

SPECIAL REPORT
of the
ACADEMIC PERSONNEL POLICIES COMMITTEE
Concerning
**PROCEDURES FOR DEALING WITH VIOLATIONS OF THE CODE
OF PROFESSIONAL ETHICS FOR THE FACULTY**

presented at the
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I. PURPOSE AND SCOPE

The Code of Professional Ethics (CPE) for the Faculty is specified in Sen. Doc. No. 78-025, and, as amended, in Sen. Doc. No. 80-064 and Sen. Doc. No. 89-039. The purpose of this report is to provide a set of procedures for dealing with charges of violations of the CPE, and disciplinary actions to be used in case the CPE is found to have been violated. These procedures are intended to provide a fair, prompt and reliable process for determining whether or not the CPE has been violated. The procedures are applicable to all faculty members at the University of Massachusetts at Amherst, including those in administrative positions. The process can be invoked by any member of the University, including the administration, faculty, students, and staff. Charges of violations can also be brought to the attention of the University administration by individuals or organizations outside the University.

Violation of the CPE is injurious to members of the University community, as well as to the reputation of the University. According to the CPE, a high standard of ethics is expected of the faculty members. The CPE contains a list of general goals and ideals, such as: "They [faculty members] practice intellectual honesty;" and "They respect and defend the free inquiry of their associates.." The degree to which these ideals are achieved by each faculty member may be very difficult to determine. Hence, except in clear cases of violations or patterns of violations, it may be difficult to prove whether ideals of this type have been violated. The objectives of the procedures presented in this document are to determine and deal with clear cases of violations of the CPE, while at the same time minimizing the possibility of unwarranted accusations and misuse of the CPE.

The CPE provides guidelines in a broad range of faculty activities including, but not limited to, research, teaching, relations with other faculty members and students, and activities in the public sector. Charges and determination of violations in some of these activities are addressed by other procedures specifically devised for those activities. For example, charges of scholarly misconduct, which for the most part involve research related activities, are addressed in Procedures Dealing with Charges of Misconduct in Scholarly Activities, Sen. Doc. No. 90-038, and disciplinary actions for the same are specified in Sen. Doc. No. 91-009. Similarly, charges of sexual harassment are addressed in the (interim) Sexual Harassment Policy and Grievance Procedure (final form pending). In the future, there may be other procedures developed for other specific activities. In instances where more specific procedures pertain, the Procedures for Dealing with Violations of the Code of Professional Ethics defers the matter to the specific procedures addressing that issue. Otherwise, the procedures described in this document will apply.

The Office of the Provost will be responsible for administering this procedure and its grievance procedure, and for coordinating its implementation with other procedures that may be in use simultaneously. When there is a charge of violation of the CPE, the Office of the Provost determines which procedure(s) are to be invoked to deal with the complaint(s) in question. It is also the responsibility of the Provost's Office to facilitate the information flow between different groups investigating charges under different procedures, if more than one procedure is activated.

Because of the broad nature of the CPE, violations can occur in a wide variety of ways. Hence, the procedures must be broad and versatile in order to deal with all kinds of violations. For example, certain types of violations might be directed against one (or several) individual(s), who may act as the complainant(s) and who may have the right to negotiate a resolution in the case. On the other hand, some violations may have the nature of being directed against the University (or its reputation) as an institution. In such cases, University officials will act as the complainants representing the University.

This procedure is not intended to impair or limit the right of anyone to seek a remedy available under state or federal law. A complainant may file a complaint with an external body without jeopardizing his/her right to a University hearing.

If the respondent (person charged with violation of the CPE) is a member of the Chancellor's staff holding academic appointment, the Chancellor will fulfill the responsibilities assigned to the Provost in this procedure. If the respondent is the Chancellor, the President of the University will fulfill the responsibilities assigned to the Provost.

The Office of the Provost will be responsible for providing information regarding these procedures. Any informal request for information and consultation with the Office of the Provost or with other University entities will not, in itself, be construed as an allegation of violation of the CPE.

II. DEFINITIONS

Complainant(s) is any person who files a complaint that the University's CPE has been violated by a faculty member(s).

Respondent(s) is a faculty member who is alleged to have violated the CPE.

The Code of Professional Ethics Board (the Ethics Board, or the Board) is the University body responsible for interpreting the CPE and for making recommendations of policy and procedural changes to the Faculty Senate. The Ethics Board consists of two faculty members from each college (school or faculty) nominated by the college (school or faculty) personnel committees in consultation with the respective deans and appointed by the Provost, and five at-large members nominated by the Committee on Committees of the Faculty Senate and appointed by the Provost. The Ethics Board plays a major role in hearings on violations of the CPE, as described below. All members of the Board are appointed for staggered three year terms; members can serve successive terms. The Ethics Board elects one of its members as the Chair for a one year term; the Chair can serve successive terms. The Board meets at least once a year to elect a Chair, regardless of other business.

The Preliminary Review Committee (PRC) is a three person committee appointed by the Chair (of the Ethics Board) from members of the Board upon notification by the Provost that a formal complaint of a CPE violation has been filed. One member of the PRC will be from the respondent's college (school or faculty), but if possible not from the respondent's department.

The Hearing Panel is a seven person panel appointed by the Chair from

members of the Board to conduct the formal investigation in a CPE violation case. At least one member of the Panel shall be from the respondent's college (school or faculty). The Panel may include at most one member from the PRC that reviewed the case. The Chair will designate one member of the Panel to serve as the Presiding Officer.

The complainant or the respondent may appeal the appointment of a member(s) of the PRC and/or the Hearing Panel to the Chair of the Ethics Board on the grounds of conflict of interest or that the member's participation would jeopardize the party's right to a fair and reliable review or hearing. The Chair shall reconstitute the PRC or the Panel taking the appeal into consideration. If the appealing party is not satisfied with the Chair's action, he/she may appeal the decision to the Provost. The Provost's decision shall be final.

III. TIMELINESS

Timeliness in investigating a complaint is of the essence of just and fair procedures. In the interest of the parties concerned, all matters should be handled as expeditiously as possible. Deadlines cited in this document are intended to serve as outside limits for actions to occur. All persons charged with administering this procedure will try to meet all deadlines, but failure to do so will not prevent the process from continuing, unless the complainant or the respondent demonstrates to the Chair of the Ethics Board some prejudice stemming from a delay. The schedule and deadlines in this document expressed in "days" or "working days" are to apply only during the Fall and Spring semesters as specified by the academic calendar.

A complainant will have sixty (60) days following an alleged violation of the CPE to file a formal complaint unless he or she can show good reason (as determined by the Chair of the Ethics Board) for having that deadline waived.

If a respondent fails to answer a charge or to participate in a hearing, his/her dean will be notified of that fact by the Chair of the Ethics Board. Failure to respond to a charge or to appear at a hearing will be considered a breach of an employee's responsibility and it will not prevent this process from proceeding. In such instances, the hearing may proceed on the basis of the existing testimony and evidence.

IV. RETALIATION

No individual will be penalized by the University or by any person for participating in the procedures described here. Any act of retaliation directed against either a complainant or a respondent will be subject to a grievance procedure. Complaints of retaliation should be addressed to the Chair of the Ethics Board, who will advise the grievant of his/her rights in this matter. The Ombuds Office will assist the alleged victim of retaliation in preparing a complaint which will then be processed in the same manner as a complaint of violation of the CPE. When circumstances warrant, the Chair of the Ethics Board may request that the Provost intervene to provide protection for the grievant. If any complaint of retaliation names the Chair of the Ethics Board, the complaint will be heard by the Provost.

V. PROCEDURES

It is the responsibility of any member of the University community to inform University officials when a possible violation of the CPE is encountered. It is not necessary that a person filing a complaint be directly affected by the action in question; it is sufficient that the complainant believe that the CPE has been violated. Circumstances involving possible violations of the CPE should be referred to the department head/chair, the dean or the Provost. Any other person associated with the University receiving a complaint alleging violations of CPE shall forward it to the respondent's dean or the Provost within five (5) working days.

It is also possible for individuals or institutions outside the University to bring a charge of violation of the CPE to the attention of University officials. In some cases a possible violation of the CPE may become public knowledge through the media. In such cases, it is the responsibility of the Office of the Provost and the appropriate dean to evaluate the allegation or implication as a possible complaint and to activate the procedures described in this report when appropriate. In cases where the alleged violation is directed against the University rather than against an individual, the University officials shall act as the complainants in the case.

A. Informal Resolution

In claims of CPE violations, as in many other areas of grievance, informal resolution of the matter between the parties involved may be possible and desirable. Especially in cases where the alleged violation is an act which affects an individual complainant and is of private nature, informal resolution may be a feasible avenue. Informal resolutions can be mediated at the department or college level and at any stage of the procedures outlined in this report. Since informal resolutions of disputes can vary greatly in their nature and the level at which they are mediated, this report does not make any attempt to set guidelines for the informal resolution of grievances. It simply recognizes it as a possibility which is not to be precluded by the formal procedures described in this report. The Ombuds Office can be used by either of the parties as a resource in seeking an informal resolution. Upon reaching a satisfactory informal resolution, the complainant may, at any point during the formal procedures, drop the complaint of violations of the CPE. In that case, all charges against the respondent will be dropped and the matter will be closed.

University officials and bodies named in the formal procedures can participate and mediate informal resolution between parties, but they should not in any way pressure the complainant or the respondent in that direction.

B. Filing a Complaint

Allegations of violation of the CPE may be made orally as well as in writing, although an oral complaint cannot be considered as a formal complaint. The University official receiving an oral complaint, depending on the nature and severity of the allegation, may intervene to take remedial action and/or may suggest and explore the possibility of an informal resolution between the parties. The Ombuds Office and other resources of the University may be used in seeking informal resolutions of disputes.

Depending on the severity of the allegation and the available evidence, the University official receiving an oral complaint may file a formal complaint on behalf of the University, if the complainant is unwilling to file a formal complaint.

If the complainant does not wish to disclose his/her identity as a complainant, or a complaint is transmitted anonymously, such a complaint cannot be considered as a formal complaint. In such cases, the University official receiving the complaint, based on the severity of the allegation and the evidence available to substantiate it, determines whether or not to file a formal complaint on behalf of the University.

Any complainant who is not satisfied with the informal resolution process or is not interested in seeking one may file a formal complaint regarding the alleged violation of the CPE.

C. The Formal Complaint

Anyone who believes a violation of the CPE has occurred may file a complaint in writing with the department head/chair, the dean, or the Provost. The complaint should state clearly and concisely the complainant's description of the alleged violation; it should also indicate any remedy sought. The complaint must be signed by the complainant. The office receiving a formal complaint, including those from outside the University, shall forward it and all related evidence to the Provost's Office within five (5) working days. If a possible violation becomes known through the media, the respondent's dean shall report the allegation in writing to the Provost's Office.

At any point during the formal procedures, a complainant may withdraw his/her charge of violation of the CPE. In that case, all charges against the respondent will be dropped and the matter will be closed, unless the respondent wants to have the procedures carried to completion. In those cases, the formal procedures shall continue, possibly without the participation of the complainant.

D. The Preliminary Review

The Provost's Office will forward the formal complaint and all other evidence to the Chair of the Ethics Board within five (5) working days of receipt. Within five (5) working days of receiving the complaint, the Chair will appoint a three person Preliminary Review Committee (PRC) to conduct a preliminary review of the complaint, appoint one of the members as the coordinator of the Committee and forward all materials to the coordinator. The PRC shall complete its review and submit its written recommendation to the Chair of the Ethics Board with copies to the respondent and to any complainant, within twenty (20) working days of the receipt of the formal complaint.

The PRC will inform the complainant and respondent that it is reviewing the complaint. If the respondent desires, he/she may respond within ten (10) working days. The PRC may consult informally, on a confidential basis, with the head/chair of the department involved and with others in the University community, gather information and conduct preliminary fact finding in carrying out the preliminary review. Immediate action should be taken to protect any

data or other materials involved, including obtaining secure possession of such materials. The PRC will meet with all three members present and will make decisions by majority.

At the end of its review the PRC will make a determination whether there are reasonable and adequate grounds to warrant additional investigation of charges of violation of the CPE. The standard of proof to be used by the PRC shall be a "preponderance of evidence." A decision by the PRC to recommend proceeding with additional investigation does not constitute a finding that violation has occurred; it means that there is reasonable likelihood that a violation might have occurred. The purpose of the preliminary review is to eliminate any baseless and unwarranted allegations.

The recommendation of the PRC shall specify either that there is sufficient substance to the claim of violation of the CPE to warrant further review or that the allegation or other information is without substance and the matter should be closed. If the PRC's recommendation is to proceed to the next level review, within ten (10) working days following PRC's decision, the Chair of the Ethics Board shall appoint a Hearing Panel to conduct the formal investigation, designate the Presiding Officer of the Panel and send the PRC's findings and all other evidence on the matter to the Presiding Officer of the Hearing Panel. If the PRC's recommendation is not to proceed, the matter will be closed. Any complainant may appeal PRC's decision to drop the charges to the Provost within ten (10) working days. Upon appeal, the Provost shall review the record and make the final decision on whether to proceed to the next level of review, within fifteen (15) working days following the appeal. If the Provost's decision is to proceed, the Chair of the Board shall appoint a Hearing Panel; if it is to drop the charges, the matter will be closed.

E. The Hearing

The hearing is an investigatory administrative procedure which is intended to provide a determination as to whether the University's CPE has been violated. In determining whether an alleged action constitutes violation of the CPE, those entrusted with administering this procedure will look at the totality of the circumstances, such as the nature of the action and the context in which it occurred. The parties will be given a full and fair opportunity to be heard. The hearing, although formal, is not a court proceeding. It will be governed by the rules set forth in this procedure and reasonable interpretations of these rules. Complainants and respondents will be expected to speak for themselves except in unusual cases, when the Panel may permit a representative to speak for a party. The Hearing Panel will hear and admit information which it believes is pertinent to the case.

Before the case is heard by the Hearing Panel, the complainant and the respondent, along with their advocates, if any, will meet with the Presiding Officer of the Panel to attempt to clarify the issue and to define the areas of disagreement. To encourage a fair and focused hearing, the Presiding Officer will notify the Panel at the start of the proceedings about the points of agreement and disagreement. The parties will each submit to the Presiding Officer the names of individuals who can provide information which may be helpful to the Panel, along with a rationale for each person named.

The Hearing Panel will hear testimony and consider evidence related to

the complaint. The Panel will determine whether the CPE has been violated. The Hearing Panel may consult with University Counselor or have his or her assistance at the hearing.

If either party wishes to submit any written argument after the hearing, he/she will notify the Presiding Officer within two (2) working days after the conclusion of the hearing. The written argument will be submitted within ten (10) working days after the hearing's conclusion.

1. Duties and Powers of the Presiding Officer

The Presiding Officer will:

- a. conduct the prehearing meeting with the complainant(s) and the respondent(s) and define issues of contention;
- b. ensure an orderly presentation of all information;
- c. ensure that the proceedings are accurately recorded; and
- d. see that a fair and impartial decision based on the information presented at the hearing is issued by the Hearing Panel no later than ten (10) working days after the conclusion of the hearing or, when additional written arguments are submitted, ten (10) working days after their submission.

2. Duties and Powers of the Hearing Panel

The Hearing Panel will:

- a. meet with two-thirds majority (at least 5 out of 7);
- b. conduct a fair and impartial hearing which ensures the rights of all parties involved;
- c. define issues of contention;
- d. receive and consider all relevant information which fair and reasonable persons would generally consider reliable and which has a direct bearing on the particular factual question to which it is addressed;
- e. ask relevant questions of the complainant, respondent, and any persons addressing the panel, to assist the Panel in determining the facts;
- f. ensure that the complainant and respondent have full opportunity to present their claims orally or in writing, and to present witnesses and information which may help establish their claims;
- g. continue the hearing to a subsequent date if necessary to ensure a full presentation of the facts, and complete the hearing within fifteen (15) working days of its start;
- h. change the date, time or place of the hearing when it finds it

necessary or for good reason shown by either party, and with due notice to all parties;

- i. permit both parties to submit written arguments within ten (10) working days from the conclusion of the hearing;
- j. decide by majority vote of its full membership (i.e., by at least 4 out of 7) on all questions of fact, interpretations of the rules, regulations and policies, recommendations for penalties and relief, and any request that are made during the hearing.

3. The Conduct of the Hearing

The Hearing Panel will conduct its hearings according to the following procedures:

- a. Unless otherwise agreed by the majority of the Panel, a closed hearing will be held within fifteen (15) working days after the Hearing Panel has been appointed. All deliberations of the Panel will be held closed to the public.
- b. The complainant and respondent will have the opportunity to hear all persons appearing before the Panel, to present and examine written documentation, and, at a time designated by the Panel, to respond to any information presented orally or in writing.
- c. Each party will have the right to be accompanied and advised by two persons, one of whom may be an attorney. If a party is to have an attorney present, advance notice to the other party and to the Presiding Officer is required. Advisors will not address the Hearing Panel directly except in special cases and with the permission of the Panel.
- d. If either party is a member of a collective bargaining unit, upon the request of the party, representatives of that union may be present as one or both of the advisors specified above. However, neither party will be required to be advised by a union representative. When there is no request for union representation by a member of a union, the union will be given five (5) working days notice that a hearing has been scheduled, and will be allowed to send an observer who may be called on by the Panel to provide information concerning the union's opinion on the matter.
- e. The hearing will be sound recorded and the recordings will become the property of the University. After the hearing, either party may have supervised access to the tapes by applying to the Chair of the Ethics Board.

4. Order of the Hearing

The proceedings before the Hearing Panel will be as follows:

- a. The Presiding Officer will read the charge(s) and allow the respondent to either admit or challenge the allegation(s).

- b. The complainant may present a brief opening statement, followed by a brief opening statement from the respondent.
- c. The Hearing Panel will give each party the opportunity to present all relevant evidence and call witnesses.
- d. At the conclusion of any individual's statement and the panel's questioning, either the complainant or the respondent may propose additional relevant questions. The Panel will determine what questions are asked and will not permit repetitive or irrelevant questions, nor any badgering of individuals appearing before the Panel.
- e. Each party may make a concluding statement to the Hearing Panel. The statement may explain or interpret information presented to support the party's position concerning contested issues. It may also directly rebut statements or interpretations made by the other party or information presented on behalf of that party.
- f. The Hearing Panel, by a majority vote of its full membership (at least 4 out of 7), may make whatever rulings it deems appropriate concerning the procedure of a hearing, provided that the rulings are consistent with the procedures described in this document.

5. Decision of the Hearing Panel

After all the evidence and testimony, including the written arguments, if any, is presented, the Hearing Panel will convene for private deliberations to determine whether the University's CPE has been violated. A violation of the CPE will be found only when there is "clear and convincing evidence" that a violation has occurred.

The Panel will conclude its deliberations within ten (10) working days after receiving all of the information it has agreed to review. If additional time is required for a fair and reliable determination, the Panel may, by majority vote of its full membership, request that the Chair of the Ethics Board extend this deadline. A request to extend deliberations will include reasons for the extension and an expected date for completing them; copies of the request will also be sent to the complainant and the respondent.

At the conclusion of its deliberations the Panel shall submit its findings in writing to the Provost, the Chair of the Ethics Board, the respondent and the complainant. The Panel shall also send the record of the hearing, and all evidence and material related to the case to the Provost. The Panel's findings shall specify either that the charge(s) are without substance and the matter should be closed or that the violation of the CPE has occurred. If the Panel finds that the CPE has been violated, its findings will also specify recommended penalties for the respondent and, if appropriate, relief for the complainant. (See Section VI.) The findings of fact as well as the recommended penalty and relief will be based solely on the information presented at the hearing.

F. Decision of the Provost

The Provost, after consultation with the Chair of the Ethics Board, will

act upon the recommendations of the Hearing Panel within ten (10) working days of their receipt. The Provost's determination shall be based upon consideration of both the case in question and any prior record of violations of the CPE by the respondent. The Provost's decision may or may not be consistent with the Hearing Panel's recommendations. The Provost shall forward his/her decision in writing to the respondent, the complainant, if any, the Chair of the Ethics Board and the Hearing Panel, with specific explanations of any change in the Panel's recommendations.

Either the respondent or the Hearing Panel may request that the decision of the Provost be reviewed by the Chancellor by filing a written petition within ten (10) working days after receiving the Provost's decision. The decision of the Chancellor shall constitute the final University disposition of the matter and no further administrative appeals will be considered. The Provost shall be responsible for the implementation of the penalties and relief decided in the case.

The Provost, if it is necessary and appropriate, will communicate in writing the University's disposition of the matter to the relevant outside agencies or entities as required by rules and regulations or terms of contract(s) between the University and these entities.

VI. DISCIPLINARY AND RELIEF ACTIONS

The penalties recommended by the Panel and the Provost will reflect the nature and severity of the misconduct, and will include, but will not be limited to, any combination of the following: verbal admonition, written warning placed in the respondent's permanent file, removal from certain duties, probation, demotion, suspension with or without pay and termination. The Hearing Panel and the Provost, may make other appropriate recommendations, such as professional counseling, and may recommend relief for the complainant which would remedy any adverse academic or employment consequences of the case. Remedies may include such actions as: transfer of either the complainant or the respondent to another department or unit on the campus; a withdrawal without penalty from an academic course or program of study; or the removal of a respondent as supervisor of a complainant's academic work or employment.

Recommended penalties shall be consistent with Trustee personnel policies and may be subject to additional review or grievance only as specified in collective bargaining agreements in force at the time of the decision.

These disciplinary actions will not affect, or be affected by, any additional sanctions that might be imposed upon the respondent by any external agency or court.

VII. REPORTS AND RECORDS

All deliberations of the Preliminary Review Committee, the Hearing Panel and the Ethics Board (on specific cases) are closed to the public and all matters regarding specific cases shall be held strictly confidential. The Provost's Office will maintain a record of all CPE violation cases, including the complainant's and respondent's names, the outcome of all proceedings, and the penalties and relief imposed, if any.

Records of all formal negotiations, hearings and reviews will be kept by the Provost's Office. The records will be available to the Chair of the Ethics Board, the Ombudsperson, the Provost, the Chancellor, and the President, for use when determining an appropriate procedure or penalty for a subsequent complaint of CPE violation, when a complaint of retaliation is made, when a decision is appealed, or when the respondent is a candidate for a supervisory position.

The records will also be available to University Legal Counsel if needed for any proceeding related to this procedure, whether internal to the University or in any judicial or administrative proceeding in which the University, its trustees, officers, employees or agents are a party.

VIII. STANDARD OF PROOF

A violation of the CPE shall be found only where there is "clear and convincing evidence" indicating that a violation has occurred. The Hearing Panel, the Provost and the Chancellor shall be bound to make their determinations based on this standard of proof. During the preliminary review conducted by the PRC, the standard of proof will be less stringent and a "preponderance of evidence" shall be sufficient to arrive at a finding that additional investigation is warranted.

MOVED: **That the Faculty Senate adopt the Procedures for Dealing with**
06-92 **Violations of the Code of Professional Ethics for the Faculty at**
 the University of Massachusetts at Amherst, presented in Sen. Doc.
 No. 92-014.