

PREFATORY NOTE

The Tentative Recommendations were first adopted by the President and Fellows on October 4, 1971. Although the recommendations are styled as “Tentative Recommendations,” these recommendations continue to serve as the applicable procedures for cases involving the removal of a tenured appointment, given their subsequent adoption on an ongoing basis for tenure revocation proceedings. The text of the Tentative Recommendations follows first, and then the Votes of the University Committee on Rights and Responsibilities, which adopted procedures to implement the Tentative Recommendations.

DISCIPLINE OF OFFICERS

TENTATIVE RECOMMENDATIONS

1. The procedures outlined below shall apply to the discipline of officers of instruction holding Corporation appointments in any Faculty, in cases involving violations of the third paragraph of the University-wide Statement on Rights and Responsibilities, and in other cases involving grave misconduct or neglect of duty arising under the Third Statute of the University. The procedures shall also apply to the discipline of other holders of Corporation appointments (including administrative officers) who are members of a Faculty, in cases involving violations of the third paragraph of the Statement, and in other cases involving grave misconduct arising under the Third Statute of the University.
2. If a complaint is made against any such person, a Screening Committee shall inquire into the case. That Committee may also attempt to assist in the settlement of the case by mutual agreement. If the case is not so settled, the Committee shall make recommendations whether further action is warranted. A copy of such recommendations shall be furnished to the person complained against (hereinafter called the “Respondent”).
3. The composition and size of the Screening Committee, the method of its selection, and the working out of appropriate complaint and other procedures for it, shall be left to the individual Faculties, provided that the plan adopted by a Faculty for the composition of its Screening Committee shall be subject to the approval of the Governing Boards.
4. If the Screening Committee’s conclusion is that further action is warranted, or in any event if the President should decide that it is advisable to have the case further considered, a Hearing Committee shall hold hearings in the case.

5. The Hearing Committee shall consist of four members of the Faculty involved and three members of other Faculties of the University; provided that, under guidelines to be worked out by the Faculty members of the University Committee on Rights and Responsibilities, where the size of a Faculty is so small that it may be inappropriate for four members to sit on such a committee, the Hearing Committee shall consist of three members of the Faculty involved and four members of other Faculties of the University.
6. Each Faculty shall have authority, either in advance or for a particular case, to increase the proportion of outside Faculty to home Faculty on the Hearing Committee hearing the case of a member of that Faculty, including the authority to determine that the case shall be heard by a Committee consisting entirely of outside Faculty.
7. If the Respondent has tenure, all members of the Hearing Committee shall be tenured members of the Faculties. If the Respondent does not have tenure, two members of the Committee shall be Faculty members without tenure.
8. The designation of a Hearing Committee for a particular case shall be as follows:
 - a. Each Faculty shall, at such intervals as it deems appropriate, elect five tenured members and two untenured members to serve as part of a pool of Faculty members available for such duty. The method of election shall be left to the individual Faculties.
 - b. The Faculty members of the University Committee on Rights and Responsibilities shall designate the Hearing Committee for a particular case from this pool, in accordance with rules of lot or rotation worked out by them, subject to the provisions of paragraphs 5, 6 and 7.
 - c. The Faculty members of the University Committee on Rights and Responsibilities shall also be charged with designating replacements for Hearing Committee members who are unable to serve.
9. No Faculty member who served on the Screening Committee for a particular case may serve on the Hearing Committee for that case.
10. The Hearing Committee shall conduct hearings, make findings of fact, and make recommendations to the President and Fellows on what, if any, action is appropriate. Copies of all findings and recommendations shall be furnished to the Respondent.
11. The Hearing Committee shall be free to invite the Fellows of Harvard College to designate two Fellows to attend the hearings and participate in its deliberations without vote. It is expected that ordinarily the Committee will issue such an

- invitation; but in any particular case the Committee may determine that such attendance or participation would under the circumstances be undesirable or unnecessary. If the Committee so determines it shall take other steps to assure that the President and Fellows will have the fullest possible appreciation of the issues and the evidence.
12. The Hearing Committee may invite other non-voting observers to attend its sessions.
 13. The Faculty members of the University Committee on Rights and Responsibilities shall be charged with working out procedures to be followed by Hearing Committees. These procedures shall assure the Respondent a full hearing and fair representation before an impartial tribunal.
 14. Upon receiving the recommendations of the Hearing Committee, the President and Fellows shall, before acting on the case, allow the Respondent a reasonable opportunity to submit such further arguments as he may deem fit.
 15. If the President and Fellows are not disposed to accept the recommendations of the Hearing Committee, they shall transmit their findings in detail to that Committee, which shall then review the case and make such further recommendations to the President and Fellows as it deems appropriate. Copies of all such findings and recommendations shall be furnished to the Respondent.
 16. In any case where the Respondent is a student and also holds a Corporation appointment specified in paragraph 1, above, the question of his status as a student shall first be determined, in accordance with the procedures governing the discipline of students in his School. If such a proceeding leads to the termination of his status as a student, and if his Corporation appointment is conditioned on his being a student (e.g., certain teaching fellows), that appointment will automatically terminate. If a separate proceeding is appropriate to determine whether such person should retain his Corporation appointment, the procedures specified in these recommendations shall be followed. Any board or committee charged with the findings of fact in any such case may, if the Respondent agrees, adopt findings of fact already made by any other duly constituted board or committee which has considered the case.
 17. If a Respondent is a member of more than one Faculty, his "home" Faculty for the purpose of these procedures shall be the Faculty where his principal activities are centered. In case the matter is in dispute, the Faculty members of the University Committee on Rights and Responsibilities shall resolve it.
 18. None of the foregoing shall prevent the working out, with the consent of interested parties, of *ad hoc* or informal procedures to be followed in individual cases.

Votes Adopted on February 9, 1972 by the University Committee on Rights and Responsibilities

VOTED: That, in accordance with Paragraph 5 of the Procedures Concerning Discipline of Officers (adopted by the President and Fellows on October 4, 1971), the Faculty members of the University Committee on Rights and Responsibilities shall, in any case involving a member of a Faculty which has fewer than twenty (20) tenured members and upon request of either the Complainant or the Respondent, appoint a Hearing Committee which consists of three members of the Faculty involved and four members of other Faculties of the University.

VOTED: That, in accordance with Paragraph 8 of the Procedures Concerning Discipline of Officers (adopted by the President and Fellows on October 4, 1971), the Faculty members of the University Committee on Rights and Responsibilities shall, in designating the members of a Hearing Committee, observe the following procedures:

- (a) The Faculty members of the Committee shall first determine the ratio of home Faculty to outside Faculty to serve on the Hearing Committee. Such determination shall be made solely on the basis of Paragraphs 5, 6 and 7 of the Procedures Concerning Discipline of Officers, and any action of the Faculty members of this Committee or the home Faculty taken in accordance therewith.
- (b) There upon the Faculty members of the Committee shall select the members of the Hearing Committee by lot from the pool of Faculty members available to serve, provided however, that no single outside Faculty shall be represented by more than one member on any Hearing Committee (except in cases in which the home Faculty has voted that a Committee consist entirely of outside faculty, in which case no outside Faculty shall be represented by more than two members on any Hearing Committee), and provided further that if the Respondent does not have tenure one of the two non-tenured members of the Hearing Committee shall be a member of an outside Faculty and the other shall be a member of the Home Faculty (except in cases in which the Home Faculty has voted that the Committee consist entirely of outside Faculty), and provided further that to the extent practicable any person who has served on a Hearing Committee shall not be selected again from the pool until all other eligible members of the pool have also served on a Hearing Committee.

VOTED: That, in accordance with Paragraph 13 of the Procedures Concerning Discipline of Officers (adopted by the President and Fellows on October 4, 1971), the following Statement of Hearing Procedures shall be applicable to hearings before any Hearing Committee designated in accordance with such Procedures Concerning Discipline of Officers.

Statement of Hearing Procedures

(1) When a case involving the possible discipline of an officer of the University is referred to a Hearing Committee, as contemplated by the Procedures Concerning Discipline of Officers (adopted by the President and Fellows on October 4, 1971), the Hearing Committee shall serve the officer (referred to hereinafter as the Respondent) and the person bringing the charges (hereinafter referred to as the Complainant) notice of hearing with specific charges in writing at least 20 days prior to the hearing. The notice of hearing shall set forth the name and Faculty of each member of the Hearing Committee, and shall identify the member the Committee who has been elected by the Committee to serve as its Chairman. The University Committee on Rights and Responsibilities shall designate, by lot in accordance with its usual procedures, a replacement for any Committee member so challenged. The Respondent may waive a hearing or may respond to the charges in writing at any time before the hearing. If the Respondent waives a hearing but denies the charges against him or asserts that the charges do not support a finding that there has been a violation of the third paragraph of the University-wide Statement on Rights and Responsibilities or that there has been grave misconduct or neglect of duty (as contemplated by the Third Statute of the University), the Hearing Committee will evaluate all available evidence and rest its recommendation upon the evidence in the record.

(2) During the proceedings the parties will be permitted to have present a limited number of academic advisors and counsel of their choice, and at the request of either party, or by vote of the Hearing Committee, a representative of either a University-wide Faculty Council or Senate (if one shall be formed), or of the American Association of University Professors, or both of them, shall be permitted to attend the proceeding as observers.

(3) The Hearing Committee shall be free to invite the Fellows of Harvard College to designate two Fellows to attend the hearings and participate in its deliberations without vote. It is expected that ordinarily the Committee will issue such an invitation; but in any particular case the Committee may determine that such attendance or participation would under the circumstances be undesirable or unnecessary. If the Committee so determines it shall take other steps to assure that the President and Fellows will have the fullest possible appreciation of the issues and the evidence.

(4) It shall be with the discretion of the Hearing Committee to permit additional persons to attend the proceedings. The Committee shall exercise its discretion in this regard after consultation with the parties, provided that the Committee will normally give great weight to a request by the Respondent that attendance of additional persons be limited.

(5) A verbatim record of the hearing or hearings will be taken.

(6) The burden of proof that there has been a violation of the third paragraph of the University-wide Statement on Rights and Responsibilities or that there has been grave

misconduct or neglect of duty (as contemplated by the Third Statute of the University) rests with the Complainant and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

(7) The Hearing Committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

(8) The parties will be afforded an opportunity to obtain necessary witnesses and administrative officers of the University will, insofar as it is possible for them to do so, seek to secure the cooperation of such witnesses.

(9) The Respondent and the Complainant will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but the Hearing Committee determines that the interest of justice require admission of his statement, the Hearing Committee will identify the witness, disclose his statement and if possible, provide for interrogatories.

(10) The Hearing Committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

(11) The findings of fact and the decisions will be based solely on the hearing record.

(12) Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements, and publicity about the case by either parties or member of the Hearing Committee will be avoided so far as possible until the proceedings have been completed, including consideration by the Corporation.

(13) The Hearing Committee will furnish the President and Fellows, the Respondent and the Complainant with copies of its findings and recommendations, and, upon request (and without charge), a transcript of the record of the hearing or hearings.

(14) None of the foregoing shall prevent the working out by the Hearing Committee, in consultation with the parties, of ad hoc or informal procedures to be followed in individual cases.