Policy Change Cover Sheet

This form must completed for each policy presented. All areas in red including the header must be filled in or it will be sent back to you for completion. Gender-inclusive language should be used in revised and new policies submitted to SCC.

*If the revisions you are requesting include housekeeping changes, please submit the housekeeping changes first. The SCC Secretary will notify you once the housekeeping changes have been made and you can submit the Policy Change Cover Sheet at that time. Please submit housekeeping changes to ndsu.scc@ndsu.edu.

Refer to the NDSU Senate Coordinating Council process for more information about housekeeping changes.

Policy Number and Name: 350.4: BOARD REGULATIONS ON HEARINGS AND APPEALS

Effect of policy addition or change: Explain the important changes in the policy or effect of this policy. Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s):

The changes were made to be in alignment with changes made to the SBHE/North Dakota University System policy 605.2. See SBHE minutes 4/29/2021 at https://ndus.edu/sbhe-overview/agendas-minutes-videos/. Also copied below: Policy underwent legal review and recommended edits after conclusion of a recent Standing Committee on Faculty Rights hearing which brought to light additional clarification needed in several areas. Due to the sensitive nature of the policies extra time was allowed for committee and council review and feedback. System office employees and legal attended the February CCF meeting to review the recommended changes. After a thorough review and discussion, the CCF supported the changes overall. These changes bring the policy closer into line with the analogous HR Policy, while still respecting the unique nature of the faculty position. The changes also reflect needed clarifications and policy improvements.

Section 1: Clean-up item referencing the corresponding SBHE policy
Section 3: Clarifies that when either party refuses to participate in discovery, the SCOFR may consider that as part of the recommendation. The final decision maker is still the President.
Section 5 (and elsewhere): Change in terminology—the SCOFR makes recommendations; the President makes decisions on the appeal.
Section 6 Provides that the SCOFR may request independent advice from an NDUS attorney who does not represent the institution.
Section 7: Provides that electronic recording of the SCOFR hearing is sufficient to meet the requirement that a transcript be prepared. This change was made due to the cost of obtaining a transcript prepared by a court reporter, which often reaches thousands of dollars.
Section 8: Clarifies that the committee’s findings of fact are limited to the appeal before the committee, and that any recommendations outside of the appeal issue (although warranted) (such as policy, procedure, or other changes) should be vetted through the normal process.

Section 11: Provides the President with additional time to reach a final decision due to unforeseen circumstances.
UPDATE FROM LEGAL 10/8/2021: M. Hammer: Added omitted language to section one: "The written notice shall include the specific reasons or grounds upon which the request for a hearing is based."

Is this a federal or state mandate:  ☐ Yes  ☒ No (but from SBHE)

Individual/Department/Committee or Organization submitting the policy change: Faculty Affairs/Office of the Provost

Date Submitted to SCC Secretary: 9/26/2021

Email address of the person who should be contacted if revisions are requested: canan.bilen.green@ndsu.edu

The SCC Secretary will keep record of all actions taken on this policy change request on the SCC policy tracking spreadsheet. You will be notified once the policy has been approved and updated or if further revisions are requested.
SECTION 350.4
BOARD REGULATIONS ON HEARINGS AND APPEALS

SOURCE: SBHE Policy Manual, Section 605.1, 605.2, 605.3, 605.4

1. A faculty member may request a hearing with the Standing Committee on Faculty Rights in accordance with NDSU Policy 350.3 (SBHE Policy 650.3) by filing a written notice, accompanied by a specification of the reasons or the grounds upon which the appeal is based, with the Committee chair or senior member of the Committee and the institution's president. The written notice shall include the specific reasons or grounds upon which the request for a hearing is based. The institution shall have ten business days from receipt by its president of the notice and specifications to file a response with the Committee Chair or senior member of the Committee and the faculty member.

2. The Committee shall appoint, at the expense of the institution according to institution procedures, a hearing officer with authority to conduct pre-hearing meetings, supervise exchange or collection of information, advise the Committee or preside over the hearing. The faculty member, the institution and their representatives shall comply with all reasonable directives and requests of the hearing officer appointed by the Committee. The institution shall provide necessary clerical support for the Committee, and upon request, for the hearing officer.

3. The Committee or the hearing officer shall hold a pre-hearing meeting or meetings in order to (a) simplify the issues, (b) effect stipulations of facts, (c) provide for or assist with the exchange of documentary or other information, or (d) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious. The faculty member, the institution and their representatives shall participate in pre-hearing meetings upon request and comply with the directives of the Committee or the hearing officer. ("Discovery" is defined as the exchange or collection of information.) Discovery shall be informal and formal depositions or interrogatories for the purposes of discovery are not permitted, except by with agreement of the parties. Failure to participate in discovery or at the pre-hearing conference, or to comply with the directives of the committee by either the faculty member or the institution may be considered by the committee when it issues its recommendation.

4. The Committee or the hearing officer shall serve written notice of hearing on the faculty member and the president or their representatives at least twenty calendar days prior to the hearing.

5. The faculty member and the institution may stipulate to a decision-resolution on the basis of the written statements, in which case the Committee shall make its decision on that basis.

6. During the proceedings the institution and the faculty member are entitled to have an administrative or academic advisor and counsel of their choice and at their own expense. The committee may request that it be provided with counsel that does not represent the institution or employee to advise it throughout the process; such counsel may include counsel who advise other institutions or the NDUS office. Proceedings concerning the appointment or removal of a faculty member may, pursuant to N.D.C.C. Section 15-10-17, be closed, unless the faculty member requests that the proceedings be open, in which case the proceedings shall be open. Proceedings
not concerning the appointment or removal of a faculty member, including proceedings concerning
discipline not involving dismissal, shall be open. Proceedings shall be closed to the public unless
the faculty member requests that the proceedings be open. N.D.C.C. ch. 44-04’s open meetings
requirements do not apply to the committee’s proceedings.

7. A verbatim transcript of the hearing or hearings shall be made at the institution's expense and shall
be accessible to both parties. An electronic recording of the hearing or hearings is sufficient to
meet the requirements of this paragraph. A party shall be provided a copy of the record, or part of
the record, upon request, at the institution's expense.

8. The findings of fact, conclusions and the decision recommendations shall be based solely on the
evidence received by the Committee. In cases brought under section 605.3(4), the faculty member
has the burden of persuasion to prove, by a preponderance of the evidence, that the action violated
the faculty member's rights; in cases appealed pursuant to section 605.3(8) or (9), the burden of
proof that grounds for the institution's action exist shall rest with the institution and be satisfied
only by clear and convincing evidence in the record considered as a whole. The committee’s
findings of fact, conclusions, and recommendations shall be limited to the appeal before the
committee. If the committee has recommendations for policy, procedure or other institutional
changes related to the appeal, those recommendations may be raised through the ordinary process
for such changes.

9. The Committee may admit any evidence which is of probative value in determining the issues or if
the interests of justice will best be served by admitting the evidence. Every reasonable effort shall
be made to obtain the most reliable evidence available. The Committee shall grant adjournments to
enable either party to investigate evidence as to which a valid claim of surprise is made.

10. The faculty member shall be afforded an opportunity to obtain necessary witnesses and
documentary or other evidence. The institution shall cooperate with the Committee in securing
witnesses and making available documentary and other evidence. The faculty member and the
institution shall have the right to confront and cross-examine all witnesses. Testimony may be taken
by deposition, including deposition by telephone, or witnesses may testify by telephone, facsimile,
video or other electronic means, upon agreement of the parties or, absent an agreement, upon
request of a party and determination by the Committee or hearing officer that such use does not
substantially prejudice the rights of any party. Affidavits may be received into evidence upon
stipulation of the parties.

11. The Committee's findings of fact, conclusions and recommendations, with supporting reasons, shall
be reported, in writing, to the institution's president and the faculty member or the faculty
member's representative. If the institution's action was a notice of dismissal and if the Committee
concludes that adequate cause for dismissal has been established, but that a lesser penalty would
be more appropriate, it may so recommend with supporting reasons. The president shall make a
decision and provide written notice of the decision, including findings of fact and reasons or
conclusions based on the hearing record, to the Committee and the faculty member within twenty
calendar days of receiving the report, unless the president determines that more time is required
due to unforeseen circumstances, in which case the president may extend the period by 10
calendar days on notice to the parties and committee. The faculty member or Committee may,
within ten calendar days of the decision, submit a written response to the decision, to which the
president may, but is not required to, reply.

12. The decision of the president is final.
13. This Policy shall not apply to appeals from a determination of responsibility regarding a formal complaint of sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.

HISTORY:
Replaces portions of Policy 605, SBHE Minutes April 25, 1995, pg 6554.
Amended April 25, 1995
Amended March 1998
Amended February 2001
Amended August 2003
Amended December 2005
Amended August 14, 2020
Amended December 14, 2020