

Indiana University East Dismissal Procedures for Tenured Faculty and Librarians

In accord with University policy, dismissal of tenured faculty or librarians shall occur only for reasons of incompetence, serious personal or professional misconduct, or extraordinary financial exigencies of the University.¹ Faculty who are not yet tenured but earning credit toward tenure are subject to review and reappointment during their probationary periods. A separate policy applies to these faculty: "Policies Governing Reappointment and Non-reappointment During Probationary Period."

The purpose of tenure is to protect and preserve academic freedom and to provide economic security. In no case shall the exercise of academic freedom be construed as professional incompetence or misconduct. University policies shall be observed, particularly concerning equal opportunity, academic freedom, academic ethics, and discrimination. No dismissal of a faculty member or a librarian shall be based on:

1. One's age, sex, color, race, national origin, religious preference, status as a veteran, political preference or allegiance, or sexual preference;
2. One's physical or emotional condition, whether legally a handicap or disability or not, except and only insofar as this condition demonstrably and seriously limits one's professional competence and was either unknown or nonexistent at the time of one's original employment (nothing in this statement precludes the faculty member's or librarian's right to disability coverage or the University's responsibility to place disabled employees on leave in accord with established policies);
3. One's performance in an area which one has been assigned without sufficient opportunity to prepare;
4. One's understanding of, or approach to, or method of pursuing an area of expertise as invidiously compared to what is considered merely preferable by others in the same or other similar discipline;
5. One's salary as an employee of the University;
6. Sources of income or other support available to one from sources other than the University unless there is a clear link to the allegation;
7. The retirement benefits for which one is eligible;
8. Unsubstantiated complaints either from within or from outside the University, even if job-related.

To the extent possible, all dismissal proceedings shall be kept confidential.

If a faculty member or librarian requests a review of an administrative action through the Faculty Grievance Procedures (Bylaws of the IU East Faculty Senate), the procedures described within the dismissal documents will proceed concurrently with the Faculty Grievance Procedures. Once exonerated, a faculty member or librarian shall not be required to answer repeated charges based on substantially the same facts.

I. ALLEGED PROFESSIONAL INCOMPETENCE

Professional competence involves the ability to perform adequately on a continuous basis during the years of appointment the basic tasks of a university professor or librarian. The basic tasks of a faculty member are defined with regard to teaching, research, and service, as understood in a faculty member's academic unit and particularly in his or her discipline. The basic tasks of a librarian are defined with regard to performance, professional development, and service responsibilities as understood within the particular library environment. One's status as a tenured faculty member or librarian at IU East establishes a presumption of being professionally competent throughout one's career through continuing professional growth and development. This presumption is further strengthened by the terms and conditions stated at the time of one's initial appointment, by one's professional accomplishments documented in ways established by department, school, library and campus policies, and by any changes in one's professional responsibilities mutually agreed to during the course of employment as a member of the faculty or as a librarian. It is recognized that both institutions and the individuals who comprise them have a mutual responsibility to evolve with changes in the knowledge and practice bases of our respective disciplines.

Professional incompetence on the part of a faculty member or a librarian, respectively, is the demonstrated continuing inability to perform adequately the ordinary duties of teaching, research, and service as expected of faculty within the academic unit or the ordinary professional responsibilities expected of librarians within the unit. The burden of documenting the professional incompetence of a tenured member of the faculty or of a tenured librarian rests with the Vice Chancellor for Academic Affairs (VCAA) in consultation with the division chair, library director or other appropriate administrator. For this purpose, only information or evidence that relates to the alleged professional incompetence may be considered.

Notice Period Procedure:

A faculty member or librarian must be given adequate primary official notice of alleged deficiencies serious enough to warrant consideration of dismissal proceedings on the grounds of professional incompetence, and the individual must have an adequate opportunity (a notice period of at least two years) to correct deficiencies which may have contributed to professional incompetence. During the notice period, the faculty member or librarian shall have access to the provisions of the IU East policy on Post-Tenure Review. Participation in a development plan shall not extend the notice period. In an extraordinary situation, the notice period can be set for less than two years, if

- The faculty member has a history of annual reviews that document performance which does not meet the specific responsibilities described in the Indiana University Code of Academic Ethics,
- and
- The VCAA can justify the determination that attempts to remediate the performance deficits are unlikely to be successful,
- and
- The Chancellor determines that a shorter notice period is required to protect the interest of the members of the University Community.

Primary official notice must be given in written form to the individual by the VCAA in consultation with the division chair/library director or other appropriate administrator (all hereafter referred to as "the administrator" throughout this document), and the written notice must specifically mention all alleged deficiencies and also the possibility of dismissal.

The primary official notice should be given in confidence to the faculty member or librarian, but the person must be informed of the means whereby he or she may request an immediate peer review by the appropriate promotion and tenure committee. But, if a majority of the duly constituted promotion and tenure committee is appointed, then the division (or unit) faculty or the librarians shall elect a special committee for this purpose as needed. Ordinarily, for faculty the committee to be consulted under this procedure is at the division level. Librarians may request a review by the Indiana University Librarians Promotion and Tenure Committee. The faculty member or librarian need not request peer review at this stage and may choose to work solely and privately with the VCAA and the administrator.

When requested by the faculty member or librarian, the appropriate promotion and tenure committee shall review the concerns addressed in the primary official notice and review the individual's performance to assess whether the issuance of the primary official notice of deficiencies was warranted. The committee will prepare a confidential written report of their proceedings and opinion, with a copy going to the dean of the unit, the administrator, and the faculty member or librarian. The report should be submitted no more than 30 days following the submission of the request by the faculty member or librarian. (In cases in which the notice period is less than 30 days, the administrator may proceed with the initiation of the formal proceedings while the committee completes its work.) If the committee finds that the accusation of professional incompetence is not warranted, the VCAA may withdraw the official primary notice, and if so must send a written notice of such action to the faculty member or librarian and the administrator in a timely manner.

The intent of this notice period is to allow the faculty member or librarian an opportunity to correct any deficiencies contributing to an inability to perform adequately and to seek solutions other than dismissal. Issuance of the primary official notice may not by itself be used as a reason for changing the terms and conditions of his or her employment. However, documented evidence of performance may be used to establish annual salary

increases (in accord with university, campus, unit, and departmental written salary polices) or to change work assignments.

If the primary official notice is not withdrawn, the faculty member or librarian may submit evidence of having corrected the alleged deficiencies to the administrator at any time during the notice period. If the administrator believes that all deficiencies have been corrected, he or she shall notify the VCAA. If the VCAA agrees that all deficiencies have been corrected, the VCAA will send a written notice to the faculty member or librarian stating that such is the case and that the question of professional incompetence is closed. If the administrator can demonstrate to the VCAA that the faculty member is not making progress toward remediating deficiencies during the notice period, the administrator with express permission of the VCAA may undertake formal proceedings for dismissal on grounds of professional incompetence.

Formal Proceeding Procedures:

If at the end of the notice period, in the judgment of the administrator the alleged deficiencies have not been corrected, the administrator with the express permission of the VCAA may undertake formal proceedings for dismissal on grounds of professional incompetence. The administrator must send written notice of his or her decision to the individual faculty member or librarian in a timely manner.

The administrator will confer with an elected peer committee before issuing any final written recommendation for dismissal. For this stage of the procedure, a special five-member peer committee must be elected by the IU East faculty and librarians from among IU East's tenured members holding the rank of professor, associate professor, librarian, or associate librarian, according to procedures established by the faculty. If the committee is not elected within 30 days after the administrator calls for the formation of a committee, the IU East Promotion and Tenure committee will serve as the committee.

The peer committee shall notify the faculty member or librarian that proceedings have been initiated. A faculty member or librarian may request a hearing before the peer committee before that committee makes a recommendation. The request must be made within thirty days of receipt of notification from the administrator, and the faculty member or librarian shall be afforded at least thirty additional days to prepare a presentation to the peer committee. A hearing, if any, should occur no later than 60 days following the administrator's written notification to the faculty member initiating formal proceedings. The committee deliberations must be concluded and the report filed within 90 days following the initial written notification to the faculty member initiating formal proceedings.

The peer committee will meet privately to the extent permitted by law, examine all evidence, and arrive at a recommendation regarding whether or not the faculty member or librarian is professionally incompetent. At all points in this process, the faculty member or librarian is entitled to know the sources and nature of the evidence, to be present (except during initial organizational meetings and final deliberations) and to confront

those alleging incompetence, to have outside experts testify, to be represented by counsel or anyone else of his or her choice, and to present evidence. Similarly, the administrator has a right to be present at meetings (except during initial organizational meetings and final deliberations), to interview witnesses, to have outside experts testify, to be represented by counsel if he or she chooses, and to present evidence.

The peer committee will make a written report regardless of its findings. The committee must file its report within 90 days of the faculty member's initial notification by the administrator; the administrator may proceed with the dismissal process after 90 days regardless. If a majority of the peer committee finds that the faculty member or librarian is professionally incompetent, the written report shall state this and the basis for its determination. If the charge of professional incompetence is unsubstantiated, the committee will state this conclusion and the basis for its determination. The written report will be forwarded simultaneously to the faculty member or librarian, to the administrator, and to the VCAA.

If the peer committee finds that the faculty member or librarian is not incompetent, the committee will recommend that the proceedings terminate and that the administrator withdraw the allegation in writing. If the administrator proceeds with the process despite the peer committee's findings, the peer committee must be notified and be afforded an opportunity to comment to the VCAA. All commentary from the peer committee must be a part of the record considered by all subsequent reviewers, who must explicitly address the peer committee's findings if they disagree with the written record. The administrator must keep in mind that the burden of proof that adequate cause exists rests with the institution and will be satisfied only by substantial evidence in the record considered as a whole.

If the peer committee finds that the faculty member or librarian is professionally incompetent, the administrator shall send his or her written recommendation for dismissal on grounds of professional incompetence to the VCAA. Within thirty days of the receipt of the administrator's written recommendation, the VCAA may proceed with dismissal procedures by forwarding the recommendation along with the peer committee report and his or her own comments to the Chancellor. The VCAA will provide a copy of his or her written recommendation to the faculty member or librarian. The faculty member or librarian must be provided with a copy of all administrative comments and recommendations before they are forwarded to the Chancellor. The Chancellor may choose to proceed with the dismissal of the faculty member or librarian. If so, the Chancellor shall issue via certified mail a written notice of dismissal, which will state with reasonable particularity the grounds for dismissal for professional incompetence. The notice shall state the effective date of dismissal.

In lieu of the one year notice period as required by the dismissal policy stated in the *IU Academic Handbook*, the faculty member or librarian may be offered an amount equal to his or her salary and fringe benefits for one year unless some other mutually agreeable arrangement is negotiated. The faculty member or the librarian shall have the right to resign at any point in the proceedings prior to notification of dismissal by the Chancellor.

Within ninety days of receipt of the notice of dismissal from the Chancellor, the faculty member or librarian may request a hearing before the IU EAST Faculty Board of Review. In the alternative, a librarian may choose to be reviewed by the Indiana University Librarians Review Board.

II. ALLEGED MISCONDUCT

Dismissal of a tenured faculty member or librarian on grounds of misconduct shall be sought only with respect to behavior that constitutes such serious and willful personal or professional wrongdoing as to demonstrate the faculty member or librarian's unfitness to hold his or her academic appointment. The following acts exemplify, but do not exhaust the sort of activity which might constitute misconduct: acts which constitute a felony; acts which constitute a flagrant breach of University rules or academic ethics and which involve moral wrongdoing; acts of academic dishonesty such as plagiarism and falsification of reports or research; theft or misuse of University resources; persistent neglect of duties or persistent failure to carry out the tasks reasonably to be expected of a person holding the position involved. Malicious or knowingly false accusations of misconduct shall be considered serious misconduct on the part of the accuser(s). In the course of dismissal for misconduct proceedings, only information or evidence that relates to the alleged misconduct may be considered.

Where the ability of the faculty member or librarian to perform effectively is clearly and seriously impaired by the nature of the misconduct, or where the work of the department, school or library clearly would be disrupted or if immediate harm to him self, herself, or others is threatened by continuance, the faculty member or librarian may at any time be suspended by the VCAA with pay until the matter is decided.

Informal Discussion Period:

Actions for dismissal on the grounds of misconduct must be initiated by an administrator at the rank of VCAA, but the administrator may base this action on the recommendations of a division chair, library director or other personnel who may be responsible for or knowledgeable about the conduct of the faculty member or librarian alleged to have engaged in misconduct. Where misconduct is suspected, the faculty member or librarian will first, as early as possible, be invited by the VCAA who is considering initiating action to discuss and respond to the allegations in person. The VCAA is obligated to collect such information and evidence as to have a reasonable and plausible belief that dismissal may be warranted by the facts; however, to the extent possible, the accusation of misconduct is to be kept confidential by the administration and those consulted. Several meetings may be required, and the faculty member or librarian must have been apprised of all allegations and evidence and been given a reasonable opportunity to respond to them prior to the end of the final exploratory meeting of the VCAA with the faculty member or librarian.

In cases in which the VCAA and the faculty member or librarian disagree as to whether the alleged misconduct has been properly characterized as "serious misconduct" warranting dismissal proceedings, the VCAA shall offer to bring this conduct characterization issue before an impartial committee composed of at least three faculty members or librarians who are jointly acceptable to the VCAA and faculty member or librarian against whom the allegations have been made. If the VCAA and faculty member can not reach agreement on at least three members to form the impartial committee after considering all eligible members of the faculty of IU East, the following process will be used. If the VCAA and the faculty member or librarian agree on two members from the faculty of IU East, the chair of the IU East Promotion and Tenure Committee (or the chair's designee) will serve as the third member of the committee. In all other circumstances, the committee will be composed of one member of the faculty of IU East selected by the VCAA, one member of the faculty of IU East selected by the faculty member or librarian, and the chair of the IU East Promotion and Tenure Committee (or the chair's designee). This group, referred to subsequently in this document as "the Committee", shall elect its own chair. If this offer for early assistance is accepted by the faculty member or librarian, the Committee, after meeting with the VCAA and the faculty member or librarian, is only to render an opinion as to whether the nature of the alleged conduct may properly be characterized as "serious misconduct" as defined in Section II. If the Committee deems pursuit of dismissal proceedings to be inappropriate, it should so state. In that case, the Committee may weigh the interests of the faculty member or librarian and of the campus and suggest, if possible, alternative ways to accommodate those interests. In the spirit of informal resolution, all parties are expected to maintain collegiality, but nothing in these procedures precludes a faculty member, librarian or administrative officer from being represented by counsel or anyone else of choice. The entire procedure described in this paragraph should be completed within a reasonable period of time, which ordinarily would be one week. The faculty member or librarian and the VCAA shall be apprised of the Committee's determination before any formal proceeding may begin.

Formal Proceeding Period:

If the preceding discussions do not resolve the matter, the VCAA, having a reasonable and plausible belief that dismissal is warranted, shall, within ninety days after the final informal meeting with the faculty member or librarian, provide that individual with written notice of intent to initiate formal proceedings to investigate possible misconduct; copies of the notice shall be given to the division chair/library director or other appropriate administrator, and to the Chancellor. This notice shall detail the specific nature of the allegations and list the witnesses, statements, documents and other evidence on which they are based.

The formal written notice shall be sent to the faculty member or librarian by certified mail. When a formal, detailed notice has been issued, the faculty member or librarian will be allowed 30 days from date of receipt to present to the VCAA or other administrator initiating the dismissal proceedings, written information in response to the allegations; will be allowed to be represented by counsel or anyone else of his or her choice; and is

entitled to full access to all relevant information regarding the case possessed by the VCAA or other administrative officers, including the names and location of all witnesses. No information to which the faculty member or librarian is denied access shall be used by the administration.

After consideration of the written response, or if no response is received at the completion of the 30 day period, the VCAA may proceed. If the VCAA believes that the faculty member or librarian is guilty of serious misconduct and wishes to pursue the dismissal of the individual, the VCAA must forward a written recommendation for dismissal with supporting documentation to the Chancellor. A copy of all materials forwarded, must be provided to the faculty member or librarian, who must be given an opportunity to provide comment and evidence in defense to the Chancellor.

If the Chancellor supports the recommendation for dismissal for misconduct, the Chancellor shall issue via certified mail a written notice to the faculty member or librarian stating the effective date of dismissal and stating with reasonable particularity the grounds on which the action is being taken.

The faculty member or librarian shall have the right to resign at any point in the proceedings prior to notification of dismissal by the Chancellor. The faculty member or librarian shall have 30 days from receipt of the notice of dismissal from the Chancellor to request a hearing before the Faculty Board of Review (as per IU East Academic Handbook, Bylaw Section V)² regardless of the date of dismissal.

Nothing in this policy shall prevent designated University officers, including the Affirmative Action Officer or the Director of Internal Auditing, from conducting investigations as specified by University policies. Nothing in this policy shall prevent the University from referring matters of possible misconduct to city, state, or federal agencies that may have jurisdiction in the investigation of possible misconduct.

¹ Indiana University Academic Handbook (1997, p.74-75)

² IU East Academic Handbook

* Note--refer to the most current editions of the IU Academic Handbook and IU East Academic Handbook for updated information.

Approved by IU East Faculty Senate: April 3, 2001