

DISCUSSION DRAFT: ACA-17, Faculty Boards of Review Uniform Standards

Significant amendments **are in red** with explanations/comments *in blue*.

Minor amendments **are in purple** and reflect current campus practices

Scope

These standards for uniform procedures apply to all proceedings conducted by campus Faculty Boards of Review.

Policy Statement

A. The faculty governance organization on each campus shall have a written Faculty Board of Review policy consistent with these standards..

B. **A Board of Review is independent. No university official may interfere with, seek to influence, or advise it to halt its proceedings except as provided in this policy.**

C. Faculty Boards of Review are available to all academic appointees [link to ACA-14] as follows:

1. **All appointees may bring complaints that university officials have infringed on their academic freedom [link to ACA-32, Academic Freedom policy].**

2. **Any** full-time academic appointee may bring a complaint that university officials have taken adverse action against them on matters within the scope of their defined academic responsibilities, including matters related dismissal, disciplinary sanction, the tenure or promotion process, compensation, assignment of duties, and working conditions.

[1] Includes full-time visiting and acting appointees, academic specialists, medical residents and fellows, but not post-docs (see ACA-14). The scope of review available to visiting appointees may be limited by a campus, see ¶ 4 below.

3. **Part-time, temporary and adjunct academic appointees may bring a complaint that university officials have taken adverse action against them during their term of appointment concerning matters within the scope of their academic responsibilities. The decision not to appoint or reappoint an individual is not grievable unless the decision violates a separate university or unit policy.**

4. **A campus policy may expand or limit the scope of review available to visiting, temporary, and adjunct appointees and/or may provide a separate grievance process for them.**

[2] Consensus that adjuncts and visitors should be able to bring complaints, but that each campus should be able to define the scope, set up a separate grievance process, and/or delegate visitor/adjunct grievances to the administration or a different process.

D. A complaint shall be brought on the home campus of the grievant.

E. An individual remains eligible to initiate or continue a Board of Review proceeding after voluntary or involuntary separation from the university, provided it is otherwise within the time frame for doing so and the terms of any separation agreement.

[3] Current policies vary. Without this, a dismissed faculty member would have no way to contest their dismissal. Split of opinion on right to grieve after a "voluntary" separation, but majority felt some issues, e.g., back salary, should not be extinguished.

F. A Board is not a court of law that renders a judgment. It makes recommendations to university officials concerning the resolution of grievances 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.

G. A campus policy may provide for the mediation of grievances and designate a committee, campus officer, or other entity as mediator. Such policies must include provisions that 1) establish deadlines so that mediation does not unduly delay the hearing, 2) prohibit information about the mediation from being disclosed to the Board of Review, 3) prohibit the mediator from also serving on the Board unless the grievant and respondent(s) consent, and 4) require the consent of all parties to begin mediation.

[4] Majority but not unanimous view that mediation should be kept separate from adversary Board procedures, so Board would not be biased for or against a party based on their actions during mediation.

H. Each campus shall designate a Board Coordinator. The Coordinator may be a member of the Board or the campus faculty governance organization, a campus administrator, or any other individual or office. The Coordinator has responsibility to receive and distribute complaints and responses, arrange times and locations of hearings, record proceedings, maintain files and records, distribute reports and perform other administrative tasks.

[5] Consensus that it was important to have someone responsible for maintaining complete records and facilitating the process, but there should be flexibility over who that is.

I. All communications among Board members concerning the review should occur through an email list or other communication medium arranged by the Coordinator.

[6] Records of communication among FBR need to be maintained to protect the university from claims of improper process or influence that could be raised in a subsequent lawsuit. They can be maintained only if an official email list is used which can be preserved.

J. A Faculty Board of Review shall allow reasonable time for the preparation of cases to all parties, set deadlines in order to dispose of cases in a timely fashion, schedule hearings at times convenient to all both parties and the Board, and provide written notice of hearings in due time to all concerned.

K. Proceedings should be conducted so as to guarantee that all parties have the opportunity to be present in person **or virtually**, to participate, and to respond to all evidence presented to the Board.

L. For complaints concerning the denial of tenure, promotion, or reappointment, a Board is limited to a review of:

1. Whether appropriate policies and procedures were followed;
2. Whether adequate consideration was given to the qualifications of the academic appointee.
3. Whether information was improperly considered or excluded that substantially affected the decision; and
4. Whether essential fairness was accommodated throughout the decision-making process.

To the extent that these issues may involve judgments about the academic value of the grievant's contribution to the discipline, the Board may not consider the merits of the underlying decision.

Reasons for Policy

A. Article V of the Constitution of the Indiana University Faculty requires the University Faculty Council to adopt uniform standards for Faculty Boards of Review. Other university policies, including UA-03, Discrimination, Harassment and Sexual Misconduct; and ACA-30, Research Misconduct, set university-wide standards for investigation and review of sanctions for misconduct that include an appeal to a campus Board of Review.

B. Uniform standards across all campuses ensure that all academic appointees are accorded the same fair and reasonable process and all university officials are held to the same standards.

Procedure

A. In General

1. A Faculty Board of Review conducts two kinds of proceedings. It conducts Inquiries to investigate and resolve complaints brought by academic appointees concerning adverse actions by university officials, and it hears Appeals by academic appointees to review sanctions imposed under university or campus misconduct policies. **A campus policy may assign additional responsibilities to the Board.**

2. Unless a campus policy provides otherwise, a Faculty Board of Review shall consist of five individuals who shall be tenure-eligible **or non-tenure-track academic appointees on long-term appointments**, and who shall be elected by the faculty or the campus faculty governance organization. A campus may use one standing Board for all cases or a pool of faculty from which individual Boards are drawn. Each campus policy shall include a procedure for filling vacancies.

[7] Consensus that NTTs should be eligible, but only those on long-term appointments.

3. A majority of the Board and its chair shall be tenured.

[8] Majority view but not unanimous.

4. An academic appointee with a full-time administrative appointment is not eligible to serve on a Faculty Board of Review. Each campus may establish its own policy on whether academic appointees with part-time administrative appointments are eligible.

5. Complaints requesting a Faculty Board of Review shall be submitted in writing to the Board Coordinator and specify the action(s) to be reviewed, the reasons for requesting the review, the university official(s) grieved against, and a proposed remedy.

6. All Board proceedings other than deliberations shall be recorded, preserved, and available to members of the Board, all parties and university officials, consistent with university policies on access to academic appointee records. [Link to ACA-27, Access to Appointee Records]

7. A Board's findings and recommendations are to be communicated without undue publicity and the Board should strive to maintain confidentiality. Reports normally should not be shared with individuals other than the parties and senior university officials.

8. A party may have an advisor, who may be an attorney or any other person.

[8] Consensus view. Consistent with misconduct policies like UA-03. This does not address whether the advisor may participate, which is handled elsewhere in this policy

9. Members of a Faculty Board of Review shall recuse themselves from considering a complaint at any stage of the process if they are members of the complainant's academic unit [link to definition], if they have advised or assisted the complainant or respondent, or if there is any other association with the complainant or respondent which will make (or create the appearance of making) them unable to serve impartially. Each campus should have a process for recusal that assures a fair and impartial Board of Review.

10. Proceedings should be conducted with the participation of the full membership of a Board of Review unless the parties consent to adding an alternate member or proceeding with fewer than the full membership. A campus policy may modify this provision.

B. Inquiries

1. A primary function of a Faculty Board of Review is to conduct Inquiries to resolve complaints brought by academic appointees concerning adverse actions by university officials.

2. Each campus faculty governance organization shall have a policy for Inquiries on that campus that is consistent with the uniform standards set in this policy. A campus policy must include the

following steps: a written complaint, a written response, adequate time for both parties to prepare their cases, an opportunity for a grievant to be heard, a report and recommendation by the Board, and a decision by the Chancellor or Provost. It may also include an opportunity for mediation or other informal resolution, a preliminary review of the complaint, and/or an initial decision by the campus chief academic affairs officer rather than the Chancellor or Provost, with the right to appeal to the Chancellor or Provost.

3. Each campus policy should establish time limits for each stage of the Inquiry that give the participants adequate time but discourage long delays.

[9] There was disagreement over whether all campuses should follow the same time limits. Those who favored university-wide time limits focused on reviews that had dragged on too long for faculty to make decisions about applying for a different job. Those who opposed university-wide time limits believed the current system on their campus worked well in most cases, even if slow. To the extent there was agreement on time limits, they were:

<i>Response due</i>	<i>2 wks</i>
<i>Hearing held</i>	<i>4-5 wks</i>
<i>FBR recommendations issued</i>	<i>2-3 wks</i>
<i>1st administrator decision</i>	<i>2 wks</i>
<i>Time to file an appeal</i>	<i>2 wks</i>
<i>Provost/Chanc. final decision</i>	<i>2 wks</i>

4. Prior to bringing a complaint, an academic appointee adversely affected by the action of a university official should normally attempt to resolve the matter informally with the official, the official's superiors, and/or the campus chief academic affairs officer. A campus policy may establish a mediation committee or other procedure for facilitating informal resolution.

5. If the grievance is not resolved informally, an academic appointee may initiate an Inquiry by the Board of Review by submitting a complaint to the Board Coordinator.

6. In most cases, complaints should be filed within 60 days after the grievant learns of the adverse administrative action. Complaints submitted after 60 days should include an explanation of the reason for the delay, and a Board may hear the complaint in the interests of fairness. No complaint may be submitted more than one year after the grievant learned of the adverse administrative action.

[10] Current campus policies vary from 30 days to 1 year. Some people thought each campus should set its own filing deadline; others thought it was unfair for faculty on some campuses to have so much more time than faculty on other campuses. A flexible 60 days was the consensus of a reasonable time.

7. Upon receiving a complaint, the Board Coordinator shall deliver a copy to the university official(s) grieved against and request a written response.

8. When a response is received, the Coordinator shall provide a copy to the grievant, submit the complaint and response to the full Board, and schedule a hearing in accordance with campus policy.

9. A campus policy may provide that all grievances will be heard by the Board, or may provide for a preliminary review by the Board, the Board chair, or other faculty body, to determine if the complaint should be dismissed and/or needs to be revised. A complaint may not be dismissed without giving the grievant an opportunity to address the reason for dismissal.

[11] There was disagreement so it was left to the campuses. Some thought a screening process worked well; some thought it violated the due process rights of the grievant to allow a complaint to be dismissed without a full hearing.

10. The grievant may request written statements and documents from university officials bearing on the complaint, and university officials must either supply those documents within the time allowed for case preparation or explain in writing to the Board why they are unable to do so. All requests and responses shall be made through the Board Coordinator.

11. A hearing before a Board of Review is an academic process, not a trial.

a. Responsibility for presenting their cases rests with the grievant and respondent. They may testify, present documents and written witness statements, call witnesses, and question witnesses. The Board also may call its own witnesses but has no obligation to do so.

b. Advisors may attend and consult with the parties but may not participate unless campus policy allows it or the Board decides in an individual case to allow such participation.

[12] Compromise between those who thought advisors (especially attorneys) were disruptive and should be banned, and those who thought they can be helpful because not all grievants can present their cases well (e.g., non-native English speakers) and it would off-set the natural advantage of respondents who are repeat participants in the process.

c. The rules of evidence do not apply and the parties may not object to the other side's evidence. However, the Board has discretion to curtail questioning or argument that is irrelevant or repetitious, or which harasses or embarrasses a witness.

d. Unsolicited or anonymous information may not be considered by the Board unless an underlying policy of the university permits their use in narrowly defined situations.

e. Hearings should be closed except for parties, witnesses, advisors, and the Board Coordinator, unless all parties agree that it should be open.

[13] Current campus policies vary. Closed hearings were preferred because grievances inevitably involve sensitive issues and potential embarrassment.

f. Each campus policy shall provide a procedure for a party with a disability to request accommodations.

12. At the conclusion of the hearing, the Board shall prepare a Report with written findings and recommendations and submit it to the Board Coordinator. The Report shall be distributed to the parties and include a summary of the grievance and response, a review of the evidence, and copies of any documents the Board found dispositive.

13. Each campus policy shall specify whether the Board's Report is sent directly to the Chancellor or Provost for a final decision, or is sent to the chief academic affairs officer of the campus for an initial decision that may then be appealed by either party to the Chancellor or Provost for a final decision.

14. If the final decision from the Chancellor or Provost does not follow the recommendations of the Board, the Chancellor or Provost shall inform the Board, the executive committee of the campus faculty governance organization, and/or any other faculty bodies designated in a campus policy, of the reasons.

15. The grievant has a right to make a final appeal to the president of the university, who may delegate the task of reviewing such appeals.

[14] The right to appeal to the President is in the constitution but in practice this is delegated to the vice-president for academic affairs. The IUPUI & IUE policies say a grievant may appeal to the Trustees, but the Trustees do not authorize it, so it is not included.

16. Each campus policy should specify the amount of time allowed for each of the steps in its Inquiry process, provide that time limits may be modified in an individual case by the Board or on consent of the parties, and define any other circumstances that extend times.

17. Each campus policy should have a process for notifying the administrative superior of a university official who does not cooperate in the process or comply with policy time limits.

C. Appeals

1. A Faculty Board of Review convened to review sanctions imposed under a university or campus misconduct policy should adhere to the time limits for filing appeals and issuing recommendations specified in the relevant misconduct policies. **If any time limit is not specified, the Board should adhere to the time limits for Inquiries set out in its campus policy.** It may extend any deadline in the interests of fairness.

2. Because discrimination or misconduct situations may involve sensitive information, proceedings shall be closed unless all parties agree to hold an open hearing.

3. The Board may not conduct new fact-finding. Its jurisdiction is limited to a review of whether the university's decision to hold an individual responsible for misconduct and impose a sanction was appropriate based on the record before it. The Board in all cases shall be supplied with the reports, decisions, and recommendations previously prepared by university officials, and have access to all relevant materials gathered by university investigators.
4. Each party to the Appeal, as defined by the underlying misconduct policy, may present a statement to the Board, orally or in writing, personally or by an advisor. The Board may pose questions to any individual who makes a statement, but the parties may not.
5. Because issues of discrimination, harassment, sexual misconduct or research misconduct may involve sensitive matters, specialized knowledge, or legal requirements, the university shall make available to the Board members appropriate training and information.
6. Unless a misconduct policy specifies otherwise, the Board may issue recommendations that (a) affirm the university's actions, (b) recommend an alternative finding or sanction, or (c) recommend that a new investigation be conducted because of a significant error in the original investigation.
7. The Board's recommendations shall be addressed to the appropriate university appellate official specified in the underlying misconduct policy. If no official is specified, its recommendations shall be sent to the campus Chancellor or Provost.
8. The grievant has a right to make a final appeal to the president of the university, who may delegate the task of reviewing such appeals.

[15] See comment 14, above.

D. Consultation

1. A Board of Review may consult with individuals outside the Board on procedural, background and policy matters that do not directly concern the merits of a complaint, including former Board members, faculty governance officers, university counsel, and the university research integrity officer.

[16] There was general consensus that a Board of Review ought to be able to consult with people outside the Board for advice about policy interpretation, Board procedures, or for background information if the review involves a highly specialized matter, but that such consultation should not be about the merits.

2. A Board may consult and seek specialized training and information from the university Title IX officer on issues involving sexual misconduct.

[17] This provision is already in UA-03, Sexual Misconduct policy.

3. In all cases, the Board retains the responsibility to make its own independent decisions about the best way to proceed that is fair to all parties.

Implementation

Each campus shall review its current Faculty Board of Review policy and make any necessary amendments no later than February 15, 2023. It may operate under the existing campus policy until an amended policy has been enacted.

Definitions

“Academic unit.” The program, department or school in which the appointee holds their primary appointment. In situations where a school or college is subdivided into departments, each campus may define what constitutes an academic unit for recusal purposes.

“Academic appointee” or “appointee.” An individual whose position is classified as an academic appointment in ACA-14, or who has been awarded emeritus status.

President, Vice-President, Chancellor, Provost, and chief academic affairs officer includes that person’s designee.

“Chief academic affairs officer.” The Vice-Provost or Vice-Chancellor responsible for faculty and academic affairs on each campus.

“Board Coordinator” is the person, entity, official or office placed in charge of facilitating the Board of Review process as defined by a campus policy.