



Governing Regulation XX

Responsible Office: Office of the President and Office of the Provost

Date Effective:

Supersedes Version: New Governing Regulation

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 accord 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, and it is a responsibility of the faculty to maintain standards of professional conduct.

Faculty members, like all non-faculty employees, must obey generally applicable constitutional provisions, statutes, regulations, rules, and procedures. Additionally, faculty members who work in certain areas, like all non-faculty employees who work in those areas, must obey constitutional provisions, statutes, regulations, rules, and procedures that are applicable to those areas.

Because faculty members frequently have constitutionally protected property interests (*i.e.*, hold tenured or contractual appointments), faculty members must receive greater due process protections in any disciplinary process than the protections afforded non-faculty employees. However, the presence of these greater due process protections does not mean that the University holds faculty members to a different standard of compliance than that expected of non-faculty employees. All university employees, regardless of faculty status, must comply with applicable constitutional provisions, statutes, regulations, rules, and procedures. Rather, the presence of additional due process concerns simply means that the disciplinary process for faculty members may be different and more complex than that for non-faculty employees.

Academic freedom, which is a special concern of the First Amendment, gives faculty members substantial autonomy in performing their various roles. Concurrently, faculty members, like all non-faculty employees, have the constitutional rights of a public employee (*i.e.* the right to speak on matters of public concern as private individuals but not as university representatives). Nevertheless, academic freedom and/or the constitutional rights of a public employee never excuse a faculty member's non-compliance with applicable constitutional provisions, statutes, regulations, rules, and procedures.

II. Scope

This regulation is applicable to all faculty members. For purposes of this regulation, "faculty members" means an individual holding the title of professor, associate professor, assistant professor, senior lecturer,

lecturer, and any other title with responsibilities comparable to the aforementioned titles. This definition applies to faculty regardless of their title series appointment, their distribution of effort agreement, any administrative appointments in addition to faculty academic appointments, standing as tenured or non-tenured, visiting or permanent, 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, and tenure. 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 - regular, extension, special, research, clinical, etc.

This regulation is separate and distinct from independent proceedings of enforcement of rights and 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 these procedures may be subjected to additional disciplinary proceedings under this regulation.

This regulation also 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.

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 unacceptable conduct by a faculty member.

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

A. Allegations

Any person may make a complaint against a faculty member by making allegations to the chair of a faculty member's department or the Dean of the faculty member's college or to an appropriate university official. Additionally, routine university operations, such as audits or compliance reviews, may result in allegations against a faculty member.

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 and the General Counsel 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.

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, a conclusion as to whether a violation occurred, and, if a violation did occur, a non-binding recommendation regarding disciplinary action (i.e., sanctions). The Office(s) conducting the investigation will submit the investigation report to the General Counsel. The General Counsel will transmit the report to the Complainant (if known) and the Dean of the faculty member's college. If an investigation finds nothing to support an allegation, the General Counsel will transmit these findings to the Dean, the Complainant (if known), and the accused faculty member.

Trivial allegations against a faculty member, particularly by a member of the University community, may rise to the level of harassment and bring the Complainant under scrutiny as delineated in these regulations.

C. Notification and Mediation

1. If the report indicates a violation has occurred, the Dean will notify the faculty member as soon as feasible and preferably within one (1) day. The Dean will provide the faculty member with an opportunity to review the investigation report. The faculty member may submit a written response to the Dean and General Counsel within seven (7) days of notification by the Dean. The Dean may extend this response period by an additional seven (7) days on oral or written request by the faculty member.
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 Dean's notification to the faculty member. The purpose of the meeting is for the Dean, the chair and the faculty member to attempt to reach an agreement as to whether a violation occurred and, if so, an appropriate sanction. 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.
3. 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
 - Reduction in salary for a fixed period of time
 - Demotion in rank, but only if promotion was based on a fraudulent dossier
 - Suspension with or without pay for a fixed period of time
 - Relocation and/or loss of space currently occupied by 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
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.
5. If the Dean and faculty member fail to reach an agreement during the meeting as to whether a violation 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 a violation 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 a violation occurred but disagree on the appropriate sanction, the issue of sanction will be referred to the Provost, who will decide an appropriate sanction within seven (7) days. As described below, the faculty member may appeal the Provost's decision.

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 twenty-five (25) faculty members eligible to serve in the Faculty Disciplinary Panel Pool. 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.
2. The President appoints the members of the Faculty Disciplinary Panel Pool from nominations submitted by the University Senate Council.

E. Faculty Inquiry Panel

1. The Faculty Inquiry Panel is a three-person panel comprised of (1) one tenured faculty member selected at random by a uniform random number generator from the Faculty Disciplinary Hearing Panel Pool (See Section E. below); (2) the Vice-President for Human Resources or a designee; and (3) 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.
2. The Faculty Inquiry Panel is responsible for determining whether there is probable cause to believe a violation 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 and that are provided by the General Counsel.
3. If the Faculty Inquiry Panel, by a majority vote, finds there is probable cause to believe a violation 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.
4. If the Faculty Inquiry Panel, by a majority vote, finds that there is no probable cause to believe a violation 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 from the Faculty Disciplinary Panel Pool using a uniform random number generator. 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. 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 it occurs publicly) 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.

2. The General Counsel, upon receipt of a report from the Faculty Inquiry Panel that there is probable cause to believe a violation has occurred, will notify the Senate Council Chair 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 *pro se* or with the assistance of an attorney, 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 burden of proof standard is a preponderance of evidence, (*i.e.*, more likely than not). The burden of demonstrating that a violation 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 issue written findings of fact and conclusions of law (*i.e.*, conclusion regarding violation) 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 and decision to the Provost, the Dean, the Complainant (if known), the accused faculty member, and the General Counsel.
8. If the Faculty Hearing Panel finds the accused faculty member guilty of the violation, the Panel will recommend non-binding sanctions to the Provost.

G. Appeals and Sanctions

This section covers appeals arising out of the decision and non-binding recommendations from the Faculty Hearing Panel and the sanctions recommended by the Provost.

1. Within seven (7) days of receipt of the Hearing Panel's decision determining guilt or innocence, either the Dean or the accused faculty member may appeal to the President. If the faculty member or Dean does not file an appeal, the decision of the Faculty Hearing Panel as to guilt or innocence

will be final.

2. On an appeal of the Faculty Hearing Panel's decision concerning guilt or innocence, the President will review the factual findings for clear error and the conclusions of law *de novo*. In determining whether the factual findings are clearly erroneous, the President will determine whether substantial evidence supports the factual findings. The President will render a final decision on guilt or innocence within seven (7) days. If the President determines the faculty member is guilty, the President will remand the matter to the Provost for an imposition of sanctions.
3. When the faculty member has been determined to be guilty and when all appeals concerning guilt or innocence have been completed (*i.e.*, time to appeal has expired or the President has rendered a decision), the Provost will determine the appropriate sanctions.
4. In making this determination, 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 President reversed on appeal, there will be no Faculty Hearing Panel recommendation. The Provost may impose a range of sanctions from verbal reprimand to initiation of termination and tenure revocation proceedings in accordance with KRS § 164.230 and Governing Regulation X. The Provost will send notification of the decision on sanctions to the Dean, the faculty member, the Complainant (if known), and the General Counsel.
5. Within seven (7) days of receipt of the Provost's decision regarding sanctions, the accused faculty member may appeal the Provost's decision regarding sanctions to President. On an appeal of the sanctions, the President will consider whether the sanction 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 sanctions within seven (7) days.
6. Sanctions will not take effect until the time to appeal the sanctions has expired or the President has rendered his decision.

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 (*i.e.*, 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.

The Provost will impose administrative leave-with-pay only if 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 violations. The same immediate, involuntary administrative leave-with-pay will be imposed if there is an investigation by a law enforcement agency of a serious crime bearing on the alleged unacceptable conduct.

References and Related Materials

Revision History

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