

II F. Disciplinary Process/Procedures

1. Purpose

Adherence to the Faculty Code of Professional Ethics, II.C.1, and to the Conduct Regulations II.F.3, set forth below is the responsibility of the individual faculty member. The principles implicit in these procedures are for the benefit of all who are involved with or are affected by the rules and regulations of Washington State University.

- 1) The purpose of this document is to enumerate the violations of law or policy for which faculty may be subject to discipline, and to provide a process for addressing those violations that ensures the accused faculty member's rights are adequately protected.
- 2) The procedures contained herein were drafted to adhere to the requirements of Washington's Administrative Procedure Act, RCW 34.05, as well to ensure that an employee's constitutional due process rights are protected. To the extent possible, the procedures for serious disciplinary action adhere to the process recommended by the American Association of University Professors for dismissal proceedings. Thus, a faculty member will not be subjected to serious discipline, absent his or her agreement, unless s/he has been provided
 - written notice of the charges against him/her;
 - the opportunity to be heard by a committee of his/her peers and, should a discipline be imposed, the right to appeal the decision to the Board of Regents;
 - the right to be accompanied to all hearings by an advisor of his/her choice;
 - a recording of the hearing.
- 3) The procedures set forth herein contain other checks and balances to protect the rights of the accused and the accuracy of the process. For example, no disciplinary action may be imposed without review by the Provost's office and, for serious, disciplinary action, without review by a committee of the faculty member's peers. Additionally, all disciplinary action imposed by the University is subject to court review according to the provisions of the Administrative Procedure Act, RCW 34.05.
- 4) These procedures enumerate timelines that shall be followed at each stage of the process to ensure that complaints are resolved in as timely a manner as possible. Timely resolution of complaints protects the rights of all participants to the process.
- 5) It is the overall goal of the University is to resolve concerns or problems at the lowest possible level. To this end, prior to initiating a formal complaint with the Provost, individuals feeling aggrieved by a faculty member's actions are encouraged to use the following resources for attempted resolution of disputes:
 - a) Supervisory chain of authority (e.g., the faculty member's Department Chair, Dean)
 - b) Office for Equal Opportunity (For complaints that may implicate EP# 15, the Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct, see also section II G below.)
 - c) Human Resource Services
 - d) University Ombudsman
 - e) Faculty Status Committee

If an individual files a complaint with the Provost without utilizing these procedures, s/he shall include a statement of reasons explaining why the complaint is being filed directly with the Provost.

This document does not address student academic complaints, which are handled using the WSU academic grievance procedure.

2. Confidentiality

It is the intent of the University that faculty discipline issues shall be kept confidential to the fullest extent provided by law. See RCW 42.56.210. Under state law, findings of specific acts of misconduct are public records that are subject to public disclosure. See RCW 42.56.210. Additionally, records created as part of the formal hearing process, including the charging document, are public documents that are subject to disclosure. See RCW 42.56.040, et seq. Similarly, the administrative procedure act requires the hearings conducted to impose formal discipline generally, but not necessarily, open to the public. See RCW 34.05.

3. Faculty Conduct Regulations Subject to University Discipline

Conduct for which faculty members are subject to University discipline falls into the following categories:

1. Violation of the policy on Freedom of Expression, II.B.2
2. Incompetence or serious or repeated neglect of duty. Unless the act is serious or puts individuals and/or property at risk, employees will not be disciplined for inadequate work performance or neglect of duty unless they have been given written notice of the areas in which the work is considered deficient, and an opportunity to improve their performance.
3. Misconduct in research and scholarship, defined as fabrication or falsification of data, plagiarism, or other serious deviations from accepted practice in proposing, implementing, or reporting on research. Procedures for investigating allegations of misconduct in research are set forth in subsection II.I.
4. Failure to comply with federal, state, or University requirements for protecting researchers, human subjects, and the public during research and for insuring the welfare of laboratory animals.
5. Use of research funds, facilities, or staff for unauthorized and/or illegal activities.
6. Violation of EP #15, the Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct (~~see section II.G below~~), which is considered part of this Faculty Manual.
7. Violation of EP #28, the Policy on Faculty-Student and Supervisor-Subordinate Relationships (~~see section II.H below~~), which is considered part of this Faculty Manual.
8. Retaliation against any individual for engaging in protected activity, including but not limited to, filing a good faith complaint of discrimination, harassment, misconduct, workplace violence or bullying. This includes, but not limited to, creating a hostile work environment or taking adverse employment action against another. Such acts form independent grounds for taking appropriate formal or informal discipline.
9. Forgery, alteration, or misuse of University documents or identification.
10. Falsification of information submitted to any University official or agency, or the offering of an intentionally false statement in any University disciplinary proceeding.
11. Theft of or intentionally damaging or defacing University property or property belonging to any member of the University community or campus visitor.
12. Illegal use, illegal possession, or illegal purveying of ~~narcotic or dangerous~~ drugs on University property. University policy is consistent with state and federal laws which regulate the possession, use, sale, and distribution of drugs.

13. Illegal possession, use, or sale of intoxicating beverages on University property. Washington State University's policies and programs for drug and alcohol abuse and a drug-free workplace are available at <http://www.wsu.edu/forms2/ALTPDF/EPM/EP20.pdf>.
14. Possession by a faculty member, on his or her person or otherwise, of a firearm, explosive, or other dangerous weapon within any office, laboratory or classroom building, lecture hall, residence hall, or sports arena on University property, and any immediately contiguous grounds, walkways and malls, except as follows:
 - (a) Those faculty members who also are authorized law enforcement officers shall be permitted to carry arms while on duty and engaged in regular activities of law enforcement.
 - (b) Faculty members with firearms in their possession shall be permitted to travel en-route to or from the University-provided storage facilities. Such facilities shall be available twenty-four hours per day for short- or long-term firearm storage.
 - (c) Activities requiring use of the prohibited items by faculty members may be conducted upon approval by the Board of Regents or their designee.
 - (d) Nothing in this article is intended to restrict the lawful possession by faculty members of firearms in privately owned vehicles on the University campus, within University-owned housing other than residence halls, or on other University property not specifically indicated above.
15. Unlawful acts that directly affect University programs, community members, or property insofar as they materially and substantially interfere with the missions, functions, processes, and goals of the University community or unlawful acts that result in guilty plea to or conviction of a felony.
16. Illegal entry, attempted entry, or entry in violation of Washington State University rules of University-controlled property, or University-related property, such as fraternities, sororities, or co-op houses.
17. Intentional disruption of the educational processes and functions of the University, including classroom and laboratory activities, offices, services, meetings, or ceremonies.
18. Intentional and unauthorized obstruction or restriction of free movement of persons or vehicles on the campus or other University property. Peaceful picketing is permitted, but such activity must be confined to the outside of University buildings and must not interfere with or restrict the free flow of traffic to and from any University building. Picketing of the Wilson Compton Union must be confined to the lobbies or to the outside of the building.
19. Violation of the University policy prohibiting Work Place Violence ~~and Bullying~~ as outlined in the BPPM Section 50.30.†

20. Violation of the University Bullying Prevention and Reporting Policy as outlined in the BPPM Section 50.31.

2021. Willful violation of published University policy.

Faculty members should be aware of conduct regulations for campus guests and visitors as follows: Guests and visitors will observe the rules and regulations of the University while on the campus or other University property. Those who willfully refuse to obey an order of a uniformed campus security officer or other law enforcement officer to desist from conduct prohibited by the University rules and regulations may be ejected from the premises. Refusal to obey such an order will subject the person to arrest under the provisions of the criminal trespass statutes, in addition to such other sanctions as may be applicable.

4. Types of Discipline

The sanctions that may be imposed include warning, censure, suspension, termination, and in emergency situations, summary suspension.

a. Informal Discipline

i) Warning

Written notice to the faculty member from the Provost that he or she has violated the ~~Code~~ Conduct Regulations II.F.3 or other regulation or policy, and that continued or additional such conduct may lead to more severe sanctions in the future.

ii) Censure

Written reprimand from the Provost regarding such violation(s).

b. Formal Discipline

i) Suspension

Suspension is defined as any one of, or a combination of, the following measures: temporary release from or reduction in assigned responsibilities; reduction or suspension of pay; denial or postponement of an opportunity for a professional promotion within the University or professional leave from the University. A summary suspension is also possible, as set forth in II.F.8.

ii) Termination

Dismissal of the faculty member from the University, whether a tenure, tenure-track or adjunct faculty member. The usual notice procedures for such termination shall not apply in this case, and may be set by the sanctioning authority.

c. Summary Suspension

In circumstances where an emergency exists or where there is an immediate threat to the public health, safety, or welfare, to University property, or to the safety or welfare of any member of the University community (including the subject faculty member), the faculty member may be suspended immediately, without pay. See Section 8 below for further information regarding the procedures for imposing a summary suspension.

Written notice from a dean, chair or other supervisor indicating that a faculty member has violated a provision of this Manual and directing him/her not to do so again, or reprimanding him/her for such violation, are not discipline that is subject to appeal under this policy.

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5. Initiation of Complaint

Any individual who has a formal complaint regarding violations of the Faculty Code of Professional Ethics, II.C.1, and the Conduct Regulations, II.F.3, should address his/her complaint, in writing, to the Provost. If the complainant has not utilized another complaint resolution procedure, s/he shall provide the Provost with a statement of reasons for filing his/her complaint directly with the Provost. If the Provost determines that the matter should be addressed at a lower level before his/her involvement, s/he shall inform the individual in writing within five (5) business days of the complaint resolution options available (e.g., The Ombudsman, the Faculty Status Committee, the Office for Equal Opportunity, etc.), as delineated in Section II.F.1 (5). The individual may initiate a formal complaint with the Provost after utilizing an alternative level complaint resolution process.

Unless the Provost has determined that a complaint should be remanded to another complaint resolution process, he shall, within ten (10) business days of receiving the complaint, determine whether the

allegations, if proved, state cause to discipline a faculty member. If the Provost determines that the charges do not state grounds for discipline, s/he shall communicate that decision to the complainant.

If the Provost determines that the charges, if proven, state grounds for disciplinary action, s/he shall promptly notify the accused faculty member of the general nature of the allegations, the requirement for cooperation during an investigation, the right to present information on his or her behalf, and the obligation not to retaliate against those filing the complaint.

6. Investigation of Complaint or of Provost Concerns

If the Provost determines that the allegations, if proved, state grounds for discipline, s/he shall, within ten (10) business days of such determination, initiate an investigation into the matter. The Provost shall determine the appropriate investigative person/body, including, but not limited to:

- a. Himself/Herself
- b. Vice Provost, ~~or~~ Associate Vice Provost, or Vice President
- c. Dean or Department Chair
- d. Office for Equal Opportunity
- e. Human Resource Services
- f. A faculty committee appointed by Faculty Status Committee within ten (10) business days of receipt of the request from the Provost and selected from among the members of the tenured ~~Faculty Hearing Committee Panel~~.

The Provost shall generally cause the investigation to be completed within thirty (30) business days of the date initiated. If it appears that the alleged violation will require that multiple witnesses be interviewed or will require an investigation that is otherwise substantial or complex, the Provost shall cause the investigation to be completed within one hundred twenty (120) calendar days of the date received. The Provost shall notify the complainant and the accused faculty member if the investigation is expected to take longer than thirty (30) calendar days.

The timelines may be extended by the Provost at any time upon his/her determination that exigent circumstances exist, e.g. unavailability of witnesses or faculty, complexity of issues. Any extension of the timelines must be communicated in writing to the accused faculty member and the complainant. The Provost may also of his/her own initiative, after learning of concerns regarding faculty conduct, initiate an investigation and pursue disciplinary action consistent with the other requirements of this policy.

Any case reported to the dean that requires punishment or attendance at a class needs to be reported to the Provost and Academic Vice President. The Provost's office shall maintain a confidential file of all cases reported to a dean whose final determination involved punishment or mandatory attendance at a class. The purpose of this file is to ensure there is an adequate record of past infractions.

7. No Discipline

If after investigation the Provost determines that the alleged conduct either did not occur or did not constitute a violation of the Faculty Code of Professional Ethics II.C.1 or the Conduct Regulations, II.F.3, Code, the Provost shall notify the affected faculty member and the complainant in writing. Said notification shall be made within ten (10) business days of the completion of the investigation. The determination of no violation by the Provost is final.

8. Summary Suspension

Summary Suspension is the responsibility of the President. Ordinarily, the disciplinary authority of the University will be invoked only after completion of the procedures established for the review of discipline cases and after the individual has utilized any appeal procedures desired as described in the following sections of the disciplinary regulations.

However, if at any time the Provost becomes aware of information that causes him/her to believe there is an immediate threat to the public health, safety, or welfare, to University property, or to the safety or welfare of any member of the University community (including the subject faculty member), the Provost shall immediately institute summary suspension procedures. These procedures require the Provost to provide the faculty member, either orally or in writing, with notice of charges against him, with an oral or written statement of the evidence that supports the charges, and with an opportunity to respond to the charges. If, after receiving the faculty member's response, the Provost believes that the immediate threat remains, s/he shall recommend to the President that the faculty member be summarily suspended. The President shall consider this recommendation, including the summary of the basis therefore and the faculty member's response to the charges and determine whether to summarily suspend the faculty member. If the faculty member is summarily suspended, salary shall not continue for the duration of the summary suspension. In all such emergency cases, the faculty member is thereafter entitled to all of the formal hearing process rights as provided in this section on formal discipline.

A decision to summarily suspend a faculty member shall comply with the requirements of RCW 34.05.479. The order of summary suspension shall be served on the faculty member in person. The notice should indicate that the suspension is for an emergency purpose in accordance with this section. It shall contain a brief statement of reasons to justify the summary suspension. If personal service is not feasible the notice shall be sent by certified mail. If there is to be a restriction on the faculty member's privilege to be present on University property, the faculty member shall be notified of that constraint, and such notice will be simultaneous with the notice of summary suspension.

The Provost shall issue a statement of charges within five (5) business days of the imposition of a summary suspension, and shall request that the Faculty Status Committee expedite the selection of a hearing committee. The Hearing Committee shall schedule the hearing within the next thirty (30) calendar days. This right to an expedited hearing may be waived by the accused faculty member.

9. Minor Infractions

If after investigation the Provost determines:

- a. The alleged conduct occurred,
- b. The conduct violated the Faculty Code of Professional Ethics, [II.C.1.](#) or the Conduct ~~Code~~[Regulations-II.F.3.](#) and
- c. The conduct subjects the faculty member to a warning or censure,

The Provost shall notify the affected faculty member in writing. This notice will be kept confidential to the extent allowed by law. The affected faculty member shall be provided the option of accepting or rejecting the informal discipline and must do so within ten (10) business days of receipt of the notice. If the affected faculty member accepts the imposed discipline, the Provost shall carry out the discipline accordingly, and notify the complainant and the cognizant administrators, including the affected faculty member's department chair and dean. If the affected faculty member rejects the imposed discipline, all information shall be turned over to the President for a final decision on the matter. The President may request additional briefing or oral argument from the Provost and the accused prior to issuing his/her decision.

10. Major Infractions

If after investigation the Provost concludes that the preponderance of evidence indicates:

- a. The alleged conduct occurred,
- b. The conduct violated the Faculty Code of Professional Ethics, [II.C.1.](#) or the Conduct ~~Code~~[Regulations-II.F.3.](#) and
- c. The conduct subjects the faculty member to a suspension or termination,

The Provost shall notify the affected faculty member in writing. This notice shall remain confidential to the extent allowed by law. The affected faculty member shall be provided the option of accepting or rejecting the imposed discipline and must do so within ten (10) business days of receipt of the notice. If the affected faculty member accepts the discipline, the Provost shall carry out the discipline accordingly, and notify the complainant and the cognizant administrators, including the affected faculty member's department chair and dean. If the affected faculty member rejects the discipline, the Provost shall cause formal disciplinary proceedings to commence.

The formal disciplinary process includes a formal hearing.

Formal hearings are adjudicative procedures under RCW 34.05. The University has developed its procedures to comport with the requirements of the Administrative Procedures Act, to ensure that parties are afforded appropriate due process rights, and to provide protection to the rights of all parties to the dispute while maintaining the collegiality that is the hallmark of the academic community.

The formal hearing procedure includes

a. Statement of Charges

The first step in the formal disciplinary process is the issuance of a Statement of Charges that shall include

- i) A reference to those portions of the Faculty Code of Professional Ethics, ~~II.C.1~~, Conduct Regulations, ~~II.F.3~~, or other particular rules or policies the faculty member is alleged to have violated;
- ii) A short and plain statement of the factual matters asserted upon which the violations are based.
- iii) A statement of the contemplated disciplinary action.

b. Response to Statement of Charges

The Respondent must provide a Response to the Statement of Charges within twenty (20) business days of service thereof. The Response to Statement of Charges shall include:

- i) Admissions or denials regarding the factual allegations related to violations of the Faculty Code of Professional Ethics, ~~II.C.1~~, Conduct ~~Code~~Regulations, ~~II.F.3~~, or other particular rules or policies listed in the Statement of Charges;
- ii) Any affirmative defenses available to the faculty member.

The Respondent may elect to be represented by counsel in these proceedings. If counsel is elected, the Provost shall be notified immediately so that all further correspondence can be directed to counsel.

If Respondent fails to respond to the Statement of Charges within the specific period, the Respondent is deemed to be in default. The Provost can then proceed to impose the discipline recommended in the Statement of Charges.

c. Hearing ~~Panel~~Committee

~~The President shall annually appoint twenty-one (21) tenured faculty on staggered three (3) year terms, nominated by the Faculty Status Committee, as members of the Faculty Hearing Committee Panel ("Panel"). The Faculty Status Committee shall keep in mind the University's values regarding affirmative action and diversity in recommending Panel members.~~

Within five (5) business days of the receipt of the Response to Statement of Charges, the Provost shall request that the Faculty Status Committee appoint a hearing committee from the members of the ~~tenured ff~~Faculty ~~Hearing Committee Panel~~. The Faculty Status Committee shall keep in mind

the University's values regarding affirmative action and diversity in recommending Panel Committee members. The Hearing Committee shall consist of five tenured faculty members. Two alternate members shall also be named. All committee members, including the alternates, shall attend the hearings. The Faculty Status Committee shall select committee members within (10) business days of the receipt of the request. Once the Faculty Status Committee has constituted the Hearing Committee, the Provost and the Respondent shall each be provided the opportunity to disqualify up to two members without stated cause. The Provost/ and the Respondent shall also each be allowed such further challenges to the Committee's membership, based on articulable cause, at the discretion of the Faculty Status Committee. The Faculty Status Committee may, at its discretion, schedule a hearing for the purpose of considering challenges to the potential committee members and finalizing the selection of ~~the Hearing Committee~~ a panel. If it does not schedule a hearing, all challenges and responses thereto will be provided in writing utilizing the following timelines: Any request to strike a committee member, whether for cause or no cause, shall be provided to the Faculty Status Committee within five (5) business days of the receipt of the committee member's names. The Faculty Status Committee shall rule on all cause challenges within ten (10) business days of the receipt thereof. Once all challenges are resolved, the Faculty Status Committee shall confirm the members of the committee in writing sent to the Provost and the Respondent, or their respective attorneys.

No Committee member shall have been involved in the investigation of any matter involved in the Statement of Charges, or the decision to convene a formal hearing with regard to those charges. No Committee member shall make or receive any ex parte contact regarding the subject matter of the formal proceeding from any party thereto, directly or indirectly, outside the scope of the formal hearing, nor shall any party to the hearing make or attempt to make any such contact. See RCW 34.05.455. Communications regarding purely procedural or housekeeping matters related to the proceeding shall not be prohibited by the foregoing. Any attempt at improper contact with any Committee member outside the hearing shall be immediately reported to both the remainder of the Committee and to the other parties.

The Hearing Committee, at that first meeting, shall elect a Chair to preside over its hearings, and shall promulgate any specific procedural rules it may deem necessary or proper for the orderly conduct of the hearing. Those rules shall be consistent with this section of the Manual and with applicable Washington State law.

d. Notice of Hearing

The Hearing Committee shall determine a date(s) for its hearing on the matter. If a summary suspension has been ordered, the hearing must be scheduled to begin no later than thirty (30) calendar days from the date the Faculty Status Committee constituted the Hearing Committee, unless the Respondent waives his/her right to have the hearing begin within this time-frame. In all other cases, the hearing must be scheduled to begin no sooner than thirty (30) and no later than ninety (90) calendar days from the date that the Faculty Status Committee constituted the Hearing Committee. The Hearing Committee shall attempt to accommodate the convenience of the parties with respect to the hearing date(s). The Hearing Committee shall notify the parties in writing of the hearing date(s) at least ten (10) business days in advance thereof. The Hearing Committee may continue the hearing date(s) at the request of either party, or at the Committee's own initiative, where justice so requires. However, the Hearing Committee will do so in writing and must determine that just cause exists for doing so. Justice requires swift resolution of the case.

The Notice of Hearing shall include:

- i) The names and addresses of all persons to whom the Notice is sent, and of their respective representatives or attorneys (if any)
- ii) The name of the matter in which the proceeding is being held (usually the name of the faculty member)
- iii) The names, titles, and campus mailing addresses of the Committee members, including a designation of the Committee Chair
- iv) A statement of the time, place, and nature of the proceeding
- v) A statement that the hearing is being held pursuant to the Administrative Procedures Act of the State of Washington, under jurisdiction and powers granted to the University under RCW chapter 28B, and pursuant to this Manual
- vi) A short and plain statement of the matters asserted by the agency; and
- vii) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding, may be held in default in accordance with the provisions of RCW 34.05.

A copy of the Charging Document shall be attached to the notice of hearing.

e. Discovery

The parties shall be allowed to exchange documents and interview witnesses prior to the hearing. The Provost shall turn over to the Respondent all investigative materials upon which the decision to issue the Statement of Charges was based. The University will also use its best efforts to secure the cooperation of witnesses and make available such documents as are under its possession and control. All parties shall diligently share information, documents, and other relevant facts to ensure against unfair surprise at the hearing.

Formal discovery is time-consuming and costly, and therefore is discouraged. The Hearing Committee shall allow formal discovery only upon a showing of necessity and unavailability of information by other means. The Hearing Committee shall review the factors outlined in RCW 34.05.446(3) when determining whether to exercise its discretion to allow discovery. Formal discovery includes requests for answers to interrogatories, requests for production, the taking of depositions and all other procedures authorized by the Superior Court Civil Rules 26 through 36.

The Hearing Committee may issue subpoenas as authorized under RCW 34.05.446, and shall make such reasonable orders as may be proper to allow the all parties a full and fair opportunity to be heard.

f. Pre-hearing Statements

In order to facilitate an expedient hearing, at least ten (10) business days prior to the date of the hearing both parties shall provide to the hearing committee a Pre-hearing statement including:

- i) A list of all individuals the party intends to call to present their case in chief;
- ii) A list of all documents the party intends to present as evidence in their case in chief;
- iii) An estimated time for the presentation of their case.

The parties need not identify witnesses or documents intended to be used only for impeachment purposes.

The parties shall also be entitled to file with the Hearing Committee such memoranda, position statements, objections to proffered evidence, and other procedural materials as the Hearing Committee may in its discretion allow. The Hearing Committee's charge on this matter is to ensure

that all parties have a full and fair opportunity to be heard while simultaneously upholding the parties' mutual interest in an expeditious proceeding.

g. Motions

The Hearing Committee shall, at appropriate stages of the proceedings, allow all parties the full opportunity to submit and respond to pleadings, motions, objections and offers of settlement. See RCW 34.05.437.

h. Formal Hearing

The Hearing Committee shall cause the hearing to be recorded by the most effective method, and shall preserve any exhibits or other materials received during the hearing. The Hearing Committee shall conduct its proceedings with as much dispatch as possible, while recognizing the parties' right to adequate time to present their case.

The University conducts faculty disciplinary hearings pursuant to the Washington Administrative Procedure Act, RCW 34.05. That law requires all hearings to be open unless closed 1) under a provision of law expressly authorizing closure or 2) under a protective order entered by the Hearing Committee pursuant to applicable rules. The Hearing Committee and the parties shall refrain from public comments or statements regarding the hearing, its conduct, the evidence presented before it, and any findings, recommendations and sanctions until final action has been taken on the matter.

The Hearing Committee shall first allow the Provost to submit those witnesses and documents identified in the Pre-hearing Statement. The Hearing Committee shall then allow the Respondent to submit those witnesses and documents identified in the Pre-hearing Statement. Both parties will be afforded the opportunity for rebuttal. All parties shall have the right to confront and cross-examine all witnesses.

The faculty member shall have the right to have a professional colleague present at all stages of the hearing as an academic advisor. In addition, the faculty member is entitled to have counsel present, as is the University. At any party's request or at the initiation of the Hearing Committee, a representative of the responsible educational association shall be permitted to attend even those portions of the hearing that have been closed to the public. The Hearing Committee retains the right to determine if any other person may attend or be excluded, including witnesses.

The Hearing Committee shall have the power, in its discretion, to adjourn the proceeding to enable any party to investigate evidence concerning which a valid claim of surprise is made, or at any point where it feels such adjournment will assist in its deliberations.

i. Findings, Recommendations & Sanctions

In all formal proceedings, the University bears the burden of proving that the faculty member violated the Faculty Code of Professional Ethics; [II.C.1](#), Conduct Regulations; [II.F.3](#), or some other regulation or policy of the University. This burden must be satisfied by a preponderance of evidence.

The Hearing Committee shall make its Finding, Recommendations and Sanctions, within thirty (30) calendar days of the last day of the hearing. It shall submit a complete record of the hearing, including any recording or transcription of the hearing and the Committee's Finding, Recommendations and Sanctions, to the President or, in those cases where the President considered a summary suspension and is therefore not eligible to act as a fact-finder, to the Board of Regents. All findings and recommendations of the Committee shall be based solely on the hearing record. The Committee shall in all cases issue an order that includes findings and recommendations, together with a statement of the reasons and bases for them. Findings based primarily on witness credibility or demeanor shall be specifically identified. Sanctions may be

recommended only based upon a finding of a violation as set forth above. Sanctions shall not be used to restrain faculty members in their exercise of academic freedom or other rights. Academic freedom, however, does not include the right to remain a faculty member while persistently failing or refusing to perform the duties and functions of a faculty member, or the right to violate University policies and rules including those governing freedom of expression.

The Hearing Committee's findings, conclusions and recommendations are preliminary recommendations in which opinions are expressed and thus and shall not be disclosed to the public until action is taken on the matter.

j. Action by the President

The President shall not hear any appeal in which he has reviewed a request for summary suspension. In such cases, the record of the hearing, including the Committee's findings, conclusions and recommendations, shall be forwarded directly to the Board of Regents, and handled as stated in section 11 below. In all other cases, authority to take action and impose sanctions if appropriate lies with the President. Upon receipt of the full and complete record of the proceedings, including the Committee's findings, conclusions, and recommendations, the President shall make a determination within twenty (20) business days.

If the President's determination is to uphold the findings, conclusions and recommendations of the Hearing Committee, the Committee and faculty member shall be so notified. If the President objects to or disagrees with any portion of the Committee's findings, conclusions and recommendation, he or she shall indicate those objections or disagreements in writing and provide them to the Committee, the Provost and to the faculty member. The Provost, Committee and the faculty member shall have ten (10) business days to respond in writing to the President's objections and disagreements. Thereafter, the President will issue a determination within ten (10) business days. The determination will include findings of fact, conclusions of law, and specification of any sanctions to be imposed. The Decision shall also contain an explanation of the basis for the conclusions and sanctions, if any. The President's directive shall become final twenty (20) business days after delivery to the faculty member, unless the faculty member files an appeal to the Board of Regents by that date.

The President shall not make or receive any ex parte contact regarding the subject matter of the formal proceeding from any party thereto, directly or indirectly, outside the scope of the formal hearing, nor shall any party to the hearing make or attempt to make any such contact. See RCW 34.05.455. Communications regarding purely procedural or housekeeping matters related to the proceeding shall not be prohibited by the foregoing. Any attempt at improper contact with the President outside the hearing shall be immediately reported to all parties.

All reports and recommendations previously withheld from public disclosure as preliminary recommendations are subject to public disclosure, as is the President's determination itself, once the President's determination is issued.

k. Action by Board of Regents Regarding Summary Suspensions

The President shall not hear any appeal in which he has issued a summary suspension. In such cases, the Committee's findings, conclusions and recommendations shall be forwarded directly to the Board of Regents. The Board of Regents shall convene a meeting as soon as is reasonably practicable after receipt of the hearing record, including the Hearing Committee's findings, conclusions and recommendations given the Board's schedule. It shall make a determination within twenty (20) business days of its meeting. If the final determination is to uphold the findings, conclusions and recommendations of the Hearing Committee, the Committee and faculty member shall be so notified. If the Board objects to or disagrees with any portion of the Committee's findings, conclusions and recommendation, it shall indicate those objections or

disagreements in writing and provide them to the Committee, the Provost and to the faculty member. The Provost, Committee and the faculty member shall have ten (10) business days to respond in writing to the Committee's objections and disagreements. Thereafter, the Board will convene another meeting as soon as is reasonable after receipt of the responses, and will issue a final determination.

The Board's final determination will include findings of fact, conclusions of law, and specification of any sanctions to be imposed. The decision shall also contain an explanation of the basis for the conclusions and sanctions, if any. The decision of the Board of Regents is the final decision of the University.

l. Appeal to Board of Regents

If the President decides to impose any sanction upon the faculty member, that faculty member shall have the right to appeal that sanction to the Board of Regents. Such an appeal must be served upon the secretary to the Board within twenty (20) business days after the faculty member's receipt of the decision. No Regent member shall make or receive any ex parte contact regarding the subject matter of the formal proceeding from any party thereto, directly or indirectly, outside the scope of the formal hearing, nor shall any party to the hearing make or attempt to make any such contact. See RCW 34.05.455. Communications regarding purely procedural or housekeeping matters related to the proceeding shall not be prohibited by the foregoing. Any attempt at improper contact with any member of the Board of Regents outside the hearing shall be immediately reported to the other Regents, to the University President, and to the parties.

The Board of Regents' review shall be based on the record of the hearing, including the Hearing Committee's findings, conclusions, and recommendations to the President, and the President's decision. The Board shall afford the faculty member and the University the opportunity to present written and/or oral argument. The Board will either sustain the decision or return it to the President with specific written objections. This decision shall be reached as soon as practicably possible by the Board of Regents within the normal constraints that arise from the infrequency of their meetings.

Sustaining of the decision by the Board of Regents shall conclude the formal proceeding. If the decision instead is returned, the President may either reconsider the decision or refer the matter back to the Hearing Committee for such further proceedings as it may deem proper. Whichever method is used, a revised final report shall thereafter be prepared for the Board addressing its concerns and recommending action by the Board. The Board shall thereafter issue the University's final decision in the matter within sixty (60) calendar days of receipt of that revised report.

m. Alternate Dispute Resolution

The parties are encouraged to seek informal resolution of the dispute described in the Statement of Charges. Nothing in these procedures shall preclude the parties and/or the University from reaching an informal resolution of the dispute via any mutually agreed-on method, including stipulation, agreed settlement, consent order, or through the default of a party. However, the informal resolution process cannot be used to circumvent the timelines necessary to carry out the formal hearing process. Time is of the essence for all parties. All parties have an interest in prompt resolution of these issues.

All testimony, statements, or other evidence obtained in the informal resolution process, whether obtained from a party to the dispute or a third party, shall be regarded as made in the course of settlement discussions, and shall accordingly be confidential and not disclosed in subsequent discovery in the course of a formal hearing, without the express permission of the person who

provided such testimony or evidence or as allowed by law. Further, such material may not be employed in proceedings for collateral or impeachment purposes without such permission or as otherwise allowed by law. However, such information may be subject to disclosure under the Washington Public Records Act and discovery in the course of a formal legal action.