

[Ad Hoc Committee Draft 4/1/24]

Appendix F...

III. The Faculty Hearing Committee

A. Purpose and Selection

1. The Faculty Hearing Committee (FHC) is a review body constituted by the Academic Council and its Executive Committee in furtherance of faculty governance. Its purpose is to provide Faculty Members with a process for seeking review and recommendations from an unbiased panel of peers in instances within the FHC's jurisdiction, as defined herein.
2. The FHC consists of at least 12 and up to 18 regular rank faculty members, nominated by the Executive Committee of the Academic Council and elected by the Council at large (regular rank faculty as defined in [Chapter 2 of the Faculty Handbook](#)). In its nominations, the Executive Committee shall seek a reasonable representation of the university's academic community. The Executive Committee shall appoint one member of the FHC to act as Chair.
3. FHC members shall serve for three-year terms and may be reelected. However, no person shall serve more than six consecutive years. Departing members shall nonetheless conclude cases pending before them at the time of the expiration of their terms. Vacancies arising during an academic year may be filled by appointment by the Executive Committee of the Academic Council until the next regular election of FHC members.

B. Jurisdiction

1. In General. The FHC shall have jurisdiction to consider complaints from faculty concerning one or more of the following matters:
 - a. Allegations of violations of the university's policies concerning academic freedom and academic tenure as set forth in [Appendix D of the Faculty Handbook](#).
 - b. Allegations of adverse employment action involving discrimination on the basis of race, color, religion, national origin, disability, veteran status, sexual orientation, gender identity, gender expression, sex, genetic information, or age. Examples of adverse employment actions include actions with respect to a member's rank, salary, fringe benefits, sabbatical and other leaves (with or without compensation), workload or work assignment, promotion, tenure, and extension or termination of employment.
 - c. Dismissal for misconduct or neglect of duty.
 - d. Termination of appointment prior to its expiration date.
 - e. Allegations of procedural unfairness with respect to an adverse employment action. (Adverse employment action has the same meaning here as in B.1.b.) A claim of

procedural unfairness may be based on allegations (i) that the decision-maker did not follow applicable university procedures in deciding upon the adverse employment action, (ii) that the decision-maker did follow applicable university procedures, but that those procedures are fundamentally unfair, or (iii) that the decision-maker acted out of bias or prejudice of a substantial nature that likely had a material impact on the decision to take the adverse employment action.

f. Allegations of damaging instances of harassment directed against a faculty member by another member (or members) of the university community after failure of a university officer or office to resolve the matter.

2. Title IX matters. In the case of a complaint filed by a faculty member with the FHC following a determination by the Office of Institutional Equity (OIE) that the faculty member engaged in conduct in violation of Title IX of the Education Amendments of 1972 (relating to sex discrimination in higher education), the FHC's jurisdiction is limited to review of sanctions (adverse employment actions) imposed on the faculty member based on OIE's determination. The FHC does not have jurisdiction to review OIE's finding of a Title IX violation.

C. Filing of Complaint

1. The FHC process commences when a Faculty Member files a written Complaint with the Chair of the FHC. A Complaint may be filed only by an individual Faculty Member and not on behalf of a group or class of faculty. In instances of identical or closely related complaints filed by multiple Faculty Members, the Chair may convene a panel to consider in a single proceeding such multiple complaints.

2. The Complaint shall:

a. State the action or actions complained of;

b. If all university action in the matter is not complete, explain why the FHC should nonetheless consider the Complaint;

c. Provide a detailed description of the events that gave rise to the Complaint;

d. Include attachments, exhibits, and statements that support the allegations in the Complaint;

e. Identify persons known or believed to have contributed to the adverse decision or action that affected the Faculty Member; and

f. Propose a desired remedy.

3. The Chair shall serve as the presiding officer on the panel. If the Chair is unable to serve on the panel, the Chair shall select another member of the FHC to preside on the matter.

4. If the Chair determines that jurisdiction is in question, a panel of at least three FHC members, including the Chair or presiding member, shall confer to resolve jurisdiction. If the panel finds that the Complaint is not within FHC jurisdiction, the Chair shall inform the Faculty Member who filed the Complaint.

5. Upon receipt of a Complaint and following a determination of jurisdiction, the Chair shall determine who is the appropriate Respondent or Respondents based upon the allegations in the Complaint. If the Complaint is based upon action taken against the Faculty Member by the Member's department, the department chair will ordinarily be designated as the Respondent. In cases involving dismissal or termination, the Respondent is the President or the President's designate.

6. The Chair shall notify the Respondent or Respondents of the matter and provide copies of the Faculty Member's Complaint and supporting materials.

7. The Chair may require a written response from the Respondent or Respondents.

D. Hearing Procedure

1. If the Chair determines that a Complaint falls within the jurisdiction of the FHC, the Chair shall appoint a Panel to consider the matter and, unless not necessary, conduct a hearing.

2. The Panel shall be drawn from the current members of the FHC. At least one member of the Panel shall be trained in law. The Chair shall notify both parties of the names of the Panel members. Either party may challenge any Panel member on grounds of personal interest or bias. If the Chair agrees that a challenge is warranted, the Chair shall appoint a replacement. The Chair or the Chair's designate shall act as the presiding officer of the Panel.

3. In cases of denial of tenure or denial of reappointment, Panels shall consist of five members. In all other cases, the chair of the FHC may, after notifying all parties and considering any objections, name a Panel of fewer than five, but not fewer than three, members. Former FHC members may be appointed in cases of necessity.

4. Hearing

a. The Panel may consider issues in advance of any hearing and resolve any issues for which there is no material factual dispute necessitating a hearing.

b. The purpose of any hearing is to afford the parties opportunity to support their positions and to afford the Panel the opportunity to gather additional material information from parties and witnesses.

c. If a hearing is required, it shall be held at a time and place mutually agreeable to the Panel, the Faculty Member, and the Respondent(s). In case of dispute, the presiding officer shall set the time and place.

- d. Prior to the hearing, the presiding officer may discuss with the parties the plan for the hearing.
- e. The hearing shall be conducted in private unless the Faculty Member, Respondent(s), and Panel all agree otherwise. The Panel shall have the discretion to permit attendance of, or call as witnesses, other individuals relevant to the matter.
- f. If the President, Provost, or Executive Vice-President for Health Affairs is a Respondent, they may attend the hearing or designate a representative to attend.
- g. All parties may have an advisor in attendance at the hearing. The advisor may not take an active part in the hearing.
- h. If the complaining Faculty Member has difficulty securing the attendance of witnesses, the university administration shall request such witnesses to appear.
- i. All evidence, written and oral, shall be recorded by a means furnished by the university.
- j. All parties shall be provided an opportunity, within reasonable limits set by the Panel, to present relevant evidence at the hearing, including the opportunity to:
 - 1. Present their own statement about relevant issues raised by the Complaint;
 - 2. Call witnesses and question all witnesses, by whomever called, and/or submit questions to the presiding officer to be posed to any witness;
 - 3. Introduce documents or other exhibits in support of any claim or response;
 - 4. Rebut any evidence.
- k. The presiding officer shall make determinations relating to the admission or exclusion of evidence.
- l. The presiding officer shall ensure that all participants are treated with respect and conduct themselves professionally.
- m. The Panel, upon request, shall have access to such university records, accounts, files, and other sources of information as may be relevant to issues raised in the Complaint.
- n. If any party objects to the Panel hearing any evidence on grounds of confidentiality or privilege, the Chair or presiding officer, after consultation with university counsel, shall initially review the requested evidence without providing it to other participants, and shall determine whether substantially equivalent evidence is available by other means that would resolve any objection on grounds of confidentiality or privilege, whether redaction of portions of the evidence would resolve any issues, or whether the evidence must be disclosed to ensure fairness of process.

- o. If any party fails to produce evidence that the Chair or presiding officer has required be produced, the Panel may presume that the evidence would be unfavorable to the party who failed to produce it.
- p. The Panel and the parties shall not disclose information of a private or confidential nature obtained in FHC proceedings, except as directed below, or where required by law.

E. Findings and Recommendations of Panel

1. Except as stated in paragraph E.2, the burden shall be on the Faculty Member to prove by a preponderance of the evidence that the facts establish a violation of university policy.
2. In cases involving dismissal for misconduct or neglect of duty, or in the case of termination of an appointment prior to its expiration date, the burden shall be on the President (or the President's representative) to prove by a preponderance of the evidence misconduct or neglect of duty justifying dismissal or termination.
3. The Panel shall issue a Report of its findings and recommendation, if any. The report shall be by majority vote and shall be based on the information provided in the Complaint, in any response, and at the hearing. Absent extraordinary circumstances, the Report should be issued within 60 days of the hearing.
4. In all cases within its jurisdiction in which a violation is found, the FHC may recommend any remedy consistent with university policy.
5. The Chair shall provide the Hearing Panel's Report to the Faculty Member, the Respondent(s), the chair of the Academic Council, the Vice President for Institutional Equity, the Provost or the Executive Vice-President for Health Affairs as appropriate, and the University Ombuds. If the Provost or the Executive Vice-President for Health Affairs is a Respondent in the matter, the Report shall also be sent directly to the President.
6. The Provost (or Executive Vice-President for Health Affairs) shall implement the FHC's recommendation unless the Provost (or Executive Vice-President for Health Affairs) determines that: (1) the matter was clearly outside the jurisdiction of the FHC; (2) the Report's recommendations were (a) not supported by substantial evidence; (b) clearly erroneous; or (c) in violation of university policy; or (3) non-implementation is required by other extraordinary circumstances. The Provost (or Executive Vice-President for Health Affairs) shall state in writing the reasons for not implementing the FHC recommendations and shall refer the matter to the President. The Faculty Member and the FHC shall be informed of the action of the Provost (or Executive Vice-President for Health Affairs) and shall be given the opportunity to present reasons why the Report's recommendations should be accepted. If the Provost (or Executive Vice-President for Health Affairs) determines that implementation of the FHC panel decision would be imprudent, impractical, or unnecessarily repetitious, the Provost (or Executive Vice-President for Health Affairs) may request that the FHC modify or amend the Report's recommendations.

F. Appeals

1. A Complainant may appeal the recommendations of the FHC in writing to the Provost (or Executive Vice-President for Health Affairs) within 10 business days of receipt of the FHC report, giving reasons why they believe that the FHC erred and specifying actions they believe the FHC should have recommended.
2. The Respondent(s) or Complainant may appeal the decision of the Provost or Executive Vice President for Health Affairs in response to an appeal to the President within 10 business days after receipt of the decision. Notice of any such appeal shall be simultaneously provided to the adverse party and the FHC. The adverse party and/or the FHC may, within 10 business days of receipt of the appeal, submit to the President reasons why the decision of the Provost (or Executive Vice President for Health Affairs) should be upheld. The President shall make a decision within 30 days of the request for review.
3. After the President has decided on a request for review, a party may request review by the Executive Committee of the Board of Trustees. This request must be made in writing to the Executive Committee of the Board of Trustees within 10 business days after receipt of the decision by the President. If the Executive Committee chooses to consider action, its review shall be based on the record of the hearing and the report of the FHC, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or their representatives. The Executive Committee may consult with the hearing panel. The Executive Committee may accept, reject, or modify the findings or recommendations of the FHC.

G. Records

For each complaint filed with the FHC, an electronic and/or paper file shall be maintained in the office of the Academic Council for retention of all records created pursuant to the procedures set forth in Sections C through F of these rules, including any hearing recordings. Such file shall be maintained for at least three years. Upon conclusion of each FHC matter, the Chair or presiding officer in the matter shall ensure that all such records are provided to the Executive Assistant of the Academic Council.