

North Dakota State University

Policy Manual

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). 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 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 resolution based on the written statements; in which case the Committee shall make its recommendation 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 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 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
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