

# APPENDIX N: **FACULTY OMBUDS** **AND FACULTY HEARING COMMITTEE**

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## I. Purpose

Duke University (University), with the concurrence of the Academic Council, has established a Faculty Ombuds and a Faculty Hearing Committee (FHC) to facilitate prompt and equitable resolution of allegations by faculty members and instructional staff. The Faculty Ombuds and the FHC shall function in accordance with the policies and procedures set forth below.

## II. The Faculty Ombuds

### A. Selection

The Faculty Ombuds shall be appointed, in consultation with the President, for a term of two years by the Academic Council and selected from active tenured or recently retired members of the faculty. The appointment may be renewed. The Faculty Ombuds shall report directly to the president of Duke University who shall appropriately compensate the Faculty Ombuds and provide reasonable support services.

Upon appointment, the Faculty Ombuds shall maintain active membership in the International Ombudsman Association (IOA) and follow recognized best practices of the profession. Before assuming duties, and regularly while in office, the Faculty Ombuds shall receive training in areas including counseling, implicit and explicit bias, and negotiation and mediation. The Faculty Ombuds shall also be knowledgeable of Duke structures for handling complaints and be familiar with relevant legal requirements. The Ombuds is one of several university channels for preventing and resolving conflicts involving faculty and instructional staff. Faculty and instructional staff may also choose to utilize resources such as those in the Office of Institutional Equity, or where alleged misconduct is by a student, those in the Office of Student Conduct.

### B. Jurisdiction

The Faculty Ombuds shall address concerns or inquiries from faculty and instructional staff related to problems in the workplace or alleged instances of unfairness, impropriety, or insensitivity. In addition, the Faculty Ombuds shall have jurisdiction to consider concerns from faculty and instructional staff including but not limited to the following matters:

1. The university's policy concerning academic freedom and academic tenure as set forth in Appendix C of this handbook;
2. The university's policy of equal treatment in employment, without regard to race, color, religion, national origin, disability, veteran status, sexual orientation, gender identity, gender expression, sex, genetic information, or age;
3. Dismissal for misconduct or neglect of duty;
4. Termination of appointment prior to its expiration date;
5. Disputed claims by a faculty member to the existence of tenure;
6. Allegations of violation of academic freedom;

7. Allegations of violation of academic due process with respect to an adverse employment or disciplinary action, including allegations of biased or prejudiced conduct by a decision-maker of a substantial nature that likely had a material impact on the outcome of the proceedings;
8. 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. Adverse employment actions include actions with respect to the 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.
9. Allegations of damaging instances of harassment directed against faculty and instructional staff by other members of the university community after failure of a university officer or agency to resolve the matter.
10. Faculty and instructional staff may consult with the Faculty Ombuds at any time. However, after a complaint has been filed with the Faculty Hearing Committee, consultation with the Ombuds shall be limited to questions about the FHC's formal processes, functions, and related procedural matters.

### C. Function

The Faculty Ombuds is a confidential, informal, independent, and impartial resource for faculty and instructional staff. The Ombuds provides faculty and instructional staff with guidance on a range of issues, including communication and conflict management skills. The Ombuds listens to the concerns of faculty and instructional staff, provides information and guidance, and attempts to resolve disputes informally through conciliation. Consistent with standards set forth by the International Ombudsman Association (IOA), the Faculty Ombuds "advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization." Among other things, it is expected that:

1. The Faculty Ombuds will practice active listening, ask strategic questions, provide information, and help faculty and instructional staff identify and evaluate available options. With the permission of the inquiring faculty or instructional staff member, the Ombuds will facilitate communications, review documentation and other relevant materials, make referrals, and/or provide mediation.
2. With the permission of the inquiring faculty or instructional staff member, when attempting conciliation, the Faculty Ombuds will confer and discuss the concerns of faculty and instructional staff with appropriate academic officers and submit to them, orally or in written form, any relevant facts and recommendations.
3. The Faculty Ombuds will routinely and promptly follow up with faculty and instructional staff to determine whether additional information or guidance is needed. In cases involving conciliation, the Ombuds will attempt to resolve the matter within 60 days of being contacted by a faculty or instructional staff member.
4. The Faculty Ombuds will collect data, including the number of contacts, the types of concerns, and the unit within the university from which the concern emanated in order to identify patterns or areas where policy changes or other improvements might occur. This information shall be shared with the President and the Academic Council in the manner described in II.C.7 below. To preserve confidentiality, the Faculty Ombuds shall not keep long-term records of individual cases, nor shall the identity of inquiring faculty or instructional staff be revealed except with the permission of those faculty and instructional staff members, or as otherwise required by law.
5. The Faculty Ombuds will operate independently of existing administrative structures. While the Faculty Ombuds may advise faculty and instructional staff and attempt conciliation, the Faculty Ombuds has no authority to make decisions on behalf of the university or on behalf of individual faculty, conduct formal investigations, override policies or decisions, or provide legal advice. The Faculty Ombuds shall be available to answer questions about how to file a formal written complaint with the FHC, as described in III.D below, and to consult with faculty and instructional staff before the initiation of any formal hearings or investigations under university processes. After the initiation of a formal hearing or investigation with the FHC, the Ombuds' role shall be limited as described in II.B.10. The Ombuds, upon request, shall have access to such university records, accounts, files, and other sources of information as may be pertinent to the concern of the faculty or instructional staff member, unless such access is otherwise restricted by law.
6. The Faculty Ombuds shall be in regular communication with other Ombuds at Duke (currently the University's Student Ombuds and the School of Medicine's Ombuds) to identify common patterns, trends or insights that

would be helpful for the university, develop recommendations, engage in professional networking and development, and discuss best practices.

7. The Faculty Ombuds shall make a yearly report to the President and to ECAC. The Ombuds shall present a summary of the report, including the number of contacts, the types of concerns raised, and actions taken, annually to the Academic Council.

#### D. Confidentiality

1. Confidentiality is essential to the Ombuds function and helps create a safe place for faculty and instructional staff to voice concerns, evaluate issues, understand University processes, identify options, and resolve or prevent conflict.
2. The Faculty Ombuds shall not disclose information of a private or confidential nature, except 1) with the express permission of the inquiring faculty or instructional staff, or 2) as required by law or pursuant to court order or other legal process, or 3) where the Faculty Ombuds determines there is imminent risk of serious harm.
3. The Ombuds is not authorized to receive notice on behalf of the university of any formal complaint to the university. For faculty and instructional staff wishing to place the university on notice of any formal complaint, charge, grievance, lawsuit or other claim, the faculty or instructional staff member must file such notice in the appropriate university office. The Ombuds will refer those wishing to place the university on notice of claims to the appropriate office such as the Office of Institutional Equity, Human Resources, or the Office of Risk and Compliance. Conversations with the Ombuds do not toll or affect any time limits by which notice of claims must be provided to the university. The Faculty Ombuds is a Campus Security Authority under the Jeanne Clery Act of 1990 as amended and will report crime information to Duke Police as required by that Act.
4. To the extent allowed by law, Duke University will protect the confidentiality of 1) communications between faculty and instructional staff and the Ombuds, and 2) other activities undertaken by the Ombuds pursuant to this Appendix.
5. The Ombuds may at the Ombuds' discretion discontinue providing services to a faculty or instructional staff member who is not using the Ombuds' services in good faith or is not abiding by the Ombuds' terms of service.

### III. The Faculty Hearing Committee (FHC)

#### A. Selection

1. The Faculty Hearing Committee shall consist of twelve tenured faculty members, nominated by the Executive Committee of the Academic Council and elected by the council at large. In its nominations the Executive Committee shall seek to present a reasonable representation of the university's academic community. The Executive Committee shall appoint one member of the FHC to act as chair.
2. Committee members shall serve for three-year terms, with four being elected to full terms each year and others elected to one-year or two-year terms to fill vacancies or to begin the practice of election to three-year terms, and may be reelected. No person shall serve more than six consecutive years. Retiring members shall nonetheless conclude the 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

The FHC shall have jurisdiction to consider complaints from faculty and instructional staff concerning one or more of the following matters:

1. The university's policy concerning academic freedom and academic tenure as set forth in Appendix C of this handbook;

2. The university's policy of equal treatment in employment, without regard to race, color, religion, national origin, disability, veteran status, sexual orientation, gender identity, gender expression, sex, genetic information, or age;
3. Dismissal for misconduct or neglect of duty;
4. Termination of appointment prior to its expiration date;
5. Disputed claims by a faculty member to the existence of tenure;
6. Allegations of violation of academic freedom;
7. Allegations of violation of academic due process with respect to an adverse employment or disciplinary action, including allegations of biased or prejudiced conduct by a decision-maker of a substantial nature that likely had a material impact on the outcome of the proceedings;
8. 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. Adverse employment actions include actions with respect to the 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.
9. Allegations of damaging instances of harassment directed against faculty or instructional staff by other members of the university community after failure of a university officer or agency to resolve the matter.
10. Appeals from the findings by a harassment grievance hearing panel or the decision by a responsible official based on such findings.

#### C. Jurisdiction Limitations

1. The jurisdiction of the FHC contained in Paragraph III.B.7 above refers to procedural rather than substantive issues.
2. The FHC shall consider complaints only when university action is otherwise complete.
3. In any of the above causes for complaint referenced in III.B, failure to act may be considered an action.

#### D. Filing a Formal Complaint

1. The Faculty Hearing Committee process commences when a complainant files a complaint with the chair of the Faculty Hearing Committee.
2. Complaints and all supporting evidence shall be in writing. The Chair of the FHC may reject any complaint that does not adequately identify the nature of the complaint, the evidence to support the allegations, and the evidence to show a good faith attempt to resolve the complaint. The Chair shall reject any complaint that has been the subject of a previous proceeding, unless significant new facts are presented. The Chair, upon request, shall have total access to such university records, accounts, files, and other sources of information as may be pertinent to the complaint or respondent's reply.
3. The complaint shall be filed with the Chair of the FHC as soon as possible after the occurrence of the action that is the subject of the complaint. The complaint shall:
  - a. Identify the complainant and the respondent;
  - b. State the action(s) complained of and whether all action is considered complete or still in process;
  - c. Specify the nature of the complaint;
  - d. Identify all efforts by the complainant to resolve the dispute;
  - e. Propose a desired remedy;
  - f. Include such attachments, exhibits, and statements in support of the complaint as can reasonably be included;

g. Name any persons thought contributory to decisive action who are also to be considered hostile toward or biased against the complainant.

4. In cases involving dismissal or termination, the respondent is the president or the president's designate. In other cases the respondent designated by the Chair of the FHC will usually be the chair of the department in which the complainant is a member, unless the action complained of was taken despite a departmental recommendation favorable to the complainant, in which case the committee chair or individual responsible for the adverse action is the respondent. Where there has been no department recommendation, the Chair will designate the individual or committee who is the respondent. Complaints shall be brought by individuals and not on behalf of a class.

#### E. The Faculty Hearing Process

1. Upon receipt of a complaint, the chair of the FHC may require written response to the grievance from any or all respondents named, and additional written submissions from either party, to focus the area of disagreement between the parties. Failure of timely response shall be grounds for finding against the non-responsive party. When the president is a respondent, and is represented by a non-responding representative, the president shall have reasonable opportunity to name another representative.

2. The Panel

a. If the chair of the FHC considers that a complaint falls within the jurisdiction of the FHC, as specified in section III above, the chair of the FHC shall appoint a panel to conduct a hearing (if the panel decides that a hearing is necessary), to prepare a report, and to make recommendations. If the chair of the FHC considers that jurisdiction is in question, that question shall be decided in a meeting with at least two other members of the FHC. If there is a finding of jurisdiction, the chair shall appoint a panel to conduct a hearing (if the panel decides that a hearing is necessary), to prepare a report, and to make recommendations. If the finding is that the complaint is not within FHC jurisdiction the chair shall report that conclusion of the complaint to the complainant. To the extent possible, panels shall be drawn from the current members of the FHC, and it is advisable that at least one member of each panel be trained in law. The chair of the FHC shall notify both parties of the names of the panel members. Either party may challenge a panel member on grounds of personal interest or bias. If the chair agrees that a challenge is appropriate, the chair shall appoint a replacement panel member. The chair shall designate one of the panel members to act as presiding officer. The chair shall notify the complainant and the respondent of the membership of the panel and of the presiding officer.

b. Except in cases of denial of tenure or denial of reappointment, where panels should include five members, the chair of the FHC has discretion, after notifying both parties and considering any objections, to name panels of only three members in cases where time available, workloads, and FHC member availability make it necessary. Former FHC members may also be appointed in cases of such necessity.

3. The Hearing

a. If a panel deems a hearing necessary, it shall be held as expeditiously as possible at a time and place mutually agreeable to the hearing panel, the complainant, and the respondents. In case of dispute, the presiding officer shall set the time and place.

b. The hearing shall be conducted in private unless the complainant and respondents both/all agree otherwise. The president, provost, or health affairs chancellor, if a party, shall have the option of attending the hearing, and may also designate an appropriate representative, who shall not be trained in law, and shall not be anyone designated a respondent under III.D.3.g., to develop the case before the panel. Neither party may have an attorney present at the hearing to serve as an advisor. Advisors may be present but may not take an active part in the hearing nor be someone with a law degree. The presiding officer shall be responsible for maintaining decorum, assuring that the parties have a reasonable opportunity to present relevant oral and documentary evidence, determining the order of procedure, and making all procedural decisions. The hearing need not be conducted strictly in accordance with rules of evidence, but the presiding officer may exclude irrelevant evidence.

c. During the hearing, each party shall have the right, within reasonable limits set by the hearing panel, to:

(1) Call, examine, and cross-examine witnesses;

(2) Introduce exhibits;

(3) Rebut any evidence. If the complainant has difficulty securing the attendance of witnesses to testify on the complainant's behalf, the university administration shall assist by requesting such witnesses to appear.

All evidence, written and oral, shall be recorded by a means furnished by the university.

d. A panel may hold sessions involving just the panel and the parties, in order to hear arguments and rulings germane to further hearing sessions.

e. The complainant shall have the right to confront at the hearing all witnesses or other persons the complainant considers adverse, including those named in III.D.3.g above, as subsidiary respondents, except as provided herein. Where unusual and urgent reasons move the hearing panel to permit the introduction of particular testimony taken outside of the hearing, the identity of each such outside witness, as well as the statements taken outside, should be disclosed to the complainant. Subject to these safeguards, statements may, when necessary, be taken outside of, and reported at, the hearing.

f. 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 upon the president or the president's representative to prove by a preponderance of the evidence the existence of misconduct or neglect of duty justifying dismissal or termination. In all other cases, the burden shall be on the complainant to prove by a preponderance of the evidence that the action complained of involved a violation of university policy.

g. The hearing panel, upon request, shall have access to such university records, accounts, files, and other sources of information as may be pertinent to the complaint or respondent's reply. Where considerations of privacy or confidentiality are asserted, however, the FHC chair or panel, after consultation with university counsel, shall first review the requested materials to assure that substantial equivalent information is not available by other means that do not involve considerations of privacy or of confidentiality.

h. The hearing panel and the parties shall not disclose information of a private or confidential nature obtained in the course of these proceedings, except as directed [in III.E.4. below, or where required by law.](#)

#### 4. Findings and Recommendations

a. Except in demonstrated extraordinary circumstances, the hearing panel shall have ninety days from the time the panel is constituted in which to prepare a report of its findings and recommendations. The report shall be by majority vote and shall be based on the [materials included in III.D.3, III.E.1,](#) and any evidence presented at the hearing. The report shall include the panel's findings of fact and its conclusions.

b. The presiding officer shall send notice of the findings and recommendations of the hearing panel to the parties, the chair of the FHC, the chair of the Academic Council, the Vice President for Institutional Equity, and the provost or the health affairs chancellor as appropriate. If the provost or the health affairs chancellor is also a respondent, the report shall be sent directly to the president.

c. If due process is found to have been violated in a decision not to renew a term appointment, grant tenure, or promote in rank, the hearing panel may request that the decision be reconsidered, along with recommended procedures. The provost or health affairs chancellor, as appropriate, may request that the FHC modify or amend its request for reconsideration or recommendation of procedures in instances where effectuation of the FHC panel decision is seen as imprudent, impractical, or unnecessarily repetitious. The provost or health affairs chancellor, as appropriate, shall implement the FHC recommendation unless he or she determines that it is outside the jurisdiction of the FHC; that it is not supported by substantial evidence, is clearly erroneous, or violates fundamental university policy; or that other extraordinary and unusual circumstances require non-implementation. The provost or health affairs chancellor, as appropriate, must state in writing the reasons for not implementing the FHC recommendation and refer the matter to the president. The faculty member and the FHC shall be informed of the action of the provost or health affairs chancellor and given the opportunity, if they wish, to present reasons why the FHC recommendations should be accepted.

d. In all cases within its jurisdiction, except those cases enumerated in subparagraph c immediately above, the FHC may recommend any remedy not inconsistent with university policy.

## 5. Appeals

a. Decisions of FHC panels in the further class of cases involving disputed claims by a faculty member to the existence of tenure, involving academic freedom, involving dismissal for misconduct or neglect of duty, or involving termination of an appointment prior to its expiration date are subject to review only by the Executive Committee of the Board of Trustees pursuant to the request of the complainant or respondent. Any such request for review must be made in writing and within ten business days after receipt of the FHC panel decision. If the Executive Committee wishes to consider taking action in the case, its review shall be based on the record of the hearing and the report of the Chair 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 also consult with the hearing panel. The Executive Committee may accept, reject, or modify the findings or recommendations of the FHC.

b. In cases involving allegations of academic due process:

(1) A complainant not satisfied with the findings and recommendations of the FHC may appeal in writing to the president within ten business days of receipt of the FHC report, giving reasons why he or she believes that the FHC erred and specifying what actions he or she believes the FHC should have recommended, except that in cases also covered by paragraph c. below the time for appeal in the aspect of the case coming under this paragraph b. shall be the same as for the aspect governed by paragraph c.

(2) If the provost or health affairs chancellor, as appropriate, does not wish to implement any or all of the FHC recommendations (for grounds of possible refusal, see paragraph III.E.4.c), he or she must state in writing within ten business days of receipt of the FHC report the reasons why he or she believes that one or more of the grounds for refusal is applicable and refer the matter to the president.

(3) The appeal statement of a complainant, or the reference of a matter to the president by the provost or health affairs chancellor, with statement of reasons, shall be made available to the adverse party and to the FHC at the same time it is sent to the president. The adverse party and/or the FHC may within ten business days of receipt of the appeal or reference submit to the president reasons why the FHC's refusal to recommend relief should be upheld or the FHC's findings and recommendations accepted. The president shall respond within thirty days thereafter to the appeal or reference.

(4) A complainant not satisfied by the action of the president may by letter to the University Secretary request review by the Executive Committee of the Board of Trustees within ten business days of notice of the president's decision. The Executive Committee may consider review under the terms and conditions defined in subparagraph a., immediately above.

c. Decisions of the FHC in cases involving discrimination as defined in section III.B.8 above or harassment as defined in section III.B.9 or section III.B.10 above shall be submitted to the provost or health affairs chancellor, as appropriate, who shall decide within ten business days after receipt of the FHC decision whether to accept, reject, or modify the findings or recommendations of the hearing panel. The decision of the provost or health affairs chancellor may be appealed to the president by the respondent or complainant within ten business days after receipt of the decision. The president shall make a decision within thirty days of the request for review. The decision of the president may be reviewed by the Executive Committee of the Board of Trustees pursuant to the request of the complainant. Any such request for review must be made in writing and within ten business days after receipt of the decision by the president. The Executive Committee may consider review under the terms and conditions defined in subparagraph a., immediately above.

## IV. Records.

A file in the office of the Academic Council shall be maintained for retention of all records created pursuant to the procedures set forth in Sections II and III of this Appendix. Such records shall be kept for at least three years.