

## Faculty Misconduct Policy\_

### Policy on Faculty Disciplinary Procedures

BL-ACA-D27

#### Scope

The faculty members covered by this policy shall include all Bloomington tenured and tenure-eligible faculty (including librarians). This policy also covers non-tenure track faculty as described in I.C. below.

#### Policy Statement

##### I. Scope and Definition

###### 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 or long-term contracts. 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 are accused may-be-guilty of “serious personal or professional misconduct” or “incompetence.” Except in cases of extraordinary financial exigency as defined in the Indiana University Bloomington policy on Creation, Reorganization, Elimination, and Merger of Academic Programs, no tenured faculty member shall be dismissed or sanctioned without following the procedures set forth in this policy. In certain circumstances detailed in section I.D, this policy requires following procedures set forth in separate policies mandated by federal laws and regulations.~~Review of cases of alleged, chronic and substantial incompetence shall also be processed under this policy.~~

Commented [SS1]: Titled changed as a result of discussions at the 2/15/22 BFC meeting.

## **B. Academic freedom and other university policies**

The purpose of tenure is to protect and preserve academic freedom and to provide economic security. During a contract term, the same protections extend to faculty without tenure. Communication that is protected by the tenets of academic freedom is not misconduct. 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.

## **C. Non-tenure track faculty**

For the purposes of this policy, the Code of Academic Ethics will be interpreted to apply in its entirety to full time non-tenure track faculty. Alleged misconduct or incompetence of non-tenure track faculty during the term of a contract of employment must be reviewed following the provisions of this policy or those governed by separate university or campus policies as detailed in Section I.D. Proceedings shall follow exactly as for tenure track faculty. The policy does not cover instances of non-renewal of contract. Those may be appealed to the Faculty Board of Review as allowed in the Indiana University Bloomington Faculty Grievance and Review Policy (D-22).

## **D. Definitions of incompetence and serious personal or professional misconduct**

Serious personal or professional misconduct is defined exclusively as an egregious violation of the Code of Academic Ethics. Misconduct or criminal activity outside the context of the University is misconduct if and only if it has a continuing adverse effect on any University program, or creates a hostile environment for any participant in such a program, whether on or off campus. Criminal charges within a political context must be viewed with great scrutiny since issues of academic freedom may be involved.

For purposes of this policy, incompetence is defined as chronic or egregious dereliction of duty, such as by a faculty member willfully refusing to perform their job duties, unreasonably neglecting their job duties, or manifesting behavior that renders them incapable of performing their job duties.

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.

#### **E. Retaliation**

Protections against retaliation are critical to the University community. Retaliation against anyone who has reported an incident of misconduct or incompetence, provided information, or participated in procedures or an investigation into such a report ~~of misconduct~~, is prohibited by the University and will not be tolerated. Acts of retaliation include intimidation, threats, and/or harassment, whether physical or communicated verbally or via written communication (including the use of e-mail, texts and social media). Retaliation also includes any other acts that are intended or reasonably likely to dissuade a reasonable person from reporting incidents, providing information, or participating in procedures as described above, as well as adverse changes in work or academic environments or other adverse actions or threats. The University will take steps to prevent retaliation, and will impose sanctions on anyone or any group who is found to have engaged in retaliation in violation of this policy. Concerns about potential retaliation in connection with a report made under this policy of misconduct should be reported to the VPFAA.

## **II. Faculty Misconduct Review Committee (FMRC)**

### **A. Membership of the FMRC**

~~The FMRC shall be composed of five tenured IUB faculty members at the rank of full professor.~~ The FMRC shall be composed of five members of the IUB faculty, all of whom must be either tenured or in long-term contracts, 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.

**Commented [SS2]:** After the Jan 18 BFC meeting, the FAC changed this slightly. The previous language was:

Incompetence is defined as chronic or egregious dereliction of duty, such as by a faculty member willfully refusing to perform their job duties, unreasonably neglecting their job duties, or engaging in behavior (e.g., substance abuse) that renders them incapable of performing their job duties.

A majority shall be tenured faculty. 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 7 days of the beginning of the fall semester to choose, from among FMRC members, a committee chair. If the review of a case is pending when the election occurs, the members of the FMRC 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 FMRC.

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

#### **B. Conflict of Interest**

If a case is brought to the FMRC that involves a faculty member and a member of the FMRC from the same department, program (or, in the case of schools with no departments, the same school), the committee member shall recuse himself/herself and an alternate member shall sit on the FMRC for the duration of the case. 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. In the event of recusals, the FMRC chair will select an alternate at random from among the list of alternates.

### **III. Procedures**

#### **A. Standards of evidence, assumption of merit, and confidentiality**

~~While these are not judicial hearings,~~ The standard for evaluating a charge under this policy is that there is clear and convincing evidence that the alleged behavior constituting misconduct or incompetence ~~misconduct~~ has occurred. The burden of demonstrating misconduct or incompetence will, in all cases, lie with the University. ~~The parties' representatives, the complainant, parties reviewing the case, and participants and~~ BFC staff are expected to maintain confidentiality about the case while it is pending and afterward, except as necessary for the participants to share information with advisors and/or witnesses to prepare and present their cases. Failure to do so may be grounds for disciplinary action. The requirement of confidentiality is necessary to protect the dignity of the proceedings and the rights of third

parties, such as students and other witnesses. But the requirement of confidentiality should be enforced in a way that is consistent with the responsible exercise of speech rights protected under First Amendment law.

The FMRC is not a court of law that renders a judgement. It makes recommendations to university officials concerning misconduct or incompetence by academic appointees, but is not an advocate for the grievant or the respondent. It acts impartially in light of existing university policies, traditional academic principles, and fairness.

## **B. Complaint initiation and notification**

1. A written complaint shall originate with the Dean of the College or School, **an administrator in a comparable position involving faculty supervision, such as the Vice Provost for Research or the Vice President for Research,** or with the Vice Provost for Faculty and Academic Affairs (VPFAA). If a complaint names the VPFAA, the complaint shall originate with the Provost. In the event that a complaint is contemplated against the VPFAA, the Provost, or the President, and such person is also a faculty member, complaints against them shall originate as follows. If the complaint names the Provost, the complaint shall originate with the President. If the complaint names the President, the complaint shall originate with the Board of Trustees.
2. Complaints shall set forth, in reasonable detail and in writing, the nature of the alleged **behavior establishing misconduct or incompetence within the meaning of this policy,** and shall include a statement as to prior efforts made to resolve the complaints by **actions such as** negotiation and informal adjustment, **or written warning,** including through the VPFAA ~~or and through~~ the BFC Mediation Committee. **It is expected that the procedures in this policy will be invoked only after other efforts to address the situation have been attempted and failed. In cases where a faculty member's behavior is alleged to create a violation of the Code of Academic Ethics or dereliction of duty but is not sufficiently egregious or chronic to warrant a formal complaint under this policy, a school dean or their designee, the Vice Provost for Faculty and Academic Affairs, or the**

**Commented [SS3]:** This sentence was added as a result of discussion at the 2/15/22 BFC meeting.

Vice Provost for Research may counsel the faculty member and seek resolution of the problem through negotiation or other informal means. While the sanction of formal reprimand is reserved for the Provost, in some cases a written warning and/or statement of expectations from the dean or their designee may be appropriate.

~~1.3.~~ Anyone contemplating initiating processes under this policy shall notify the VPFAA and the Provost and obtain the acknowledgement of either the VPFAA or the Provost before the process begins.

~~2.4.~~ After the VPFAA or the Provost has acknowledged ~~the a case of~~ misconduct, the complaint shall be submitted to the FMRC chair.

### C. Notice and Review

1. In cases ~~of alleged misconduct that which~~ the VPFAA or the Provost determines requires immediate action to protect the faculty member or others from immediate harm, 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 expedited action and shall offer ~~him/her them~~ the opportunity for an informal conference to discuss the emergency action.
2. The faculty member shall be notified in writing by the FMRC chair that a complaint has been filed with the FMRC, citing specific instances of violation of the Code of Academic Ethics or evidence of incompetence as defined in this policy. The notification will include a copy of the complaint. 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 FMRC members and alternates.
3. ~~The faculty member may peremptorily bar one member of the FMRC. All other~~Any challenges to the ~~composition participation~~ of a member of the FMRC must be submitted in writing to the FMRC. In such a case, a member of the FMRC will not be removed without the approval of a majority of the FMRC. If a member is removed, then an alternate member will be identified by the Faculty Council office.

4. The faculty member will have twenty (20) days from receipt of the notification to file a written response with the FMRC Chair, who will forward the complaint and the response to the FMRC.
- ~~5.~~ After receipt of the faculty member's response, the FMRC will promptly set the date for a hearing. The hearing shall be scheduled for no sooner than twenty (20) and no more than thirty (30) days after receipt of the faculty member's response.
- ~~6.~~ Each side may call witnesses to testify at the hearing. Within ten (10) days after receiving notice of the date set for the first day of hearings, the faculty member and the complainant shall provide to the FMRC the names of all persons to be called to testify and a brief explanation of each person's connection to the case. Thereafter witnesses may only be added with the consent of the FMRC. The FMRC is charged with notifying witness and calling them to testify and with ensuring that the complainant and the faculty member each have a complete list of all witnesses that will be called to the proceeding.
- ~~7.~~ Each party may question the other party's witnesses. Witnesses who cannot appear in person may appear by electronic means. Student witnesses must be accompanied by a non-participating advisor.
- ~~5.8.~~ During the hearing, the complainant shall present his/her their case first, after which the faculty member will present his/her their case. Each party will have up to four (4) hours to present their side of the case, including the testimony of their witnesses. If additional time is needed, it may be granted at the discretion of the chair. As much as possible, both sides should present their cases in their written submissions, including statements from witnesses, with the hearing devoted primarily to questions to parties or witnesses from members of the FMRC. Each hearing day shall be no longer than eight hours, including meal and rest breaks. The full hearing presentation by each party should shall be concluded within a period of not more than take place within a ten (10) day periodfourteen (14) days, with the expectation that most hearings should be completed within a shorter period of time.
- ~~6.1.~~ Each side may call witnesses to testify at the hearing. Within ten (10)

~~days after receiving notice of the date set for the first day of hearings, the faculty member and the complainant shall provide to the FMRC the names of all persons to be called to testify and a brief explanation of each person's connection to the case. Thereafter witnesses may only be added with the consent of the FMRC. The FMRC is charged with notifying witness and calling them to testify and with ensuring that the complainant and the faculty member each have a complete list of all witnesses that will be called to the proceeding.~~

- ~~7.1. Each party may question the other party's witnesses. Witnesses who cannot appear in person may appear by electronic means. Student witnesses must be accompanied by a non-participating advisor.~~
- ~~8. Each hearing day shall be no longer than eight hours, including meal and rest breaks. Additional hearing days may be scheduled at the FMRC's discretion if more information is needed from either party. The proceedings will be structured informally in order to emphasize that these are not judicial proceedings.~~
9. The respondent may be accompanied by up to two (2) advisors (including legal counsel) of their choice during the hearing. Additional advisors, such as a translator, may be allowed at the FMRC chair's discretion. The complainant may be accompanied by a representative of the University General Counsel's office or other counsel. Advisors or counsel may not participate in the hearing except to provide confidential consultation and advice inside and outside of the hearing room. Recognizing that the institutional perspective of the General Counsel's office may influence its judgment on some questions, the FMRC should use discretion in seeking advice from that office on substantive or procedural matters during the course of a case. At the same time, because the General Counsel's office could be called upon to defend in court an action ultimately taken against a faculty member, that office has an interest in assuring that all proceedings comply with law. If a matter requires the FMRC to seek guidance from the General Counsel's office, to avoid conflicts of interest that office should designate a different attorney than the one assisting the complaining party. The FMRC may also seek counsel from a faculty member who has appropriate legal training or policy experience and

**Commented [S54]:** After the Jan 18 BFC meeting, the FAC revised this language. It previously read:

In general the FMRC should avoid seeking counsel on substantive or procedural matters from individuals or offices that may have a conflict of interest, including the university's Office of General Counsel. It may seek counsel from a faculty member who is approved by the BFC Executive Committee and who has appropriate legal training or policy experience, such as former chairs of the FBR or FMRC.

~~who is approved by the BFC Executive Committee. Confidential information about the case may be shared as needed with such a person, to whom this policy's rules of confidentiality also apply. The complainant may consult with the University counsel only on procedural matters at any stage of the proceedings. The faculty member may be accompanied by counsel and/or a reasonable number of advisors of his or her choice for the course of the proceedings. Faculty's counsel and advisors may provide the faculty member advice but may not participate in the proceedings except to provide informal, confidential consultation inside and outside the hearing room.~~

10. The chair of the FMRC shall preside at all hearings and ensure that the process detailed herein is followed. Within the parameters of this policy, the chair may exercise judgment and make decisions intended to ensure that the process is efficient and effective while remaining fair to both parties.
11. Hearings will be closed to the public unless the faculty member and the complainant agree to an open hearing. "Closed" means that only the complainant or his/her/their representative(s), the faculty member and his/her/their advisor(s), members of the FMRC, witnesses at the time of their own testimony, the chief of staff of the BFC or his/her/their designee, and any technical staff needed to record the proceedings shall attend.
12. All hearings held by the FMRC in regard to a case shall be recorded on audio or video recording equipment provided by the office of the BFC. ~~Such Audio~~ recordings of the proceedings shall be made available to any of the parties upon their request. Particular care must be taken to protect the identity of any student witnesses.
13. After the hearings have concluded, the FMRC shall meet at least once to reach a recommendation on how to resolve the case. The FMRC shall report its findings to all parties in writing in accordance with Section E no more than twenty (20) days after the conclusion of the hearings. The nature of possible findings is discussed in Section D.

#### D. Findings and Sanctions

1. The FMRC may make one of the following findings:
  - a. No violation of the Code of Academic Ethics, and/or no dereliction of duty~~misconduct~~;
  - b. Some violation of the Code of Academic Ethics~~misconduct~~ but not egregious, and/or some dereliction of duty but neither egregious nor chronic;
  - b.c. Egregious violation of the Code of Academic Ethics, and/or egregious or chronic dereliction of duty.
2. In recommending sanctions, the FMRC shall take into account any extenuating circumstances.
3. The FMRC shall make every effort to ensure that the sanctions it recommends are appropriate and proportional to the misconduct or incompetence found.
4. If the FMRC determines that there has been misconduct or incompetence, it may recommend any of the following sanctions against the faculty member:
  - a. A written reprimand from the Provost with a warning that additional sanctions will be imposed if there is a repetition or continuation of the behavior~~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.
5. 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. If this sanction is applied to the Provost as a result of a finding that he/she has~~they~~ have engaged in misconduct or incompetence, the President shall

have this discretion. If this sanction is applied to the President as a result of a finding that ~~he/she has~~they have engaged in misconduct or incompetence, the Board of Trustees shall have this discretion.

#### **E. Reporting of Findings and Sanctions**

1. The FMRC shall document its findings and recommendations in a written report that includes all relevant documentation, specifies the allegations, summarizes relevant information, and states the findings reached and the evidence on which it reached those findings. The report shall make explicit findings of fact with respect to each allegation and list the evidence relevant to that finding. The report and other retained documentation must be sufficiently detailed to serve as a basis for the Provost to review and take action on the FMRC's recommendations, as well as to facilitate review by the Faculty Board of Review (FBR), should the faculty member grieve the FMRC's process or Provost's action.
2. On its completion, the FMRC report shall be forwarded to the Provost with copies to the VPFAA, the complainant, and the faculty member. The Provost shall make a decision based on the FMRC's recommendation within thirty (30) days and shall notify the faculty member, the complainant, and the FMRC of that decision. If the Provost's decision differs from the FMRC's recommendation, the Provost will provide a report to the faculty member, the complainant, the FMRC, and ~~upon appeal to~~ (upon appeal) the FBR, explaining the difference in enough detail to allow for review by the ~~Faculty Board of Review (FBR)~~FBR. The Provost's decision is final unless the faculty member appeals that decision.
3. If the faculty member against whom this ~~misconduct~~ proceeding has been applied is the Provost, the President shall fulfill the role of the Provost. If the faculty member against whom this ~~misconduct~~ proceeding has been applied is the President, the Provost shall fulfill his/her/their role as stated in this policy.

## F. Appeals

Within forty-five (45) days of receipt of the Provost's ruling, the faculty member may file an appeal with the FBR in accordance with the FBR's rules (See Policy D-22).

1. 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.
2. If the faculty member against whom this ~~misconduct~~ proceeding has been applied is the Provost, the President shall fulfill the role of the Provost. If the faculty member against whom this ~~misconduct~~ proceeding has been applied is the President, the Provost shall fulfill ~~his/her~~ their role as stated in this policy.

## G. ~~Exoneration and Double Jeopardy~~ Finality and Subsequent Complaints

Resolution of a complaint under this policy will be final and a faculty member shall not be required to answer repeated charges under this policy based on substantially the same facts. However, where the same behavior continues or escalates after a previous FMRC proceeding, regardless of outcome, it may form the basis for a new complaint against the faculty member.

## H. Records

The OVPFAA shall maintain a file, which includes the FMRC's report, the Provost's decision and report, and all documents produced by the FBR and President's reviews and decisions. Access to the materials in the file shall be available to the Faculty Board of Review and to others only upon authorization by the faculty member or OVPFAA for good cause.

## I. ~~Waiver Extensions~~ of Time Requirements

Either party may request an extension of time under these procedures by written request ~~given~~ to the FMRC ~~chair, which the chair may grant at their discretion and/or the other party. Each of the parties shall be granted one-three (3) day extension. Any subsequent requests for extension of time shall be granted at the sole discretion of the FMRC.~~

**J. Report to the Bloomington Faculty Council**

The FMRC shall report annually in writing to the BFC the number and types of cases presented to it and the number and types of case dispositions.

**IV. Definitions**

*Day* is defined as any weekday on which instruction takes place on the Bloomington campus.

*Dean is defined as the Dean of a College or School or any academic administrator appointed by the Dean to act as the Dean's representative.*