

The AFPS Committee is currently the final step in the procedure by which faculty members can grieve a broad range of decisions made by their academic supervisors. The Committee has unanimously come to the conclusion that its role in the grievance procedure should be reconsidered.

The Committee has therefore drafted a substantial revision of its role in the grievance procedure, and brings it to the Senate to solicit the Senate's comments and advice before formally presenting it to the Senate for action.

COMMITTEE ON ACADEMIC FREEDOM AND PROFESSIONAL STATUS OF THE FACULTY

PROPOSED REVISED POLICY

*Additions are in **bold font***

Charge to the Committee

A. Examine and make recommendations concerning issues and considerations in the following areas:

1. Academic Freedom and Responsibility
2. Freedom of Teaching and Learning, including but not limited to the special concerns of the faculty that teaching and learning at Cornell University be carried on freely and without disruption, interference, or intimidation.
3. The Professional Status of the Faculty, including but not limited to policies and procedures relating to faculty appointments, promotion, retirement, separation, tenure and other related matters.

B. Receive and review written complaints brought by or against a Faculty member with respect to matters involving academic freedom and responsibility and freedom of teaching and learning and any other matters that might affect his or her professional reputation, impair the execution of his or her professional and University responsibilities, adversely affect his or her economic status, lead to his or her dismissal, or otherwise alter terms of his or her employment.

1. It shall lie within the discretion of the Committee to determine whether it will or will not entertain a specific complaint brought to it. **If the complaint falls within the jurisdiction of the appropriate college grievance procedure or any other avenue of review within the University, the AFPS will not entertain the complaint until that review process has run its course. The Committee will not entertain complaints regarding decisions of another review process that forbids its decisions from being reviewed by the Committee.**

(a) When possible, the Committee should promulgate to the community any criteria it establishes (attached) that it will utilize in determining whether or not to entertain complaints.

(b) If the Committee determines it will not entertain a specific complaint, the individual or individuals advancing such complaint can appeal such decision to the University Faculty Committee. The University Faculty Committee can uphold the Committee's decision, direct the Committee to entertain the complaint or direct the Committee to entertain a portion of the issues raised in the complaint or the complaint in some modified form.

(c) Once a complaint has been accepted and adjudicated by the Committee, the complaint will not be subject to further appeal within the faculty governance system.

2. Procedures for reviewing complaints brought to it shall be established by the Committee, subject to the following limitations:

(a) Such procedures must

(i) Comport with the basic precepts of due process.

(ii) Maintain at all times strict confidence in the handling of individual cases unless otherwise agreed in writing by all parties involved. This rule of strict confidence includes the dissemination of any Committee reports except under the following terms and conditions:

(1) After reviewing a written complaint, the Committee shall prepare a written, draft report of its findings and any recommendations for action. Copies of this draft report shall be sent to the complainant, the other principals in the case (typically a department chair and dean), the University Faculty Committee of the Faculty Senate and the Dean of the Faculty. All recipients shall be enjoined to keep the draft report confidential and to return it promptly with comments or criticisms to the Committee. After reviewing these replies, the Committee shall prepare a final report which it shall send to the same people as the draft report and, when appropriate, to the President and

Provost of the University. The complainant shall not be enjoined to keep this report confidential but other recipients shall be requested to do so. However, if the complainant makes public a portion of the report, other recipients may make public the entire report. Moreover, if in the judgment of both the Committee and the University Faculty Committee, public release of a report, in whole or in part, either would clear any individual involved in the proceedings of charges damaging to his or her reputation or serve to clarify incorrect publicity, or provide guidance to the faculty or the University community because of the issues involved, this may be done. The complainant and others involved shall be advised that such a public release is a possibility.

(b) The Committee may utilize subcommittees of its own members to undertake the initial review of complaints brought to it, but all final decisions on any complaint must be by a majority vote of the Committee members attending a meeting of the Committee called to review the complaint.

(c) The Committee should make available the procedures it will utilize in reviewing a complaint to those involved prior to the undertaking of its review.

(d) The Committee's findings and recommendations arising out of the review of complaints, other than complaints that appeal the decisions resulting from other avenues of review, are solely advisory to the administrators to whom they are addressed.

(e) The review of complaints brought to the Committee appealing the decisions resulting from other avenues of review and the disposition of the Committee's findings and recommendations in those cases shall conform to the following special procedures:

(i) The Committee will base its decisions solely on written records of previous reviews, written records supplied by the parties to the dispute and oral and/or written testimony of the two parties.

(ii) When the Committee finds the previous reviews to have been inadequate or deficient either in terms of fact-finding or inferences from the facts, it shall have the authority to ask the prior review body to reopen its review, correct the inadequacies and deficiencies and re-examine its findings in the light of that reconsideration. The complainant may submit a new complaint to the Committee appealing the further actions of the prior review body.

(iii) The Committee will issue its draft report within 90 days of its first meeting to consider the complaint.

(iv) The Committee may establish reasonable time limits for receiving responses to the Committee's draft report from the opposing parties.

(v) The Committee's report will make recommendations to appropriate members of a college administration or the University administration regarding the disposition of the specific complaint(s) directed to the Committee.

(vi) In the normal course of events, the appropriate college or University administrator will accept and implement the recommendations of the Committee. If the administrator declines to do so, he or she will provide the Committee with a detailed written explanation stating the reasons for rejecting the Committee's recommendations. In coming to his or her decision whether to accept and implement the recommendations of the Committee, the administrator will refrain from carrying out a new investigation of the matter. The administrator(s) will come to a final conclusion on the disposition of the Committee's recommendations within 90 days of receipt of the Committee's final report.

(vii) If the administrator(s) declines wholly or partially to accept the Committee's recommendations, the complainant may, within 15 days of the receipt of the administrator's decision, advise the administrator(s), the Dean of the college, and the Committee of the complainant's decision to proceed to arbitration.

(viii) The selection of the arbitrator and the arbitration procedure shall be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association, subject to the provisions below:

1. The scope of the arbitration will be limited to the issues of academic freedom and professional status raised in the original complaint and/or raised in the Committee's final report and recommendations.
2. The decision of the arbitrator shall be final and binding upon the complainant and the University.
3. The arbitration shall not be deemed a waiver of the complainant's right to pursue any legal claims related to the subject matter of the arbitration.

The first \$500. of the costs of the arbitration, excluding advocate fees and witness expenses, shall be equally borne by the

complainant and the University. Costs in excess of \$500. (excluding advocate fees and witness expenses) shall be borne entirely by the University.

Composition of the Committee*

Nine members of the faculty appointed with the concurrence of the Faculty Senate by the Nominations and Elections Committee for three-year terms.

Two student members (of which at least one shall be an undergraduate) with voting privileges, selected annually by the Staffing Committee of the Student Assembly. Reselection of a student for a second year shall be permitted. Student members of the Committee shall not participate in the review process set forth in Subdivision B of the Committee's Charge.

*Except as noted specifically below the Committee shall be organized and operate under the Rules and Procedures governing standing committees of the Faculty Senate.

Adopted by the Faculty Council of Representatives, December 9, 1987, Records, pp. 6530-44C, Appendices A and B. Changes in nomenclature from FCR and Executive Committee to Faculty Senate and University Faculty Committee and to reflect amendments to the Organization and Procedures of the University Faculty, October 1995.

COMPLAINTS TO THE COMMITTEE ON ACADEMIC FREEDOM AND THE PROFESSIONAL STATUS OF THE FACULTY

This note is designed to help potential plaintiffs bring their concerns before this Committee. This note has been prepared by the Committee, and should be read in conjunction with the charge to the Committee from the Faculty Senate.

- 1. Complaints typically pass through grievance procedures within individual colleges before reaching this committee.*
- 2. Complaints must be in writing. Plaintiffs should not ask committee members to help in preparing a complaint. The Dean of the Faculty or the Ombudsman may be able to recommend someone willing to assist in this regard.*
- 3. Potential plaintiffs may ask the Committee chair or the Dean of the Faculty to clarify procedures, but lengthy discussion of a case's merits with these individuals is inappropriate.*
- 4. Complaints are confidential, but not from any Cornell officials who can clarify the facts of the case--including the respondents (those whose actions are the subject of the complaint).*
- 5. As mandated in the Faculty Senate's charge to the Committee, before issuing a final report the Committee allows plaintiffs and respondents to respond to a draft of that report. However, the Committee does not ordinarily reconsider a complaint after issuing a final report on that complaint.*

*The following is a **typical** sequence of action in response to a complaint.*

- 1. The Committee considers whether the complaint has passed through all appropriate preliminary grievance procedures.*
- 2. The Committee then considers whether the complaint alleges violations of the written or generally understood policies of Cornell University.*
- 3. The Committee finally addresses the merits of the complaint. The Committee may appoint subcommittees to collect and report facts, or to draw up written statements of the Committee's conclusions, but subcommittees do not formulate and submit recommendations. Recommendations on complaints are made only by the full Committee.*

Adopted 11/5/93. Changes in nomenclature from FCR to Faculty Senate, October 1995.