

II F 3. Conduct Regulations

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.H and BPPM 45.25.
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 and Harassment.
7. Violation of EP #28, the Policy on Faculty-Student and Supervisor-Subordinate Relationships.
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 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, illegal use, or illegal 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 their 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 Compton Union Building must be confined to the lobbies or to the outside of the building.
19. Violation of the University policy prohibiting Work Place Violence as outlined in the BPPM 50.30.
20. Violation of the University Bullying Prevention and Reporting Policy as outlined in the BPPM 50.31.

21. Violation of the University Ethics Policy EP #45.

21~~22~~. Willful violation of published University policy.

II F 5. Initiation of Complaint

Any individual who has a formal complaint regarding violations of the Faculty Code of Professional Ethics, II.C.1, and/or the Conduct Regulations, II.F.3, should address their complaint, in writing, to the provost. If the complainant has not utilized another complaint resolution procedure, they shall provide the provost with a statement of reasons for filing their complaint directly with the provost. If the provost determines that the matter should be addressed at a lower level before their involvement, they shall inform the individual in writing within ~~five-fifteen~~ (15) business days of the complaint resolution options available (e.g., the Ombudsman, the Faculty Status Committee, Compliance & Civil Rights (CCR), 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, they 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, they shall communicate that decision to the complainant in writing.

If the provost determines that the charges, if proven, state grounds for disciplinary action, they shall promptly initiate an investigation or rely on a previously conducted investigation in accordance with Section II.F.6 and notify the accused faculty member of next steps.

II F 6. Investigation of Complaint or of Provost Concerns

If the provost determines that the allegations, if proved, state grounds for discipline, they will notify the accused faculty member in writing within twenty (20) business days from the receipt of the allegations. shall, wWithin ten (10) business days of such notification, the provost will~~determination,~~ initiate an investigation into the matter, unless a reliable investigation, which includes notice to the accused faculty member and an opportunity to respond, has already been completed. In such cases, the provost, in their sole discretion, may elect to rely on the investigation in lieu of the investigation provided for in this Section II.F.6. In matters involving Title IX Sexual Harassment, as defined by EP#15, the provost must rely on the investigation completed by Compliance and Civil Rights (CCR) in lieu of the investigation provided for in this Section II.F.6. If the provost initiates an investigation, the provost shall 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 their behalf, and the obligation not to retaliate against those filing the complaint. The provost shall also determine the appropriate investigative person/body, including, but not limited to

- a. Themselves
- b. Vice provost, associate vice provost, or vice president
- c. Dean or department chair
- d. CCR
- 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.

When the provost initiates an investigation, the provost shall generally cause the investigation to be completed within ~~thirty-sixty~~ (360) 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) business 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 ~~thirtysixty~~ (360) business days.

The timelines may be extended by the provost at any time upon their 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 their 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.

II F 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 II.F.3, or the University Ethics Policy, EP #45, 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 their decision.

If the conduct, as alleged, meets Title IX Sexual Harassment and jurisdiction as defined by EP#15 (the Policy Prohibiting Discrimination & Harassment), even if the investigation does not find a violation, there is still a formal hearing afforded to the parties as described in the Major Infractions section.

II F 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 Regulations, II.F.3, or the University Ethics Policy, EP #45, and
- c. The conduct subjects the faculty member to a suspension or termination,

Or where the alleged conduct constitutes Title IX Sexual Harassment, as defined in EP#15 (Policy Prohibiting Discrimination & Harassment),

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, [the University Ethics Policy, EP #45](#), 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.
- iv) For matters involving allegations of Title IX Sexual Harassment, as defined by EP#15, a statement that the Respondent is presumed not responsible.

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 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 Committee

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 faculty, except in matters involving Title IX Sexual Harassment, as defined in EP#15, for which the Faculty Status Committee itself will act as the Hearing Committee. The Faculty Status Committee shall keep in mind the University's values regarding affirmative action and diversity in recommending committee members.

For matters not involving Title IX Sexual Harassment, the Hearing Committee shall consist of ~~five~~three (53) tenured faculty members. ~~Two~~One (12) alternate

tenured faculty members shall also be named. All committee members, ~~including the alternates, shall will~~ attend the hearings. Alternates will only attend the hearings if they replace a Hearing Committee member. The Faculty Status Committee shall select committee members within fifteen (1~~50~~) 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 one~~two~~ members without stated cause. The provost ~~and~~ 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. 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.

For matters involving Title IX Sexual Harassment, as defined by EP#15, the Hearing Committee shall consist of the Faculty Status Committee, excluding any members who have a bias and/or conflict of interest towards the complainant or the respondent, or towards complainants or respondents generally. All members participating in a hearing must have appropriate training on Title IX regulatory requirements, as provided by Compliance & Civil Rights (CCR).

For any matter, 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 Hearing Committee member outside the hearing shall be immediately reported to both the remainder of the Hearing Committee and to the other parties.

The Hearing Committee, at that first meeting, shall elect a chair to preside over its hearings The Hearing Committee shall request appointment of an Administrative Law Judge from the Washington Office of Administrative Hearings. Rules, 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 Faculty Manual and with applicable Washington State law.

Hearing Committee members are required to attend the scheduled hearing and must be prepared to adjust their teaching and research schedule in order to attend hearings. Hearings will not be rescheduled or moved to accommodate Committee member schedules. It is important that those serving on the Hearing

Committee understand this potential commitment. To this end, faculty selected to be on hearing committees will receive written confirmation from the Office of the President describing the responsibilities of the committee. Each committee member must sign the document, acknowledging their commitment to the process. A copy of the signed document will be shared with the committee member's chair/director and dean.

Parties will work with the Hearing Committee to set agreeable dates, but Hearing dates are ultimately set by an Administrative Law Judge and Hearing Committee members are required to attend. This may include hearing dates set during reduced university hours, university breaks, and the summer session between the end of spring semester and the beginning of fall semester. The University will work with Committee members to cover class work and other responsibilities during a hearing. Hearing Committee members with nine-month appointments will be remunerated appropriately when necessary.

d. Notice of Hearing

~~The Hearing Committee~~An Administrative Law Judge will~~shall~~ determine a date(s) for ~~theits h~~Hearing on the matter. The Administrative Law Judge may continue the hearing date(s) at the request of either party, or as justice requires.

If a summary suspension has been ordered, the hearing must be scheduled to begin no later than twenty-five (25) business days from the date the Faculty Status Committee constituted the Hearing Committee, unless the Respondent waives their right to have the hearing begin within this time-frame. In all other cases, the hearing must be scheduled to being no sooner than twenty-five (25) and no later than ~~seventy-five-ninety (9075)~~ business 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 ~~must~~shall include all of the following:

- 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 Hearing 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 the Faculty 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. ~~and~~
- viii) ~~—~~**For cases related to Title IX Sexual Harassment and jurisdiction, as defined in EP#15:** Per EP #15, the hearing must be held in a venue that allows for separate rooms for complainant and respondent. Notice of the hearing will be provided to both the complainant and the respondent and will include a statement that the Respondent is presumed not responsible.

~~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 (and the Complainant in matters involving Title IX Sexual Harassment, as defined by EP #15) 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.

For hearings related to Title IX Sexual Harassment and jurisdiction, as defined in EP#15 (Policy Prohibiting Discrimination and Harassment): Per EP #15, any evidence must be made available for inspection and review at any hearing.

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.

Interviews of witnesses shall be done within a reasonable time before the Hearing and shall not extend beyond the minimum time necessary to obtain relevant information. Witnesses may request that both parties provide information before

an interview, including the length of the interview, the format, the general nature of questions that will be asked, and length of time required to conduct the interview. Witnesses have the right to refuse that an interview be recorded. The Office of the Attorney General, WSU Division cannot provide legal representation to faculty witnesses. However, faculty may request an orientation to the hearing process from the Office of the Attorney General.

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~~ Administrative Law Judge such memoranda, position statements, objections to proffered evidence, and other procedural materials as the ~~Judge~~ 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~~ Administrative Law Judge 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~~ Administrative Law Judge shall cause the hearing to be recorded by the most effective method and shall preserve any exhibits or other materials received during the hearing. **For hearings related to Title IX Sexual Harassment and jurisdiction, as defined in EP#15:** Audio or audiovisual recording or transcripts must be available for the party's inspection and review. 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~~Administrative Law Judge shall first allow the provost to submit those witnesses and documents identified in the Pre-hearing Statement. The ~~Hearing Committee~~Administrative Law Judge shall then allow the Respondent (and the Complainant in matters involving Title IX Sexual Harassment, as defined by EP#15) 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 ~~Administrative Law Judge~~Hearing Committee retains the right to determine if any other person may attend or be excluded, including witnesses.

For hearings related to Title IX Sexual Harassment and jurisdiction, as defined in EP#15, each party must be allowed an advisor. Advisors must be present. If the advisor is not able to be present, the university must provide an advisor free of charge to conduct the cross-examination on that party's behalf. The advisor may or may not be an attorney. Advisors, but not the parties, may cross examine the other party and all witnesses who choose to participate in the hearing. The ~~Hearing Committee~~Administrative Law Judge will review cross-examination questions in advance to determine relevance, and to explain any decisions about questions selected for exclusion. The sexual history of a complainant is not relevant or admissible in a hearing unless the complainant's sexual predisposition or prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The Administrative Law Judge or 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 twenty-five (25) business 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.

For non-Title IX Sexual Harassment matters, 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.

For matters involving allegations of Title IX Sexual Harassment, as defined by EP#15, the Hearing Committee shall make a written determination of its findings, sanctions, and remedies determinations, as well as the reasons and bases for them, available to the complainant and respondent within twenty-five (25) business days of the last day of the hearing. All findings of the committee shall be based solely on the hearing record. 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. Section 10 (j-l). below do not apply to these matters. Appeals rights for Title IX Sexual Harassment cases are described in Section 10(m).

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, they 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 of Regent'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 of Regent's 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 of Regents will convene another meeting as

soon as is reasonable after receipt of the responses, and will issue a final determination.

The Board of Regent'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 of Regents 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 of Regents shall afford the faculty member and the University the opportunity to present written and/or oral argument. The Board of Regents 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 of Regents addressing its concerns and recommending action by the Board of Regents. The Board of Regents shall thereafter issue the University's final decision in the matter within fifty (50) business days of receipt of that revised report.

m. Appeals in cases involving Title IX Sexual Harassment.

For cases involving allegations of Title IX Sexual Harassment, as defined in EP#15, the complainant and the respondent may appeal to the Office of the President on the following grounds:

- Procedural irregularity that affected the outcome;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made when such evidence might affect the outcome;
- The Title Coordinator, investigator, or decision maker has a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or

Such an appeal must be served to the Office of the President within twenty (20) business days after the faculty member's receipt of the Hearing Committee's decision. The president, or the president's delegate, will review the appeal; the reviewer cannot be a member of the Hearing Committee, the investigator assigned to the case, or the Title IX Coordinator. The President, or the president's delegate, will receive training on Title IX regulatory requirements, as provided by Compliance and Civil Rights (CCR).

The president, or the president's delegate must not have a bias and/or conflict of interest towards either party, and must 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 Office of the President, the president, or the president's delegate outside the hearing shall be immediately reported to the Provost, to the University president, and to the parties.

The President's review shall be based on the record of the hearing, including the Hearing Committee's findings, sanctions, and remedies. The Office of the President will notify both the complainant and respondent in writing, when an appeal has been received. After notification of the appeal, both parties will have ten days to submit a written statement in support of or challenging an outcome to the Office of the President. The President, or delegate, will either sustain the decision of the Hearing Committee or return it to the Hearing Committee with specific written objections. This decision shall be reached as soon as practicably possible, and will be issued in writing with a rationale for the decision to the Hearing Committee and both parties, simultaneously. Where the Hearing Committee's findings are not upheld, the Hearing Committee will review the written objections and determine the appropriate process, which may include revising the Hearing Committee's findings, sanctions, or remedies, or reengaging in the hearing process, if needed.

n. 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.

II G. Policy Regarding Conduct for Which Faculty May Face Disciplinary Action

Washington State University values an environment of inclusion, trust and respect. As part of the larger community of the University, some of the policies governing faculty are written in other documents. In particular, the following policies from the Executive Policy Manual (EP, http://public.wsu.edu/~forms/HTML/EPM/EP00_Introduction_and_Table_of_Contents.htm) and the Business Policies and Procedures Manual (BPPM, http://public.wsu.edu/~forms/HTML/BPPM/01.01_Table_of_Contents.htm) are considered part of this manual.

II G 1. Policy Prohibiting Discrimination, Sexual Harassment, And Sexual Misconduct – EP#15

II G 2. Policy On Faculty-Student And Supervisor-Subordinate Relationships – EP#28

II G 3. Policy On Ethics – EP#45

II G 4. Misconduct in Research – BPPM 45.25

II G ~~53~~. Workplace Violence – BPPM 50.30

II G ~~64~~. Bullying Prevention and Reporting – BPPM 50.31