

## ACTION ITEM #5

### Revisions to the Faculty Manual – Disciplinary Process/Procedures (Erica Weintraub Austin)

May 6, 2016

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Revisions to the Faculty Manual

PROPOSED: That the Board of Regents approve the attached changes to the Faculty Manual – Disciplinary Process/Procedures

SUBMITTED BY: Erica Weintraub Austin, Interim Co-Provost

SUPPORTING  
INFORMATION:

On March 1, 2016, the Faculty Affairs Committee approved bringing forward to the Senate the changes below to Sections II.F of the Faculty Manual, which outline the policies and procedures for faculty discipline.

The following is a high-level overview of the proposed changes as presented below:

1. Changing the pool of faculty from which to choose a Hearing Committee to all tenured faculty rather than having to set up and choose from a 21 member Hearing Committee Panel.
2. The addition of the Prevention of Bullying Policy to the list of conduct subject to discipline.
3. Clarifying language and referencing.

#### 1. Purpose

“Adherence to the Faculty Code of Professional Ethics, II.C.1, and to the Conduct Regulations, II.F.3, ~~set forth below~~ is the responsibility of the individual faculty member. The principles implicit in these procedures are for the benefit of all who are involved with or are affected by the rules and regulations of Washington State University.

1) The purpose of this document is to enumerate the violations of law or policy for which faculty may be subject to discipline, and to provide a process for addressing those violations that ensures the accused faculty member’s rights are adequately protected.

2) The procedures contained herein were drafted to adhere to the requirements of Washington’s Administrative Procedure Act, RCW 34.05, as well to ensure that an employee’s constitutional due process rights are protected. To the extent possible, the procedures for serious

disciplinary action adhere to the process recommended by the American Association of University Professors for dismissal proceedings. Thus, a faculty member will not be subjected to serious discipline, absent his or her agreement, unless s/he has been provided

- written notice of the charges against him/her;
- the opportunity to be heard by a committee of his/her peers and, should a discipline be imposed, the right to appeal the decision to the Board of Regents;
- the right to be accompanied to all hearings by an advisor of his/her choice;
- a recording of the hearing.”

### 3. Faculty Conduct Regulations ~~Subject to University Discipline~~

“Conduct for which faculty members are subject to University discipline falls into the following categories:

1. Violation of the policy on Freedom of Expression, II.B.2
2. Incompetence or serious or repeated neglect of duty. Unless the act is serious or puts individuals and/or property at risk, employees will not be disciplined for inadequate work performance or neglect of duty unless they have been given written notice of the areas in which the work is considered deficient, and an opportunity to improve their performance.
3. Misconduct in research and scholarship, defined as fabrication or falsification of data, plagiarism, or other serious deviations from accepted practice in proposing, implementing, or reporting on research. Procedures for investigating allegations of misconduct in research are set forth in subsection II.I.
4. Failure to comply with federal, state, or University requirements for protecting researchers, human subjects, and the public during research and for insuring the welfare of laboratory animals.
5. Use of research funds, facilities, or staff for unauthorized and/or illegal activities.
6. Violation of EP #15, the Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct (~~see section II.G below~~), ~~which is considered part of this Faculty Manual.~~
7. Violation of EP #28, the Policy on Faculty-Student and Supervisor-Subordinate Relationships (~~see section II.H below~~), ~~which is considered part of this Faculty Manual.~~
8. Retaliation against any individual for engaging in protected activity, including but not limited to, filing a good faith complaint of discrimination, harassment, misconduct, workplace violence or bullying. This includes, but not limited to, creating a hostile work environment or taking adverse employment action against another. Such acts form independent grounds for taking appropriate formal or informal discipline.
9. Forgery, alteration, or misuse of University documents or identification.

10. Falsification of information submitted to any University official or agency, or the offering of an intentionally false statement in any University disciplinary proceeding.
11. Theft of or intentionally damaging or defacing University property or property belonging to any member of the University community or campus visitor.
12. Illegal use, illegal possession, or illegal purveying of ~~narcotic or dangerous~~ drugs on University property. University policy is consistent with state and federal laws which regulate the possession, use, sale, and distribution of drugs.
13. Illegal possession, use, or sale of intoxicating beverages on University property. Washington State University's policies and programs for drug and alcohol abuse and a drug-free workplace are available at <http://www.wsu.edu/forms2/ALTPDF/EPM/EP20.pdf>.
14. Possession by a faculty member, on his or her person or otherwise, of a firearm, explosive, or other dangerous weapon within any office, laboratory or classroom building, lecture hall, residence hall, or sports arena on University property, and any immediately contiguous grounds, walkways and malls, except as follows:
  - a. Those faculty members who also are authorized law enforcement officers shall be permitted to carry arms while on duty and engaged in regular activities of law enforcement.
  - b. Faculty members with firearms in their possession shall be permitted to travel en-route to or from the University-provided storage facilities. Such facilities shall be available twenty-four hours per day for short- or long-term firearm storage.
  - c. Activities requiring use of the prohibited items by faculty members may be conducted upon approval by the Board of Regents or their designee.
  - d. Nothing in this article is intended to restrict the lawful possession by faculty members of firearms in privately owned vehicles on the University campus, within University-owned housing other than residence halls, or on other University property not specifically indicated above.
15. Unlawful acts that directly affect University programs, community members, or property insofar as they materially and substantially interfere with the missions, functions, processes, and goals of the University community or unlawful acts that result in guilty plea to or conviction of a felony.
16. Illegal entry, attempted entry, or entry in violation of Washington State University rules of University-controlled property, or University-related property, such as fraternities, sororities, or co-op houses.

17. Intentional disruption of the educational processes and functions of the University, including classroom and laboratory activities, offices, services, meetings, or ceremonies.
18. Intentional and unauthorized obstruction or restriction of free movement of persons or vehicles on the campus or other University property. Peaceful picketing is permitted, but such activity must be confined to the outside of University buildings and must not interfere with or restrict the free flow of traffic to and from any University building. Picketing of the Wilson Compton Union must be confined to the lobbies or to the outside of the building.
19. Violation of the University policy prohibiting Work Place Violence and Bullying as outlined in the BPPM Section 50.30.1
20. Violation of the University Bullying Prevention and Reporting Policy as outlined in the BPPM Section 50.31.
21. Willful violation of published University policy.”

#### 4. Types of Discipline

“The sanctions that may be imposed include warning, censure, suspension, termination, and in emergency situations, summary suspension.

##### a. Informal Discipline

##### i) Warning

Written notice to the faculty member from the Provost that he or she has violated the ~~Code~~ Conduct Regulations II.F.3 or other regulation or policy, and that continued or additional such conduct may lead to more severe sanctions in the future.”

#### 5. Initiation of Complaint

“Any individual who has a formal complaint regarding violations of the Faculty Code of Professional Ethics, II.C.1, and the Conduct Regulations, II.F.3, should address his/her complaint, in writing, to the Provost. If the complainant has not utilized another complaint resolution procedure, s/he shall provide the Provost with a statement of reasons for filing his/her complaint directly with the Provost. If the Provost determines that the matter should be addressed at a lower level before his/her involvement, s/he shall inform the individual in writing within five (5) business days of the complaint resolution options available (e.g., The Ombudsman, the Faculty Status Committee, the Office for Equal Opportunity, etc.), as delineated in Section II.F.1 (5). The individual may initiate a formal complaint with the Provost after utilizing an alternative level complaint resolution process.”

#### 6. Investigation of Complaint or of Provost Concerns

"If the Provost determines that the allegations, if proved, state grounds for discipline, s/he shall, within ten (10) business days of such determination, initiate an investigation into the matter. The Provost shall determine the appropriate investigative person/body, including, but not limited to:

- a. Himself/Herself
- b. Vice Provost, ~~or~~ Associate Vice Provost, or Vice President
- c. Dean or Department Chair
- d. Office for Equal Opportunity
- e. Human Resource Services
- f. A faculty committee appointed by Faculty Status Committee within ten (10) business days of receipt of the request from the Provost and selected from among the members of the tenured faculty Hearing Committee Panel.

The Provost shall generally cause the investigation to be completed within thirty (30) business days of the date initiated. If it appears that the alleged violation will require that multiple witnesses be interviewed or will require an investigation that is otherwise substantial or complex, the Provost shall cause the investigation to be completed within one hundred twenty (120) calendar days of the date received. The Provost shall notify the complainant and the accused faculty member if the investigation is expected to take longer than thirty (30) calendar days. The timelines may be extended by the Provost at any time upon his/her determination that exigent circumstances exist, e.g. unavailability of witnesses or faculty, complexity of issues. Any extension of the timelines must be communicated in writing to the accused faculty member and the complainant. The Provost may also of his/her own initiative, after learning of concerns regarding faculty conduct, initiate an investigation and pursue disciplinary action consistent with the other requirements of this policy.

Any case reported to the dean that requires punishment or attendance at a class needs to be reported to the Provost and Academic Vice President. The Provost's office shall maintain a confidential file of all cases reported to a dean whose final determination involved punishment or mandatory attendance at a class. The purpose of this file is to ensure there is an adequate record of past infractions."

#### 7. No Discipline

"If after investigation the Provost determines that the alleged conduct either did not occur or did not constitute a violation of the Faculty Code of Professional Ethics II.C.1 or the Conduct Regulations, II.F.3. Code, the Provost shall notify the affected faculty member and the complainant in writing. Said notification shall be made within ten (10) business days of the completion of the investigation. The determination of no violation by the Provost is final."

#### 10. Major Infractions

"If after investigation the Provost concludes that the preponderance of evidence indicates:

- a. The alleged conduct occurred,
- b. The conduct violated the Faculty Code of Professional Ethics, II.C.1, or the Conduct Code Regulations, II.F.3, and
- c. The conduct subjects the faculty member to a suspension or termination,"

#### 10. Major Infractions

"The formal hearing procedure includes

##### a. Statement of Charges

The first step in the formal disciplinary process is the issuance of a Statement of Charges that shall include

- i) A reference to those portions of the Faculty Code of Professional Ethics, II.C.1, Conduct Regulations, II.F.3, or other particular rules or policies the faculty member is alleged to have violated;
- ii) A short and plain statement of the factual matters asserted upon which the violations are based.
- iii) A statement of the contemplated disciplinary action.

##### b. Response to Statement of Charges

The Respondent must provide a Response to the Statement of Charges within twenty (20) business days of service thereof. The Response to Statement of Charges shall include:

- i) Admissions or denials regarding the factual allegations related to violations of the Faculty Code of Professional Ethics, II.C.1, Conduct Code Regulations, II.F.3, or other particular rules or policies listed in the Statement of Charges;
- ii) Any affirmative defenses available to the faculty member.

The Respondent may elect to be represented by counsel in these proceedings. If counsel is elected, the Provost shall be notified immediately so that all further correspondence can be directed to counsel.

If Respondent fails to respond to the Statement of Charges within the specific period, the Respondent is deemed to be in default. The Provost can then proceed to impose the discipline recommended in the Statement of Charges.

##### c. Hearing Panel Committee

~~The President shall annually appoint twenty-one (21) tenured faculty on staggered three (3) year terms, nominated by the Faculty Status Committee, as members of the Faculty Hearing Committee Panel ("Panel"). The Faculty Status Committee shall keep in mind the University's values regarding affirmative action and diversity in recommending Panel members.~~

Within five (5) business days of the receipt of the Response to Statement of Charges, the Provost shall request that the Faculty

Status Committee appoint a hearing committee from the members of the tenured faculty Hearing Committee Panel. The Faculty Status Committee shall keep in mind the University's values regarding affirmative action and diversity in recommending Committee members. The Hearing Committee shall consist of five tenured faculty members. Two alternate members shall also be named. All committee members, including the alternates, shall attend the hearings. The Faculty Status Committee shall select committee members within (10) business days of the receipt of the request. Once the Faculty Status Committee has constituted the Hearing Committee, the Provost and the Respondent shall each be provided the opportunity to disqualify up to two members without stated cause. The Provost/ and the Respondent shall also each be allowed such further challenges to the Committee's membership, based on articulable cause, at the discretion of the Faculty Status Committee. The Faculty Status Committee may, at its discretion, schedule a hearing for the purpose of considering challenges to the potential committee members and finalizing the selection of the Hearing Committee a panel. If it does not schedule a hearing, all challenges and responses thereto will be provided in writing utilizing the following timelines: Any request to strike a committee member, whether for cause or no cause, shall be provided to the Faculty Status Committee within five (5) business days of the receipt of the committee member's names. The Faculty Status Committee shall rule on all cause challenges within ten (10) business days of the receipt thereof. Once all challenges are resolved, the Faculty Status Committee shall confirm the members of the committee in writing sent to the Provost and the Respondent, or their respective attorneys."

This recommendation was passed by the Faculty Senate on March 31, 2016.