

2_Senator Grossman Amendments



UNIVERSITY OF KENTUCKY® Regulations

Governing Regulation XX

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

Date Effective:

Supersedes Regulation Version: New Governing

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Faculty Disciplinary Policy and Procedures (DRAFT)

4 Hyper Links to be inserted later

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I. Introduction

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

15
16 University faculty members, like all University employees, must obey the rules, standards, and
17 procedures that arise under federal and state constitutions, statutes, and regulations, University
18 Governing and Administrative Regulations, the University Senate Rules, and other regulatory
19 jurisdictions (GR II.A). For purposes of this document, we define "misconduct" as a failure to obey the
20 laws and regulations described in the preceding sentence.

21
22 As is consistent with the principles set forth in the professional standard of academic freedom as defined
23 by the American Association of University Professors and the Association of American Colleges and
24 Universities, academic freedom does not excuse a faculty member from complying with the rules, standards
25 and procedures that arise under federal and state laws, statutes, and regulations, University Governing and
26 Administrative Regulations, the University Senate Rules, and other regulatory jurisdictions (GR II.A), as
27 described in paragraph 2 above.

28
29

II. Scope

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

39

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40 This regulation does not apply to faculty performance review or expectations for scholarly activity for
41 purposes of appointment, reappointment, promotion, and tenure. Faculty performance review and
42 expectations for scholarly activity are covered in other Administrative Regulations (AR), as well as
43 regulations that describe for each title series the expected activities and criteria for promotion and tenure.
44

45 To the extent that university administrators, including the President of the university, hold appointments
46 as faculty members, faculty administrators are subject to this regulation with respect to activities related
47 to their faculty appointment.
48

49 This regulation is separate and distinct from independent proceedings involving the enforcement of
50 clinical rights and clinical responsibilities that arise under the Joint Commission mandated UK
51 HealthCare Medical Staff By-laws, the federally mandated University's research misconduct policy, or the
52 federally mandated Title IX Sexual Assault procedures. Faculty members who are subject to disciplinary
53 proceedings under those procedures may be subjected to additional disciplinary proceedings under this
54 regulation.
55

56 This regulation also does not describe the proceedings for the revocation of tenure or for the termination
57 of academic appointments of faculty members who do not have tenure.
58

59 The procedures established by this regulation do not supersede Governing Regulations or Administrative
60 Regulations that specifically permit appeal to, or appearances before, the Board or a Board Committee.
61

62 III. Entities Affected

63 This regulation will apply to all faculty members as defined in this regulation.
64

65 IV. Procedures

66 The following procedures govern the handling of misconduct by a faculty member.
67

68 For purposes of computing deadlines under these procedures, if the deadline falls on a Sunday, Monday,
69 university-recognized holiday or day when the University's Office of the President is closed, the deadline
70 is automatically extended to the next day when the University's Office of the President is open.
71

72 For purposes of this regulation, "written notification" means notification by formal written letter and
73 notification by electronic message.
74

75 A. Allegations

76
77 Any person may make a complaint against a faculty member by making allegations to the chair of a
78 faculty member's department, the Dean of the faculty member's college, or an appropriate university
79 official. Additionally, routine university operations, such as audits or compliance reviews, may result
80 in allegations against a faculty member.
81

82 Allegations against a faculty member by a member of the University community that are made other
83 than in good faith, may rise to the level of harassment and bring the Complainant under scrutiny as
84 delineated in these regulations.
85

86 If the accused faculty member is a dean, then the Provost shall take the place of the Dean of the
87 accused faculty member's college in this and all subsequent procedures^[scb1].
88

89 In the event of either allegations reported initially to a chair and subsequently to a Dean or allegations
90 reported directly to a Dean, the Dean must inform the General Counsel. In consultation with the

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91 General Counsel, the Dean will determine (1) whether an investigation should be conducted, and (2)
92 if so, the appropriate university office(s) to conduct an investigation. The context of the allegation will
93 dictate the time at which the accused faculty member is informed of the allegation. For purposes of
94 this regulation, a dean may designate an appropriate associate dean and the General Counsel may
95 designate an associate counsel or non-university counsel retained by the General Counsel to handle
96 the allegation.

97
98 Allegations brought forward and adjudicated under this regulation cannot be reopened without
99 substantive new evidence, as determined by the General Counsel.

100 101 B. University Investigation

102
103 Depending on the nature of the allegation, the appropriate university office(s) (e.g., Institutional
104 Equity and Equal Opportunity, Internal Audit, UK HealthCare Corporate Compliance, UK Police, UK
105 Athletics Compliance, Office of Legal Counsel, etc.) will conduct the investigation. The report will
106 include findings of fact, a conclusion as to whether misconduct occurred, and, if misconduct did
107 occur, a nonbinding recommendation regarding disciplinary action (*i.e.*, sanctions). The Office(s)
108 conducting the investigation will submit the investigation report to the General Counsel. The General
109 Counsel will transmit the report to the Dean of the faculty member's college. If an investigation finds
110 nothing to support an allegation, the General Counsel will transmit these findings to the Dean, the
111 Complainant (if known), and the accused faculty member.

112 113 C. Notification and Mediation

114
115 1. If the report indicates misconduct has occurred, the Dean will provide written notification to the
116 faculty member as soon as feasible and preferably within two (2) days. The Dean will provide the
117 faculty member with a copy of the report. The faculty member may submit a written response to
118 the Dean and General Counsel within seven (7) days of notification by the Dean. The Dean may
119 extend this response period by an additional fourteen (14) days on oral or written request by the
120 faculty member.

121
122 2. The Dean will schedule a meeting with the faculty member and the faculty member's chair, which
123 will be held within twenty-one (21) days of the Dean's notification to the faculty member. The
124 purpose of the meeting is for the Dean, the chair and the faculty member to attempt to reach an
125 agreement as to whether misconduct occurred and, if so, an appropriate sanction. In cases where
126 the faculty member elects to have personal legal counsel at the meeting(s) with the Dean and
127 chair, an attorney from the Office of Legal Counsel must also be present. It is to be hoped that
128 the majority of cases will be resolved at this stage through mediation.

129
130 3. Sanctions will not take effect until a final determination of guilt is made and all appeals exhausted
131 (see G9 below). Sanctions will not exceed a level that is reasonably commensurate with the
132 seriousness of the misconduct. Sanctions are defined, for the purposes of this entire document,
133 as the following:

- 134
- 135 • Verbal reprimand
- 136 • Written censure
- 137 • Restitution to the University for actual monetary damage suffered by the University
- 138 through misuse or unauthorized use of University property
- 139 • Loss of specific privileges including, but not limited to, loss of access to University Pro-
- 140 Card or travel funds
- 141 • If indicated by the circumstances, requirement to undergo assessment for behavioral
- 142 or mental disorders by an appropriate professional, and, if the professional determines
- 143 that treatment is indicated, requirement to undergo such treatment^[scb2].
- 144 • Removal from supervisory role and loss of title associated with that role
- 145 • Removal from named or endowed chair or professorship

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- Reduction in salary for a specified period of time
- Demotion in rank, but only if promotion was based on a fraudulent dossier
- Suspension with or without 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.
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 reappointed. 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 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 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; 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

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201 scientific or scholarly bias. The panel members will be expected to state in writing that they have
202 no conflicts of interest.

- 203
- 204 2. The Faculty Inquiry Panel is responsible for determining whether there is probable cause to
205 believe misconduct has occurred. The Faculty Inquiry Panel is limited to a review of the initial
206 investigation report and the faculty member's written response, if any. The Faculty Inquiry Panel
207 may interview the faculty member, the chair and the Dean, but the Faculty Inquiry Panel may not
208 conduct a further investigation. The Faculty Inquiry Panel may consider new findings of fact that
209 were not considered in the original investigation and that are provided by the General Counsel.
210
- 211 3. If the allegation involves a chair or dean, the Faculty Inquiry Panel will be expanded to include
212 three (3) tenured faculty members, who hold appointments in colleges other than that of the chair
213 or dean and who will be selected at random by a uniform random number generator from the
214 Faculty Disciplinary Hearing Panel Pool; the Vice-President for Human Resources or a designee;
215 and an associate provost selected by the Provost.
216
- 217 4. If the allegation involves a faculty employee holding an administration position above the level of
218 either a dean or an administratively equivalent position, the procedures to be used for convening
219 a Faculty Inquiry Panel will be determined by the President in consultation with Senate Council.
220
- 221 5. If the allegations involve the President, the procedures will be determined by the Board of
222 Trustees in consultation with the Senate Council.
223
- 224 6. If the Faculty Inquiry Panel, by a majority vote, finds there is probable cause to believe
225 misconduct has occurred, the case is referred to a Faculty Hearing Panel. The Faculty Inquiry
226 Panel will send notification *via* electronic mail of this finding to the Dean, the Complainant (if
227 known), the faculty member, and the General Counsel.
228
- 229 7. If the Faculty Inquiry Panel, by a majority vote, finds that there is no probable cause to believe
230 misconduct has occurred, the case is dismissed. The Faculty Inquiry Panel will send Notification
231 of this finding to the Dean, the Complainant (if known), the faculty member, and the General
232 Counsel.
233

234 F. Faculty Hearing Panel

- 235
- 236 1. The Faculty Hearing Panel is comprised of five (5) faculty members, who are selected at random
237 by the Senate Council Chair from the Faculty Disciplinary Panel Pool using a uniform random
238 number generator. The Senate Council Chair will consult with the Chair of the Department of
239 Statistics on the selection of this uniform random number generator. Faculty members who
240 occupy a position of administrative supervision over faculty personnel (*i.e.*, individuals with
241 greater than or equal to 50% administrative effort or individuals with an administrative assignment
242 at the level of chair or above) are ineligible to serve in the Faculty Disciplinary Panel Pool. A
243 person who served on the Faculty Inquiry Panel may not serve on the Faculty Hearing Panel in
244 the same case. Any member of the Faculty Hearing Panel who has personal involvement or prior
245 factual knowledge of the case (*i.e.*, knowing something pertinent to the case before it occurs
246 publicly) will recuse himself or herself. If a Faculty Hearing Panel member chooses recusal, then
247 a new member will be chosen at random from the Pool by the Senate Council Chair using a
248 uniform random number generator. Precautions will be taken against real or apparent conflicts of
249 interest on the part of potential members of the Faculty Hearing Panel. Such conflicts of interest
250 may include: administrative dependency, close personal relationships, collaborative relationships,
251 financial interest, or scientific or scholarly bias. The panel members will be expected to state in
252 writing that they have no conflicts of interest.
253
- 254 2. The General Counsel, upon receipt of a report from the Faculty Inquiry Panel that there is
255 probable cause to believe misconduct has occurred, will notify the Senate Council Chair that a

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256 Faculty Hearing Panel is needed.

- 257
- 258 3. The Chair of the University Senate Council will select members of the panel at random from the
- 259 Faculty Disciplinary Panel Pool using a uniform random number generator. The Senate Council
- 260 Chair will contact faculty members to serve on the Faculty Hearing Panel within seven (7) days of
- 261 receiving notification from the General Counsel. The Chair of the University Senate Council will
- 262 inform potential members of the Faculty Hearing Panel that the case involves a named faculty
- 263 member in a particular college.
- 264
- 265 4. Once a Faculty Hearing Panel is selected, the Dean and faculty member may each exclude one
- 266 member from the Panel. If either the Dean or faculty member excludes a Panel member, then the
- 267 Senate Council Chair will select a new member or members at random from the Faculty
- 268 Disciplinary Panel Pool using a uniform random number generator. When such exclusions occur,
- 269 the seven-day period for appointing the Faculty Hearing Panel will be extended by an additional
- 270 seven (7) days.
- 271
- 272 5. The Faculty Hearing Panel will conduct the hearing within thirty (30) days of receiving the referral
- 273 unless the Provost extends the time period in extraordinary circumstances. The Dean, through a
- 274 representative of the Office of Legal Counsel, will present the case against the faculty member.
- 275 The accused faculty member, either alone or with the assistance of at most two (2) additional
- 276 persons, such as an attorney and a representative chosen by the accused faculty member, may
- 277 present a defense. The parties may call witnesses, cross-examine the other party's witnesses,
- 278 and present other evidence; however, as this is an administrative hearing, formal rules of
- 279 evidence and procedure do not apply. The Faculty Hearing Panel may admit any evidence of
- 280 probative value in determining the issues involved.
- 281
- 282 6. The burden of proof standard is clear and convincing evidence. The burden of demonstrating that
- 283 misconduct occurred is on the representative of the Office of Legal Counsel, and the accused
- 284 faculty member is presumed to be innocent.
- 285
- 286 7. After the hearing, the Faculty Hearing Panel will consider the evidence presented at the hearing,
- 287 and the majority will issue written findings of fact and conclusions of law (*i.e.*, conclusion
- 288 regarding misconduct) within seven (7) days of the conclusion of the hearing. If a member of the
- 289 Faculty Hearing Panel dissents with the majority decision, that member may submit a written
- 290 explanation of his/her dissension. The Faculty Hearing Panel will send the written findings,
- 291 including dissents, and decision to the Provost, the Dean, , the accused faculty member, and the
- 292 General Counsel.
- 293
- 294 8. If the Faculty Hearing Panel finds the accused faculty member guilty of misconduct, the Panel will
- 295 recommend nonbinding sanctions to the Provost. The faculty member may appeal the finding of
- 296 guilt.
- 297
- 298 9. If the Faculty Hearing Panel finds that the accused faculty member is not guilty of misconduct, the
- 299 case is closed unless the dean submits a written appeal of the innocent decision based on
- 300 substantive errors in the faculty hearing panel process or errors in interpretation of fact or law .
- 301
- 302 10. If the allegation involves the Provost, the President will assume the role of the Provost in these
- 303 proceeding.
- 304
- 305 11. If the allegation involves the President, the Board of Trustees assumes the role of the Provost in
- 306 these proceedings.

307 G. Appeals

308 This section covers appeals arising out of the decision and nonbinding recommendations from the

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311 Faculty Hearing Panel and the sanctions recommended by the Provost. The procedures
312 established by this regulation do not supersede Governing Regulations or Administrative
313 Regulations that specifically permit appeal to, or appearances before, the Board or a Board
314 Committee.
315

- 316 1. If the faculty member or Dean does not file a written appeal within seven (7) days of receipt of the
317 Faculty Hearing Panel's written decision, the decision of the Faculty Hearing Panel as to guilt or
318 innocence shall be final. The complainant, if known, shall be informed of the decision by General
319 Counsel, to the extent required by law.
320
- 321 2. The Faculty Disciplinary Appeals Panel shall hear all appeals. The panel consists of the Provost,
322 the Chair of the Senate Council, and the Academic Ombud. In the event the Provost is unable to
323 serve, the President shall appoint a replacement. In the event that the Academic Ombud or the
324 Chair of the Senate Council is unable to serve, the Senate Council shall appoint replacement(s).
325 Precautions will be taken against real or apparent conflicts of interest on the part of potential
326 members of the Faculty Disciplinary Appeals Panel. Such conflicts of interest may include:
327 administrative dependency, close personal relationships, collaborative relationships, financial
328 interest, or scientific or scholarly bias. The panel members will be expected to state in writing that
329 they have no conflicts of interest.
330
- 331 3. The faculty member and the dean will be provided with copies of the written appeal and given an
332 opportunity to respond in writing.
333
- 334 4. The deliberations of the Faculty Disciplinary Appeals Panel are limited to review of the specific
335 issues raised by the appellant (IV.F.8, F9). In determining whether the factual findings are clearly
336 erroneous, the Faculty Disciplinary Appeals Panel will determine whether substantial evidence
337 (i.e. evidence a reasonable person would accept as adequate to support the conclusion) supports
338 the factual findings.
339
- 340 5. When a party appeals to the Faculty Disciplinary Appeals Panel, the party must submit a written
341 brief detailing the basis for the appeal and providing supporting evidence attesting to the validity
342 of the appeal. The party that prevailed at the Faculty Hearing Panel will be provided with a copy
343 of this brief and may submit a written response brief within seven (7) days.
344
- 345 6. The Faculty Disciplinary Appeals Panel will render a final decision within seven (7) days of the
346 submission of briefs. If the Appeals Panel's decision is in agreement with the Hearing Panel, the
347 appellant and the appellee are notified of the Panel's decision and the reasons for the decision.
348 If the decision of the Faculty Disciplinary Appeals Panel is not in agreement with the decision of
349 the Faculty Hearing Panel, the Faculty Disciplinary Appeals Panel must also send a written
350 justification for the reversal to the Faculty Hearing Panel, the University Senate Council, and the
351 Executive Committee of the Board of Trustees.
352
- 353 7. If the Faculty Disciplinary Appeals Panel determines the faculty member is innocent, the matter is
354 closed.
355
- 356 8. If the Faculty Disciplinary Appeals panel determines the faculty member is guilty, the Provost
357 shall impose sanctions. In determining sanctions, the Provost is guided, but not bound, by the
358 Faculty Hearing Panel's recommendation, if any, concerning sanctions (If the Faculty Hearing
359 Panel found the faculty member to be innocent, but the decision was reversed on appeal, there
360 will be no Faculty Hearing Panel recommendation). The Provost will send notification of the
361 sanctions decision to the Dean, the University faculty member, the General Counsel, and the
362 Complainant, if known.
363
- 364 9. Within seven (7) days of receipt of the Provost's decision regarding a sanction or sanctions, the
365 accused faculty member may appeal the Provost's decision regarding any sanction to the

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366 President. On an appeal of a particular sanction, the President will consider whether the
367 determination is reasonable in light of sanctions imposed on similarly situated staff members and
368 similarly situated faculty in other colleges. The President will render a final decision regarding a
369 sanction or sanctions within seven (7) days.

370
371 10. The sanction or sanctions will not take effect until the time to appeal the sanction or sanctions has
372 expired or the President has rendered his decision.

373
374 11. The complainant, if known, shall be informed of the decision by General Counsel to the extent
375 required by law.

376
377 12. Confidentiality of the record is guaranteed in accordance with Governing Regulations XVI Section
378 B., 1
379

380 V. Retaliation

381 Retaliation is prohibited. Retaliation occurs when an adverse action is taken against a covered individual
382 because he or she engaged in a protected activity including but not limited to reporting discrimination or
383 participating in an investigation of a discrimination report. (See AR 6.1)
384

385 VI. Administrative Leave With Pay during the Process

386 At any time during the process beginning with receipt of an allegation, the Provost, after consultation with
387 and on the advice of the General Counsel, may initiate immediate, involuntary administrative leave with
388 pay. The Provost may impose additional conditions as part of the administrative leave with pay.
389

- 390 1. The Provost will impose involuntary administrative leave with pay only if the Provost determines
391 that there is a risk that the accused faculty member's continued assignment to regular duties or
392 presence on campus may cause harm to others in the University community, impede the
393 investigation, or create a risk of continuing misconduct. The restrictions that the Provost imposes
394 on a faculty member on administrative leave with pay shall be no greater than necessary for
395 amelioration of the risks perceived by the Provost.
396
397 2. Involuntary administrative leave with pay for more than thirty (30) days requires approval of the
398 Board of Trustees.
399
400 3. The accused faculty member may appeal the imposition of involuntary administrative leave with
401 pay to the Senate Advisory Committee on Privilege and Tenure (SACPT), under SR1.4.4.2B4.
402

403 References and Related Materials

404 405 406 Revision History

407
408 For questions, contact: Office of Legal Counsel
409
410

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Main document changes and comments

Page 2: Inserted Robert Grossman 4/20/2015 10:45:00 AM

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

Page 2: Comment [scb1] Sheila Brothers 4/27/2015 10:45:00 AM

Rationale is to make sure that deans are subject to the same disciplinary process as other faculty members. Also provides recourse in cases of collusion between chairs and deans. Not that that is likely ever to happen.

Page 2: Inserted Robert Grossman 4/20/2015 10:45:00 AM

Page 3: Inserted Robert Grossman 4/20/2015 10:43:00 AM

If indicated by the circumstances, requirement to undergo assessment for behavioral or mental disorders by an appropriate professional, and, if the professional determines that treatment is indicated, requirement to undergo such treatment

Page 3: Comment [scb2] Sheila Brothers 4/27/2015 10:45:00 AM

Sometimes inappropriate behavior indicates an underlying problem. Catching someone engaging in misconduct might be used as an opportunity to get someone some needed help.

I'm certainly open to other wording that might accomplish the same purpose.

Page 3: Inserted Sheila Brothers 4/27/2015 10:45:00 AM

Page 8: Inserted Robert Grossman 4/20/2015 10:47:00 AM

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.

Header and footer changes

Text Box changes

Header and footer text box changes

Footnote changes

Endnote changes