

## **Report of the Renewed Ad Hoc Committee to Align Faculty Rule 3335-5-04 and the Sexual Misconduct Policy**

### **I. Background**

On October 12, 2017, the Steering Committee established a renewed Ad Hoc committee to review issues related to Faculty Rule 3335-5-04, "Hearing Procedures for Complaints against Faculty Members." The core charges to the committee were to *"develop a proposal to constitute a Sexual Misconduct Committee that will work with the Title IX Coordinator to adjudicate complaints of this nature,"* and to *"propose language that will align the Sexual Misconduct Policy, OCR Resolution Agreement and relevant sections of the 04 rule."*

The entire charge to the committee can be found in the Appendix. In brief, the committee was asked to propose a coherent, timely, streamlined, and fair process for adjudicating sexual misconduct complaints against faculty via a newly constituted Sexual Misconduct Committee, and to propose language that would bring the Sexual Misconduct Policy and Faculty Rule 3335-5-04 into alignment around this process.

The committee members are:

- Steve Lopez (SBS; Department of Sociology)
- Mollie Blackburn (College of Education and Human Ecology; Department of Teaching and Learning)
- Sandra Metzler (College of Engineering, Department of Mechanical and Aerospace Engineering)
- David Horn (A&H, Department of Comparative Studies)
- Kay Wolf (Vice Provost for Academic Policy and Faculty Resources, Office of Academic Affairs)
- Brandon Lester (Office of Legal Affairs, non-voting)
- Ben Givens (Secretary of the University Senate, non-voting)

Hannah Torma (Senate Recording Secretary) also provided important resources and support.

At its first meeting, on Wednesday, October 25, 2017, the committee voted to select Steve Lopez as chair. The committee met a total of fourteen times and concluded its work on March 13, 2018. During the course of its deliberations, the committee met with the Title IX Coordinator as well as staff members from the Human Resources Title IX office.

In what follows, we outline

1. The broad set of issues considered by the committee in the course of our work;
2. The process we propose for adjudicating sexual misconduct complaints against faculty; and
3. Proposed revisions to both the Sexual Misconduct Policy and the 04 rule that would be necessary in order to enact the process we envision. We recognize that the process for revising the Policy is different from that required to revise the Rule.

## **II. Issues Considered by the Committee**

Starting points for the committee's work included the current lack of agreement between the policy and the rule, and vagueness in the current policy about how the policy and the rule are supposed to intersect (leading in effect to two separate investigations).

As the committee learned more about the nature of sexual misconduct investigations (Title IX Coordinator Kellie Brennan and HR staff members Kristi Hoge and Thomas Ramey were especially helpful in this regard), we came to understand that a successful set of recommendations would need to attend to and reconcile a set of diverse, and in some cases competing, objectives:

1. Ensuring that complaints of sexual misconduct are taken seriously and investigated in a way that is both thorough *and* timely, while protecting as far as possible the confidentiality of all parties;
2. Ensuring that complaints of sexual misconduct are investigated by people with the proper training;
3. Ensuring that investigations follow a coherent, well-defined process in which the Sexual Misconduct Policy and the 04 Rule work together in a clear way rather than conducting competing or redundant investigations;
4. Ensuring that HR retains the ability to investigate and dismiss cases that do not rise to the level of a policy violation;
5. Ensuring that, consonant with the 04 process generally, violations are adjudicated via faculty investigation, which is not clear in the current policy;
6. Respecting HR's expressed desire to have a point in the process in which the HR investigator goes on the record regardless of what the Sexual Misconduct Committee (SMC) decides;
7. Ensuring that respondents have the opportunity to respond formally with corrections or rebuttals *before* a decision on the case is made (the current process does not guarantee this);
8. Reconciling the lower standard of evidence required by the Office for Civil Rights (OCR) agreement (preponderance of the evidence) with the higher standard (clear and convincing evidence) required by the current 04 rule in cases of faculty misconduct generally.

Some of these objectives were easier than others to meet. The last item presented a set of particularly difficult choices. Specifically, if we recommended that the entire process follow the lower standard of evidence, sexual misconduct would be adjudicated at a lower standard of evidence than all other forms of faculty misconduct. If, on the other hand, we recommended following the higher standard, allegations of sexual misconduct against faculty members would be adjudicated at a higher standard of evidence than allegations of sexual misconduct against staff and students. Neither outcome struck us as ideal. Our proposed solution to this conundrum is a compromise that makes use of different standards at different stages of the investigation.

We should also note one additional issue we learned about from HR and the Title IX Office towards the end of our work. OCR requires that investigations of gender discrimination and harassment be treated the same as investigations of sexual misconduct. It is somewhat unclear exactly how this requirement might be applied in practice; nevertheless, in view of the recommendations set forth in this report and the existing 04 process, we recommend that the Senate also consider aligning the procedures for investigating these two kinds of violations. Investigations into claims of gender discrimination and harassment made against faculty members could be handled by the procedure we outline here, or by an equivalent, symmetrical process. However, since gender discrimination and harassment are covered by a separate university policy, such a proposal would be outside the scope of the current ad hoc committee's charge. Therefore, while we find it important to mention for possible future consideration by the Senate, we do not address this issue further in this report.

### **III. Proposed Process for Investigating Complaints of Faculty Sexual Misconduct**

In this section of our report, we lay out in linear fashion the process we propose. In the final section, we propose specific revisions to Policy and Rule that would be required to enact this new process.

1. Complaints of sexual misconduct against faculty will no longer be adjudicated by college investigation committees. Instead, in accordance with our committee's charge, we propose that a standing Senate Faculty Sexual Misconduct Committee (SMC) be created to adjudicate such cases.

*Comments: The proposal to route complaints of sexual misconduct against faculty members through a new, standing committee rather than through college investigation committees was included in the charge to our committee.*

*Substantively, we believe that this is the best way to meet the federal requirement that anyone investigating allegations of sexual misconduct receive special training in the investigation of sexual misconduct. This training is quite extensive; both the original ad hoc committee and the renewed committee believe that, given the current volume of cases and the extensive nature of the required training, a dedicated committee should handle this type of misconduct. Additionally, having a central investigation of sexual misconduct brings the*

*matter outside the department and college, which may help with both confidentiality and impartiality.*

2. The SMC shall be composed of 15 tenured faculty from across the university who serve for staggered 3-year terms (5 individuals up for replacement or renewal each year). All members of SMC must receive sexual misconduct investigation training. The members of the SMC will be appointed by the Executive Committee of Faculty Council. A chair will be elected from the membership in the spring whose term will begin during the subsequent summer session.

*Comments: The committee carefully considered both the size and composition of the SMC, including questions about whether the HR investigator should be a member of the committee, about whether the SMC should include non-tenure-track faculty members, and other questions. We recommend that the SMC should be composed of tenured faculty only in order to keep the SMC consistent with the existing 04 process as much as possible and to preserve the independence of the committee. It might be necessary to have some individuals serve 4 or 5 year terms at the outset in order to get on the right schedule of staggered terms.*

3. Sexual misconduct should be defined in Rule 3335-5-04 using the same language as the Sexual Misconduct Policy.
4. In keeping with current practice and the Sexual Misconduct Policy, initial investigations of alleged faculty sexual misconduct should continue to be carried out by HR Title IX investigators. This includes initial screening, HR dismissal of complaints that lack merit or do not rise to the level of a policy violation, early resolution, and interim measures as described in the policy.

*Comments: The committee carefully considered at what point the SMC should become involved in an investigation. Initially we thought that any case that would result in a policy violation if substantiated should go to the SMC for adjudication. However, we learned that such an approach would inundate the SMC with an unmanageable volume of cases, that many complaints turn out not to be policy violations after all, AND that it often requires a good deal of investigation to make that determination. HR is best equipped with personnel and expertise to winnow the wheat from the chaff in this regard.*

5. In cases where the HR investigator concludes that a preponderance of the evidence suggests a policy violation occurred, the HR investigator prepares a preliminary investigation report and sends it, along with copies of any documentary evidence collected in the course of the HR portion of the investigation, to the chair of SMC.

*Comments: This is our solution to THREE problems: the problem of case volume; the problem of dual standards of evidence; and the problem of how to combine two investigations (HR and 04) into one. Our proposed process (a) should result in a manageable volume of cases for the SMC; (b) creates a coherent division of labor between HR and the SMC in which HR prepares preliminary investigation reports and the SMC (in further consultation with HR) prepares final investigation reports; and (c) incorporates the “preponderance” standard required by OCR by*

*using it as the standard for the preliminary investigation report, while reserving the “clear and convincing” standard for the final investigation report (see below).*

6. The chair of SMC should meet with HR at least quarterly for status reports on current cases, and should be able, if he or she wishes, to take a closer look at any case that HR has decided not to move forward.

*Comments: The committee feels that it would be good for the SMC to have regular contact with HR and to be kept apprised of the broader universe of complaints that HR sees but don't move to the SMC. The committee also considered the case of Larry Nassar at Michigan State University, in which HR personnel were informed of complaints against him but were pressured from above to take no action. We view the proposed quarterly meetings and the idea that the SMC chair has the ability to further investigate any case as important potential safeguards.*

7. When the SMC chair receives a preliminary investigation report from HR, within 10 days he or she forms an investigation panel consisting of three members of the committee and transmits the preliminary investigation report and accompanying materials to the panel. The panel selects a chair.

8. The SMC panel meets with the HR investigator to review the initial report and can ask for additional information either at the initial meeting or during the subsequent course of their review and investigation.

*Comments: Because initial investigations are carried out by HR investigators, who actually interview the parties and write the preliminary investigation reports, SMC panels may have questions – either for clarification or for further information.*

9. After it performs an initial review of the report, the SMC sends the preliminary investigation report prepared by the HR investigator to the complainant and respondent for corrections, comments, rebuttals, additional evidence etc. Each party will have 30 days to respond.

*Comments: This is an important step. Currently, HR interviews the respondent and orally informs him or her about the allegations. Under our proposed process, inspired by elements of the way that allegations of research misconduct are currently handled, the SMC panels will be able to consider not only the preliminary investigation report but also any evidence that the complainant or respondent produces in response to it.*

10. Complainant and respondent each may, but are not required to, meet with the SMC panel. These decisions will not have any bearing on the SMC panel's deliberations.

*Comments: This step is important because it gives both parties the right to go to the SMC and tell their story but does not require either party to do so. We wanted to make it especially clear to complainants that their cases' outcomes would NOT hinge on their appearing in person before the SMC.*

11. The SMC panel considers all the evidence (including additional information received directly from HR in response to requests, complainant and respondent responses to the preliminary report, and so on).

12. At the conclusion of its investigation, the panel shall deliver to the dean a final investigation report containing its findings, a recommendation concerning the merits of the complaint and, if the complaint is judged to have merit, a proposed sanction. Sexual misconduct will be considered a potentially terminable offense, in line with grave misconduct, gross incompetence, research misconduct, and non-trivial financial fraud. Findings of the SMC panel shall be based on clear and convincing evidence.  
*Comments: This ensures that: (a) consonant with the 04 process generally, violations are adjudicated via faculty investigation; and (b) faculty cannot be formally disciplined without clear and convincing evidence of misconduct.*
13. From here, things essentially (with minor wording changes) follow the ordinary 04 procedure, starting at section Section F of Rule 3335-5-04.

#### IV. Policy and Rules Changes Necessary to Implement the Proposed Process

(1) Edits to Sexual Misconduct Policy. While the committee understands that the Senate does not maintain the University's Sexual Misconduct policy, it nonetheless considered how the proposed changes to the 04 process would interact with and affect that policy. In doing so, the committee identified a number of proposed edits to ensure that the policy is compatible with the revised 04 process outlined herein.

- Under "Policy Details, Section IX, "Remedies," subsection (B)(3), insert "*and 3335-5-04.1*" after the reference to the 04 rule.
- Under "Policy Details, Section XI, "Use of Sexual Misconduct Allegations in Employment or Academic Actions," change the word "addressed" to "*substantiated*".

*Comments: As written, the policy could be read to mean that an allegation of sexual misconduct could be considered with respect to someone investigated and found not guilty, since if the respondent is exonerated by the investigation, the allegation has indeed been "addressed." This possibility was almost certainly not the intended result, and thus the committee recommends revising the policy to prevent this sort of action.*

- "Procedure," Section I (F), should be revised as follows (proposed new language in red):

F. The investigation generally will include interviews with the parties if available, interviews with other witnesses as determined by the investigator, and a review of relevant documents as appropriate. In cases of alleged sexual assault, relationship violence, or stalking, parties will be given timely and equal access to information that will be used during disciplinary meetings and hearings.

1. In cases of alleged sexual misconduct by a faculty member, investigated by the Office of Human Resources and/or the Office of University Compliance and Integrity, the investigator will prepare a written case report that typically provides a summary of facts, analysis, and findings. This case report serves as a preliminary investigation report under Faculty Rule 3335-5-04.1. When the HR investigator finds by a preponderance of the evidence that a policy violation occurred, the investigator shall send the written case report to the chair of the Sexual Misconduct Committee (SMC), who assembles an investigation panel as described in Faculty Rule 3335-5-48.20. The matter shall thereafter proceed in accordance with the procedures set forth in Faculty Rule 3335-5-04.1.
2. In cases of alleged sexual misconduct by all other employees, investigated by the Office of Human Resources and/or the Office of University Compliance and Integrity, the investigator will prepare a written case report that typically provides a summary of facts, analysis, findings, and recommended corrective actions. This report is shared with the complainant and accused at the conclusion of the investigation.
3. In cases of alleged sexual misconduct by a student, investigated by the Office of Student Life, Student Conduct Department, a student charged with one or more violations of Code of Student Conduct has the right to a hearing. In a case when a charged student admits to such violation(s) in writing, the student may request in writing to have a decision as to appropriate action made administratively by a hearing officer rather than

have the charges referred to a hearing officer or board for a hearing. In such situations, the student waives the right to a hearing and the related procedural guarantees provided by a hearing officer or board hearing. In cases of sexual misconduct, the university conduct board consists only of faculty and staff representatives.

*Comments: These changes are necessary to spell out in the policy how the policy intersects with the rule. The current paragraph, dealing with all employees, is not adequate for this task.*

- Under “Procedure” Section I (G) (3), insert the words “or Faculty Sexual Misconduct Committee” after the words “Student Conduct Committee”

(2) Proposed new faculty rules or sections of rules:

- Since Senate faculty committees are defined in 3335-5-48 of the Rules, a new section of Rule 3335-5-48 is necessary to establish the Sexual Misconduct Committee. Here is our proposed language for this rule:

*3335-5-48.20*

*(A) Membership.*

*The Sexual Misconduct Committee shall consist of fifteen tenured members of the faculty selected by the faculty council from at least eight different Colleges and regional campuses. Each member of the SMC must be trained in the investigation of sexual misconduct before serving on a panel. Each elected 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 whose term will begin during the subsequent summer session.*

*(B) Duties and responsibilities.*

*(1) Conduct investigations of faculty sexual misconduct under rule 3335-5-04 of the Administrative Code following the procedures of section 04.1 of this rule.*

*(C) Organization.*

*(1) The chair shall select three members of the committee to sit on each investigation panel. Panelists may not be drawn from the respondent’s TIU. If disqualifications or case loading should require their service, alternates may be assigned to SMC panels.*

*(2) The chair of Sexual Misconduct Committee shall rule on any objection by any party to the proceedings that a member of the panel should be replaced because of a relationship to one of the parties, a prior or current involvement with the facts or issues, alleged personal bias which may introduce prejudice, or any other alleged conflict of interest.*

*(3) A panel member or alternate may recuse himself or herself for any of the reasons stated in paragraph (C)(2) of rule 3334-5-48.20 of the Administrative Code.*

*(4) Each sexual misconduct committee panel shall select a chair who shall have responsibility to direct the proceedings of the panel, and to advise panel members on such university rules and procedures as the panel members may deem necessary. The panel chair shall be a member of the panel and sexual misconduct committee.*

*(5) As a standing committee of the senate, this committee is also governed by the provisions of rules 3335-5-46 and 3335-5-48 of the Administrative Code.*

- Rather than attempting to weave the procedures for investigating sexual misconduct into the main 04 rule, the committee decided that it would be best to outline the procedures in one place. Thus, we propose 3335-5-04.1 below

#### *3335-5-04.1*

*(A) Investigations of Sexual Misconduct Allegations against Faculty.*

- 1. This rule takes the place of sections (C)-(E) of 3335-5-04 for investigations of sexual misconduct allegations against faculty.*
- 2. As stated in section 3335-5-04 (B)(1), complaints of sexual misconduct follow the procedures laid out in the University Sexual Misconduct Policy and this rule.*

*(B) Procedures.*

- 1. Should the Office of Human Resources, following an investigation performed in accordance with the University Sexual Misconduct Policy, conclude that a preponderance of the evidence suggests that a faculty member has violated the policy, the Office of Human Resources (HR) shall forward a copy of the preliminary investigation report, as well as all materials collected during the investigation, to the chair of the Sexual Misconduct Committee (SMC), which is established by faculty rule 3555-5-48.20.*
- 2. The SMC chair shall make every effort to convene a hearing panel to consider the complaint within 10 days of receiving a preliminary investigation report.*
- 3. The SMC panel shall meet with the HR investigator to review the preliminary investigation report. The SMC panel can ask the HR investigator to obtain additional information during the course of its review and investigation.*
- 4. After it performs an initial review of the report, the SMC shall send the preliminary investigation report prepared by the HR investigator to the complainant and respondent for review and response. Each party shall have 30 days to respond.*
- 5. The complainant and respondent may each choose to meet with the SMC panel, but neither party is obliged to do so, and this choice shall have no bearing on the SMC*

- panel's deliberations. The committee may also obtain relevant information from other persons but shall protect the confidentiality of the proceedings.*
- 6. Any documentary evidence relied upon by the HR investigator or the SMC panel in establishing their findings shall be shared with both the complainant and the respondent.*
  - 7. At the conclusion of its investigation, the chair of the SMC shall deliver to the dean of the respondent's college a final investigation report containing the SMC panel's findings, a recommendation concerning the merits of the complaint and, if the complaint is judged to have merit, a proposed sanction. Findings of the SMC panel shall be based on clear and convincing evidence.*
  - 8. Any proposed sanctions shall be commensurate with the nature of the complaint. Sanctions of a continuing nature must include time limitations and an annual review. Sanctions for sexual misconduct include but are not limited to:*
    - a. Verbal reprimand;*
    - b. Written reprimand;*
    - c. Mandatory counseling or other rehabilitation;*
    - d. Reimbursement for damages to or destruction of university property, or for misuse or misappropriation of university property, services or funds;*
    - e. Reassignment of duties or other restrictions on duties or privileges;*
    - f. Restriction of access to university property or services, the abuse of which led to the complaint;*
    - g. Reduction of salary base not to exceed thirty-three percent for one-year;*
    - h. Reduction of twelve-month appointment to nine-month appointment;*
    - i. Combination of above sanctions;*
    - j. Dismissal of non-tenured faculty; and*
    - k. Dismissal of tenured faculty.*
  - 9. The SMC panel shall make every effort to complete its investigation within sixty days of receipt of the preliminary investigation report.*

(3) Edits to sections of the existing 04 rule:

We reproduce below the current 04 rule with **proposed edits highlighted in red**:

**3335-5-04 Hearing procedures for complaints against faculty members.**

(A) Definitions and construction.

(1) This rule shall apply to all formal complaints of misconduct against faculty members as defined in Chapter 3335-5 of the Administrative Code. Complaints may be filed under this rule against administrators who hold faculty appointments.

(2) As appropriate, department chairs, deans, or the executive vice president and provost (hereinafter "provost") will attempt, through the use of informal consultation, to resolve complaints to their satisfaction and that of the complainant, and the faculty member against whom the complaint is made (hereinafter "respondent").

(3) Gross incompetence is defined as conduct that reflects gross indifference or consistent failure to satisfactorily perform faculty obligations. Allegations of gross incompetence shall be judged on the basis of a faculty member's serious failure to meet his or her obligations as a faculty member.

(4) Grave misconduct is defined as flagrant, egregious, and willful misbehavior in violation of the law or established university rules or policies. Allegations of grave misconduct shall be judged on the basis of acts or omissions which seriously impair the effectiveness of a faculty member to meet his or her obligations as a faculty member.

(5) Sexual misconduct is defined as conduct of a sexual nature or conduct based on sex or gender that is nonconsensual or has the effect of threatening, intimidating, or coercing a person. It includes sexual harassment, sexual violence, relationship violence, and stalking. Sexual misconduct is a form of sex- and gender-based discrimination.

(6) 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.

(7) Research misconduct is defined as fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in reporting research results. A finding of research misconduct requires: a) that there be a significant departure from accepted practices of the relevant research community; and b) the misconduct be committed willfully, knowingly, or recklessly. Research misconduct does not include honest error or differences of opinion.

(8) Department chairs, deans, or the provost shall not act in their administrative capacities in the consideration of any complaint naming them as respondent. If a complaint names a department chair or a dean as respondent, the 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 this official under this rule.

(9) All records of proceedings under this rule shall be maintained in the office of academic affairs. Such records shall remain confidential to the extent permitted by law.

(10) At the time of their initial appointment and when they receive their annual review, faculty members shall be given notice of their right to review their personnel file maintained by their tenure initiating unit (hereinafter "primary personnel file"). A member of the faculty may place in his or her primary personnel file a response to any evaluation, comment or other material contained in the file.

(11) Documents related to the performance of a faculty member which are received by his or her tenure initiating unit prior to the filing of a complaint may not be introduced in proceedings under this rule unless they have been placed in the faculty member's primary personnel file, and the faculty member has been so informed, or copies have otherwise been provided to the faculty member.

(12) The designation "department chair" in this rule includes division chair, school director, deans of colleges without departments, and regional campus deans and directors.

(13) 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.

(14) If at any time the provost determines that a faculty member poses a clear and present danger to persons or property, the provost may temporarily and immediately reassign the faculty member or, in the event of allegations of nontrivial financial fraud, suspend the faculty member with pay pending completion of investigation of a complaint under this rule. The provost shall be responsible for assuring that a complaint is filed promptly.

(15) Respondents shall be given written notice of decisions required by this rule. Any notice shall be sent by certified mail, and a copy shall be sent by regular mail. 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.

(16) Complainants shall be given written notice of decisions of the department chair and the dean, and the final disposition of the case. Any notice shall be sent by certified mail, and a copy shall be sent by regular mail.

(B) Initial proceedings.

(1) Unlike other forms of faculty misconduct, investigations of allegations of faculty sexual misconduct do not follow the procedures laid out in Sections (B) through (E) of this Rule. Instead, they shall be conducted in accordance with the university's Sexual Misconduct Policy and Faculty Rule 3335-5-04.1.

(2) A complaint may be filed by any student or university employee.

(3) The complaint shall be set forth in writing. A copy shall be furnished to the respondent by the administrator with whom the complaint is filed.

(4) A complaint shall state facts to support an allegation that a faculty member has failed to meet his or her obligations as a faculty member, has committed acts or omissions which otherwise impair his or her effectiveness in meeting these obligations, has engaged in grave misconduct, research misconduct, has committed nontrivial financial fraud, or has otherwise violated university rules.

(5) Only allegations stated in the complaint shall be considered at the various stages of deliberation.

(6) A complaint may be filed with a department chair, a dean, the provost or the president. If a complaint is filed with the dean, provost, or president, it shall be immediately referred to the appropriate department chair for initial review. A complaint against a faculty member in a college without departments shall be referred directly to the dean of the college. If a complaint is filed against a regional campus faculty member, the regional campus dean shall serve jointly with the department chair in the initial review. The regional campus dean and the department chair must agree that there is probable cause for the case to go forward.

(C) Review by the department chair.

(1) The department chair shall review the allegations in the complaint and discuss the matter with the complainant and with the respondent.

(2) If the chair determines that there is probable cause to believe that the allegations are true and that it is not appropriate to reach an informal resolution, the chair shall refer the matter to the dean.

(3) If the chair determines that there is not probable cause to believe that the allegations are true, the chair shall dismiss the complaint. In this event, the complainant may appeal the dismissal to the dean. The appeal must be in writing and must be filed with the dean within twenty-one days after the notice of the chair's decision was mailed. In the event of an allegation of grave misconduct, research misconduct, or nontrivial financial fraud, the chair shall refer the matter to the dean.

(4) The chair shall make every effort to complete the review in fourteen days.

(D) Review by the dean.

(1) Upon receipt of an appeal or a referral of a complaint from a department chair, the dean shall review the allegations in the complaint and discuss the matter with the complainant and the respondent.

(2) If the dean determines that there is probable cause to believe that the allegations are true and that it is not appropriate to reach an informal resolution, the dean shall refer the matter to the college investigation committee.

(3) If the dean determines that there is not probable cause to believe that the allegations are true, the dean shall dismiss the complaint. The proceedings shall terminate at this point except in cases involving faculty members in colleges without departments or in the event of an allegation of grave misconduct, research misconduct, or nontrivial financial fraud. In the case of colleges without departments, the complainant may appeal a dismissal by the dean to the college investigation committee. The appeal must be in writing and must be filed with the dean within twenty-one days after the dean's decision was mailed to the complainant. Upon receipt of an appeal the dean shall immediately forward the appeal to the college investigation committee, which shall proceed in accordance with paragraph (E) of this rule. In the case of a allegation of grave misconduct, research misconduct, or nontrivial financial fraud, the matter shall be forwarded to the college investigation committee.

(4) The dean shall make every effort to complete the review in fourteen days.

(E) The college investigation committee.

(1) Each college shall establish a procedure for the creation of a standing college investigation committee, which shall consist of tenured faculty members. A college may include on its college investigation committee tenured faculty members from other colleges.

(2) Upon receipt of a referral of a complaint from the dean, the college investigation 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 by the complainant. The committee may also obtain relevant information from other persons, but shall protect the confidentiality of the proceedings. At the conclusion of its investigation, the committee shall deliver to the dean its findings, a recommendation concerning the merits of the complaint and, if the complaint is judged to have merit, a proposed sanction. Findings of the committee shall be based on clear and convincing evidence.

(3) Any proposed sanctions shall be commensurate with the nature of the complaint. Sanctions of a continuing nature must include time limitations and an annual review. Sanctions include but are not limited to:

(a) Verbal reprimand;

(b) Written reprimand;

(c) Mandatory counseling or other rehabilitation;

- (d) Reimbursement for damages to or destruction of university property, or for misuse or misappropriation of university property, services or funds;
  - (e) Reassignment of duties or other restrictions on duties or privileges;
  - (f) Restriction of access to university property or services, the abuse of which led to the complaint;
  - (g) Reduction of salary base not to exceed thirty-three percent for one-year;
  - (h) Reduction of twelve-month appointment to nine-month appointment;
  - (i) Combination of above sanctions;
  - (j) Dismissal of non-tenured faculty; and
  - (k) Dismissal of tenured faculty.
- (4) The committee may recommend termination of employment of tenured faculty members only in demonstrated cases of gross incompetence, grave misconduct, research misconduct, or nontrivial financial fraud.
- (5) The committee shall make every effort to complete its investigation and submit its report within forty-five days.

(F) Decision by the dean.

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

- (a) Dismiss the complaint;
- (b) Uphold the committee's recommendation and proposed sanction;
- (c) Uphold the committee's recommendation with what would reasonably be interpreted as an equivalent or lesser sanction.

(2) If the college investigation committee or the sexual misconduct committee has recommended a sanction other than termination of employment, the dean may not increase the sanction to termination of employment except in the case of grave misconduct, research misconduct, sexual misconduct, or nontrivial financial fraud

(3) The dean shall make a decision in thirty days.

(4) Except in the case of grave misconduct, research misconduct, sexual misconduct, or nontrivial financial fraud, if the dean dismisses the complaint, the proceedings shall be

terminated and the matter closed. The dean shall refer all cases of grave misconduct, research misconduct, **sexual misconduct**, and nontrivial financial fraud, to the provost.

(5) The respondent may appeal any decision or sanction to the provost.

(6) An appeal by the respondent must be in writing and must be filed with the provost within twenty-one days after notice of the dean's decision was mailed.

(G) 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:

(a) Dismiss the complaint;

(b) Uphold the dean's decision and proposed sanction;

(c) Uphold the dean's decision with what would reasonably be interpreted as an equivalent or lesser sanction.

(d) In the case of grave misconduct, research misconduct, **sexual misconduct**, or nontrivial financial fraud, increase the sanction.

(e) In the case of grave misconduct, research misconduct, **sexual misconduct**, or nontrivial financial fraud, reverse the dean's decision and impose a sanction.

(2) The executive vice president and provost shall make every effort to reach a decision within fourteen days.

(3) If the executive vice president and provost upholds the dean's decision and proposed termination of employment, or if the executive vice president and provost modifies a sanction that is less than termination, 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 twenty-one days after notice of the executive vice president and provost's decision was mailed.

(H) The faculty hearing committee.

(1) Within thirty days of receipt of an appeal from a respondent the faculty hearing committee which is established by rule 3335-5-48.10 of the Administrative Code, shall convene a hearing panel to consider the complaint. 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 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.

(3) Respondents shall have the right to be represented by legal counsel or any other person of their choice, to examine the witnesses and evidence against them, 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.

(4) The provost, or designee, shall present the case to the hearing panel. In presenting the case, the provost may be advised by the general counsel.

(5) The hearing panel shall receive testimony and other evidence as it deems to be material and relevant to the issues before it.

(6) 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.

(7) At the conclusion of the proceedings, the hearing panel shall make separate written findings of fact with respect to each substantive issue raised at the hearing and a recommendation as to a sanction, if any, to be imposed. Such findings of fact and recommendation, together with a recording of the proceedings, shall be transmitted to the president of the university and to the respondent. Findings of the hearing panel shall be based on clear and convincing evidence.

(8) The hearing panel will not be bound by the findings of the college investigation committee or sexual misconduct committee, or the executive vice president and provost.

(9) The hearing panel may recommend termination of employment of tenured faculty members only in demonstrated cases of gross incompetence, grave misconduct, research misconduct, sexual misconduct, or nontrivial financial fraud.

(10) The hearing panel shall make every effort to conclude the proceedings within sixty days.

(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:

(a) Dismiss the complaint;

(b) Impose any sanction less than termination of employment whether or not it accords with the recommendation of the hearing panel;

(c) Recommend to the board of trustees termination of employment on such terms and conditions as the president may deem advisable;

(d) Remand the case to the hearing panel for reconsideration.

(2) Any decision of the president shall be communicated in writing to the hearing panel and to the respondent.

(J) Board of trustees.

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 give the respondent an opportunity to present to it arguments in writing, or in person, or both.

## Appendix

### **Renewed Ad Hoc Committee to Review Faculty Rule 3335-5-04 with respect to Sexual Misconduct**

#### **Committee Charge**

Based on the recommendations of the AY 16-17 committee:

1. Develop an amendment to Section A of Faculty Rule 3335-5-04 that explicitly identifies Sexual Misconduct as a separate category of misconduct subject to the Rule. This amendment should specify that complaints brought forth under this rule follow a distinct path to resolution.
2. Develop a proposal to constitute a Sexual Misconduct Committee that will work with the Title IX Coordinator to adjudicate complaints related to complaints of this nature.
3. Develop a protocol for resolving Sexual Misconduct allegations against faculty that will protect to the maximum degree possible the privacy rights of both the complainant and the respondent, in accordance with recommendations three and four of the Ad Hoc Committee Summary of August 29, 2017.
4. Propose language that will align the Sexual Misconduct Policy, OCR Resolution Agreement and relevant sections of the 04 rule.

#### **Committee Membership**

The committee shall be composed of the following individuals:

- Steve Lopez, SBS; Department of Sociology
- Mollie Blackburn, College of Education and Human Ecology; School of Teaching and Learning
- Sandra Metzler, College of Engineering, Department of Mechanical and Aerospace Engineering
- David Horn, A&H, Department of Comparative Studies
- Kay Wolf, Vice Provost for Academic Policy and Faculty Resources, Office of Academic Affairs
- Brandon Lester, Office of Legal Affairs (non-voting)
- Ben Givens, Secretary of the University Senate (non-voting)

One of the faculty members will serve as chair.

#### **Meetings**

The chair will call meetings of the committee. The committee should deliver a report to the steering committee by the beginning of spring semester 2018.