to testify at the hearing. The faculty member and the complainant shall provide to the committee the names of all persons to be called to testify within ten (10) days after receiving notice of the date set for the hearing. Thereafter witnesses may only be added with the consent of the FMIRC.
7. Each party may question the other party's witnesses. Each witness who is a University employee or student shall be given a letter, signed by the Dean, the appropriate department chair or unit head, the faculty member, the chair of the FMIRC, and the BFC president stating that no retaliation will be taken against the witness for his/her testimony.
8. Witnesses who cannot appear in person may submit written statements to the committee, provided the other side is allowed to request written responses to questions. Witnesses may also appear by electronic means if the needed technology is available in the designated hearing room(s).
9. Each hearing day shall be no longer than eight hours, including meal and rest breaks. Additional hearing days may be scheduled at the FMIRC's discretion if more information is needed from either party. The meetings will be structured informally in a way that emphasizes that these are not legal proceedings.
10. The University (including any acting on the University's behalf in the investigatory process) may consult with the University Counsel on procedural matters at any stage of the proceedings. The faculty member may be accompanied by counsel of his or her choice for the course of the proceedings. Faculty's counsel may provide the faculty member advice, but may not participate in the proceedings. This includes both the right to informal, confidential consultation in the hearing room and the right to leave the room for private consultation. All sides should remain cognizant that the hearings are extrajudicial.
11. The chair of the FMIRC shall preside at all hearings and ensure that the faculty member's due process rights are respected.
12. Hearings will be closed to the public unless the faculty member requests an open hearing. "Closed" means that only the complainant or his/her representative(s), the faculty member and his/her advisor(s), members of the Committee, witnesses at the time of their testimony, the chief of staff of the BFC or his/her designee, and any technical staff needed to record the proceedings shall attend.
13. All hearings held by the FMIRC in regard to a case shall be recorded on audio or video recording equipment provided by the office of the Bloomington Faculty

- Council. Transcripts of the proceedings should be made available to the Dean, faculty member, and FMIRC members at the earliest convenience.
14. Both parties and their representatives, members of the Committee, and BFC staff are expected to maintain confidentiality about the case while it is pending and afterward. Failure to do so may be grounds for disciplinary action.
 15. After the hearings have concluded, the FMIRC shall meet at least once to reach a recommendation on how to resolve the case. The FMIRC shall report its findings to all parties in writing no more than twenty (20) days after the conclusion of the hearings. The nature of possible findings is discussed in section F.

F. Findings and Sanctions

1. The FMIRC may make one of the following findings:
 - a. No deficiencies: The FMIRC finds that the faculty member has met accepted standards of conduct.
 - b. Some deficiencies, but neither substantial nor chronic: The FMIRC identifies some deficiencies in the faculty member's conduct, but these deficiencies are not judged to be substantial nor chronic.
 - c. Substantial or chronic deficiencies: The FMIRC determines that there are substantial or chronic deficiencies in the faculty member's conduct.
 - d. Deficiencies due to potential disability: The FMIRC determines that there are substantial or chronic deficiencies due to potential disability.
2. When the FMIRC finds "substantial or chronic deficiencies," "progressive discipline" may be recommended in preference to suspension or dismissal from the University. In addition, the FMIRC should determine whether extenuating circumstances, especially relating to potential mental or physical disability, substance abuse, or family crises may be related to the behavior under investigation and disciplinary recommendations may reflect such determinations.
3. If the FMIRC determines that there are chronic or substantial deficiencies, it may recommend any of the following sanctions against the faculty member:
 - 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 with or without pay.
 - e. Dismissal, provided that the faculty member was given notice of the possibility of dismissal.

4. If the FMIRC determines that this is potentially a case of deficiency due to disability, campus and university policies involving disability support and leave should be followed.
5. Except in cases of personal or professional misconduct, if the final disciplinary outcome of this policy is dismissal, the faculty member or librarian shall receive an amount equal to his or her salary and fringe benefits for one year after receipt of the final decision, unless some other mutually agreeable arrangement is negotiated. In cases of personal or professional misconduct, if the final disciplinary outcome of this policy is dismissal, the faculty member may, at the Provost's discretion, receive severance compensation no greater than one year's salary. The faculty member or librarian shall have the right to resign at any point in the proceedings prior to notification of dismissal by the Provost.

G. Reporting and Final Decisions

1. Whether or not a hearing takes place, the FMIRC shall document its findings in a written report that specifies the allegations, summarizes relevant information, and states the conclusions reached and the evidence on which it reached those conclusions. The report shall make explicit findings of fact with respect to each allegation and list the evidence relevant to that finding. The report shall also clearly state the FMIRC's recommendations. The report and other retained documentation must be sufficiently detailed to serve as a basis for the Provost to take action on the FMIRC's recommendations and to permit review by the Provost, as well as to facilitate review by the Faculty Board of Review (FBR), should the faculty member grieve the FMIRC's process or Provost's action. The factual findings of the FMIRC shall be conclusive on any later FBR proceeding.
2. On its completion, the FMIRC report shall be forwarded to the Provost with copies to the VPFAA, the Dean, and the faculty member. The Provost shall make a ruling based on the FMIRC's recommendation within 30 days. If the Provost's ruling differs from the FMIRC's, the Provost will provide a report explaining the difference in enough detail to allow for a review by the Faculty Board of Review.

H. Appeals

1. Within forty-five (45) days of receipt of the Provost's ruling, the faculty member may provide notice of an intention to appeal to the other party and to the Faculty Board of Review (FBR). Such appeals shall be limited to: (1) claims that the process was flawed in a way that creates a significant risk that the outcome was erroneous; or (2) appeal of the sanctions imposed as a result of a finding of misconduct. The appeal

must specify the nature of any claimed procedural error. The factual record established during the investigation shall constitute the factual record for the purposes of the appeal.

2. The FBR shall consider any appeal by the faculty member brought under this policy in accordance with the FBR's established process at the time of the appeal. As the FBR is reviewing an act of the Provost, the FBR recommendation will be made to the President, who will make a final decision on the case.

I. Records

After completion of the case and all ensuing related actions, the FMIRC Chair shall prepare a complete file regarding the case up to and including the FMIRC's report, including the original records of all proceedings and copies of all documents and other materials furnished to the FMIRC. Access to the materials in the file shall be available to the Faculty Board of Review and to others only upon authorization by the FMIRC for good cause. The records of the FMIRC shall be kept and maintained at the Office of the Vice Provost for Faculty and Academic Affairs (VPFAA).

J. Waiver of Time Requirements

Either party may request an extension of time under these procedures by written request given to the FMIRC and/or the other party. Such extension shall be given at the sole discretion of the FMIRC.

K. Report to the Bloomington Faculty Council

The Faculty Misconduct and Incompetence Review Committee shall report annually in writing to the Bloomington Faculty Council the number and types of cases presented to it and the number and types of case dispositions.

L. Definitions

Day is defined as any day on which instruction takes place on Bloomington campus.