

FUTURE ACTION ITEM #3

Faculty Manual Revisions: Section III, Faculty Personnel Policies, F. Disciplinary Process/procedures; and Section II as Proposed by the Attorney General
(Daniel J. Bernardo)

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Faculty Manual Revisions: Section III, Faculty Personnel Policies, F. Disciplinary Process/procedures, page 86 and Section II as Proposed by the Attorney General

PROPOSED: That the Board of Regents approve revisions to Section III Faculty Personnel Policies, F. Disciplinary Process/procedures, page 86 and Section II as Proposed by the Attorney General

SUBMITTED BY: Daniel J. Bernardo, Interim Provost and Executive Vice President

SUPPORTING INFORMATION:

A. The following changes are proposed to the Faculty Manual. This applies to the termination of pre-tenure tenure-track faculty [Section III. F. Disciplinary Process/procedures (Termination of Employment) 1. (Non-reappointment)]. The sentence appears on p. 86 of the online Manual (whole PDF version).

Current sentence: "This decision shall be made by the department Chair in consultation with the Dean and tenured members of the department involved."

Proposed revision: "This decision shall be made by the department Chair with the approval of the Dean and following consultation with tenured members of the department involved."

Justification: Requiring approval by the Dean will provide more protection against an arbitrary decision of termination by the department Chair than the current wording allows. With the new wording at least two people will have to agree that termination is in order. With the old wording a unilateral decision can be made. Both versions require that

the tenured members of the department be consulted. There is no change in the role of the faculty.

B. At the request of the Faculty Affairs Committee, Ann Heath, Assistant Attorney General, suggested changes to the Faculty Manual (Section II F.1.5, Section II F.3, Section II H) to update the language for consistency and legality. These recommended changes are specific in the attached document.

At the Faculty Affairs meeting of March 22, 2013 the proposed changes were approved and it both A and B as reference above were passed by the Faculty Senate on April 11, 2013.



Bob Ferguson

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MEMORANDUM

DATE: March 8, 2013

TO: Robert Greenberg, Chair, Faculty Senate
David Turnbull, Past Chair, Faculty Senate
Robert Rosenman, Chair Elect, Faculty Senate

FROM: Ann M. Heath, Assistant Attorney General 
Washington State University Division

SUBJECT: **Proposed Amendments to the *Faculty Manual* – Section II**

I recommend the following amendments be made to Section II of the *Faculty Manual*, primarily in order to bring the referenced sections into compliance with the law. The relevant sections are set out below with proposed changes noted in legislative format.

PROPOSED AMENDMENT TO SECTION II.F.1.5:

5) It is the overall goal of the University ~~is~~ to resolve concerns or problems at the lowest possible level. To this end, prior to initiating a formal complaint with the Provost and Executive Vice President individuals feeling aggrieved by a faculty member's actions are encouraged to use the following resources for attempted resolution of disputes:

a. Supervisory chain of authority (e.g., the faculty member's Dept. Chair, Dean)

~~b. Employee Complaint Procedure (Information about the program is available at:~~

~~<http://www.wsu.edu/HRS/administration/ecc/ComplaintProcedures.htm>~~

)

~~b. Center for Human Rights Office for Equal Opportunity~~ (For complaints involving discrimination or harassment based on age, creed, national origin, gender, disability, sexual orientation, etc.)

~~c. Human Resource Services~~

~~d. University Ombudsman~~

~~e. Faculty Status Committee~~

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COMMENTS:

5)b. This proposed amendment is recommended for accuracy and clarity. The Employee Complaint Procedure (ECP) has been renamed the Workplace Concern Resolution Process (WCRP). The WCRP specifically states it is not available to faculty members. For these reasons, removal of the reference to the ECP is recommended.

5)c. This proposed amendment is recommended for accuracy and to avoid confusion. The Center for Human Rights has been renamed the Office for Equal Opportunity.

PROPOSED AMENDMENTS TO SECTION II.F.3:

6. Discrimination against any person based on race, ethnicity, religion, age, color, creed, gender, national origin, physical, mental or sensory disability, use of a guide dog or service animal, marital status, sexual orientation, gender expression or identity, genetic information, or honorably discharged veteran or military status, ~~or status as a Vietnam-era or disabled veteran~~ which deprives that person of civil rights, employment opportunities, or housing, or which, in any way, impedes, hinders, delays, or restricts the individual's membership or subsequent full participation in any activities of the recognized organizations of the University.

COMMENTS:

“Gender expression or identity”: This proposed amendment is recommended to incorporate the prohibition in state law (RCW 49.60) against discrimination based on a person’s gender expression or identity.

“Genetic information”: This proposed amendment is recommended to incorporate the federal prohibition against discrimination based on a person’s genetic information. The federal Genetic Information Nondiscrimination Act (GINA), which prohibits discrimination in employment based on genetic information, took effect in November 2009.

“Honorably discharged veteran or military status”: This proposed amendment is recommended to incorporate the federal prohibition against discrimination against an honorably discharged veteran and discrimination based on a person’s military status. The Uniformed Services Employment and Reemployment Rights Act (USERRA) revised and strengthened the existing Veterans’ reemployment laws. It prohibits discrimination in hiring, retention in employment or any other incident or advantage of employment because of any application, membership, or service in the uniformed services, and also prohibits retaliation against an employee for taking action to enforce these rights. 5 CFR § 353.202.

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7. Violation of the University ~~“pPolicy Prohibiting against
dDiscrimination and sSexual hHarassment”~~ or the ~~“Policy on Faculty-
Student and Supervisor-Subordinate Relationships.”~~

Procedures for investigating allegations of discrimination and sexual harassment ~~are set forth in the University document, “Policy Prohibiting
Discrimination and Sexual Harassment” “Policy on Faculty-Student and
Supervisor-Student Relationships”~~ available ~~here and at~~ www.chr.wsu.edu. The policies are also listed below. Any amendments to these policies are automatically incorporated herein.

COMMENTS:

This proposed amendment is recommended for accuracy and clarity. The procedures for investigating allegations of discrimination and sexual harassment are not contained in the referenced policies. In addition, the Policy Prohibiting Discrimination and Sexual Harassment and the Policy on Faculty-Student and Supervisor-Subordinate Relationships are set out in full in the *Faculty Manual*. These policies are subject to amendment outside the *Faculty Manual* process. Therefore, it is recommended that explicit reference be made to the automatic incorporation of any amendments to these policies in the event that the *Faculty Manual* amendment process lags behind.

8. Retaliation against any individual for engaging in protected activity, including₂ but not limited to, filing a good faith complaint of discrimination, harassment or misconduct against another. Retaliation is defined as any action that might have dissuaded a reasonable person from making or supporting a charge of discrimination. ~~taking adverse employment action against another.~~

COMMENTS:

This proposed amendment is recommended to reflect the standard for retaliation articulated by the United States Supreme Court in *Burlington Northern v. White*, 126 S. Ct. 2405 (2006), in the context of discrimination and sexual harassment cases. The standard as currently expressed is too narrow and is inconsistent with current law.

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PROPOSED AMENDMENT TO SECTION II.H:

H. ADMINISTRATIVE PROCEDURES FOR MISCONDUCT IN RESEARCH

Hereafter *misconduct* means misconduct in research and scholarship as defined in IV.-F.3 above. Misconduct does not include honest error or honest differences in interpretations or judgments of data. This policy pertains to original research and scholarship only and is not intended to replace other policies dealing with academic conduct, such as integrity in class or course work.

The procedures for investigating misconduct in research shall be as set forth in Executive Policy #33. To the extent this section H. conflicts with EP #33 or federal law, EP #33 and federal law shall control.

COMMENTS:

This proposed amendment is recommended to make it clear that Executive Policy #33 (which is based directly on federal law) and federal law itself control the investigation of research misconduct.