

Institutional Responsibility for Legal Demands on Faculty

The statement that follows, a revision and expansion of a 1984 statement, was approved by the Association's Committee A on Academic Freedom and Tenure and adopted by the Association's Council in November 1998.

There has been in recent years a steady growth in lawsuits filed against faculty members over the discharge of their professional responsibilities. Legal actions have been initiated by colleagues, by rejected applicants for faculty positions, by students, and by persons or entities outside the academic community. Litigation has concerned, among numerous issues, admissions standards, grading practices, denial of degrees, denial of reappointment, denial of tenure, dismissals, and allegations of defamation, slander, or personal injury flowing from a faculty member's participation in institutional decisions or from the substance of a faculty member's research and teaching. The increasing number of these lawsuits, which often reflect a lack or misuse of appropriate procedures for evaluation and review within an academic institution, is much to be regretted. The parties concerned are subject not only to damage to reputation but also to significant financial liability, which may include cost of legal representation, loss of time, court costs and expenses, and judgments of the court or out-of-court settlements. Moreover, faculty members have increasingly been summoned by legal process to disclose or account for their research and teaching in lawsuits to which they are not parties. Colleges and universities have a responsibility for ensuring legal representation and indemnification to members of their faculties who are subject to lawsuits stemming from their professional performance in institutional service or their conduct of research and teaching.

Statement

The Association recommends that colleges and universities adopt a comprehensive general policy on legal representation and indemnification for members of their faculties. The policy should ensure effective legal and other necessary representation and full indemnification in the first instance for any faculty member named or included in lawsuits or other extra-institutional legal proceedings arising from an act or omission in the discharge of institutional or related professional duties or in the defense of academic freedom at the institution. It should also include specific provisions as follows:

1. The policy should include all stages of such legal action, threatened or pending, in a judicial or administrative proceeding, and all aspects of the use of compulsory process whether or not the faculty member is a party in the proceeding.
2. The policy should ensure effective legal representation of the faculty member's interests, whether by the institution's regular counsel or by specially retained counsel, with due attention to potential conflicts of interest.
3. The policy should be applicable whether or not the institution is also named or included in the legal action, though the institution might consider joining in the action as a party if it has not been named.
4. The policy should provide for all legal expenses, for all other direct costs, and for court judgments and settlements.
5. The policy may provide for legal representation and indemnification through insurance.
6. The policy may provide for a faculty committee to make recommendations on the application of the policy to extraordinary circumstances not foreseen at the time of promulgating the policy of general application.