



## Faculty Disciplinary Policy and Procedures (DRAFT)

---

Hyper Links to be inserted later

### I. Introduction

---

The University provides and sustains an environment conducive to academic achievement in all its forms. Maintenance of this environment requires that faculty pursue their academic activities in accordance with appropriate standards of scholarly activity. The faculty's privileges and protections of tenure rest on the mutually supportive relationships among the faculty's professional competence, its academic freedom, and the central functions of the university in granting degrees and furthering creative accomplishments. These relationships are also the source of the professional responsibilities of faculty. It is a responsibility of the university to maintain conditions and rights supportive of the faculty's pursuit of these central functions.

When acting within or on behalf of the University of Kentucky, University faculty members, like all University employees, must obey the rules, standards, and procedures that arise under federal and state constitutions, statutes, and regulations, University Governing and Administrative Regulations, the University Senate Rules, and other regulatory jurisdictions (GR II.A). For purposes of this document, we define "misconduct" as a failure to obey the laws and regulations described in the preceding sentence. The University is indifferent to a faculty member's misconduct in the private domain inasmuch as the misconduct or any resulting criminal or civil disciplinary action does not obstruct the faculty member's ability to perform his or her duties effectively.

As is consistent with the principles set forth in the professional standard of academic freedom as defined by the American Association of University Professors and the Association of American Colleges and Universities, academic freedom does not excuse a faculty member from complying with the rules, standards and procedures that arise under federal and state laws, statutes, and regulations, University Governing and Administrative Regulations, the University Senate Rules, and other regulatory jurisdictions (GR II.A), as described in paragraph 2 above.

### II. Scope

---

This regulation is applicable to all faculty members in the University community ranging from entry-level faculty ranks to the President of the University of Kentucky. For purposes of this regulation, a "faculty member" means an individual holding the rank of professor, associate professor, assistant professor, instructor, senior lecturer, lecturer, and any other rank with responsibilities comparable to the aforementioned ranks. This definition applies to faculty regardless of title series appointments, their distribution-of-effort agreements, any administrative appointments in addition to faculty academic appointments, standing as tenured or untenured, visiting or permanent, temporary, emeritus or active, and full-time or part-time status. The definition of university faculty in this regulation is broader than the definition of faculty in other regulations and in HR Policy 4.0.

This regulation does not apply to faculty performance review or expectations for scholarly activity for purposes of appointment, reappointment, promotion, granting of tenure, merit evaluation or determination of merit raises. Faculty performance review and expectations for scholarly activity are covered in other Administrative Regulations (AR), as well as regulations that describe for each title series the expected activities and criteria for promotion and tenure.

To the extent that university administrators, including the President of the university, hold appointments as faculty members, faculty administrators are subject to this regulation with respect to activities related to their faculty appointment.

This regulation is separate and distinct from independent proceedings involving the enforcement of clinical rights and clinical responsibilities that arise under the Joint Commission-mandated UK HealthCare Medical Staff By-laws, the federally mandated University's research misconduct policy, or the federally mandated Title IX Sexual Assault procedures. Faculty members who are subject to disciplinary proceedings under those procedures may be subjected to additional disciplinary proceedings under this regulation.

This regulation does not describe the proceedings for the revocation of tenure or for the termination of academic appointments of faculty members who do not have tenure.

The procedures established by this regulation do not supersede Governing Regulations or Administrative Regulations that specifically permit appeal to, or appearances before, the Board or a Board Committee.

### III. Entities Affected

---

This regulation will apply to all faculty members as defined in this regulation.

### IV. Procedures

---

The following procedures govern the handling of alleged misconduct by a faculty member.

For purposes of computing deadlines under these procedures, if the deadline falls on a Saturday, Sunday, or university-recognized holiday, the deadline is automatically extended to the next day when the University is open.

For purposes of this regulation, "written notification" means notification by formal written letter and notification by electronic message.

#### A. Allegations

Any person may make a complaint against a faculty member by making allegations to the chair of a faculty member's department, the Dean of the faculty member's college, or an appropriate university official. If the allegations involve a criminal activity, then the complaint must occur within any Statute of Limitations as defined by state and/or federal law. If allegations do not involve criminal activity, then the complaint must occur within twelve (12) months of the discovery of the alleged behavior. Additionally, routine university operations, such as audits or compliance reviews, may result in allegations against a faculty member. Although allegations may originate from a variety of sources -- individuals, organizations, administrative bodies, and authorities within or outside of the University community -- only allegations that unambiguously fall within and apply to the faculty member's professional domain shall be advanced to the Investigation phase. All others will be referred to the appropriate criminal or civil authorities (depending on severity), or dismissed altogether.

Allegations against a faculty member by a member of the University community that are made other than in good faith, may rise to the level of harassment and bring the Complainant under scrutiny as delineated in these regulations.

If the accused faculty member is a dean, then the Provost shall take the place of the Dean of the accused faculty member's college in this and all subsequent procedures.

In the event of either allegations reported initially to a chair and subsequently to a Dean or allegations reported directly to a Dean, the Dean must inform the General Counsel. In consultation with the General Counsel, the Dean will determine (1) whether an investigation should be conducted, and (2) if so, the appropriate university office(s) to conduct an investigation. The context of the allegation will dictate the time at which the accused faculty member is informed of the allegation. For purposes of this regulation, a dean may designate an appropriate associate dean and the General Counsel may designate an associate counsel or non-university counsel retained by the General Counsel to handle the allegation.

Allegations brought forward and adjudicated under this regulation cannot be reopened without substantive new evidence, as determined by the General Counsel, but no later than one year after the new evidence is discovered by university officials.

#### B. University Investigation

Depending on the nature of the allegation, the appropriate university office(s) (e.g., Institutional Equity and Equal Opportunity, Internal Audit, UK HealthCare Corporate Compliance, UK Police, UK Athletics Compliance, Office of Legal Counsel, etc.) will conduct the investigation. The report will include findings of fact. The Office(s) conducting the investigation will submit the investigation report to the Dean and the General Counsel. If an investigation finds nothing to support an allegation, the General Counsel will transmit these findings to the Dean and the accused faculty member, and the conclusion of no merit to the Complainant (if known).

#### C. Notification and Mediation

1. If the report indicates misconduct has occurred, the Dean will provide written notification to the faculty member as soon as feasible and preferably within two (2) business days. The Dean will provide the faculty member with a copy of the report. The faculty member may submit a written response to the Dean and General Counsel within fourteen (14) business days of confirmed receipt notification by the Dean. The Dean shall extend this response period by an additional fourteen (14) days on oral or written request by the faculty member, or longer if circumstances so indicate.
2. The Dean will schedule a meeting with the faculty member and the faculty member's chair, which will be held within twenty-one (21) days of the receipt of the faculty member's written response. The purpose of the meeting is for the Dean, the chair and the faculty member to attempt to reach an agreement as to whether misconduct occurred and, if so, an appropriate sanction. A faculty member may elect to bring an advisor to the meeting with the Dean and chair. In cases where the faculty member elects to have personal legal counsel at the meeting(s) with the Dean and chair, an attorney from the Office of Legal Counsel must also be present. It is to be hoped that the majority of cases will be resolved at this stage through mediation. If a faculty member is away from the university for approved business travel, annual leave, family leave or sick leave, or is unavailable to respond for any other university-approved absence, these time-periods for response are extended by the duration of travel or leave.
3. Sanctions will not take effect until a final determination of guilt is made and all appeals exhausted (see G9 below). Sanctions will not exceed a level that is reasonably commensurate with the seriousness of the misconduct. If any sanction prevents a faculty member from performing normally assigned duties, their duties shall be changed to reflect that. Sanctions are defined, for the purposes of this entire document, as the following:
  - Verbal reprimand
  - Written censure
  - Restitution to the University for actual monetary damage suffered by the University through misuse or unauthorized use of University property

- Loss of specific privileges including, but not limited to, loss of access to University Pro-Card or travel funds
- Removal from supervisory role and loss of title associated with that role
- Removal from named or endowed chair or professorship
- Demotion in rank, but only if promotion was based on a fraudulent dossier
- Suspension with pay for a specified period of time
- Relocation and/or loss of space currently occupied by and/or assigned to the faculty member
- Denial or curtailment of emeritus status, if applicable
- Recommending to the President and Board of Trustees that the faculty member in question be dismissed from the employ of the University

Suspension is defined, for the purposes of this entire document, as the temporary withdrawal or cessation from specific duties or employment as distinguished from permanent severance accomplished by removal.

4. If the issue is resolved during the meeting/mediation, the Dean will notify the General Counsel. The General Counsel must approve any proposed agreement before its implementation however the General Counsel's disapproval shall be explained in writing and be based on misapplication of law or rules and not based on an opinion on lack of severity of the sanctions.
5. If the Dean and faculty member fail to reach an agreement during the meeting as to whether misconduct occurred, the matter is referred to a Faculty Inquiry Panel. The Dean will notify the General Counsel that no agreement was reached on whether or not misconduct occurred. The General Counsel will then initiate the process leading to the selection of a Faculty Inquiry Panel by contacting the Chair of the University Senate Council.
6. If the Dean and the faculty member agree that misconduct occurred, but they disagree on the appropriate sanction or sanctions, the issue will be referred to the Provost, who will decide an appropriate sanction or sanctions within seven (7) days. As described below, the faculty member may appeal the Provost's decision to the President.

#### D. Selection of the Faculty Disciplinary Panel Pool

1. After seeking nominations from the University Senate, the University Senate Council will provide the President with the names of at least thirty-six (36) faculty members eligible to serve in the Faculty Disciplinary Panel Pool with staggered three-year terms; members may be recommended again by the Senate Council for subsequent terms. Efforts will be made by the University Senate Council to ensure that the Faculty Disciplinary Panel Pool includes [1] at least one tenured faculty member from each college and [2] at least one untenured faculty member from each of the Clinical and Research Title Series at the rank of professor or associate professor. Faculty members who occupy a position of administrative supervision over faculty personnel (*i.e.*, individuals with greater than or equal to 50% administrative effort or individuals with an administrative assignment at the level of chair or above) are ineligible to serve in the Faculty Disciplinary Panel Pool.
2. The President appoints twenty-five (25) members of the Faculty Disciplinary Panel Pool from nominations submitted by the University Senate Council. The appointed faculty will serve on either a Faculty Inquiry Panel or a Faculty Hearing Panel but not both for the same case.

#### E. Faculty Inquiry Panel

1. The Faculty Inquiry Panel is a five-person panel comprised of three (3) tenured faculty member selected at random by a uniform random number generator from the Faculty Disciplinary Hearing Panel Pool; the Vice-President for Human Resources or a designee; and an associate provost selected by the Provost. The rationale for the panel member from Human Resources is to ensure a balance in evaluating cases involving faculty *versus* those involving staff, and the rationale for the associate

provost is to ensure a balance in evaluating cases across colleges. The General Counsel will notify the University Senate Council Chair that there is a need for a Faculty Inquiry Panel and the Chair of the University Senate Council will select a faculty member at random from the Faculty Disciplinary Hearing Panel Pool using a uniform random number generator. Precautions will be taken against real or apparent conflicts of interest on the part of potential members of the Faculty Inquiry Panel. Such conflicts of interest may include: administrative dependency, close personal relationships, collaborative relationships, financial interest, or scientific or scholarly bias. The panel members will be expected to state in writing that they have no conflicts of interest.

2. The Faculty Inquiry Panel is responsible for determining whether there is probable cause to believe misconduct has occurred. The Faculty Inquiry Panel is limited to a review of the initial investigation report and the faculty member's written response, if any. The Faculty Inquiry Panel may interview the faculty member, the chair and the Dean, but the Faculty Inquiry Panel may not conduct a further investigation. The Faculty Inquiry Panel may consider new findings of fact that were not considered in the original investigation.
3. If the allegation is against a chair or dean, the Faculty Inquiry Panel will include three (3) tenured faculty members, who hold appointments in colleges other than that of the chair or dean and who will be selected at random by a uniform random number generator from the Faculty Disciplinary Hearing Panel Pool; the Vice-President for Human Resources or a designee; and an associate provost selected by the Provost.
4. If the allegation involves a faculty employee holding an administration position above the level of either a dean or an administratively equivalent position, the procedures to be used for convening a Faculty Inquiry Panel will be determined by the President in consultation with Senate Council.
5. If the allegations involve the President, the procedures will be determined by the Board of Trustees in consultation with the Senate Council.
6. If the Faculty Inquiry Panel, by a majority vote, finds there is probable cause to believe misconduct has occurred, the case is referred to a Faculty Hearing Panel. The Faculty Inquiry Panel will send notification *via* electronic mail of this finding to the Dean, the Complainant (if known), the faculty member, and the General Counsel.
7. If the Faculty Inquiry Panel finds that there is no probable cause to believe misconduct has occurred, the case is dismissed. The Faculty Inquiry Panel will send Notification of this finding to the Dean, the Complainant (if known), the faculty member, and the General Counsel.

#### F. Faculty Hearing Panel

1. The Faculty Hearing Panel is comprised of five (5) faculty members, who are selected at random by the Senate Council Chair and Vice Chair and/or SREC Chair from the Faculty Disciplinary Panel Pool using a uniform random number generator. The Senate Council Chair will consult with the Chair of the Department of Statistics on the selection of this uniform random number generator. A person who served on the Faculty Inquiry Panel may not serve on the Faculty Hearing Panel in the same case. Any member of the Faculty Hearing Panel who has personal involvement or prior factual knowledge of the case (*i.e.*, knowing something pertinent to the case before the accusation has been made) will recuse himself or herself. If a Faculty Hearing Panel member chooses recusal, then a new member will be chosen at random from the Pool by the Senate Council Chair using a uniform random number generator. Precautions will be taken against real or apparent conflicts of interest on the part of potential members of the Faculty Hearing Panel. Such conflicts of interest may include: administrative dependency, close personal relationships, collaborative relationships, financial interest, or scientific or scholarly bias. The panel members will be expected to state in writing that they have no conflicts of interest.
2. The General Counsel, upon receipt of a report from the Faculty Inquiry Panel that there is probable

cause to believe misconduct has occurred, will notify the Senate Council that a Faculty Hearing Panel is needed.

3. The Chair of the University Senate Council will select members of the panel at random from the Faculty Disciplinary Panel Pool using a uniform random number generator. The Senate Council Chair will contact faculty members to serve on the Faculty Hearing Panel within seven (7) days of receiving notification from the General Counsel. The Chair of the University Senate Council will inform potential members of the Faculty Hearing Panel that the case involves a named faculty member in a particular college.
4. Once a Faculty Hearing Panel is selected, the Dean and faculty member may each exclude one member from the Panel. If either the Dean or faculty member excludes a Panel member, then the Senate Council Chair will select a new member or members at random from the Faculty Disciplinary Panel Pool using a uniform random number generator. When such exclusions occur, the seven-day period for appointing the Faculty Hearing Panel will be extended by an additional seven (7) days.
5. The Faculty Hearing Panel will conduct the hearing within thirty (30) days of receiving the referral unless the Provost extends the time period in extraordinary circumstances. The Dean, through a representative of the Office of Legal Counsel, will present the case against the faculty member. The accused faculty member, either alone or with the assistance of at most two (2) additional persons, such as an attorney and a representative chosen by the accused faculty member, may present a defense. The parties may call witnesses, cross-examine the other party's witnesses, and present other evidence; however, as this is an administrative hearing, formal rules of evidence and procedure do not apply. The Faculty Hearing Panel may admit any evidence of probative value in determining the issues involved.
6. The standard of proof is clear and convincing evidence. The burden of demonstrating that misconduct occurred is on the representative of the Office of Legal Counsel, and the accused faculty member is presumed to be innocent.
7. After the hearing, the Faculty Hearing Panel will consider the evidence presented at the hearing, and the majority will issue written findings of fact and conclusions of law (*i.e.*, conclusion regarding misconduct) within seven (7) days of the conclusion of the hearing. If a member of the Faculty Hearing Panel dissents with the majority decision, that member may submit a written explanation of his/her dissension. The Faculty Hearing Panel will send the written findings, including dissents, and the panel's decision to the Provost, the Dean, the accused faculty member, and the General Counsel.
8. If the Faculty Hearing Panel finds the accused faculty member guilty of misconduct, the Panel will recommend nonbinding sanctions to the Provost. The faculty member may appeal the finding of guilt.
9. If the Faculty Hearing Panel does not find that the accused faculty member is guilty of misconduct, the case is closed. The Dean may request the case be reopened when conditions of G.1.b are met.
10. If the allegation involves the Provost, the President will assume the role of the Provost in these proceeding.
11. If the allegation involves the President, the Board of Trustees assumes the role of the Provost in these proceedings.

#### G. Appeals

This section covers appeals arising out of the decision and nonbinding recommendations from the Faculty Hearing Panel and the sanctions recommended by the Provost. The procedures established by this regulation do not supersede Governing Regulations or Administrative Regulations that specifically permit appeal to, or appearances before, the Board or a Board Committee.

##### 1.a. Finding of Guilt.

If the Panel finds the accused faculty member guilty, the accused faculty member may appeal within fourteen (14) days of receipt of the Hearing Panel's decision determining guilt. If the faculty member does not file an appeal, the decision of the Faculty Hearing Panel as to guilt or innocence will be final.

1b. Finding of Innocence.

In accordance with Section IV.A above, allegations brought forward and adjudicated to the finding of innocence a Dean can cause the case be reopened for new adjudication, when there is substantive new evidence as determined by the General Counsel.

2. The Faculty Disciplinary Appeals Panel shall hear all appeals. The panel consists of an Associate Provost, an elected Senate Council member chosen by Senate Council, and the Academic Ombud. In the event the Associate Provost is unable to serve, the Provost shall appoint a replacement. In the event that the Academic Ombud or the member of the Senate Council is unable to serve, the Senate Council shall appoint replacement(s). Precautions will be taken against real or apparent conflicts of interest on the part of potential members of the Faculty Disciplinary Appeals Panel. Such conflicts of interest may include: administrative dependency, close personal relationships, collaborative relationships, financial interest, or scientific or scholarly bias. The panel members will be expected to state in writing that they have no conflicts of interest.
3. The faculty member and the dean will be provided with copies of the written appeal and given an opportunity to respond in writing.
4. The deliberations of the Faculty Disciplinary Appeals Panel are limited to review of the specific issues raised by the accused faculty member. In determining whether the factual findings are clearly erroneous, the Faculty Disciplinary Appeals Panel will determine whether substantial evidence (i.e. evidence a reasonable person would accept as adequate to support the conclusion) supports the factual findings.
5. When the accused appeals to the Faculty Disciplinary Appeals Panel, the accused must submit a written brief detailing the basis for the appeal and providing supporting evidence attesting to the validity of the appeal. The dean will be provided with a copy of this brief and may submit a written response brief within seven (7) days.
6. The Faculty Disciplinary Appeals Panel will render a final decision within seven (7) days of the submission of briefs. If the Appeals Panel's decision is in agreement with the Hearing Panel, the appellant and the appellee are notified of the Appeal Panel's decision and the reasons for the decision. If the decision of the Faculty Disciplinary Appeals Panel is not in agreement with the decision of the Faculty Hearing Panel, the Faculty Disciplinary Appeals Panel must also send a written justification for the reversal to the Faculty Hearing Panel, the University Senate Council, and the Executive Committee of the Board of Trustees.
7. If the Faculty Disciplinary Appeals Panel determines the faculty member is innocent, the matter is closed.
8. If the Faculty Disciplinary Appeals panel determines the faculty member is guilty, the Provost shall impose sanctions. In determining sanctions, the Provost is guided, but not bound, by the Faculty Hearing Panel's recommendation, if any, concerning sanctions (If the Faculty Hearing Panel found the faculty member to be innocent, but the decision was reversed on appeal, there will be no Faculty Hearing Panel recommendation). The Provost will send notification of the sanctions decision to the Dean, the University faculty member, the General Counsel, and the Complainant, if known.
9. Within seven (7) days of receipt of the Provost's decision regarding a sanction or sanctions, the accused faculty member may appeal the Provost's decision regarding any sanction to the President. On an appeal of a particular sanction, the President will consider whether the determination is reasonable in light of sanctions imposed on similarly situated staff members and similarly situated faculty in other colleges. The President will render a final decision regarding a sanction or sanctions within seven (7)

days.

10. The sanction or sanctions will not take effect until the time to appeal the sanction or sanctions has expired or the President has rendered his decision.
11. The complainant, if known, shall be informed of the decision by General Counsel to the extent required by law.
12. Confidentiality of the record is guaranteed in accordance with Governing Regulations XVI Section B.1.

## V. Retaliation

---

Retaliation is prohibited. Retaliation occurs when an adverse action is taken against a covered individual because he or she engaged in a protected activity including but not limited to reporting discrimination or participating in an investigation of a discrimination report. (See AR 6.1)

## VI. Administrative Leave with Pay during the Process

---

At any time during the process beginning with receipt of an allegation, the Provost, after consultation with and on the advice of the General Counsel, may initiate immediate, involuntary administrative leave with pay. The Provost may impose additional conditions as part of the administrative leave with pay.

1. The Provost will impose involuntary administrative leave with pay only if the Provost determines that there is a risk that the accused faculty member's continued assignment to regular duties or presence on campus may cause harm to others in the University community, impede the investigation, or create a risk of continuing misconduct. The restrictions that the Provost imposes on a faculty member on administrative leave with pay shall be no greater than necessary for amelioration of the risks perceived by the Provost.
2. Involuntary administrative leave with pay for more than thirty (30) days requires approval of the Board of Trustees.
3. The accused faculty member may appeal the imposition of involuntary administrative leave with pay to the Senate Advisory Committee on Privilege and Tenure (SACPT), under SR1.4.4.2B4.

## References and Related Materials

---

### Revision History

---

*Endorsed by University Senate on Monday, May 4, 2015.*

For questions, contact: [Office of Legal Counsel](#)