



San José State
UNIVERSITY

A campus of The California State University

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S99-9

At its meeting of May 3, 1999, the Academic Senate passed the following Policy Recommendation presented by Annette Nellen for the Professional Standards Committee.

POLICY RECOMMENDATION

**MODIFICATION TO S94-5/F95-1
BOARD OF ACADEMIC FREEDOM
AND PROFESSIONAL RESPONSIBILITY**

- Whereas: "Policy and Procedures for Responding to Allegations of Scientific or Other Misconduct in Funded Research" passed by the Senate on May 3, 1999 provides procedures that vary from those currently provided for in S94-5/F95-1 with respect to dealing with allegations of scientific misconduct.
- Whereas: The Associate Vice President for Research (AVP Research) is responsible for dealing with allegations of misconduct in funded research and should work with the Office of Faculty Affairs when such allegations involve Unit 3 faculty members.
- Whereas: The BFR was established in 1994 to implement S93-12, Academic Freedom and Professional Responsibility. BFR'S charge includes advising and assisting the Office of Faculty Affairs on the handling of complaints of breaches of faculty responsibility, including complaints of scientific and other research misconduct.
- Resolved: That S94-5/F95-1 be modified as shown in the attached policy, and as modified, be issued as a new policy.
- Resolved: That, once assigned, the appropriate policy numbers be inserted into this policy per Senate By-Law 13(b), and that passage of this resolution serve as notice to the Senate of such editorial changes.

ACTION BY UNIVERSITY PRESIDENT: Approved by President Robert Caret on May 4, 1999.

BOARD OF ACADEMIC FREEDOM AND PROFESSIONAL RESPONSIBILITY

I. Mission

The Board of Academic Freedom and Professional Responsibility (BFR) is charged with implementing S99-8, Academic Freedom and Professional Responsibility, except as noted in Section IV below. To carry out this charge, BFR will:

1. Monitor the state of academic freedom and professional responsibility at the University, making reports and recommendations (including revisions of all documents relating to academic freedom and responsibility) to the Academic Senate and the University community as it deems necessary;
2. Work in concert with the Office of Faculty Affairs to advise and orient new faculty in the areas of academic freedom and professional responsibility;
3. Educate the academic community about academic freedom and professional responsibility by disseminating S99-8 and holding workshops and forums as necessary;
4. Be available to consult confidentially with members of the University on issues related to academic freedom and professional responsibility;
5. Address complaints of infringements of academic freedom brought by members of the University, issuing findings as appropriate;
6. Advise and assist the Office of Faculty Affairs on the handling of all complaints of breaches of faculty responsibility, including complaints of scientific and other research misconduct.

II. Election, Qualifications, and Terms of Membership

BFR will consist of nine members, one member from each of the Colleges and one from the Unit 3 General Unit membership. Members of BFR are elected by the faculty of their respective College or Unit. The electorate will consist of all faculty who are subject to the provisions of S99-8.

During the Spring Term of each year elections will be held to replace BFR members whose terms are ending. Candidates shall be nominated by a petition signed by at least five (5) members of the faculty of their respective College or Unit. The candidate shall indicate by his/her signature on the petition willingness to serve if elected. For each College or Unit holding an election, the candidate with a plurality of votes is elected. In the case of a tie, a run-off election shall be held, with only the candidates in a tie on the ballot.

A special election, following these same procedures, shall be held when a BFR member is unable to complete his/her term or needs to be replaced temporarily for the period of a leave from the University. The appropriate College Dean (or Provost in the case of the General Unit) shall hold a special election within one month of the determination of the vacancy.

Membership on BFR is restricted to full-time tenured Full Professors. It is expected that the Professors whose names are placed in nomination for BFR will be faculty whose integrity and honor are held in the highest regard by their colleagues.

BFR members will serve staggered terms of four years. The Board will elect a Chair for a one-year term, covering the academic year. Members will be replaced by an election in their host Colleges or the Unit as their terms expire.

BFR will, as it deems appropriate, divide itself into sub-committees in order to carry out its mission.

III. Procedures for Addressing Alleged Infringements of Academic Freedom

1. BFR is the first body on campus to hear allegations from a faculty member of an infringement of academic freedom by a member of the University administration. (If a student brings such an allegation against a faculty member or if a faculty member brings one against a colleague, the procedure is provided in IV below, since it will be treated as an allegation of professional misconduct.) It is understood throughout this document that more than one person may be the complainant or the subject in an allegation of misconduct. In its proceedings on such allegations, the Board will be confidential and discreet.
2. After such an allegation is brought to the Board, the Chair will ask it to form a sub-committee of two members to conduct an initial assessment of the complaint (the sub committee will not include a member from the complainant's home college or unit). The sub-committee will determine:
 - a. If the complaint is timely (i.e., if the complaint has been lodged by the end of the second semester following the one during which the alleged conduct took place).
 - b. If the complaint is such that informal resolution is possible;
 - c. If the alleged conduct violates S99-8;
3. If the sub-committee determines that the complaint meets the above three criteria, it will:
 - a. Ask the complainant to submit a written statement of the allegations that includes all relevant details and an indication of the remedy that is sought;
 - b. Provide the subject with a copy of the complaint;
 - c. Inform the subject of the right to respond in writing to the complaint;
 - d. Interview concerned parties and witnesses, if any;
 - e. Attempt to forge a resolution of the complaint acceptable to all parties, including the Board.
4. At the end of its initial assessment, the sub-committee will reach one of the following three conclusions, subject to a confirming vote of BFR:
 - a. The complaint is without merit, a finding presented to the subject and complainant in writing;
 - b. A resolution of the complaint signed by the complainant, the subject, and the Chair of the Board within forty (40) academic-year days of the original filing;
 - c. Notification of the principal parties, the President and the Chair of the Academic Senate that the complaint is not resolvable at this level. If in this case the sub-committee believes that a violation of S99-8 has occurred, it will also report this finding to BFR, which may recommend to the President and the Chair of the Senate that further action be taken.
5. Records of the sub-committee's assessment will be kept according to the following guidelines:
 - a. If the complaint has no merit, all record of it will be destroyed, except the written notification of such a finding sent to the complainant and the subject;

- b. If the complaint is resolved, copies of the complaint, documentation, and resolution will be sent to the principal parties, the President, and the Chair of the Senate; after ten days, all copies are to be delivered to the Office of Faculty Affairs, which will maintain the file for four years, after which time they will be destroyed;
- c. If no resolution is possible at this level, all records of the complaint will be sent to the Office of Faculty Affairs, which will keep them for four years, after which time they will be destroyed;
- d. If in cases b or c, a new allegation is lodged against the subject of the complaint, a new four-year period of record keeping begins with the filing of the more recent complaint;
- e. The records of such a complaint and related documents will only be available to appropriate University officials during a formal action.

IV. Procedures for Addressing Allegations of Professional Misconduct by the Faculty

1. Allegations of professional misconduct by a faculty member are made in one of the following administrative offices: the office of the dean of the faculty member, the Office of Faculty Affairs, the Office of Student Affairs, or the Office of Human Resources. The office receiving the complaint shall write an intake interview report and transmit it as soon as possible, usually within twenty-four hours, to the Office of Faculty Affairs. Allegations involving misconduct by a faculty member on a funded project shall be transmitted to the Associate Vice President for Research (AVP Research) within twenty-four hours, as required by S99-10, Policy and Procedures for Responding to Allegations of Scientific or Other Misconduct in Funded Research; the AVP Research shall work in consultation with the Office of Faculty Affairs on such allegations.
2. The Office of Faculty Affairs shall refer complaints involving the matters listed below to the offices indicated. Those complaints will not ordinarily be reported to BFR. Complaints of all other alleged violations of S99-8 shall be handled in consultation with BFR, as described in item 3 below.
 - a. Potential violations by one or more faculty members of the civil rights of non-faculty, including potential acts of unlawful discrimination, shall be referred immediately to the Office of Equal Opportunity (OEO) for further processing.
 - b. Complaints from a faculty member about issues that are covered by the Agreement shall be referred immediately to CFA for handling according to formal grievance procedures. Such complaints include allegations from a faculty member that s/he was discriminated against on the basis of certain prohibited factors.
 - c. Allegations by one or more students against a faculty member in relation to instructional issues, including unfair grading, shall be immediately referred to the Ombudsman for handling in consultation with the Academic Fairness Committee.
 - d. Complaints that a faculty member has violated the Americans with Disabilities Act shall be referred to the office of Disabled Student Services for handling in accordance with established procedures for that purpose.
 - e. Complaints of alleged misconduct (including scientific misconduct) on a project funded by the Public Health Service (PHS) or any other grant or contract shall be referred to the AVP Research to ensure that the handling of the complaint conforms to the requirements of S99-10, Policy and Procedures f

or Responding to Allegations of Scientific or Other Misconduct in Funded Research. For allegations involving Unit 3 faculty members, the AVP Research shall consult with the Office of Faculty Affairs throughout the inquiry phase and any investigation; the Office of Faculty Affairs may involve BFR as appropriate per the procedures of this document and legal requirements governing funded research. (See S99-10).

3. The Office of Faculty Affairs shall be responsible for managing the processing of all complaints in a timely fashion. In doing so, the following steps will ordinarily be completed in the order given. Various laws, government regulations, Trustee policy, collective bargaining agreements, and University policy may indicate the need for variations in the order of the steps and in the time required for each step. Some of the steps below may be omitted, depending on the outcome of previous steps. It is the intent of this policy that all complaints that a faculty member has violated S99-8, except those listed in item 2 above, be processed with advice from BFR.
 - a. Written, confidential intake interview report.
 - b. Initial assessment of complaint.
 - c. Consultation with BFR and management.
 - d. Notification to subject of complaint.
 - e. Informal resolution attempts.
 - f. Confidential investigation.
 - g. Preliminary report.
 - h. Consultation with BFR and management.
 - i. Final disposition and notice to all parties.
 - j. Maintenance of confidential case files.
4. Members of the BFR shall provide consultation to the Office of Faculty Affairs, assist in attempts at informal resolution, and possibly assist in investigations. They shall act under the authority of the President. Their advice shall be sought in the following:
 - a. Appropriate questions to be addressed in an initial assessment of the complaint, including whether the complaint involves a violation of S99-8, and whether there needs to be a formal investigation. Members of the BFR may assist in investigations if requested by Faculty Affairs, but shall not be required to do so.
 - b. Whether the complaint is amenable to informal resolution and, if so, along what lines. Members of the BFR will usually assist in achieving informal resolution.
 - c. Monitoring investigations, especially with respect to any discipline-specific issues.

History

The procedures of this policy were first provided in S94-5 created by the Professional Standards Committee, and approved by the Academic Senate on May 2, 1994. S94-5 was approved and signed as University Policy on May 11, 1994. S94-5 was created to implement S93-12 on Academic Freedom and Professional Responsibility. S94-5 was slightly amended by F95-1 approved as University Policy on October 2, 1996.