



Ohio Administrative Code

Rule 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.

Effective: April 2, 2021

(A) This rule applies to complaints made against faculty members involving sexual misconduct, workplace violence, whistleblower retaliation, and protected class discrimination, harassment, and retaliation as defined in applicable university policies. A faculty member may be disciplined up to and including termination for violations established under this rule.

(B) Initial proceedings.

(1) Complaints of sexual misconduct and protected class discrimination, harassment, and retaliation must be filed with or referred to the office of institutional equity, and complaints of workplace violence and whistleblower retaliation separate from protected class or sexual misconduct must be filed with or referred to the office of human resources.

(2) The applicable office shall perform a preliminary assessment to determine whether the complaint warrants further investigation, whether an informal resolution would be appropriate, whether the matter should be referred to a different university office or process, or whether the matter should be closed and not proceed further in the process.

(3) If the applicable office determines that further investigation is warranted and that an informal resolution is not appropriate at that stage in the process, it shall notify the complainant and respondent of its decision to pursue an investigation and shall assign an investigator to investigate the complaint.

(C) Investigation determinations.

(1) Complaints of sexual misconduct pursuant to Title IX of the Education Amendments Act of 1972 and implementing regulations shall be investigated pursuant to the procedures set forth in the university sexual misconduct policy. All findings of misconduct shall be referred to the university



sanctioning committee for a recommendation for sanctions only in accordance with section of this rule.

(2) For all other complaints subject to this rule:

(a) The investigator shall perform the investigation in accordance with applicable university policy and shall meet with both the complainant and respondent and review any documentary evidence provided by these parties. The investigator shall have the authority to gather information relevant to the complaint, including through interviewing individuals other than the complainant and respondent as the investigator sees fit or as recommended by the complainant and respondent, but shall otherwise strive to maintain confidentiality in the proceedings.

(b) 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.

(c) 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.

(d) When fact gathering is complete, the investigator shall prepare a written investigative summary (preliminary report) that identifies the relevant and material facts in the case. The investigator shall provide that document to both the complainant and respondent for review. Each party shall have fourteen days to respond and to identify any alleged errors or omissions in the investigative summary.

(e) Following review of any comments by the parties, the investigator shall thereafter make any modifications to the report that the investigator deems appropriate and issue a final report that will include the summary of the facts gathered, analysis of the allegations, and findings as to whether the applicable policy was violated under the preponderance of the evidence standard. If a violation is found, this report shall be provided to the university sanctioning committee to determine the appropriate sanction. If no violation is found, the complaint shall be dismissed.



(D) The university sanctioning committee.

(1) The university sanctioning committee is responsible for determining what sanction to recommend for a policy violation.

(a) The university sanctioning committee shall consist of fifteen tenured members of the faculty selected by the executive committee of faculty council from at least eight different colleges and regional campuses. Each member of the university sanctioning committee must receive required training before serving on the panel. Each selected person shall serve a three-year term followed by a one-year term as an alternate member. A chair shall be elected from the membership in the spring for a one-year term, starting during the subsequent summer session.

(b) The chair shall select three members of the committee to sit on each sanctioning panel. Panelists may not be drawn from the complainant's or respondent's tenure initiating unit, as may be applicable. Alternates may be assigned to university sanctioning panels at the chair's discretion.

(2) Upon receipt of the investigation report, the committee shall meet with the investigator to discuss the investigation and findings, and may request clarification on any aspect of the investigation process. The committee shall also offer both the complainant and the respondent the opportunity to meet with the committee to present their views as to an appropriate sanction.

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

(a) Aggravating factors may include, but are not limited to:

(i) the degree to which the respondent's conduct was flagrant, egregious, or willful;

(ii) the strength of the evidence presented;

(iii) whether the respondent has previously been found to have engaged in misconduct;



(iv) whether the respondent's conduct caused injury or harm to another individual, university property, or the university's reputation; and

(v) whether the respondent had received prior warnings about engaging in the conduct at issue.

(b) Mitigating factors may include, but are not limited to:

(i) the conduct at issue did not cause injury or harm to another individual, university property, or the university's reputation; and

(ii) the respondent accepted responsibility for the misconduct.

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

(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) Restrictions on duties or privileges;

(f) Restriction of access to university property or services;

(g) Reduction of salary base;



(h) Reduction of twelve-month appointment to nine-month appointment;

(i) Reduction of full-time equivalent (FTE) appointment;

(j) Reduction of rank;

(k) Revocation of tenure;

(l) Termination of employment.

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

(6) For all other complaints under this rule, the committee shall complete its review and submit its report to the respondent's dean within thirty days.

(E) Decision by the dean.

(1) For all complaints under this rule except sexual misconduct complaints under Title IX, the dean may, after reviewing the report and recommendation of the university sanctioning committee:

(a) Uphold the committee's proposed sanction;

(b) Impose what would reasonably be interpreted as an equivalent or lesser sanction; or

(c) Increase the sanction.



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

(3) Appeals:

(a) The dean's decision shall be final in all cases in which the sanction imposed is a verbal reprimand, a written reprimand, or mandatory counseling or training.

(b) If the dean imposes any other sanction except for revocation of tenure or termination of employment, the respondent shall have the right to appeal in writing to the provost for review.

(c) If the dean imposes a sanction that revokes tenure or terminates employment, the matter shall be automatically appealed to the provost.

(d) In all appeals, whether discretionary or automatic, the respondent may identify their position on the case in writing to the provost. All such submissions and all discretionary appeals must be filed within fourteen days after notice of the dean's decision was mailed.

(F) Review of appeals by the provost.

(1) After reviewing the record of a case upon appeal or upon referral by the dean, the provost may:

(a) Affirm the dean's sanction or the sanction imposed by the university sanctioning committee for sexual misconduct complaints under Title IX;

(b) Impose what would reasonably be interpreted as an equivalent or lesser sanction to the sanction;

(c) Increase the sanction; or

(d) In the event that the provost determines that substantial new evidence exists (evidence that was not available at the time of the initial investigation and that may reasonably have affected the finding of misconduct) or there was conflict of interest or procedural error in the previous steps of the



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

(2) The provost shall make a decision within fourteen days of receiving materials from the dean, respondent or complainant as applicable. Complainant and respondent shall each have the right to respond to a filing by the other party.

(3) For complaints of sexual misconduct under Title IX, the provost's decision shall be final.

(4) For all other complaint subject to this rule: a. If the provost affirms the dean's decision to terminate employment, or imposes or upholds a sanction set forth in section (D)(4)(vii) to (xii) of this rule, the respondent may appeal to the faculty hearing committee. In all other cases, the provost's decision shall be final.

(5) An appeal by the respondent must be in writing and must be filed with the faculty hearing committee within fourteen days after notice of the provost's decision was mailed. Appeals to the faculty hearing committee shall be limited to one or more of the following grounds:

(a) the sanction is disproportionate to the violations committed in view of the aggravating and mitigating factors;

(b) 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

(c) there was conflict of interest or procedural error in the previous steps of the process that resulted in material harm or prejudice to the respondent.

(G) The faculty hearing committee.

(1) Within fourteen days of receipt of an appeal from a respondent the faculty hearing committee established by rule 3335-5-48.10 of the Administration Code shall convene a hearing panel to consider the complaint and to provide a recommendation to the president regarding the appropriate action to be imposed. The respondent and the provost or designee may each make one peremptory



challenge to the seating of one person on the hearing panel and one peremptory challenge to the selection of a presiding officer.

(2) The parties to this hearing shall be the respondent and the provost, or designee.

(3) The hearing panel may restrict the attendance of persons at the proceedings. However, the respondent and the provost shall have the right to have one observer of their choosing present at all times.

(4) The provost, or designee, shall present the case to the hearing panel. In presenting the case, the provost may be advised and represented by the general counsel, or designee. The provost shall have the right to present witnesses and evidence and to examine witnesses and evidence presented by the respondent.

(5) Respondents shall have the right to represent themselves or to be represented by legal counsel or any other person of their choice. The respondent shall have the right to examine the witnesses and evidence presented against them in the hearing, to present witnesses and evidence on their own behalf, and to refuse to testify or be questioned in the proceedings without prejudice to their cause.

(6) The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues appealed, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the appeal. However, in all proceedings, the hearing panel shall afford complainants equal rights to participate in any proceeding and the ability to present a response to the respondent's claims as applicable.

(7) An electronic recording shall be kept of all proceedings at a hearing panel. The recording shall be conveyed by the chair of the faculty hearing committee to the office of academic affairs.

(8) At the conclusion of the proceedings, the hearing panel shall make separate written conclusions with respect to each substantive issue raised at the hearing.

(a) 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.

(b) If the respondent alleges conflict of interest, procedural error, or substantial new evidence, the faculty hearing committee shall set forth what their conclusions are and whether they believe that further proceedings are appropriate.

(9) The faculty hearing committee's report, together with a recording of the proceedings, shall be transmitted to the president, provost, and respondent within sixty days of the date that the final hearing panel is convened.

(H) The president.

(1) Upon receipt of the written recommendation and a record of the proceedings from a hearing panel, the president shall review the matter. The president may:

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

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

(c) Remand the case to the hearing panel for reconsideration; or

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

(2) The president's decision on all sanctions less than termination of employment is final.

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



(4) The president shall make a decision within thirty days.

(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.