



# **POLICY MANUAL**

## **FACULTY**

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**Number 407**

**Subject: Academic Due Process: Sanctions and Hearing Procedures**

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### **407.1 INTRODUCTION**

This policy describes allowable sanctions that may be imposed on a faculty member and specifies procedures for the imposition of a sanction, for establishing medical incapacity, and for conducting a grievance hearing.

Where administrators have faculty role assignments, they are subject to the provisions of this policy, such provisions to be carried out by their immediate supervisors.

In the absence of the President, or where a potential or actual conflict of interest exists, the President may designate a tenured faculty member to act on his/her behalf. If the Provost is not a tenured faculty member or where a potential or actual conflict of interest exists, the Provost may designate a tenured faculty member to act on his/her behalf.

In all proceedings in this policy, the rights of access to records are maintained (see Policy 405.6.4).

#### **1.1 Non-punitive Measures**

Non-punitive measures such as guidance, counseling, therapy, leave of absence, voluntary resignation, or early retirement should be considered and taken in lieu of a sanction when: (1) it is available; (2) it will provide reasonable assurance that the faculty member will not repeat his/her violation of professional responsibility; (3) substantial institutional interests are not undermined; and (4) the faculty member consents thereto.

## **1.2 Definitions of Days**

In all proceedings under Policy 407, a day is defined as a calendar day (Sunday through Saturday, excluding official university holidays).

## **407.2 SANCTIONS**

Misconduct contrary to the standards of conduct set forth in Policy 403 may lead to sanction. Minor departures from responsible professional behavior are likely to be minor lapses which can be corrected simply by calling the matter to the attention of the faculty member involved. Such minor lapses are handled within the faculty member's academic unit.

Apparent failures to comply with the standards of conduct are approached by positive attempts to improve faculty performance such as sustained attempts to inform, persuade, and improve. If appropriate, positive efforts to improve faculty performance shall precede or accompany all sanctions.

### **2.1 Authorized Sanctions**

#### (1) Reprimand.

A reprimand is a written statement detailing a violation of the standards of conduct in Policy 403.

#### (2) Probation.

Probation is a period of time, not to exceed one year, during which faculty members who have violated the standards of conduct in Policy 403 are afforded the opportunity to demonstrate their ability to comply with their professional responsibilities. Failure to fulfill the terms of probation may result in the imposition of another sanction.

#### (3) Suspension.

Suspension is the barring of a faculty member from the exercise of all or part of his/her duties for a period of time, not to exceed one year. Suspension may be imposed with full pay, partial pay, or without pay.

#### (4) Reduction in rank.

Reduction in rank is a one-step reduction in faculty rank as defined in Policies 401.4 and 401.5. Reduction in rank is different from reduction in status (see Policy 406.2.3 (2)).

#### (5) Dismissal.

Dismissal is the ending of employment.

Termination and non-renewal are defined here to differentiate them from dismissal. Termination and non-renewal are not sanctions. Termination means the ending of employment of a tenured faculty member or a faculty member with term appointment for medical reasons, program discontinuance, financial crisis, or bona fide financial exigency. Non-renewal means the ending of employment of a faculty member without tenure or a faculty member with term appointment by non-renewal of his/her contract (see Policy 405).

## **2.2 Purpose**

The imposition of a sanction should serve one or more of the following purposes: (1) to induce self-improvement and reform by a faculty member whose conduct demonstrates the need for self-improvement and reform; (2) to indicate to the faculty member the seriousness of his/her violation and thereby deter him/her from future violations; (3) to reassure the institutional community that violations of the standards of conduct will not be tolerated, thereby helping to maintain respect for and commitment to the standards by other members of the institutional community; or (4) to remove from institutional employment faculty members whose violation of the standards of conduct makes them unsuitable to continue in beneficial service to the institution.

## **2.3 Imposing a Sanction**

The decision to impose a sanction should be guided by mercy and restraint. A sanction shall be imposed when: (1) the purpose set forth in Policy 407.2.2(2) cannot be adequately served by non-punitive measures; (2) the sanction is not disproportionately severe in relation to the violation of the standards of conduct for which it is imposed; and (3) the imposition of such sanction is fair and just to the faculty member involved, giving due consideration to the situation and to any relevant matters tending to mitigate the seriousness of the violation.

Sanctions are mutually exclusive and are imposed by the authority of the President. However, probation and another sanction consequent on the failure to fulfill the terms of probation cannot be imposed simultaneously. Sanctions are not cumulative; the sanctions are progressive in severity, but do not have to be imposed progressively.

## **2.4 Restitution**

When a sanction less than dismissal is imposed, the terms of imposition may include the requirement that the faculty member take reasonable action to make restitution or to remedy a situation created by a violation of the standards of conduct.

## **2.5 Double Jeopardy**

No faculty member shall be twice subject to proceedings under this policy for the same instance of a violation of a standard of conduct.

Where a faculty member has been subject to proceedings in a court of law, a sanction shall not be imposed on the faculty member for the same acts unless the acts constitute violations of the standards of conduct in Policy 403.

### **407.3 PROCEDURES FOR REPRIMANDS**

#### **3.1 Notification of Intent to Issue a Reprimand**

If a faculty member's department head (or supervisor) and dean (or director or vice president) believe that a faculty member has violated the standards of conduct in Policy 403 and such violation warrants a reprimand, they shall notify the faculty member of the basis of the proposed reprimand. The faculty member shall be afforded an opportunity to meet and persuade them that the proposed reprimand should not be imposed. If a reprimand is imposed, it must be issued within 5 days of the meeting.

#### **3.2 Review of Reprimand**

If a faculty member believes that the reprimand has been unjustly imposed, he or she may request a review of the reprimand by the Academic Freedom and Tenure Committee. Such request must be made in writing to the chair of the committee within 20 days after the faculty member receives the reprimand. Within 20 days of receipt of a written request for review, the chair of the Academic Freedom and Tenure Committee shall select by lot and convene a special panel of three members of the Academic Freedom and Tenure Committee (see Policy 402.13.3(2)). The panel shall provide the faculty member with the opportunity to submit a detailed written statement if he or she desires. The panel shall decide whether the facts merit a reprimand hearing. Submission of a request for review does not automatically result in a reprimand hearing.

The panel may seek to bring about a settlement of the matter with the consent of all parties involved. If settlement is not possible or appropriate within 20 days after the panel is convened, the panel will decide whether or not to hold a hearing on the matter.

#### **3.3 Reprimand Hearing**

The reprimand hearing will occur within 10 days after the review of the reprimand by the panel. The hearing will be informal but will provide the faculty member and those imposing the reprimand with the rights to be present, to be heard, and to present evidence.

Within 10 days after the hearing, the panel will report its findings and recommendations in writing to the faculty member and to those imposing the reprimand. If the panel determines that the written reprimand is unjust or otherwise inappropriate, such sanction shall be rescinded by those who imposed it and removed from the faculty member's file.

## **407.4 PROCEDURES FOR SANCTIONS OTHER THAN REPRIMANDS**

Probation, suspension with other than full pay, reduction in rank, and dismissal may be imposed on a faculty member only after it has been determined, by the proceedings in this policy, that he or she has violated the standards of conduct in Policy 403. The President may suspend a faculty member with full pay pending completion of the procedures described below. In all proceedings to impose a sanction other than a reprimand, the following procedures shall govern, except for procedures which govern allegations of research fraud (see Policy 407.8) and sexual harassment (Policy 407.9).

### **4.1 Initiation**

Whenever there are grounds to believe that a faculty member has failed to comply with the standards of conduct in Policy 403, the President, upon his/her own initiative, upon a recommendation from a department head, supervisor, dean, director, vice president or other administrative office, upon request of the Board of Trustees, or upon the receipt of complaints from any person, may initiate proceedings for probation, suspension, reduction in rank, or dismissal of a faculty member.

### **4.2 Notice of Intent to Impose a Sanction**

At the direction of the President, the Provost shall cause written notice to be delivered personally or by certified mail, return receipt requested, to the faculty member under investigation. A copy of this notice shall be sent to the chair of the Academic Freedom and Tenure Committee, along with a statement confirming the date the faculty member received it. Copies will also be sent to the faculty member's department head (or supervisor) and dean (or director or vice president) where appropriate.

Such notice shall contain the following:

- (1) A concise and clear statement of the facts, conduct, or circumstances reported to constitute failure to comply with the standards of conduct in Policy 403, including a statement of the standard or standards the faculty member is alleged to have violated.
- (2) A statement of the sanction proposed.
- (3) A statement that (a) the faculty member has the right to be heard in a conference with the Provost (see Policy 407.4.5); (b) the faculty member may have an advisor of his/her own choosing present at such conference; (c) this conference must be requested in writing within 5 days after receipt of the notice by the faculty member; and (d) this conference must be held within 10 days after receipt of notice by the faculty member.
- (4) A statement of the schedule of events which lead to a formal hearing, and that a faculty member may be accompanied at such hearing by an advisor of his/her own choosing.

(5) A statement that within 20 days of the receipt of this notice, the faculty member, if he or she wishes to contest the alleged violation, must file in writing with the chair of the Academic Freedom and Tenure Committee a statement of intent to contest the alleged violation through formal hearing; and that failure to do so will result in the imposition of the proposed sanction.

(6) A statement that within 20 days of the filing of the written statement of intent to contest the alleged violation through formal hearing, the faculty member must file, with the chair of the hearing panel, a written response which answers the alleged violation contained in the original notice; and that failure to do so will result in the imposition of the proposed sanction.

### **4.3 Schedule of Events**

The proceedings shall commence with the receipt by the faculty member of the written notice as described in Policy 407.4.2. A copy of the notice must be delivered by the Provost to the chair of the Academic Freedom and Tenure Committee within 10 days of receipt of notice by the faculty member.

If the faculty member desires a conference with the Provost, he or she must request it within 5 days of receipt of notice. The conference must be held within 10 days of receipt of notice.

The faculty member must present to the chair of the Academic Freedom and Tenure Committee a written statement of intent to contest the alleged violation through formal hearing within 20 days of receipt of notice. The chair of the Academic Freedom and Tenure Committee must notify the Provost of the faculty member's intent to contest the alleged violation through formal hearing within 10 days of receiving such statement of intent.

The chair of the Academic Freedom and Tenure Committee must appoint four members of a hearing panel (Policy 402.12.3(7)), including a hearing panel chair, within 10 days of the filing of the written statement of intent to contest the alleged violation through formal hearing. The President must appoint an administrative member of the hearing panel within the same time.

The faculty member must file, with the chair of the hearing panel, a written response which answers the alleged violation contained in the original notice, within 20 days of the filing of the written statement of intent to contest the alleged violation through formal hearing. The chair of the hearing panel must provide the President with a copy of the faculty member's written response which answers the alleged violation contained in the original notice within 5 days of receiving such response.

A prehearing conference will be held within 10 days prior to the formal hearing. The formal hearing will be held within 40 days of receipt of the faculty member's statement of intent to contest the alleged violation through formal hearing. The chair of the hearing

panel will schedule the hearing date. The hearing panel must provide a written report of its recommendation to the President, Provost, and to the faculty member within 20 days of the hearing.

The schedule of events for sanctions may be suspended for a reasonable time if key participants are not available either in person, by teleconference, by letter, or other appropriate means. The hearing panel, appointed by the chair of the Academic Freedom and Tenure Committee, will determine by a majority vote whether a suspension of the schedule of events for sanctions is warranted.

#### **4.4 Emergencies**

Emergencies may be grounds for a reasonable extension of the time limits for filing a notice of intent to contest the alleged violation, or for responding to the alleged violation, or for conducting the hearing. Such emergencies must be of a serious and compelling nature, and any such extension shall be by mutual agreement. Failing agreement, an extension for filing a notice of intent to contest the alleged violation is granted only by a majority vote of the Academic Freedom and Tenure Committee; an extension for filing a written response or for conducting the formal hearing is granted only by a majority vote of the hearing panel.

#### **4.5 Conference with Provost**

A faculty member notified of an intent to impose a sanction has the right to be heard in conference with the Provost. The schedule for requesting and holding a conference is specified in 4.3 above. Both the faculty member and the Provost may each have an advisor of their own choosing present at the conference. The purpose of the conference is to attempt to reach an agreement or settlement. In the event that the alleged violations are disposed of by mutual agreement or negotiation at the conference, no hearing need be held. A copy of such settlement shall be sent to the chair of the Academic Freedom and Tenure Committee.

The right to a conference with the Provost is discretionary with the faculty member; requesting or rejecting such a conference does not abrogate the faculty member's right to a formal hearing.

#### **4.6 Notice of Intent to Contest the Alleged Violation**

A faculty member notified of action leading to sanction must file a notice of intent to contest the alleged violation if the faculty member desires a formal hearing. The notice of intent to contest the alleged violation must be filed with the chair of the Academic Freedom and Tenure Committee within 20 days of receipt of notice. Failure to do so will result in entry of the faculty member's default in the premises, and the imposition of the proposed sanction.

#### **4.7 Response to the Alleged Violation**

The faculty member must file a written response which answers the alleged violation contained in the original notice with the chair of the hearing panel within 20 days of the filing of the written statement of intent to contest the alleged violation. Appropriate, substantiating documentation shall be submitted with the response. Failure to do so will result in entry of the faculty member's default in the premises, and the imposition of the proposed sanction.

#### **4.8 Pre-hearing Conference**

Within 10 days prior to the date set for the hearing, a pre-hearing conference will be held before the chair of the Academic Freedom and Tenure Committee, who shall preside, and the chair of the hearing panel. At this pre-hearing conference the Provost or administrative representative and the faculty member shall make available to each other lists of their proposed witnesses and the documentary evidence to be introduced at the hearing. The pre-hearing conference shall delineate the issues to be examined at the hearing, stipulate the facts to be agreed upon, and achieve such other appropriate prehearing objectives as will make the hearing fair, effective, and expeditious.

Before the formal hearing begins, upon request, either party shall allow the other to examine all documentary evidence and any written or recorded statements that were made by witnesses listed by either party.

#### **4.9 Hearing to Consider Imposition of a Sanction**

(1) Date.

The formal hearing will be held within 40 days of receipt of the faculty member's statement of intent to contest the alleged violation through formal hearing. The chair of the hearing panel will schedule the hearing date. The formal hearing may be continued upon good cause shown by either party. The panel will grant adjournment to enable either party to investigate evidence to which a valid claim of surprise is made.

(2) Records; witnesses; counsel.

Upon request by either the Provost or administrative representative, the faculty member, or any member of the hearing panel, the chair of the hearing panel shall request the production of University records and the presence of witnesses to appear and testify. Compliance with such requests is an obligation of employment of any University official or employee except that the privilege against self-incrimination and access to University records as provided in Policy 405.6.4 shall be honored by the panel.

The faculty member and the Provost or administrative representative have the right to have present any one person as an advisor of their choice at all stages of the hearing. The faculty member and the Provost or administrative representative shall also have the right

to confront and cross-examine witnesses, to present evidence and call witnesses in their own behalf, to testify, and to be present with their advisor and/or counsel at all meetings and proceedings of the panel except sessions which are closed for deliberation and vote. The faculty member's advisor and the Provost or administrative representative's advisor are permitted to advise and counsel their respective parties but are not permitted to argue the case or interrogate witnesses. Members of the hearing panel may question witnesses and parties to the hearing.

(3) Opening the hearing to the public.

Hearings shall be closed to the public unless the faculty member requests that they be open and the panel determines, following such request, that an open hearing will not prejudice the interests of the University, the faculty member, or the witnesses. When an open hearing is requested by the faculty member but such request is denied, the specific reasons for denial shall be stated in the record. In any closed hearing the faculty member and the Provost or administrative representative shall have the right to the presence of not more than three persons each designated by them as observers.

(4) Hearing record.

A verbatim record of the hearing or hearings shall be made by the President's office and, upon request, a typewritten copy shall be made available to the faculty member without cost.

(5) Burden of proof.

The burden of proof that adequate cause exists to impose a sanction rests with the Provost or administrative representative and shall be satisfied only by a preponderance of the evidence in the record considered as a whole.

The panel will not be bound by rules of evidence, and will admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

The findings of fact and the recommendation will be based solely on the hearing record.

(6) Publicity.

Except for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by all parties and persons involved or present will be avoided as far as possible until the proceedings have been completed.

(7) Deliberations; standards for review.

Hearing panel deliberations and voting shall be conducted in closed sessions from which all other persons are excluded. Upon request of any member of the panel, votes shall be taken by secret written ballot. A simple majority of members shall be required for recommendations by the hearing panel. The panel chair shall be entitled to vote on all questions. The hearing panel may recommend the sanction proposed by the Provost or a less severe sanction, including no sanction.

The standard of review by the hearing panel shall be whether the imposition of the proposed sanction (a) is an arbitrary or capricious action, (b) fails to accord the faculty member the academic due process statutory, or constitutional established by these policies, (c) violates the academic freedom of the faculty member, or (d) violates the legal, statutory, or constitutional rights of the faculty member. If the faculty member asserts a violation of statutory or constitutional civil rights in any of the protected categories of race, color, religion, sex, national origin, age, disability, marital or parental status, or veteran's status, in the faculty member's written response to the alleged violation or at any time during the course of the proceeding, such claims shall be immediately referred in writing to the Affirmative Action/Equal Opportunity (AA/EO) Office by the chair of the hearing panel. All such statutory and constitutional civil rights claims shall be handled as outlined in Policy 305.

The hearing panel must report its recommendation to the President, the Provost, and to the faculty member within 20 days of the hearing.

#### **4.10 Decision by the President**

The President shall review the report and recommendation of the hearing panel and notify the faculty member, the Provost, and the chair of the Academic and Freedom Committee of his/her decision within 10 days.

Prior to making his/her decision, the President may remand the matter to the hearing panel for review and further hearing, if necessary. The President shall state in writing to the chair of the hearing panel the specific purposes or reasons for the remand. The further review and hearing shall be limited to those purposes or reasons. The hearing panel shall complete its review and report its conclusions to the President within 20 days after receipt of the remand by the chair of the hearing panel. The President shall review the report and notify the faculty member, the Provost, and the chair of the Academic Freedom and Tenure Committee within 10 days.

The decision of the President is final.

#### **4.11 Temporary Suspension with Full Pay Pending Legal Action**

In the event that a faculty member is charged with a felony that affects an institutional interest, the President may temporarily suspend the faculty member with full pay without following the procedures above upon written notice to the faculty member. This

suspension shall remain in effect until such time as the faculty member has resigned, been acquitted of the felony charges, or been sanctioned according to procedures above.

## **407.5 MEDICAL INCAPACITY**

A faculty member may be transferred to the University's disability program because of medical incapacity which does not allow the faculty member to perform his/her duties and responsibilities. Procedures for this purpose shall be as follows.

### **5.1 Faculty Member Initiation**

When a faculty member feels unable to perform his/her duties because of medical incapacity, he or she may request transfer to the University's disability program. The request for transfer will be sent to the faculty member's department head or supervisor and must include a letter from the faculty member's physician certifying the incapacity.

The department head or supervisor will send a recommendation to the appropriate dean or director requesting that the faculty member be placed on the medical disability program.

A faculty member's transfer from the department or division's budget to the disability program shall be in accordance with the provisions of the University's group disability insurance policy.

### **5.2 University Initiation**

Procedures to transfer a faculty member to the disability program may also be initiated by a written statement alleging medical incapacity made to the Provost by the faculty member's dean, director, vice president, department head, or supervisor.

Within 20 days after the receipt of such written allegation, the Provost shall notify the faculty member thereof and inform him or her of the rights to a conference with the Provost and to be examined at University expense by two appropriately licensed professionals. The two professionals shall be chosen by the Budget and Faculty Welfare Committee from lists submitted by the Provost and the faculty member.

If the faculty member refuses medical examination or if the medical examiners find the faculty member to be suffering from a medical condition which could substantially and adversely affect the performance of his/her duties, the Provost may recommend that the President initiate procedures described in Policy 407.4 to transfer the faculty member to the disability program. Under these circumstances, references to imposing a sanction shall be replaced by references to transferring to the disability program. A transference to the disability program is a termination (see Policy 407.2.1(5)).

## **407.6 GRIEVANCES**

Faculty members may grieve actions taken against them, including actions initiated by the University against the faculty member. Grievances are allegations of arbitrary or capricious conduct; violations of legal, constitutional, or statutory rights; or violations of this code or other adopted policies and procedures. A faculty member may not grieve a decision reached under Policies 407.3, .4, and .5.

### **6.1 Initiation**

A faculty member who has grounds to file a grievance may file written notice of intent to grieve with the chair of the Academic Freedom and Tenure Committee in a timely fashion, but in no instance later than 120 days after the grievant knew or should have known the facts and circumstances giving rise to the grievance.

However, if the subject of the grievance is termination, non-renewal (including the denial of tenure), or reduction in status a faculty member must file written notice of intent to grieve with the chair of the Academic Freedom and Tenure Committee within 20 days of receipt of notice of termination, non-renewal, or reduction in status.

Once notice of intent to grieve has been filed with the chair of the Academic Freedom and Tenure Committee, the actual grievance statement must be filed in writing with the chair of the Academic Freedom and Tenure Committee within 20 days. Failure to file the grievance statement during this time dismisses the intent to grieve with prejudice against the faculty member refiling.

Proceedings for grievances may be suspended for a reasonable time if key participants are not available either in person, by teleconference, by letter, or other appropriate means. The hearing panel, appointed by the chair of the Academic Freedom and Tenure Committee, will determine by a majority vote whether a suspension of grievance proceedings is warranted.

### **6.2 Grievance Statement**

The grievance statement must include a specific identification of the grievance, a concise summary of the evidence with supporting documentation, and a list of individuals (i.e., respondents) who are asked to respond to the grievance statement. Five copies plus an additional copy for each respondent must be filed with the chair of the Academic Freedom and Tenure Committee.

If a faculty member asserts a violation of statutory or constitutional civil rights in any of the protected categories of race, color, religion, sex, national origin, age, disability, marital or parental status, or veteran's status in his/her grievance statement (or at any time during the course of the proceeding), such claims shall be immediately referred in writing to the AA/EO Office by the chair of the Academic Freedom and Tenure Committee. All such statutory and constitutional civil rights claims shall be handled as

outlined in Policy 407.9.3. The chair of the Academic Freedom and Tenure Committee shall inform the faculty member in writing.

### **6.3 Grievance Hearing Panel**

Once the grievance statement has been filed, the chair of the Academic Freedom and Tenure Committee must, within 15 days, appoint a grievance hearing panel in accord with Policy 402.12.3(7). The President will appoint the fifth member of the grievance hearing panel within 15 days of the filing of the grievance statement.

### **6.4 Distribution of Grievance Statement and Responses**

Within 5 days after the filing of the grievance statement, the chair of the Academic Freedom and Tenure Committee must distribute copies of the grievance statement to each of the respondents named in the grievance.

Within 20 days after the filing of the grievance statement, these respondents must file six copies of their written responses with the chair of the grievance hearing panel. Within 25 days after the filing of the grievance statement, the chair of the grievance hearing panel must distribute the respondents' responses to the grievant.

Within 25 days after the filing of the grievance statement, the chair of the grievance hearing panel must distribute copies of the grievance statement and the respondents' responses to the remaining members of the grievance hearing panel.

### **6.5 Pre-hearing Conference**

Within 40 days after the filing of the grievance statement, a pre-hearing conference shall be held before the chair of the Academic Freedom and Tenure Committee, who shall preside, and the chair of the grievance hearing panel. At this pre-hearing conference the parties shall make available to each other lists of their witnesses and the documentary evidence to be introduced at the hearing. The pre-hearing conference shall delineate the issues to be examined at the hearing, stipulate the facts to be agreed upon, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

Before the formal hearing begins, upon request, either party shall allow the other to examine all documentary evidence and any written or recorded statements that were made by witnesses listed by either party.

## **6.6 Grievance Hearing**

### **(1) Date.**

The grievance hearing will be held within 20 days of the pre-hearing conference. The grievance hearing panel will schedule the hearing. The grievance hearing may be continued upon good cause shown by any of the parties and mutual agreement thereto. The grievance hearing panel will grant adjournment to enable either party to investigate evidence to which a valid claim of surprise is made.

### **(2) Records; witnesses; counsel.**

Upon request by either of the parties to the grievance, the hearing panel shall request the production of University records and the presence of witnesses to appear and to testify. Compliance with such requests is an obligation of employment of any University official or employee except that the privilege against self-incrimination and access to University records as provided in Policy 405.6.4 shall be honored by the hearing panel.

Each party to the grievance has the right to have present any one person as an advisor of his/her choice at all stages of the hearing. Each party shall also have the right to confront and cross-examine witnesses, to present evidence and call witnesses in his/her own behalf, to testify, and to be present with him/her advisor at all meetings and proceedings of the hearing panel except sessions which are closed for deliberation and vote. The advisors and counsels are permitted to advise and counsel their respective parties but are not permitted to argue the case or interrogate witnesses. Members of the hearing panel may question witnesses and parties to the hearing.

### **(3) Opening the hearing to the public.**

Grievance hearings shall be closed to the public unless a party requests that they be open, the other party agrees, and the hearing panel determines that an open hearing will not prejudice the interests of any of the parties to the grievance. Where an open hearing is requested on the mutual consent of the parties but such request is denied, the specific reasons for denial shall be stated in the record. In any closed grievance hearing the parties shall have the right to choose and to have present not more than three persons each designated by them as observers.

### **(4) Record.**

The chair of the hearing panel will be responsible for seeing that a taped record of the hearing is taken. If a typewritten record is desired by either party to the grievance, the parties will share in the cost of the transcription.

### **(5) Burden of proof.**

The burden of proof that adequate cause for grievance exists rests with the faculty member and shall be satisfied only by a preponderance of the evidence in the record considered as a whole.

The grievance hearing panel will not be bound by strict rules of evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

The findings of fact and the recommendation will be based solely on the hearing record.

(6) Publicity.

Except for such simple pronouncements as may be required covering the time of the hearing and similar matters, public statements and publicity about the grievance by either party will be avoided as far as possible until the proceedings have been completed.

(7) Deliberations.

Hearing panel deliberations and voting shall be conducted in closed sessions from which all other persons are excluded. Upon request of any member of the hearing panel, votes shall be taken by secret ballot. A simple majority of members shall be required for recommendations. The chair shall be entitled to vote on all questions.

(8) Recommendation of the hearing panel.

In its finding, the hearing panel will determine only whether the grievance is valid or not valid; that is, whether or not there has been arbitrary or capricious conduct, violations of legal, constitutional, or statutory rights, or violations of these policies or other adopted policies and procedures. The determination of the hearing panel shall be binding on the Academic Freedom and Tenure Committee as a whole. A hearing panel shall submit a written report and recommendation to the President within 20 days of the hearing. A copy of the hearing panel's report shall be forwarded to both parties to the grievance.

(9) Presidential review and recommendation.

The President shall review the report and recommendation of the hearing panel and notify the parties to the grievance of his/her decision within 10 days.

The decision of the President is final.

## **407.7 NON-RENEWAL**

### **7.1 Definition of Non-Renewal**

Non-renewal is the ending of employment of tenure-eligible or term appointment faculty, other than by dismissal (Policy 407.2.1(5)) or by termination (Policy 406.2.3(2)). When

non-renewal occurs at the end of the pre-tenure probationary period for tenure-eligible faculty (Policy 405.1.4), it is a denial of tenure.

## **7.2 Reasons for Non-Renewal**

There are only three reasons for non-renewal: unsatisfactory performance of the faculty member's assigned role (Policies 405.6.1 and 11.1); failure to satisfy the criteria for the award of tenure; or cessation of extramural funding that is required for a substantial portion of the salary support of the faculty member. Non-renewal prior to the end of the pre-tenure probationary period for tenure-eligible faculty is an administrative decision of the department head, director, dean, or vice president and must be approved by the Provost and President. In making a decision regarding non-renewal, the department head, director, dean, or vice president is to take into consideration the most current and all previous reports from the Tenure/ Promotion Committee when making a decision regarding non-renewal (Policy 405.6.2(1)). Tenure-eligible and term appointment faculty members may not have their appointments non-renewed for reasons which violate their academic freedom or legal rights.

## **7.3 Notice of Non-Renewal**

(1) Delivery of notice.

The President or the President's designee shall prepare written notice of non-renewal and shall deliver the notice personally to the faculty member, or shall have the notice delivered by certified mail, return receipt requested. If the notice is thus mailed, it is deemed effective for all purposes.

(2) Notification schedule.

For tenure-eligible faculty appointments, non-renewal must first be preceded by the following minimum notice (Table 407.7.3): (a) not later than March 1 for first-year and second-year appointees; (b) not later than December 15 for third-year appointees; (c) no later than January 29 prior to the issuance of a terminal year appointment for fourth-year and fifth-year appointees, except in the case of denial of tenure (see Policy 407.7.1), where minimum notice shall be not later than April 15.

For term appointments commencing at times other than the beginning of the academic year, notice of non-renewal must be no later than: (a) 60 days prior to the end of the first year of service; (b) 130 days prior to the end of the second year of service; or (c) 30 days prior to the issuance of a terminal year appointment after two or more years of service.

**Table 407.7.3 Notification schedule for non-renewal of tenure-eligible faculty appointments on a normal pre-tenure probationary period.**

Effective appointment date	First year March 1	Second year March 1	Third year Dec. 15**	Fourth year Jan. 29	Fifth year Jan. 29	Tenure denial April 15
Jul. 1-Dec. 31,2003	2004	2005	2006	2007	2008	2009
Jan. 1-Jun. 30,2004	2005	2006	2007	2008	2009	2010
Jul. 1-Dec. 31,2004	2005	2006	2007	2008	2009	2010
Jan. 1-Jun. 30,2005	2006	2007	2008	2009	2010	2011
Jul. 1-Dec. 31,2005	2006	2007	2008	2009	2010	2011
Jan. 1-Jun. 30,2006	2007	2008	2009	2010	2011	2012
Jul. 1-Dec. 31,2006	2007	2008	2009	2010	2011	2012
Jan. 1-Jun. 30,2007	2008	2009	2010	2011	2012	2013
Jul. 1-Dec. 31,2007	2008	2009	2010	2011	2012	2013
Jan. 1-Jun. 30,2008	2009	2010	2011	2012	2013	2014
Jul. 1-Dec. 31,2008	2009	2010	2011	2012	2013	2014
Jan. 1-Jun. 30,2009	2010	2011	2012	2013	2014	2015
Jul. 1-Dec. 31,2009	2010	2011	2012	2013	2014	2015
Jan. 1-Jun. 30,2010	2011	2012	2013	2014	2015	2016
Jul. 1-Dec. 31,2010	2011	2012	2013	2014	2015	2016
Jan. 1-Jun. 30,2011	2012	2013	2014	2015	2016	2017
Jul. 1-Dec. 31,2011	2012	2013	2014	2015	2016	2017
Jan. 1-Jun. 30,2012	2013	2014	2015	2016	2017	2018
Jul. 1-Dec. 31,2012	2013	2014	2015	2016	2017	2018
Jan. 1-Jun. 30,2013	2014	2015	2016	2017	2018	2019

\*\*There is an early schedule for annual review and recommendation for renewal for third-year appointees.

#### **7.4 Procedures**

(1) Statement of reasons for non-renewal.

Reasons for non-renewal may be stated in the notice of non-renewal, at the President's discretion.

(2) Conference.

At the faculty member's request, a conference to discuss the non-renewal shall occur between department head or supervisor and faculty member who received notice of non-renewal within 5 days of receipt of the notice of non-renewal.

(3) Review by higher administrative level.

At the faculty member's request, the non-renewal and relevant documentation shall be reviewed in conference with the faculty member at the next higher level outside the academic unit within 15 days of the notice of non-renewal. Unless specifically requested by the faculty member, this conference shall not include the department head or supervisor.

## **407.8 INQUIRY INTO ALLEGATIONS OF SCIENTIFIC MISCONDUCT IN RESEARCH AND IMPOSING SANCTIONS FOR RESEARCH FRAUD**

In order to distinguish misconduct from honest error and ambiguities of interpretation that are inherent in scientific research, and to provide an environment that promotes integrity, the University has adopted procedures for assessing allegations and conducting inquiries and investigations related to possible scientific misconduct in research. These procedures are contained in the "UTAH STATE UNIVERSITY Scientific Misconduct Procedures" (USU-SMP). The USU-SMP procedures were recommended by the Office of Research Integrity of the U. S. Department of Health and Human Services and modified by USU. The USU-SMP are maintained and made available by the Vice President for Research. They shall also be included in the Faculty Handbook.

### **8.1 Applicability**

The Scientific Misconduct Procedures apply to all faculty, professional employees, graduate and undergraduate researchers, trainees, technicians, staff members, fellows, guest researchers or collaborators conducting funded research at USU.

If the imposition of a sanction is recommended for a member of the faculty as a result of such inquiry and investigation, these sanctions shall apply for research fraud as defined in Policy 407.8.2(2) and the procedures in Policy 407.4 shall govern.

### **8.2 Definitions**

#### (1) Definitions of Scientific Misconduct in Research

Scientific misconduct or misconduct in science means fabrication, falsification, plagiarism, using data generated by someone else without permission, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

#### (2) Definition of Research Fraud for the Imposition of a Sanction

Research fraud is an act of deception which is different from unintentional error. For the purposes of imposing a sanction under Policy 407.4, research fraud is considered to be a violation of the standards of conduct set forth in Policy 403 which occurs within a research setting and involves one or more of the following deceptive practices: plagiarism (Policy 403.3.2(1)); falsification of data (Policy 403.3.2(2)); misappropriation of other's

ideas (Policy 403.3.2(3)); failure to exercise “reasonable care” where appropriate in research (Policy 403.3.2(7) and 403.5)); and misuse of confidential or privileged information (Policy 403.3.2(4)).

### (3) Definition of the Accuser in Scientific Misconduct

The accuser is a person who makes an allegation of scientific misconduct.

### (4) Definition of the Respondent in Scientific Misconduct

The respondent is the person against whom an allegation of scientific misconduct is directed or the person who is subject of the inquiry or investigation.

## **8.3 Research Integrity Officer**

The Research Integrity Officer is responsible for assessing allegations of scientific misconduct and determining when such allegations warrant inquiries and for overseeing any inquiries and investigations. This officer will be the Vice President for Research.

## **8.4 Inquiry into Allegations of Scientific Misconduct**

The procedures detailed in the USU-SMP will be followed when an allegation of possible misconduct in science is received by an institutional officer. Special circumstances in an individual case may dictate a variation from the normal procedure when doing so is deemed to be in the best interest of the University. Any change from the normal procedure must ensure fair treatment to the subject of the inquiry or investigation. Any significant variation must be approved in advance by the Vice President for Research.

## **8.5 Protection of the Good Faith Accuser and the Respondent**

University employees who receive or learn of an allegation of scientific misconduct will treat the accuser with fairness and respect and, when the allegation has been made in good faith, will take reasonable steps to protect the position, confidentiality, and reputation of the accuser and other individuals who cooperate with the University against retaliation. Likewise, University employees who receive or learn of an allegation of scientific misconduct will treat the respondent with fairness and respect. In both instances, University employees will protect, to the maximum extent possible, the confidentiality of information regarding the accuser, the respondent, and other affected individuals.

## **407.9 SEXUAL HARASSMENT**

### **9.1 Definition of Sexual Harassment**

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity, including a student's academic success;

(2) Submission to or rejection of such conduct is used as a basis for an employment decision affecting an individual; or

(3) Such conduct unreasonably interferes with an individual's work or academic performance or creates an intimidating, hostile, or offensive working or learning environment.

## **9.2 Policy Statement**

No faculty member shall engage in sexual harassment. Sexual harassment will not be tolerated by the faculty or administration of the University. Any statement in Policies 407.9 and 407.10 that refers to faculty also applies to graduate students with teaching or research responsibilities and other instructional personnel of the University.

Sexual harassment may involve a misuse of power and threaten relationships between teacher and student or supervisor and subordinate and may exist among peers.

## **9.3 Examples of Sexual Harassment**

Sexual harassment encompasses the verbal or physical conduct prohibited by Policy 407.9.1 above and also includes, but is not limited to:

(1) Sexual assault and physical molestation;

(2) Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;

(3) Subtle pressure for sexual activity, an element of which may be conduct such as repeated and unwanted staring or touching of a sexual nature or unwelcome "sexual talk;"

(4) Sexual conduct (not legitimately related to the subject matter of a course in which one is involved) that produces discomfort or humiliation, or both, and that includes one or more of the following: (a) comments of a sexual nature; or (b) sexually explicit statements, questions, jokes, pictorials, or anecdotes;

(5) Sexual conduct that would discomfort or humiliate, or both, a reasonable person at whom the conduct was directed that includes one or more of the following: (a) unnecessary touching, patting, hugging, or brushing against a person's body; (b) remarks of a sexual nature about a person's clothing or body; or (c) remarks about sexual activity or speculations about previous sexual experience.

## **9.4 Isolated Acts**

For sexual harassment to be committed in some instances, a pattern of prohibitive conduct is required. Members of the University community who, without establishing a pattern of doing so, engage in isolated conduct of the kind described in Policy 407.9.3 demonstrate insensitivity that necessitates remedial measures. When University administrators become aware that such activities are occurring in their areas, they should direct that those engaged in such conduct undertake an educational program designed to help them understand the harm they are doing and must advise the AA/EO Office of such activities.

## **9.5 Procedures for Inquiry into Allegations of Sexual Harassment and Other Violations of Statutory and Constitutional Civil Rights**

### **(1) Initiation.**

A complaint that the provisions of this policy have been violated may be brought by any member of the University community to any academic or administrative officer or organizations such as the Women's Center. The complaint shall be filed with the AA/EO Office. The complaint must be filed within 120 calendar days of the last alleged occurrence. Alleged incidences outside the timeline should nonetheless be brought to the attention of the AA/EO Office for review.

### **(2) Procedures.**

An inquiry or investigation shall be conducted in accordance with the policies and practices of the AA/EO Office. Since damage could result to the career and reputation of any person accused of a violation of this policy, or other constitutional or statutory civil rights laws, all information regarding such matters should be held as confidential, to the maximum extent possible.

In the event the allegations in the complaint are not substantiated, all reasonable steps will be taken to restore the reputation of the accused faculty member.

A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously is subject to sanction or other University discipline.

Any appeal of the findings and recommendation of the inquiry or investigation shall also be conducted in accordance with the policies and practices of the AA/EO Office.

### **(3) Temporary suspension with full pay pending final disposition.**

In extraordinary circumstances, where the Provost finds that it is reasonably certain that the alleged sexual harassment has occurred and serious and immediate harm will ensue if the faculty member continues to work, and after consulting the chair of the Academic

Freedom and Tenure Committee, the Provost may at any time during or after an inquiry or investigation into a sexual harassment complaint recommend to the President the suspension with pay of any faculty member or teaching assistant accused of sexual harassment.

(4) Report to the Academic Freedom and Tenure Committee.

Whenever a referral has been made by an Academic Freedom and Tenure grievance committee to the Affirmative Action/Equal Opportunity Office, the Director of the Affirmative Action/Equal Opportunity Office (AA/EO) shall meet periodically with the Academic Freedom and Tenure grievance committee and the chair of the Academic Freedom and Tenure Committee to discuss any inquiry or investigation.

(5) Exclusive action.

A faculty member may not file a grievance under Policy 407.7 to challenge the proceedings under this policy.

## **407.10 CONSENSUAL RELATIONSHIPS**

### **10.1 Rationale**

The University's educational mission is promoted by professionalism in faculty-student relationships. Professionalism is fostered by an atmosphere of mutual trust and respect. Actions that harm this atmosphere undermine professionalism and hinder fulfillment of the University's educational mission. Trust and respect are diminished when those in positions of authority abuse or appear to abuse their power. Those who abuse or appear to abuse their power in such a context violate their duty to the University community.

Faculty members exercise power over students, whether in giving them praise or criticism, evaluating them, making recommendations for their further studies or their future employment, or conferring any other benefits on them. Amorous relationships between faculty members and students are not acceptable to the University when the faculty member has professional responsibility for the student. Such situations greatly increase the chances that the faculty member will abuse his/her power and sexually exploit the student. Voluntary consent by the student in such a relationship is suspect, given the fundamentally asymmetric nature of the relationship. Moreover, other students and faculty may be affected by such unprofessional behavior because it places the faculty member in a position to favor or advance one student's interest at the expense of others and implicitly makes obtaining benefits contingent on amorous or sexual favors. Therefore, the University will view it as unprofessional conduct if faculty members engage in amorous relations with students in certain situations, even when both parties appear to have consented to the relationship.

## **10.2 Consensual Relationships in the Instructional Context**

No faculty member shall have an amorous relationship (consensual or otherwise) with a student who is enrolled in a course being taught by the faculty member, whose academic work (including work as a teaching assistant) is being supervised by the faculty member, or whose present or future academic or professional success is controlled or influenced by the faculty member. A violation of this policy is considered to be violation of the standards of conduct set forth in Policy 403.

## **10.3 Consensual Relationships Outside the Instructional Context**

Amorous relationships between faculty members and students occurring outside the instructional context may lead to difficulties. Particularly when the faculty member and student are in the same academic unit or in units that are academically allied, relationships that the parties view as consensual may appear to others to be exploitive. Further, in such situations (and others that cannot be anticipated), the faculty member may face serious conflicts of interest and should be careful to distance himself/herself from any decisions that may reward or penalize the student involved. A faculty member who fails to withdraw from participation in activities or decisions that may reward or penalize a student with whom the faculty member has or had an amorous relationship is considered to be in violation of the standards of conduct set forth in Policy 403.

### **407.11 COMPLAINTS**

A complaint alleging violations of Policies 407.9 or 407.10 may be informally or formally registered by any person, or the formal process (Policy 407.12) may be initiated by the Provost.

#### **11.1 Informal Complaint**

At the complainant's option, a complaint that one or more provisions in Policies 407.9 or 407.10 have been violated may be brought to any appropriate member of the University community, including any academic or administrative officer of the University such as the Provost, the AA/EO Director, the Vice President for Student Services, any collegiate dean, director, supervisor, department head, ombudsperson, or advisor, and departments or organizations such as the Women's Center.

The person to whom the complaint is brought will counsel the complainant about the options available under this policy and, at the complainant's request, may help the complainant resolve the complaint informally and/or help the complainant draft a formal complaint if the complainant decides to follow that route.

The person to whom the informal complaint is brought will not inform the accused of the complainant's action without the consent of the complainant.

## **11.2 Formal Complaint**

A complainant who wishes to make a formal complaint should file it with the AA/EO Office.

### **407.12 PROCEDURES FOR INQUIRY INTO ALLEGATIONS OF VIOLATIONS OF POLICY ON SEXUAL HARASSMENT AND CONSENSUAL RELATIONSHIPS (Policy 407.9 and 407.10)**

In all proceedings to impose a sanction for violations of Policies 407.9 and/or 407.10, the following rules and procedures shall govern.

#### **12.1 Initiation of a Preliminary Inquiry into Alleged Violations of Policies 407.9 and/or 407.10**

Whenever there are grounds to believe that a faculty member has violated Policies 407.9 and/or 407.10, the Director of the Affirmative Action/Equal Opportunity Office, upon the filing of a complaint, will initiate a preliminary inquiry. In conducting the preliminary inquiry, the Director of the Affirmative Action/Equal Opportunity Office may interview the complainant, the accused, and other persons believed to have pertinent factual knowledge. At all times, the Director of the Affirmative Action/Equal Opportunity Office will conduct the preliminary inquiry in a manner to ensure confidentiality.

The Director of the Affirmative Action/Equal Opportunity Office must decide whether or not an inquiry is appropriate, and must inform those filing the complaint of this decision within 10 days of receiving the complaint of alleged violation of Policies 407.9 and/or 407.10. If an inquiry is warranted, the Director of the Affirmative Action/Equal Opportunity Office will inform the Provost who shall cause an inquiry panel to be established.

#### **12.2 Inquiry into Allegations of Violation of Policies 407.9 and/or 407.10**

(1) Purpose.

An inquiry into allegations of violation of Policies 407.9 and/or 407.10 shall determine from review of factual evidence whether the initiation of actions described in Policies 407.1 through 407.4 is warranted.

The purpose of the inquiry is to establish whether there is a reasonable basis for believing that the alleged violation of this policy has occurred.

(2) Notification of faculty member.

Within 10 days of the decision to hold an inquiry, the Provost shall notify the faculty member in writing, return receipt requested, of the specific allegations filed against him/her and the procedures described in this policy regarding the inquiry.

(3) Membership of the inquiry panel.

The inquiry will be conducted by a panel of three faculty members, including two chosen by the chair of the Academic Freedom and Tenure Committee from the membership of that committee or from the Faculty Senate at large, and one to be chosen by the Provost. Each member of the inquiry panel shall be impartial and shall be removed and replaced if there are any real or apparent conflicts of interest. Not all members of the inquiry panel shall be of the same sex.

(4) Inquiry panel deliberations.

In conducting the inquiry, the inquiry panel may interview the complainant, the accused, and other persons believed to have pertinent factual knowledge. At all times, the inquiry panel will take steps to ensure confidentiality. The inquiry will afford the accused a full opportunity to respond to the allegations.

The inquiry panel must review the allegations and provide a written report of its findings within 20 days after the Provost's notification to the accused. The inquiry panel will review the evidence relating to the allegations and determine whether or not actions as described in Policies 407.1 through 407.4 are warranted.

(5) Inquiry panel report.

The written report of the inquiry panel shall be submitted to the Provost. If the report recommends proceedings to take actions described in Policies 407.1 through 407.4, the Provost shall forward a recommendation to the President to initiate such proceedings, and will so notify the complainant and the accused. If the inquiry panel report indicates that the allegations are unsupported, the Provost shall so notify the complainant and the accused.

The outcomes of the inquiry are either a judgment that the allegations are not warranted or the recommendation of actions described in Policies 407.1 through 407.4.

### **12.3 Protection of Complainant and Others**

(1) Consent of complainant.

Inquiries will be initiated only with the complainant's consent. The complainant will be informed fully of steps taken during the inquiry.

(2) Protection of witnesses.

All reasonable measures will be taken to assure that the complainant and all others testifying before the hearing panel will suffer no retaliation as the result of their activities in regard to the process. Steps to avoid retaliation might include: (a) lateral transfers of one or more of the parties in an employment setting and a comparable move if a classroom setting is involved, and (b) arrangements that academic and/or employment evaluations concerning the complainant or others be made by an appropriate individual other than the accused, and/or (c) temporary suspension with full pay pending final disposition.

In extraordinary circumstances, after consulting the chair of the Academic Freedom and Tenure Committee, the Provost may, at any time during or after an inquiry into a sexual harassment complaint, recommend to the President the suspension with pay of any faculty member or teaching assistant accused of sexual harassment if, after reviewing the allegations and interviewing the accused, the complainant, and, if it seems appropriate, others, the Provost finds that it is reasonably certain that the alleged sexual harassment has occurred and serious and immediate harm will ensue if the person continues to work.

#### **12.4 Protection of the Accused**

At the time the inquiry commences, the accused will be informed of the allegations, the identity of the complainant, and the findings of the preliminary inquiry. In the event the allegations are not substantiated, all reasonable steps will be taken to restore the reputation of the accused.

A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously is subject to sanction or other University discipline.

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