

To the University Community

Since 1992, various committees of the Senate Executive Committee and a joint Faculty Senate-Administration Task Force have worked to revise the University's procedures by which alleged misconduct by faculty members may be investigated and sanctions imposed for just cause. The goal in these discussions was to simplify and expedite the process that was in place while ensuring fairness and respect for the rights of the respondent faculty member.

The policy printed below does just that. It also makes the President the final decision-maker; provides for the reconsideration of the recommendation of a major sanction; and combines the procedures for imposing a major sanction with those used for imposing minor sanctions. The policy also drops the section on Misconduct in Research, which remains in effect but as a separate policy. Because Misconduct in Research procedures are heavily dependent on ever-changing Federal regulations, periodic revision is necessary, and their incorporation into the just cause policy made it more difficult to effect that revision quickly and simply.

The revised procedures put forward by the joint Faculty Senate-Administration Task Force were approved by the Senate Executive Committee on April 2, 1997, and by a mail ballot of the faculty on May 22, 1997. They subsequently were reviewed and recommended for adoption by the Academic Policy Committee of the Trustees on June 19, 1997, and adopted by the Trustees the next day at their Stated Meeting. The new policy became effective July 1, 1997, and has been published as section II.E.10 of the *Handbook for Faculty and Academic Administrators*.

— Stanley Chodorow, Provost

Procedure Governing Sanctions Taken Against Members of the Faculty

(Approved by the Faculty Senate May 22, 1997)

(Approved by the Trustees June 20, 1997)

I. Introduction and Definitions

A. Introduction

The imposition of a sanction on a faculty member of the University of Pennsylvania is a rare event. However, when situations that might lead to such an action arise, they must be handled fairly and expeditiously. It is essential to have a process that both protects the rights of faculty members and addresses the legitimate concerns of the University. This policy replaces the previously existing "Suspension or Termination of Faculty for Just Cause" (*Handbook for Faculty and Academic Administrators* 1989, as revised 1991, pages 47-51) and also modifies the "Procedures of the Senate Committee on Conduct" (*Almanac* October 31, 1989).

Any cases initiated after this policy is in force, even if the alleged actions preceded its adoption, will be governed by the procedures prescribed here. This document simplifies the previous processes and relates them to a Dean's procedures for imposing minor sanctions. The result is a more coherent and less cumbersome process.

B. Definitions

1. "Charging party"—the Provost, a Dean, a Provost's or Dean's designee who shall be a faculty member of the University, or a Group for Complaint (Definition No. 6).

2. "Complainant"—individual bringing to the attention of a Dean or the Provost a situation that may call for a sanction (Definition No. 14) against a faculty member (Definition No. 5). The complainant may be a student or faculty or staff member of the University, or any individual outside the University who believes that a major infraction (Definition No. 8) or minor infraction (Definition No. 10) of University behavioral standards by a faculty member has occurred.

3. "Counsel"—an advisor, who may be an attorney.

4. "Dean"—the Dean of one of the University's schools.

5. "Faculty member"—a member of the standing faculty, or a standing faculty clinician-educator.

6. "Group for Complaint"—a charging party elected by the standing faculty of a school, by a secret ballot, from its own tenured professors which by the fact of its election shall be empowered to take action that may result in the imposition of a major sanction (Definition No. 9) pursuant to these procedures. The size of the Group for Complaint shall be determined by the faculty but shall not be less than three.

7. "Hearing Board"—either the University Tribunal or the School Committee on Academic Freedom and Responsibility (CAFR). The respondent shall determine whether the Hearing Board will be the Univer-

sity Tribunal (Definition No. 18) or the School CAFR.

8. "Major infraction of University behavioral standards"—an action involving flagrant disregard of the rules of the University or of the customs of scholarly communities, including, but not limited to, serious cases of the following: plagiarism; misuse of University funds; misconduct in research; repeated failure to meet classes or carry out major assigned duties; harassment of, improperly providing controlled substances to, or physical assault upon, a member of the University community; the bringing of charges of major or minor infractions of University standards against a member of the University community, knowing these charges to be false or recklessly indifferent to their truth or falsity; violation of the University's conflict of interest policy or commission of serious crimes such as, but not limited to, murder or rape.

9. "Major sanction"—serious penalties that include, but are not limited to, termination; suspension (Definition No. 15); reduction in academic base salary; zero salary increases stipulated in advance for a period of four or more years.

10. "Minor infraction of University behavioral standards"—an action involving disregard of the University's rules or of the customs of scholarly communities that is less serious than a major infraction.

11. "Minor sanction"—penalties less serious than a major sanction that may include, but are not limited to, a private letter of reprimand; a public letter of reprimand; special monitoring of specific future research, teaching, supervision of students, or other activities related to the minor infraction.

12. "Misconduct in Research Procedures"—the "Procedures Regarding Misconduct in Research" set forth in the current Handbook for Faculty and Academic Administrators.

13. "Respondent"—the faculty member complained against.

14. "Sanction"—penalties imposed by the Trustees, the President, the Provost, or a Dean on a faculty member.

15. "Suspension"—temporary removal of all or a substantial portion of a faculty member's University activities with or without compensation.

16. "Termination"—cancellation of a faculty member's appointment and compensation, as of a certain date.

17. "University Just Cause Panel"—a University-wide Panel from which University Tribunals are chosen. This Panel shall be composed of tenured professors: twelve from the School of Arts and Sciences; twelve from the School of Medicine; six each from the School of Engineering and Applied Sciences, the School of Veterinary Medicine, and the Wharton

School; and three from each of the remaining schools of the University. They shall be appointed, for staggered three-year terms except where an appointment is to complete the term of a person who leaves the panel early. Terms start on July 1. Appointments may be renewed.

The Chair of the Faculty Senate, after consultation with the Past Chair and Chair-elect, has the responsibility for designating the members of the Panel from current or past members of the various School Committees on Academic Freedom and Responsibility and/or past members of the Senate Committee on Academic Freedom and Responsibility (SCAFR).

This shall be done in consultation with the current or past chairs of the various Committees on Academic Freedom and Responsibility, and with due regard for the need for appropriate diversity on University Tribunals. It is also the responsibility of the Chair of the Faculty Senate to inform the prospective members of the Panel about their responsibilities as members of a Tribunal.

18. "University Tribunal"—a body of six tenured professors selected from the Just Cause Panel to hear evidence in a particular case. No more than two members of a Tribunal shall hold primary appointments in the same school. Not less than one of the members shall be from the school of the respondent. The Tribunal shall be created by the process described below. That process shall continue until a Tribunal of six that includes at least one member of the faculty of the school of the respondent can be designated. Once the members of the Tribunal have been designated, they will then elect a chair. Members of the Tribunal shall serve until the case is completed regardless of the termination date of their appointment to the University Just Cause Panel. The Chair of the Tribunal shall conduct the Tribunal's business and preside at hearings but not cast votes except to break ties. Once having served as members of a Tribunal, faculty members are excused from further membership on the University Just Cause Panel for the remainder of their terms. The Chair of the Faculty Senate shall designate a faculty member from the same school to serve the remainder of the term in accordance with the process described in Definition No. 17.

19. "Working days"—shall mean Mondays through Fridays except when the University is officially closed.

II. Suspension or Termination for Just Cause: Preliminary Procedures

A. Types of Charges

Two types of charges, governed by two separate but related processes, are covered by these procedures: major infractions of University behavioral standards and minor infractions of University behavioral standards. In each situation, appropriate action shall be initiated promptly by a member of the University administration who shall normally be the Dean of the school in which the faculty member's primary appointment lies but who may, in unusual circumstances, be another Dean or the Provost. The Dean or Provost may act personally or through a delegate.

B. Preliminary Procedures

Should a question arise regarding the possible imposition of a sanction, the Dean or Provost shall normally interview the respondent in the presence of any department chair concerned and afford opportunity for informal adjustment of the matter. If the matter is adjusted informally to the satisfaction of the Dean or Provost and the respondent, no further proceedings shall be invoked by them. If the matter is not adjusted informally, the Dean or Provost shall consult with several tenured members of the University faculty who are not currently members of the University Just Cause Panel or the school CAFR. Relying on these consultations, the Dean or Provost shall decide whether to invoke the just cause procedures in a case involving major infractions of University behavioral standards, to impose minor sanctions directly in a case involving minor infractions of University behavioral standards, or to drop the matter. If the decision is to drop the matter, the Dean or Provost shall notify the respondent and any complainant in writing.

C. Formation of a Group for Complaint

If the Dean or Provost decides to drop the matter or impose a minor sanction, no further proceedings shall be initiated with the single exception of the faculty's prerogative to form a Group for Complaint. If a faculty has by resolution requested its Dean to examine a situation possibly involving imposition of a major sanction and within 15 working days following the date such resolution was adopted, neither the Dean, another Dean, nor the Provost has either initiated proceedings for imposition of a

major sanction or provided reasons for not initiating such proceedings that are deemed satisfactory by the faculty, then, within 30 working days, the faculty may elect from its own members a Group for Complaint. Members of the University Just Cause Panel and the School CAFR shall withdraw from faculty meetings when these matters are considered and shall not be eligible for membership on the Group for Complaint. The secretary of the faculty shall record the minutes of this meeting and attach as appendices any written information upon which the faculty's vote to elect the Group was based. If formed, the Group shall receive this material and promptly conduct an investigation and may initiate proceedings for imposition of a major sanction if it determines that there is substantial reason to believe that just cause exists therefor. A determination by the Group not to initiate further proceedings shall be reported to the faculty, the Dean, the Provost, the respondent and any complainant, with the Group's reasons for making such determination, and no further action shall be taken by the faculty. However, the Group for Complaint may recommend that the Dean or Provost, where appropriate, impose a minor sanction. If a Dean, Provost or Group for Complaint decides to pursue the case against the faculty member, that individual or group shall initiate other proceedings as described in the remaining sections of this policy.

III. Minor Sanction

A. Imposition by Dean or Provost

If, having consulted with several members of the tenured faculty, the Dean or Provost concludes that the situation involves only a minor infraction of University behavioral standards, the Dean or Provost shall impose a minor sanction on the respondent. He or she shall notify the respondent of this decision and take the steps necessary to put the sanction into effect after the two-week time period for the possible initiation of the mechanisms needed to create a Group for Complaint.

B. Application for Relief to Faculty Grievance Commission

The respondent may apply to the Faculty Grievance Commission for relief from any minor sanction imposed by the Dean or Provost. However, subsequent formation of a Group for Complaint requires that the Grievance Commission cease all activity regarding such relief until a final decision has been reached concerning a major sanction.

IV. Major Sanction

A. Charging Party Requests Formation of Hearing Board: Respondent's Options

1. If the charging party believes that a major infraction of University behavioral standards has occurred, the charging party shall promptly request that the Chair of the Faculty Senate determine, within three working days, whether the respondent wishes to be heard by a University Tribunal or the school CAFR. If the respondent chooses the University Tribunal, the Chair of the Faculty Senate shall prepare a list of 10 faculty members from the University Just Cause Panel who will constitute the potential members of the University Tribunal.

2. The 10 potential members are to be drawn from a randomly ordered list of members of the University Just Cause Panel that is stratified to insure that at least two shall hold primary appointments from the school of the respondent and no more than three shall hold primary appointments from a single school. Only the Chair of the Faculty Senate and the Executive Assistant to the Faculty Senate Chair shall know the order of the names on this list. The Chair of the Faculty Senate shall provide the potential members with copies of these procedures.

B. Charging Party and Respondent Informed of Potential Members of Hearing Tribunal

If the respondent chooses to be heard by a University Tribunal, the Chair of the Faculty Senate shall, within 5 working days following the respondent's choice, provide to the charging party and the respondent an alphabetic listing of the potential members of the Tribunal.

C. Disqualification of Potential Members of Hearing Board

1. The charging party and the respondent each shall be entitled to move to disqualify for prejudice any potential member of the Hearing Board. Such motion shall set forth, in writing, the reasons therefor and shall be delivered to the Chair of the Faculty Senate if the hearing is to be conducted by a University Tribunal or to the chair of the School CAFR if the Hearing is to be conducted by that body not later than 15 working days

after the potential members have been named.

2. Motions to disqualify members of the school CAFR shall be decided by the remaining members of the committee. If the remaining members decide that disqualification is proper, an alternate member, if any is available, shall serve as a substitute for the disqualified member. If an alternate member is not available, the remaining members shall select a substitute.

3. If the respondent has chosen to be heard by a University Tribunal, the Chair of the Faculty Senate shall convene the potential members of the Tribunal after the deadline for motions to disqualify has passed, but no later than 25 working days after the potential members have been named. The potential members shall immediately elect a pro tempore chair from those members who are not named in a motion to disqualify. These members shall decide, by majority vote, whether to disqualify the members named in the motions. The pro tempore chair shall provide the list of potential members who have not been disqualified to the Chair of the Faculty Senate. The Chair of the Faculty Senate will designate the six of the remaining eligible members who rank highest on the randomized list as the University Tribunal for this case.

D. Members of University Tribunal Named

If more than four members of the group or all members of the faculty of the school of the respondent are disqualified, the Chair of the Faculty Senate shall, without identifying those who were not excused, provide an additional list of four more than the number excused, in the manner provided in paragraphs IV.A., B., and C..

E. Hearing Board Determines Whether to Proceed

1. Once the composition of the Hearing Board is determined, the charging party shall promptly send to the Chair of the Hearing Board, the respondent and the Dean and Provost a written statement which sets forth in as much detail as is practicable the grounds for the complaint and for the recommendation of a major sanction. In the case of misconduct in research, the report of the formal investigation committee issued under the Misconduct in Research Procedures shall be included. The notice to the respondent shall be by certified mail. To determine whether formal hearings shall take place, the Hearing Board shall immediately consider the statement from the charging party, consult the relevant documents, and afford the charging party opportunity to present oral and written argument, but shall not hold a hearing to receive evidence.

2. If the Hearing Board concludes that the grounds stated, if true, would clearly not constitute just cause for imposition of a major sanction, it shall issue a report to that effect, sending copies to the charging party, the President, any complainant, and the respondent. The substance of the complaint shall not be the basis of any further proceedings with respect to major sanctions. However, the Hearing Board may remand the case to the Dean or Provost for further proceedings or actions in accordance with paragraph III.A. that relates to a minor sanction.

3. If the Hearing Board concludes that the grounds stated, if true, might constitute just cause for the imposition of a major sanction, and it believes that there is probable cause that in further proceedings the grounds stated will be found to be true, it shall conduct such proceedings as hereinafter provided.

4. The Hearing Board shall normally issue its determination within 15 working days of receiving the complaint, unless circumstances clearly warrant a delay, in which case the record shall detail reasons for the delay.

F. Notification of Right to a Hearing

If further proceedings are conducted, the Chair of the Hearing Board shall send to the respondent, by certified mail, written notice that the respondent may preserve the right to a hearing by notifying the Hearing Board's Chair, in writing, within 15 working days following the respondent's receipt of such notice. The Hearing Board may at its discretion and in exceptional circumstances, grant a short extension of this time period at the respondent's request and upon a showing of good cause. The charging party shall supply to the Chair of the Hearing Board a summary statement of the evidence to be presented by the charging party, including a list of witnesses, copies of relevant extracts from the Statutes and standing resolutions of the Trustees of the University of Pennsylvania, a copy of these procedures, and copies of any other University documents that are relevant to the respondent's procedural rights in this matter. The Chair of the Hearing Board shall furnish these documents with the notice to the respondent.

G. Hearing Board Procedure in the Absence of Participation by Respondent

If the respondent does not request a hearing, the charging party shall nevertheless present evidence to the Hearing Board. The Hearing Board shall then make a written report of its findings, conclusions and recommendations and send a copy of its report and a transcript of the testimony prepared as in paragraph IV.I. below to the charging party and the respondent within 20 working days following the receipt of the charging party's evidence. If the Hearing Board concludes that the charging party has not shown clear and convincing evidence of just cause for the imposition of a major sanction, no major sanction may be imposed, and the substance of the complaint shall not be the basis for any further proceedings with respect to major sanctions. However, based on clear and convincing evidence of a minor infraction, the Hearing Board may recommend that the Dean or Provost impose a minor sanction and he or she will normally implement that recommendation. If the Hearing Board concludes that the charging party has shown clear and convincing evidence of just cause for the imposition of a major sanction, the Hearing Board shall promptly send to the President a copy of its report recommending the major sanction and a transcript of the testimony.

H. Hearing Board Procedure when Respondent Participates

If the respondent requests a hearing before the Hearing Board, the Chair of the Hearing Board shall notify the charging party and the respondent in writing of the date and place of the hearing, within 5 working days following the receipt of the respondent's request. The hearing shall be held at the earliest date that is practicable to the respondent, charging party and Hearing Board, and ordinarily no more than three months from the notification date. Delay of the hearing beyond three months from the notification date shall require a written request to the Hearing Board from the charging party or respondent, and be granted only if the Hearing Board deems that more time is required. Not less than 15 working days prior to the date of the hearing, the respondent shall provide to the Chair of the Hearing Board a written answer to the charging party's statement of the grounds for the complaint and for the recommendation of a major sanction.

I. Procedures During a Hearing

Hearings shall be private with two exceptions. The respondent shall have the right to invite as observers representatives of national professional academic associations concerned with matters of academic freedom and tenure. Other observers may be invited to attend if the charging party, the respondent and the Chair of the Hearing Board consent. A transcript of the hearing shall be made at the expense of the University. The charging party has the burden of proving by clear and convincing evidence that there is just cause for imposition of a major sanction against the respondent. Both the respondent and the charging party may appear personally throughout the hearing; both may have the assistance of counsel. The Hearing Board shall afford the respondent and the charging party the opportunity to present oral and written argument. The respondent and the charging party shall have the right to confront the witnesses and to question them personally or through counsel. They may call witnesses and shall receive the cooperation of the University administration in securing the attendance of such witnesses and the production of such documents as may be relevant. The extent of document production shall be determined by the Hearing Board. The Hearing Board may permit the use of electronic or other means, such as telephone conference calls, in lieu of the appearance of witnesses.

J. Report of Hearing Board and Objections of Respondent

1. Upon concluding the hearings, the Hearing Board shall deliberate privately. It shall determine solely upon the basis of information presented at the hearings whether or not the charging party has established by clear and convincing evidence that a major infraction has occurred. If so, the Hearing Board shall recommend what the major sanction should be. Decisions shall require a majority of the members participating. If the Hearing Board determines that just cause for the imposition of a major sanction has not been established, no major sanction may be recommended. In that event, the Hearing Board may recommend a minor sanction if it determines that a minor infraction has occurred.

2. The Hearing Board shall conclude its deliberations promptly and send to the President a written report in which it shall set forth its findings, conclusions, recommendations, and a transcript of the hearings. Copies of these documents shall also be sent to the respondent by certified mail, and

to the charging party, and the Dean and/or Provost.

3. The respondent may request a reconsideration of the sanction by submitting a written statement to the Chair of the Hearing Board within 5 days of the receipt of the panel's recommendation. In the event of such a request, the Chair shall reconvene the Hearing Board within 5 days of the receipt of the request and hear statements from both the complainant and the respondent, delivered either personally or through counsel. The Hearing Board may, by majority vote, elect to recommend an increased or a decreased sanction; if the Board votes not to change its recommendation, the initial recommendation remains in force. The Chair of the Hearing Board shall communicate its recommendation to the President and to the respondent in writing no later than 5 days after the hearing on the request for reconsideration of sanction.

4. In either case the respondent may, within 30 working days following the receipt of the documents (i.e., 30 days, including the 15 days allowed for a reconsideration of sanction), send to the President any objections to the findings, conclusions or recommendations of the Hearing Board.

K. President's Actions

1. The President, relying only upon the materials forwarded by the Hearing Board and objections submitted by the respondent, shall normally accept the Hearing Board's recommendations.

2. The President may depart from the Hearing Board's recommendations only in exceptional circumstances and only after consulting the individuals then serving as the Chair, Past Chair and Chair-elect of the Faculty Senate ("the three Chairs"). Permissible departures are limited to (a) discontinuance of the proceedings for failure of proof and (b) the reduction in the severity of a sanction. When a departure is proposed, the President shall send to the three Chairs all of the documents received from the Hearing Board and the respondent and shall secure their views before taking action. Should any of the three Chairs be unable to serve, the other two Chairs shall select a replacement from the available former Chairs of the Faculty Senate.

3. If the proceedings are discontinued, the substance of the complaint shall not be the basis for any further proceedings with respect to major sanctions.

4. The President may request reconsideration of the sanction recommended by a hearing board by submitting a written statement to the Chair of the Hearing Board within 5 days of the receipt of the panel's recommendation and the respondent's objections. In the event of such a request, the Chair shall reconvene the Hearing Board within 5 days of the receipt of the request and hear statements from both the President and the respondent, delivered either personally or through counsel. The Hearing Board may, by majority vote, elect to recommend an increased or a decreased sanction; if the Board votes not to change its recommendation, the initial recommendation remains in force. The Chair of the Hearing Board shall communicate its recommendation to the President and to the respondent in writing no later than 5 days after the hearing on the request for reconsideration of sanction.

5. The President may remand the matter to the Hearing Board because there has been a significant defect in procedure. If the matter is remanded to the Hearing Board, the President shall send to the Hearing Board the respondent's objections, if any. The Hearing Board shall reconvene, take steps to repair any procedural defects, and hold an additional hearing, if needed, granting to the parties those procedural rights provided in paragraph IV.I.. The Hearing Board shall then send a second report to the President, along with the transcript of any second hearing, with copies to the respondent by certified mail, and to the charging party and the Dean and/or Provost.

6. Within 10 days of the receipt of the materials forwarded by the Hearing Board, the President shall send to all interested parties a letter stating his or her decision and the reasons. The President's decision, except a decision to remand or a decision that is the subject of an appeal under paragraph IV.L., is final within the University.

L. Appeal of President's Decision

If the respondent objects that there has been a significant defect in procedure but the President declines to remand the matter to the Hearing Board under paragraph IV.K.4., the respondent may appeal on that ground

in writing to SCAFR. The President shall promptly forward to SCAFR all of the documents upon which the decision was made. SCAFR shall review the documents forwarded by the President and the respondent's written statement of appeal and shall decide the appeal within 30 working days of the receipt of the documents. If SCAFR finds that there has been a significant defect in procedure, it shall remand the matter to the Hearing Board for further proceedings in accordance with paragraph IV.K.5. Otherwise, the President's decision shall be final.

M. Termination

If the Hearing Board recommends that the respondent's appointment be terminated, it shall also recommend a date of termination and a date of termination of salary and benefits, which cannot be more than one year beyond the date of the President's final action.

N. Hearing Board Records

On the completion of the case the Hearing Board shall transfer all of its records to the office of the Faculty Senate. These records shall be stored in a locked file. The Chair, Past Chair and Chair-elect of the Faculty Senate, are responsible for obtaining and maintaining these records.

V. Interim Suspension

A faculty member shall not be suspended prior to the conclusion of proceedings under this policy unless continuance poses a threat of immediate harm to the faculty member or others. Any such suspension shall be with salary. A Dean's decision to suspend a faculty member shall be accompanied by a concise statement of the factual assumptions on which it is based and the grounds for concluding that the faculty member's continuance threatens immediate harm. Such a decision should be made only after consultation with the school CAFR, which should, whenever possible, afford the faculty member an opportunity to be heard, and to present evidence why interim suspension should not be imposed.

VI. General Matters

A. No Public Statements When Proceedings Are in Progress

To preserve the integrity of the process, members of the University community should avoid public statements about charges and proceedings that involve minor or major sanctions until the proceedings have been completed.

B. Actions When Charges Are Unfounded

If final action under Section IV completely exonerates the respondent, the University shall reimburse that individual for the reasonable costs and expenses, including attorney fees, incurred in his or her defense. In that event the administration should also attempt to ameliorate any damage wrongly done to the reputation of the respondent or of any complainant, provided that the complainant acted in good faith. If it appears that the complainant did not act in good faith, the administration shall investigate and take appropriate action.

C. Statements Following a Minor Sanction

If the respondent has been subjected to a minor sanction, the Dean or Provost, after consultation with the President and discussion with the Chair of the Faculty Senate, may publicize this fact.

D. Statements Following a Major Sanction

If the respondent has been subjected to a major sanction, the President, after informal discussion with the Chair, Past Chair and Chair-elect of the Faculty Senate, shall publish in *Almanac* a statement describing the case and its disposition in appropriate detail.

Aide Memoir: Initialization of Panels

The following statement shall be sent to the Chair of the Faculty Senate on approval of this policy:

Initially, one-third of the members of the University Just Cause Panel chosen from each school shall serve for one year, one-third for two years and one-third for three years. Thereafter, all appointments shall be for three-year terms, except where appointments are made to complete the terms of persons who leave the panel before the end of their terms.