



MEMORANDUM

To: Julio Frenk
University President

From: Linda L. Neider
Chair, Faculty Senate

A handwritten signature in blue ink, appearing to read 'L. Neider', is written over the 'From:' line.

Date: March 30, 2020

Subject: Faculty Senate Legislation #2019-71(B) –Revisions to *Faculty Manual* Sections B4.13 and C15, Termination for Cause Committee, and Section B4.10, Committee on Professional Conduct.

The Faculty Senate, at its March 25, 2020 meeting, after the second reading, unanimously approved the proposed revisions to *Faculty Manual* Sections B4.13 and C15, Termination for Cause Committee, and Section B4.10, Committee on Professional Conduct. Existing Section C15 of the *Faculty Manual* does not well serve the interests of the accused, the faculty or the University. Moreover, it has provisions that are cumbersome and are likely to lead to unnecessary delay.

The proposal is enclosed for your reference.

This legislation is now forwarded to you for your action.

LLN/ll/rh

cc: Jeffrey Duerk, Executive Vice President and Provost
David Birnbach, Executive Vice Provost, Faculty Affairs
All Academic Deans

CAPSULE: Faculty Senate Legislation #2019-71(B) – Revisions to *Faculty Manual* Sections B4.13 and C15, Termination for Cause Committee, and Section B4.10, Committee on Professional Conduct.

PRESIDENT'S RESPONSE

APPROVED:  DATE: 4/29/20
(President's Signature)

OFFICE OR INDIVIDUAL TO IMPLEMENT: Dr. Linda Neider, Faculty Senate Chair

EFFECTIVE DATE OF LEGISLATION: _____
(if other than June 1 next following)

NOT APPROVED AND REFERRED TO: _____

REMARKS (IF NOT APPROVED): _____

CONFIDENTIAL DRAFT

MODIFICATION OF *FACULTY MANUAL* TERMINATION FOR CAUSE PROVISIONS

Purposes of the Changes

Existing Section C15 of the *Faculty Manual* does not well serve the interests of the accused, the faculty, or the University. Moreover, it has provisions that are cumbersome and are likely to lead to unnecessary delay.

Changes and Additions

Add the following "charge" to the standing committees section of the *Faculty Manual*.

B4.13¹ Termination for Cause Committee. The Committee shall consist of 23 to 33 members, elected annually by the Faculty Senate. Each member shall be a tenured faculty member, with the rank of full Professor and with substantial time on the University faculty. No member shall be a member or alternate member of the Senate, nor may a member be the holder of any administrative position specified in section A7.1(f) or (g). The Chair of the Senate shall propose names for election. Members of this panel should be chosen on the basis of their objectivity and competence and of the regard in which they are held in the academic community. In proposing names, the Senate Chair shall endeavor to assure a broad cross-section from the schools and colleges of the University, and to assure adequate gender and ethnic diversity. The primary function of the committee is to provide a roster of names that can be appointed to the Review Panel for a particular case. The committee as a whole shall have no role in individual cases. However, the entire committee may meet to make recommendations on policy or legislative language if requested by the Senate Chair or one quarter of the committee members. The jurisdiction of the Committee, the conduct potentially meriting termination, and the procedures to be followed in the event of a complaint are specified in C15.

Delete all of existing section C15 and substitute each of the following subsections:

C15 Termination for Cause Committee

¹ COMMENT: The University Curriculum Committee and the Women and Minorities Committee would be re-designated.

C15.1 Jurisdiction over Persons. Except as provided in C7.5 concerning declared financial emergencies dealing with loss of tenure, and C5.3 concerning RESEARCH FACULTY who have lost their external financial support, all formal disciplinary actions against a member of the UNIVERSITY FACULTY where termination is a possible outcome, including loss of tenure by a tenured faculty member, or termination of employment by a member of the UNIVERSITY FACULTY prior to the end of the faculty member's contract must be brought to and reviewed by the Termination for Cause Committee as set forth in these procedures. The Committee has no jurisdiction over GENERAL FACULTY members who are not UNIVERSITY FACULTY.

C15.2 Conduct over which the Committee has Jurisdiction. The Committee shall have jurisdiction only if the President brings a complaint after findings of fact by a Hearing Panel of the Committee on Professional Conduct (CPC) pursuant to section B4.10 which the President believes support the conclusion that tenure should be revoked and/or the faculty member's employment terminated because the accused has engaged in conduct rendering the faculty member unsuitable to serve the university or has committed unprofessional conduct of a serious character within the meaning of B4.10(c). In the event that the President does not agree with the findings or recommendation of the CPC, the President still has the right to bring the complaint forward to the Termination for Cause Committee.

C15.3 Complaint. If the President decides to seek the termination of a faculty member, then within 10 academic days following receipt of the final report by the Hearing Panel of the Committee on Professional Conduct, the President shall provide to the Secretary of the Faculty Senate and to the accused:

1. a statement of the relevant factual determinations of the Hearing Panel of the Committee on Professional Conduct;
2. a concise statement as to why, in her or his opinion, the acts or omissions specified in paragraph 1 of this sub-section render the faculty member unsuitable to serve the University or which constitute unprofessional conduct of a serious character, warranting consideration by the Termination for Cause Committee; and
3. certification that the University has exhausted all reasonable attempts at an informal resolution, or an explanation as to why, under the circumstances, informal resolution is impossible or inappropriate.

C15.4 Subsequent action by the Senate Chair. The Senate Chair, in consultation with the other Senate Officers, as appropriate:

1. shall return a complaint that fails to meet the requirements of C15.3, in order to have the defect remedied, or to obtain additional information essential to a determination of whether the requirements for action by the Committee have been met, and shall notify the accused;

2. after providing the opportunity to cure any defects in the complaint, shall reject a complaint that does not meet the requirements of C15.1, C15.2, and C15.3, and shall notify the accused;
3. may not accept a complaint if the University failed to bring its complaint within 10 academic days (C15.3). However, upon the request of the President for good cause shown, and after the accused has had a chance to comment, the Senate Chair may waive this time requirement, and shall notify the accused.
4. may defer action pending the outcome of a court case, determination by a professional disciplinary body, or a complaint before the Committee on Professional Conduct related to the conduct specified in the University's complaint, and notify the President and the accused.

C15.5 Non-discretionary duty. Unless an action is taken pursuant to paragraphs 2, 3, or 4 of C15.4, the Senate Chair must appoint a Review Panel in accordance with the requirements of this section.

C15.6 Notice of the decision to appoint a Review Panel. Once the Senate Chair has decided to appoint a Review Panel, the Secretary of the Faculty Senate shall promptly notify the University and the accused of the decision, including the Senate Chair's statement that the requirements of the *Faculty Manual* to appoint a Review Panel have been met. Notice to the accused shall also include a copy of the University's complaint; a copy of this section of the *Faculty Manual* and the relevant portions of C20; a reiteration of the accused's rights to be represented by Academic Counsel or Legal Counsel; and an offer to explain the subsequent procedures to the accused or the accused's Academic or Legal Counsel.

C15.7 Procedures for Selection of the Review Panel.

1. The Senate Chair shall promptly appoint a provisional Review Panel of 11 members selected from the Termination for Cause Committee². No member of the provisional Panel shall be from the same department or un-departmentalized school as the accused. No member may be a relative or domestic partner of the accused or of the President. No member may have been the complaining party or a witness in a prior Committee on Professional Conduct complaint concerning the same faculty member.
2. The provisional members have a duty to recuse themselves if they believe they are ineligible under paragraph 1, if they believe they cannot be fair and impartial, or if they believe their participation will create a conflict of interest or the appearance of such a conflict. Notice of a decision of self-recusal shall be sent to the Secretary of the Faculty Senate as a matter of urgency so as not to delay the

² All provisional Review Panel members will be requested to sign a confidentiality agreement, supplied by the Faculty Senate.

proceedings. The Senate Chair shall then appoint additional members of the Committee, so that the provisional panel has 11 members.

3. The Senate Chair or his or her designee, chosen from the membership of the Committee on General Welfare, shall conduct a very brief oral examination of the provisional members. The parties, (or the President's representative), their Academic or Legal Counsel, the Senate Chair or Senate Officer and the Secretary of the Faculty Senate shall be in attendance. Neither party may directly question the provisional members, but they may suggest questions in writing to the Senate Chair or his or her designee prior to the oral examination. Each party may exercise a maximum of two peremptory challenges (i.e. dismissal of a panel member without cause and without the need to provide any reason for the challenge).
4. Upon the conclusion of the oral examination, the Senate Chair shall select five of the remaining members to serve on the Review Panel, and two to serve as alternates. The members of the panel shall then meet to select one of them as Chair of the Review Panel. In the event that they cannot do so within a brief time not to exceed one academic day, the Senate Chair shall pick the Review Panel Chair.
5. Notice of the names and departments/schools of the members and alternates of the Review Panel shall be provided by the Secretary of the Faculty Senate to the parties, the counsels for the parties, and the members of the Panel.

C15.8 Subsequent Actions

1. Within 5 academic days of the notice of selection of the Review Panel, the University shall provide the Secretary of the Faculty Senate the following for distribution to the accused, the counsel for the accused, and the Review Panel members and alternates:
 - a. a brief statement of the grounds asserted for termination or other sanction, which shall be confined to one or more of those listed in Section B4.10 as granting jurisdiction to the Hearing Panel of the Committee on Professional Conduct; and
 - b. a Bill of Particulars, which shall consist of the findings of the Hearing Panel of the Committee on Professional Conduct.. In cases in which the President does not agree with the findings or recommendations of the CPC, the Bill of Particulars shall also include findings with which the President disagrees, and the specific reasons why the President believes that revocation of tenure and/or termination of employment prior to the end of the faculty member's contract is warranted. Where relevant, the Bill of Particulars shall also set forth the detailed standards of conduct that are alleged to have been infringed.
 - c. A complete record of the proceedings before the Hearing Panel.

2. The accused shall provide the Secretary of the Faculty Senate a written reply to the Bill of Particulars within 5 academic days of the provision of that document to the accused. The reply shall address in reasonable detail each of the grounds asserted in the Bill of Particulars. The Secretary shall provide copies of the reply to the University, the counsel for the University, and the Review Panel members and alternates.
3. With the assistance of the Faculty Senate Office staff, the Chair of the Review Panel will provide a list of proposed dates for the hearing, and solicit the comments of the parties not to exceed 15 academic days from the receipt of the Bill of Particulars. The Secretary of the Faculty Senate shall then set the dates of the hearing, with assistance with the logistics from the President's Office staff, as needed. .

C15.9 Matters on Which Testimony May be Taken

1. Facts established by a Hearing Panel of the Committee on Professional Conduct – whether by admission of the accused or by a determination of the Hearing Panel, and reported to the Senate and the President – shall be deemed to be true. Such findings of fact may be overturned only when they are determined to be unsupported by substantial evidence, and the error is highly prejudicial. Evidence supporting such a claim may only be taken if the Review Panel determines from the parties' written submissions pursuant to C15.8 that the Hearing Panel's determinations of fact were not supported by substantial evidence and highly prejudicial.
2. Except as otherwise allowed by this sub-section, or by paragraph 1 of C15.10, new facts may not be offered into evidence unless they are highly relevant and could not have been put forth to the Hearing Panel of the Committee on Professional Conduct.
3. Non-cumulative evidence may be taken to support assertions by either party of the existence of matters in aggravation or mitigation, or reflecting on the seriousness of the conduct found by the Hearing Panel of the Committee on Professional Conduct.

C15.10 Panel Procedures

1. The Review Panel Chair shall specify a date, not to exceed 5 academic days, by which the parties must provide a list of witnesses they intend to call, and documents or exhibits they intend to put into evidence, pursuant to Section C15.9(1) through (3). The lists shall be provided to the Secretary of the Faculty Senate for distribution to the parties and the Panel. Only evidence disclosed in accordance with this paragraph may be used at the hearing, except as essential for rebuttal purposes. However, the Review Panel Chair may admit unlisted evidence if it was unknown to the party by the date when the parties must

provide their lists, and failure to consider the additional evidence would constitute a clear miscarriage of justice.

2. The University has a duty to make known to the accused any exculpatory documents, or the identity of witnesses who could provide evidence favorable to the accused. A knowing failure to do so which is material to the outcome invalidates any adverse action that may be recommended by the Review Panel against the accused. A copy of the documents and/or the identity of such witnesses shall also be provided to the Secretary of the Faculty Senate.

Except under exceptional circumstances as determined by the Review Panel Chair, or as otherwise provided in the *Faculty Manual*, no other discovery shall be allowed prior to the Hearing.

4. The procedures contained in this section, and elsewhere in the *Faculty Manual* to the extent relevant, shall be binding upon the Review Panel. The Review Panel shall otherwise determine for itself the procedures it shall follow. However, the Faculty Senate may, by class D legislation, adopt "default" procedures which are binding on Hearing or Review Panels unless a Panel makes an express decision to the contrary in writing and conveys that decision to the parties and their representatives through the Secretary of the Faculty Senate.
5. Parties. The parties to an action under this section shall consist only of the accused faculty member and the University. The accused has a right to be represented by Academic Counsel or Legal Counsel as those terms are defined in C20.2. Legal Counsel must comply with the provisions of paragraph 2 of that sub-section. The President may designate an administrator to act as the complaining party for the University. The University shall be represented by the General Counsel's office. However, if the accused chooses to be represented by Legal Counsel, the University has the option to be represented instead by outside counsel.
6. Only the following persons may be present during the hearing: the members of the Panel and the alternates, the accused, the Academic or Legal Counsel for the accused, the President or Provost, the President's designated representative, or the Provost's designee, Counsel for the University, a witness then being examined, the Secretary of the Faculty Senate, and the court reporter. The court reporter shall administer an oath to each witness.
7. Notices and Filing of Documents. Unless the Chair of the Review Panel decides to the contrary, all notices shall be filed in accordance with the terms of C20.7. The originals of all documents that are to be provided to either party shall be filed with the Secretary of the Faculty Senate, who shall distribute copies to the parties and their counsel.

8. Requirements of Law. The hearing shall not be conducted with the strictness of a court of law. Neither state nor federal rules of civil or criminal procedure, nor rules of evidence shall apply. Hearsay evidence may be proffered for the probative value, if any, it may possess. The adverse party has a right to challenge the relevance, authenticity and veracity of any evidence presented.
9. Nothing in paragraphs 7 and 8 of this sub-section shall prevent the Chair of the Review Panel from requiring that documents be adequately identified in order to assure their authenticity, from placing time limits on testimony, or from precluding or otherwise limiting testimony that duplicates prior evidence.
10. The accused has the right to decline to testify or otherwise speak during the hearing. The Review Panel shall not draw any inferences from the accused exercising this right.
11. Each party or the Academic or Legal Counsel for a party shall have the right to make opening remarks, to call and examine witnesses and place documents and exhibits into evidence which are relevant to the issues listed in C15.9, to cross-examine witnesses for the other party, and to make a closing statement either orally or written, as determined by the Panel. After a witness has been examined and cross-examined, the members of the Review Panel may also pose questions. The Review Panel may allow or require the parties to submit post-hearing memoranda. If so, each party shall have the right to submit a written reply to the memorandum of the other party.
12. A transcript of the proceedings shall be made by a competent court reporter at the University's expense. Copies of the transcript shall be provided at no cost to the accused, and to the Secretary of the Faculty Senate.

C15.11 Findings of Fact and Recommendations of the Review Panel.

1. Following the completion of hearings, if any, the Review Panel shall meet to review the facts and make recommendations. Only the Review Panel Members and the Secretary of the Senate shall be present. No recording or transcription of the deliberations may be made.
2. The Review Panel must consider the severity of the offense, and any aggravating or mitigating circumstances.
3. Within 10 academic days of the conclusion of the hearings and any additional time allowed for submission of post-hearing memoranda, the Review Panel shall send a report to the Secretary of the Faculty Senate. This timeframe may be extended to permit a transcript of the hearings to be completed and delivered. The report shall include (i) a brief recitation of its findings of facts, including any facts previously established by a Hearing Panel of the Committee on Professional Conduct on which the Panel relied; (ii) its conclusions as to whether the facts so

- found support the conclusion that the conduct renders the faculty member unsuitable to serve the University or has engaged in unprofessional conduct, and its assessment of the seriousness of the acts or omissions; and (iii) its recommendations.
4. In making its recommendations, the Review Panel report shall include one of the following conclusions, and provide an explanation of its choice:
 - a. the accused has presented conclusive proof that the earlier findings of fact by the Hearing Panel of the Committee on Professional Conduct were not supported by substantial evidence and were highly prejudicial to the accused. Accordingly, the accused is exonerated, and any further sanction would be unjust. The Review Panel urges the President and the Senate to consider reversing any sanction already implemented;
 - b. the unacceptable conduct or omission transpired but any further sanctions beyond those already imposed would be unjust;
 - c. there has been a violation of one or more standards as charged, but only a lesser sanction, such as one listed in B4.10 (p)(iii), is warranted;
 - d. there has been a violation of one or more of the standards as charged in the complaint, and the violation is serious enough to justify a more serious sanction than could be imposed under B4.10(p)(iii), but is not serious enough to warrant the termination of the faculty member's employment. Such sanctions could include (i) a bar on serving in any administrative capacity or in any position involving faculty governance; (ii) restrictions on contact with students; (iii) a loss of faculty voting rights permanently or for a period of years; (iv) a permanent reduction of a faculty member's base compensation to an amount between 50% and 90% of the current amount; and/or,(v) termination of tenure or of the remaining periods of a multi-year contract, but with the retention of the faculty member's employment as that of a lecturer or other staff member; or
 - e. termination of employment.
 5. Dissenting and concurring opinions are strongly discouraged, but if prepared, shall be included in the report sent to the Secretary of the Faculty Senate, who shall notify the President and the accused of the Review's Panel's findings and recommendations.
 6. Within 10 academic days of provision of the report, the parties may transmit to the Secretary of the Faculty Senate any objections they have to the findings of fact and recommendations.

7. The Secretary of the Faculty Senate shall transmit any statements of objection by the parties, to the President, and the accused.

C15.12 Miscellaneous Provisions

1. Nothing in this section shall prevent an accused from retiring if eligible, from resigning, or from settling the matter with the University at any time up until the Review Panel submits its findings and recommendations. Notice of such an action shall be communicated in writing to the Secretary of the Faculty Senate. The Chair of the Faculty Senate shall then dismiss the case.
2. Failure of the accused to respond to preliminary matters or to participate in the proceedings shall not deprive the Review Panel of jurisdiction. Unless there was a failure of notice or an emergency justifying non-participation, the Panel shall then hear any witnesses and consider other evidence proffered by the University and make its findings and recommendations to the President without the participation of the accused.
3. All aspects of the processes and proceedings under this section shall be confidential. Breach of confidentiality by any faculty member constitutes unprofessional conduct and shall be handled in accordance with B4.10. Breach of confidentiality by any other university official or employee shall be considered a serious violation which may result in disciplinary actions up to termination of employment. No public statement or press comment shall be made concerning any aspect of the process unless the parties and the Chair of the Faculty Senate agree to allow a specific release of material. However, upon the conclusion of all hearing procedures and any appeals, the University may confirm that a faculty member has been terminated or otherwise sanctioned, or the accused may confirm that no sanction has been imposed.
4. The accused may be suspended during the University's investigation and the proceedings outlined under this section only for cases involving a serious risk to the safety of others. Any such suspension shall be with pay.
5. Service on the Review Panel as a party, Academic Counsel, witness, Panel member or alternate may conflict with the participant's scheduled activities. The President shall direct the relevant Deans and Chairs to facilitate the participation of their faculty members. As needed, the Office of the Executive Vice President and Provost shall make such arrangements as are necessary to cover the teaching and other University assignments of such faculty members so that the proceedings may be conducted from day to day until they are concluded.
6. In order to comply with the requirement that the proceedings continue from day to day until they are concluded, if necessary the Review Panel members shall continue to serve after the last day of scheduled undergraduate examinations in either semester. The Executive Vice President and Provost shall compensate the Review

Panel members who are not on twelve-month contracts for any additional days of service on a *pro rata* basis, and reimburse for any additional expenses caused by any such continuation of service. Weekday days when such hearings are held after the last scheduled undergraduate examination are to be considered academic days for the purposes of this section only.

7. All members of the University community have a duty to cooperate with the Review Panel. They shall provide documents or testimony upon the request of a party. Failure to do so after a proper request has been provided shall be subject to disciplinary measures. However, nothing in this paragraph shall preclude the Chair of the Review Panel from dismissing a request for particular documents or testimony, if the requested person establishes that compliance would be excessively burdensome or an unwarranted intrusion into personal matters when compared to the benefit of the requested evidence to the process. The Chair of the Review Panel shall have the authority to redact the names or other identifying information of innocent third parties from documents, and to direct witnesses not to use such names or other identifying information in their testimony
8. Provision of knowingly false testimony or fraudulent documents by any employee is a serious offense. If done by the accused, the Review Panel shall give heavy weight to the offense in making its findings of fact, its conclusions concerning the seriousness of the faculty member's conduct, and its recommendations concerning sanctions pursuant to C15.11. If done by a member of the UNIVERSITY FACULTY other than the accused, the matter shall be referred by the Review Panel Chair to the Chair of the Senate for action by the Committee on Professional Conduct under B4.10. If done by any other university employee, the university shall impose disciplinary action, up to termination of employment.
9. For good cause shown, the Chair of the Review Panel may authorize the use of interactive video conferencing as a means of taking testimony. Electronic means of conferencing may also be used by the Review Panel for its confidential deliberations.

C15.13 Decision of the President. After considering the report of the Review Panel along with any objections it received pursuant to Section C15.11.6, the President shall render a decision on the sanctions, if any, to levy against the accused. The President would normally be expected to uphold and implement the recommendations of the Review Panel. Unless the Board of Trustees chooses to review the case in accordance with C15.14, the decision of the President is final. Upon the decision of the President, the Chair of the Faculty Senate shall dismiss the Review Panel. If the President's decision differs from the recommendations of the Review Panel, the reasons for the difference shall be explained in writing to the Secretary of the Faculty Senate. The Secretary of the Faculty Senate shall provide a copy of this statement of reasons to the accused and to the Senate's General Welfare Committee members.

C15.14 Discretionary Review by the Board of Trustees

1. Transmission to the Board of Trustees. The President shall transmit the President's decision to the Board of Trustees, or the relevant Board Committee, with copies to the accused and the Secretary of the Faculty Senate. The full report of the Review Panel, including any minority findings and recommendations, along with any objections it received pursuant to Section C15.11.(6) shall be provided to the Board or relevant Board Committee. If the President's decision under C15.13 differs from the recommendation of the Review Panel, the Board shall also receive the President's letter of explanation.
2. Discretionary Review.
 - a. If the Board (or its committee) decides to review the matter, its review shall be based on the findings of fact, conclusions as to the seriousness of the conduct, and recommendations of the Review Panel, as well as statements of objection by the parties pursuant to C15.11 and the decision of the President. There shall be an opportunity for argument (oral, written, or both as the Board may decide) by the parties (or the President's representative), or their Academic or Legal Counsel.
 - b. The President (or the President's representative) and the Chair of the Faculty Senate (or the Chair's representative) shall be given the opportunity to be present when the Trustees consider the report of the Review Panel and related documents, shall have access to all documents submitted to the Trustees in the matter, and may address the Board briefly if they, or the Board, so request.
 - c. The Board will then decide, outside the presence of the President (or the President's representative) and the Chair of the Faculty Senate (or the Chair's representative), whether to sustain the President's decision, overrule the President's decision and impose its own sanctions, or refer the matter to the Review Panel pursuant to Section C15.14(3).
 - d. Upon a final decision of the Board, the matter is closed.
3. Return of the Case to the Review Panel.
 - a. The Board may return the matter to the Review Panel through the Secretary of the Faculty Senate, either (i) to pose specific questions to the Review Panel or (ii) to direct the Review Panel to obtain additional evidence on specified issues. The Secretary of the Faculty Senate shall provide the parties a copy of the Board's action within five (5) academic days of the request. If necessary to comply with the action of the Board of Trustees, the Chair of the Review Panel shall advise the parties of the issues and direct them to produce any additional evidence they may have that is relevant to the specified issues. Within ten (10) academic days after sending copies of the Board's action to the parties, the Review Panel shall meet to hear argument from the parties and receive any additional evidence, but such evidence shall be limited exclusively to the points specified by the Board.

- b. The Review Panel proceedings required by this sub-section shall continue from academic day to academic day until they are completed. Upon the receipt of any additional evidence and argument offered by the parties, the Review Panel shall consider whether it should modify its statement of facts or its conclusions and recommendations. Within ten (10) academic days from the conclusion of the supplemental hearing, the Review Panel shall send its report through the Secretary of the Faculty Senate to the Board of Trustees and the President. The provisions of C15.12 (5) and (6) shall apply to any such continuation.
- c. Upon consideration of any report sent by the Review Panel in accordance with paragraph b. of this sub-section, the Board of Trustees shall render its decision, and provide it to the Secretary of the Faculty Senate for distribution to the President and the accused.
- d. The determination of the Board of Trustees is final. Upon receipt of the Board's decision, the Chair of the Faculty Senate shall dismiss the Review Panel.

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B4.10 (a) The COMMITTEE ON PROFESSIONAL CONDUCT (CPC) has jurisdiction over complaints that a member of the UNIVERSITY FACULTY has committed unprofessional conduct.⁺²

The primary function of the committee is to provide a roster of names that can be appointed to the Hearing Panel for a particular case. The committee as a whole shall have no role in individual cases. However, the entire committee may meet to make recommendations on policy or legislative language if requested by the Senate Chair or one quarter of the committee members.

(b) The CPC consists of at least twenty-five members, elected annually by the Faculty Senate. Each member shall be a tenured faculty member, with the minimum rank of Associate³ Professor and with substantial time on the University faculty. No member shall be a member or alternate member of the Senate, nor may a member be the holder of any administrative position specified in section A7.1(f) or (g).

~~(c)~~ (c) Except as provided elsewhere in this section, the CPC shall have jurisdiction over:

1. an allegation that a member of the UNIVERSITY FACULTY is not suitable to serve the university by virtue of having:
 - i. been convicted of a serious crime or entered into a plea of guilty to the commission of such a crime by an American court or by a foreign court that accords a high standard of due process rights, and the acts committed would constitute a felony under federal law or the laws of Florida; or
 - ii. been convicted of multiple misdemeanors by one or more American courts for which a guilty party could have been sentenced to imprisonment for more than 30 days for each offense, but not including simple traffic offenses or violation of local ordinances;
2. an allegation that a member of the UNIVERSITY FACULTY has engaged in unprofessional conduct by:
 - i. violating a provision of this *Faculty Manual*, including the *Faculty Handbook*, that sets forth standards of conduct;
 - ii. violating specific written professional standards of conduct applicable to a person in the faculty member's profession, such as those applicable to members of the bar or licensed physicians;
 - iii. violating ethical or behavioral standards generally applicable to faculty members, such as those including but not limited to dealing with plagiarism, abuse of students, physical contact without consent, or committing common-law battery against a member of the university community;
 - iv. repeatedly failing to perform essential duties set forth in legislation adopted by the Faculty Senate, or a written bylaw of the faculty member's primary Department or School, and the failure to perform faculty duties without justification or approval by the Faculty Senate. Such a failure is more serious if the faculty member received a

⁺ #2009-28(B)

² #2009-28(B)

³ #2018-59(D)

written warning and the deficiency persisted;

- v. committing serious defalcations involving university funds or resources, or intentionally damaging valuable university property; or
- vi. engaging in retaliation of any sort against an individual who has made a good faith charge against another individual for violation of the Faculty Manual or applicable law.

- (d) A complaint that a member of the UNIVERSITY FACULTY has engaged in unprofessional conduct can be brought:
- (i) either by the University, acting through the President, the Provost, the Vice Provost for Faculty Affairs, or an Academic Dean. Before the University may file a complaint under this sub-paragraph, a thorough investigation must take place; or
 - (ii) by a member of the UNIVERSITY FACULTY who does not fall within (c)(i).
- (de) The complaint shall be addressed to the Chair of the Faculty Senate in writing. The complaint shall include, at a minimum:
- (i) a brief recitation of the alleged conduct and when it occurred;
 - (ii) a concise statement as to why, in the opinion of the complaining party, the conduct is unprofessional; and
 - (iii) a declaration that ~~all~~ reasonable attempts at informal resolution have been exhausted, or an explanation as to why, in the opinion of the complaining party, further attempts at informal resolution would be pointless.
- (ef) Except as provided in paragraphs (f) or (h), upon receipt of a complaint meeting the requirements of paragraphs (c) and (d), the Chair of the Faculty Senate must appoint a hearing panel for the case as soon as it is feasible to do so.
- (fg) The Chair of the Faculty Senate may not appoint a hearing panel if:
- (i) the complaint, even if assumed to be correct in all its factual allegations, does not allege conduct that any reasonable hearing panel could construe as unprofessional; or
 - (ii) the gap between the time in which the allegedly unprofessional conduct occurred and the filing of the complaint is so great as to make the complaint untimely in terms of the availability of evidence and witnesses, prejudice to the accused, or other relevant factors.
- (gh) If the complaining party disagrees with the decision of the Chair of the Faculty Senate under paragraph (f), the party may appeal the ruling to the Committee on General Welfare within 10 academic working days from the date the Chair's decision is sent to the complaining party. The Committee on General Welfare has 10 academic working days from the time of receipt of the appeal in which to render a decision. At its sole discretion, it may make the decision on the basis of written documents, or may request the complaining party and the Chair of the Faculty Senate to make oral presentations.

- (~~h~~i) The Chair of the Faculty Senate has the discretion not to appoint a hearing panel if the same or substantially the same conduct is under investigation by the Committee to Investigate Misconduct in Research, by the Faculty Sexual Harassment Officer, by the Senate's Committee on Rank, Salary and Conditions of Employment, or by the Faculty Hearing Committee as these roles are specified in the *Faculty Manual*. The Chair has similar discretion if the matter is subject to an indictment or information by a State or Federal prosecutor. Any decision not to appoint a hearing panel on one of the grounds listed in this paragraph is without prejudice to the filing of a complaint after such investigations or proceedings have concluded.
- (~~j~~) The hearing panel for a particular case shall consist of three members of the CPC selected by the Chair of the Faculty Senate. To the extent feasible, the selected members of the hearing panel shall include one member who has had legal training. No member of the hearing panel may be:
- (i) from the same department or undepartmentalized school as the accused;
 - (ii) from the same department or undepartmentalized school as the complainant in the case of a complaint filed pursuant to paragraph (c)(ii); or
 - (iii) a relative or domestic partner of the accused, of the complainant, or of an individual who holds one of the offices listed in (c)(i).
- (~~h~~)~~j~~(k) Service on the Hearing Panel as a party, Academic Counsel, witness, Panel member or alternate may conflict with the participant's scheduled activities. The President shall direct the relevant Deans and Chairs to facilitate the participation of their faculty members. As needed, the Office of the Executive Vice President and Provost shall make such arrangements as are necessary to cover the teaching and other University assignments of such faculty members so that the proceedings may be conducted from day to day until they are concluded. The Executive Vice President and Provost shall compensate the Review Panel members who are not on twelve-month contracts for any additional days of service on a pro rata basis, and reimburse for any additional expenses caused by any such continuation of service. Weekday days when such hearings are held after the last scheduled undergraduate examination are to be considered academic days for the purposes of this section only.
- (~~l~~) As soon as the hearing panel is constituted, the Secretary of the Faculty Senate shall forward a copy of the charges to the accused and the complainant, notifying them of the following matters in writing:
- (i) the appointment of the hearing panel and the names of its members;
 - (ii) the requirement that the accused provide a brief reply to the charges;
 - (iii) the requirement that any communications related to the matter before the hearing panel by a party or that party's counsel with the panel, with the other party, or with any official listed in (c)(i) be made only through the Faculty Senate Office; and
 - (iv) the procedures by which the hearing panel will carry out its work.
- (~~k~~)~~m~~) In the case of a complaint filed by the university pursuant to paragraph (c)(i):
- (i) The hearing panel shall hold a hearing promptly after its appointment.

- (ii) The hearing panel must present its final report within 30 academic working days, measured from the receipt of the complaint by the hearing panel to the date a final report is sent to the President and Senate, unless the Chair of the Faculty Senate, for good cause, grants an extension of not more than 20 academic working days.
- (iii) The accused shall have the right to represent him or herself or to be represented at the hearing by academic counsel or legal counsel. The University shall be represented by the Office of the General Counsel. However, the university may utilize outside counsel if the accused decides to be represented by legal counsel.

- (~~h~~) In the case of a complaint filed by a faculty member pursuant to paragraph (c)(ii):
 - (i) The complaint shall be investigated by one or more investigators appointed by the Chair of the Faculty Senate from the membership of the CPC. No investigator may be a member of the hearing panel for the same case, nor may an investigator be appointed who is excludable from panel membership for the same case under the provisions of paragraph (i).
 - (ii) The accused and the complainant each have the right to explain the facts and circumstances to the investigators, but without counsel present. The accused also has the right, without prejudice, to decline to speak with the investigators.
 - (iii) The investigators shall report their findings in detail to the hearing panel as quickly as a careful investigation will allow, but in any event within 30 academic working days.
 - (iv) If upon consideration of the report by the investigators, the hearing panel concludes that there appear to be sufficient facts which, if established at a hearing, make it more likely than not that unprofessional conduct has taken place, a hearing shall be held promptly.
 - (v) From the date the hearing panel receives the report of the investigators, the hearing panel has 20 academic working days to conduct the hearing and present its report to the President and Senate, unless the Chair of the Faculty Senate, for good cause, grants an extension of not more than 20 academic working days.
 - (vi) The accused and the complainant shall have the right to be represented at the hearing by academic counsel or legal counsel. The Office of the General Counsel may participate at its discretion.

- (~~h~~~~o~~) In any hearing pursuant to this section:
 - (i) A hearing panel member or investigator has a duty to recuse him or herself if there would be, or there would appear to be a conflict of interest or any reason why the panel member could not be neutral and impartial. The accused shall have the right to request that the Chair of the Faculty Senate remove a panel member for good cause shown.
 - (ii) The accused has a right to waive the hearing, in which case the decision of the hearing panel shall be based on the information already available to the hearing panel. The accused also has the right, without prejudice, to decline to speak during the hearing.^[HR1]

~~(iii)~~ The accused has a right to raise affirmative defenses justifying the conduct, if the asserted defense is based on an interpretation of law, professional standards, or the Faculty Manual.

- (iv) The accused may plead guilty to one or more of the charges, in which case, the hearing will then be held concerning the remaining charges, if any.
 - (~~iv~~v) The panel may, at its discretion, require the filing of briefs, memoranda or other documents by the parties before or during the hearing, and may issue orders governing the conduct of the hearing and the panel's processes.
 - (~~v~~vi) The complainant, the accused, and the General Counsel's office shall have the right to make opening and closing statements either orally or written, as determined by the Panel; to examine all briefs, and other documents presented to the hearing panel; and to present, examine, and cross examine witnesses.
 - (~~vi~~vii) The accused has the right, during or after the hearing but before the panel concludes its report, to make an oral statement or to file a written statement to the hearing panel explaining matters in mitigation.
- (~~np~~p) If the hearing panel has reason to believe that an individual acting as complainant or witness has knowingly introduced evidence that has been fabricated or has knowingly given false testimony, the panel may recommend:
- (i) in the case of a faculty member, that the Chair of the Faculty Senate bring a charge of unprofessional conduct against the faculty member; or
 - (ii) in the case of an employee who is not a faculty member, that the Chair of the Faculty Senate bring the matter to the attention of one or more appropriate administrators.

(~~o~~)

~~In the event that the hearing panel concludes that no unprofessional conduct has taken place, or that only a trivial or technical violation has taken place, it shall prepare a report to the Chair of the Faculty Senate briefly explaining its conclusions. At its discretion, the hearing panel~~(q) The University has a duty to make known to the accused any exculpatory documents, or the identity of witnesses who could provide evidence favorable to the accused. A knowing failure to do so which is material to the outcome invalidates any adverse action that may be recommended by the Review Panel against the accused. A copy of the documents and/or the identity of such witnesses shall also be provided to the Secretary of the Faculty Senate

(r) Upon the conclusion of its hearings and deliberations, the Hearing Panel shall prepare a report to the President, the Chair of the Faculty Senate and the accused and forward to the Secretary of the Faculty Senate for distribution. The reports shall contain the following sections (i) The findings of facts of the Panel, including in particular the acts or omissions of the accused which are relevant to the matters charged; (ii) the conclusions of the Panel as to whether the facts support a finding that the accused is not suitable to serve the university within the meaning of sub-section C (1) or has engaged in unprofessional conduct within the meaning of C (2), and, if so, whether the conduct was merely a technical or trivial violation; and (iii) the sanctions recommended to the President and the Senate, respectively, if any. At its discretion, the Hearing Panel may comment on matters it believes should be rectified or reformed, and may request that these comments be forwarded to the Senate, the President, and/or other appropriate administrative officials.

~~The Chair of~~ Once the report has been submitted, the Faculty Senate Chair shall ~~then~~ dismiss the ~~case~~⁽¹¹²⁾ Panel and make a report to the Committee on General Welfare, taking care to protect privacy and confidentiality.

~~(s)~~ In those cases in which the hearing panel concludes that no unprofessional conduct has taken place, or that only a trivial or technical violation has taken place, and no sanctions are recommended, the Chair of the Faculty Senate shall then dismiss the case.

~~(t)~~ If the hearing panel determines that unprofessional conduct has taken place, and that the conduct was not merely a trivial or technical violation, it shall prepare a report to the Chair of the Faculty Senate and to the President. It shall recommend one or more of the following as sanctions:

- (i) *Censure by the Senate.* If the Senate concurs with the recommendation of censure, it shall decide on the text of the censure resolution, on the means and extent of publication of the resolution, on whether the censure resolution shall be made a part of the faculty member's personnel records, and on whether the member shall be barred or suspended from service on the Senate.
- (ii) *Dismissal,* in accordance with the procedures specified in section C15 of the *Faculty Manual.*
- (iii) *Sanctions by the President other than dismissal.* The President may take one or more of the following actions: restrictions on pay increases for a period of years; a one-time reduction in pay not to exceed 10% of base pay; required counseling or training; loss of rights to have graduate Research Assistants or Teaching Assistants; and/or termination of appointment to an Administrative position. The President is not required to impose the sanctions recommended by the hearing panel, but shall explain in writing to the Senate the reasons for imposing sanctions that differ from the hearing panel's recommended sanction(s).

~~(u)~~ Nothing in this section shall be interpreted to preclude a mutually satisfactory settlement between the complainant and the accused (for a case filed under paragraph (c)(ii)). A mutually satisfactory settlement may also be reached between the university and the accused (for a case filed under (c)(i)), provided, that such a settlement may not adversely affect the interests of third parties. Any settlement must be reached prior to the time the hearing committee files its report to the Senate. If a settlement is reached, the Chair of the Faculty Senate shall dismiss the case.

~~(v)~~ The Senate shall adopt and publish written procedures as Class D legislation for⁴:

- (i) Filing and processing complaints;
- (ii) Appointment of investigators and hearing panel members;
- (iii) The conduct of hearings; and
- (iv) Consideration of censure and related matters by the Senate.

In the event of a conflict between those procedures and this section, this section shall prevail.

⁴ [#2011-23\(D\)](#) – procedures