

INDIANA UNIVERSITY BLOOMINGTON
FACULTY MISCONDUCT AND INCOMPETENCE POLICY
(Approved: BFC 4/6/99, 12/01/2009, **Revised Date/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 “serious personal or professional misconduct” or “incompetence”. Except in cases of extraordinary financial exigency no tenured faculty member or librarian shall be dismissed without following the procedures set forth in this policy. In certain circumstances detailed in 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 freely criticize policies and practices. The IU policy on academic freedom (ACA 32) defines academic freedom as “full freedom of investigation.” In this context it is important to note that this means not only freedom to investigate topics that are politically unpopular, but the freedom to engage in high risk research where results are neither immediate nor guaranteed. University and campus policies shall be observed, particularly 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

For the purposes of this policy, “misconduct” shall be understood as behavior that falls under any one of the following two categories:

1. Serious Personal or Professional Misconduct

Serious personal or professional misconduct concerns positive acts of malfeasance. The following acts exemplify, but do not exhaust, the sort of activity which might constitute misconduct: acts which constitute a flagrant breach of University rules or academic ethics, substance abuse during discharge of professional duties, theft or misuse of University resources. 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. In all but emergency cases of incompetence, the Faculty Development Plan (**insert policy number**) must be used and exhausted prior to any complaint of incompetence brought under this 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 May 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 choose, from among FMIRC members, a committee chair at the first meeting after the election. 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 the case, 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 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 request for a review shall originate with the Chair of the department or unit (with Dean approval), the Dean of the College or School, or (in the case of misconduct only) the Provost. Such request 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 Request shall include documentation that the provisions of the Faculty Development Plan have been followed and exhausted. If a request for dismissal of the faculty member based on the alleged misconduct is sought the written statement must clearly set out this request.
2. All cases where dismissal is to be considered must be submitted to and approved by the Provost. For cases of misconduct, the Provost's approval must be obtained before being brought to the FMIRC; for cases of incompetence the Provost's approval must be obtained after the Faculty Development Plan is exhausted and before departmental consideration of the case. Unless there is reasonable fear of harm to the University or to individuals, the faculty member should be allowed to continue in their duties throughout the proceedings. In all cases, the faculty member shall continue to receive full pay and benefits throughout the proceedings.
3. Complaints should be submitted to the Chief of Staff of the Bloomington Faculty Council, who will then notify the FMIRC that a complaint has been filed against a faculty member, and convene a meeting of the FMIRC to review the complaint. All reasonable efforts should be made to keep and protect the privacy of the faculty member and keep their name confidential.

C. Emergency cases

1. In cases of alleged misconduct or incompetence which the Provost determines require immediate actions 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 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 Provost and the FMIRC in writing. The Provost shall, within two (2) days, provide the FMIRC and the faculty member with a memorandum specifying the information on which the Provost is acting and the reasons why that information justifies the emergency action. The faculty member shall submit to the FMIRC 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 Provost and the faculty member within two (2) days of receipt of the faculty member's memorandum.
3. When emergency action is taken, the Provost shall immediately submit a request 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 Provost's request. 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 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 to take place.
4. The Chair of the FMIRC shall convene a hearing to review the allegations presented in the request within twenty-five (25) days after the date of the request. 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. The FMIRC Committee shall make its findings and recommendations as soon as possible or within fifteen (15) days of completion of the hearing, after which the faculty member and the Provost shall be entitled to pursue appeals as detailed in this policy.

D. Cases of incompetence

1. In the case of non-emergency incompetence, the Faculty Development Plan must be followed and exhausted before the complaint can be brought to the FMIRC.
2. Following the failure of a development plan as determined by the final report of the ad hoc department development committee, the faculty member's Dean may initiate

- incompetence proceedings. It must be clearly stated at the outset whether dismissal is sought, and cases seeking dismissal must be approved by the Provost. 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 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. After the initiation of incompetence proceedings, the departmental committee assembled for the Faculty Development Plan (insert policy #) will write a detailed report outlining the original need for development, the development plan, and the failure of development under the plan. This report will take into account both all annual merit reviews (compliant with policy E.23) and all reviews under the Faculty Development Plan (insert policy #). In no instance should administrative failure to document performance be taken as a failure of performance on the part of the faculty member. The faculty member shall have 90 days to assemble a dossier in response to this report (including, if they choose, letters from external reviewers who they personally solicit).
 4. Should the departmental committee find the complaint of incompetence justified, the report written by this committee and the faculty member's dossier shall be shared with the entire faculty in the designated department or unit, using the same procedures for ensuring confidentiality as are used in tenure and promotion cases. In cases where dismissal is sought, the committee shall clearly state in their report whether they find that dismissal is justified by the degree of incompetence. In cases where the committee is not unanimous in its judgment concerning either incompetence or dismissal, this shall be indicated clearly in the report.
 5. The faculty in the department or unit shall review the committee's written report and faculty member's dossier and meet to discuss the case. Following the meeting and discussion, the faculty shall vote on the case. All voting will be conducted by anonymous ballot and faculty will be given at least three (3) days following the meeting to cast their votes. If the 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.
 6. 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 a development plan under the Faculty Development Plan. 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.

7. In cases where dismissal is sought, the faculty shall vote first on whether or not incompetence has occurred, and second and separately on whether or not dismissal is warranted. If the 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.
8. If the faculty member's tenure or promotion case was subject to a review at a school level in addition to the unit level, the incompetence proceedings shall be as well. This review shall be conducted by the elected Policy Committee of the school or other larger unit. 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 the Policy Committee finds no grounds for incompetence, the review is stopped at this level; if the Policy Committee finds no grounds for dismissal, dismissal is no longer possible as a sanction. Should the Policy Committee find that incompetence has occurred, the case is then forwarded to the FMIRC with its written recommendation. In this case the review now follows all procedures for cases of personal or professional misconduct.
9. Any case of incompetence that is brought to a departmental or school-level vote but that does not reach the FMIRC shall be reported in writing to the OVPFAA by the department or unit head pursuing the case as well as, in the event of school-level review, by the committee reviewing the case. The OVPFAA shall annually send to the BFC a written report detailing all such cases.

E. Cases of Misconduct

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 request for review from the Dean of the academic unit, 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 on whether to honor the faculty member's request.
2. After the FMIRC has received the faculty member's response, an ad hoc committee comprised of at least three members 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 ad hoc committee 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. If either party rejects the plan the ad hoc committee will then meet to set hearing dates for reviewing the case against the faculty member.
4. If the informal adjustment process has failed to resolve the dispute between the complainant and the faculty member, the FMIRC will set dates for 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.
 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 side may question the other side'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 the fact 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 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 to 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. Except in cases of open hearings, 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 against the offending party.
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 criteria are met for F.1.c, "substantial or chronic deficiencies," recommendations of "progressive discipline" may apply as preferable to suspension or dismissal from the University. The Dean and Provost must demonstrate that progressive discipline has been applied in non-emergency cases. 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. 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. 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's action on the FMIRC's recommendations and to permit a later 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 Dean, the faculty member, and, where appropriate, the departmental chair or unit head.

H. Appeals

1. The FMIRC's report and recommendations are subject to review by the Provost. Within ninety (90) days of receipt of the FMIRC's report, the faculty member or the Provost 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 Provost or the faculty member brought under this policy in accordance with the FBR's established process at the time of the appeal.
3. Upon the conclusion of the FBR's review of appeals submitted to it hereunder, the FBR shall issue a written report of its decision to the faculty member and the Provost affirming or overturning, in whole or in part, the recommendations of the FMIRC. Either the Provost or the faculty member may appeal the decision of the FBR to the President, whose decision shall be final.

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 Offices of the Vice Provost for Faculty and Academic Affairs (OVPF AA).

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.