



## Ohio Administrative Code

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

Effective: April 2, 2021

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(A) This rule applies to complaints made against faculty members involving misconduct and other violations of applicable law, university policies or rules, or unit governance documents that do not otherwise fall under rules 3335-5-04.1, 3335-5-04.2, or 3335-5-A of the Administration Code faculty member may be disciplined for violations established under this rule, up to and including termination for violations constituting grave misconduct or non-trivial financial fraud. For the purposes of this rule:

(1) "Grave misconduct" is defined as flagrant, egregious, and willful misbehavior in violation of the law or established university rules or policies.

(2) "Nontrivial financial fraud" is defined as a deliberate act or deliberate failure to act that is contrary to law, rule, or policy so as to obtain unauthorized financial benefit from the university for oneself, one's family, or one's business associates. Nontrivial financial fraud includes, but is not limited to, misappropriation of university funds or property, authorizing or receiving compensation or reimbursement for goods not received or services not performed or hours not worked, or unauthorized alteration of financial records.

(B) Initial proceedings.

(1) A complaint may be filed by any student or university employee, including employees from administrative offices who are filing complaints arising out of investigations by those offices. Complaints may be filed with a chair, dean, associate dean, provost, vice provost for academic policy and faculty resources (hereinafter "vice provost"), or the president. All complaints must be referred to the vice provost for initial review in accordance with this rule.

(2) The complaint shall be set forth in writing and shall state facts to support an allegation that a faculty member has engaged in misconduct or has otherwise violated applicable law, university



policies or rules, or unit governance documents.

(a) The vice provost shall review every complaint to determine whether the complaint presents an actionable violation and that the complaint is not clearly retaliatory or abusive in nature. If the vice provost is named as a respondent, the provost shall identify a designee. If the vice provost determines that a complaint either does not allege a violation that can be addressed under this rule or was filed for clearly retaliatory or abusive purposes, the vice provost must consult with the complainant within seven days of filing to clarify the nature of the complaint. The vice provost may dismiss such a complaint within seven days of consulting with the complainant if it cannot be addressed under this rule or is clearly retaliatory or abusive in nature. This determination does not prohibit referral of a complaint filed under this rule to another applicable university process.

(i) The complainant may appeal this dismissal in writing to the provost within seven days of this decision. Upon receiving such an appeal, the provost may either reinstate the complaint or dismiss it, and that decision is final. The provost must issue a decision within fourteen days of receiving such an appeal.

(b) If the vice provost determines that the complaint should proceed or if the complaint is reinstated by the provost, the vice provost shall furnish a copy of the complaint to the respondent and shall refer it to the respondent's department chair for a probable cause review in accordance with section (C) of this rule.

(i) 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.

(ii) For the purposes of this provision, the term "department chair" includes school directors, deans of colleges without departments, and regional campus deans and directors.

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

(C) Probable cause review.



(1) The department chair shall review the allegations in the complaint and discuss the matter with the complainant and the respondent to determine whether there is probable cause to believe that the allegations are true.

(2) If the department chair determines that there is not probable cause to believe that the allegations are true, the chair shall dismiss the complaint.

(a) If the complaint is dismissed, the complainant may appeal the dismissal to the dean. The appeal must be in writing and filed with the dean within twenty-one days after the notice of the chair's decision was mailed. Upon receiving such an appeal, the dean may either reinstate the complaint and refer it to the college investigation and sanctioning committee or dismiss it, and such a dismissal is final. The dean must issue a decision within thirty days after receiving such an appeal.

(3) If the department chair determines that there is probable cause to believe that the allegations are true, the department chair shall refer the matter to the college investigation and sanctioning committee unless the department chair completes an informal resolution in accordance with rule 3335-5-04(E) of the Administration Code.

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

(D) College investigation and sanctioning committee.

(1) Each college shall appoint a college investigation and sanctioning committee, which shall fulfill the responsibilities set forth in this section. The committee shall be all tenured faculty or a majority of tenured faculty if including clinical/teaching/practice faculty who are non-probationary associate professors or professors. A college may include faculty members from other colleges on its committee.

(2) Upon receipt of a referral of a complaint from the department chair, the committee shall meet with the complainant and the respondent and shall review any documentary evidence provided by these parties. The respondent shall be given copies of any documentary evidence provided to the committee as part of the investigation and be given an opportunity to respond to all such



documentation. The committee shall have the authority to gather information relevant to the complaint, including through seeking to interview individuals other than the complainant and respondent as the committee sees fit or as recommended by the complainant and respondent. The committee shall strive to maintain confidentiality in the proceedings.

(3) At the conclusion of the investigation, the committee shall prepare a preliminary report that identifies the proposed findings of fact, a conclusion as to whether a violation occurred under the preponderance of the evidence standard, and if so whether the conduct rose to the level of grave misconduct or non-trivial financial fraud as defined in rule 3335-5-04.1(A)(1)(i) to (iii) of the Administration Code. The committee shall provide that document to both the complainant and respondent for review. Each party shall have seven days to respond and to identify any alleged errors or omissions in the findings.

(4) Following review of any comments by the parties, the committee shall thereafter make any modifications to the report that it deems appropriate and issue a final report. If the committee concludes that a violation occurred, the committee shall include its proposed sanction in the final report.

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

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

(i) the degree to which the respondent's conduct was flagrant, egregious, or willful if grave misconduct is found;

(ii) the significance and impact of the faculty member's failure to meet academic responsibilities if serious failure to meet faculty obligations is found;

(iii) the degree and impact of the fraud if non-trivial financial fraud is found;

(iv) the strength of the evidence presented;



- (v) whether the respondent has previously been found to have engaged in misconduct;
  - (vi) whether the respondent's conduct caused injury or harm to another individual, university property, or the university's reputation; and
  - (vii) 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.
- (6) The committee shall have the authority to recommend sanctions as it sees fit as long as the sanctions are commensurate with the nature of the complaint and the committee's analysis of any aggravating and mitigating factors. Sanctions may be of a discrete or continuing nature, but sanctions of a continuing nature must specify the period of time in which they are applicable. Sanctions may include, but are not limited to the following, and may further include a combination of sanctions:
- (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 in cases of grave misconduct or non-trivial financial fraud,

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

(E) Decision by the dean.

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

(a) Dismiss the complaint if the committee did not find a violation;

(b) Impose the committee's proposed sanction;

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

(d) Increase the sanction if the committee determined that the respondent engaged in grave misconduct or non-trivial financial fraud.

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



(3) Appeals:

(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. A respondent may, place a response to this sanction in their primary personnel file.

(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.

(c) If the dean imposes a sanction that revokes tenure or terminates employment, or if the case involves a finding by the committee of grave misconduct or non-trivial financial fraud, regardless of the sanction, the matter shall be automatically appealed to the provost.

(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 appealed by a respondent or referred by the dean, the provost may:

(a) Affirm the dean's sanction;

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

(c) In the case of grave misconduct or non-trivial financial fraud 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 and respondent as applicable.

(3) If the provost affirms the dean's decision to terminate employment, or imposes or upholds a sanction set forth in section (D)(6)(vii) 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.

(4) An appeal by the respondent must be in writing and must be filed with the faculty hearing committee within fourteen days after notice of the provost's decision was mailed.

(G) The faculty hearing committee.

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

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

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

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

(5) Respondents shall have the right to represent themselves or to be represented by legal counsel or





any other person of their choice. The respondent shall have the right to examine the witnesses and evidence presented against them in the hearing, to present witnesses and evidence on their own behalf, and to refuse to testify or be questioned in the proceedings without prejudice to their cause.

(6) The hearing panel shall receive testimony and other evidence as it deems relevant and material to the issues appealed, and may decline to receive evidence presented by the provost or the respondent that is not material and relevant to the appeal.

(7) The hearing panel will not be bound by the findings of the college investigation and sanctioning committee or the provost.

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

(9) At the conclusion of the proceedings, the hearing panel shall make written conclusions with respect to each substantive issue raised, including but not limited to:

(a) appropriateness of the sanction, and, if found to be inappropriate, the faculty hearing committee's recommended sanction in accordance with the factors set forth in section (D)(5) of this rule.

(b) conflict of interest, procedural error, or substantial new evidence.

(c) findings of the college investigation committee.

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

(H) The president.

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



- (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 for cases of grave misconduct or non-trivial financial fraud 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.
- (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.