

1 San Jose State University
2 Academic Senate
3 Professional Standards Committee
4 May 6, 2024
5 Final Reading

AS 1870

6 Policy Recommendation
7 Board of Professional Responsibility

8 Legislative History: This proposal would rescind S99-9 (Board of Professional
9 Responsibility) and replace it with the following policy recommendation:

10 Rationale: The policy establishing the Board of Professional Responsibility has not
11 been updated in 25 years, while the procedures and university offices for addressing
12 breaches of professional ethics have undergone many changes in that time. In addition,
13 the current makeup of the Board dates to a time when the Boards of Academic
14 Freedom and Professional Responsibility were a single unit with a much broader
15 charge. As a result, the current Board is difficult to staff and often cannot operate due to
16 lack of a quorum. Further, the Board has historically operated without sufficient
17 collaboration with the University administration, which has curtailed its effectiveness.
18 Thus, language about the roles of both the University administration and the Board in
19 resolving complaints about breaches of professional responsibility has been added.
20 Finally, Amendment A to S99-8 and S99-9 established an independent Board of
21 Academic Freedom, but the sections of S99-9 declaring the mission and organization of
22 the Board of Professional Responsibility were inadvertently deleted. This policy will
23 establish the Board of Professional Responsibility as a separate entity, including its
24 mission and organization/membership, and address other changes in reporting
25 structures and procedures.

26 Since the first reading, Professional Standards has received feedback from the
27 Provost's Office, the Senior Associate Vice President for University Personnel, and the
28 Senate. In response to this feedback, we have made the following changes:

- 29 1) Updated membership to include Associate Professors and Senior Lecturers.
- 30 2) Added information about training requirements for members of the Board.
- 31 3) Clarified language about how complaints can be referred to the Board has been
32 clarified - specifically, we have clarified the primary role of the University
33 administration, in particular (but not limited to) the Title IX and Gender Equity
34 Office and UP-AER (University Personnel-Academic Employee Relations) in
35 classifying and referring complaints.
- 36 4) Emphasis has been placed on the Board's function in consultation and in seeking
37 informal resolutions whenever possible.
- 38 5) Changed communication of findings section to require the Board to make a
39 recommendation in the event that an informal resolution cannot be reached.
- 40 6) Removed references to the BPR carrying out investigations.

41 Resolved: That S99-9 (Board of Professional Responsibility) be rescinded and replaced
42 with the following:

43 Approved: April 29, 2024

44 Vote: 10-0-0

45 Present: Barrera, Blanco, Chen, French, Kazemifar, Pendyala, Pruthi, Raman, Riley,
46 Smith

47 Absent: Lacson

48 Financial Impact: None anticipated

49 Workload Impact: Some additional workload for the administrative office(s) charged with
50 directing complaints to the correct committees, and specifically for the Office of Faculty
51 Services and Academic Employee Relations (UP-AER) with regard to the establishment
52 and posting of procedures, and the evaluation of findings that are proposed to be placed
53 in Personnel Action Files.

54 Policy Recommendation
55 Board of Professional Responsibility

56
57 I. Mission

58 The Board of Professional Responsibility (BPR) is charged with monitoring and
59 ensuring professional responsibility. BPR will evaluate allegations of professional
60 misconduct and infringements of academic freedom in violation of University Policy
61 S99-8(Professional Responsibility), except as noted in Section III below. To carry out
62 this charge, BPR will:

- 63 1. Monitor the state of professional responsibility at the University, and make reports
64 and recommendations to the Academic Senate regarding revisions of policy and
65 other documents relating to professional responsibility;
- 66 2. Be available to consult confidentially with all members of the University on issues
67 within the Board's purview (see Section III.3 below);
- 68 3. Address complaints of infringements of academic freedom brought by members of
69 the University, issuing findings as appropriate;
- 70 4. Advise and assist UP-AER with complaints about breaches of professional
71 responsibility;
- 72 5. Review and adjudicate disputes regarding Student Fairness Committee
73 recommendations, as described in University Policy S14-3, section VI.
- 74 6. Review and adjudicate disputes regarding recommendations by the Office of
75 Student Conduct and Ethical Development (SCED), as described in University
76 Policy F15-7, Academic Integrity, in the rationale and section 5.0.
- 77 7. Present an annual report to the Academic Senate relaying all essential
78 information pertaining to professional responsibility cases, including but not limited
79 to number of complaints, general categories, types of complaints, methods of
80 resolution, and year to year trends.

81 II. Appointment, Qualifications, and Terms of Membership

- 82 1. BPR will consist of five faculty members-at-large, each from a different
83 college/academic unit; membership is restricted to tenured faculty and Senior
84 Lecturer faculty, with a majority of tenured professors. The members shall be
85 appointed by the Academic Senate after recommendation by the Senate
86 Executive Committee, selected through a nominating process.
- 87 2. Nominees for the BPR must submit a one-page statement to the Academic
88 Senate Executive Committee indicating their interest and experience. Preference
89 will be given to nominees with expertise or training in conflict resolution,

90 mediation, and other areas of BPR's work. Faculty nominated for BPR shall have
91 a reputation for ethical behavior, and their integrity and honor must be held in the
92 highest regard by their colleagues. Administrative members of the Executive
93 Committee (the President and Provost) shall review the personnel action files
94 (PAFs) of nominees and consult with the appropriate Title IX/DHR administrator(s)
95 and UP-AER, re: any in-progress matters/investigations and/or other relevant
96 concerns, prior to the Executive Committee's deliberations.

97 3. BPR members will serve staggered terms of two years, with the potential for
98 reappointment for up to two additional terms. The BPR will elect a Chair for a one-
99 year term, covering the academic year. Members will be replaced by the process
100 described above as their terms expire.

101 4. All members shall sign a statement prepared by UP indicating that they agree to
102 keep confidential all content of complaints, consultations, and committee
103 deliberations. Committee members may not participate in deliberations until after
104 having signed the agreement.

105 5. At the start of their term, BPR members will receive standard anti-bias and conflict
106 resolution trainings. The appropriate trainings will be determined and implemented
107 in consultation with UP.

108 6. BPR members should recuse themselves when necessary to avoid the possibility
109 (or the appearance) of bias or conflict of interest.

110 III. Complaints Containing Allegations of Faculty Professional Misconduct

111 1. Complaints containing allegations of faculty professional misconduct in alignment
112 with University Policy S99-8 will first be evaluated by the appropriate
113 administrative offices, such as Office for Title IX/DHR and/or Equal
114 Opportunity/Academic Employee Relations, and only those complaints deemed
115 appropriate to the purview of the BPR will be referred to the Board. Complaints
116 containing allegations of faculty professional misconduct may initially be submitted
117 to any university administrative office designated by the University to receive such
118 complaints and may not necessarily be referred to the BPR, particularly if the
119 complaint overlaps other policies and/or Executive Orders.

120 a. Pursuant to applicable Executive Orders and/or policies, a list of these offices
121 shall be publicly posted by the University through its various platforms of
122 communication.

123 b. Pursuant to applicable Executive Orders and/or policies, each office will
124 assign the responsibilities related to these complaints to a selected
125 representative in their respective offices.

126 c. UP shall designate a person to consult with and assist BPR with its
127 responsibilities related to transmitted complaints.

128 d. Should a complaint come directly to the Board concerning anything outside of
129 its purview, it will immediately refer the matter to the Office for Title IX/DHR.

130 2. Transmission to BPR. Various campus offices may receive complaints for
131 behavior alleged to be in violation of law and/or CSU/SJSU Executive Orders
132 and/or policies. After appropriate review, if the alleged violative behavior
133 concerns only University Policy S99-8, the complaint(s) shall be referred to UP-
134 AER (if not already in that office), for transmission to the BPR.

135 3. Consultation. The members of the BPR shall, provide consultation to and shall
136 consult with UP-AER involving complaints containing allegations of faculty
137 professional misconduct. The primary goals of the BPR are to provide private
138 consultation and to work towards the informal resolution to conflicts. Per CSU
139 policy¹, all members of the BPR are responsible employees with a duty to report;
140 thus the BPR cannot be considered a confidential resource (see I, paragraph 2
141 above). Complaints/requests for consultations (including pre-grievance
142 consultations) received directly by the BPR that appear to involve, in any
143 manner, allegations of protected status² discrimination, harassment and/or
144 retaliation as defined by Executive Order³ will be immediately referred to the Title
145 IX/DHR administrator/office. This includes complaints/requests for consultation
146 implicating Article 16⁴ of the CSU-CFA Collective Bargaining Agreement.
147 However, BPR members will hold confidential the content of complaints/requests
148 for consultations and any subsequent committee discussions and/or deliberations
149 in all cases that appropriately reside with BPR.

150 4. In consultation with UP-AER, BPR shall develop and revise, as needed,
151 procedures to process requests for consultation/complaints from receipt to
152 resolution. Appendix A includes a list of suggested procedures. BPR's
153 procedures shall be publicly posted by the University through its various
154 platforms of communications.

155 IV. Alleged Infringements of Academic Freedom

156 1. University offices receiving complaints containing allegations of infringements of
157 academic freedom in alignment with University Policy S99-8 shall transmit such
158 complaints to the BPR within 10 working days of receipt.

159 2. BPR will develop and revise, as needed, procedures to evaluate allegations of

¹<https://calstate.policystat.com/policy/12891658/latest/>

² Protected Status includes Age, Disability (physical or mental), Gender (or sex), Genetic Information, Gender Identity (including transgender), Gender Expression, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color, caste, or ancestry), Religion or Religious Creed, Sexual Orientation, and Veteran or Military Status.

³<https://calstate.policystat.com/policy/12891658/latest/>

⁴<https://www.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Documents/unit3-cfa/article16.pdf>

160 infringements of academic freedom in violation of University Policy S99-8.

161 V. Communication of Findings

162 1. The findings of the BPR related to SFC or SCED cases shall be addressed as
163 described in University Policy S14-3, Student Fairness Dispute Resolution, and
164 University Policy F15-7, Academic Integrity.

165 2. The findings of the BPR related to breaches of professional responsibility shall be
166 presented to the **involved parties** in writing. Such findings may fall into three
167 categories:

168 a. The BPR may find that a complaint is without merit or that the evidence is
169 insufficient to determine that a complaint has merit. In such cases, the
170 decision of the BPR is final.

171 b. The BPR may find that a complaint has merit and that a satisfactory informal
172 resolution can be reached. **In such cases, the findings and resolution**
173 **achieved shall be documented and sent to the principal parties and UP-AER.**

174 c. The BPR may find that a complaint has merit and is of sufficient gravity that
175 an informal resolution is not achievable. **In such cases, the BPR shall make**
176 **recommendations for further action to the President. It shall document such**
177 **recommendations by following the procedures for placing material in the PAF**
178 **as established in the CFA/CSU Collective Bargaining Agreement.**⁵

179 **History**

180 The procedures of this policy were first provided in S94-5 created by the Professional
181 Standards Committee, and approved by the Academic Senate on May 2, 1994. S94-5
182 was approved and signed as University Policy on May 11, 1994. S94-5 was created to
183 implement S93-12 on Academic Freedom and Professional Responsibility. S94-5 was
184 slightly amended by F95-1 approved as University Policy on October 2, 1996. S94-5
185 and F95-1 were modified and reissued as a new policy (S99-9) on May 4, 1999. S99-9
186 was further modified by Amendment A to S99-8 and S99-9 on August 21, 2023.
187

⁵ See CFA/CSU Agreement 11.3: Any material identified by source may be placed in the PAF.. Identification shall indicate the author, the committee, the campus office, or the name of the officially authorized body generating the material.

188 Appendix A: Suggested Procedures for Complaints Containing Allegations of
189 Professional Misconduct or Infringements of Academic Freedom

190 The BPR is charged with developing procedures, in consultation with the UP-AER, to
191 address and resolve complaints in alignment with University Policy S99-8 (Professional
192 Responsibility). These procedures may include (but are not limited to):

- 193 1. Development of a process to examine and discuss an incoming complaint;
- 194 2. Development of standards to determine whether a complaint is amenable to
195 informal resolution and, the process of conducting an informal resolution
- 196 3. Development of a process that BPR will use to assist in achieving informal
197 resolutions;
- 198 4. Development of a method for determining the Board's final findings and voting on
199 them;
- 200 5. Development of notification procedures including but not limited to the principal
201 parties and other relevant parties;
- 202 6. Development of a process for the communication of findings to all required parties
203 (see Section V above);
204