

PRR Revision 2020: Rationale

The Boulder Faculty Assembly's Professional Rights and Responsibilities Document Revision Committee
September 1, 2020

Our charge

In the fall of 2018, at the Provost's request, the BFA created an ad hoc committee to revise the 2013 Professional Rights and Duties document (PRD). The committee's charge was to bring the PRD into compliance with the major revisions to the Laws and Policies of the Regents, and in particular, the changes to Article 5 "Faculty." The committee was comprised of Bob Ferry, BFA president; Jerry Hauser, former BFA president and Faculty Ombuds; Suzanne Soled, Director of Faculty Relations; Elvira Henson, Senior Managing Associate University Counsel; Michelle Krech, Senior Associate University Counsel; and chaired by Kathryn Pieplow, Senior Instructor Emerita.

Guiding principles

1. We revised for clarity throughout.
2. We defined "faculty" and to which classifications of faculty the PRR applies.
3. Part IV was revised specifically around the following concepts:
 - Retain valuable employees and create a welcoming, functional workplaces
 - Disputes should be resolved at the lowest level possible
 - Encourage informal resolution whenever possible
 - Progressive discipline

General Changes

1. We changed to gender-neutral language throughout the document
2. We added numbering, headings, & outlining elements for clarity and emphasis
3. We removed the "Appendix" and replaced it with a "References and Resources" section with links to relevant documentation. Our plan is for the links to be updated by the BFA office on a regular basis.
4. We updated and added references to the Laws & Policies of the Regents and CU Boulder policies throughout. Information, explanations, and definitions are in footnotes, while references are in endnotes. All references are linked, and the goal is for the BFA office to update the links regularly.

Specific Changes

Name

We changed the name from "Rights and Duties" to "Rights and Responsibilities." The document is now titled "Professional Rights Professional Rights and Responsibilities of Faculty Members and Roles and Professional Responsibilities of Academic Leaders" (PRR).

Preamble

We expanded the Preamble.

1. We added a definition of faculty to whom the PRR applies. The definition is consistent with that used in Regent Law and implemented on the CU Boulder campus.

2. We moved the authoritative sources for the PRR from Part I.
3. We removed the “Overview” section because the document is not excessively long, and the table of contents gives a good idea of what’s in the document.
4. We moved and incorporated the philosophical statements from the Overview into the relevant parts of the PRR.

Part I: Professional Rights of Faculty Members

This part is largely unchanged, although the new language better reflects the language in Article 5 as revised 2018-2020.

1. We renamed “academic ethics” as “professional integrity” and provided a definition.
2. The paragraph on the derivation of faculty rights was moved to the Preamble.

Part II: Professional Responsibilities, Ethical Principles, and Faculty Conduct

Parts II.A, II.B, and II.C are largely unchanged.

1. We clarified and updated language reflecting the changes to the Laws of the Regents.
2. The bulleted lists were reorganized to group similar ideas.
3. Part II.B was reformatted into a bulleted list of expected and unacceptable conduct to reflect the formatting of II.A and II.C.
4. Part II.C was renamed “Citizenship” from “Academic Citizenship.” The broader title better reflects this section’s focus on faculty’s “professional obligations and expectations that derive from membership in the community of scholars and the larger campus community.” We added inclusive excellence and shared faculty governance language.

The text in Parts II.D through II.J was deleted and replaced with links to relevant university policy related to the same content. The 2013 language mirrors language from university policies but does not duplicate all of the referenced policies. The 2020 revision refers readers to the policies themselves as they are more thorough, regularly updated, and this reduces potential conflicts in language between the PRR and university policy.

Part III: Roles and Professional Responsibilities of Academic Leaders

This section is, in essence, a job description for academic leaders. The section largely reprints APS 1026 “Roles and Responsibilities of Department Chairs.” APS 1026 is marked “approved for rescission: 07-01-2020,” on the grounds that this level of detail is more appropriate for the campus or unit level. We opted to keep Part III so that a “job description” will exist should APS 1026 be rescinded.

1. Part III was significantly reorganized to present larger, more general and philosophical statements before the more specific, enumerated duties of academic leaders.
2. The responsibilities listed in “Additional Obligations” from the 2013 version were incorporated into the Leader and Administrator sections in the 2020 revision.
3. We changed the title “chair” to ‘academic leader’ and “department” to “unit” to better reflect the wide variety of names for academic units at CU Boulder and the titles of their leaders.
4. Academic leaders are, by law, at-will employees, which was misstated in the 2010/2013 version of the PRR.
5. We generally tailored the language of Part III to CU Boulder rather than simply mirroring the language of APS 1026.
6. We have had significant input from several administrators at CU Boulder and the system level to help us clarify specific faculty responsibilities (especially fiscal, research).

Part IV: Process for Review of Faculty Conduct and Responses to Unprofessional Conduct by a Faculty Member

We emphasize training for Academic Leaders throughout Parts III and IV. Academic Leaders come from the faculty and typically have little training in administration. The Office of Faculty Relations has undertaken a number of training programs for new and continuing Academic Leaders. Part IV was revised with an eye to helping Academic Leaders by providing step-by-step instructions for how to provide and protect due process rights for faculty when concerns about unprofessional conduct are raised. We also attempted to make it clear that while Faculty Relations is available to help with inquiries, responsibility for the inquiry and any sanction imposed lies with the Supervising Administrator. Faculty Relations is never the sole reviewing authority for unprofessional conduct.

Part IV was revised with the goal of making the process logical and as clear and understandable as we could make it.

Preserving Relationships

Our emphasis throughout Part IV was that disputes should be resolved in ways that supported relationships rather than punished people for perceived wrongs. Therefore, we emphasize resolving disputes informally, in a variety of ways, and at the lowest possible levels.

1. We included examples of the range of responses to unprofessional conduct available (IV.A.3.b) to emphasize that Supervising Administrators have a wide variety of tools available to them when it comes to responding to unprofessional conduct and provide examples of those options.
2. We removed the term complainant as being too legal.
3. We distinguished between and added definitions for “concerns” about possible unprofessional conduct and “allegations” of unprofessional conduct to encourage conversations about behavior.
4. We changed the generally used term “sanction” which included the entire range of possible actions to “responses” and “sanctions” to reflect our emphasis on informal resolution rather than punishment.
5. We substituted “inquiry” for “investigation” in order to emphasize the relational nature of this process.

Due Process

We increased and clarified due process rights for faculty (tenured and tenure-track, and instructors with contracts if those contracts state that the PRR applies to the instructor). Our goal was to provide transparency and fundamental fairness throughout. We also believe that this process reflects best practices and provides a checklist for handling concerns about unprofessional conduct by at-will employees.

1. We reordered the sections throughout Part IV and itemized a number of points so that the steps are more clear and sequential throughout the inquiry process.
 - a. Recusal was moved to “General Principles,” as it may happen at any stage of the process if a conflict of interest arises (IV.A.9).
 - b. The Appeals section was moved from the middle of the inquiry process to after a sanction(s) is imposed, which is when an appeal would occur (IV.E).
2. When it appears that concerns about unprofessional conduct have merit and may result in sanctions being imposed, the faculty member receives written notification (IV.C.3.c).
3. We clarified the right of Responding Faculty to meet with the Supervising Administrator to respond to allegations and provide information they would like to be considered (IV.C.3.c.iii).
4. We list the information that should appear in a written report following a decision by the Supervising Administrator, regardless of whether the Supervising Administrator concluded that the allegation(s) had merit. This new provision is important as it appears to be the only place where we

address the Supervising Administrator's decision-making and the faculty member's rights to information about the decision (IV.C.5.c).

5. We add a standard of review for determining whether conduct was unprofessional. That standard is a preponderance of the evidence.

Appeals

The process for appealing findings of unprofessional conduct was strengthened.

1. We clarified the reasons for appeal: procedural errors and/or disproportionate sanction(s) imposed.
2. New information is grounds for appeal only if that information could not reasonably have been presented in the earlier proceedings and which the Responding Faculty Member believes materially changes the determination or sanction.
3. The time to appeal was extended from 10 working days to 20 working days (essentially one month).
4. We clarified what the Reviewing Administrator reviews on appeal (IV.E.4.b).
5. We attempted to clarify the role of the BFA Grievance Committee – which is only to review the process for errors (this is the same review that P&T provides faculty in Article 5.D).
6. In response to complaints that once an allegation has been made, no one ever hears what happens. We made the PRR's grievance process more transparent, responsive, and timely.
7. We encourage a general 60-day process (IV.A.8.a).
8. We added the ability to extend time for good cause (IV.A.8.c).

The PRR Revision Committee envisions two clear roles for the BFA Grievance Committee:

1. Clearing house – communicate avenues for complaints
2. Upon appeal, the committee would review the process that resulted in a sanction.

Future considerations

Two themes emerged during our deliberations that we have presented to the Provost concern the classifications of faculty to whom the PRR applies:

- 1) A clarification of which classifications of faculty Part IV applies to, and
- 2) Part IV sets out a best practices approach to responding to allegations of unprofessional conduct. Therefore, it is our strong recommendation that administrators follow the process outlined in Part IV – regardless of faculty classification – when investigating allegations of unprofessional conduct.

We identified two issues that the BFA may want to address in the future. Both of these instances are exacerbated by the lack of a formal requirement in the PRR to memorialize all complaints of unprofessional conduct. The Revision Committee attempted to address the problem by encouraging more and continued training of Academic Leaders.

1. Historical cases, repeated instances of allegations of unprofessional conduct, or repeated unprofessional conduct by a faculty member highlighted the need to formalize institutional memory.

Often unprofessional conduct has been repeated and ongoing, but when the conduct is finally reported, there is no written record or evidence other than word of mouth, which is difficult to act upon. Rather than having an established pattern of misconduct that might be acted upon immediately, the department must start documenting information as if the earlier behaviors had not occurred. However, requiring that every instance of unprofessional conduct be recorded in some sort of departmental file – regardless of the severity of the behavior – may have a chilling effect on reporting any instance of unprofessional conduct.

2. Unit administrators have also been known to wait out problems: they complete their service as chair, and as there is currently no requirement for a record of allegations of unprofessional conduct, incoming administrators have to start from the beginning without a historical record.

We addressed this issue by:

- a. Adding an item (Part III.C.1.i) reminding leaders that they have a duty to make the transition to a successor as smooth as possible. This includes communicating ongoing problems.
- b. Encouraging continued training for new/continuing academic leaders who are elected by their faculty but may have little or no previous administrative experience. Faculty Affairs has created the Academic Leaders Institute, which is designed to train academic leaders in administrative best practices.