

Proposed Changes to the Bylaws of the Board of Regents of the University of Nebraska to Strengthen Academic Freedom

Recommended by Faculty Senate at the University of Nebraska–Lincoln

Summary of Changes

Section 3.4.4

The first change is to section 3.4.4 which addresses the Assignment of Duties. Currently, bargaining agreements at UNK and UNO stipulate that assignment of duties are to be in consultation with the faculty. That process would now be uniform for all campuses.

Section 4.6

The committee is proposing a minor wording change to limit the sources to be used in faculty evaluation.

Section 4.7

This section is a completely new section to the Bylaws. The purpose of this section is to define sanctions, suspensions (immediate and regular suspensions), suspensions that are terminations, and terminations. It also points the reader to the appropriate process for dealing with each of the situations, such as filing a grievance, initiating a professional conduct complaint, or termination proceedings.

Section 4.8

This section is a completely new section to the Bylaws. The purpose of this section is to explain the appropriate process for dealing with Immediate Suspensions. Essentially, Immediate Suspensions can be imposed immediately but last no longer than 90 calendar days. If a mutual settlement cannot be reached between the professional staff member and the administrative officer, then the chair of an informal faculty committee (on UNL's campus this would be the ARRC) must be contacted by the administrative officer prior to or within two calendar days of an immediate suspension to review each of the following, as applicable: a briefing from the appropriate threat assessments review team, claims of serious disruptions to University operations, and/or suspension through end of contract. The committee is to be notified by the administrative officer if the contract will expire within 90 calendar days. Finally, the committee is charged with either validating the immediate suspension or rejecting it, in which latter case the administration should pursue the suspension through a formal hearing. The principles found in this section originate from section 5 of the AAUP's "Recommended Institutional Regulations on Academic Freedom and Tenure".

Sections 4.9 and 4.10

There are no changes to these sections other than sectional references.

Sections 4.11 and 4.12

These sections are essentially not changed with the exception of clarifying that Faculty Practice Appointments are separate from Faculty Research Appointments, and updating sectional references. This would also require a change to 4.4.8 not included in these recommendations.

Sections 4.13 through 4.16

There are no changes to these sections other than sectional references.

Section 4.17

This section deals with the Academic Freedom Committee. On the UNL campus this is the Academic Rights and Responsibilities Committee (ARRC). The only changes other than sectional references are to 4.17.2(i) where the reader is reminded of sections 4.7 and 4.8 in regard to immediate suspensions, and a change to the burden of proof.

Section 4.18

This section deals with the Professional Conduct (PC) Committee. On the UNL campus this is the ARRC. Since the PC Committee will be used for imposing a suspension or other major sanction on a professional staff member, we made several changes to this section to specify and strengthen the procedural standards for PC Committee. For example, the professional staff member has the right to hear the charge against them and respond to it. The PC Committee will hold a hearing whereby documentary evidence is presented and witnesses testify under oath. Witnesses can be cross-examined and rebuttal evidence is allowed. Also, the burden of proof rests with the complainant and will be satisfied by the greater weight of the evidence.

Section 4.19 and 4.20

These sections have no changes.

Recommended Bylaw Changes

3.4.4 **Assignment of Duties.** The service and teaching obligations for each full-time member of the instructional staff in any semester shall consist of such amounts of one or more of the types of services necessary for a successful University program, including teaching, research, directing and supervising research, advising or counseling, committee assignments, administrative duties, field work, extension activities, and other miscellaneous assignments as may be deemed reasonable in each instance by the department chair, and Dean or director concerned, within standards approved by the Chancellor, the President, and the Board, and after appropriate consultation with the instructional staff member.

Members of the instructional staff other than those appointed primarily for research may be relieved of all or part of their teaching obligations for one or more semesters to pursue a program of research, if recommended by the appropriate research council, where established, and the Chancellor and the President, and approved by the Board. An instructional staff member who is relieved of all teaching obligations for one or more semesters to pursue a program of research shall be expected, as a rule, to resume regular teaching obligations after completion of the assigned program. Employment by the University of members of the staff who are in the academic-year service class for non-instructional work during the summer vacation period shall be governed by the following:

(a) Such employment shall be limited to not more than three months.

(b) The monthly rate of remuneration for such employment shall not exceed one-ninth of the staff member's full-time remuneration during the preceding academic year.

(c) Vacation for such employment shall be earned at the rate of two days per month, and cannot be carried beyond the summer period in which it is earned.

History: Amended, 43 BRUN 168-169 (28 July 1979)
Amended, 42 BRUN 152 (10 November 1978)

4.6 **Evaluation of Faculty Performance: Procedure.** Each major administrative unit, or appropriate subdivision thereof as stated in Section 4.5 (Standards for Promotion, Continuous Appointment, and Salary Adjustment) of these *Bylaws*, shall establish procedures for gathering relevant information from all appropriate sources, including student evaluations and peer judgments, as part of an annual review of faculty performance in relation to the standards established under Section 4.5. Individual faculty members shall have the opportunity to submit materials deemed relevant to their remuneration and status as a part of the annual review, or as such information becomes available. When appropriate, the judgment of others in each faculty member's specialized field of competence may be included in a review. Faculty members shall have access to all material submitted for their evaluation and the opportunity to respond in writing.

The annual review shall be considered in determining merit salary adjustments, promotions, and for awarding Continuous Appointment. The results of the review will be communicated to the individual faculty member.

4.7 Sanctions, Suspensions, and/or Termination of a Professional Staff Member: Definition.

4.7.1 Suspension. Any involuntary removal of a member of the professional staff from some or all of said member's duties constitutes a suspension. A suspension through the end of a contract or one that is indefinite is a termination. If a suspension is imposed, salary will continue during any period of suspension and an assignment to other duties shall not diminish a professional staff member's salary.

(1) Immediate Suspension. A suspension where the administrative officer has reason to believe that immediate removal or reassignment of duties is necessary because:

(a) the professional staff member's presence in the workplace presents a clear and present danger of physical harm being incurred to the professional staff member, to others within the workplace or to University property or facilities as determined by the University threat assessment team, or

(b) an investigation that could result in the imposition of a sanction or other remedial action has been or is being initiated into whether the professional staff member has violated University policy and the leave is necessary during the investigation in order to protect University resources, prevent the destruction of evidence, or avoid a continuing violation of the policy.

Alleged conduct that could give rise to an immediate suspension includes, without limitation:

(a) threats of death or physical harm against a professional staff member, self or others;

(b) research misconduct by a professional staff member;

(c) misappropriation of institutional or grant funds or monies by a professional staff member;

(d) behavior by a professional staff member towards a student, colleague or others that can be reasonably construed as threatening, menacing, or bullying;

(e) inappropriate sexual behavior, including sexual harassment, unwelcomed sexual touching or sexual assault, by a professional staff member against a student, colleague or others; or

(f) conduct related to the professional staff member's assigned duties that could lead to the filing of felony criminal charges against a professional staff member.

Immediate suspensions can last no longer than 90 calendar days. After 90 calendar days the professional staff member must be reinstated, unless formal proceedings have been filed against the professional staff member as specified in sections 4.17 (Academic Freedom and Tenure Committee) or 4.18 (Professional Conduct Committee) of these *Bylaws* or a second review of the committee specified in 4.8 (2) (Procedures for Immediate Suspension of a Professional Staff Member) of these *Bylaws* has determined that harm or disruption still remains, in which case the suspension may continue pending the conclusion of those proceedings.

(2) Suspension. All suspensions that are not classifiable as Immediate Suspensions are Suspensions. To impose a suspension on a professional staff member, the administration must file a complaint as specified in sections 4.17 (Academic Freedom and Tenure Committee) or 4.18 (Professional Conduct Committee) of these *Bylaws*.

4.7.2 **Other Major Sanctions.** Major sanctions other than suspension include but are not limited to demotion or salary reduction. The appropriate administrative officer will notify said professional staff member of the basis of the proposed major sanction and provide said member with an opportunity to persuade the administration that the proposed major sanction should not be imposed. The administration must file a complaint as specified in section 4.18 (Professional Conduct Committee) of these *Bylaws* to impose a major sanction on a professional staff member.

4.7.3 **Other Sanctions.** If the administration determines that the conduct of a professional staff member justifies imposition of a lesser sanction, such as a written reprimand, the administration will notify said professional staff member of the basis of the proposed sanction and provide said member with an opportunity to persuade the administration that the proposed sanction should be rescinded or not imposed. If the proposed sanction is imposed, then said professional staff member can file a complaint using procedures under sections 4.16 (Grievance Committee), 4.17 (Academic Freedom and Tenure Committee) or 4.18 (Professional Conduct Committee) of these *Bylaws*.

4.7.4 **Termination.** An appointment of a Professional Staff Member may be terminated prior to the expiration of the stated term, if applicable, only for adequate cause, in which case procedures in section 4.17 (b) (Academic Freedom and Tenure Committee) of these *Bylaws* must be followed; retirement for disability; bona fide discontinuance of a program or department; or extraordinary circumstances because of financial exigency.

4.8 **Procedures for Immediate Suspension of a Professional Staff Member.** Before the imposition of an immediate suspension upon a professional staff member may occur, the following shall take place:

(1) Where possible, discussions between the professional staff member and appropriate administrative officer looking toward a mutual settlement; if no mutual settlement is attained, then;

(2) An informal inquiry by the duly elected faculty committee whose membership is separate from the committee outlined under sections 4.17 (Academic Freedom and Tenure Committee) and 4.18 (Professional Conduct Committee) of these bylaws.

Prior to or within two calendar days of an immediate suspension of a professional staff member, the administrative officer shall notify the chair of the appropriate elected faculty committee.

The faculty committee is charged to evaluate any claim made by an administrative officer as to whether an immediate suspension is warranted under the conditions stipulated in 4.7.1 (1) of these *Bylaws*. The committee shall ensure that less stringent action has been considered, protect against claims of arbitrary or capricious action, and ensure that the faculty member has been informed of their right to due process. The committee must decide within 10 business days after being notified of the imposed suspension whether to validate the immediate suspension or to rule that the suspension be pursued as a suspension or other sanction as referenced in section 4.7.1 of these *Bylaws*. Failure to rule on the immediate suspension within the stipulated timeframe will result in the justification for needing an immediate suspension being deemed valid. In the event that the administrative officer's decision to continue an immediate suspension is at variance with the recommendations of the committee, the administrative officer shall detail the reasons in a written opinion, and copies shall be provided to the parties concerned and the committee.

In all cases, the administrative officer must notify the committee if the professional staff member's contract will expire prior to the 90 day suspension limit. Accordingly, the committee must rule whether the suspension through end of contract is approved or whether formal termination proceedings are warranted.

Should the committee rule that a formal complaint is warranted, then;

(3) The appropriate administrative officer files a complaint under sections 4.17 (Academic Freedom and Tenure Committee) or 4.18 (Professional Conduct Committee) of these *Bylaws*, to include a statement of charges, framed with reasonable particularity by the appropriate administrative officer.

4.79 Termination of an Appointment by a Professional Staff Member: Time.

(1) A member of the professional staff (Section 3.1.1) employed on an academic-year basis may terminate his or her appointment at the end of an academic year, if he or she gives notice at the earliest opportunity and not later than the latest of the following:

(a) May 15, or

(b) Thirty days after receiving notification of the terms and conditions of appointment for the coming academic year.

(2) A member of the professional staff employed on other than an academic-year basis shall give notice at the earliest opportunity and in no case later than the latest of the following:

(a) Four months before the termination date of the appointment, or

(b) Thirty days after receiving notification of the terms and conditions of appointment for another term.

A member of the professional staff may properly request a waiver of the time requirements contained in this Section in case of hardship, or where he or she would otherwise be denied substantial professional advancement or other opportunity, but the member should abide by the decision on his or her request.

4.7.10 Termination of a "Special Appointment" Prior to Expiration of the Stated Term: Reasons; Rights of the Appointee. A "Special Appointment" may be terminated prior to the expiration of the stated term, or with less than 90 days' notice by the University if no term is stated, only for adequate cause, retirement for age or disability, bona fide discontinuance of a program or department, or extraordinary circumstances because of financial exigency. The President or Chancellor, as appropriate, shall be empowered to approve appeal and grievance procedures that will insure to staff with respect to termination of their non-faculty special appointments the rights similar to those provided by Section 4.163.2 ([Powers of Faculty Grievance Committee](#)) and 4.147.2 ([Academic Freedom and Tenure Committee: Powers; Rules of Procedure](#)) of these *Bylaws* to staff with respect to termination of faculty appointments.

History: Amended, 49 BRUN 300 (16 June 1984)
Added, 42 BRUN 52-53 (29 July 1978)

4.118 Termination of an "Appointment for a Specific Term," "Health Professions Faculty Appointment," ~~or~~ "Faculty Practice Appointment," and/or "Faculty Research Appointment" at Expiration of the Stated Term; Rights of the Appointee. When the University notifies a person holding an Appointment for a Specific Term, Health Professions Faculty Appointment, ~~or~~ a Faculty Practice Appointment, ~~and-or~~ Faculty Research Appointment, that his or her appointment will not be renewed at the expiration of the term stated, the appointee shall:

(a) Have the opportunity to request a reconsideration by any individual or group making a recommendation or decision not to renew such an appointment and to offer evidence for that reconsideration.

(b) Have the right to petition the Grievance Committee, if one is established at his or her major administrative unit pursuant to Section 4.1~~63~~.1 (Grievance Committee: Power to Create), and upon such petitioning shall have the rights provided by Section 4.1~~63~~.2 (Powers of Faculty Grievance Committee).

History: Amended, 73 BRUN 46-48 (9 October 2015)
Amended, 62 BRUN 14 (28 February 1998)
Amended, 53 BRUN 150-151 (6 May 1988)

4.1~~29~~ Termination of an "Appointment for a Specific Term," "Health Professions Faculty Appointment," ~~or~~ "Faculty Practice Appointment," and/or "Faculty Research Appointment" Prior to Expiration of the Stated Term: Reasons; Rights of the Appointee. An Appointment for a Specific Term, Health Professions Faculty Appointment, ~~or~~ Faculty Practice Appointment, or and Faculty Research Appointment may be terminated prior to the expiration of its term only for the reasons stated in Section 4.1~~41~~ (Termination of a Continuous Appointment: Grounds), and before such termination the appointee shall have the rights specified in Section 4.1~~74~~.2 (Academic Freedom and Tenure Committee: Powers; Rules of Procedure).

History: Amended, 73 BRUN 46-48 (9 October 2015)
Amended, 53 BRUN 151 (6 May 1988)

4.1~~30~~ Total Period of Service Prior to a "Continuous Appointment." The total period of full-time service on an Appointment for a Specific Term prior to acquisition of a Continuous Appointment shall not exceed seven years, including all previous tenure-related full-time service with the rank of instructor or higher in all accredited institutions of higher education. For faculty members with three or more years of previous tenure related full-time service with the rank of instructor or higher at accredited institutions of higher education, a written agreement to an initial appointment for an Appointment for a Specific Term will not normally extend the period of service on an Appointment for a Specific Term at the University beyond four years before a Continuous Appointment is acquired, and in no case shall such agreement extend the period of service on an Appointment for a Specific Term at the University beyond seven years before a Continuous Appointment is acquired. The President may provide an adjustment of a faculty member's appointment where full-time service by the faculty member is interrupted by leave of absence due to maternity, disability or family and medical leave. Unless a contrary agreement is reached at the time the leave of absence is granted, time spent on an academic leave of absence shall be included in the period of service. A Continuous Appointment may be granted earlier, but not later, than the time limits specified in this Section. A person who is eligible under Section 4.4.3 (Continuous Appointment) but not granted a Continuous Appointment in accordance with the time limits in this Section shall be given a Notice of Termination, but such notice shall comply with Section 4.4.2 (Appointments for a Specific Term).

History: Amended, 75 BRUN 4 and 13 (25 January 2018)
Amended, 62 BRUN 14 (28 February 1998)

Amended, 44 BRUN 137 (15 March 1980)
Amended, 42 BRUN 53 (29 July 1978)
Amended, 40 BRUN 3 (20 November 1976)

4.141 **Termination of a Continuous Appointment: Grounds.** A Continuous Appointment may be terminated only for adequate cause, retirement for age or disability, bona fide discontinuance of a program or department, or extraordinary circumstances because of financial exigency. Before any termination for cause may occur, it shall be necessary to submit the matter to the Academic Freedom and Tenure Committee in the manner provided in Section 4.174.2 ([Academic Freedom and Tenure Committee: Powers; Rules of Procedure](#)).

4.152 **Termination of Appointments for Financial Exigency or Because of Discontinuance of a Program or Department: Time.** When any type of appointment is terminated because of financial exigency or discontinuance of a program or department, whether the termination is effective on or before the date stated for termination in the written appointment contract, the University shall give notice of termination as soon as possible, and shall make reasonable efforts to notify persons twelve (12) months prior to the effective date of termination. In such a case the released faculty member's place will not be filled by a replacement within a period of two years unless the released faculty member has been offered reappointment and a reasonable time within which to accept or decline it.

4.163 **Grievance Committee.**

4.136.1 **Grievance Committee: Power to Create.** Pursuant to authority granted by these Bylaws, the faculty governing agency of each major administrative unit is empowered to create a Faculty Grievance Committee, which shall have the powers specified in Section 4.136.2 ([Powers of Faculty Grievance Committee](#)), in addition to any other powers granted by the faculty governing agency pursuant to these *Bylaws*.

4.163.2 **Powers of Faculty Grievance Committee.** Any Faculty Grievance Committee established under Section 4.163.1 shall be empowered:

(a) To consider a complaint filed by any faculty member alleging any grievance;

(b) To seek to settle the grievance by informal methods of adjustment and settlement, either itself or by using the services of any officer or body directed to settle grievances and disputes by mediation, conciliation, or other informal methods;

(c) To draft rules of procedure for the orderly and fair handling of grievances by the Committee, which rules shall become effective after notice and hearing when approved or modified by the Board, and, upon approval, shall be effective as a part of the Rules of the Board; and

(d) To proceed, if informal methods fail to resolve the matter satisfactorily, with further proceedings, to be conducted in accordance with the Rules of Procedure approved by the Board under this Section, and in accordance with the following principles:

(1) If the grievance alleges that inadequate consideration was given to relevant matters by the person or body that took the action or made the decision that led

to the grievance, the Grievance Committee shall investigate the facts, and, if convinced that inadequate consideration of the relevant matters occurred, state the facts found and the respects in which the consideration was inadequate. The Committee may order the matter reconsidered by the appropriate person, group or groups, or recommend that other rectifying action be taken. The Grievance Committee shall not substitute its judgment on the merits for that of the person, group, or groups that previously considered the decision.

(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.

4.147 **Academic Freedom and Tenure Committee.**

4.147.1 ~~—————~~**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.

4.174.2 **Academic Freedom and Tenure Committee: Powers; Rules of Procedure.** The Committee established by Section 4.174.1 (Academic Freedom and Tenure Committee: Creation) 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 any 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), (b) (1), Section 4.147.2 (Academic Freedom and Tenure Committee: Powers; Rules of Procedure) 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) The 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 Appointment and Faculty Research Appointment prior to its stated

termination date are in issue, the burden of proof rests with the University, and will be satisfied by the~~shall have the burden of proving adequate cause for the termination by the~~ greater weight of the evidence in the record considered as a whole.

(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 an Immediate Suspension is warranted. If an Immediate Suspension is to be imposed prior to a termination proceeding, the procedure outlined in section 4.8 (Procedures for Immediate Suspensions upon a Professional Staff Member) of these Bylaws must be followed in accordance with the conditions stipulated in section 4.7.1 (1) (Immediate Suspension)~~immediate harm to himself or herself, others or property is threatened by his or her.~~ 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)

4.158 Professional Conduct Committee.

~~4.1518.1~~ **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 ~~4.1518.2~~ (Powers and Procedures of Professional Conduct Committee) and ~~4.1518.3~~ (Function of Professional Conduct Committee), in addition to any other power granted by the faculty governing agency to the Committee pursuant to these Bylaws.

~~4.1518.2~~ **Powers and Procedures 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 (Professional Staff) of these Bylaws, with professional misconduct. This includes complaints filed by a University officer against a member of the professional staff seeking a suspension or other major sanction less than termination as described in sections 4.7 and 4.8 of these Bylaws. A copy of the complaint shall be served upon the person or persons charged in the complaint. The person(s) so charged shall answer in writing to the complaint, and a copy thereof served upon the person or persons filing the complaint.

(b) To investigate the facts relevant to the charge and to make factual determinations, to interpret standards of professional conduct applicable to members of the professional staff, and to apply those standards to the facts. Said investigation shall include reviewing documentary evidence and witness testimony from or on behalf of all parties involved in the complaint. The Committee shall set the matter for a hearing as early as possible. 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. When the complainant is a University officer, the Committee shall arrange for a verbatim account of the hearing and archive all exhibits filed with the Committee. All parties shall be entitled to be represented by counsel at their own expense. The hearing will not be bound by strict rules of legal evidence and may admit any evidence that is of probative value in determining the issues involved. ~~advising the affected party of the charge, hearing his or her response, and considering any evidence produced by such party.~~

(c) ~~To conclude~~ decide whether there are reasonable grounds to believe that the person against whom the charge is directed committed acts that amount to professional misconduct. In cases brought to Committee, the burden of proof rests with the complainant and will be satisfied by the greater weight of the evidence in the record considered as a whole.

(d) To advise ~~the person filing the charge~~ all parties, and any other appropriate person or groups, of the Committee's conclusion and factual findings.

(e) To recommend to the appropriate University officer, or group, whether action should be taken with respect to the charge, and the nature of such action.

(f) To recommend sanctions less severe than appointment termination where the Committee judges less severe sanctions appropriate.

(g) The 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.

4.1518.3

Function of Professional Conduct Committee.

~~The Professional Conduct Committee's function shall be to ascertain facts, to interpret standards of professional conduct applicable to persons engaged in teaching, extension work, research, service, and administration at the University, to apply those standards to the facts, to advise other persons or groups whether a violation of professional conduct has occurred, and to recommend an appropriate sanction, if it concludes a violation has occurred.~~ The Professional Conduct Committee does not have power to impose sanctions, and its findings of fact, interpretations of professional standards, advice, and recommendation are not binding. The Professional Conduct Committee shall not serve as a prosecutor of cases involving alleged violations of professional standards. The Committee acts only in an advisory capacity. An appropriate University officer has the power to make the final decision on sanctions, but the University officer shall decide upon the basis of the evidence submitted to the Committee and the report of the Committee. Unless clearly erroneous, findings of fact made by the Committee shall be

accepted. The University officer shall give the Committee's findings and conclusions due consideration. In the event that the University officer's decision is at variance with the recommendations of the Committee, the University Officer shall detail the reasons in a written opinion, and copies shall be provided to the parties concerned and to the Committee.

4.196 **"Extraordinary Circumstances Because of Financial Exigencies" and "Financial Exigency" Defined.** As used in Chapter IV of these Bylaws the term "extraordinary circumstances because of financial exigencies" or the term "financial exigency" shall mean a bona fide, imminent financial crisis of such magnitude, caused by financial circumstances beyond the control of the Board of Regents, that within a particular major administrative unit (campus) as a whole normal operations cannot be maintained and programs of the major administrative unit must therefore be significantly altered.

History: Added, 53 BRUN 80 (12 December 1987)

4.207 **Declaration of a Financial Exigency.** A state of financial exigency may only be found and declared by the Board of Regents upon the recommendation of the President in accordance with policy established by the Board for declaration of a state of financial exigency.

History: Added, 53 BRUN 80 (12 December 1987)