

Chapter III

FACULTY RECORDS AND FILES

1. INTRODUCTION

Files kept by institutions on individual faculty members will contain considerably more information than basic personnel files. Various administrators and faculty committees collect and review numerous documents that demonstrate faculty performance and that are used to make tenure, promotion, and contract renewal decisions.

Federal and state laws provide no mandates as to which documents to retain or the length of time certain records are kept. A systematic records retention and disposal program for these records must be based on the usefulness of the information being kept, cost of storage and exposure to liability.

This chapter discusses information that is typically kept and factors to be considered when determining what information to keep and the length of time to keep it.

2. FACULTY FILES

The “basic data” kept on individual faculty members generally consist of the following:

- ✓ official personnel/employment records (see the Chapter on Personnel and Employment Records);
- ✓ any reports prepared by the faculty member and submitted to the department chair’s or dean’s office;
- ✓ a correspondence file, including all correspondence to and from the faculty member;
- ✓ a current resume, including awards, citations, honors and all publications by the faculty member (although space may not permit keeping copies of each publication); and
- ✓ any disciplinary actions taken against the faculty member;

Materials from which evaluations of faculty members for promotion, tenure or contract renewal are made generally include

- ✓ course evaluation forms completed by students, which are usually reviewed by the faculty member and supervisors, such as a department head or dean;
- ✓ reviews by other faculty members, department heads and deans, including evaluations prepared as a result of observations of teaching in the classroom and interviews with the faculty member;
- ✓ evaluations of scholarship, e.g., letters from external and internal reviewers evaluating publications authored by the faculty member;

- ✓ information on any public service performed by the faculty member; and
- ✓ faculty committee evaluation reports, which may be prepared in part from the above information.

Retention Period

The basic data listed above should be kept at least as long as the faculty member is employed by the institution. The length of time to retain any information other than personnel records is discretionary, based on institutional policies, needs and requirements.

Student evaluations of faculty performance can become quite bulky. Typically, these evaluations are kept for a minimum of 3 years, or until a promotion, tenure or contract renewal decision is reached.

Other records relied upon in evaluating faculty performance for contract renewal, promotion or tenure should be kept at least 4 years from the time the action is taken, particularly when a contract is not renewed or a promotion is not forthcoming.

Reasons for Retaining

Although no federal regulations require retention of any of this information other than personnel information (see the chapter on Personnel and Employment Records), from a legal perspective, retention periods for faculty files and evaluations should be determined with an eye to future litigation. The length of time in which a civil rights, discrimination, or breach of employment contract suit can be brought varies from state to state, and custodians of these records should consult the laws of their

respective jurisdictions to determine the time frame in which these suits can be brought.

Practical administrative considerations, such as available storage space, the usefulness of the information and the relative ease with which documentation can be located, dictate what information should be kept and the length of time to keep it. Files that are never purged will eventually decrease efficiency by making current information difficult to locate. In addition, any files regularly kept by an institution may be discoverable in litigation. (See the chapter on General Principles of Records Retention).

Access and Disclosure Considerations

A few state laws provide that any employee be given access to his or her personnel files, and files routinely kept on any employee may be subject to inspection and review by the employee. Officials should review the laws of their respective jurisdictions to determine the applicable law.

The issue of confidentiality in the peer review system typically arises when a faculty member claims that a tenure denial or some other employment decision was based on some form of discrimination. To substantiate this claim, the faculty member or the EEOC, to which the faculty member has filed a discrimination claim, attempts to acquire all relevant information, including access to peer review materials, to prove that the adverse personnel decision had a discriminatory basis.

Evaluations made and votes cast during peer reviews are not protected from disclosure. In 1990, the Supreme Court held that peer review materials that are relevant can be obtained, at least by the EEOC, rejecting arguments by the university that confidentiality is essential to the peer review process and that academic freedom protected the information from disclosure.

3. FACULTY DISCIPLINARY FILES

When a faculty member is guilty of misconduct, an institution may respond with sanctions ranging from a written reprimand to termination. To avoid or refute charges that a disciplinary action was discriminatory, arbitrary or unfair, it is vital that an institution adopt and consistently apply a policy governing the disciplinary process. It is also prudent to document any formal proceedings. The minimum information that should be kept is

- ✓ documentation of any performance or behavior deficiencies;
- ✓ documentation of attempts to correct the behavior or deficiencies, such as performance counseling or lesser sanctions;
- ✓ a copy of the charge or charges brought against the faculty member;
- ✓ a copy of notification to the faculty member of the charges and any relevant correspondence;
- ✓ documentation that reflects the conduct of all levels of disciplinary hearings or proceedings, including any appeals;
- ✓ the findings of the disciplinary board or hearing officer; and
- ✓ the resolution of the proceeding, e.g., whether the charges are dismissed or any sanctions are imposed.

Retention Period

There is no legal requirement that these records be kept for any particular period of time. Institutional decisions as to the length of time to retain disciplinary files should be based upon the usefulness of the record to the institution and anticipated legal exposure. Any retention period should be applied consistently to all disciplinary files, although an institution may opt to purge files on lesser sanctions more frequently than files on serious disciplinary offenses.

Reasons for Retaining

Disciplinary records should be kept as long as there is the potential for a suit challenging the action. Because this period of time is based upon state law, officials should be familiar with the laws of their respective jurisdictions.

Records pertaining to disciplinary actions should be kept routinely, and not on an ad hoc or selective basis, in order to counter charges of arbitrary disciplinary proceedings.

Access and Disclosure Considerations

State law governs an employee's right to inspect, review and challenge certain information maintained in a personnel file. Although state law generally does not require disclosure of information peculiar to faculty files, officials should become familiar with the law of their respective jurisdictions.

Disciplinary records should be kept confidential and made available only to those who have a legitimate right to view the materials.

SELECTED BIBLIOGRAPHY

Articles and Books

AAUP Policy Documents and Reports, American Association of University Professors, 2001 Edition.

Weeks, K., *Faculty Decision Making and the Law*. (College Legal Information, Inc., 1996).

Weeks, K. and Davis, D. (Eds.), *Legal Deskbook for Administrators of Independent Colleges and Universities, 2nd Edition* (Supplemented Annually), Center for Constitutional Studies, Baylor University and National Association of College and University Attorneys (1999).

Winstanley, M., "A Higher Education in Instant Accounting," 9 *Inform* 30 (1995).

Cases

University of Pennsylvania v. EEOC, 493 U.S. 182, 110 S.Ct. 577, 107 L.Ed.2d 571 (1990).