

## FACULTY COUNCIL AD HOC COMMITTEE ON THE 04 RULE

### FINAL REPORT

April 2, 2020

### EXECUTIVE SUMMARY

The proposed 04 Rule revision is organized along three tracks with a consistent structure. The three tracks are preceded by a section that gives a general procedural overview. The first track is for grossly deficient performance and other violations of rule, policy or law; the second for research misconduct; and the third for sexual misconduct, equity violations, whistleblower retaliation, and workplace violence. Duplicate investigations have been eliminated so that timeliness is enhanced and due process is rigorously protected. The proposed rule 3335-5-04 can be found in section VIII below.

### STRUCTURE

The structure of the process from the original 04 Rule has been preserved, so that initial review, probable cause determination, investigation, sanction, Dean decision, Executive Vice President and Provost decision, appeal to Faculty Hearing Committee, President, and Board of Trustees stages of the process are consistent. What has changed is that for two tracks, research misconduct and sexual misconduct, the entities involved in the initial proceedings (initial review, probable cause determination, investigation and sanction) are unique bodies with extensive training in the nuances of that behavior. The changes for these processes are mandated in federal regulations. Further, in all three tracks, there are procedural improvements and modifications to reflect best practices and eliminate inconsistencies, inefficiencies, and conflicts, among other things.

### TIMELINE

The timeline of each process has been improved so that both complainant and respondent can see resolution of the issue. Some processes that had a limitless timeframe are now specified and extensions must be sought in writing and approved by the Executive Vice President and Provost.

#### I. CHARGE

This committee was constituted by the Faculty Council at the end of Spring semester 2019, and given the following charge:

**“Purpose and Background:** To recommend changes to rule 3335-5-04 to address concerns about the current process, including for situations of sexual misconduct, cases of research misconduct, and the use of the 04 rule to address performance issues of faculty as well as administrators with faculty appointments. The committee should also consider the idea of having an expedited process for cases that involve a lower tier of sanctions.

The Faculty Council Ad Hoc Committee on the 04 Rule will consider modifying the 04 rule based on recommendations by the previous ad hoc committee on Sexual Misconduct, the Research Misconduct

Policy Review committee, the Deans proposal for re-evaluation of the 04 rule, best practices at peer institutions, and areas of concern about the process regarding current 04 practices.” The committee began meeting on June 14, 2019, and met weekly beginning in Fall 2019 and ending its work on April 1, 2020.

## II. MEMBERS

The membership of the committee was chosen to represent multiple populations and stakeholders in the outcome of the 04 revision process. The committee was designed to include 7 voting members and 2 non-voting advisory members. Faculty members include **Colette Dollarhide** (Chair), Professor, Department of Educational Studies; **Don Mutti**, Professor, College of Optometry; **Stefan Niewiesk**, Professor and Chair, Department of Veterinary Biosciences; and **Maurice Stevens**, Professor, Department of Comparative Studies. Administrative members include **Kathy Lasher**, Associate Vice President, Office of Institutional Equity; **Kay Wolf**, Senior Vice Provost, Office of Academic Affairs; and **Rachel Kleit**, Associate Dean for Faculty Affairs, College of Engineering. The non-voting members include **Ben Givens**, Secretary of the University Senate, and **Brandon Lester**, Associate General Counsel, Office of Legal Affairs.

## III. GOALS AND PRIORITIES

According to the charge given to the committee, the overall goal was to “have a fair, equitable, and expedient [faculty discipline] process that protects the rights of faculty and the integrity of the institution.” During early meetings, the committee explored and discussed this goal, and articulated relevant values and priorities that tied directly to the changes that were deliberated during the revision process. A core consideration was to ensure that this new set of procedures increase trust in the process. To accomplish this, it was agreed that the revised 04 process would require fairness to faculty and administration, equity, consistency, timeliness, and clarity. Using these guiding principles, the committee focused on ensuring the balance of academic freedom and responsibility, due process for respondent and complainant, the safety of the university community, the integrity of the university, and meeting all federal and state guidelines and regulations.

## IV. PRIOR WORK ON THIS TOPIC, RESOURCES, AND INVITED CONSULTANTS

The committee began its work by reviewing the work of prior committees that addressed issues of sexual misconduct, research misconduct, and various policy recommendations. The first report, dated 29 August 2017, details the first 04 Ad Hoc Committee empaneled by the Steering Committee of the Senate outlined initial recommendations relative to charges against faculty involving sexual misconduct and research misconduct. In addition, the current committee reviewed the [report](#) of the Renewed Ad Hoc committee to Align Faculty Rule 3335-5-04 and the Sexual Misconduct Policy dated March 13, 2018 and the report titled Alignment of Faculty Rule 3335-5-04 and the Proposed Revised Research Misconduct Policy dated April 11, 2018.

These reports from prior committees provided a foundation for the work of the current committee and contributed to the discussions of revisions. Additional input about the sexual misconduct policy and federal requirements were provided by **Kathy Lasher**, Associate Vice President, Office of Institutional Equity, and additional input about research misconduct process was sought from **Susan Garfinkel**, Assistant Vice President, Research Compliance. Important procedural considerations were recognized in terms of the importance of trained investigators for these two types of misconduct and ways in which these trained investigators could appropriately conduct timely, informed, and confidential investigations that render additional college-level investigations as duplicative, time-consuming, and potentially harmful to complainants and respondents.

Since the committee consulted with representatives of the Office of Institutional Equity and the Office of Research Compliance, the committee also sought consultation with Human Resources, which conducts investigations of workplace violence, and other complaint-related work behaviors. **Tom Ramey**, Administrative Director, and **Kristi Hoge**, Manager of Employee Relations, from the office of Employee and Labor Relations consulted with the committee and provided an overview of the Employee and Labor Relations Investigation Standards. Twice during the drafting of the revised rule, the chair presented some of the committee's ideas to the Faculty Hearing Committee who provided useful feedback.

The committee sought additional information through a review of discipline procedures for each of fifteen peer institutions, including the universities in the Big Ten Academic Alliance and additional comparable institutions: The University of Virginia, the University of Texas System, and the University of California System. This overview was compiled by law clerks in Legal Affairs, who provided a summary of procedures and highlighted ways in which the 3335-5-04 Rule is unique. In addition, a comprehensive [report](#) on Sexual Misconduct policies at the University of Illinois was an example of how one university chose to include other forms of incivility in the behavior conduct of a large university.

#### V. SUMMARY OF CURRENT PROBLEMS WITH THE 04 PROCESS

After careful consideration of all prior reports, current practices and policies, and comparison across multiple universities, the committee articulated the following problems with the current 3335-5-04 Rule.

- 1) *Unclear process with potential for multiple investigations.* In the current structure of the 04 Rule, investigations that are undertaken in administrative offices (HR, Office of Research, Office of Institutional Integrity) are then duplicated at the college level by the College Investigation Committee. The existing process can therefore lead to conflicting findings and significantly prolong the overall resolution of the case.
- 2) *Complaints of discrimination, retaliation, workplace violence, and research misconduct require specialized training to investigate.* The University's Offices of Research, Institutional Equity, and Human Resources conduct investigations in certain areas--including research misconduct, sexual misconduct, protected class discrimination and retaliation, and workplace violence--that require specialized training, as well as sensitive and confidential treatment of complainant and respondent, and dispositions that are sensitive to privacy and human dignity. For example, training for sexual misconduct involves extensive training in

- conducting investigations that meet federal guidelines and regulations, and training in trauma-informed best practices.
- 3) *Shifting federal guidelines and regulations concerning sexual misconduct and research misconduct require frequent updates to the rule.*
    - Investigating, adjudicating, sanctioning and reporting research misconduct and sexual misconduct must follow federal guidelines and regulations or the University could be found out of compliance. Currently, we are following federal guidelines and best practices, but these specialized steps are not reflected in the current 04 rule.
    - The evidentiary standard for sexual misconduct is a *preponderance of the evidence*. Likewise, research misconduct findings have been established under a preponderance standard. These stand in contrast to the current 04 rule.
    - Revisions to the 04 rule have not kept up with changes in federal regulations, nor best practices employed at Ohio State. The 04 rule must be updated to align current and required practices.
  - 4) *The resolution of a case can take years due to an undefined or poorly enforced timeline.* The time it takes for each 04 case to come to a final conclusion can be several years. While it is agreed that timeliness *alone* is not the only criteria by which to judge an important process that could result in termination, re-assignment, or demotion, it is important to note that a timely process provides protection for faculty against employment limbo while the case is being resolved, and protects complainants' interest in timely resolutions to their allegations.
  - 5) *Global procedural issues.* In reviewing the 04 rule holistically, the committee both received concerns and identified several areas in which the rule language created issues or could be clarified. For example, the current probable cause review steps require that certain allegations of misconduct, including grave misconduct, be automatically referred on regardless of the facial merits of the claims. Further, the current rule does not clearly define conflict of interest procedures. Additionally, the 04 rule does not distinguish between minor sanctions, like a verbal reprimand, and more significant sanctions like a reduction in base salary, in terms of appeals to the provost or to the faculty hearing committee in certain respects. These and other issues in the current rule language could potentially lead to expending resources for minor or misdirected allegations or create logistical issues in the process.

## VI. PROPOSED CHANGES TO THE 04 RULE:

The committee systematically rewrote the 04 rule to improve consistency, trust, timeliness, fairness and clarity. This section summarizes the changes that are proposed.

1. **Creates three separate and distinct set of procedures for violations of different types, each type varying in applicable federal regulations as well as in the type of investigation required.**

The proposed 04 process has clear tracks that provide specific processes for the initial stages of the process for each type of complaint.

- The first track includes violations of grossly deficient performance and various types of misconduct. This track most closely aligns with the current 04 process and includes a department chair review and a college investigation and sanctioning committee.
- The second track outlines the procedure for complaints of research misconduct that better aligns with the revised Research Misconduct Policy that is coordinated and overseen by the Office of Research. That office conducts the preliminary assessment and inquiry, and then a university-level faculty panel is constituted to conduct the investigation and sanctioning, consistent with current regulatory directives.
- The third track addresses procedures for complaints that fall under the Sexual Misconduct Policy and other policies that are investigated by professionals in the Office of Institutional Equity (OIE), in compliance with regulatory directives. In addition, complaints involving workplace violence and whistleblower retaliation that are investigated by the Office of Human Resources are addressed in this track. All complaints in this track involve a university-level faculty committee that determines sanctions.

Once the final investigation is completed and a sanction recommended, the three tracks converge back to a common process that is identical, from the decision of the dean, to appeals to the Provost, the appeal to the Faculty Hearing Committee, the decision of the President and the appeal to the Board of Trustees.

## **2. Provides clarified due process for complainant and respondent.**

Due process that exists in the current rule has been preserved and, in the following bulleted cases, clarified in the revision.

- Respondents have the right to respond to documentary evidence provided in the complaint.
- Complainants and respondents have the opportunity to provide written statements of their position in the preliminary investigation report that is then integrated into the final report. This provides better context for the decision of the dean.
- In track 1, the complainant can appeal a dismissal in the initial review by the Office of Academic Affairs.

All processes are now explicit and clarified so that practice, policy and rule are aligned to protect due process.

## **3. Increases levels of review based on increasing severity of sanctions**

Depending on the seriousness of the sanction, there are different appeal rights. The respondent has the right to appeal the decision of the Dean for the all but the most minor sanctions. The respondent can appeal the decision of the Provost in the case of serious sanctions, and appeal the decision of the President in the case of termination. This tiered appeal process is designed to provide more appellate opportunities for the most serious cases, and to prevent lesser offenses and sanctions from expending faculty and administrative time and resources. It is not in anyone's interest to prolong an already lengthy process.

#### **4. Improves compliance with the timeline**

The proposed 04 language provides mandatory deadlines for each action step. The rule language of individuals or committees “making every effort” to conform to the timeline has been removed. Any defined extensions of time must be requested in writing and approved by the Provost.

#### **5. Requires investigations of research misconduct and sexual misconduct to be conducted by trained faculty and professionals.**

The requirements from the federal agencies for investigating research misconduct and sexual misconduct is for trained professionals to be involved. This revision requires that a standing university committee be established that receives specialized training in investigations and/or sanctioning into the behavior alleged. Specifying those compliance offices that have trained investigators will provide trained professionals to support the complainant and respondent in appropriate ways.

#### **6. Eliminates duplicate investigations.**

In the proposed rule, investigations are conducted by trained faculty and professionals (Track 2) and professional investigators (Track 3). These investigations will not then be re-investigated by a college investigation committee. There will be standing university-level committees from which panels will be drawn for sanctioning (Track 3) and for investigation and sanctioning (Track 2). This elimination of duplicative investigations should greatly improve the timeline for resolution of complaints.

#### **7. Separates investigative process from sanctioning recommendations**

Investigations of misconduct or deficient performance require extensive gathering of evidence, including interviews and physical and electronic data collection. Once gathered into a preliminary report, feedback from the complainant and respondent must be considered, and then deliberations can occur to arrive at a final finding of the facts and the determination of whether a violation occurred. It is only at that stage, after a violation has been determined to have occurred, that a committee should consider sanctions. This separation of investigation and sanctioning is emphasized throughout the proposed rule, but it is most explicit in the third track where a separate faculty sanctioning committee will take the finding identified in the OIE- or HR-based final investigation report to then consider the appropriate sanction.

#### **8. Provides a consistent evidentiary standard across all three tracks.**

Consistent with federal mandates, and for consistency across the university and across the tracks of the 04 rule, the preponderance of evidence standard will be used. While this level of evidence is less stringent than the “clear and convincing” standard in the existing 04 rule, the preponderance of evidence standard only applies to the question of whether or not a violation occurred. The recommended sanction is considered separately. Just as due process is designed to increase as the severity of sanctions increase, the faculty body recommending the sanction will operate by nature with increased scrutiny and require a higher level of evidence when considering more severe sanctions. This sanctioning body will reflect faculty input and will be informed by new guidance on sanctioning, as described in item 9 below.

**9. Provides new guidance on sanctioning**

The current rule provides very little guidance on sanctioning, simply stating that proposed sanctions should be commensurate with the nature of the complaint. The proposal provides a new section that outlines a set of Aggravating and Mitigating factors that committees should consider when determining an appropriate sanction, thus increasing consistency and clarity in sanctioning recommendations.

**10. Provides new clarity on the grounds for appeal to the faculty hearing committee**

The current 04 rule is silent with respect to the grounds on which an appeal of the Provost's decision can be made. The proposed rule language identifies three specific conditions for appeals: (1) an inappropriate sanction, (2) substantial new evidence or (3) a procedural error. This focuses the respondent's rationale for appeals.

**11. Preserves the role of faculty in the process of sanctioning and hearing appeals**

The rights and responsibilities of faculty are nicely summarized in section one of chapter 5 (3335-5-01) of the faculty rules - the 01 rule. Faculty are in the best position to evaluate the appropriate sanctions for violations of these responsibilities, as well as violations of the other rules, policies, laws and guidelines. The committees that determine sanctions for any violations that fall under the 04 rule consist of faculty peers. In all three tracks, respondents can appeal decisions to impose serious sanctions to the Faculty Hearing Committee, another committee of peers. The right of faculty to recommend sanctions for faculty colleagues and to appeal decisions to faculty colleagues is preserved in the proposed rule.

**12. Revises the entire rule to clean up and clarify a variety of minor procedural issues.**

Changes have been made throughout the rule to provide clarity and to address issues like conflicts of interest, informal resolution, and how notice is provided. The number of minor changes are too numerous to list here, but in total they significantly improve the rule.

**VII. RECOMMENDATIONS**

1. Advance this report to the Steering Committee and recommend that they steer the report and the proposed language for a revised 3335-5-04 rule to the Rules Committee.
2. Request that the Rules Committee consult widely on the proposed rule change, including with the Faculty Hearing Committee, the Committee on Academic Freedom and Responsibility, the Faculty Council and the faculty as a whole, the Council of Deans, the President, the Provost, the Office of Research, the Office of Institutional Equity, the Office of Human Resources, the Office of Compliance and Integrity, and the Office of Legal Affairs.

3. Schedule regular updates from the Rules Committee at Autumn semester 2020 Faculty Council meetings.
4. Ask the Steering Committee to request that the Rules Committee bring a final rule revision proposal back to the Steering Committee in the Autumn semester so that it can be placed on a University Senate agenda for approval.
5. If approved by the University Senate, then training and communications will be critically important.
  - a. The Office of Academic Affairs will need to educate all current and incoming deans and chairs about
    - i. the newly revised 04 process,
    - ii. ways in which the annual performance review may interact with the 04 process, and
    - iii. informal resolution options available to them.
  - b. Deans and chairs will need to inform faculty about these changes so that they understand the process and how it may impact them.

VIII. PROPOSED 3335-5-05 RULE**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. Complaints may be filed under this rule against any individual with a faculty appointment, including administrators who hold such appointments, as long as the complaint pertains to their duties and obligations under that faculty appointment.
- (B) Complaints shall proceed under the general procedures set forth in this rule as well as the specific procedures set forth in the following subsections depending on the nature of the allegations.
1. Complaints involving allegations of deficient performance of faculty duties, misconduct, and violations of applicable law, university policies or rules, or unit governance documents that do not otherwise fall under rules 3335-5-04.2 and 3335-5-04.3 shall proceed under rule 3335-5-04.1. A faculty member may be disciplined for violations established under this rule, and may be terminated for violations if the conduct constitutes grave misconduct, non-trivial financial fraud, or grossly deficient performance as defined in rule 3335-5-04.1(A)(1)–(3).
  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, and 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.
- (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 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 chair of the steering committee of the university senate shall 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 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 and/or sanctioning committee has such a conflict, that individual shall be replaced in accordance with the applicable procedures for that committee.

- (D) If at any time 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 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 attempt to use informal dispute resolution to resolve the complaint to their satisfaction as well as that of the complainant and the faculty member against whom the complaint is made (hereinafter "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, 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 for review and approval before being finalized.
- (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 and by failing to appear for scheduled sessions. If a complainant or respondent relinquishes their rights of participation at any particular step, that relinquishment does not prevent that individual from exercising any rights that may be applicable at any other step of the process.
- (G) All records of proceedings under this rule shall be maintained in 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, a respondent may be accompanied by one support person of their choosing (including but not limited to personal legal counsel). However, except as otherwise provided in rules 3335-5-04.1 through 3335-5-04.3, 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 3335-5-04.3 are mandatory. However, the executive vice president and provost or designee may grant defined extensions of any time period on an as-needed basis upon written request.

**3335-5-04.1 Procedures for complaints of deficient performance 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 deficient performance of faculty duties, misconduct, and other violations of applicable law, university policies or rules, or unit governance documents that do not otherwise fall under rules 3335-5-04.2 and 3335-5-04.3. A faculty member may be disciplined for violations established under this rule, and may be disciplined up to and including termination for violations constituting grave misconduct, non-trivial financial fraud, or grossly deficient performance. 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. “Grossly deficient performance” is defined as a faculty member’s sustained and/or serious failure to fulfill one or more of the academic responsibilities defined in rule 3335-5-01(C).
  3. “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, executive vice president and provost, vice provost for academic policy and faculty resources, or the president. However, all complaints must be referred to the vice provost for academic policy and faculty resources 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 his or her academic responsibilities, engaged in misconduct, or has otherwise violated applicable law, university policies or rules, or unit governance documents in their faculty capacity. Complaints against administrators who hold faculty appointments must allege facts related to the faculty appointment duties to be actionable. The vice provost for academic policy and faculty resources shall review every complaint that is filed.
    - i. The vice provost for academic policy and faculty resources shall determine whether the complaint presents an actionable violation and is not retaliatory or abusive in nature. 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 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 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 executive vice president and provost within seven days of this decision. Upon receiving such an appeal, the executive vice president and provost may either reinstate the complaint or dismiss it, and that decision is final. The executive vice president and 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 executive vice president and 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" 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 that fall within 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 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 chair determines that there is probable cause to believe that the allegations are true, the chair shall refer the matter to the college investigation and sanctioning committee unless the chair completes an informal resolution in accordance with rule 3335-5-04(E).
4. The chair shall complete this process within fourteen days.

(D) College investigation and sanctioning committee

1. Each college shall establish a procedure for the creation of a standing college investigation and sanctioning committee, which shall fulfill the responsibilities set

forth in this section. The committee shall include tenured faculty and may include 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 and/or as recommended by the complainant and respondent, but shall otherwise 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, grossly deficient performance, 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 fourteen 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.
5. In evaluating sanctions, the committee shall consider the aggravating and mitigating factors in evaluating the totality of the circumstances.
  - 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 failure to meet academic responsibilities if grossly deficient performance 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.

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 to be recommended 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. Reassignment of duties or other restrictions on duties or privileges;
    - vi. Restriction of access to university property or services, the abuse of which led to the complaint;
    - 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; and
    - xii. Termination of employment in cases of grave misconduct, non-trivial financial fraud, or grossly deficient performance.
  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 does not find a violation;
    - ii. Impose the committee's proposed sanction;
    - iii. Impose what would reasonably be interpreted as an equivalent or lesser sanction.
    - iv. Increase the sanction if the committee determined that the respondent engaged in grave misconduct, non-trivial financial fraud, or grossly deficient performance.
  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. Except as set forth in section (E)(3)(iii) below, the dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, and/or mandatory counseling or training. A respondent may, however, place a response to this sanction in their primary personnel file.
    - ii. Except as set forth in sections (E)(3)(i) and (iii), if the dean imposes any sanction except for revocation of tenure and/or termination of

employment, the respondent shall have the right to appeal in writing to the executive vice president and provost.

- iii. If the dean imposes a sanction that revokes tenure and/or terminates employment, or if the case involves a finding by the committee of grave misconduct, non-trivial financial fraud, or grossly deficient performance regardless of the sanction, the matter shall be automatically appealed to the executive vice president and provost.
- iv. In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the executive vice president and provost. All such submissions and all discretionary appeals as set forth in section (E)(3)(ii) must be filed within fourteen days after notice of the dean's decision was mailed.

(F) Review of appeals by the executive vice president and provost.

1. After reviewing the record of a case appealed by a respondent or referred by the dean, the executive vice president and 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, non-trivial financial fraud, or grossly deficient performance, increase the sanction.
  - iv. In the event that the executive vice president and 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 procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the executive vice president and provost may return the case back to a previous step of the process for further proceedings as appropriate.
2. The executive vice president and provost shall make a decision within fourteen days of receiving materials from the dean and respondent as applicable.
3. If the executive vice president and 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 executive vice president and 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 executive vice president and 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 complaint and to provide a recommendation to the President regarding the appropriate action to be taken. 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 executive vice president and provost or designee.
  3. The faculty hearing committee shall only hear arguments that: (1) the sanction is disproportionate to the violations committed in view of the aggravating and mitigating factors; (2) 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 (3) there was procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent.
  4. 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.
  5. 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.
  6. Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice, and to present their position. 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.
  7. The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues before it, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the complaint.
  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 the executive vice president and provost.
  9. 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)(5) of this rule.
    - ii. If the respondent alleges 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.
  10. The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, executive vice president and provost, and respondent within sixty days of the date that the final hearing panel is determined.
- (H) The president.
1. Upon receipt of the written findings of fact and 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.
    - 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 procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the president may 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 executive vice president and provost, and to 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 all of the procedural rights set forth in the Research Misconduct policy that are applicable to each step, 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 policy.
- (C) Investigation and Sanctioning.
  1. If a complaint is referred for investigation, the Office of Research shall convene an investigation 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 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 and/or as recommended by the complainant and respondent, but shall otherwise strive to maintain confidentiality in the proceedings.

3. At the conclusion of the investigation, the investigation committee shall prepare a preliminary report in accordance with the Research Misconduct policy and this rule. 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 findings in the preliminary report.
4. In evaluating sanctions, the investigation committee shall consider the aggravating and mitigating factors in evaluating the totality of the circumstances.
  - 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.
5. 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 to be recommended 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. Reassignment of duties or other restrictions on duties or privileges;
  - vi. Restriction of access to university property or services, the abuse of which led to the complaint;
  - 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; and
  - xii. Termination of employment.
6. 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 committee, the dean may:
  - i. Uphold the committee's proposed sanction;
  - ii. Impose what would reasonably be interpreted as an equivalent or lesser sanction.
  - iii. Increase the sanction.
2. The dean shall make a decision in twenty-one days. The final report of the investigation committee and the dean's decision shall be sent to the complainant, if any identified, and the respondent.
3. Appeals:
  - i. Except as set forth in section (D)(3)(iii) below, the dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, and/or mandatory counseling or training.
  - ii. Except as set forth in sections (D)(3)(i) and (iii), if the dean imposes any sanction except for revocation of tenure and/or termination of employment, the respondent shall have the right to appeal in writing to the executive vice president and provost for review.
  - iii. If the dean imposes a sanction that revokes tenure and/or terminates employment, the matter shall be automatically appealed to the executive vice president and provost.
  - iv. In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the executive vice president and provost. All such submissions and all discretionary appeals as set forth in section (D)(3)(ii) must be filed within fourteen days after notice of the dean's decision was mailed.

(E) Review of appeals by the executive vice president and provost.

1. After reviewing the record of a case appealed by a respondent or referred by the dean, the executive vice president and 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.
  - iv. In the event that the executive vice president and 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 procedural error in the previous steps

of the process that resulted in material harm or prejudice to the respondent, the executive vice president and provost may return the case back to a previous step of the process for further proceedings as appropriate.

2. The executive vice president and provost shall make a decision within fourteen days of receiving materials from the dean and respondent as applicable.
  3. If the executive vice president and provost affirms the dean's decision to terminate employment, or imposes or upholds a sanction set forth in section (C)(5)(vii) through (xii) of this rule, the respondent may appeal to the faculty hearing committee. In all other cases, the executive vice president and 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 executive vice president and provost's decision was mailed.
- (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 executive vice president and provost or designee.
  3. The faculty hearing committee shall only hear arguments that: (1) the sanction is disproportionate to the violations committed in view of the aggravating and mitigating factors; (2) 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 (3) there was procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent.
  4. 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.
  5. 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.
  6. Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice, and to present their position. 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.

7. The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues before it, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the complaint.
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 the executive vice president and provost.
9. 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 (C)(4) of this rule.
  - ii. If the respondent alleges 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.
10. The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, executive vice president and provost, and respondent within sixty days of the date that the final hearing panel is determined.

(J) The president.

1. Upon receipt of the written findings of fact and 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.
  - 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 procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the president may 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 executive vice president and provost, and to the respondent.
4. The president shall make a decision within thirty days.

(K) 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 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 is closed and shall 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, 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 and credibility determinations
  1. 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 seeking to interview individuals other than the complainant and respondent as the investigator sees fit and/or as recommended by the complainant and respondent, but shall otherwise strive to maintain confidentiality in the proceedings. In performing the investigation, the investigator shall determine whether a credibility determination is required, and if so, shall determine which specific issues require a credibility determination. Credibility determinations shall be conducted in accordance with applicable policies and their associated standards and procedures.
  2. 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.
  3. 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.

4. Once 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 seven days to respond and to identify any alleged errors or omissions in the findings.
  5. Following review of any comments by the parties and final resolution of any credibility issues, 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 shall be constituted in accordance with [rule]. The university sanctioning committee is responsible for determining what sanction to recommend for a policy violation.
  2. Upon receipt of an investigator's report, the committee 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 committee shall consider the aggravating and mitigating factors in evaluating the totality of the circumstances.
    - 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 to be recommended 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. Reassignment of duties or other restrictions on duties or privileges;
    - vi. Restriction of access to university property or services, the abuse of which led to the complaint;
    - 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; and
    - xii. Termination of employment.
  5. The committee shall complete its review and submit its report to the respondent's dean within thirty days.
- (E) Decision by the dean.
1. After reviewing the report and recommendation of the university 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.
    - iii. Increase the sanction.
  2. The dean shall make a decision in twenty-one days. The final report of the university sanction committee and the dean's decision will be sent to the complainant and the respondent.
  3. Appeals:
    - i. Except as set forth in section (E)(3)(iii) below, the dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, and/or mandatory counseling or training.
    - ii. Except as set forth in sections (E)(3)(i) and (iii), if the dean imposes any sanction except for revocation of tenure and/or termination of employment, the respondent shall have the right to appeal in writing to the executive vice president and provost for review.
    - iii. If the dean imposes a sanction that revokes tenure and/or terminates employment, the matter shall be automatically appealed to the executive vice president and provost.
    - iv. In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the executive vice president and provost. All such submissions and all discretionary appeals as set forth in section (E)(3)(ii) must be filed within fourteen days after notice of the dean's decision was mailed.
- (F) Review of appeals by the executive vice president and provost.
1. After reviewing the record of a case appealed by a respondent or referred by the dean, the executive vice president and 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.
    - iv. In the event that the executive vice president and 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 procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the executive vice president and provost may return the case back to a previous step of the process for further proceedings as appropriate.
  2. The executive vice president and provost shall make a decision within fourteen days of receiving materials from the dean and respondent as applicable.
  3. If the executive vice president and 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 executive vice president and 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 executive vice president and 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 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 executive vice president and provost or designee.
  3. The faculty hearing committee shall only hear arguments that: (1) the sanction is disproportionate to the violations committed in view of the aggravating and mitigating factors; (2) 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 (3) there was procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent.
  4. 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.
  5. 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.

6. Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice, and to present their position. 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.
7. The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues before it, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the complaint.
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 the executive vice president and provost.
9. 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 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.
10. The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, executive vice president and provost, and respondent within sixty days of the date that the final hearing panel is determined.

(L) The president.

1. Upon receipt of the written findings of fact and 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.
  - 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 procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent, the president may 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 executive vice president and provost, and to the respondent.
4. The president shall make a decision within thirty days.

(M) 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.