



DEPARTMENT OF THE NAVY
OFFICE OF THE ACADEMIC DEAN AND PROVOST
UNITED STATES NAVAL ACADEMY
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ACDEANINST 1531.63D
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ACADEMIC DEAN AND PROVOST INSTRUCTION 1531.63D

From: Academic Dean and Provost

Subj: COMPLAINTS AGAINST FACULTY MEMBERS

Ref: (a) USNA Faculty Handbook
(b) AAUP Statement on Professional Ethics
(c) AAUP Statement on Academic Freedom
(d) Department of Defense Directive 1350.2
(e) OPNAV Instruction 5354.1E
(f) USNAINST 12750.4

Encl: (1) Procedures for Handling Midshipman Complaints Against
Faculty Members

1. Purpose. To publish instructions regarding the disposition of grievances against alleged misconduct of faculty members in their professional dealings with midshipmen, excluding accusations of sexual harassment or assault, use of inappropriate teaching materials, grading grievances, or issues of integrity in research and scholarly activity. These topics are covered in appropriate other Naval Academy instructions.

2. Cancellation. ACDEANINST 1531.63B. This instruction is a complete revision. Since changes are extensive, no special markings appear in the margins. Therefore, it should be read in its entirety.

3. Background. As provided in reference (a), U.S. Naval Academy (USNA) instructors have the right to academic freedom within the classroom. At the same time, there must be a distinction drawn between proper pedagogical activities that challenge students' beliefs, assumptions, and perceptions in order to facilitate their mental development, and behavior that is unprofessional and/or pedagogically inappropriate.

Pedagogical Techniques. Pedagogical techniques must make room for spirited exchanges over beliefs and ideas, but instructors are obliged to maintain a professional atmosphere that respects the students' dignity. The USNA subscribes to the American Association of University Professors' Statement on Professional Ethics (reference (b)): "As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly standards of their disciplines. They demonstrate

respect for the student as an individual, and adhere to their proper role as intellectual guides and counselors." Respect for the midshipman as a student requires that faculty avoid discrimination on political grounds, or for reasons of race, religion, sex, ethnic origin, national origin, or ancestry. Professional ethics requires faculty members to conduct instruction in a professional and appropriate manner. Types of unacceptable behavior include: use of gratuitously abusive and/or demeaning language; failure to meet class; failure to prepare for class; evaluation of student work by criteria irrelevant to class performance; arbitrary denial of access to instruction.

b. Academic Freedom. Academic freedom is a hallmark of an academic institution that values excellence in scholarship, free inquiry, and open discourse. Reference (c) provides a definition of academic freedom and a discussion of responsibilities attendant upon its exercise. The United States Naval Academy subscribes to the American Association of University Professors' statement on academic freedom, issued in 1940 with interpretations of 1970.

(1) A broad and well-rounded educational program such as the one that the Naval Academy seeks to provide its midshipmen will expose students, at times, to controversial ideas, challenge strongly held beliefs or value systems, or touch on sensitive areas. Indeed, it is not an uncommon pedagogical practice for an instructor to adopt an unusual, different, or unpopular stance to provoke discussion or to encourage students to analyze their own views or to assess the basis of their values.

(2) The Naval Academy has never imposed any test of propriety, ideology, or religion on its faculty or the academic program it offers. To do so would deny its faculty and its students the academic freedom to explore, to teach, and to learn. Instead, the Naval Academy has relied upon the good judgment and awareness of its faculty to be reasonable and to appreciate and respect the sensibilities of its midshipmen.

(3) Academic freedom is not a faculty member's license to say or do anything without restriction. Faculty members may be provocative. They are entitled to express their opinions and offer their scholarly views on the subject matter they teach, but they are also expected to treat their students with dignity and respect. With but rare exceptions, this has been the norm at the Naval Academy.

c. Individual Rights. The rights of individuals who work for the Department of Defense and the Department of the Navy are safeguarded by regulations such as are found in references (d) and (e).

(1) In particular, reference (e), which derives from reference (d), proscribes hostile work environments, defining the term as follows:

"An environment which prevents members from functioning to their full capacity, free of unlawful discrimination and SH [Sexual Harassment]. A hostile work environment unreasonably interferes with an individual's work performance. It need not result in concrete psychological harm to the victim but need only be perceived by a reasonable person, and is perceived by the victim, as hostile or offensive."

This definition involves the perception of the individual as well as another party, the reasonable person. The reasonable person standard is defined in the same reference:

An objective test used to determine if behavior meets the legal test for unlawful discrimination and SH. The test requires a hypothetical exposure of a reasonable person (third party) to the same set of facts and circumstances; if the behavior is offensive, then the test is met. The reasonable person standard considers the complainant's perspective and does not rely upon stereotyped notions of acceptable behavior within that particular work environment.

(2) Reference (d) was created with an awareness of the needs of an academic institution to preserve the principles of academic freedom. In establishing the Defense Equal Opportunity Management Institute (DEOMI) whose purpose is to promote improved human relations throughout the Department of Defense, reference (d) requires that policies and procedures at DEOMI shall be consistent with the principles of responsible academic freedom at the National Defense University (NDU). NDU expects "all members of the University community to understand the importance of and to practice responsible academic freedom." In addition, NDU goes on to state that "The National Defense University has continually subscribed and subscribes now to the American Association of University Professors' statement on academic freedom, issued in 1940 with interpretations of 1970." The fact that the Department of Defense grants academic freedom to the DEOMI, the school that teaches those who will handle matters of sexual harassment and of hostile work environments is evidence that the Department of Defense is aware of the importance of the principle of academic freedom and that this is not inconsistent with the human relations objectives of the Department. The Naval Academy also subscribes to the "1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments."

4. Resolution. Settling the grievance at the lowest possible level is the preferred process to resolve the issue. This process may include a direct discussion between the midshipman and faculty member or a meeting between the two, facilitated by other USNA faculty or staff. If this process is not desired by the midshipman or after

having met with the faculty member deemed to be unsuccessful, a third option is available, an official inquiry into the alleged professional misconduct.

a. At all levels of the academic chain of command, the handling of the complaint should include the following:

- (1) Strict confidentiality;
- (2) Early notice to the faculty member involved;
- (3) Timely action;
- (4) Timely response to the complainant.

b. Enclosure (1) details procedures for handling complaints of alleged faculty misconduct.



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PROCEDURES FOR HANDLING MIDSHIPMEN COMPLAINTS
AGAINST FACULTY MEMBERS

1. Midshipman Responsibility. Midshipmen have the right to report apparent occurrences of faculty misconduct toward students. If desired, the midshipman alleging the misconduct (hereinafter referred to as the complainant) may bring the concern directly to the faculty member whose conduct is questioned (hereinafter referred to as the respondent). The complainant is encouraged to enter into this discussion with an open mind. The complainant may not have interpreted the situation accurately and may thus be incorrect in believing that misconduct has occurred. The respondent may have inadvertently spoken or acted in a manner that gave rise to the appearance of misconduct, although no offense against the dignity of the student was intended. Direct discussion provides the opportunity to clarify any such misunderstandings. At times challenges to beliefs, assumptions, and perceptions in order to facilitate students' mental development may be mistaken for, or be perceived as, deliberate attempts to demean a student. Due to the asymmetrical relationship between faculty members and midshipmen, the settling of grievances against faculty members stemming from alleged professional misconduct by expecting the grievant midshipman to directly approach the faculty member may not be possible or desired, and certainly cannot be a requirement. While settling grievances at the lowest possible level is a desirable and common sense principle, there must be a system put in place which will provide access to midshipmen for counsel/guidance to help determine the best way forward. If direct approach to the faculty member is not desired, midshipmen are encouraged to speak with other trusted mentors about their concerns. These mentors could include other USNA faculty members, department chairs, division leaders, deans, company officers, other brigade officers or enlisted leaders, coaches, ECA advisors, or others.

2. Faculty Responsibility. A faculty member should always be aware of how his or her conduct may be perceived and should take corrective measures when alerted to the appearance of inappropriate behavior. Faculty members are expected to always behave in accordance with the highest standards of the professional ethics of the professoriate.

3. Protection of Respondent and Complainant. The Naval Academy will, to the greatest extent possible, protect the confidentiality of the respondent and the complainant, ensure the integrity of the inquiry process, and limit the dissemination of information regarding the complaint to only those with a need to know. The civilian respondent retains all his or her civil service protections.

4. Inquiry Process. The complainant has the option of reporting the alleged misconduct to the Vice Academic Dean (VAD) at any time or attempting to resolve the matter by directly engaging the respondent.

15 October 2018

The complainant may also seek the assistance of an intermediary (i.e. mentor, coach, faculty/staff member etc.) to discuss resolution options, including their assistance in facilitating a meeting with the respondent or the VAD. If the complainant does engage the respondent but after doing so remains dissatisfied with the result, a report of alleged misconduct may be filed with the VAD. Allegations of misconduct submitted to the VAD must be in writing and signed by the complainant.

A. Initial Meeting with VAD. The VAD will hold a confidential meeting with the complainant and others as appropriate. This meeting will include a discussion of the alleged misconduct detailed in the written statement provided by the midshipman and the possibility of meeting with the respondent, perhaps mediated by a third party (e.g., department chair, mentor coach, etc.). If the Division Director and/or the Department Chair are not yet aware of the complaint, the VAD will, if appropriate, alert them immediately after the initial meeting. Regardless of when Division Directors and Department Chairs become aware of the complaint, they will normally consult with the VAD or ADP before taking any action. In addition, if the midshipman's chain of command is not yet aware of the issue, the VAD will notify the Deputy Commandant.

B. Assessment Meeting. If resolution through a direct meeting between the complainant and respondent is not desired, deemed inappropriate, or if the alleged misconduct warrants further attention even if there can be a resolution through direct discussion between the complainant and respondent, the VAD will convene an assessment meeting as soon as possible. Participants at the meeting will include the appropriate Division Director, Department Chair, and Senior Professor. Additional participants may be designated by the VAD (i.e. command counsel, staff judge advocate, Human Resources Office representative). In this meeting, held outside the presence of the complainant, the VAD presents information contained in the written complaint and any attempts made to resolve the issue. Those in the meeting would then discuss the complaint and the inquiry process: (1) preliminary inquiry (military respondent) or (2) a fact-finding inquiry and report (civilian respondent).

C. Preliminary Inquiry/Fact-Finding Inquiry and Report. A preliminary inquiry/fact-finding inquiry is conducted pursuant to correspondence signed by the VAD to the Division Director of the respondent. For a military respondent, the Division Director will initiate a preliminary inquiry with the assistance of the staff judge advocate. For civilian faculty, the inquiry will be conducted by a panel of three senior faculty members, selected by the Division Director in consultation with the Faculty Senate President. A non-voting legal advisor will also be named to the panel by the Division Director. This panel collects relevant documents and conducts interviews with appropriate parties, including the complainant and the respondent. The panel will provide a written report detailing the

15 October 2018

facts and circumstances surrounding the alleged misconduct and the panel's opinions. The report will not include recommendations.

(1) The report or the results of the preliminary inquiry are submitted to the Division Director.

(2) Military Faculty. The Division Director will then determine what if any further action is necessary to address the findings of the preliminary inquiry pursuant to Department of the Navy guidelines and notify the VAD of the decision.

(3) Civilian Faculty. The Division Director will forward a copy of the Fact-finding Inquiry and Report to the respondent for review and comment. Any comments submitted by the respondent must be in writing and submitted within 10 working days of receipt. Those comments, if any, will be considered and included with the final report. The Division Director then informs the VAD that the fact-gathering panel has completed their work and that a meeting with the command counsel, a Human Resources Office representative, and others as deemed appropriate will be scheduled to discuss the report and if necessary, options available to address misconduct.

(a) After carefully considering the entire report, including respondent's comments, the Division Director determines what if any action should be taken. The Division Director will notify the Human Resources Department representative of the decision and request preparation of the necessary implementing documentation for signature and delivery to the respondent.

(b) Any civilian personnel disciplinary action that exceeds the authority of the Division Director must be referred to the Academic Dean and Provost for decision. In such a case, the Division Director will be the Proposing Official. The respondent will have an opportunity to review and comment on the disciplinary action proposed by the Division Director before it is forwarded to the Academic Dean and Provost as the Deciding Official. The Academic Dean and Provost will review the report and any comments submitted by the respondent in rendering a decision. The Human Resources Office will be requested to draft the correspondence implementing that decision for signature and delivery to the respondent.

D. Appeal Process for Civilian Faculty:

(1) The respondent may appeal action taken by the Division Director to the Academic Dean and Provost. Any appeal must be made in writing and submitted to the Academic Dean and Provost within 10 working days of receiving the Division Director's decision. The Dean will forward the appeal and accompanying documentation to the Faculty Senate President for review and comment. The Academic Dean and Provost considers the entire report along with any comments provided by the Faculty Senate President and issue a decision. This decision is final and not subject to further appeal.

(2) In those cases where the Academic Dean and Provost is the Deciding Official, the appeal, if any, must be submitted in writing to the Superintendent or designee within 10 working days of receiving the decision. The Superintendent or designee will forward the report and appeal to the Faculty Senate President for review and comment. The Superintendent or designee considers the entire report, appeal, and

comments from the Faculty Senate President in rendering a written decision. That decision is final and may not be further appealed.

E. Timeliness. The notional time between the initial meeting with the VAD and the submission of the preliminary inquiry/Fact-finding Inquiry and Report to the Division Director is 60 days. Requests for additional time may be submitted to the Division Director for approval.