

Report of the Post-Tenure Review Taskforce

October 13, 2016

1. Timeline of Work Leading to Appointment of the Taskforce

Fall 2014: Faculty Affairs Committee (FAC) forms a post-tenure review subcommittee¹ to examine the documents and processes associated with all forms of review of tenured faculty, including processes around faculty misconduct, annual reviews, and merit reviews. The subcommittee charge was to “remove ambiguities in the current documentation and consider whether our current processes protect academic freedom, provide adequate mentoring for faculty, and create a productive and positive campus environment” (email from FAC chair Cassidy Sugimoto, 8/25/14).

Spring 2015: Subcommittee drafts a policy on Faculty Misconduct and Incompetence Review (FMIR), which was a substantial revision of the existing Faculty Misconduct Policy (D-27, originally passed by BFC in 1999 and revised in 2009). The subcommittee also drafted a new policy on Faculty Advancement (FAP, sometimes called Faculty Development). These policies were presented to the BFC for a first reading on April 7 2015.²

Fall 2015: These two documents (FMIR and FAP) were circulated for comment and discussed again at BFC on September 15. In response to some of the comments received, a subgroup of the Executive Committee divided the FMIR draft policy into two policies, one for misconduct and another for incompetence. The latter outlined procedures for faculty review of cases in which a dean sought to sanction or dismiss a tenured faculty member for incompetence. The policy stipulated that no incompetence proceedings could begin until a review and remediation process had been completed with oversight by an ad hoc committee of departmental colleagues, as spelled out in the Faculty Advancement Policy.

In November 2015, the Executive Committee appointed a post-tenure review taskforce (Gary Ebbs, Moira Marsh, and Christiana Ochoa) to (1) decide how best to separate the Misconduct and Incompetence parts of the recently revised Faculty Misconduct and Incompetence Review Policy, (2) add language to the Incompetence part of FMIRP and to the recently proposed Faculty Advancement Policy (FAP) to facilitate the application of these policies to very small departments/units, and (3) review and address faculty comments on these documents.

¹ Gary Ebbs (Philosophy), Anthony Fargo (Media), David Fisher (Math), Ray Greiner (English), Bradley Levinson (Education), Moira Marsh (Library /Folklore), Laura McCloskey (chair) (Public Health), Ted Miller (SPEA, emeritus), and Christiana Ochoa (Law, VPFAA ex-officio).

² Revised Faculty Misconduct and Incompetence Policy <http://www.indiana.edu/~bfc/docs/circulars/14-15/B35-2015.pdf>; Faculty Development Policy draft <http://www.indiana.edu/~bfc/docs/circulars/14-15/B36-2015.pdf>

2. Activities of the Post-Tenure Review Taskforce

The taskforce reviewed all the comments about the suite of draft policies (FMIRP and FAP) received from executive associate deans, department chairs, and school policy committees, and individual faculty members. Frequent among these comments were concerns that the proposed FAP process would have a negative impact on collegiality and campus culture, while being onerous to complete.

Since the draft FAP was based on a similar policy adopted at IUPUI, we gathered additional input from faculty governance leaders there. The IUPUI faculty adopted the IUPUI Faculty/Librarian Review and Enhancement policy in 1998 after a sole Trustee had suggested the IU should consider post-tenure review. Originally intended to promote faculty development, in practice this policy has become a tool for administrators to dismiss faculty. At best the criteria are vague and at worst the policy is open to abuse. On IUPUI faculty leader said that of all the things he accomplished on the faculty council, this was the one he most regretted.

The taskforce also consulted the AAUP statement on post-tenure review (*Post-tenure Review: An AAUP Response* (1999)).³ Moira Marsh attended a lecture on "Examining Post Tenure Review" by AAUP President Rudy Fichtenbaum at Indiana State University on April 6. These two items convey the message that the AAUP is unequivocally opposed to post-tenure review because it dampens creativity, hurts collegiality, and threatens academic freedom. In addition, the taskforce took into account national discussions and emerging research regarding the effect of annual reviews in the private sector, which corroborated the AAUP statement and lecture.

After considering all these materials and several thorough discussions of the policies and attempts to amend the language of the incompetence part of the policies, the task force presented a memo to the FAC and to the EC in February 2016. The full text of that memo is attached at the end of this report. The memo conveyed our conclusion that any attempt to specify minimum standards in research, even at the department level, amounted to a dangerous erosion of academic freedom. Establishing such standards was the *sine qua non* of the FAP and therefore of the incompetence policy that followed from it. At the meeting of the EC on February 18, 2016, the task force was charged with deciding how to go forward—whether to try to repair the FAP, or stop work on the proposed new incompetence and faculty advancement policies, and focus exclusively, instead, on completing work on the improved misconduct policy. After thorough discussions of possible ways to try to repair the drafts of the new incompetence and faculty advancement policies, and in consultation with members of the FAC, in April 2106 the task force decided on the latter course.

Beginning in April 2016, the taskforce has worked to revise the misconduct policy, based on comments from faculty members, the FAC and the VPFAA. This revised misconduct policy is attached to this report and is the only policy now under discussion.

3. Summary of Key Changes to Misconduct Policy in this Draft

- I.C: Misconduct policy extended to apply to full time non-tenure track faculty
- I.D: Misconduct defined exclusively as egregious violations of the Code of Academic Ethics (Policy I-1) and extended to some categories of behavior that may occur off campus.
- III.A: Standard of evidence is “clear and convincing evidence.”

³ <https://www.aaup.org/report/post-tenure-review-aaup-response>

- III.C.1: Definition and disposition of emergency cases. While the policy continues to allow for emergency action, such cases now follow the normal review process, because expedited reviews seemed to jeopardize due process precisely when due process is arguably most needed.
- III.C.8: Student witnesses must be accompanied by non-participating advisors during hearings.
- III.C.10: Role of counsel in misconduct hearings limited.

4. Appendix: Taskforce Memo to FAC

DATE: Feb 1, 2016

TO: FAC

FROM: PTR Task Force (members: Gary Ebbs, Moira Marsh, Christy Ochoa)

RE: What we have accomplished and some hard questions about how to proceed

The PTR Task Force was charged with three central tasks: (1) decide how best to separate the Misconduct and Incompetence parts of the recently revised Faculty Misconduct and Incompetence Review Policy (FMIRP), (2) add language to the Incompetence part of FMIRP and to the recently proposed Faculty Advancement Policy (FAP) that facilitates the application of these policies to very small departments/units, and (3) review and address faculty comments on these documents.

We have now completed tasks (1) and (2). We also started task (3), but soon found ourselves mired in very deep and difficult questions about the FAP. Several of the faculty comments we considered raised serious objections to the August draft of the FAP. One of the most important of these objections is that the requirement that departments formulate standards for minimally satisfactory performance in research amounts to a dangerous erosion of academic freedom and thereby undermines a central protection that tenure is supposed to provide. The more we thought about this objection, the more concerned about it we became, for the following reasons.

One might think that an R1 university *must* have requirements for minimally satisfactory performance in research, or face the criticism that it does not take its research mission seriously. After much discussion, however, we have come to the opposite conclusion that it is precisely because we are an R1 university that we must be extremely cautious about adopting a policy that would require of units/departments that they formulate and apply standards for minimally satisfactory performance in research. The problems are all too easy to foresee: even a well-intentioned set of standards could lead departments to

classify the research of an outstanding colleague as unsatisfactory. For instance, the IU math department defines “research active” to mean “has published an article within the last three years”. By this definition, for instance, the brilliant Princeton mathematician, Andrew Wiles, would have counted as “research inactive” during some of the six years when he was trying, in near total secrecy, to prove Fermat’s last conjecture. He eventually succeeded and his proof is one of the glories of recent mathematics. If the math department’s rule for “research active” were used as a criterion for satisfactory performance in research, Wiles would have been judged unsatisfactory in research for some of the years he worked on the theorem. In many fields it is common for academics to work on book projects for years before finally publishing the results, and in some cases the most effective use of research time is to focus only on the book, not on smaller publication projects along the way. It seems to us that it is not a good idea to encourage units/departments to formulate standards that could have the effect of making our researchers take time away from what they really want to work on just in order to make sure that they are not judged unsatisfactory in research by their colleagues.

One might think this is not really a problem: units and departments would just have to come up with better criteria for minimally satisfactory performance in research than “has published an article within the last three years”. Perhaps one should just require that a satisfactory research process is under way, instead of requiring a research product, such as a publication. We considered this, too. The more we thought about it, the more difficult it came to seem to state the relevant notion of process in a way that is not completely meaningless, but that also could not possibly undervalue research activity of a kind that should be allowed to flourish at an R1 university.

One might think the problem is no *more* difficult than that of formulating standards for tenure and promotion—standards of a kind that each unit/ department is already committed to formulating and has already formulated, presumably without any dire consequences. But the two kinds of standards (i.e. for tenure and promotion, on the one hand, and for minimally satisfactory research performance, on the other) are really quite different. Each academic discipline has decades of best practices in their discipline to work from in drawing up tenure and promotion standards. Each unit/department is also constrained to formulate standards for tenure and promotion that are not far out of alignment with those of their peer units/departments at other universities, since external letters of evaluation are required for tenure and promotion cases. When it comes to the problem of formulating minimal standards for satisfactory performance in research, however, there are no established best practices within the academic disciplines to draw on. If we were to adopt the FAP, including the requirement to come up with standards for minimally satisfactory performance in research, we would be asking our colleagues throughout the university, at each “grass roots” unit, to *make up* standards for which there are no established disciplinary best practices. There is a real possibility that the result would be a set of standards with very bad unintended consequences for our faculty and for faculty morale.

The methods, sources, and avenues of outstanding research in any given discipline may be very difficult to predict, if not completely unpredictable; it seems inevitable for any explicit standard one can formulate for minimally satisfactory performance in research, there will be some outstanding, acclaimed

researcher who would count as unsatisfactory by that standard. If we really value research, and want to create and sustain a university environment that facilitates research at the highest levels, and that allows for and even encourages the kind of risk taking that can lead to breakthroughs in research, we should be wary of imposing any top-down, institutional requirement that units/departments define what counts as minimally satisfactory performance in research. Once researchers have achieved tenure, and have thereby proved that they are able to do excellent research, we should create and sustain for them an environment in which they have full freedom to pursue their research as they see fit, and not try to tell them what counts as pursuing their research in a minimally satisfactory way.

These reflections leave us with no clear way forward right now. We are sometimes inclined to drop the research part of the FAP and keep just the teaching and service parts. For teaching and service, we think it is much less difficult or dangerous to state standards for minimally satisfactory performance. It is much clearer in these cases what needs to be done, what a faculty members duties are, and so on. The rest of the policy could be written without allowing research as one of the areas for which a faculty member could be reviewed for satisfactory performance, and for which an involuntary plan for advancement might be drawn up. It is far beyond the charge of our Task Force to make this change to the FAP. We just want to present it as one possible way forward. If we went this way, however, the FAP would have include a detailed, compelling rationale for not including research as one of the areas of performance that it covers. To provide such a rationale would be a great deal of work and would, again, be beyond our charge.

Another possible way forward is to keep the research component of the FAP, but provide very clear guidelines for what can and cannot be part of a unit's standards for minimally satisfactory performance. The idea would be to include in the FAP policy something like the VPFAA's guidelines for tenure and promotion, and the recent College guidelines for College units' standards for promotion and tenure, only in this case geared toward formulating standards for minimally satisfactory performance in the three areas, including research. This would also be far beyond our charge, but, in any case, right now we don't see what the guidelines for the research component could be and how those guidelines could avoid the dangers sketched above.

A final possibility that we think is worth considering is to stop working on the Incompetence and FAP parts of the new policies, and focus only on passing a clean misconduct policy.

In sum, the three options we now see are: (i) dropping research from FAP and adding a rationale for doing so, (ii) keeping research in the FAP but adding guidelines for formulating standards for minimally satisfactory performance to the policy, and (iii) abandoning work on the Incompetence/FAP policies altogether. We are not advocating any one of these three options. We aim only to raise and recommend for your consideration the hard problems we encountered in the course of our work on the PTR Task Force.

