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NU-BOR-Bylaws-4.14

NU Board of Regents

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(2) If the grievance alleges that a discontinuance of a department or program is not bona fide, or that no extraordinary circumstances because of financial exigency exist, the Committee shall investigate and state its factual findings, conclusions, and recommendations in writing, which shall be filed with the Chancellor of the major administrative unit involved, the complainant, and the faculty governing agency.

4.14 **Academic Freedom and Tenure Committee.**

4.14.1 **Academic Freedom and Tenure Committee: Creation.** The faculty governing agency of each major administrative unit shall create an elected faculty Committee on Academic Freedom and Tenure, which shall have the powers specified in these *Bylaws*, and any other powers granted by the faculty governing agency and approved by the Board.

4.14.2 **Academic Freedom and Tenure Committee: Powers; Rules of Procedure.** The Committee established by Section 4.14.1 shall have the following powers and rules of procedure:

(a) The Committee shall consider any complaint filed by any member of the professional staff alleging any procedural or substantive grievance that constitutes an allegation that action taken, or threatened, violates the complainant's academic freedom or academic tenure.

(b) The Committee shall consider a complaint filed against any member of the faculty seeking to terminate his or her Continuous Appointment, his or her Appointment for a Specific Term prior to the termination date stated in the appointment, or his or her Special Appointment as a faculty member prior to its termination date, or his or her Health Professions Faculty Appointment, or his or her Faculty Practice and Faculty Research Appointment prior to the end of its stated term.

(1) The Board, or the President, shall have the authority to direct that proceedings under this subsection be instituted in the manner herein provided.

(2) Any Chancellor, Dean, director, or department chair, any Grievance Committee, or Professional Conduct Committee believing that there is reasonable cause to terminate a Continuous Appointment, an Appointment for a Specific Term, Health Professions Faculty Appointment, or a Faculty Practice and Faculty Research Appointment prior to the end of its stated term, shall certify his, her or its conclusion to that effect to the President, who shall determine if the complaint has sufficient merit to warrant investigation.

(i) In cases where the grounds for termination of a Continuous Appointment or an Appointment for a Specific Term are based in whole or in part on questions of professional competence, no such certification shall be made until the tenured members of the faculty member's school, division or department, or college in the absence of smaller units, have been consulted on the issues involving professional competence. Such consultation shall be effected through the appropriate administrator (department chair, school or division director, or dean) calling on fourteen (14) days' notice a meeting of the tenured faculty of the unit for the specific purpose of discussing the faculty member's professional competence. Votes on substantive matters relating to the faculty member's professional competence shall be by secret ballot. The report of such meeting, in the form of approved minutes containing a summary of the matters discussed and the votes taken, shall be forwarded by the administrator to the Chancellor for transmission to the President.

(ii) In cases where the grounds for termination of a UNMC Health Professions Faculty Appointment, or a UNL Faculty Practice and Faculty Research Appointment are based in whole or in part on questions of professional competence, no such certification shall be made until the faculty holding such a UNMC or UNL appointment who have received at least one promotion in academic rank while holding such an appointment and the tenured members of the faculty member's school, division or department, or college in the absence of small units, have been consulted on the issues involving professional competence. Such consultation shall be effected through the appropriate administrator (department chair, school or division director, or dean) calling on fourteen (14) days' notice a meeting of the eligible consulting faculty of the unit for the specific purpose of discussing the faculty member's professional competence. Votes on substantive matters relating to the faculty member's professional competence shall be by secret ballot. The report of such meeting, in the form of approved minutes containing a summary of the matters discussed and the votes taken, shall be forwarded by the administrator to the Chancellor for transmission to the President.

(3) If the Board or President has determined that an investigation should be made, the President shall employ an attorney to make the investigation and report to the President if he or she believes reasonable cause exists for termination of the appointment. Investigation shall be made in such manner as the attorney so employed determines to be appropriate, but shall not involve a public hearing and shall be conducted on as confidential a basis as possible. The investigator shall prepare a report of the investigation and provide it to the President. The President shall provide a copy of said report to the Chancellor of the administrative unit involved. The report shall be considered a confidential communication. If the report recommends that no basis exists for terminating the appointment, and the Board accepts said report, no further proceedings shall be had with reference to terminating the appointment. If the Board does not accept said report, it may cause such further investigation to be made by such persons and in such manner as it deems appropriate and consistent with these *Bylaws*. If the report recommends that there is reasonable cause to terminate the appointment, the President or the Board may order the attorney making the report to file a complaint with the Academic Freedom and Tenure Committee, and to take the affirmative with respect to producing evidence to support the complaint.

(c) The procedure with reference to complaints filed under paragraphs (a), (b), or (b) (1), Section 4.14.2 shall be conducted in accordance with the following principles:

(1) The complaint must be filed with the Committee and copy thereof served upon the person or persons charged in the complaint.

(2) The complaint shall state in concise terms the facts upon which it is based and the relief sought.

(3) The person(s) so charged shall have a period of twenty (20) days from the date of service of the complaint to file an answer in writing to the complaint. Copy of the answer must be served by such person(s) upon the attorney filing the complaint by regular United States mail with sufficient postage attached, properly addressed to said attorney, and mailed on or before twenty (20) days after filing the complaint.

(4) The Committee shall set the matter for hearing on as early a date as possible in order to permit the parties to reasonably prepare for the hearing.

(5) The person(s) charged shall be entitled to be represented by counsel at the expense of such person(s).

(6) The person(s) charged shall be entitled to be notified at least ten (10) days in advance of the hearing of the witnesses to be called by the attorney filing the complaint and of documents to be offered in evidence at the hearing, and the attorney conducting the hearing shall be obligated to provide such information within that time. The person(s) charged shall notify the attorney filing the complaint in writing at least five (5) days before the hearing of the witnesses to be called and documents to be offered in evidence at the hearing. No witnesses or documents not so listed shall be heard or received at the hearing, except in cases of surprise, or for the purpose of rebutting oral testimony of the other party, or for other justifiable cause found to exist by the Committee.

(7) Testimony shall be taken under oath. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

(8) The Committee may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence; provided, that any party may file with the Committee at least three (3) days before the hearing a written request that the rules of evidence followed by the District Courts in the State of Nebraska shall be applicable. If such a written request is filed, the Committee shall notify the parties that the proceedings shall comply with the principles of law with respect to proceedings in the District Courts in Nebraska, and all counsel and parties shall be bound by such rules and standards of ethics and codes of trial conduct as are applied in the District Courts.

(9) In the event any party to the proceedings desires the issuance of a subpoena, such subpoena shall be issued at the direction of the Corporation Secretary, and may be served in the manner provided for subpoenas in the Nebraska Court Rules of Discovery.

(d) Committee shall draft rules or procedures not inconsistent with these *Bylaws* for the prompt, orderly and fair hearing of all complaints filed with the Committee. Said rules shall be submitted to the Board, and when approved or modified, after notice and hearing, shall constitute a part of the Rules of the Board.

(e) The Committee shall submit to the Board the complete verbatim account of the hearing and all exhibits filed with the Committee, and report promptly to the Board and the staff member involved the Committee's findings, conclusions, and recommended action that the Committee deems advisable.

(f) The Board has power to make the final decision, but except as herein provided, the Board shall decide upon the basis of the evidence submitted to the Committee and the report of the Committee. Unless clearly erroneous, the findings of fact made by the Committee shall be accepted. The Board shall give the Committee's findings and conclusions due consideration, and shall take into account the fact that the Committee is a representative committee of the faculty and had the opportunity to see and hear the witnesses who testified personally before the Committee. In the event that the Board's decision is at variance with the recommendations of the Committee, the Board shall detail the reasons in a written opinion, and copies shall be provided to the parties concerned and the Committee. Once the Board has rendered its decision, the matter shall not be subject to further review except by appropriate court proceedings.

(g) The Board on its own motion may receive additional evidence at a public hearing, after notice to interested parties, in any case where the Board in its discretion determines that justice requires such further hearing before the Board. Any person desiring to present additional evidence to the Board may apply to the Board for hearing before the Board. Before any such hearing is granted, showing shall be required that there is additional relevant evidence that has been discovered, or has developed, or which could not be produced at the prior hearing; that the same was not available at the prior hearing and could not have been discovered or produced by reasonable diligence.

(h) In all proceedings before the Committee in which the termination of a Continuous Appointment, the termination of an Appointment for a Specific Term prior to its stated termination date, the termination of a Special Appointment as a faculty member prior to its termination date, or the termination of a Health Professions Faculty Appointment or a Faculty Practice and Faculty Research Appointment prior to its stated termination date are in issue, the University shall have the burden of proving adequate cause for the termination by the greater weight of the evidence.

(i) Prior to a decision by the Board, the staff member involved shall not be suspended from his or her duties or assigned other duties unless immediate harm to himself or herself, others or property is threatened by his or her continuance. Salary will continue during any period of suspension and an assignment to other duties shall not diminish a staff member's salary.

(j) The Committee shall have power to consider a request filed by any person, board or committee that alleges that a staff member should be subjected to sanctions less severe than appointment termination, and power to recommend in any case sanctions less severe than appointment termination where less severe sanctions seem appropriate.

History: Amended, 73 BRUN 46-48 (9 October 2015)
Amended, 70 BRUN 47-48 (8 December 2011)
Amended, 53 BRUN 151-154 (6 May 1988)
Amended, 53 BRUN 80 (12 December 1987)
Amended, 49 BRUN 300 (16 June 1984)
Amended, 42 BRUN 53-54 (29 July 1978)

4.15 Professional Conduct Committee.

4.15.1 **Professional Conduct Committee: Power to Create.** Pursuant to power granted by these *Bylaws*, the faculty governing agency of each major administrative unit is empowered to create a Professional Conduct Committee, which shall have the functions and powers specified in Sections 4.15.2 and 4.15.3, in addition to any other power granted by the faculty governing agency to the Committee pursuant to these *Bylaws*.

4.15.2 **Powers of Professional Conduct Committee.** A Professional Conduct Committee shall be empowered:

(a) To receive complaints from any person charging a member of the professional staff, as defined in Section 3.1.1 of these *Bylaws*, with professional misconduct.

(b) To investigate the facts relevant to the charge and to make factual determinations. Said investigation shall include advising the affected party of the charge, hearing his or her response, and considering any evidence produced by such party.