

As amended and approved by the UD Faculty Senate in the
Faculty Senate meeting on May 3, 2021

COMMITTEE ON FACULTY RIGHTS AND RESPONSIBILITIES TERMINATION, COMPLAINT AND APPEAL PROCEDURES

Jurisdiction

The Faculty Constitution charges the Faculty Senate with the right to delegate responsibility to and charge Faculty Committees. The Committee on Faculty Rights and Responsibilities (FRR or Committee) has jurisdiction over all faculty disputes pertaining to faculty termination, reappointment, evaluation, salary adjustment, sabbatical leave, fringe benefits, academic freedom, and other areas of personnel policy and conditions of faculty employment.

All Faculty members are within the jurisdiction of and are subject to the procedures of the FRR.

The FRR hears cases that originate before it and that come to it on appeal. The procedures for termination of a faculty member's employment are different from the procedures for other disputes that originate before the FRR. Termination procedures are derived from and governed by the termination policy set forth in the Faculty Handbook, Section 4. They are set forth in "Termination Procedures," Section I below.

The FRR procedures for handling all other disputes originating before it are specified in "Mediation and Hearing Procedures," Section II below. The FRR may refuse to consider a complaint that requests the Committee to hear a case under Section II in two instances:

1. if the Committee determines that the issue is not in its purview;
2. if the matter under dispute is deemed insubstantial by a majority of the Committee after the Initiator(s) has(have) followed the steps outlined in Section II-B.

The FRR also hears certain appeals from decisions related to discrimination, harassment, sexual misconduct and Title IX. The procedures for handling appeal from those decisions are specified in Section III.

I. Termination Procedures

A. Definitions

For the purposes of FRR procedures in termination cases as outlined below, the following words have these specific meanings:

1. A **termination case** arises when an appropriate administrator sends a faculty member a letter of intent to terminate for one of the three causes enumerated in the Faculty Handbook, 4.1.15 (incompetence, gross irresponsibility, or moral turpitude). Neither a denial of promotion and tenure nor a grievance is a termination case within the meaning of these rules.
2. A **grievance** is an alleged violation of the AAUP bargaining agreement and is pursued through the AAUP Grievance Procedure.
3. **Hearing** refers to the specific steps in C below for the hearing and investigation of termination cases.
4. **Faculty** refers to
 - a Any full- or part-time professor, associate professor, or assistant professor who are employed by the University of Delaware, including Administrators who also hold faculty appointments; and
 - b Any instructor employed by the University of Delaware, except for graduate student instructors; and
 - c Emeritus Professors.
5. **Employee** means an employee of the University of Delaware, and includes Emeritus Professors irrespective of whether they receive a wage or salary.
6. **The Committee** refers to the Faculty Rights and Responsibilities Committee.
7. **Initiator** refers to an administrator who sends a letter of intent to terminate.
8. **Respondent** refers to Faculty, against whom an Initiator(s) files a letter of intent to terminate.
9. **Party** refers to either Initiator(s) of or Respondent(s) to a termination case.

10. **Hearing Panel** refers to the Committee members and any other person recruited to serve on the Hearing Panel to hear a particular termination case. The Hearing Panel may include all members of the Committee irrespective of whether they are tenured or untenured, or Tenure or Continuing Track faculty members.
11. **The Chair** refers to the FRR Chair, unless the FRR Chair has a conflict of interest, in which case it refers to the Committee member with the most seniority determined first, by length of time on the Committee, then by length of time at the University, and then by rank. The Chair may designate a Committee member to chair a Hearing.
12. **Working Day** refers to the days when the University conducts regular business, normally Monday through Friday and excluding all University holidays and furlough days. Winter and Summer session days are included. To count Working Days, Parties exclude the day of the receipt of materials or notice requiring response.
13. **Response** refers to the Respondent's written reply to the Initiator's letter of intent to terminate.
14. **Complainant** refers to the student, staff or faculty member who brought a formal complaint of wrongdoing against the Respondent prompting the FRR termination proceeding.

B. General Provisions

1. A Faculty member receiving a letter of intent to terminate has the right to refuse a hearing. The decision for or against a hearing should be set forth in the Response to the letter of intent to terminate. All reference below to a Respondent's rights and obligations are subject to the Respondent's right to withdraw from the hearing procedures at any time.
2. The burden of proof in the proceedings rests with the party or parties bringing the charge and the relevant standard in FRR termination proceedings is clear and convincing evidence, unless federal, state or local law deems otherwise.
3. Each Party has the right to be represented by an advisor of their own choosing.

4. Each Party has the right to have an observer present of their own choosing.
5. All Faculty may avail themselves of these procedures.
6. All Parties to a Termination Case before the Committee must comply with the Committee's procedures. In particular, all Parties must attend and participate fully in any duly scheduled Hearings on the Case to which they are Parties, unless they are excused from attending in accordance with C-4 below.
7. A Party's failure to attend or participate fully in a duly scheduled Hearing constitutes a violation of the obligations of Faculty at the University of Delaware and will result in such sanctions as the administration deems appropriate.
8. A Party's failure to comply with a provision of Committee procedures will result in that Party's loss of those rights provided by that part of the procedure (for example, documents not submitted within specified time limits will not be admitted as evidence at the Hearing). One Party's failure to comply with Committee procedures does not abrogate the other Party's responsibility to comply.

C. Hearing Procedures

1. Preliminary Steps

a. Written Letter of intent to terminate

The Initiator(s) sends the Respondent(s) and the Chair a letter of intent to terminate that sets forth a charge of gross irresponsibility, incompetence or moral turpitude, including, but not limited to, a charge issued pursuant to the University's Non-Discrimination, Sexual Misconduct and Title IX Policy; briefly specifies the nature of the evidence for the charge; and indicates the desired date and any conditions of termination.

b. Written Response

Within ten Working Days after the date that the Initiator(s) files a letter of intent to terminate, the Respondent(s) shall file with the Chair a Response that, at a minimum, indicates whether the Respondent(s) denies the charge and wishes a hearing.

c. Expanded Written Charge

Within 15 Working Days after the date the Respondent(s) file a Response, the Initiator(s) shall file with the Chair and the Respondent(s) an expanded written charge that lays out the Initiator(s)' case and sets out the process of investigation leading to the decision to terminate. The expanded written charge should include the essentials of the charge, which are: 1.) The identities of people alleged to be involved in the offense (*i.e.*, the alleged offender, conspirators, victims); 2.) The standards that are alleged to have been violated; and 3.) Particular actions alleged to have violated the standards. The Hearing should include only charges for which the essentials have been provided. The essentials of the process of the investigation are: 1.) The chronology of the investigative steps and major decisions; 2.) Identities of investigators and key decision-makers; 3.) Identities of investigative techniques; and 4.) A connection between the investigative findings and the decision to terminate.

d. Pre-Hearing Meeting

Within 15 Working Days after the Initiator(s) submit an expanded written Complaint, the Chair shall conduct a short Pre-Hearing Meeting with the Initiator(s) and Respondent(s). Each Party shall have the opportunity to be accompanied by their advisor. The Complainant also shall have an opportunity to meet with the Chair, either at the same time as the Pre-Hearing Meeting or separately at the option of the Complainant. The Complainant shall have the opportunity to be accompanied by an advisor. At or before the Pre-hearing meeting, any Party may raise any questions about the charge, the hearing, advisors, or any other procedural matter; and the Complainant shall have the same right. At the meeting, the Chair shall:

- i. Fix an expeditious and mutually agreeable time for the Hearing no sooner than 20 days after the letter of intent to terminate;

- ii. Review Hearing procedures, including the Parties' obligations, the roles of advisors and observers, the rules for submitting documentary evidence, and possible limits on the number of witnesses;
- iii. Set deadlines for submission of documentary evidence and names of witnesses to be called;
- iv. Identify advisors and observers selected by the Parties and;
- v. Tentatively name the Hearing Panel, pursuant to any Party's claims of conflict of interest under Section 3-b or other cause for excusing a Hearing panel member.

e. Witness Lists

Parties shall submit the names of witnesses to the Chair within the time agreed upon in section d-iii above. The Chair shall make the names available to all other Parties immediately. If the Committee decides to call additional witnesses, it will promptly communicate their names to all Parties. Before the Hearing, the Chair may question and rule on the value of a witness to the proceedings and remove witnesses deemed redundant secondary witnesses or otherwise not relevant to the details of the expanded written charge.

f. Documents

- i. Parties shall submit documents to the Chair at least 10 Working Days before the Hearing or lose the right to submit documents. Except as provided in Section I.C.7., within 5 Working Days after receipt, the Hearing Panel shall make all documents available in the Senate office to all Parties and to no one else; except that the Complainant, if there is one, also shall be given access to all documents in the same manner as access is granted to all Parties.

- ii. All documents shall be submitted in duplicate with one set being original documents if at all possible. All documents shall remain in the possession of the Committee. If original documents are in the possession of someone not a Party to the Hearing, then the Hearing Panel may request the submission of any such documents for the purpose of making a copy of such document which shall be regarded as if original. If original documents no longer exist, then copies may be accepted, subject to verification where possible.
- iii. Except as provided in Section I.C.7, all documents and correspondence received by the Hearing Panel that relate to a Hearing shall be made available by the Hearing Panel to the Parties to that Hearing and to no one else. Parties may not remove original documents from the Senate Office, but may make and remove copies. Items made available shall be considered confidential and shall not be communicated to anyone that is not a Party, advisor or observer.

2. The Hearing

a. Attendance is limited to the following:

- i. The Initiator(s) and the Respondent(s);
- ii. One advisor selected by each Initiator and one advisor selected by each Respondent;
- iii. One observer selected by each Initiator and one observer selected by each Respondent.
- iv. The members of the Hearing Panel and supporting staff;
- v. Each witness during their testimony.
- vi. The Complainant may, but is not required to, attend the entire hearing accompanied by an advisor of the Complainant's choosing. If the Complainant does not wish to be present in the hearing room or if mandated by law, the Complainant will be allowed to participate by videoconference.

b. Conduct of the Hearing

- i. It is the responsibility of the Hearing Panel and its support staff to arrange hearing space and maintain records of the Hearing.
- ii. The Chair shall call the Hearing to order, determine all procedural questions and objections raised at the Hearing, and determine the admissibility of evidence.
- iii. All Parties, Advisors, Observers, Complainants (as appropriate) and members of the Hearing Panel shall be identified for the record.
- iv. The record shall include both the Initiator(s)' letter of intent to terminate and the Respondent(s)' response.
- v. Each witness shall be present in the hearing room only during the time of their testimony and shall refrain from discussing the case with other witnesses; provided, however, that the Complainant shall be entitled to be present at the Hearing at all times as provided in Section I.C.2.a.vi above.

c. Statements and Questioning of Witnesses

- i. First the Initiator(s) and then the Respondent(s) may make an opening statement.
- ii. The order in which witnesses shall be heard is as follows: first the witnesses called by the Initiator(s), second those called by the Respondent(s), and third those called by the Hearing Panel.
- iii. The order in which each witness shall be questioned is as follows:
 - a. Witnesses called by the Initiator shall be questioned first by the Initiator, then by the Respondent and then by the Hearing Panel.

- b. Witnesses called by the Respondent shall be questioned first by the Respondent, then by the Initiator and then by the Hearing Panel.
 - c. Witnesses called by the Hearing Panel shall be questioned first by the Hearing Panel, then by the Initiator and then by the Respondent.
 - d. If the Complainant is called as a witness, the person against whom the complaint was brought may not directly question the Complainant. Questioning should be conducted by that person's advisor.
 - e. Each member of the Hearing Panel may ask questions of any or all witnesses directly or may have the Chair ask questions on their behalf.
- iv. After the Hearing Panel and the Parties have questioned a witness, members of the panel and Parties may pose additional questions at the discretion of the Chair.
 - v. After all witnesses have been questioned, first the Initiator(s) and then the Respondent(s) may make closing statements. After the closing statements, the Hearing Panel may further question the Parties.
- d. Transcript of Hearing

Except as provided in Section I.C.7., a transcript of the Hearing shall be made available by the Chair to the Parties to the Hearing and to the Complainant, and to no one else. The Parties and the Complainant shall not provide a copy of the transcript or show it to anyone other than their advisors, observers or legal counsel.

3. The Hearing Panel

- a. Membership

The Hearing Panel shall consist of those members of the Committee who are available and do not have a conflict of interest as defined below (b). If less than four members of the Committee are available and eligible, the Chair will recruit additional persons to serve on the Hearing Panel from prior members of the FRR Committee; provided that nothing in this paragraph shall prevent a prior FRR member from serving as a mediator, advisor or support person. Recruitment from that pool will be by blind draw, unless the non-conflicted members of the Committee determine that recruitment should be targeted to advance a diverse and inclusive Hearing Panel given the issues presented.

b. Conflict of Interest

- i. Any member of the Committee who is a member of the department of the Initiator(s) or the Respondent(s) or who has a relationship of friendship, animosity, or some other nature that goes beyond mere personal acquaintance or professional association may not serve on the Hearing Panel unless otherwise agreed by all Parties.
- ii. Either Party may request that any member of the Hearing Panel be excused for cause. Such a request must be made in writing to the

Chair no later than five Working Days after the Pre-Hearing Meeting. The Committee shall decide whether the alleged cause justifies excusing the member and shall notify all Parties of its decision and reasons therefore at least 5 Working Days prior to the Hearing.

4. Attendance

- a. All Parties to a Complaint before the Committee must attend and fully participate in any duly scheduled Hearings on that Complaint.
- b. The Hearing Panel may excuse a Party from attending under the following circumstances:
 - i. At least 15 Working Days prior to the Hearing, the Party notifies the Chair in writing of a significant, conflicting obligation that prevents the Party from attending; or

- ii. At any time prior to the Hearing, the Party notifies the Chair in writing of a serious and unexpected emergency or illness that prevents the Party from attending.
- c. A Party's failure to adhere to section a above, unless excused pursuant to sections b-i or b-ii above, constitutes a violation of the obligations of Faculty at the University of Delaware and will result in such sanctions as the administration deems appropriate. In addition, at its discretion, the Hearing Panel may proceed with a Hearing in a Party's absence.
- d. If a Party is excused pursuant to sections b-i or b-ii above, the Hearing Panel shall postpone the Hearing, reset the Hearing to the earliest possible mutually agreeable date, and officially notify all Parties and witnesses of the new hearing date within five Working Days.

5. Witnesses

- a. It is the responsibility of the Parties to name their witnesses by the deadline fixed in the Parties' preliminary agreement.
- b. In the event that either the Initiator(s) or the Respondent(s) discover new witnesses after the deadline agreed upon, their names shall be provided to the Chair immediately. If the Hearing Panel determines that this discovery is legitimate, then the other Parties shall be informed of the names of the new witnesses immediately. However, all new witnesses must be identified and their names communicated to all Parties at least eight Working Days prior to the Hearing.
- c. Each witness duly notified of a Hearing is obliged to attend and fully participate in hearing procedures.
- d. The Hearing Panel may excuse a witness from attending under the following circumstances:

- i. Within seven Working Days of the date of the witness' notice to appear, the witness notifies the Chair that the witness is unable to appear; or
 - ii. At any time prior to the Hearing, the witness notifies the Chair in writing of a serious and unexpected emergency or illness that prevents the witness from attending.
- e. If a witness fails to appear or is excused from attending under the provisions in d above, the Hearing Panel shall determine whether the Hearing shall continue as scheduled or whether, in the interests of fairness, the Hearing should be rescheduled to the earliest possible mutually agreeable date. If the Hearing proceeds as scheduled, but either Party considers the absent witness' testimony to be essential, then that Party may, at the conclusion of the Hearing, petition the Hearing Panel for a subsequent Hearing to be limited to eliciting the absent witness' testimony.
- f. The Hearing Panel shall attempt to avoid inconveniencing witnesses by realistically scheduling the time each witness is expected to testify and by conducting the Hearing as expeditiously as is consonant with fairness and due process.
- g. Unless excused according to d above, the failure of a witness who is a university employee to comply with section c above constitutes a violation of their responsibilities as a member of the University community and will result in whatever sanctions the administration deems appropriate.
- h. Claims of special privilege by witnesses shall be ruled upon by the Chair.

6. Advisors and Observers

- a. Each Party is free to determine the degree to which their advisor will conduct their case, including presenting opening and closing statements and questioning witnesses.
- b. Each observer selected by a Party may only observe and may not otherwise participate in the Hearing.

- c. If a person serves as an advisor for either the Respondent or Initiator, that person cannot also serve as a witness without violating the Hearing procedures, Section C.2.a.v., and Section C.2.b.v, above.

7. Hearing Panel Report

- a. Within 14 working days of receipt of the hearing record, including the hearing transcript and all exhibits admitted at the hearing, the Hearing Panel shall write its recommendations to the Provost , and transmit to the Provost the transcript and all documents that a Party asked to be admitted into evidence whether admitted or not. If the Provost has a conflict of interest the report will go to the President. The Report shall address two questions:
 - i. Does the evidence provide adequate proof of the Initiator's charges?
 - ii. If so, do the charges constitute a terminable offense, i.e., gross irresponsibility, incompetence, or moral turpitude?

Both the opinion of the majority and an opinion of those in the minority (in the event the opinion is not unanimous) shall be provided to the Provost (or President) to the Respondent and to any Complainant. These opinions should be signed by the concurring parties at the discretion of the members of the panel. In the event the panel chooses not to sign the opinions, the number of members supporting each position shall be provided.

- b. Within 21 days after receipt of the Report, which includes the recommendation, the Provost (or President) shall, in writing, either affirm the Report or refer it back to FRR with detailed objections and/or suggestions. If the Report is referred back, FRR shall review the Provost's (or President's) response, taking into account any objections or suggestions therein. FRR may submit a revised report or decline to do so within 21 days to the Provost (or President), who may affirm, modify, or reject it within 21 days. If the Report is rejected or modified, then the Provost (or President) shall provide a written statement to the Hearing Panel and both parties describing the substantive reason(s) for rejection or modification. The Provost's (or President's) decision shall be final and conclusive, and the matter in question shall be deemed closed, unless either Party or the Complainant requests an appeal to the Board of Trustees within 21 days after receipt of a written copy of the Provost's (or President's) decision. The Board of Trustees may hear appeals at their discretion, and the Board's decision shall be

final. All communication and decisions shall be made available to the Hearing Panel, the Parties and the Complainant.

- c. The Hearing Panel shall not provide a copy of, or show, its Report, including any revisions, or the Provost's (or President's) objections, suggestions or decision or the Board's decision to anyone else, except for members of the Committee who were not members of the Hearing Panel.

II. Mediation and Hearing Procedures

A. Definitions

For the purposes of FRR procedures as outlined below, the following words have these specific meanings:

1. A **Complaint** is any question within the jurisdiction of the FRR brought by a Faculty member for mediation or hearing. Note that a "Complaint" is not the same as a "grievance." A grievance is an alleged violation of the AAUP bargaining agreement and is pursued through the AAUP Grievance Procedure.
2. **Mediation** refers to the specific steps in B-2 below for resolution of faculty Complaints.
3. **Hearing** refers to the specific steps in C below for the hearing and investigation of faculty Complaints after the failure of Mediation.

15. **Faculty** refers to

- a Any full- or part-time professor, associate professor, or assistant professor who are employed by the University of Delaware, including Administrators who also hold faculty appointments; and
 - b Any instructor employed by the University of Delaware, except for graduate student instructors; and
 - c Emeritus Professors.
4. **Employee** means an employee of the University of Delaware, and includes Emeritus Professors irrespective of whether they receive a wage or salary.

5. **The Committee** refers to the Faculty Rights and Responsibilities Committee (FRR).
6. **The Chair** refers to the FRR Chair, unless the FRR Chair has a conflict of interest, in which case it refers to the member with the most seniority determined by first, length of time on the Committee, then by length of time at the University, and then by rank. The Chair may designate a Hearing Panel member to chair a hearing.
7. **Initiator** refers to a Faculty member who brings a Complaint to the Committee.
8. **Respondent** refers to Faculty member(s) against whom a Complaint is brought by Initiator(s).
9. **Party** refers to either Initiator(s) of or Respondent(s) to a Complaint.
10. **Hearing Panel** refers to the Committee members and any other person recruited to serve on the Hearing Panel to hear a particular termination case. The Hearing Panel may include all members of the Committee irrespective of whether they are tenured or untenured, or Tenure or Continuing Track faculty members.
11. **Working Day** refers to the days when the University conducts regular business, normally Monday through Friday and excluding all University holidays and furlough days. Winter and Summer session days are included. To count Working Days, Parties exclude the day of the receipt of materials or notice requiring response.

B. Procedures

1. General Provisions

- a. This section does not apply to (i) termination, which is governed by Section I of these rules or (ii) discrimination, harassment, sexual misconduct and Title IX appeals, which are governed by Section III of these rules. All Faculty may avail themselves of these procedures.
- b. All Parties to a Complaint must comply with the Committee's procedures. In particular, all Parties must attend and participate fully in any duly scheduled Hearings on the Complaint to which they are Parties, unless they are excused from attending in accordance with C-4-b below.

- c. The burden of proof in the proceedings rests with the party or parties bringing the charge, and the relevant standard in FRR complaint and proceedings under this Part II is a preponderance of the evidence (more likely than not).
- d. A Party's failure to attend or participate fully in a duly scheduled hearing constitutes a violation of the obligations of Faculty at the University of Delaware and will result in such sanctions as the administration deems appropriate.
- e. A Party's failure to comply with a provision of Committee procedures will result in that Party's loss of those rights provided by that part of the procedure (for example, documents not submitted within specified time limits will not be admitted as evidence at the Hearing). One Party's failure to comply with Committee procedures does not abrogate the other Party's responsibility to comply.
- f. During a Hearing (Section C below), a Party may enlist the help of any University employee to act as an advisor, except (i) those employees presently serving on the FRR, or (ii) those employees who have a juris doctorate (J.D.) degree and are employed as University of Delaware staff or Administrators. The Parties also may also enlist the help of an observer, who need not be a University employee.

2. Procedures for Mediation

- a. Before bringing a dispute to the Committee by communicating a Complaint to the Chair, a faculty member is expected to have exhausted all other reasonable means of resolving the dispute, including, where appropriate, discussion with the faculty member's departmental chair or equivalent and/or Dean.
- b. An Initiator(s) begins the Mediation process by communicating a Complaint to the Chair. If, after discussion with the Chair, the Initiator(s) decides to withdraw the Complaint, or if the Initiator(s) and the Chair mutually agree to drop the Complaint, then the matter is closed and no record of the Complaint is kept.
- c. If the Complaint is not terminated through the discussion process above, the Initiator(s) may present a preliminary Complaint in writing to the Chair and to the person(s) against whom the Complaint is directed.

- d. The Chair shall refer the Initiator(s) to a member of the Faculty whom the Chair, with the concurrence of the Committee, has appointed to act as Mediator. With the approval of the Committee, a member of the Committee may serve as mediator in a complaint, but may not serve on the Hearing Panel, nor serve as an advisor or observer in the Complaint Hearing and must recuse self from all Committee deliberations concerning this complaint. The Mediator shall work with the Initiator(s) and Respondent(s) to investigate the Complaint and effect a resolution agreeable to all Parties.
- e. Mediation is concluded when:
 - i. The Complaint is withdrawn; or
 - ii. The Complaint is resolved to the satisfaction of the Parties, and the Complainant (as appropriate); or
 - iii. The Mediator determines that no informal resolution is possible; or
 - iv. After 30 Working Days (or after any extension agreed to by the Initiator(s), Mediator, and the Chair), the Complaint has not been resolved.
- f. Upon conclusion of Mediation, the Mediator shall report the results to the Committee within fifteen Working Days.
- g. If a majority of the Committee determines that the Complaint falls within its purview, the Chair shall advise the Initiator(s) of their right to a Hearing under Section C. If a majority of the Committee determines that the Initiator's Complaint does not fall within its purview or that the Complaint is insubstantial, then no Hearing on the matter shall be held.

C. Procedures for the Hearing

1. Preliminary Steps

a. Written Complaint

If the Committee agrees to hear the Complaint, the Initiator(s) files with the Committee and the Respondent(s) an expanded written Complaint

which specifies the charge(s), reviews the evidence, and includes the remedies sought.

b. Written Response

Within ten Working Days after the date that the Initiator(s) file(s) a Complaint, the Respondent(s) shall file with the Committee a Response that, at a minimum, indicates whether the Respondent(s) deny the Complaint.

c. Pre-Hearing Meeting

Within 15 Working Days after the Initiator(s) submit the expanded written Complaint, the Chair shall conduct a short Pre-Hearing Meeting with Initiator(s) and Respondent(s). Each Party shall have the opportunity to be accompanied by their advisor., At or before this meeting, any Party may raise any questions about the charge, the hearing, advisors, or any other procedural matter. At the meeting, the Chair shall:

- i. Fix an expeditious and mutually agreeable time for the Hearing; reasonable efforts being made to schedule the Hearing within 45 Working Days of the Pre-Hearing Meeting. Such Hearing should not be scheduled for a date greater than 65 Working Days after the Pre-Hearing Meeting;
- ii. Review Hearing procedures, including the Parties' obligations, the roles of advisors and observers, the rules for submitting documentary evidence, and possible limits on the number of witnesses;
- iii. Set deadlines for submission of documentary evidence and names of witnesses to be called;
- iv. Identify advisors and observers selected by the Parties; and
- v. Tentatively name the Hearing Panel, pursuant to any Party's claims of conflict of interest under Section C-3-b or other cause for excusing a Hearing panel member.

d. Witness Lists

Parties shall submit the names of witnesses to the Chair within the time agreed upon in section c-3 above. The Chair shall make the names available to all other Parties immediately. If the Hearing Panel decides to call additional witnesses, it will promptly communicate their names to all Parties.

e. Documents

- i. Parties shall submit documents to the Chair at least 10 Working Days before the Hearing or lose the right to submit documents. Except as provided in Section II.C.7, within 5 Working Days after receipt, the Hearing Panel will make all documents available in the Senate office to all Parties and to no one else.
- ii. All documents shall be submitted in duplicate with one set being original documents if at all possible. All documents shall remain in the possession of the Committee. If original documents are in the possession of someone not a Party to the Hearing, then the Hearing Panel may request the submission of any such documents for the purpose of making a copy of such document which shall be regarded as if original. If original documents no longer exist, then copies may be accepted, subject to verification where possible.
- iii. Except as provided in Section II.C.7, all documents and correspondence received by the Committee that relate to a Hearing, or to an attempt at Mediation that precedes it, shall be made available by the Committee to the Parties to that Hearing and to no one else. Parties may not remove original documents from the Senate Office. Parties may however make and remove copies of documents, other than those protected by law such as HIPAA and FERPA. All items made available for review and/or copying shall be considered confidential and shall not be communicated to anyone not a Party, advisor, observer, or legal counsel.

f. The time periods, deadlines and Hearing dates set forth in these procedures are to be adhered to by all Parties and the Hearing Panel. However, for good

cause presented in writing by any Party or considered necessary by the Hearing Panel, reasonable extensions may be granted by the Hearing Panel.

2. The Hearing

a. Attendance is limited to the following:

- i. The Initiator(s) and the Respondent(s).
- ii. One advisor selected by each Initiator and one advisor selected by each Respondent. .
- iii. One observer selected by each Initiator and one observer selected by each Respondent.
- iv. The members of the Hearing Panel and supporting staff.
- v. Each witness during their testimony.

b. Conduct of the Hearing

- i. It is the responsibility of the Hearing Panel and its support staff to arrange hearing space and maintain records of the Hearing.
- ii. The Chair shall call the Hearing to order, determine all procedural questions and objections raised at the Hearing, and determine the admissibility of evidence.
- iii. All Parties, Advisors, Observers and members of the Hearing Panel shall be identified for the record.
- iv. The record shall include both the Initiator(s)' Complaint and the Respondent(s)' response.
- v. Only members of the Hearing Panel and the Parties may question a witness unless otherwise provided for pursuant to section c, below.

- vi. Each witness shall be present in the hearing room only during the time of their testimony and shall refrain from discussing the case with other witnesses.

- c. Statements and Questioning of Witnesses
 - i. First the Initiator(s) and then the Respondent(s) may make an opening statement.
 - ii. The order in which witnesses shall be heard is as follows: first the witnesses called by the Initiator(s), second those called by the Respondent(s), and third those called by the Hearing Panel.
 - iii. The order in which each witness shall be questioned is as follows:
 - a. Witnesses called by the Initiator shall be questioned first by the Initiator, then by the Respondent and then by the Hearing Panel.
 - b. Witnesses called by the Respondent shall be questioned first by the Respondent, then by the Initiator and then by the Hearing Panel.
 - c. Witnesses called by the Hearing Panel shall be questioned first by the Hearing Panel, then by the Initiator and then by the Respondent.
 - d. Each member of the Hearing Panel may ask questions of any or all witnesses directly, or may have the Chair ask questions on their behalf.
 - e. If the Complainant is a witness, the person against whom the complaint was brought may not directly question the Complainant. Questioning should be conducted by the faculty member's advisor.

- iv. After the Hearing Panel and the Parties have questioned a witness, members of the panel and Parties may pose additional questions at the discretion of the Chair.
- v. After all witnesses have been questioned, first the Initiator(s) and then the Respondent(s) may make closing statements. After the closing statements, the Hearing Panel may further question the Parties.

d. Transcript of Hearing

Except as provided in Section II.C.7, a transcript of the Hearing shall be made available by the Chair to the Parties to the Hearing and to the Complainant and to no one else. The Parties and the Complainant shall not provide a copy of the transcript or show it to anyone other than their advisors, observers or legal counsel.

3. The Hearing Panel

a. Membership

The Hearing Panel shall consist of those members of the Committee who are available and do not have a conflict of interest as defined below (b). If less than four members of the Committee are available and eligible, the Chair will recruit additional persons to serve on the Hearing Panel from prior members of the FRR Committee; provided that nothing herein shall prevent a prior FRR member from serving as a mediator, advisor or support person. Recruitment from that pool will be by blind draw, unless the non-conflicted members of the Committee determine that recruitment should be targeted to advance a diverse and inclusive Hearing Panel given the issues presented.

b. Conflict of Interest

- i. Any member of the Committee who is a member of the department or unit of the Initiator(s) or the Respondent(s) or who has a relationship of friendship, animosity, or some other nature that goes beyond mere personal acquaintance or professional association may not serve on the Hearing Panel unless otherwise agreed by all Parties.
- ii. Either Party may request that any member of the Hearing Panel be excused for cause. Such a request must be made in writing to the Committee no later than five Working Days after the Pre-Hearing Meeting. The Committee shall decide whether the alleged cause justifies excusing the member and shall notify all Parties of its decision and reasons therefore at least 5 Working Days prior to the Hearing.

4. Attendance

- a. All Parties to a Complaint before the Committee must attend and fully participate in any duly scheduled Hearings on that Complaint.
- b. The Hearing Panel may excuse a Party from attending under the following circumstances:
 - i. At least 15 Working Days prior to the Hearing, the Party notifies the Chair in writing of a significant, conflicting obligation that prevents the Party from attending; or
 - ii. At any time prior to the Hearing, the Party notifies the Chair in writing of a serious and unexpected emergency or illness that prevents the Party from attending.
- c. A Party's failure to adhere to section a above, unless excused pursuant to sections b-i or b-ii above, constitutes a violation of the obligations of Faculty at the University of Delaware and will result in such sanctions as the administration deems appropriate. In addition, at its discretion, the Hearing Panel may proceed with a Hearing in a Party's absence.
- d. If a Party is excused pursuant to sections b-i or b-ii above, the Hearing Panel shall postpone the Hearing, reset the Hearing to the earliest possible mutually agreeable date, and officially notify all Parties and witnesses of the new hearing date within five Working Days.

5. Witnesses

- a. It is the responsibility of the Parties to name their witnesses by the deadline fixed in the Parties' preliminary agreement.
- b. In the event that either the Initiator(s) or the Respondent(s) discover new witnesses after the deadline agreed upon, their names shall be provided to the Hearing Panel immediately. If the Hearing Panel determines that this discovery is legitimate, then the other Parties shall be informed of the names of the new witnesses immediately. However, all new witnesses must be identified and their names communicated to all Parties at least eight Working Days prior to the Hearing.
- c. Each witness duly notified of a Hearing is obliged to attend and fully participate in hearing procedures.
- d. The Hearing Panel may excuse a witness from attending under the following circumstances:
 - i. Within seven Working Days of the date of the witness' notice to appear, the witness notifies the Chair that the witness is unable to appear; or
 - ii. At any time prior to the Hearing, the witness notifies the Chair in writing of a serious and unexpected emergency or illness that prevents the witness from attending.
- e. If a witness fails to appear or is excused from attending under the provisions in d above, the Hearing Panel shall determine whether the Hearing shall continue as scheduled or whether, in the interests of fairness, the Hearing should be rescheduled to the earliest possible mutually agreeable date. If the Hearing proceeds as scheduled, but either Party considers the absent witness' testimony to be essential, then that Party may, at the conclusion of the Hearing, petition the Hearing Panel for a subsequent Hearing to be limited to eliciting the absent witness' testimony.
- f. The Hearing Panel shall attempt to avoid inconveniencing witnesses by realistically scheduling the time each witness is expected to testify and by conducting the Hearing as expeditiously as is consonant with fairness and due process.

- g. Unless excused according to d above, the failure of a witness who is a university employee to comply with section c above constitutes a violation of the employee's responsibilities as a member of the University community and will result in whatever sanctions the administration deems appropriate.

6. Advisors and Observers

- a. Each advisor may undertake functions otherwise assigned to the Party under Section C-2-b and c above such as the presentation of an opening statement, presentation of a closing statement, and/or the questioning of one or more witnesses, provided that the questioning of a particular witness or the delivery of a statement shall not be shared by a Party and an advisor.
- b. Each observer selected by a Party may only observe and may not otherwise participate in the Hearing.

7. Advisory Opinion and Final Decision

- a. Within 14 days of receipt of the hearing record, including the hearing transcript and all exhibits admitted at the hearing, the Hearing Panel shall write an advisory opinion to the Provost that includes the Hearing Panel's conclusions about the case and any remedies the Hearing Panel may recommend, and transmit to the Provost the transcript and all documents that a Party asked to be admitted into evidence whether admitted or not. If the Provost is a Complainant or Respondent or otherwise has a conflict of interest, the advisory opinion will go to the President. These remedies are not limited to those specified by the initiator(s) in the complaint.
- b. The Hearing Panel shall provide a copy of its opinion to the Provost (or President) and to each Party. The Provost will issue a decision within 45 Working Days of receipt of the opinion and provide a copy to the Parties and the Hearing Panel. The Hearing Panel shall not provide a copy of, or show, its opinion or the Provost's (or President's) decision to anyone else, except for members of the Committee who were not members of the Hearing Panel. The Provost (or President) or the parties may disclose the contents of the opinion and decision at their discretion.

III. Procedures for Appeals

A. Definitions

1. **“Appellate Board”** means the Committee on Faculty Rights and Responsibilities (FRR). The Appellate Board includes all members of the Committee irrespective of whether they are tenured or untenured, or Tenure or Continuing Track faculty members.
2. **“Appellate Officer”** means the Provost (or the President in those instances in which the Provost is a party or has a real or perceived conflict of interest) available to render decisions following an appeal to the FRR.
3. **“Complainant”** means the person who is alleged to have experienced the prohibited conduct.
4. **“Working Day”** means business days when all University offices are open. This does not include weekends, holidays, furlough days or inclement weather days when University offices are closed.
5. **Faculty**
 - a. Any full- or part-time professor, associate professor, or assistant professor who are employed by the University of Delaware, including Administrators who also hold faculty appointments; and
 - b. Any instructor employed by the University of Delaware, except for graduate student instructors; and
 - c. Emeritus Professors.
6. **“Parties”** means the Complainant and the Respondent
7. **“Policy”** means the University of Delaware’s Non-discrimination, Sexual Misconduct, and Title IX Policy approved in conformance with the Collective Bargaining Agreement.
8. **“Prohibited Conduct”** means the conduct that is prohibited by the Policy.
9. **“Respondent”** means the person who allegedly committed a violation of the Policy.
10. **“Sanctions”** means disciplinary and/or educational measures imposed following a determination of responsibility under the Policy.

B. Conflict of Interest

1. Any member of the Committee who is a member of the department of the Initiator(s) or the Respondent(s) or who has a relationship of friendship, animosity, or some other nature that goes beyond mere personal acquaintance or professional association may not serve on the Hearing Panel unless otherwise agreed by all Parties.
2. Either Party may request that any member of the Hearing Panel be excused for cause. Such a request must be made in writing to the Chair of the FRR by any appealing party no later than five Working Days after such party's appeal has been filed or by any non-appealing party no later than five Working Days after receipt of notice of such an appeal has been received. The Appellate Board shall decide whether the alleged cause justifies excusing the member and shall notify all Parties of its decision and reasons therefore within at least 5 Working Days prior to rendering its decision.

C. Procedure

1. Appeals of the decision or sanction may be filed by either Party.
2. The burden of proof is preponderance of the evidence.
3. Within 30 working days of receipt from the Title IX of the written appeal and responses and all documentation contained within the Investigator's file and the Respondent's disciplinary file, the Appellate Board will review the materials, reach a decision in a closed meeting, and issue its decision in writing.
4. The Appellate Board, by majority vote, may decide to:
 - a. Grant the appeal and send the report back to the Title IX Coordinator with instructions to either (a) consider the new evidence, if any, or (b) cure the error, which may include additional investigation, a new investigation, or a new hearing.
 - b. Grant the appeal and send the report back to the Sanctioning Official to reconsider the sanction.
 - c. Deny the appeal, in which case the Appellate Board's opinion is considered advisory and a report is provided to the Provost.
 - d. Grant the appeal and change the sanction(s) applied in which case the Appellate Board's opinion is considered advisory and a report is provided to the Provost.

5. A decision to grant an appeal in whole or in part shall rest on one or more of the following.
 - a. The factual findings on which the decision under review is based are clearly erroneous, meaning that they are not supported by substantial credible evidence in the record.
 - b. The decision or sanction under review rested on an improper interpretation of the Policy.
 - c. A procedural error occurred that significantly impacted the outcome of the investigation, hearing or sanction.
 - d. One or more of the sanctions imposed are inappropriate or unreasonable.
 - e. New evidence or information has arisen that was not available or known to a party during the investigation or hearing and that could significantly impact the decision or sanction. Information that was known to the Appellant during the investigation or hearing but which they chose not to present for any reason is not considered new evidence.
 - f. The Title IX Coordinator, investigator, hearing officer or the person or panel imposing the sanction that impacted the outcome had an actual conflict of interest or demonstrated bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

6. Decisions

- a. The Appellate Board's decision will include a written evaluation. In the event the decision is not unanimous, the minority may, but is not required to, issue an alternative evaluation.
- b. Decisions rendered under III.B.5.a-b shall not be subject to review by the Provost. The Complainant, the Respondent, and the Title IX Coordinator will receive simultaneous written notice of the decision and written evaluation(s).
- c. Decisions rendered under III.B.5.c-d. shall be subject to review by the Provost. The Appellate Board will transmit any advisory decision and written explanations to the Provost. If the Provost is a Complainant or Respondent or otherwise has a conflict of interest, the advisory opinion will go to the President. The Provost will issue a decision, including a written explanation, within 30 Working Days of receipt of the Advisory Opinion. The Complainant, the Respondent, Title IX

Coordinator and Appellate Board will receive simultaneous written notice of the final decision.

- d. When the final decision includes a sanction of a letter of intent to terminate, Respondents may avail themselves to the rights under Section I of these rules.