

Revisions to the 04 (Spring 2024)

3335-5-03 Appointment of faculty and staff; tenure.

- (A) The board of trustees shall appoint the president and all employees of the university not in the classified civil service, subject to the laws of the state of Ohio, and in the case of tenure-track faculty, to the rights and protection of tenure as provided for in these rules.
- (B) Tenure is a commitment by the university and may be earned by all individuals with tenure-track faculty status subject to successful completion of a probationary period. Tenure-track faculty status is defined in rule 3335-5-19 of the Administrative Code.
- (C) The protections of tenure and academic freedom extend to all levels of faculty responsibility within the university in accordance with rule 3335-5-01 of the Administrative Code and are not restricted to activities identified with specific instructional, research or public service programs.
- (D) Tenure is lost only by formal resignation, by voluntary reduction of appointment below fifty per cent of service to the university except in the case of an approved leave of absence, by retirement, by transfer to clinical/teaching/practice, research, or associated faculty status, or may be terminated by reason of proved incompetence or grave misconduct in accordance with rule 3335-5-04 of the Administrative Code, for causes set forth in rule 3335-5-02 of the Administrative Code, or under the conditions of bona fide financial exigency, as specified in rule 3335-5-02.1 of the Administrative Code.
- (E) Tenured members of the faculty who serve the university as administrators do not lose tenure by virtue of being administrators.

3335-5-04 Procedures for complaints of misconduct made against faculty members.

- (A) This rule shall apply to all formal complaints of misconduct against faculty members as defined in rule 3335-5-19 (A) and (B). Complaints may be filed under this rule against any individual with a faculty appointment, including administrators who hold such appointments.
 - (1) Complaints about the performance of administrators in their administrative capacity must be brought pursuant to applicable rules or policies for those administrative positions; all complaints against administrators who hold faculty appointments relating to the violation of applicable law, university policies or rules, or unit governance documents (other than those related to the performance of the administrator's duties) must be brought under this rule.
- (B) Complaints shall proceed under the general procedures set forth in this rule and the specific procedures set forth in the following four subsections based on the nature of the allegations.
 - (1) Complaints involving allegations of failure to meet faculty obligations and complaints arising from the investigatory process set forth in the Campus Free Speech policy shall proceed under rule 3335-5-04.1. A faculty member may be disciplined under this rule and may be terminated if the conduct constitutes serious failure to meet faculty obligations for violations established under rule 3335-5-04.1(A) or a violation of the Campus Free Speech policy.
 - (2) Complaints involving allegations of research misconduct shall proceed under rule 3335-5-04.2. A faculty member may be disciplined up to and including termination for violations established under this rule.
 - (3) Complaints involving allegations of sexual misconduct, workplace violence, whistleblower retaliation, discrimination, harassment, and retaliation based on protected status shall proceed under rule 3335-5-04.3. A faculty member may be disciplined up to and including termination for violations established under this rule.
 - (4) Complaints involving allegations of violations of applicable law, university policies or rules, or unit governance documents shall proceed under rule 3335-5-04.4, unless they fall under rules 3335-5-04.1, 3335-5-04.2 or 3335-5-04.3. A faculty member may be disciplined under this rule, and may be terminated if the conduct constitutes grave

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misconduct or non-trivial financial fraud for violations established under rule 3335-5-04.4(A)(1)–(2).

(C) Conflicts:

- (1) No administrator may act in their administrative capacity in the consideration of any complaint naming them as respondent. If a complaint names a department chair, school director, or a dean as respondent, the executive vice president and provost (hereinafter “provost”) shall appoint an equivalent rank administrator from another department or college to perform the responsibilities of the named official under this rule. If a complaint names the provost as respondent, the president shall appoint an individual to perform the responsibilities of the provost. If a complaint names the president as respondent, the Board of Trustees shall appoint an individual to perform the responsibilities of the president.
 - (2) If any individual with responsibilities under this rule has a conflict of interest with a complainant or respondent, such that the individual stands to benefit personally or incur personal harm depending on the outcome, or otherwise has a relationship with the faculty member against whom the complaint is made (hereafter “respondent”) that creates a bias, or otherwise could not fairly and impartially perform those responsibilities, the individual shall not participate in this process, and a replacement shall be named in accordance with Section (C)(1) of this rule. In the event that a member of an investigation or sanctioning committee has such a conflict, that individual shall be replaced in accordance with the applicable procedures for that committee.
- (D) If the provost determines that a faculty member’s presence on campus is detrimental to the safety and well-being of the university community or university property, the provost may reassign the faculty member off campus with pay pending completion of the process set forth in this rule.
- (E) At each step of the process, individuals with responsibilities under this rule may use informal dispute resolution to resolve the complaint to their satisfaction as well as that of the complainant and the respondent in accordance with applicable policy. The appropriateness of an informal resolution in any case will depend on the circumstances of each particular case. All such resolutions must be reported to the Office of Academic Affairs for review and approval before being finalized. In addition, reports must be made to the Office of Research (for proceedings under Faculty Rule 3335-5-04.2), or the Office of Institutional Equity or Office of Human Resources (for proceedings under Faculty Rule 3335-5-04.3) as may be applicable.
- (F) Complainants and respondents may expressly or implicitly relinquish their rights to participate in any step of this process, including but not limited to by failing to respond to reasonable attempts to schedule required meetings, or by failing to appear for scheduled sessions. If a complainant or respondent relinquishes their rights of participation at any step, that relinquishment does not prevent that individual from exercising any rights that may be applicable at any other step of the process. To the extent not specified in this rule, complainants and respondents shall be entitled to all rights required by state and federal law that are applicable to these proceedings.
- (G) All records of proceedings under this rule shall be maintained by the Office of Academic Affairs. Such records shall be afforded the same privacy and confidentiality afforded to comparable records of other university employees, subject to public records laws and other disclosures within and external to the university in accordance with applicable law and the need to know such information to support university operations.
- (H) The term “day” as used in this rule means “calendar day.” If the last day of a designated time period falls on a weekend or a day on which the university is closed, the time period shall expire at the close of business on the next succeeding business day.
- (I) Complainants and respondents shall be given written notice of decisions required by this rule. Any notice shall be sent by certified mail and by email. The time period for any action to be taken after delivery of the notice shall begin to run on the date on which the notice is mailed.
- (J) At each step of the process set forth in **this rule, complainants and respondents** may be accompanied by one support person of their choosing (including but not limited to personal legal counsel). Except as otherwise provided in rules 3335-5-04.1 through 3335-5-04.4 of the Administrative Code, though, such individual shall only be entitled to appear with the respondent

- and shall not be entitled to participate in or delay the process in any way.
- (K) The timelines set forth in this rule and in rules 3335-5-04.1 through 3335-5-04.4 of the Administrative Code are mandatory. However, the provost or designee may grant defined extensions of any time period on an as-needed basis upon written request.

(L) Should a faculty member facing a complaint under this rule resign or retire from their university employment while a complaint is pending, the provost may elect in their discretion to pause the proceedings under this rule once that resignation or retirement becomes effective. If such proceedings are paused, they will resume immediately should the faculty member return to university employment at any point. However, the provost may not pause complaints of research misconduct brought under rule 3335-5-04.2 or of sexual misconduct, workplace violence, whistleblower retaliation, discrimination, harassment, and retaliation based on protected status brought under rule 3335-5-04.3 unless an investigation has been completed and a violation has been found under those processes and the only remaining issue is what sanction to impose for such violations.

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3335-5-04.1 Procedures for complaints of failure to meet academic responsibilities.

- (A) This rule applies to complaints made against faculty members involving their failure to meet academic responsibilities as defined in rule 3335-5-01(C) as well as complaints arising from the investigatory process set forth in the Campus Free Speech policy. A faculty member may be disciplined for violations established under this rule, and may be disciplined up to and including termination for serious failure to meet faculty obligations or violations of the Campus Free Speech policy. For the purposes of this rule “serious failure to meet faculty obligations” is defined as conduct that reflects gross indifference or consistent failure to satisfactorily perform the faculty obligations set forth in paragraph (C) of rule 3335-5-01 of the Administrative Code. If complaints against a faculty member are brought concurrently under both 3335-5-04.1 and 3335-5-04.4, those complaints may be consolidated into one proceeding, retaining the relevant evidentiary standard for each complaint.

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(B) Initial proceedings.

- (1) A complaint may be filed by any student or university employee, including employees from administrative offices who are filing complaints arising out of investigations by those offices. Complaints may be filed with a chair, dean, associate dean, provost, vice provost for academic policy and faculty resources (hereinafter “vice provost”), or the president. All complaints must be referred to the vice provost for initial review in accordance with this rule.
- (2) The complaint shall be set forth in writing and shall state facts to support an allegation that a faculty member has failed to meet their academic responsibilities.
 - i. The vice provost shall review every complaint to determine whether the complaint presents an actionable violation and that the complaint is not clearly retaliatory or abusive in nature. If the vice provost is named as a respondent, the provost shall identify a designee. If the vice provost determines that a complaint either does not allege a violation that can be addressed under this rule or was filed for clearly retaliatory or abusive purposes, the vice provost must consult with the complainant within seven days of filing to clarify the nature of the complaint. The vice provost may dismiss such a complaint within seven days of consulting with the complainant if it cannot be addressed under this rule or is clearly retaliatory or abusive in nature. This determination does not prohibit referral of a complaint filed under this rule to another applicable university process.

1. The complainant may appeal this dismissal in writing to the provost within seven days of this decision. Upon receiving such an appeal, the provost may either reinstate the complaint or dismiss it, and that decision is final. The provost must issue a decision within fourteen days of receiving such an appeal.
- ii. If the vice provost determines that the complaint should proceed or if the complaint is reinstated by the provost, the vice provost shall furnish a copy of the complaint to the respondent and shall refer it to the respondent's department chair for a probable cause review in accordance with section (C) of this rule.
 1. If the faculty member's department chair is the complainant or respondent, the complaint shall be referred to the faculty member's dean for the initial probable cause review.
 2. For the purposes of this provision, the term "department chair" shall include school directors, and deans of colleges without departments, and regional campus deans and directors. For regional campus faculty, the campus dean or director shall serve as the department chair for the probable cause review. If the complaint is filed by the regional campus dean or director, the college dean shall serve as the regional campus dean or director for the probable cause review.
- (3) Only allegations stated in the complaint shall be considered at the various stages of deliberation. However, additional facts relevant to the allegations set forth in the complaint may be presented throughout the process.

(C) Probable cause review.

- (1) The department chair shall review the allegations in the complaint and discuss the matter with the complainant and the respondent to determine whether there is probable cause to believe that the allegations are true. The department chair may have another administrator present in discussions with the complainant and respondent as they evaluate probable cause.
- (2) If the department chair determines that there is not probable cause to believe that the allegations are true, the chair shall dismiss the complaint.
 - i. If the complaint is dismissed, the complainant may appeal the dismissal to the dean. The appeal must be in writing and filed with the dean within twenty-one days after the notice of the chair's decision was mailed. Upon receiving such an appeal, the dean may either reinstate the complaint and refer it to the college investigation and sanctioning committee or dismiss it, and such a dismissal is final. The dean must issue a decision within thirty days after receiving such an appeal.
- (3) If the department chair determines that there is probable cause to believe that the allegations are true, the department chair shall refer the matter to the college investigation and sanctioning committee unless the department chair completes an informal resolution in accordance with rule 3335-5-04(E).
- (4) The department chair shall complete this process within fourteen days.

(D) College investigation and sanctioning committee.

- (1) Each college shall appoint a college investigation and sanctioning committee, which shall fulfill the responsibilities set forth in this section. The committee shall

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be all tenured faculty or a majority of tenured faculty if including clinical/teaching/practice faculty who are non-probationary associate professors or professors. A college may include faculty members from other colleges on its committee.

- (2) Upon receipt of a referral of a complaint from the department chair, the committee shall meet with the complainant and the respondent and shall review any documentary evidence provided by these parties. The respondent shall be given copies of any documentary evidence provided to the committee as part of the investigation and be given an opportunity to respond to all such documentation. The committee shall have the authority to gather information relevant to the complaint, including by interviewing individuals other than the complainant and respondent as the committee sees fit or as recommended by the complainant or respondent. The committee shall strive to maintain confidentiality in the proceedings.
- (3) At the conclusion of the investigation, the committee shall prepare a preliminary report that identifies the proposed findings of fact, a conclusion as to whether a violation occurred under the clear and convincing evidence standard, and if so whether the conduct rose to the level of serious failure to meet faculty obligations as defined in rule 3335-5-04.1(A). The committee shall provide that document to both the complainant and respondent for review. Each party shall have seven days to respond and to identify any alleged errors or omissions in the findings.
- (4) Following review of any comments by the parties, the committee shall thereafter make any modifications to the report that it deems appropriate and issue a final report. If the committee concludes that a violation occurred, the committee shall include its proposed sanction in the final report.
- (5) In evaluating sanctions, the committee shall consider the totality of the circumstances, including aggravating and mitigating factors.
 - i. Aggravating factors may include, but are not limited to:
 - a. the significance and impact of the faculty member's failure to meet academic responsibilities if serious failure is found or of their violation of the Campus Free Speech policy;
 - b. the strength of the evidence presented;
 - c. whether the respondent has previously been found to have engaged in misconduct;
 - d. whether the respondent's conduct caused injury or harm to another individual, university property, or the university's reputation; and
 - e. whether the respondent had received prior warnings about engaging in the conduct at issue.
 - ii. Mitigating factors may include, but are not limited to:
 - a. the conduct at issue did not cause injury or harm to another individual, university property, or the university's reputation; and
 - b. the respondent accepted responsibility for the misconduct.
- (6) The committee shall have the authority to recommend sanctions as it sees fit as long as the sanctions are commensurate with the nature of the complaint and the committee's analysis of any aggravating and mitigating factors. Sanctions may be of a discrete or continuing nature, but sanctions of a continuing nature must specify the period of time in which they are applicable. Sanctions may include, but are not limited to the following, and may further include a combination of sanctions:
 - i. Verbal reprimand;
 - ii. Written reprimand;
 - iii. Mandatory training and professional development counseling or other

- rehabilitation;
- iv. Restrictions on duties or privileges;
- v. Restriction of access to university property or services;
- vi. Reduction of salary base;
- vii. Reduction of twelve-month appointment to nine-month appointment;
- viii. Reduction of full-time equivalent (FTE) appointment;
- ix. Reduction of rank;
- x. Revocation of tenure;
- xi. Termination of employment due to serious failure to meet faculty obligations.

(7) The committee shall complete its investigation and submit its report to the respondent's dean within forty-five days.

(E) Decision by the dean.

(1) After reviewing the report and recommendation of the college investigation and sanctioning committee, the dean may:

- i. Dismiss the complaint if the committee did not find a violation;
- ii. Impose the committee's proposed sanction;
- iii. Impose what would reasonably be interpreted as an equivalent or lesser sanction; or
- iv. Increase the sanction if the committee determined that the respondent engaged in a serious failure to meet faculty obligations.

(2) The dean shall make a decision in twenty-one days. The final report of the college investigation and sanctioning committee and the dean's decision shall be sent to the complainant and the respondent.

(3) Appeals:

- i. The dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, or mandatory counseling or training, but a respondent may place a response to this sanction in their primary personnel file.
- ii. If the dean imposes any other sanction except for revocation of tenure or termination of employment, the respondent shall have the right to appeal in writing to the provost.
- iii. If the dean imposes a sanction that revokes tenure or terminates employment, the matter shall be automatically appealed to the provost.
- iv. In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the provost. All such submissions and all discretionary appeals must be filed within fourteen days after notice of the dean's decision was mailed.

(F) Review of appeals by the provost.

(1) After reviewing the record of a case appealed by a respondent or referred by the dean, the provost may:

- i. Affirm the dean's sanction;
- ii. Impose what would reasonably be interpreted as an equivalent or lesser sanction to the dean's sanction;
- iii. Increase the sanction; or
- iv. In the event that the provost determines that substantial new evidence

exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the provost shall return the case back to a previous step of the process for further proceedings as appropriate.

- (2) The provost shall make a decision within fourteen days of receiving materials from the dean and respondent as applicable.
- (3) If the provost affirms the dean's decision to terminate employment, or imposes or upholds a sanction set forth in section (D)(6)(vii) through (xi) of this rule, the respondent may appeal to the faculty hearing committee. In all other cases, the provost's decision shall be final.
- (4) An appeal by the respondent must be in writing and must be filed with the faculty hearing committee within fourteen days after notice of the provost's decision was mailed.

(G) The faculty hearing committee.

- (1) Within fourteen days of receipt of an appeal from a respondent, the faculty hearing committee established by rule 3335-5-48.10 shall convene a hearing panel to consider the appeal and to provide a recommendation to the president regarding the appropriate action. The respondent and the provost or designee may each make one peremptory challenge to the seating of one person on the hearing panel and one peremptory challenge to the selection of a presiding officer.
- (2) The parties to this hearing shall be the respondent and the provost, or designee.
- (3) The hearing panel may restrict the attendance of persons at the proceedings. However, the respondent and the provost shall have the right to have one observer of their choosing present at all times.
- (4) The provost, or designee, shall present the case to the hearing panel. In presenting the case, the provost may be advised and represented by the general counsel, or designee. The provost shall have the right to present witnesses and evidence and to examine witnesses and evidence presented by the respondent.
- (5) Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice. The respondent shall have the right to examine the witnesses and evidence presented against them in the hearing, to present witnesses and evidence on their own behalf, and to refuse to testify or be questioned in the proceedings without prejudice to their cause.
- (6) The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues appealed, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the appeal.
- (7) The hearing panel will not be bound by the findings of the college investigation and sanctioning committee or the provost.
- (8) An electronic recording shall be kept of all proceedings at a hearing panel. The recording shall be conveyed by the chair of the faculty hearing committee to the Office of Academic Affairs.
- (9) At the conclusion of the proceedings, the hearing panel shall make written conclusions with respect to each substantive issue raised, including but not limited to:
 - i. appropriateness of the sanction, and, if found to be inappropriate, the faculty hearing committee's recommended sanction in accordance with the factors set forth in section (D)(5) of this rule.
 - ii. conflict of interest, procedural error, or substantial new evidence.
 - iii. findings of the college investigation committee.
- (10) The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, provost, and respondent within sixty days of the

date that the final hearing panel is convened.

(H) The president.

- (1) Upon receipt of the written recommendation and a record of the proceedings from a hearing panel, the president shall review the matter. The president may:
 - i. Impose any sanction less than termination of employment whether or not it accords with the recommendation of the hearing panel;
 - ii. Recommend to the board of trustees termination of employment for cases of serious failure to meet faculty obligations **or a violation of the Campus Free Speech policy** on such terms and conditions as the president may deem advisable;
 - iii. Remand the case to the hearing panel for reconsideration; or
 - iv. In the event that the president determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the president shall return the case back to a previous step as appropriate.
- (2) The president's decision on all sanctions less than termination of employment is final.
- (3) Any decision of the president shall be communicated in writing to the hearing panel, the provost, and the respondent.
- (4) The president shall make a decision within thirty days.

(I) Board of trustees.

- (1) The board of trustees, in reviewing and deciding upon a case in which termination of employment has been recommended, has the ultimate authority to take that action necessary to promote the best interest of the university and to protect the rights of the individual. In such cases, the board shall have the discretion to decide whether the respondent has an opportunity to present to it arguments in writing, or in person, or both.

3335-5-04.2 Procedures for complaints of research misconduct made against faculty members.

- (A) This rule applies to complaints involving research misconduct made against faculty members. A faculty member may be disciplined up to and including termination for violations established under this rule. Research misconduct is defined in rule 3335-13- 08 and the Research Misconduct policy.
- (B) Preliminary assessment and inquiry.
 - (1) Complaints alleging research misconduct must be filed with or referred to the Office of Research.
 - (2) The Office of Research shall ensure that a preliminary assessment is performed in accordance with the Research Misconduct policy to determine whether the complaint alleges research misconduct as defined in the policy and is sufficiently credible and specific so that research misconduct may be identified.
 - (3) If the preliminary assessment concludes that the allegations in the complaint meet the definition of research misconduct and are sufficiently credible and specific so that potential evidence of research misconduct may be identified, the Office of Research shall proceed to an inquiry review in accordance with the Research Misconduct policy to determine whether the allegations have sufficient substance to warrant an investigation.
 - (4) If the inquiry concludes that the allegations have sufficient substance and that an investigation

is warranted in accordance with the Research Misconduct policy, an investigation shall be initiated as set forth in section (C) of this rule. All other procedural steps, including but not limited to appeals, shall be performed in accordance with the Research Misconduct policy.

- (5) In both the preliminary assessment and inquiry steps, complainants and respondents shall be afforded procedural rights, including but not limited to the rights to review documentary evidence, submit evidence, be accompanied by an advisor, review and file a written response to reports, and make appeals, as specifically defined in the Research Misconduct policy.

(C) Investigation and sanctioning.

- (1) If a complaint is referred for investigation, the Office of Research shall convene an investigation and sanctioning committee consisting of a minimum of three voting members from the Research Integrity Standing Committee in accordance with the Research Misconduct policy.
- (2) The committee shall examine all the documentation and conduct formal interviews, when possible, of the respondent, the complainant, and others who may have information relevant to the complaint, but shall strive to maintain the confidentiality of the proceedings.
- (3) The respondent shall be given copies of any documentary evidence provided to the committee as part of the investigation and be given an opportunity to respond to all such documentation.
- (4) At the conclusion of the investigation, the committee shall prepare a preliminary report in accordance with this rule and the Research Misconduct policy. Findings and conclusions shall be based on the preponderance of the evidence standard. The respondent shall have fourteen days to respond and to identify any alleged errors or omissions in the preliminary report.
- (5) In evaluating sanctions, the committee shall consider the totality of the circumstances, including aggravating and mitigating factors.

- i. Aggravating factors may include, but are not limited to:

1. the degree to which the respondent's conduct was flagrant, egregious, or willful;
2. the significance and impact of the faculty member's failure to meet academic responsibilities if relevant;
3. the strength of the evidence presented;
4. whether the respondent has previously been found to have engaged in misconduct;
5. whether the respondent's conduct caused injury or harm to another individual, university property, or the university's reputation; and
6. whether the respondent had received prior warnings about engaging in the conduct at issue.

- ii. Mitigating factors may include, but are not limited to:

1. the conduct at issue did not cause injury or harm to another individual, university property, or the university's reputation; and
2. the respondent accepted responsibility for the misconduct.

- (6) The committee shall have the authority to recommend sanctions as it sees fit as long as the sanctions are commensurate with the nature of the complaint and the committee's analysis of any aggravating and mitigating factors. Sanctions may be of a discrete or continuing nature, but sanctions of a continuing nature must specify the period of time in which they are applicable. Sanctions may include, but are not limited to the following, and may include a combination of sanctions:

- i. Verbal reprimand;
- ii. Written reprimand;

- iii. Mandatory counseling or other rehabilitation;
- iv. Reimbursement for damages to or destruction of university property, or for misuse or misappropriation of university property, services or funds;
- v. Restrictions on duties or privileges;
- vi. Restriction of access to university property or services;
- vii. Reduction of salary base;
- viii. Reduction of twelve-month appointment to nine-month appointment;
- ix. Reduction of full-time equivalent (FTE) appointment;
- x. Reduction of rank;
- xi. Revocation of tenure;
- xii. Termination of employment.

(7) After receipt of any comments from the respondent, the committee shall complete its investigation and submit its final report to the Deciding Official set forth in the Research Misconduct policy in accordance with that policy. If the committee concludes that research misconduct occurred, the respondent shall have the right to submit an appeal of that decision to the Deciding Official in accordance with the Research Misconduct policy.

- i. If a finding of research misconduct is confirmed following review of the report and any appeals by the Deciding Official, the case shall be referred to the respondent's dean for further proceedings under section (D) of this rule. If no finding of research misconduct is made following such review, the case shall be dismissed.

(D) Decision by the dean.

(1) After reviewing the report and recommendation of the investigation and sanctioning committee, the dean may:

- i. Uphold the committee's proposed sanction;
- ii. Impose what would reasonably be interpreted as an equivalent or lesser sanction; or
- iii. Increase the sanction.

(2) The dean shall make a decision in twenty-one days. The final report of the investigation and sanctioning committee and the dean's decision shall be sent to the complainant, if any identified, and the respondent.

(3) Appeals:

- i. The dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, or mandatory counseling or training.
- ii. If the dean imposes any other sanction except for revocation of tenure or termination of employment, the respondent shall have the right to appeal in writing to the provost for review.
- iii. If the dean imposes a sanction that revokes tenure or terminates employment, the matter shall be automatically appealed to the provost.
- iv. In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the provost. All such submissions and all discretionary appeals must be filed within fourteen days after notice of the dean's decision was mailed.

(E) Review of appeals by the provost.

(1) After reviewing the record of a case appealed by a respondent or referred by the dean, the provost may:

- i. Affirm the dean's sanction;
- ii. Impose what would reasonably be interpreted as an equivalent or lesser

- sanction to the dean's sanction;
 - iii. Increase the sanction; or
 - iv. In the event that the provost determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the provost shall return the case back to a previous step of the process for further proceedings as appropriate.
- (2) The provost shall make a decision within fourteen days of receiving materials from the dean and respondent as applicable.
- (3) If the provost affirms the dean's decision to terminate employment, or imposes or upholds a sanction set forth in section (C)(6)(vii) through (xii) of this rule, the respondent may appeal to the faculty hearing committee. In all other cases, the provost's decision shall be final.
- (4) An appeal by the respondent must be in writing and must be filed with the faculty hearing committee within fourteen days after notice of the provost's decision was mailed. Appeals to the faculty hearing committee shall be limited to one or more of the following grounds:
- i. the sanction is disproportionate to the violations committed in view of the aggravating and mitigating factors;
 - ii. substantial new evidence has been discovered (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct); or
 - iii. there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent.

(F) The faculty hearing committee.

- (1) Within fourteen days of receipt of an appeal from a respondent the faculty hearing committee established by rule 3335-5-48.10 shall convene a hearing panel to consider the complaint and to provide a recommendation to the president regarding the appropriate action to be imposed. The respondent and the provost or designee may each make one peremptory challenge to the seating of one person on the hearing panel and one peremptory challenge to the selection of a presiding officer.
- (2) The parties to this hearing shall be the respondent and the provost, or designee.
- (3) The hearing panel may restrict the attendance of persons at the proceedings. However, the respondent and the provost shall have the right to have one observer of their choosing present at all times.
- (4) The provost, or designee, shall present the case to the hearing panel. In presenting the case, the provost may be advised and represented by the general counsel, or designee. The provost shall have the right to present witnesses and evidence and to examine witnesses and evidence presented by the respondent.
- (5) Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice. The respondent shall have the right to examine the witnesses and evidence presented against them in the hearing, to present witnesses and evidence on their own behalf, and to refuse to testify or be questioned in the proceedings without prejudice to their cause.
- (6) The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues appealed, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the appeal.
- (7) An electronic recording shall be kept of all proceedings at a hearing panel. The recording shall be conveyed by the chair of the faculty hearing committee to the Office of Academic Affairs.
- (8) At the conclusion of the proceedings, the hearing panel shall make separate written conclusions with respect to each substantive issue raised at the hearing.

- i. If the respondent challenges the appropriateness of the sanction, the faculty hearing committee shall recommend a sanction and provide its rationale for doing so set forth what their recommended sanction is in accordance with the factors set forth in section (C)(5) of this rule.
 - ii. If the respondent alleges conflict of interest, procedural error, or substantial new evidence, the faculty hearing committee shall set forth what their conclusions are and whether they believe that further proceedings are appropriate.
 - (9) The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, provost, and respondent within sixty days of the date that the final hearing panel is convened.
- (G) The president.
- (1) Upon receipt of the written recommendation and a record of the proceedings from a hearing panel, the president shall review the matter. The president may:
 - (a) Impose any sanction less than termination of employment whether or not it accords with the recommendation of the hearing panel;
 - (b) Recommend to the board of trustees termination of employment on such terms and conditions as the president may deem advisable;
 - (c) Remand the case to the hearing panel for reconsideration; or
 - (d) In the event that the president determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the president shall return the case back to a previous step of the process for further proceedings as appropriate.
 - (2) The president's decision on all sanctions less than termination of employment is final.
 - (3) Any decision of the president shall be communicated in writing to the hearing panel, the provost, and the respondent.
 - (4) The president shall make a decision within thirty days.
- (H) Board of trustees.
- (1) The board of trustees, in reviewing and deciding upon a case in which termination of employment has been recommended, has the ultimate authority to take that action necessary to promote the best interest of the university and to protect the rights of the individual. In such cases, the board shall have the discretion to decide whether the respondent has an opportunity to present to it arguments in writing, or in person, or both.

3335-5-04.3 Procedures for complaints of sexual misconduct, workplace violence, whistleblower retaliation, and protected class discrimination, harassment, and retaliation made against faculty members.

- (A) This rule applies to complaints made against faculty members involving sexual misconduct, workplace violence, whistleblower retaliation, and protected class discrimination, harassment, and retaliation as defined in applicable university policies. A faculty member may be disciplined up to and including termination for violations established under this rule.
- (B) Initial proceedings.
 - (1) Complaints of sexual misconduct and protected class discrimination, harassment, and retaliation must be filed with or referred to the Office of Institutional Equity, and complaints of

workplace violence and whistleblower retaliation separate from protected class or sexual misconduct must be filed with or referred to the Office of Human Resources.

- (2) The applicable office shall perform a preliminary assessment to determine whether the complaint warrants further investigation, whether an informal resolution would be appropriate, whether the matter should be referred to a different university office or process, or whether the matter should be closed and not proceed further in the process.
 - (3) If the applicable office determines that further investigation is warranted and that an informal resolution is not appropriate at that stage in the process, it shall notify the complainant and respondent of its decision to pursue an investigation and shall assign an investigator to investigate the complaint.
- (C) Investigation determinations.
- (1) Complaints of sexual misconduct pursuant to Title IX of the Education Amendments Act of 1972 and implementing regulations shall be investigated pursuant to the procedures set forth in the university Sexual Misconduct policy. All findings of misconduct shall be referred to the university sanctioning committee for a recommendation for sanctions only in accordance with Section D of this rule.
 - (2) For all other complaints subject to this rule:
 - i. The investigator shall perform the investigation in accordance with applicable university policy and shall meet with both the complainant and respondent and review any documentary evidence provided by these parties. The investigator shall have the authority to gather information relevant to the complaint, including through interviewing individuals other than the complainant and respondent as the investigator sees fit or as recommended by the complainant and respondent, but shall otherwise strive to maintain confidentiality in the proceedings.
 - ii. The parties shall receive all of the rights set forth in the applicable policy, and shall further have the right to receive the policies, standards, and procedures applicable to the investigation.
 - iii. The parties shall be given the ability to review copies of any documentary evidence that is provided to the investigator as part of the investigation and is relevant to the substance of the complaint. Parties shall have the ability to respond to all such documents during the investigation, and the ability to suggest witnesses who may be contacted as part of the investigation within the investigator's discretion.
 - iv. When fact gathering is complete, the investigator shall prepare a written investigative summary (preliminary report) that identifies the relevant and material facts in the case. The investigator shall provide that document to both the complainant and respondent for review. Each party shall have fourteen days to respond and to identify any alleged errors or omissions in the investigative summary.
 - v. Following review of any comments by the parties, the investigator shall thereafter make any modifications to the report that the investigator deems appropriate and issue a final report that will include the summary of the facts gathered, analysis of the allegations, and findings as to whether the applicable policy was violated under the preponderance of the evidence standard. If a violation is found, this report shall be provided to the university sanctioning committee to determine the appropriate sanction. If no violation is found, the complaint shall be dismissed.

(D) The university sanctioning committee.

- (1) The university sanctioning committee is responsible for determining what sanction to

recommend for a policy violation.

- i. The university sanctioning committee shall consist of fifteen tenured members of the faculty selected by the executive committee of faculty council from at least eight different Colleges and regional campuses. Each member of the university sanctioning committee must receive required training before serving on the panel. Each selected person shall serve a three-year term followed by a one- year term as an alternate member. A chair shall be elected from the membership in the spring for a one-year term, starting during the subsequent summer session.
 - ii. The chair shall select three members of the committee to sit on each sanctioning panel. The chair of the committee may sit on the panel as an observer. Panelists may not be drawn from the complainant's or respondent's tenure initiating unit, as may be applicable. Alternates may be assigned to university sanctioning panels at the chair's discretion.
- (2) Upon receipt of the investigation report, the committee sanctioning panel shall meet with the investigator to discuss the investigation and findings, and may request clarification on any aspect of the investigation process. The committee shall also offer both the complainant and the respondent the opportunity to meet with the committee to present their views as to an appropriate sanction.
- (3) In evaluating sanctions, the investigation and sanctioning panel committee shall consider the totality of the circumstances, including aggravating and mitigating factors.
- i. Aggravating factors may include, but are not limited to:
 - a. the degree to which the respondent's conduct was flagrant, egregious, or willful;
 - b. the strength of the evidence presented;
 - c. whether the respondent has previously been found to have engaged in misconduct;
 - d. whether the respondent's conduct caused injury or harm to another individual, university property, or the university's reputation; and
 - e. whether the respondent had received prior warnings about engaging in the conduct at issue.
 - ii. Mitigating factors may include, but are not limited to:
 - a. the conduct at issue did not cause injury or harm to another individual, university property, or the university's reputation; and
 - b. the respondent accepted responsibility for the misconduct.
- (4) The committee shall have the authority to recommend sanctions as it sees fit as long as the sanctions are commensurate with the nature of the complaint and the committee's analysis of any aggravating and mitigating factors. Sanctions may be of a discrete or continuing nature, but sanctions of a continuing nature must specify the period of time in which they are applicable. Sanctions may include, but are not limited to the following, and may further include a combination of sanctions:
- i. Verbal reprimand;
 - ii. Written reprimand;
 - iii. Mandatory counseling or other rehabilitation;
 - iv. Reimbursement for damages to or destruction of university property, or for misuse or misappropriation of university property, services or funds;
 - v. Restrictions on duties or privileges;
 - vi. Restriction of access to university property or services;

- vii. Reduction of salary base;
- viii. Reduction of twelve-month appointment to nine-month appointment;
- ix. Reduction of full-time equivalent (FTE) appointment;
- x. Reduction of rank;
- xi. Revocation of tenure;
- xii. Termination of employment.

- (5) For sexual misconduct complaints under Title IX, the committee shall reach its sanction decision within thirty days. This sanction decision shall be incorporated into the findings in accordance with the university Sexual Misconduct policy, and a written determination containing the combined findings and recommended sanction shall be issued. The complainant and respondent shall have equal rights to appeal the written determination to the provost for review in accordance with Section (F) of this rule and shall not be reviewed by the respondent's dean under Section (E) of this rule. All appeals must be in writing and be filed within fourteen days after the written determination is issued. The appeal shall be on the grounds for appeal permitted by the Sexual Misconduct policy and in accordance with the procedures provided by that policy.
- (6) For all other complaints under this rule, the committee shall complete its review and submit its report to the respondent's dean within thirty days.

(E) Decision by the dean.

- (1) For all complaints under this rule except sexual misconduct complaints under Title IX, the dean may, after reviewing the report and recommendation of the university sanctioning committee:
- i. Uphold the committee's proposed sanction;
 - ii. Impose what would reasonably be interpreted as an equivalent or lesser sanction; or
 - iii. Increase the sanction.
- (2) The dean shall make a decision in twenty-one days. The final report of the university sanctioning committee and the dean's decision will be sent to the complainant and the respondent.
- (3) Appeals:
- i. The dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, or mandatory counseling or training.
 - ii. If the dean imposes any other sanction except for revocation of tenure or termination of employment, the respondent shall have the right to appeal in writing to the provost for review.
 - iii. If the dean imposes a sanction that revokes tenure or terminates employment, the matter shall be automatically appealed to the provost.
 - iv. In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the provost. All such submissions and all discretionary appeals must be filed within fourteen days after notice of the dean's decision was mailed.

(F) Review of appeals by the provost.

- (1) After reviewing the record of a case upon appeal or upon referral by the dean, the provost may:
- i. Affirm the dean's sanction or the sanction imposed by the university sanctioning committee for sexual misconduct complaints under Title IX;

- ii. Impose what would reasonably be interpreted as an equivalent or lesser sanction to the sanction;
 - iii. Increase the sanction; or
 - iv. In the event that the provost determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the provost shall return the case back to a previous step of the process for further proceedings as appropriate.
- (2) The provost shall make a decision within fourteen days of receiving materials from the dean, respondent or complainant as applicable. Complainant and respondent shall each have the right to respond to a filing by the other party.
- (3) For complaints of sexual misconduct under Title IX, the provost's decision shall be final.
- (4) For all other complaint subject to this rule:
- a. If the provost affirms the dean's decision to terminate employment, or imposes or upholds a sanction set forth in section (D)(4)(vii) through (xii) of this rule, the respondent may appeal to the faculty hearing committee. In all other cases, the provost's decision shall be final.
- (5) An appeal by the respondent must be in writing and must be filed with the faculty hearing committee within fourteen days after notice of the provost's decision was mailed. Appeals to the faculty hearing committee shall be limited to one or more of the following grounds:
- i. the sanction is disproportionate to the violations committed in view of the aggravating and mitigating factors;
 - ii. substantial new evidence has been discovered (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct); or
 - iii. there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent.

(G) The faculty hearing committee.

- (1) Within fourteen days of receipt of an appeal from a respondent, the faculty hearing committee established by rule 3335-5-48.10 shall convene a hearing panel to consider the complaint and to provide a recommendation to the president regarding the appropriate action to be imposed. The respondent and the provost or designee may each make one peremptory challenge to the seating of one person on the hearing panel and one peremptory challenge to the selection of a presiding officer.
- (2) The parties to this hearing shall be the respondent and the provost, or designee.
- (3) The hearing panel may restrict the attendance of persons at the proceedings. However, the respondent and the provost shall have the right to have one observer of their choosing present at all times.
- (4) The provost, or designee, shall present the case to the hearing panel. In presenting the case, the provost may be advised and represented by the general counsel, or designee. The provost shall have the right to present witnesses and evidence and to examine witnesses and evidence presented by the respondent.
- (5) Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice. The respondent shall have the right to examine the witnesses and evidence presented against them in the hearing, to present witnesses and evidence on their own behalf, and to refuse to testify or be questioned in the proceedings without prejudice to their cause.

- (6) The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues appealed, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the appeal. However, in all proceedings, the hearing panel shall afford complainants equal rights to participate in any proceeding and the ability to present a response to the respondent's claims as applicable.
- (7) An electronic recording shall be kept of all proceedings at a hearing panel. The recording shall be conveyed by the chair of the faculty hearing committee to the Office of Academic Affairs.
- (8) At the conclusion of the proceedings, the hearing panel shall make separate written conclusions with respect to each substantive issue raised at the hearing.
 - i. If the respondent challenges the appropriateness of the sanction, the faculty hearing committee shall set forth what their recommended sanction is in accordance with the factors set forth in section (D)(3) of this rule.
 - ii. If the respondent alleges conflict of interest, procedural error, or substantial new evidence, the faculty hearing committee shall set forth what their conclusions are and whether they believe that further proceedings are appropriate.
- (9) The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, provost, and respondent within sixty days of the date that the final hearing panel is convened.

(H) The president.

- (1) Upon receipt of the written recommendation and a record of the proceedings from a hearing panel, the president shall review the matter. The president may:
 - i. Impose any sanction less than termination of employment whether or not it accords with the recommendation of the hearing panel;
 - ii. Recommend to the board of trustees termination of employment on such terms and conditions as the president may deem advisable;
 - iii. Remand the case to the hearing panel for reconsideration; or
 - iv. In the event that the president determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the president shall return the case back to a previous step of the process for further proceedings as appropriate.
2. The president's decision on all sanctions less than termination of employment is final.
3. Any decision of the president shall be communicated in writing to the hearing panel, the provost, and the respondent.
4. The president shall make a decision within thirty days.

(I) Board of trustees.

- (1) The board of trustees, in reviewing and deciding upon a case in which termination of employment has been recommended, has the ultimate authority to take that action necessary to promote the best interest of the university and to protect the rights of the individual. In such cases, the board shall have the discretion to decide whether the respondent has an opportunity to present to it arguments in writing, or in person, or both.

3335-5-04.4 Procedures for complaints of misconduct and other violations of applicable law, university policies or rules, or governance documents made against faculty members.

- (A) This rule applies to complaints made against faculty members involving misconduct and other

violations of applicable law, university policies or rules, or unit governance documents that do not otherwise fall under rules 3335-5-04.1, 3335-5-04.2, or 3335-5-04.3. **If complaints against a faculty member are brought concurrently under both 3335-5-04.1 and 3335-5-04.4, those complaints may be consolidated into one proceeding, retaining the relevant evidentiary standard for each complaint.** A faculty member may be disciplined for violations established under this rule, up to and including termination for violations constituting grave misconduct or non-trivial financial fraud. For the purposes of this rule:

- (1) “Grave misconduct” is defined as flagrant, egregious, and willful misbehavior in violation of the law or established university rules or policies.
 - (2) “Nontrivial financial fraud” is defined as a deliberate act or deliberate failure to act that is contrary to law, rule, or policy so as to obtain unauthorized financial benefit from the university for oneself, one’s family, or one’s business associates. Nontrivial financial fraud includes, but is not limited to, misappropriation of university funds or property, authorizing or receiving compensation or reimbursement for goods not received or services not performed or hours not worked, or unauthorized alteration of financial records.
- (B) Initial proceedings.
- (1) A complaint may be filed by any student or university employee, including employees from administrative offices who are filing complaints arising out of investigations by those offices. Complaints may be filed with a chair, dean, associate dean, provost, vice provost for academic policy and faculty resources (hereinafter “vice provost”), or the president. All complaints must be referred to the vice provost for initial review in accordance with this rule.
 - (2) The complaint shall be set forth in writing and shall state facts to support an allegation that a faculty member has engaged in misconduct or has otherwise violated applicable law, university policies or rules, or unit governance documents.
 - i. The vice provost shall review every complaint to determine whether the complaint presents an actionable violation and that the complaint is not clearly retaliatory or abusive in nature. If the vice provost is named as a respondent, the provost shall identify a designee. If the vice provost determines that a complaint either does not allege a violation that can be addressed under this rule or was filed for clearly retaliatory or abusive purposes, the vice provost must consult with the complainant within seven days of filing to clarify the nature of the complaint. The vice provost may dismiss such a complaint within seven days of consulting with the complainant if it cannot be addressed under this rule or is clearly retaliatory or abusive in nature. This determination does not prohibit referral of a complaint filed under this rule to another applicable university process.
 - a. The complainant may appeal this dismissal in writing to the provost within seven days of this decision. Upon receiving such an appeal, the provost may either reinstate the complaint or dismiss it, and that decision is final. The provost must issue a decision within fourteen days of receiving such an appeal.
 - ii. If the vice provost determines that the complaint should proceed or if the complaint is reinstated by the provost, the vice provost shall furnish a copy of the complaint to the respondent and shall refer it to the respondent’s department chair for a probable cause review in accordance with section (C) of this rule.
 - a. If the faculty member’s department chair is the complainant or respondent, the complaint shall be referred to the faculty member’s dean for the initial probable cause review.
 - b. For the purposes of this provision, the term “department chair”

includes school directors, deans of colleges without departments, and regional campus deans and directors.

- (3) Only allegations stated in the complaint shall be considered at the various stages of deliberation. However, additional facts relevant to the allegations set forth in the complaint may be presented throughout the process.

(C) Probable cause review.

- (1) The department chair shall review the allegations in the complaint and discuss the matter with the complainant and the respondent to determine whether there is probable cause to believe that the allegations are true.
- (2) If the department chair determines that there is not probable cause to believe that the allegations are true, the chair shall dismiss the complaint.
 - i. If the complaint is dismissed, the complainant may appeal the dismissal to the dean. The appeal must be in writing and filed with the dean within twenty-one days after the notice of the chair's decision was mailed. Upon receiving such an appeal, the dean may either reinstate the complaint and refer it to the college investigation and sanctioning committee or dismiss it, and such a dismissal is final. The dean must issue a decision within thirty days after receiving such an appeal.
- (3) If the department chair determines that there is probable cause to believe that the allegations are true, the department chair shall refer the matter to the college investigation and sanctioning committee unless the department chair completes an informal resolution in accordance with rule 3335-5-04(E).

- (4) The department chair shall complete this process within fourteen days.

(D) College investigation and sanctioning committee.

- (1) Each college shall appoint a college investigation and sanctioning committee, which shall fulfill the responsibilities set forth in this section. The committee shall be all tenured faculty or a majority of tenured faculty if including clinical/teaching/practice faculty who are non-probationary associate professors or professors. A college may include faculty members from other colleges on its committee.
- (2) Upon receipt of a referral of a complaint from the department chair, the committee shall meet with the complainant and the respondent and shall review any documentary evidence provided by these parties. The respondent shall be given copies of any documentary evidence provided to the committee as part of the investigation and be given an opportunity to respond to all such documentation. The committee shall have the authority to gather information relevant to the complaint, including through seeking to interview individuals other than the complainant and respondent as the committee sees fit or as recommended by the complainant and respondent. The committee shall strive to maintain confidentiality in the proceedings.
- (3) At the conclusion of the investigation, the committee shall prepare a preliminary report that identifies the proposed findings of fact, a conclusion as to whether a violation occurred under the preponderance of the evidence standard, and if so whether the conduct rose to the level of grave misconduct or non-trivial financial fraud as defined in rule 3335-5-04.1(A)(1)(i)–(iii). The committee shall provide that document to both the complainant and respondent for review. Each party shall have seven days to respond and to identify any alleged errors or omissions in the findings.
- (4) Following review of any comments by the parties, the committee shall thereafter make any modifications to the report that it deems appropriate and issue a final report. If the committee concludes that a violation occurred, the committee shall include its proposed sanction in the final report.

(5) In evaluating sanctions, the committee shall consider the totality of the circumstances, including aggravating and mitigating factors.

- i. Aggravating factors may include, but are not limited to:
 - a. the degree to which the respondent's conduct was flagrant, egregious, or willful if grave misconduct is found;
 - b. the significance and impact of the faculty member's misconduct, failure to meet academic responsibilities if serious failure to meet faculty obligations is found;
 - c. the degree and impact of the fraud if non-trivial financial fraud is found;
 - d. the strength of the evidence presented;
 - e. whether the respondent has previously been found to have engaged in misconduct;
 - f. whether the respondent's conduct caused injury or harm to another individual, university property, or the university's reputation; and
 - g. whether the respondent had received prior warnings about engaging in the conduct at issue.
- ii. Mitigating factors may include, but are not limited to:
 - a. the conduct at issue did not cause injury or harm to another individual, university property, or the university's reputation; and
 - b. the respondent accepted responsibility for the misconduct.

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(6) The committee shall have the authority to recommend sanctions as it sees fit as long as the sanctions are commensurate with the nature of the complaint and the committee's analysis of any aggravating and mitigating factors. Sanctions may be of a discrete or continuing nature, but sanctions of a continuing nature must specify the period of time in which they are applicable. Sanctions may include, but are not limited to the following, and may further include a combination of sanctions:

- i. Verbal reprimand;
- ii. Written reprimand;
- iii. Mandatory counseling or other rehabilitation;
- iv. Reimbursement for damages to or destruction of university property, or for misuse or misappropriation of university property, services or funds;
- v. Restrictions on duties or privileges;
- vi. Restriction of access to university property or services;
- vii. Reduction of salary base;
- viii. Reduction of twelve-month appointment to nine-month appointment;
- ix. Reduction of full-time equivalent (FTE) appointment;
- x. Reduction of rank;
- xi. Revocation of tenure;
- xii. Termination of employment in cases of grave misconduct or non-trivial financial fraud.

(7) The committee shall complete its investigation and submit its report to the respondent's dean within forty-five days.

(E) Decision by the dean.

(1) After reviewing the report and recommendation of the college investigation and sanctioning committee, the dean may:

- i. Dismiss the complaint if the committee did not find a violation;
- ii. Impose the committee's proposed sanction;

- iii. Impose what would reasonably be interpreted as an equivalent or lesser sanction; or
 - iv. Increase the sanction if the committee determined that the respondent engaged in grave misconduct or non-trivial financial fraud.
- (2) The dean shall make a decision in twenty-one days. The final report of the college investigation and sanctioning committee and the dean's decision shall be sent to the complainant and the respondent.

(3) Appeals:

- i. The dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, or mandatory counseling or training. A respondent may place a response to this sanction in their primary personnel file.
- ii. If the dean imposes any other sanction except for revocation of tenure or termination of employment, the respondent shall have the right to appeal in writing to the provost.
- iii. If the dean imposes a sanction that revokes tenure or terminates employment, or if the case involves a finding by the committee of grave misconduct or non-trivial financial fraud, regardless of the sanction, the matter shall be automatically appealed to the provost.
- iv. In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the provost. All such submissions and all discretionary appeals must be filed within fourteen days after notice of the dean's decision was mailed.

(F) Review of appeals by the provost.

- (1) After reviewing the record of a case appealed by a respondent or referred by the dean, the provost may:
- i. Affirm the dean's sanction;
 - ii. Impose what would reasonably be interpreted as an equivalent or lesser sanction to the dean's sanction;
 - iii. In the case of grave misconduct or non-trivial financial fraud increase the sanction; or
 - iv. In the event that the provost determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the provost shall return the case back to a previous step of the process for further proceedings as appropriate.
- (2) The provost shall make a decision within fourteen days of receiving materials from the dean and respondent as applicable.
- (3) If the provost affirms the dean's decision to terminate employment, or imposes or upholds a sanction set forth in section (D)(6)(vii) through (xii) of this rule, the respondent may appeal to the faculty hearing committee. In all other cases, the provost's decision shall be final.
- (4) An appeal by the respondent must be in writing and must be filed with the faculty hearing committee within fourteen days after notice of the provost's decision was mailed.

(G) The faculty hearing committee.

- (1) Within fourteen days of receipt of an appeal from a respondent, the faculty hearing committee established by rule 3335-5-48.10 shall convene a hearing panel to consider the appeal and to provide a recommendation to the president regarding the appropriate action. The respondent and the provost or designee may each make one peremptory challenge to the seating of one person on the hearing panel and one peremptory challenge to the selection of a presiding officer.
- (2) The parties to this hearing shall be the respondent and the provost, or designee.
- (3) The hearing panel may restrict the attendance of persons at the proceedings. However, the respondent and the provost shall have the right to have one observer of their choosing present at all times.
- (4) The provost, or designee, shall present the case to the hearing panel. In presenting the case, the provost may be advised and represented by the general counsel, or designee. The provost shall have the right to present witnesses and evidence and to examine witnesses and evidence presented by the respondent.
- (5) Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice. The respondent shall have the right to examine the witnesses and evidence presented against them in the hearing, to present witnesses and evidence on their own behalf, and to refuse to testify or be questioned in the proceedings without prejudice to their cause.
- (6) The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues appealed, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the appeal.
- (7) The hearing panel will not be bound by the findings of the college investigation and sanctioning committee or the provost.
- (8) An electronic recording shall be kept of all proceedings at a hearing panel. The recording shall be conveyed by the chair of the faculty hearing committee to the Office of Academic Affairs.
- (9) At the conclusion of the proceedings, the hearing panel shall make written conclusions with respect to each substantive issue raised, including but not limited to:
 - i. appropriateness of the sanction, and, if found to be inappropriate, the faculty hearing committee's recommended sanction in accordance with the factors set forth in section (D)(5) of this rule.
 - ii. conflict of interest, procedural error, or substantial new evidence.
 - iii. findings of the college investigation committee.
- (10) The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, provost, and respondent within sixty days of the date that the final hearing panel is convened.

(H) The president.

- (1) Upon receipt of the written recommendation and a record of the proceedings from a hearing panel, the president shall review the matter. The president may:
 - i. Impose any sanction less than termination of employment whether or not it accords with the recommendation of the hearing panel;
 - ii. Recommend to the board of trustees termination of employment for cases of grave misconduct or non-trivial financial fraud on such terms and conditions as the president may deem advisable;
 - iii. Remand the case to the hearing panel for reconsideration; or
 - iv. In the event that the president determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the president shall return the

case back to a previous step of the process.

- (2) The president's decision on all sanctions less than termination of employment is final.
 - (3) Any decision of the president shall be communicated in writing to the hearing panel, the provost, and the respondent.
 - (4) The president shall make a decision within thirty days.
- (l) Board of trustees.
- (1) The board of trustees, in reviewing and deciding upon a case in which termination of employment has been recommended, has the ultimate authority to take that action necessary to promote the best interest of the university and to protect the rights of the individual. In such cases, the board shall have the discretion to decide whether the respondent has an opportunity