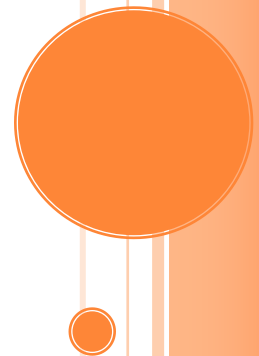


FACULTY HANDBOOKS AS ENFORCEABLE CONTRACTS: A STATE GUIDE

An AAUP Guidebook



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Introduction

Each year, the American Association of University Professors (AAUP) receives many inquiries about the legal status of faculty handbooks. To respond to some common inquiries, the Association's legal office prepared this overview of faculty handbook decisions.¹ It is arranged by state and includes decisions of which the Association is aware and that it considers most helpful. The guide provides background to help professors, administrators, and their lawyers analyze whether the provisions of a faculty handbook are enforceable as a contract. References to law review articles and other general sources appear at the end of the guide. This compilation is not exhaustive. It excludes scores of cases addressing the enforcement of employee or personnel manuals and handbooks outside higher education, while including a few non-higher education cases where the issues raised in such cases are relevant in a higher education setting. This compilation also includes a few cases that involve personnel manuals and handbooks applicable to college and university staff because these cases touch on issues relevant to the status of faculty handbooks. This guide is not intended as legal advice. Rather, the AAUP intends this guide to provide general legal information about this developing area of the law. The Association urges you to consult counsel in your state experienced in higher education or employment law. Should you require assistance locating appropriate counsel, the AAUP may be able to refer you to a local attorney; please e-mail attorneyreferral@aaup.org for assistance.

¹We would appreciate comments and suggestions about ways to make this publication as user-friendly as possible. We also ask that you forward to us additional relevant cases and their citations for inclusion in the next edition. Please contact the AAUP Office of Staff Counsel, at legal.dept@aaup.org.

BACKGROUND

Most employees, including university support staff who are not unionized, are “employees-at-will.” In most states, the at-will employment rule is that either party—the employer or the employee—may terminate the employment relationship virtually at any time and for any reason or no reason at all (but not based upon unlawful discriminatory motivations, of course).

A faculty member, however, almost always has a contract or letter of appointment. Courts are often asked to decide whether a faculty handbook—which includes policies, rules, and procedures under which professors work—also establishes a contractual relationship between a professor and an institution. The issue usually arises in the context of a breach-of-contract claim, and the question is whether the faculty handbook is part of the employment contract between the professor and the institution. A majority of states have held that contractual terms can at times be implied from communications such as oral assurances, pre-employment statements, or handbooks (Chagares 1989). Of these, handbooks are the most common source of implied contractual terms (Chagares 1989).

Faculty handbook cases raise many issues, including:

- Must a faculty handbook be expressly incorporated by reference into a professor’s letter of appointment for the handbook terms to be enforceable?
- May a faculty handbook become part of a professor’s employment contract based on the university’s established practices even when no express reference to the handbook exists in that contract?
- Is a faculty handbook a unilateral policy statement subject to change at the discretion of the institution?
- Must a faculty handbook meet the legal contract requirements of offer, acceptance, and consideration before the handbook is enforceable as an employment contract? (Consideration is a legal term referring to something of value given in exchange for a promise.)
- What is the legal effect of a disclaimer in a faculty handbook in

which a college or university disavows any intent to be contractually bound by the contents?

- Do faculty members at public institutions have a constitutionally protected due process and property interest in continued employment based on a handbook's provisions? (Property interest has been defined by the U.S. Supreme Court as follows: "A person's interest in a benefit is a 'property' interest for due process purposes if there . . . are rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing." *Perry v. Sindermann*, 408 U.S. 593, 601 (1972).)
- When a university or college updates its faculty handbook or merges with another institution, does the new or the old handbook control a professor's claim?

Terminology

Nonlawyers may wish to know that the term *aff'd mem.* means that an appeals court affirmed a trial court's decision without writing an opinion. The term *reh'g denied* indicates that a court has declined to rehear a case, and the term *cert. denied* means that a state's highest court or the United States Supreme Court declined to review an appellate court's decision. The term *en banc* means that all of the judges of a court – e.g., all of the judges of the Fifth District Court of Appeals, not just a panel of judges – heard a case, a practice sometimes followed in important cases in which an earlier decision merits reconsideration. The term *dicta* means the part of a judicial opinion which is editorializing on the part of the judge; it does not form part of the basis for the opinion, and it may not be cited as precedent. The term *per curiam* indicates that the opinion is delivered “by the court” rather than by an individual justice. *Per curiam* decisions are often, though not always, shorter decisions that deal with issues the court views as noncontroversial. The term “Not recommended for publication” refers to cases the court did not intend for publication. The court limits the use of these cases as precedents for future cases, so please check your local court rules before relying on these cases. Readers should check, or “Shepardize,” cases listed in this guide for their current status before relying on them. The AAUP updates this list of cases only periodically.

Case Summaries and Citations

ALABAMA

House v. Jefferson State Community College, 2005 WL 327355 (Ala. Feb. 11, 2005). A former instructor sued a college, claiming that his employment was terminated without a hearing in violation of his employment contract. The instructor's contract stated that he was employed on probationary status pursuant to a specific provision in the college's policy manual. According to the manual, a probationary employee under contract who is terminated within the period of the contract is entitled to a hearing. The court held that the instructor's letter of appointment clearly incorporated this provision of the manual, and the instructor was therefore entitled to a hearing.

Boyett v. Troy State University at Montgomery, 971 F. Supp. 1403 (M.D. Ala. 1997), *aff'd*, 142 F.3d 1284 (11th Cir. 1998). A list of reasons for nonreappointment of nontenured professors provided in a faculty handbook, explicitly identified as a partial list and clearly distinguishing tenured and nontenured professors, cannot serve as the basis for a "legitimate expectation that reappointment could be denied only for cause."

Anderson-Free v. Steptoe, 970 F. Supp. 945 (M.D. Ala. 1997). For an employee handbook to be incorporated as part of a contract, it must satisfy three conditions: (1) "the language . . . must be specific enough to constitute an offer"; (2) "the handbook must have been issued to the employee"; and (3) "the employee must have accepted the offer by retaining employment after having been issued the handbook."

Shuford v. Alabama State Board of Education, 978 F. Supp. 1008 (M.D. Ala. 1997). In a case involving a university president, the court ruled that to determine whether the language of a handbook is sufficient to create a property interest in continued employment, it would look to "substantive restrictions on the employer's discretion to discharge, rather than on the procedural protections provided." A sixty-day notice requirement, which limited the timing of employment termination rather than the decision to terminate, was a

procedural rather than a substantive restriction, and therefore did not constitute a property interest in continued employment.

ALASKA

Zuelsdorf v. University of Alaska-Fairbanks, 794 P.2d 932 (Alaska 1990). A policy manual was expressly incorporated in an employment contract between a university and two nontenured professors through explicit reference in letters of appointment. Once the deadline established in the faculty manual for sending a notice of nonretention for the school year had passed, the professors had a vested right in employment for that year, and that right could not be changed unilaterally by the university's subsequent amendment of the manual to provide for a later deadline.

ARIZONA

University of Arizona v. County of Pima, 722 P.2d 352 (Ariz. App. 1986). The university appointed a nontenured faculty member for a period of four years. After one year the university attempted to dismiss the faculty member by relying on the university's policy manual, which stated that faculty members cannot be appointed for a period greater than one year. The court held that when an administration enters into a contractual relationship with a faculty member, separate from the university's policy manual, the university cannot rely on the provisions of the policy manual to break that contract.

Smith v. University of Arizona, 672 P.2d 187 (Ariz. App. 1983). An assistant professor sought and was denied a tenure review process at the end of six years of service as specified by the faculty handbook. The court determined that the university was required to conduct a tenure review process in compliance with the faculty manual.

ARKANSAS

Doe ex rel. Doe v. Little Rock School District, 380 F. 3d 349 (8th Cir. 2004). The court stated that a student handbook may not be considered a binding contract between a school and a student, but opined in *dicta* that an employee

handbook may be enforceable as a contract under traditional contract principles.

Casteel v. Clear Channel Broadcasting, Inc., 254 F. Supp. 2d 1081 (W.D. Ark. 2003). Former employees sued a company and the company moved to stay action and compel arbitration. The employees had received a “New Hire Guide” containing a six-page Arbitration Agreement. The court held that the guide did not constitute a binding contract to arbitrate, even for employees who had signed an acknowledgment of receipt of the guide.

Brown v. Pepsico, 844 F. Supp. 517 (W.D. Ark. 1994). Following his termination, an employee filed a breach-of-contract claim in which he stated that the company handbook created a contractual employment relationship with his employer that could be terminated only for cause. The district court, relying on the employee handbook, determined that the employees were employed at will. The manual specifically provided that “the employee may quit at any time” and that “the company may terminate an employee, with or without cause.”

Crain Industries Inc. v. Cass, 810 S.W.2d 910 (Ark. 1991). A business laid off six senior employees while retaining several other employees who had shorter lengths of service with the company. The senior employees claimed a breach of contract based on a provision in the employee handbook stating that if it became necessary to reduce the number of employees, employees would be laid off on the basis of least seniority. The company claimed that the employee handbook did not constitute a legally binding contract. The Supreme Court of Arkansas disagreed, finding that when an employer makes definite statements about what its conduct will be, an employee has a contractual right to expect the employer to perform as promised.

CALIFORNIA

Gutkin v. University of Southern California, 125 Cal. Rptr. 2d 115 (Cal. App. 2002). For claims involving the revocation of tenure or tort claims against a private university, faculty members must exhaust all possible administrative remedies before a California court will hear their case.

Slatkin v. University of Redlands, 106 Cal. Rptr. 2d 480 (Cal. App. 2001). Faculty members bringing claims of discrimination against colleges or universities in the State of California do not have to exhaust all administrative remedies before a California court will hear their case.

Pomona College v. Superior Court, 53 Cal. Rptr. 2d 662 (Cal. App. 1996). Under California law, in cases not involving discrimination, administrative (not judicial) review was the exclusive remedy available to a nontenured professor who alleged procedural defects in a college's tenure review and grievance procedure and alleged that the process was governed by the college handbook.

COLORADO

Darr v. Town of Telluride, 495 F.3d 1243 (10th Cir. 2007). When town unilaterally changed employment policy from one granting pre-termination notice and hearing to policy holding that employment was terminable at will, court rejected terminated employee's contract claim based on prior manual and policies and held that newly-adopted policies governed.

Hulen v. Yates, 322 F.3d 1229 (10th Cir. 2003). A tenured professor possessed a property interest protected under the due process clause based upon his contract with the state university and confirmed by the university's customs and practices. The parties agreed that the university's faculty manual had contractual force.

Johnson v. Colorado State Board of Agriculture and Colorado State University, 15 P.3d 309 (Colo. App. 2000). The university's faculty manual contained a policy that called for the performance review of tenured faculty members. Unsatisfactory performance reviews could lead to dismissal. In 1997 and 1998 a tenured faculty member received unsatisfactory reviews and was dismissed. The tenured faculty member argued that the policy manual called for

performance review of tenured faculty members every five years and that his two unsatisfactory reviews therefore occurred over too short a time period. The university argued that the faculty manual called for tenured faculty members to be reviewed on a yearly basis. The court stated that if a faculty manual, which the court treated as an enforceable contract, contains an ambiguous policy, the court will look to other indicators. The court looked to the intent of the policy and found that the faculty manual called for performance review on a yearly basis.

Thornton v. Kaplan, 937 F. Supp. 1441 (D. Colo. 1996). Metropolitan State College of Denver, which denied tenure to a professor, did not violate the professor's property interest in having his tenure application reviewed fairly and in compliance with the school's written policies and procedures because no property interest is created by general criteria for awarding tenure and procedures for tenure review. Rather, property interest would be attained only when a university's "discretion is clearly limited so that the employee cannot be denied employment unless specific conditions are met."

Laubach v. Bradley, 572 P.2d 824 (Colo. 1977). The language of the faculty handbook at Colorado School of Mines reinforced the college's contention that the school had no tenure system in place. In addition, simple reliance on length of service cannot support an interest in continued employment. "[L]ongevity of employment per se, without additional supportive facts . . . [does not create] a protectable interest to the individual."

University of Colorado v. Silverman, 555 P.2d 1155 (Colo. 1976). A dean conditioned retaining an untenured professor on two factors: the renewal of a grant under which the professor was hired and a favorable recommendation by the professor's department. Both conditions were met, but the professor was not retained. The court found that it was the professor's responsibility to be aware of a faculty handbook provision that stated that the board of regents made all faculty appointments. The power to make appointments could not be delegated to the dean, so the professor was not justified in relying on the dean's statements.

CONNECTICUT

Neiman v. Yale University, 821 A.2d 1165 (Conn. 2004). A faculty member challenged the denial of tenure in state court before exhausting the grievance process provided for in the faculty handbook. The court ruled that the professor's failure to exhaust all internal remedies, as provided in the handbook, barred the court from hearing the claim.

Fenn v. Yale University, 283 F. Supp. 2d 615 (D. Conn. 2003). The district court held that the university's patent policy, as stated in the faculty handbook, was a valid and enforceable part of the professor's employment contract. Though the 1975 policy in the handbook had been amended during his employment, the current policy was found to be part of the professor's employment agreement because the 1975 policy (and all subsequent policies) explicitly provided that the university could revoke or amend the policy at any time.

Craine v. Trinity College, 791 A.2d 518 (Conn. 2002). The court upheld the verdict for a professor on her breach-of-contract claim for denial of tenure. The court noted that "a faculty manual that sets forth terms of employment may be considered a binding employment contract." The defendant's standards and requirements for tenure review were set forth in the faculty handbook, and required that the college "indicate as clearly as possible those areas to which a candidate needs to address special attention" when conducting her second reappointment review. The court found that the college's failure to indicate adequately to the candidate trouble areas during this second review, before the denial of tenure, constituted breach of the contract as set forth in the faculty handbook.

Franco v. Yale University, 161 F. Supp.2d 133 (D. Conn. 2001). A surgeon brought a case against Yale University for salary reductions, failure to reappoint him, and his exclusion from private physicians' groups within the department. The university argued, in part, that the claims should be barred by the surgeon's failure to follow the internal review provisions specified in the faculty handbook. The plaintiff explicitly eschewed, however, any claim that he had a contract based upon the handbook. The court concluded that if the doctor

should, at trial, seek damages based upon the failure to reappoint him or reductions in salary while he was employed, the failure to exhaust the internal remedies in the handbook would bar such claims. However, the court also concluded that other aspects of the complaint, having to do with issues not covered by the internal review process, were not barred by a failure to follow the handbook procedures.

DELAWARE

Motley v. Delaware State University, 2004 WL 1588317 (Del. Super. May 28, 2004) (unpublished). This case involved a dispute over payments owed for leave time accrued by Motley, former vice president of student affairs and special assistant to the president. Motley had entered into annual employment contracts with the university that provided that she was a professional employee, and thus her employment was governed by the Professional Employee Handbook. Therefore, the court held that the payments for accrued leave should be based upon the terms set out in the handbook.

Henry v. Delaware Law School of Widener University, Inc., No. A-8837, 1998 WL 15897 (Del. Ch. Jan. 12, 1998) (unpublished). A university did not breach a professor's employment contract, which incorporated by reference the university's faculty manual, when it denied the professor tenure. Despite the professor's claim that the review process was "sufficiently tainted," the court found that the procedures used in the initial tenure decision and the internal review process were substantially followed.

DISTRICT OF COLUMBIA

Clampitt v. American University, 957 A.2d 23 (D.C. 2008). A private university's obsolete employment manual did not create an implied contract of employment between the university and the employee. The manual had not been distributed for years and was used only for guidance. Moreover, there was no evidence that the employee received the manual, or relied on or bargained for policies set forth in the manual.

Howard University v. Lacy, 828 A.2d 733 (D.C. 2003), *reh'g granted in part*, 833 A.2d 991 (D.C. 2003). The court found that the fact that the first page of the faculty handbook stated “[t]his document is not to be construed as a contract” and reserved discretion in the university to terminate employees did not automatically mean the handbook was *not* an enforceable contract. At the same time, the fact that another court had found the same handbook to be an enforceable contract did not stop the university from arguing that it did not constitute an enforceable contract in this case. The court remanded the case to the lower court to determine whether or not the faculty handbook was an enforceable contract.

Kakaes v. George Washington University, 790 A.2d 581 (D.C. 2002). The faculty handbook constituted a contract between the faculty member and university. The court found that failure to give timely notice of denial of tenure was a breach of that contract, but refused to grant tenure as a remedy. Instead, the court upheld the lower court’s grant of \$75,000 in damages and costs.

Paul v. Howard, 754 A.2d 297 (D.C. 2000). A faculty handbook published in 1980 and still in effect at the time of application for tenure was a binding contract of employment for a tenure decision. A second tenure application submitted after the publication of a new faculty handbook in 1993 was governed by the new faculty handbook, as a new contract of employment. The university’s denial of tenure both times was appropriate under both handbooks, and the professor was not entitled to de facto tenure under either handbook despite seven years of service in a tenure-track position and one additional year in a non-tenure-track lecturer position.

Breiner-Sanders v. Georgetown University, 118 F. Supp. 2d 1 (D.D.C. 1999). The court held that a faculty handbook “defines the rights and obligations of the employee and employer, and is a contract enforceable by the courts” (quoting *McConnell v. Howard University* (below)). A professor who alleged that the handbook’s provisions on allocation of office space and fair treatment of faculty had not been properly followed was not entitled to summary judgment because there were unresolved factual questions.

McConnell v. Howard University, 818 F.2d 58 (D.C. Cir. 1987). District of Columbia law provides that an employee handbook is a contract enforceable by the courts and, therefore, a private university's power to terminate the appointment of a tenured faculty member is subject to faculty handbook procedures and provisions.

Morgan v. American University, 534 A.2d 323 (D.C. 1987). A section of the faculty handbook, which provided for the dismissal of a professor upon showing of adequate cause, did not abrogate the university's right to rescind a contract for material misrepresentation when a full-time faculty member failed to disclose that he simultaneously held a full-time position at another university.

Howard University v. Best, 484 A.2d 958 (D.C. 1984). A university breached its contract with a faculty member by failing to give notice of nonrenewal as required by the faculty handbook.

Greene v. Howard University, 412 F.2d 1128 (D.C. Cir. 1969). The university was in breach of contract by not providing nontenured faculty members adequate notice as defined by its faculty handbook. Prior conduct had created protectable interests in faculty retention and review. "Contracts are written, and to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is. The readings of the marketplace are not invariably apt in this non-commercial context."

FLORIDA

Williams v. Florida Memorial College, 453 So.2d 541 (Fla. App. 1984). Because only notice of intention to reappoint was specified by the faculty handbook, a nontenured professor who was not given one year's notice of nonreappointment did not have a breach-of-contract claim.

GEORGIA

Shah v. Clark Atlanta University, 1999 U.S. Dist. LEXIS 22077 (N.D. Ga. July 21, 1999). The court held that a professor's "reliance on the Faculty Handbook to support a breach-of-contract claim is . . . misplaced" because "an employer's

failure to follow termination procedures in a personnel manual is not actionable under Georgia law.” In doing so, the court also noted that the faculty handbook contained a specific provision stating that it shall not be construed as a legally binding contract, and that the professor’s employment contract “did not explicitly incorporate the Faculty Handbook.”

Gray v. Board of Regents of University System of Georgia, 150 F.3d 1347 (11th Cir. 1998), *cert. denied*, 526 U.S. 1065 (1999). The court rejected a professor’s contention that “mere presence” as a faculty member beyond a seven-year probationary period was sufficient for the award of tenure and its protections. A professor’s property interest in employment was not secured by successive, separate one-year contracts. The claim that a handbook provides for the automatic award of tenure with the offer of an eighth-year contract was rejected. Neither a plain reading of handbook provisions nor preexisting practice could support a claim for tenure and property interest in continued employment.

Savannah College of Art and Design v. Nulph, 460 S.E.2d 792 (Ga. 1995). A college and a professor, who was released midyear during a one-year employment contract, agreed that the faculty handbook, which provided grounds and procedures for termination, was incorporated into the professor’s employment contract. However, the college did not breach that contract in failing to follow proper procedures for dismissing the professor: “If the employer were justified in terminating the employee under the contract, then the termination would have occurred even if the employer had followed the proper procedures. Thus, procedural flaws in the manner in which the termination was carried out will not warrant damages to compensate for losses that naturally result from a justified termination.”

Moffie v. Oglethorpe University, Inc., 367 S.E.2d 112 (Ga. App. 1988). A faculty handbook that was incorporated by reference in a faculty member’s half-page employment contract, and of which the tenure-track faculty member was aware, formed part of an employment contract; however, the university did not breach that contract by failing to provide supportive data for tenure denial

because no damages arise from such failure: “all that is lost by such a failure is [the] satisfaction of [the professor’s] curiosity.”

HAWAII

Shoppe v. Gucci America, Inc., 14 P.3d 1049 (2000). A non-academic employee sued her former employer on the ground that her discharge violated the employee handbook because she was given no warnings before her discharge. The Supreme Court of Hawaii held in favor of the employer on appeal, stating Hawaii’s rule that a handbook is enforceable only where it modifies the employment-at-will presumption “and, by its language or . . . [the employer’s] actions, encourages [the employee’s] reliance thereon.”

University of Hawaii v. University of Hawaii Professional Assembly, 659 P.2d 732 (Haw. 1983). A tenure-track professor charged that a university improperly denied him tenure. The university had relied on the tenure provisions of the faculty handbook, which stated that a Ph.D. was required, instead of relying on the professor’s department’s tenure criteria, which did not require a Ph.D. The court found that the faculty handbook criteria governed because they had been established by the board of regents.

Abramson v. Board of Regents, 548 P.2d 253 (Haw. 1976). A public university handbook lacked the force of law because there was no showing of compliance with state rule-making procedures. But the published tenure policy of an educational institution may be incorporated by reference into an employment contract of a probationary faculty member. In the absence of a written or unwritten policy creating the expectation of employment, an instructor had no property interest in continued employment.

IDAHO

Olson v. Idaho State University, 868 P.2d 505 (Idaho App. 1994). Because the conferral of tenure, as provided by the faculty handbook, required a “positive action of approval” from the board and president of the institution, an untenured professor who had been recommended for tenure at every level and

then denied by the president could not avail himself of the due process protections associated with tenure.

Hughes v. Idaho State University, 835 P.2d 670 (Idaho App. 1992). A nontenured professor's property interest in continued employment was not violated where the professor was not offered an additional contract; the professor had been hired under a series of one-year contracts rather than a one-year contract that was "continued year after year," as the professor argued. Various handbook provisions supported that conclusion.

Loebeck v. Idaho State Board of Education, 530 P.2d 1149 (Idaho 1975). A grant of tenure at Idaho State University required an affirmative act by the institution, as specified by the faculty handbook and letter of appointment.

ILLINOIS

Ross v. May Company, 880 N.E.2d 210 (Ill. App. Ct. 2007). Plaintiff sued his employer on the ground that it breached the employee handbook by discharging him without following the procedures of the handbook in existence when he was hired. The Illinois Court of Appeals affirmed the lower court's finding that the original handbook was an enforceable contract. The court also held that the employer had not legitimately altered the terms of the contract when it changed the employee handbook because it offered no additional consideration to the employee in exchange for the protections it removed.

Green v. Trinity International University, 801 N.E.2d 1208 (Ill. App. 2003). To state a cause of action for breach of contract arising from failure to comply with the faculty handbook, a professor must allege facts demonstrating that the handbook created binding contractual rights. The following requirements must be met: (1) the language of the policy statement must contain a promise clear enough that the faculty member would reasonably believe that an offer was made, (2) the statement must be disseminated to the faculty member in such a manner that he or she is aware of its contents and reasonably believes it to be an offer, and (3) the faculty member must accept the offer by commencing or continuing to work after learning of the policy statement. The professor claimed that the university's breach arose from its failure to notify him of his dismissal in

a timely manner, as required by the handbook. The court held, however, that the handbook provisions did not apply to the university's decision to terminate. The professor had failed to allege any facts pertaining to the handbook's incorporation into his letter of appointment, and thus, he had no basis to assume that the handbook created binding contractual rights.

Hentosh v. Herman M. Finch University of Health Sciences, 734 N.E.2d 125 (Ill. App.), *appeal denied*, 742 N.E.2d 327 (Ill. 2000). Professors submitted their tenure applications for review, but the tenure review was never completed because the department decided to terminate their appointments. Both sides agreed that the faculty handbook was part of their contracts. The court found that the faculty handbook modified the at-will relationship. Therefore, the untenured professors were entitled to tenure review. Furthermore, based on the university bylaws and faculty handbook, once the tenure-review process was begun, the professors had the right to have it completed.

Kirschenbaum v. Northwestern University, 728 N.E.2d 752 (Ill. App. 2000). A medical school faculty handbook, along with a letter of appointment, clearly identified Northwestern University's "zero-based" salary obligation to a faculty member. Because the terms of the contract were "unambiguous," Northwestern did not breach an express or implied contract with the faculty member.

Gray v. Mundelein College, 695 N.E.2d 1379 (Ill. App. 1998). Under Mundelein College's faculty manual, the appointments of tenured professors could be terminated for a limited number of reasons, including financial exigency. Facing financial problems, Mundelein "affiliated" with Loyola University, an eventuality not addressed by the handbook. The court determined that the precise terms of the handbook were operative, and because no financial crisis had been announced as stipulated in the guidelines, the tenured professors' rights were not extinguished by affiliation. See also *Gray v. Loyola University of Chicago*, 652 N.E.2d 1306 (Ill. App. 1995).

Jacobs v. Mundelein College, Inc., 628 N.E.2d 201 (Ill. App. 1993). A private college's decision not to renew a faculty member's contract failed to breach the faculty handbook because the handbook's controlling provision did not require the administration to defer to or even accept the recommendations of

department chairpersons or faculty members on the issue of contract renewal. For a handbook to become part of an employment contract, it must (1) “contain a promise clear enough that an employee would reasonably believe an offer has been made”; (2) “be disseminated to employee in such a manner that he is aware of its contents and reasonably believes it to be an offer”; and (3) “be accepted by the employee, meaning employee must commence or continue to work after learning of policy statement.”

Arneson v. Board of Trustees, McKendree College, 569 N.E.2d 252 (Ill. App. 1991). A college could not reject a manual as part of an employment contract because, although the manual was never adopted by the college, professors were made to rely on the manual as part of the “rules and regulations” defining the relationship between the faculty and the college.

INDIANA

Peters v. Gilead Sciences, 533 F.3d 594 (7th Cir. 2008). Company handbook’s promise of twelve weeks of leave created enforceable contract and prohibited company from replacing employee during leave of fewer than twelve weeks.

Lim v. The Trustees of Indiana University, 2001 U.S. Dist. LEXIS 24822 (S.D. Ind. Dec. 4, 2001), *aff’d*, 297 F.3d 575 (7th Cir. 2002). A professor brought a number of claims against the university for having denied her tenure, including breach of contract based on her faculty handbook. For the breach-of-contract claim to survive, the professor had to establish that the faculty handbook “represents a contractual commitment by the University.” The court noted that both the 1992 faculty handbook, under which Dr. Lim was appointed, and the 1997 handbook, which was in effect when she was denied tenure, contained the “identical disclaimer on the first page,” which read: “Statements and policies in this Handbook do not create a contract and do not create any legal rights.” The court held that the “clear and forthright disclaimer is ‘a complete defense to a suit for breach of contract based [up]on an employee handbook.’” Accordingly, the faculty handbook failed to constitute an enforceable contract. The court observed that the *Colburn* case, discussed below, failed to support the “conclusion that the Handbook constitutes a legally binding contract for

definite-term employees. Any bolder language about how the appointment papers might have incorporated certain parts of the Handbook as a contractual commitment is merely dicta.”

McElroy v. Saint Meinrad School of Theology, et al., 713 N.E.2d 334 (Ind. 2000). A tenured professor, whose employment was terminated after she had signed an open letter to the pope advocating the ordination of women, brought a breach-of-contract action against a Catholic institution. The court held that ambiguity in the letter of appointment showed the intent of both parties to incorporate additional terms, including the faculty handbook, which allowed for termination for serious deficiency in performance of duties.

Colburn v. Trustees of Indiana University, 739 F. Supp. 1268 (S.D. Ind. 1990), *aff'd*, 973 F.2d 581 (7th Cir. 1992). A faculty handbook provided no definite terms of employment, and department bylaws stated that professors could be dismissed only for cause during the academic year for which they had been appointed. Therefore, professors who had one-year employment contracts could not prevail on their dismissal claims when the university failed to reappoint them, since the professors were not dismissed, merely not reappointed.

IOWA

King v. Hawkeye Community College, No. C98-2004, 2000 U.S. Dist. LEXIS 1695 (N.D. Iowa Jan. 3, 2000) (unpublished). The court stated that a handbook may constitute an offer by a college that is accepted by a professor if the professor could reasonably believe that he or she had been guaranteed protections by the college. The court applied the three-part test stated in *Taggart v. Drake University* (below) and looked at the following criteria to evaluate whether it was reasonable for the professor to rely on the handbook: “(1) Is the handbook in general and the progressive disciplinary procedures in particular mere guidelines or a statement of policy, or are they directives?; (2) Is the language of the disciplinary procedures detailed and definite or general and vague?; (3) Does the employer have the power to alter the procedures at will or are they invariable?” The court stated that “if the language is vague, creates procedural

guidelines, and reserves the right for employers to change procedures, the handbook does not create a unilateral contract.” Based on this analysis, the court held the handbook to be part of the professor’s contract. Therefore, the college breached the contract when the handbook stated that the professor was entitled to six months of unpaid leave and a three-month review to determine if he was fit to return to work, and the college provided neither.

University of Dubuque v. Faculty Assembly, et al., No. EQCV090784 (Iowa Dist. 1999) (unpublished). The court concluded that the faculty handbook constituted an enforceable employment contract because (1) “letters of appointment and the Handbook expressly incorporate each other by reference”; (2) the handbook clearly states that its “terms shall be legally binding and enforceable”; (3) the terms of the handbook “govern the continuation and termination of the employment contract and supersede letters of appointment in the event of a conflict”; and (4) “surrounding facts and circumstances also indicate that the Handbook terms are part and parcel of the employment contracts.”

Taggart v. Drake University, 549 N.W.2d 796 (Iowa 1996). The university did not breach an employment contract with a faculty member who was denied tenure. A faculty handbook may give rise to an enforceable contract under three conditions: “(1) document must be sufficiently definite in its terms to create an *offer*; (2) document must be communicated to and accepted by employee so as to create *acceptance*; and (3) employee must continue working, so as to provide *consideration*.” While the procedural rights in the handbook were sufficiently specific to create a contract, the university followed procedures adequately to deny the professor’s breach-of-contract claim.

Mumford v. Godfried, 52 F.3d 756 (8th Cir. 1995). A probationary professor did not have a property interest in continued employment at Iowa State University and therefore had no constitutional right to due process. While the faculty handbook procedures were incorporated into his employment contract, “a contractual right to have certain procedures followed does *not* create a property interest in procedures themselves.”

KANSAS

Lesourd v. Washburn University of Topeka, No. 86-2324-S, 1987 U.S. Dist. LEXIS 9367 (D. Kan. Sept. 22, 1987) (unpublished). A professor's contract stated that her appointment was subject to the policies of the faculty handbook. Therefore, the department chair's discussion with a nontenured professor concerning her teaching assignment for the next year did not preclude the university from terminating her employment because the faculty handbook stated that all faculty contracts were "subject to final confirmation by approval of the budget after final hearing." The department chair did not have authority to enter into a binding contract with the professor.

KENTUCKY

Landrum v. Lindsey Wilson College, 2004 WL 362317 (Ky. App. Feb. 7, 2004). A professor's contract incorporated by reference the faculty handbook. The handbook provided that a faculty member under a multi-year contract could be dismissed with one-year notice and majority consent of the division chairs or for misconduct or other specified conditions. During the professor's three-year contract, the college inserted a provision in his contract allowing the college to terminate his appointment for any reason as long as thirty days' notice was provided. The court held that when an employment contract is for a specified period of time, the employer cannot unilaterally alter the terms of the contract during that time. Therefore, the college would not have been able to terminate the professor's appointment without cause during the term of his contract. However, he was not reappointed at the end of the contract, so the court did not have to decide whether the faculty handbook or the contract applied.

Landrum v. Board of Regents, No. 92-6231, 1994 U.S. App. LEXIS 2329 (6th Cir. Feb. 8, 1994) (unpublished). An untenured professor was employed under a consent decree from previous litigation. The settlement provided that the university was to employ the professor "through the academic year when he reaches the age of sixty-five years, according to the provisions of the University

Faculty Handbook.” Although the handbook was later updated to ensure employment until age seventy, the court found the consent decree was based on the earlier handbook. Therefore, the university did not violate the professor’s rights when it refused to employ him past age sixty-five.

Blank v. Peers, No. 92-5687, 1993 U.S. App. LEXIS 8038 (6th Cir. Apr. 7, 1993), *cert. denied*, 510 U.S. 883 (1993) (not recommended for publication). A university failed to follow grievance procedures outlined in the faculty handbook in terminating a tenured professor’s appointment. Nevertheless, this “technical” violation of the handbook requirements did not violate constitutional due process because the hearing actually accorded the professor was meaningful.

LOUISIANA

Stanton v. Tulane University, 777 So.2d 1242 (La. App.), *writ denied*, No. 2001-C-0391, 2001 La. LEXIS 1410 (La. Apr. 12, 2001). A nontenured assistant professor claimed his employment was terminated in violation of the university’s faculty handbook. The court found that the handbook was not part of the contract, because “Louisiana recognizes a presumption favoring at-will employment,” and the handbook explicitly said that it was a “general guide.” The court stated that “implicit in the status of nontenured/probationary employee is the assumption that protection against arbitrary or repressive dismissal is absent, i.e., the doctrine of employment at will prevails.”

Fairbanks v. Tulane, 731 So.2d 983 (La. App. 1999). A deceased faculty member’s son sued a university for tuition-waiver benefits identified in the faculty handbook as part of a faculty member’s compensation. The court concluded that the university was not entitled to summary judgment, because the facts concerning handbook provisions still needed to be resolved. Commenting on previous court decisions concerning faculty handbooks, the court wrote that “[w]e did not hold that a provision of the faculty handbook could never become an enforceable obligation.” Under conditions where provisions of a handbook are designed to induce an employee (e.g., in the form

of additional compensation), an employee may “acquire a vested property right.”

Schwarz v. Administrators of Tulane Educational Fund, 699 So.2d 895 (La. App. 1997). The failure of a private university to grant tenure to a professor did not breach any employment contract because the tenure procedure set forth in the faculty handbook did not constitute a mutual agreement necessary for a contractual obligation; “a grievance procedure in a handbook is a unilateral expression of company policy” rather than “a meeting of the minds” for the purposes of contract law.

Schalow v. Loyola University of New Orleans, 646 So.2d 502 (La. App. 1994). A private university was entitled to deny reappointment to a probationary professor without cause after the expiration of his annual contract. Some faculty handbook provisions were specifically incorporated by reference into the professor’s employment contract, and these provisions indicated that nontenured faculty members were probationary employees—in contrast with tenured faculty, who could be dismissed only for cause.

Marson v. Northwestern State University, 607 So.2d 1093 (La. App. 1992). “[P]olicy handbooks do not constitute a part of the contract per se” and, therefore, a faculty handbook did not form part of a nontenured faculty member’s contract. Moreover, the university followed the policy guidelines of the handbook.

MAINE

Earnhardt v. University of New England, No. 95-229-P-H, 1996 U.S. Dist. LEXIS 10030 (D. Me. July 3, 1996) (unpublished). A faculty handbook was an enforceable contract because a tenured professor’s appointment letter expressly incorporated it.

Knowles v. Unity College, 429 A.2d 220 (Me. Sup. 1981). An untenured professor could not rely on AAUP guidelines when the faculty handbook and accreditation self-study both clearly stated that the university had no tenure policy. No tenure terms were included in the professor’s letter of appointment, nor did the appointment letter reference the faculty handbook.

MARYLAND

University of Baltimore v. Iz, 716 A.2d 1107 (Md. Spec. App. 1998). A nontenured faculty member challenged the university's decision to deny him tenure. The court ruled that the professor received the tenure review provided by the contract. However, "not all personnel policies contained in employee manuals create enforceable contractual rights." For example, the court ruled that general statements of policy would not qualify as enforceable contractual rights.

Marriott v. Cole, 694 A.2d 123 (Md. Spec. App.), *cert. denied*, 700 A.2d 1215 (Md. 1997). A seventh consecutive one-year contract issued to a faculty member at Morgan State University did not entitle the professor to tenure under the faculty handbook in effect at the time of her hiring, absent express incorporation in the contract of regulations in effect on her date of hire. Instead, the employment contract incorporated revisions of regulations that were made subsequent to her date of hire, under which the professor was permanently ineligible for tenure.

Johns Hopkins University v. Ritter, 689 A.2d 91 (Md. Spec. App. 1996), *cert. denied*, 694 A.2d 950 (Md. 1997). A university properly terminated the appointments of two professors despite statements of the university department director, because the tenure process is entirely governed by the faculty handbook, and the director had no authority to modify the handbook's tenure procedure. Although the director could have created the impression that the two professors were to start their employment as tenured full professors, "when a tenure process is established in writing and is communicated to a prospective appointee, a subordinate official may not circumvent that process and bind college to a tenure arrangement."

Elliott v. Board of Trustees of Montgomery County Community College, 655 A.2d 46 (Md. Spec. App. 1995). A disclaimer in a community college's new employee handbook purported to change employee contracts that were implied to continue unless good cause existed for termination to at-will contracts. However, the disclaimer was not "conspicuous." Moreover, a two-page

memorandum accompanying the new manual “mute[d] the effectiveness of disclaimer” by indicating that the revision was designed to “make [the handbook] easier to use” and failed to point out that the new manual contained the disclaimer. Nonetheless, the employer would be free to modify unilaterally a contract previously established with employees as part of an employee handbook as long as the college provides “reasonable,” not necessarily “actual,” notification.

Foster v. Tandy Corp., 828 F.2d 184 (4th Cir. 1987). The employee, a retail sales clerk, claimed that his employer breached its contract with him when it did not follow the four-step disciplinary process outlined in the employee handbook before he was discharged. The court held that the language of the handbook was not mandatory and agreed with the employer that not all statements in personnel handbooks were enforceable contracts.

MASSACHUSETTS

Berkowitz v. President & Fellows of Harvard College, 789 N.E.2d 575 (Mass. App. 2003). A tenure-track professor alleged that the university failed to follow grievance and tenure procedures in the faculty handbook. In addressing the professor’s claims, the court treated the handbook as a contract. The court wrote that interpretation of a university contract should be undertaken using two guiding principles. The first principle is the standard of reasonable expectation – that is, what meaning the university should expect the professor to give to the contract. The second principle is that courts should be wary of interfering with academic decisions of private universities, unless they violate the reasonable expectation of the parties or the university acted in an arbitrary and capricious manner. The court granted the university’s motion to dismiss the complaint.

Tuttle v. Brandeis University, 2002 WL 202470 (Mass. Super. Feb. 4, 2002) (unpublished). “Under appropriate circumstances, promises contained in a personnel handbook, like the Faculty Handbook, can be binding on an employer and effectively become terms of an employment contract.” The court held that if an employee reasonably believes his employer was offering to extend the

terms of the contract through the manual, the terms of the manual may become incorporated into the employment contract. Consequently, the terms governing tenure may be implied in the faculty member's employment contract and the faculty member has a cause of action for breach of contract if the university fails to follow such procedures.

Motzkin v. Trustees of Boston University, 938 F. Supp. 983 (D. Mass. 1996). A university's alleged failure to follow certain procedures delineated in the faculty handbook, which the parties agreed was incorporated into a professor's employment contract, was immaterial to the professor's breach-of-contract claim "since the outcome of a hearing conducted in a manner that [complainant] would deem 'procedurally proper' would be the same," given that the professor conceded that the university had the right to terminate his employment for cause and he admitted that he was unfit to teach.

Harris v. Board of Trustees of State Colleges, 542 N.E.2d 261 (Mass. 1989). A college properly dismissed a tenured faculty member as "unfit" under the provisions of a college policy handbook that allowed discharge of tenured professors for "just cause."

Goldhor v. Hampshire College, 521 N.E.2d 1381 (Mass. App. 1988). A college administrator and faculty member was dismissed by the president because of "extenuating" circumstances. The administrator's handbook provided for specific employment termination procedures except in "extenuating" circumstances. The court concluded that the college's use of "extenuating" circumstances as justification for termination was an affirmative defense and, therefore, the "college must shoulder the burden of proof."

MICHIGAN

Marwil v. Baker, 499 F. Supp. 560 (E.D. Mich. 1980). A professor sued a university, charging that he was guaranteed “a tenure review in his sixth year, or at least an ad hoc renewal committee, and a seventh terminal year” based on rules, policy statements, and customs of the university. The court agreed that “[i]n Michigan an employee can have contractual rights in the procedures and benefits found in statements of policy,” but found that the university had properly followed its guidelines and procedures.

Bates v. Sponberg, 547 F.2d 325 (6th Cir. 1976). A university’s failure to follow its own handbook in terminating the employment of a tenured professor may raise an administrative state law claim, but was not a violation of constitutional due process rights because the professor was given a meaningful hearing.

MINNESOTA

Cooper v. Gustavus Adolphus College, 957 F. Supp. 191 (D. Minn. 1997). Faculty handbook provisions that (1) give the complainant, not the accused, sole discretion to initiate a formal sexual harassment grievance process, and (2) provide separate procedures for the dismissal of tenured professors were incorporated into a tenured professor’s employment contract. Whether the college breached the professor’s contract by failing to comply with the faculty handbook’s dismissal procedures for tenured faculty is a factual issue to be determined by a jury.

Eldeeb v. University of Minnesota, 864 F. Supp. 905 (D. Minn. 1994), *aff’d*, 60 F.3d 423 (8th Cir. 1995). Although a tenure code was part of an employment contract between a university and an oral surgeon-professor, general policy statements such as “due process” and “academic freedom” in a tenure code and nondiscrimination brochure did not meet contractual requirements under Minnesota law because of the difficulty of determining whether a breach has occurred. A faculty handbook may become the basis of a contract if terms are specific and communicated to a professor.

MISSISSIPPI

Whiting v. University of Southern Mississippi, 451 F.3d 339 (5th Cir. 2006). After being denied tenure, professor with excellent evaluations sued, claiming Faculty Handbook guaranteed tenure if she met or exceeded criteria used for evaluation. Court ruled that Handbook's apparent assurance of tenure was vitiated by other sections of the handbook that made clear that tenure was never guaranteed and was made contingent on the board of trustees' and president's acceptance.

Holland v. Kennedy, 548 So.2d 982 (Miss. 1989). "[T]he express terms of a contract of employment may be *supplemented* by provisions of a personnel manual. If the handbook or policy statement is intended to *supplant* or *modify* the express terms of the contract, however, such an intent must also be expressed." Because the express terms of a professor-administrator's contract were ambiguous, the professor could introduce evidence of an employer's past practices and oral representations, as well as the policy handbook, to support the claim that his appointment was for a definite term.

Robinson v. Board of Trustees of East Central Junior College, 477 So.2d 1352 (Miss. 1985). Because a professor's one-page contract specifically referred to policies, rules, and regulations promulgated by the board of trustees, the provisions of the faculty handbook became part of the professor's contract. Even without evidence of the formal adoption of a handbook, the board was nonetheless bound by provisions because of the "use and dissemination of the publications and the terms of the contract entered into by the parties."

MISSOURI

Daniels v. Board of Curators of Lincoln University, 51 S.W.3d 1 (Mo. App. 2001). A tenured professor also held a position as vice president of student affairs, which was governed by an employee handbook. Although the university had a policy that said employees served at will, it also had employee handbook provisions that guaranteed that staff would not be dismissed without good cause. The court found that the promise not to dismiss without cause gave the professor "a protected property interest in his continued employment [as vice

president], thus entitling professor to notice of the reasons for termination and an opportunity to be heard.”

Muth v. Board of Regents of Southwest Missouri State University, 887 S.W.2d 744 (Mo. App. 1994). The faculty handbook included a grievance process for faculty members to object to a denial of tenure. After being denied tenure, a faculty member, rather than exhaust her administrative remedies, filed suit in state court. The state appellate court ruled that a court can hear a tenure dispute only after all internal administrative remedies have been exhausted, as provided in the handbook.

Krasney v. Curators of University of Missouri, 765 S.W.2d 646 (Mo. App. 1989). Neither prior appointments nor any provision of a university’s manual created the right to reappointment under a temporary librarian’s specific term contract.

Snowden v. Northwest Missouri State University, 624 S.W.2d 161 (Mo. App. 1981). A nontenured faculty member’s claim that he was not given timely notice of nonrenewal was rejected on the grounds that the faculty handbook clearly identified the timing for notice for faculty members on regular contracts.

MONTANA

Ashtar v. Van De Wetering, 642 P.2d 149 (Mont. 1982). Eastern Montana College’s code, which was specified as the Rank and Tenure Committee’s operating manual, “although by its nature a pseudo-extension of the contract,” was not part of the contract. The court followed the rationale of *Gates v. Life of Montana Ins. Co.*, 638 P.2d 1063 (Mont. 1982), which held that an employee handbook was not part of an employee’s contract because it was not bargained for and no meeting of minds existed.

NEBRASKA

Brady v. Curators of University of Trustees of Nebraska State Colleges, 242 N.W.2d 616 (Neb. 1976). A college violated a tenured professor’s contract rights by terminating his employment without notice and hearing as required by the faculty handbook. The professor’s participation in grievance procedures under a

collective bargaining agreement did not terminate his contractual rights to due process under the faculty handbook.

NEVADA

University of Nevada, Reno v. Stacey, 997 P.2d 812 (Nev. 2000). A professor claimed that he should have been granted tenure when he met the threshold rating requirements set out in a university's bylaws and administrative manual. The court found that the manual and bylaws were "incorporated by reference" into the professor's employment agreement with the university. However, the professor was not guaranteed tenure because the manual and bylaws made clear "the discretionary nature of [the university's] decision to grant tenure."

NEW HAMPSHIRE

Dillman v. New Hampshire College, 838 A.2d 1274 (N.H. 2003). The college appealed a jury verdict in favor of the college's former audio visual director and a decision by the trial court denying the college's motion for a directed verdict. The director's letter of appointment stated that his position was "covered under the policies and procedures outlined in the New Hampshire College Unified Handbook." Subsections of the handbook suggested that an employee could be fired for just cause only. The court held that these provisions were sufficient evidence for a jury to conclude that the director was not an at-will employee, therefore affirming the denial of a directed verdict.

Young v. Plymouth State College, 1999 U.S. Dist. LEXIS 22745 (D.N.H. Sept. 21, 1999). A professor brought a claim of breach of contract based on a college's failure to follow its handbook's provisions. The court noted that "an employer's handbook or policy statement may form an enforceable unilateral contract," but found that the disclaimer in this particular handbook "effectively prevented the formation of any enforceable contract provisions with respect to the College's complaint and termination procedures."

NEW JERSEY

Fanelli v. Centenary College, 2004 WL 2364894 (3d Cir. Oct. 21, 2004)

(unpublished). A former director of the college's graduate programs sued for breach of contract. The court found that although the institution's constitution provides that full-time faculty members cannot be dismissed without cause and due process, the director was not a full-time faculty member, and so was not covered by the constitution. Instead, her employment was covered by the "Staff Handbook," which provided that she could be dismissed at will.

Healy v. Fairleigh Dickinson University, 671 A.2d 182 (N.J. App. Div.), *cert. denied*, 678 A.2d 713 (N.J.), *cert. denied*, 519 U.S. 1007 (1996). A professor's claim of de facto tenure after completion of fourteen continuous semesters was rejected as conflicting with "formal, established tenure procedure" delineated in the handbook.

Alicea v. New Brunswick Theological Seminary, 581 A.2d 900 (N.J. App. Div. 1990). A seminary failed to provide a faculty member, who had been denied tenure, with grievance procedures in accordance with the faculty manual. The seminary was "obliged by [its] established procedures to provide plaintiff with a forum for resolution of his claim."

NEW MEXICO

Bauer v. College of Santa Fe, 78 P.3d 76 (N.M. App. 2003). Contesting the non-renewal of their appointments, two nontenured professors argued that the criteria for reappointments provided in the college's handbook required the college to reappoint them. The parties agreed that the employment relationship between them was governed both by the signed letters of appointment and by the faculty handbook, which stated that "faculty members will be appointed or reappointed subject to their professional qualifications." However, the handbook also provided that "*nonreappointment*" occurs when action is "taken by the administration not to renew the standard contract of a probationary faculty member after the expiration of his/her contract." In this case, the court held that the college had simply exercised a right of "*nonreappointment*" as

described by the handbook, and the college therefore did not breach any employment contract.

Handmaker v. Henney, et al., 992 P.2d 879 (N.M. 1999). A professor's claim relied in part on representations by the university to provide context for interpreting the contract. The state supreme court returned the case to the district court on grounds that the case was prematurely appealed. In doing so, however, the court noted that the issue of contract interpretation was "best informed" by *Garcia v. Middle Rio Grande Conservancy Dist.*, 918 P.2d 7, 12-13 (N.M. 1996), which held that "an employment contract may be implied in fact from a term exhibited in writing in, for example, a personnel policy manual."

Hillis v. Meister, 483 P.2d 1314 (N.M. App. 1971). Although a professor's contract at Eastern New Mexico University made no reference to a handbook, the court found that the handbook "govern[ed] the relationship between the faculty members and the university's administration" and that the university's failure to follow reappointment procedures set forth in the handbook was a breach of contract.

NEW YORK

Ricioppo v. County of Suffolk, et al., 2009 U.S. Dist. LEXIS 18979 (E.D.N.Y. March 4, 2009). A community college's personnel handbook said that "Administrative Officers entering their sixth year of employment with the College shall be granted continuing appointment." An administrator and sometime faculty member had been employed by the college from 1995 through 2003, and argued that he had automatically received a "continuing appointment" (akin to tenure) upon his sixth year of employment. The federal district court disagreed, noting that the Handbook states that it is a "guide and does not substitute for existing practice"; that the Handbook reserves the Trustees' right to change the personnel policies "as they deem appropriate"; and that the existing practice at the college was that a fifth-year probationary employee was *eligible* for a continuing appointment, dependent upon the president's recommendation and the Board's approval.

Postol v. St. Joseph's College, 777 N.Y.S.2d 699 (App. Div. 2004). A full-time non-tenure-track faculty member sued the college for unfairly denying his application for a tenure-track position. His employment contract as a non-tenure-track professor specifically stated that he was bound by the terms of the faculty handbook. The court affirmed the trial court's dismissal of the professor's suit because he had failed to exhaust administrative remedies as set forth in the handbook, which required him to file an internal grievance.

Byerly v. Ithaca College, 290 F. Supp. 2d 301 (N.D.N.Y. 2003). A professor's motion to add a breach-of-contract claim to her complaint in federal court was denied because her claim was based upon the college's alleged failure to follow procedures set forth in the faculty handbook. Any claims based upon the rights and procedures found in college manuals or handbooks may be reviewed only in a special Article 78 proceeding in the state trial court.

Rajagopalan v. Mount Sinai Med. Ctr., 769 N.Y.S.2d 524 (App. Div. 2003). To incorporate the terms of a faculty handbook into a letter of appointment, the professor must demonstrate both reliance upon its terms and resulting detriment. An associate professor appointed to a five-year term met neither of the above criteria. Therefore, the court affirmed the dismissal of his breach-of-contract claim.

Sackman v. Alfred University, 717 N.Y.S.2d 461 (Sup. Ct. 2000). A university's failure to follow a handbook's tenure procedures and policies entitled the professor to a new tenure review, but the court denied the professor's claim that the university breached his contract when it failed to grant tenure.

Maas v. Cornell University, 721 N.E.2d 966 (N.Y. 1999). A handbook was not part of an employment contract where a university did not express an intent to have the handbook become part of the contract, the handbook was heavily informational in nature, and the handbook clearly stated that it could be altered at any time.

Holm v. Ithaca College, 669 N.Y.S.2d 483 (Sup. Ct. 1998). "Handbook rules, if duly authorized, are contractual in nature and, so far as applicable, bind both the college and the plaintiff." Therefore, a tenured faculty member waived contractual rights to peer review and grievance procedures by not having filed

under procedures set forth in two different handbooks in effect during his employment.

Pearce v. Clinton Community College, 667 N.Y.S.2d 781 (App. Div. 1998). Employment-at-will principles remain in place when a faculty manual does not limit the administration's power of dismissal through specified termination procedures.

Roufaiel v. Ithaca College, 660 N.Y.S.2d 595 (App. Div. 1997). A professor at a private college stated a breach-of-contract claim based on the provost's memorandum stating that the college would not apply a tenure density rule (a cap of no more than 75 percent of tenure-eligible positions), since a memorandum could be construed as an express limitation on the college's discretion. However, no cause of action arose from the allegation that the college failed to follow certain rules governing the tenure review process because no express provision existed in the faculty handbook that such a failure limited the college's discretion in granting tenure: "The right to bring breach of contract [claims is] recognized where there are express limitations on college's discretion in tenure review process."

De Simone v. Siena College, 663 N.Y.S.2d 701 (App. Div. 1997). A college's decision not to renew a professor's contract was permissible because nothing in the faculty handbook or the professor's employment contract mandated renewal or substantively limited the college's discretion not to renew. The college did not breach the professor's employment contract when (1) it failed to provide him with written evaluations of his teaching ability, as called for in the faculty handbook, because the professor was terminated for failure to get along with colleagues, rather than for any teaching deficiency; and (2) it was allegedly two days late in sending the professor notice of its intent not to renew his contract because this error was *de minimis*.

Klinge v. Ithaca College, 663 N.Y.S.2d 735 (App. Div. 1997). A faculty handbook's immediate dismissal provision, which provided that no letter of warning was required in certain cases involving "a flagrant and egregious abuse of position," governed the employment termination of a tenured professor accused of plagiarism.

Bennett v. Wells College, 641 N.Y.S.2d 929 (App. Div. 1996). A private college was directed to conduct a *de novo* (new) tenure review because of its failure to follow faculty handbook rules in denying tenure to a professor. The college's review lacked the active involvement of the college president, no direct communication existed between the administration and faculty in the tenure decision, and the dean's negative tenure recommendation was based on declining student enrollment, which was not a criterion enumerated in the faculty handbook.

Polakoff v. St. Lawrence University, No. 95-CV-1660, 1996 WL 481552 (N.D. N.Y. Aug. 19, 1996) (unpublished). A professor successfully stated a breach-of-contract claim, based on a faculty handbook provision that "[t]his policy of equal employment opportunity . . . governs all University employment policies, practices and actions," because the university used improper criteria and procedures to deny her tenure for discriminatory reasons. Under New York law, a handbook may give rise to contractual duties if "there exists an 'express limitation' on employer's rights."

NORTH CAROLINA

Mayo v. North Carolina State University, 608 S.E.2d 116 (N.C. App. 2005). The administration sought to have a professor repay his summer salary, since the professor resigned as of the fall and the institution treated the salary during the summer as "prepayment" for the following academic year. The state appellate court rejected the administration's argument, ruling that the tenured faculty member's written employment agreement, which consisted of his appointment letter, annual salary letter, the policies adopted by the trustees, and the faculty handbook, failed to contain such a repayment policy. Since the language of these documents was clear as to the faculty member's salary, the university was not allowed to introduce other evidence concerning salary payments.

Massie v. Board of Trustees, Haywood Community College, 2005 WL 375594 (W.D.N.C. Feb. 16, 2005). The court denied summary judgment on a welding instructor's breach-of-contract claim, stating that there was a genuine issue of

fact whether the faculty handbook provision regarding maximum course loads had been incorporated into the instructor's employment contract.

Claggett v. Wake Forest University, 486 S.E.2d 443 (N.C. App. 1997). A professor alleged that a university's policies, procedures, and guidelines were part of his employment contract. The court determined that the university did not breach its contract with the professor in rejecting the professor's tenure application because "[t]he mere allegation that defendant failed to grant the plaintiff tenure is insufficient to allege any breach by defendant of the terms of plaintiff's employment contract."

Black v. Western Carolina University, 426 S.E.2d 733 (N.C. App. 1993). North Carolina provides that handbooks or policies do not become part of employment contracts unless expressly included in a contract; therefore, because university code provisions regulating fixed-term appointments were not incorporated expressly either into a professor's employment contract or the handbook, the professor was not entitled to notice of nonreappointment beyond the expiration date in the original contract.

NORTH DAKOTA

Peterson v. North Dakota University System, 678 N.W.2d 163 (N.D. 2004). The State Supreme Court ruled that regulations adopted by the State Board of Education as part of its policy manual govern the dismissal of faculty members and are part of the employment contract, citing *Hom v. State* (discussed below).

Long v. Samson, 568 N.W.2d 602 (N.D. 1997). A faculty member's lawsuit alleging contractual and tort claims arising from the University of North Dakota's tenure review process was dismissed because his employment contract was governed by the procedural regulations set forth in the faculty handbook, and he had not pursued the administrative remedies required therein.

Thompson v. Peterson, 546 N.W.2d 856 (N.D. 1996). A faculty member's employment agreement "was specifically governed by the NDSU [North Dakota State University] University Senate Policy Implementing Procedural Regulations and by the State Board regulations" (citing *Hom*).

Hom v. State, 459 N.W.2d 823 (N.D. 1990). Regulations, including those governing employment termination, adopted by the State Board of Education as part of the policy manual are part of a contract between the institution and the faculty member.

Stensrud v. Mayville State College, 368 N.W.2d 519 (N.D. 1985). A professor sued a college for its failure to follow precisely the handbook provisions for termination. The professor received “reasonable notice” of her employment termination, and this notice in no way compromised her procedural rights. “[S]ubstantial compliance with the procedural requirements for termination is sufficient if their purpose is fulfilled.”

OHIO

Chan v. Miami University, 652 N.E.2d 644 (Ohio 1995). A university violated a tenured professor’s due process rights and breached the professor’s employment contract, which incorporated by reference the university’s faculty manual, in terminating the professor’s employment under a rule prohibiting sexual harassment, rather than under the rule and procedure providing for dismissal of tenured faculty.

Brahim v. Ohio College of Podiatric Medicine, 651 N.E.2d 30 (Ohio App. 1994), *cert. denied*, 648 N.E.2d 515 (Ohio 1995). A college’s dismissal of a professor did not breach the professor’s employment contract, where the faculty handbook was incorporated by reference into the professor’s appointment letter because evidence indicated that the college followed the handbook’s grievance procedures, and sufficient cause existed to terminate the professor’s contract.

Yackshaw v. John Carroll University Board of Trustees, 624 N.E.2d 225 (Ohio App. 1993). A professor dismissed by a private university was not entitled to the court’s *de novo* review, but merely to the determination whether the university breached the professor’s contract and whether substantial evidence existed in the administrative record to support dismissal. The private university properly terminated the tenured professor’s employment contract, which incorporated by reference the faculty handbook, after an investigation and internal hearings,

which complied with the handbook, found the professor unfit because of “moral turpitude.”

OKLAHOMA

Bunger v. University of Oklahoma Board of Regents, 95 F.3d 987 (10th Cir. 1996). A university did not violate a professor’s procedural due process rights because nontenured faculty members at public institutions do not possess a constitutionally protected property interest in reappointment beyond a specified contract period, nor do procedural protections in a faculty handbook create a property interest in reappointment.

Skimbo v. Eastern Oklahoma State College, 1996 WL 822817 (Okla. App. Aug. 20, 1996). A state university breached its contract with a tenured professor when it eliminated the professor’s department because of apparent financial problems and effectively terminated his employment by offering him an adjunct position instead of laterally transferring him to “substantially similar status” in the area in which he was qualified to teach and for which he could receive a full-time tenured faculty salary. A full-time position could have been created by combining adjunct and nontenured faculty positions. While the faculty handbook, which was specifically incorporated by reference into the professor’s employment contract, allowed nonrenewal of employment contracts when a department was eliminated, the handbook also granted preferential status to tenured faculty.

Jones v. University of Central Oklahoma, 910 P.2d 987 (Okla. 1995). “[W]here a written formal tenure policy exists, and the court finds that that policy constitutes an express contract, a university professor cannot have a legitimate claim to tenure pursuant to an informal, unwritten tenure policy” based solely on length of service.

Beck v. Phillips Colleges, Inc., 883 P.2d 1283 (Okla. App. 1994). A president of a junior college, who had been dismissed, introduced the college “policy manual” as part of written evidence of an implied contract of employment. While the court noted that “employer handbooks and policy manuals” are factors critical to determining whether an implied contract of job security exists,

the court found that the written instruments submitted were “simply too vague to constitute an implied contract.”

OREGON

Conway v. Pacific University, 924 P.2d 818 (Or. 1996). A former visiting professor was appointed to a tenure-track position but did not pass his probationary period. The professor sued. The court ruled that notwithstanding a dean’s assurances to the professor that poor student evaluations would not affect his tenure prospects, the university acted properly in not renewing the professor’s contract based on poor student evaluations. The court reasoned that the university’s conduct did not give rise to a negligent misrepresentation claim—even though the university handbook required the university to provide information to employees concerning career advancement and job performance—because the contract did not create a “special” relationship required to establish such a claim.

Machunze v. Chemeketa Community College, 810 P.2d 406 (Or. App.), *cert. denied*, 815 P.2d 406 (Or. 1991). A college handbook and the faculty member’s individual contract did not support a community college employee’s claim that her appointment was conditioned solely on satisfactory evaluations and, therefore, no implied agreement existed to renew her contract.

PENNSYLVANIA

Shepard v. Temple University, 948 A.2d 852 (Pa. Super. Ct. 2008). Plaintiff, a professor at Temple University, filed suit against Temple, claiming that its denial of her application for tenure constituted a breach of her employment contract as well as the terms of the faculty handbook. On appeal, the Pennsylvania Superior Court found that the university complied with the handbook and her employment contract, and that Shepard’s claim really sought judicial review of the university president’s decision not to renew her. The court refused to review the president’s decision, holding that the assessment of tenure factors “is best performed by those closely involved in the life of the institution, not by judges.”

Atkinson v. Lafayette Coll., No. 01-CV-2141, 2003 U.S. Dist. LEXIS 13951 (E.D. Pa. July 24, 2003) (unpublished). Although the district court did not explicitly state that the faculty handbook was part of the employment contract, the court relied on both the letter of appointment and the handbook in determining that the professor did not have tenure. The letter of appointment stated that the professor's position was "at the pleasure of the President of the College and the Board of Trustees," and the handbook provided that tenure would not be granted "by default." Accordingly, the court found no breach of contract.

Ferrer v. Trustees of the University of Pennsylvania, 2002 Pa. LEXIS 3107 (Pa. Dec. 31, 2002) (unpublished). The administration launched a formal investigation, in compliance with the faculty handbook, into a faculty member's research program to determine if the faculty member had engaged in misconduct. The investigation found that the allegations of misconduct were unsubstantiated. According to the handbook, when a faculty member is found not guilty of misconduct, the matter shall be dropped and the dean must take an active role to repair any damage done to the professor's reputation. Instead, the dean unilaterally imposed sanctions on the professor. The faculty member sued for breach of contract, claiming that under the faculty handbook the university was obligated to work to repair his reputation after the investigation found no wrongdoing. The court agreed and awarded the faculty member \$2.9 million.

Pourki v. Drexel University, No. 98-4231, 1999 U.S. Dist. LEXIS 4519 (E.D. Pa. Mar. 24, 1999) (unpublished). "Under Pennsylvania law, employment relationships are presumed to be at-will. An employee can overcome this presumption by presenting evidence of a contract with specific and definite terms regarding length of employment or cause of termination." A university's faculty handbook gave the president and board of trustees final authority to override the faculty's tenure recommendations, so the faculty handbook did not override presumption of at-will employment.

Gulezian v. Drexel University, No. 98-3004, 1999 U.S. Dist. LEXIS 3276 (E.D. Pa. Mar. 19, 1999), *reh'g denied*, No. 98-3004, 1999 U.S. LEXIS 4624 (E.D. Pa. Apr. 8, 1999) (unpublished). "An employer's handbook does not create

contractual rights absent a clear representation that it is to have such an effect.” Therefore, regarding a breach-of-contract claim for failure to grant tenure (which was dismissed on other grounds), the court stated, “It appears from the pertinent language in the Handbook that defendant [University] merely articulated in generalized terms the factors considered when making decisions, that there was a tenure quota, that tenure was discretionary and that no professor was assured of obtaining tenure.”

Gronowicz v. Pennsylvania State University, 1997 WL 799438 (E.D. Pa. Dec. 29, 1997), *aff'd*, 168 F.3d 478 (3rd Cir. 1998). A professor, who was required to sign a “Memorandum of Personal Service” stating that he was “entitled to benefits of, and agree[d] to abide by, regulations” of the university, failed to state a breach-of-contract claim when the university denied him tenure and terminated his employment because the memorandum, along with other university policies concerning tenure, failed to form an express employment contract. To overcome the presumption of at-will employment in Pennsylvania, a professor must demonstrate “(1) sufficient additional consideration; (2) an agreement for a definite duration; (3) an agreement specifying that employee will be discharged only for just cause; or (4) an applicable recognized public policy exception.”

Block v. Temple University, 939 F. Supp. 387 (E.D. Pa. 1996). A professor claimed that a university breached its contract, created by the faculty handbook and the collective bargaining agreement, when the professor allegedly withdrew his tenure application based on the institution’s promise that he would later receive a “fresh and fair” tenure review. The matter had to be resolved under the grievance procedure of the collective bargaining agreement because the professor’s employment agreement provided for tenure review under the handbook and collective bargaining agreement.

Miller v. Trustees of University of Pennsylvania, 1993 U.S. Dist. LEXIS 13141 (E.D. Pa. Aug. 2, 1993) (unpublished). A professor alleged he was wrongly denied tenure even though he fulfilled the standard of “intellectual leadership” that was listed in the faculty handbook as the chief criterion for attaining tenure. “Under Pennsylvania law, policies in employee handbooks can be binding on an

employer.” However, the court found that the policies were “‘aspirational’ statements lack[ing] the clarity and specificity that Pennsylvania courts require to overcome the presumption of at-will employment. Further, where provisions in an employee handbook give the employer the exclusive authority to evaluate an employee’s performance, they . . . cannot defeat the at-will presumption of employment.”

RHODE ISLAND

Dunfey v. Roger Williams University, 824 F. Supp. 18 (D. Mass. 1993). Under Rhode Island law, a university handbook that can be amended unilaterally by an institution at any time does not create contractual rights.

SOUTH CAROLINA

Connor v. City of Forrest Acres, 348 S.C. 454 (Sup. Ct. 2002). An employee, a former police dispatcher who had received a negative performance evaluation, filed a breach-of-contract claim against the city after she was discharged. The South Carolina Supreme Court recognized that because an employee handbook may create a contract, the existence of such a contract is an issue for the jury to decide.

Dodgens v. Kent Mfg. Co., 955 F. Supp. 560 (D.S.C. 1997). A former employee was terminated by his employer for job-related mistakes. The employee filed a breach-of-contract claim, but the court found that he was employed at-will and thus not entitled to relief. While South Carolina courts recognize that an employer can alter an employee’s at-will status through its employee manual, the court in this case held that the employee handbook did not create an implied contract.

SOUTH DAKOTA

Lau v. Behr Heat Transfer Sys., 150 F. Supp. 2d 1017 (D.S.D. 2001). The discharged employees filed suit against their employer for breach of contract and wrongful termination. The parties agreed that the employee handbook was an employment contract. Although South Dakota law provides that employment

having no specific term can be terminated at the will of either party, the court recognized that an exception exists where the employee handbook specifically provides that an employer can discharge its employees “for cause only.” The court ruled, however, that the employee handbook contained no such language.

TENNESSEE

Langland v. Vanderbilt University, 589 F. Supp. 995 (D. Tenn. 1984), *aff’d mem.*, 772 F.2d 907 (6th Cir. 1985). The parties stipulated that tenure provisions in a faculty manual were part of a faculty member’s individual contract, and the court ruled that the plain language of the manual supported the conclusion that the dean evaluated the faculty member’s scholarship under the appropriate standard in the faculty handbook.

TEXAS

Fox v. Parker, 98 S.W.3d 713 (Tex. App. 2003). A tenured professor sued a student and the university for defamation and breach of contract after his employment was terminated following allegations of sexual misconduct. Each year, the professor received and signed a letter extending his appointment with the university. The annual letter stated that if the professor accepted appointment with the university, his complete contract consisted of the letter and the applicable provisions of the university’s personnel policy manual. Therefore, the court held that the applicable dismissal procedures were those contained in the manual.

Halper v. University of Incarnate Word, 90 S.W.3d 842 (Tex. App. 2002). A faculty member entered into a one-year contract with a private university. The signed contract stated that “termination of this contract is governed by Faculty Handbook policy.” While the contract referenced the faculty handbook, neither party signed the handbook. Before the expiration of the one-year contract the faculty member applied for tenure, which was denied. The faculty member then sued the university, claiming that the unsigned faculty handbook was incorporated by reference into his letter of appointment. The court agreed. The faculty member then claimed that the university’s decision not to award him

tenure breached the restrictions on nonreappointment contained in the faculty handbook. The court disagreed, finding that the university's decision to deny tenure was in compliance with the faculty handbook.

Curtis v. University of Houston, 940 F. Supp. 1070 (S.D. Tex. 1996), *aff'd mem.*, 127 F.3d 35 (5th Cir. 1997). A public university claimed that it denied promotion to a tenured associate professor based on "his lack of a published research monograph, his lack of national visibility, and his hiatus from a productive output of academic materials." The university's faculty handbook did not give the professor future expectation of a property interest in promotion to full professor, but merely a property interest in status as a tenured associate professor.

Owens v. Board of Regents of Texas Southern University, 953 F. Supp. 781 (S.D. Tex. 1996). A professor at a state university was denied tenure and sued, contending various claims including that a revised faculty manual, in effect at the time she was denied tenure and explicitly stating that tenure was granted only upon affirmative action by the board of regents, did not govern her tenure denial because the university violated timely notice provisions in the faculty manual regarding tenure application and denial. The court ruled that it was premature to determine which version of the handbook governed the professor's tenure, and whether she was entitled to de facto tenure under an earlier faculty manual.

Spuler v. Pickar, 958 F.2d 103 (5th Cir. 1992). An assistant professor sued a public university, alleging that he was denied due process in being refused tenure and having his employment terminated. Texas law provides that faculty handbooks, standing alone, "constitute no more than guidelines absent express reciprocal agreements addressing discharge protocols and, therefore, professor enjoyed no property interest in continued employment or an assurance of tenure."

UTAH

Doi v. University of Utah, 2004 WL 2457792 (D. Utah Oct. 28, 2004). The assistant dean of the College of Education lost her job when her position was

eliminated. Her breach-of-contract claims based on the university's manual were dismissed as barred by the state's sovereign immunity (meaning that the state could not be sued).

Cherry v. Utah State University, 966 P.2d 866 (Utah App. 1998). Under a university's code of policies and procedures, an assistant professor was entitled to review by the Tenure Advisory Committee (TAC) regarding her tenure candidacy, but not her reappointment. Therefore, the professor could not appeal to the TAC her termination of employment by the president. "[A]n educational institution may undertake a contractual obligation to observe particular termination formalities by adopting procedures or by promulgating rules and regulations governing the employment relationship."

VERMONT

Logan v. Bennington College Corp., 72 F.3d 1017 (2d Cir. 1995), *cert. denied*, 519 U.S. 822 (1996). A professor with "presumptive tenure"—a five-year contract that would be renewed in the absence of substantial failure to perform, financial problems, or elimination of the position by the college owing to policy changes—was properly dismissed by the college for "good cause" for violating an "interim" sexual harassment policy in the faculty handbook. While a jury could have reasonably interpreted the faculty handbook as an employment contract between the professor and the college, the adoption of an interim sexual harassment policy failed to constitute breach of contract, even though it was not approved by the faculty as required by the faculty handbook, because the interim policy did not "substantially" change the college's harassment policy and, therefore, faculty consultation and approval were not required. Furthermore, alleged "procedural flaws" during the professor's appeal and hearing did not constitute a breach because these flaws did not violate the faculty handbook provisions.

Nzomo v. Vermont State Colleges, 138 Vt. 73 (Sup. Ct. 1980). An untenured professor at Castleton State College charged that he had been improperly terminated. Although general rules for dismissal set forth for all Vermont state colleges by the Vermont State trustees were followed, rules in the faculty

handbook of Castleton State College were not followed. The court held that the college improperly failed to follow handbook provisions and that the procedures for termination were not modified by past conduct. The court found that the labor board was correct in rewarding only out-of-pocket expenses to the professor; neither reinstatement nor back pay was necessary because the decision to terminate the professor's appointment would have been made even if proper procedures had been followed.

VIRGINIA

Tuomala v. Regent University, 477 S.E.2d 501 (Va. 1996). Three professors signed “three-year continuing contracts” for “tenured faculty appointment[s],” the terms of which were defined in the faculty handbook, and the university later modified that handbook to provide that professors receiving appointments under continuing contracts were entitled to annual “new contract[s],” rather than renewal of existing contracts. In the end, the professors were entitled to three years of employment under their three-year contracts, and after that they were entitled to one-year contracts only.

Sabet v. Eastern Virginia Medical Authority, 775 F.2d 1266 (4th Cir. 1985). A professor believed that a university offered “permanent tenure” in accordance with AAUP policy. This belief, based on the widespread adoption of AAUP policies and the fact that the university had always renewed contracts in the past, was not justified, the court ruled, when the faculty handbook stated that the university had no such tenure policy.

Siv v. Johnson, 748 F.2d 238 (4th Cir. 1984). Where standards for tenure in the faculty handbook were formally adopted by the board of visitors, which had sole authority to grant tenure, the standards were presumed by the court to be part of a nontenured professor’s contract. Although the handbook stated that faculty recommendations for tenure should be followed barring some “compelling reason,” the faculty member’s constitutional due process rights were not violated when the administration denied tenure in spite of faculty recommendations and did not state a compelling reason for doing so. The administration’s decision was based on the perceived lack of scholarly potential, a constitutionally permissible reason.

WASHINGTON

E.I. Du Pont de Nemours & Co. v. Okuley, 344 F.3d 578 (6th Cir. 2003), *cert. denied*, 541 U.S. 1027 (2004). According to the Washington State University faculty manual, the university “holds ownership in patents and other non-patentable intellectual products as a result of their employment.” The parties agreed that the faculty manual was a legally binding part of the professor’s

employment contract with the university. Although the professor argued that the university failed to notify him of its ownership in a product (a particular genetic discovery) within fifty days, as required by the faculty manual, the court held that the manual explicitly exempted from this provision any property developed under an agreement with an outside corporate sponsor. Therefore, the university had the right to transfer its interest to a sponsoring corporation without notifying the professor. (The case arose in the Sixth Circuit because the faculty member had made the discovery while working in a laboratory at Ohio State University; the court referred to the WSU handbook, however, and applied Washington contract law.)

Mills v. Western Washington University, 208 P.3d 13, (Wash. Ct. App. 2009).

A tenured faculty member in the theater department of Western Washington University sued the university after he was disciplined during a hearing closed to the public. The faculty member argued, among other things, that the university's code of ethics in the faculty handbook was unconstitutionally vague. A trial court and the Washington State Court of Appeals both ruled against the faculty member finding that the faculty handbook was not vague as applied to him but the appeals court did eventually remand his case back to the university for a second hearing because it determined that the original hearing had been unlawfully closed to the public.

Jensen v. Walla Walla College, 117 Wash. App. 1033 (2003) (unpublished). A tenure-track assistant professor sued for breach of contract when the college failed to award him a three-year contract. The court held that as a matter of law no breach of contract existed because the college followed the tenure-track review procedures set out in the faculty handbook.

Trimble v. Washington State University, 993 P.2d 259 (Wash. 2000). "When an employer promises in writing specific treatment in specific situations, those promises may become an enforceable component of the employment relationship, even in an employment-at-will situation." However, "[a]n employee manual in an employment-at-will situation only provides specific obligations if the language of the manual is specific." Therefore, a professor could not succeed on his claim that tenured faculty should have provided

written comments on his tenure evaluation when the handbook clearly made submission of written comments an option, not an imperative.

WEST VIRGINIA

Graf v. West Virginia University, 429 S.E.2d 496 (W. Va. 1992). Neither state university medical school rules nor those of its affiliated corporation could prohibit a faculty member's moonlighting when the board of regents' policy bulletin permitted it and the employment contract specifically made the appointment subject to the policy bulletin and the faculty handbook.

WISCONSIN

Myklebust v. Medical College of Wisconsin, 2004 WL 957935 (7th Cir. Apr. 28, 2004). A former assistant professor sued the college following the termination of her appointment, claiming retaliation in response to her prior filing of a sexual harassment claim. The court found that her argument based upon the employee handbook was irrelevant because she had dropped her breach-of-contract claim.

Macgillis v. Marquette University, 514 N.W.2d 421 (Wis. App. 1993) (not recommended for publication). The express employment contract of a professor included an implied condition of good faith. Furthermore, the handbook could serve to "flesh out" the terms of the contract (citing *Ferraro v. Koelsch*, 368 N.W. 2d 666, 668 (Wis. 1985), which held that an employee handbook can convert an at-will relationship into one bound by contractual terms).

WYOMING

Trabing v. Kinko's, Inc., 57 P.3d 1248 (Wyo. 2002). The Wyoming Supreme Court held that an employee handbook from Kinko's copying service did not constitute a contract. Although the handbook implied that discharge could occur only for cause, the employee had also signed an employment agreement which specifically provided that her employment was at will. Because at-will employees are not entitled to relief for breach of contract, the employee's claim failed.

McLean v. Hyland Enterprises., 34 P.3d 1262 (Wyo. 2001). An employee alleged that he was wrongfully dismissed after he reported an unsafe working condition. Although he claimed that the employee handbook altered the at-will status of his employment, the court held that just because an employer may have an employee manual does not mean that the manual covers all employees. Moreover, any valid contract between an employer and an individual employee requires offer, acceptance, and consideration. No evidence existed in this case that the employer had made an offer to the employee to be bound by the terms of the manual. Thus, the employee handbook did not constitute a contract.

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