

Administrative Response to the IU Faculty Board of Review Memorandum (of February 26, 1998)

Concerning the IU Faculty Grievance Process

The following is an administrative response to the IU Faculty Board of Review Report for 1997-98. Statements by the Board will be answered serially and according to the numbering system in the Board report. However, first, please note that the report comes from a hearing panel, not the elected members of the IU Faculty Board of Review.

1. The report states, ***“On 4/29/97 Chancellor Wartell requested that the Hickey grievance hearing scheduled for 4/30/97 be delayed because of >problems/senate-dev.regarding university jurisdiction.”*** The 4/29 memo (attached), was co-signed by the IU Speaker, Professor Downs. In fact, Professor Downs drafted the original memorandum on Senate letterhead. The IU Speaker had negotiated acceptance of a delay by the IPFW and IU administrations in return for a good-faith effort on his part to convince the Chair of the Faculty Board of Review to recuse herself from service on the Board during consideration of the Hickey grievance.

The report states, ***“In a memo of 5/16/97 Ms. Frapwell questioned the IU Faculty Board of Review’s authority on the Hickey or any other case. By his apparent silence and inaction, the Chancellor did not uphold the Indiana University faculty=s rights to a grievance process as guaranteed in the Indiana University Academic Handbook. Professor Michael Downs, not the Chancellor, eventually worked out an agreement by which, according to an 8/8/97 memo from Ms. Frapwell, the Hickey grievance was allowed to proceed according to Indiana University procedures.”*** In “questioning” the Board=s authority, Ms. Frapwell=s memos are statements of IU policy, not legal advice. She speaks for Indiana University. The agreement which eventually resulted in a hearing and was purportedly worked out by Professor Downs alone resulted, in fact, from discussions among Frapwell, Downs, and Wartell.

2. The report states, ***“The Board of Review never received all of the information that it felt was relevant to hearing the grievances of Professors Gail Hickey and Edlyn Jones of the School of Education, despite repeated memos to VCAA (sic) Walter Branson (3/25/97), Chancellor Wartell (4/2/97 and, when first memo went unanswered, on 4/15/97), and Sharon Groeger (4/21/97).”*** All public records requested by the IU Faculty Board of Review were provided. Neither the IPFW nor the IU administration has any obligation or legal right to provide confidential information, especially concerning other faculty, to the IU Faculty Board of Review. Privileged personnel documents had been requested by the Board. The Board Chair’s requests and Mr. Branson’s responses are attached.

The report states, ***“Some promotion and tenure information was provided to the Purdue Grievance Board last spring.”*** The access to public records policy applies

to the Purdue Grievance Board and was applied in the situation cited. Mr. Branson, who is responsible for access to public records requests, responds consistently to all requests.

The report states, ***“At a spring Academic Officers Committee meeting, at which one member of the Board happened to be present, VCAA Fenwick English announced to the Deans and others that they did not have to provide information requested by the IU Faculty Board of Review.”*** As a matter of standard practice, all requests for information are reviewed by Mr. Branson, and he determines whether the information will be provided. VCAA English communicated that practice to the deans. In addition, the Board does not have subpoena authority for witnesses, and that information was shared with the deans.

The report states, ***“The Board did not receive the materials that the administration wished us to examine for the Hickey grievance hearing until the morning of the hearing and several days after the deadline the Board had set.”*** Some materials were provided to the IU Faculty Board of Review, inadvertently and because of ambiguity in a Board memo, by IU legal counsel in an apparently untimely fashion. However, the Board accepted similarly untimely material from the plaintiff without comment.

The report states, ***“Although the administration then promised to provide any information referred to in those materials that arrived too late for Board members to read prior to the hearing, they did not fulfill that promise, particularly in regard to the School of Education faculty=s performance review of School of Education Dean Betty Steffy in spring 1997.”*** The performance review of the Dean of Education is not public information. For the same reason, performance reviews for other faculty would also not have been provided had the Board asked for them.

The report states, ***“Chancellor Wartell, after rendering his decision on the Hickey grievance on 12/1/97, on 2/18/98, referred the issue of academic freedom, on which the Board had ruled in its 10/31/97 report, to the local chapter of the American Association of University Professors for its opinion. The Board considers this referral to AAUP to be a direct attempt to undermine the faculty governance structure and the authority of the elected Indiana University Faculty Board of Review.”*** Much disagreement exists, campus-wide and nationally, as to the definition of the term Academic freedom. @ Since the IU Faculty Board of Review does not have acknowledged expertise pertaining to the definition of academic freedom, and since academic freedom is defined in documents approved by major American universities and the AAUP, it is, therefore, appropriate to consult the AAUP on such issues, especially where disagreement regarding definitions occurs. However that question may be answered would not have changed the chancellor's findings. In addition, the administration believes that the entire campus and the Board would benefit from having a better understanding of the term.

3. The report states, ***“Neither VCAA English, former Dean of the School of Education, nor Dean of the School of Education Betty Steffy appeared at the grievance hearing of Edlyn Jones on May 8, 1997. Sharon Groeger represented the administration.”*** The administration chooses how to present its case just as the plaintiff chooses how to present its case. No witness on either side is obligated by any document to appear or testify.

4. The report states, ***“On 7/30/97 School of Education Dean Steffy sent Chancellor Wartell a formal Complaint of Harassment against Professor Hickey and referred him to her attorneys. The Chancellor referred the Complaint to an intake reviewer who recommended the appointment of a panel to investigate the Complaint. On August 22, 1997, the Chancellor approved that recommendation. In part, the Complaint charged that the Hickey grievance, which the Board of Review had approved as meriting a grievance hearing in spring 1997, was ‘nothing more than a disguised attempt to personally attack, defame and harass me,= and that ‘many of the issues and facts alleged in the grievance should {not} be allowed to be presented before the IU Faculty Review Board or any other faculty institution.’ Despite this interference with what it considered due process, the Board nevertheless proceeded with its ongoing attempts to re-schedule the delayed Hickey hearing for the fall. Chancellor James Yackel of Purdue University Calumet, who was appointed by President Beering to replace Chancellor Wartell in the investigation of Dean Steffy=s Complaint of Harassment, did not agree to consider Dean Steffy’s allegations that a faculty grievance was a form of harassment.”*** Filing a C-33 complaint is the right of any IPFW employee or student. Complaints filed under C-33 are considered confidential. Both the Board and Professor Hickey breached C-33 by releasing information from the documents. In addition, the Board report misrepresents the substance of the harassment complaint and the adjudication of that complaint by quoting edited portions of the confidential document and by misstating aspects of Chancellor Yackel’s role and findings.

5. The report states, ***“Dean Steffy’s Complaint of Harassment charged that when the Board convened on April 30, 1997, for the purpose of hearing Professor Hickey=s grievance, the meeting was >not a properly convened administrative proceeding in that neither I nor anyone from the University appearing on my behalf were present at this meeting,= and that >slanderous= statements were made about her at that time.”*** The actions of the Board in allowing plaintiff and plaintiff’s lawyer to read public statements supposedly within the protection of the hearing process with neither defendant nor defendant=s representative present exceed the bounds of due process accorded to a plaintiff and deny due process to the defendant.

As a general response to the report, the administration supports and defends the right of all faculty to have access to grievance procedures, but expects professional, appropriate behavior from those charged with hearing such grievances. Behavioral questions are raised because:

1. According to IU Speaker Downs, on several occasions he felt it necessary to warn the Board Chair that the Board should not attempt to “make@ the plaintiff=s case or to otherwise work on behalf of the plaintiff.
2. The informal resolution phase of the Jones grievance consisted of a Board meeting with the Chancellor and Vice Chancellor during which the Board indicated that informal resolution could occur only if the administration acceded to all of Dr. Jones= demands. No informal resolution phase was offered by the Board in the Hickey grievance.
3. Most notably during the Hickey grievance, Board members demonstrated a lack of objectivity. Defendant=s witnesses and their credibility were attacked by Board members during questioning.
4. The Board reports and recommendations contain numerous errors and many conclusions based on hearsay. Little evidence of attempts to confirm facts or to cull hearsay appeared in the reports.

The IPFW administration and the IU administration have, in the past, cooperated and will, in the future, cooperate in good faith with good-faith efforts of IU Faculty Boards of Review.

3/16/98

attachments