

UNIVERSITY OF MARYLAND PROCEDURES FOR ADDRESSING ALLEGATIONS OF FACULTY PROFESSIONAL MISCONDUCT

I. PURPOSE

These Procedures are designed to facilitate the review of Allegations of Professional Misconduct under the University of Maryland's Policy on Faculty Professional Conduct ("the Policy").

II. GENERAL

A. Rules of Interpretation

1. Time Periods; Extensions
 - a. References to days in the Policy refer to business days, excluding days that the University is officially closed. Unless otherwise specified in these Procedures, a Respondent's failure to exercise any right granted hereunder within the stated time period will be deemed a waiver of that right. The Deciding Official may extend time periods specified in these Procedures for good cause, including those time periods associated with the Preliminary Assessment and Investigation processes set forth below. Any requests for extensions from a Respondent related to the provision of a response to either the Allegation or a subsequent Investigation report must be submitted in writing to OIRC and will be considered by the Deciding Official.
2. Plural Usage
 - a. The Policy and these Procedures are written with singular references to a party (*e.g.*, a Respondent) or an Allegation. In cases involving multiple parties or Allegations, the Policy and these Procedures should be construed accordingly.

B. Cooperation

1. Every member of the University community has the responsibility to cooperate fully and in Good Faith with any proceedings held pursuant to the Policy and these Procedures, including by promptly providing information, potential sources of relevant evidence, or testimony if requested by the OIRC and/or any other University official or administrator involved in the proceedings. The Respondent has a particular obligation to fully cooperate and may be subject to disciplinary action for the failure to do so.
2. Testimony, evidence, and/or documentation may not be compelled from confidential resources, administrators, and/or offices such as the ombuds, the Faculty and Staff Assistance Program ("FSAP"), the Office of Civil Rights and Sexual Misconduct ("OCRSM").

C. Timing, Notice, and Opportunity to Respond

1. Complainants and Reporters should report Allegations to the OIRC as soon as practically possible to ensure prompt attention to alleged professional misconduct and allow OIRC to collect evidence at the earliest opportunity. Regardless of the timing of the alleged misconduct, Allegations should be reported to OIRC for assessment; however, OIRC may determine that specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to a particular Allegation, including the passage of time since the occurrence of the alleged conduct, which may result in loss of relevant information, evidence, and witness testimony and thus impair the University's ability to fully and appropriately review and/or investigate the Allegation.
2. If the Respondent is no longer a University employee upon the initiation of these Procedures, the requirements of written notice and an opportunity to respond set forth below will be observed as far as is practical, but the failure of the Respondent to respond or appear for an interview will not deter the process.
3. Allegations of Professional Misconduct should be submitted within 30 days of a faculty member's departure from the University. While an Allegation submitted after this time may be considered for review in accordance with the Policy and these Procedures, the Respondent's departure from the University, as well as other factors such as the passage of time, may impair the University's ability to fully and appropriately review and/or investigate the Allegation. In such instances, the University may decline to pursue the Allegation under the Policy, unless the University is required to continue its review by federal or state law or regulation.
4. Faculty members who fall under the Policy are subject to the Policy and these Procedures once in effect.

D. Confidentiality

1. Allegations and Proceedings
 - a. As a general principle, the existence of and details regarding an Allegation and any information regarding the resulting proceedings should be kept in strict confidence by all parties (*e.g.*, Respondent, Complainant, administrators).
 - b. To the extent possible and consistent with a fair and thorough review of an Allegation, the appropriate implementation of these Procedures, and the University's need to meet any associated legal and/or regulatory requirements, the disclosure of an Allegation and the resulting proceedings will be limited to those who need to know about them to carry out the requirements of the Policy and these Procedures, and with only that level of detail shared as is necessary to carry out a particular requirement, although the following exceptions may be made:
 1. Disclosure in the form and to the extent necessary to carry out the University's obligations as set forth in Section II.E. below;

2. Disclosure in the form and to the extent necessary to facilitate other compliance-related functions and/or referrals as set forth in the Policy and these Procedures;
 3. Disclosure by Complainants, Respondents, and administrators as necessary in order to address the Allegation(s); and/or
 4. As otherwise required by federal or state law or regulation.
2. Complainant and Witness Identity
 - a. The University will make diligent efforts to honor the request of any Complainant or Witness that their identity not be disclosed, however, anonymity cannot be guaranteed. Limited disclosure of Complainant or Witness identity may be necessary to fulfill certain requirements of the Policy and these Procedures, such as to facilitate the collection of information and evidence relevant to the review of an Allegation and/or the University's compliance with federal or state law or regulation.
 3. Breaches
 - a. Any concerns regarding breaches of confidentiality should be reported to the OIRC for review and investigation as warranted and appropriate. If the concerns are substantiated, the associated individual's conduct will be referred for review and any appropriate disciplinary action in accordance with applicable USM and University policies, procedures, and contracts, including the Policy and these Procedures when the associated individual is a faculty member.
 - b. The engagement of other individuals by an Investigator or other staff from the OIRC for the purpose of collecting information necessary for the review of an Allegation will not be deemed a breach of confidentiality under the Policy and these Procedures.

E. Events Requiring Immediate Action

1. If at any time during the course of proceedings held pursuant to the Policy and these Procedures an Investigator or anyone else directly involved in this process has reason to believe (or the University otherwise receives information indicating) that any of the following conditions are present, that individual shall notify the Deciding Official and the Office of General Counsel:
 - a. The need to take immediate action to protect any Complainant, Respondent, Witness, or any other person involved in any proceedings held pursuant to the Policy and these Procedures;
 - b. An immediate hazard or other imminent risk of danger to public health or safety or the safety of specific individuals;
 - c. The need to take immediate action to protect University resources or the funds or other resources of any governmental or other sponsor of research, or to assure

- compliance with the terms of an award, contract, or cooperative agreement involving research;
- d. The need to take immediate action to prevent the loss, destruction, or alteration of any potential sources of relevant information or evidence;
 - e. The need to take immediate action to prevent or stop an imminent or continuing violation of an applicable law, regulation, or other governmental requirement or institutional policy; and/or
 - f. Any potential violation of criminal or civil law.
2. The Deciding Official, in consultation with the Office of General Counsel, should immediately facilitate the commencement of those steps necessary to address the situation, including but not limited to notice to relevant authorities and placement of an associated individual on administrative leave.
 3. Notwithstanding any other provision of the Policy and/or these Procedures, appropriate University officials or administrators shall have the authority to take any actions they deem necessary or appropriate to safeguard University personnel or other resources, other participants in any proceedings held pursuant to this policy, public health or safety, the funds or resources of sponsors of research, or potential sources of evidence.
 - a. Actions may include, but are not limited to, suspension with or without pay, denial of access to University facilities and resources, temporary reassignment of duties and responsibilities, and/or termination. That any such action is taken shall not be deemed to predetermine any finding or conclusion from the review of an allegation under the Policy and these Procedures, but any information arising from any such action may constitute relevant evidence in that review.

F. Bad Faith Acts

1. If information is discovered that suggests that the Complainant acted in Bad Faith in making the Allegation, or that the Complainant or any Witness acted in Bad Faith in offering testimony or evidence during the course of the proceedings, the individual's conduct will be referred for review and appropriate disciplinary action in accordance with applicable USM and University policies, procedures, and contracts, including the Policy and these Procedures, up to and including termination. The context in which actions occurred is a relevant and important factor to be taken into account when determining whether an individual has acted in Bad Faith.

G. Protection from Retaliation

1. Any individual who has, in Good Faith, participated in a proceeding held pursuant to the Policy and these Procedures (*e.g.*, as a Complainant, Witness, Unit Head, Deciding Official, or counsel) or otherwise cooperated in the review of an Allegation under The Policy and these Procedures shall be protected from retaliation. The

context in which retaliatory action has occurred, including its materiality, is a relevant and important factor to be taken into account in determining whether the action constitutes Retaliation, and there must be a clear causal link between the participation or cooperation and the alleged retaliatory action taken against the individual.

2. Any concerns regarding potential or actual retaliation should be reported to OIRC for review and, as appropriate, investigation or referral for disciplinary action in accordance with applicable USM and University policies, procedures, and contracts, as well as any applicable state and federal laws.

H. Conflicts of Interest

1. In the event that an Allegation arises for which an individual with responsibility for some aspect of the implementation of these Procedures (*i.e.*, the Deciding Official, an Investigator, or the University official or administrator to whom any appeals and/or recommendations for disciplinary, remedial, or corrective actions and/or other sanctions would be referred) would have a Conflict of Interest in carrying out his or her duties, the appointment of another individual to perform those duties will be addressed as follows:
 - a. In the case of a potentially conflicted Investigator, the Deciding Official will identify a replacement;
 - b. In the case of a potential conflict on the part of the Deciding Official, the President or their designee will identify a replacement; and
 - c. In the case of a potentially conflicted University official or administrator, the appropriate Next Level Administrator will identify a replacement.

I. Role of Counsel or Advocate

1. Counsel for the University
 - a. The Office of General Counsel (“OGC”) will act as a legal advisor to the University with regard to the implementation of the Policy and these Procedures.
2. Counsel or Advocate for the Respondent
 - a. The Respondent may, at his or her own expense, secure legal counsel to serve as an advisor during the proceedings held pursuant to the Policy and these Procedures.
 - b. The Respondent’s counsel may not directly participate in the proceedings or cause delay or otherwise interfere with the proceedings. While the Respondent may be accompanied by his or her counsel when interviewed by an OIRC Investigator and may seek a recess to privately consult with his or her counsel, the Respondent’s counsel may not speak for the Respondent during the interview or otherwise actively participate in the interaction.
 - c. The Respondent’s counsel may not act on behalf of the Respondent throughout the proceedings with respect to those actions that are the obligation of the

Respondent under this policy, including, but not limited to, speaking for the Respondent in writing or otherwise communicating on behalf of the Respondent, and directly providing information, documentation, or evidence.

- d. Respondents may also choose an Advocate, who must be a University employee, to serve as an advisor during the proceedings. Like legal counsel above, the advocate shall not interfere with the Investigation but serve as a resource for the Respondent to interpret policy, clarify questions, or offer exculpatory information.
3. Counsel or Advocate for the Complainant
 - a. The Complainant may also elect to be represented by legal counsel or an advocate during the proceedings held pursuant to the Policy and these Procedures.
 - b. The same conditions for participation that apply to the Respondent's counsel or advocate as described in the above section apply to the counsel or advocate for the Complainant.

J. Limitations and Exclusivity of Procedures

1. The Policy and these Procedures provide the exclusive mechanism for the review of Allegations of Professional Misconduct, except in those situations which involve underlying conduct that must be reviewed under another University policy (*e.g.*, sexual misconduct).
2. Final procedural and substantive determinations made under the Policy and these Procedures cannot be challenged or overturned under any other University policy or procedure, including, but not limited to, the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00(A)) and the University System of Maryland Policy on Grievances for Nonexempt and Exempt Staff Employees (VII-8.00).

III. PROCEDURES

A. Resolution Prior to Reporting an Allegation to OIRC

1. Prior to reporting an Allegation to OIRC under the Policy and these Procedures, parties should seek to resolve conduct matters in a professional and collegial manner. If the parties are not able to resolve their concerns, they should:
 - a. Elevate the concern to the Unit Head for resolution.
 - b. Elevate the concern to the Next Level Administrator if the Unit Head is unable to resolve the matter or is a party to the allegation.
 - c. Consider engaging the ombuds to address the concerns.

B. Preliminary Assessment of Allegations by OIRC; Referral for Other Review or Action

1. Upon receipt of an Allegation of Professional Misconduct, OIRC will conduct a Preliminary Assessment to determine whether the reported activity or behavior could, if substantiated, constitute Professional Misconduct and is therefore appropriate for review under the Policy.
 - a. The Preliminary Assessment may, however, determine that the reported activity: does not meet the definition of Professional Misconduct or does not rise to the level of conduct that warrants investigation in accordance with the Policy and these Procedures, but may be appropriate to address through a different pathway (*e.g.*, through engagement of the Respondent's Unit Head); must be handled under another University policy (*e.g.*, allegations of sexual misconduct); or otherwise requires referral to another University unit, office, or committee for further consideration or action.
 - b. OIRC will confidentially consult the appropriate Unit Head and/or other University offices or resources (*e.g.*, an individual, office, or committee with responsibility related to the concern presented) in making such a determination.
2. OIRC will notify the Respondent via e-mail and include a brief synopsis of the Allegation and the next procedural steps, including information regarding the Respondent's ability to address the Allegation throughout the process set forth in these Procedures. OIRC may request information from the Respondent at this stage specifically for the purpose of facilitating the Preliminary Assessment.
3. In some instances, the Deciding Official may delay Respondent notification if such action will jeopardize a criminal or civil case or there is a reasonable possibility of evidence destruction. If the notification process is permanently withheld, the Deciding Official shall inform the President or their designee.
4. The Preliminary Assessment, which will typically be completed within thirty (30) days, may include the collection of additional information to facilitate this initial review to the extent that such is necessary to determine the appropriate manner in which to proceed. If the Allegation appears appropriate for review under the Policy, the Preliminary Assessment will also include consideration of whether there is sufficient credible evidence to support initiating an Investigation. The Deciding Official may grant one extra period of thirty (30) days to complete the Preliminary Assessment.
5. The Preliminary Assessment process will result in one or more of the following outcomes:
 - a. A determination that an Allegation does not fall within the definition of Professional Misconduct and therefore does not warrant further review under the Policy and will not proceed for Investigation;
 - b. A determination that an Allegation falls within the definition of Professional Misconduct and merits further review in the form of an Investigation;

- c. A determination that an Allegation falls within the definition of Professional Misconduct, but may be more readily or appropriately resolved at the unit level and therefore will be referred to the appropriate Unit Head;
 - d. A determination that an Allegation falls within the definition of Professional Misconduct, but may be more appropriately reviewed by another institutional office, unit, or committee based on the subject matter area or oversight authority associated with that office, unit, or committee (*e.g.*, for specific research compliance areas) and therefore will be referred accordingly;
 - e. An amended list of Allegations under consideration by the Investigation or to modify an existing Allegation on the basis of the information collected and analysis performed during the Preliminary Assessment; and/or
 - f. A determination that a particular issue requires referral to another University unit, office, or committee for review under another University policy or otherwise for further consideration or action.
6. OIRC will generate a Preliminary Assessment Report (“PAR”) that sets forth the Allegation, summarizes any information that was collected and considered to facilitate the Preliminary Assessment, states the outcome(s) of the Preliminary Assessment, and provides the basis for the related determination(s). The Respondent will be notified in writing of the outcome of the Preliminary Assessment and provided with a copy of the associated report.
 - a. The Complainant will be notified of the outcome of the assessment.
 7. In the event that any Allegation will proceed for Investigation, the Respondent will be provided with a detailed list of the Allegations to be further addressed. The Respondent will be given fourteen (14) days after receiving the PAR to provide a written response.
 8. The Office of Faculty Affairs will be notified of and engaged as necessary and appropriate in the initiation of an Investigation.
 9. OIRC may, as necessary and appropriate, engage in a joint review and/or investigation of an Allegation with another relevant University unit, office, or committee (*e.g.*, University Human Resources).
 10. Matters that are referred by OIRC for handling at the unit level, but which are unable to be resolved at that level, may be referred back to OIRC for further review and action.

C. Investigation

1. The purpose of the Investigation is to formally develop a factual record through the collection and examination of potential sources of relevant evidence, and to evaluate the resulting factual record to determine whether Professional Misconduct occurred.
2. This process will be handled by an Investigator from OIRC, who will be assigned to conduct the Investigation by the Executive Director of that office. The Investigation

will typically be completed within 120 days, although circumstances may warrant an extension.

3. The Deciding Official has the authority to extend the investigative period by 60 days to 180 days in total. Extensions beyond the 180 days must be approved by the President or their designee and accompanied by a written justification. The Respondent will be notified via email of any extension of the investigative period.
4. The Investigation may include the collection of information through a variety of methods, including, but not limited to:
 - a. Interviews of the Respondent, the Complainant, and any relevant Witnesses;
 - b. Collection of relevant information from University systems, ascertained through appropriate University policies and procedures; and
 - c. Communication, as relevant, with external parties who may have knowledge and/or materials germane to the Investigation.
5. OIRC may, as necessary and appropriate, engage other institutional offices, units, or committees with relevant subject matter expertise and/or oversight authority in the review and investigation of Allegations, including the review and analysis of relevant information or evidence.
6. Interviews will normally occur in-person and be memorialized in a written Memorandum of Interview (“MOI”). Interviews will not typically be recorded, but, if requested and agreeable to all parties, the OIRC Investigator will record the interview and have it transcribed. The transcription of an individual’s interview will be made available to that individual.
7. Memorandums of Activity (“MOA”) document the analysis and examination of files collected during the Investigation.
8. Physical items collected during the Investigation, such as a computer hard drive, will be tracked with a chain of custody document and sequestered in a space controlled only by OIRC personnel.
9. The owner of personal property collected during the Investigation will be given a property receipt.
10. MOIs and MOAs will be completed within five (5) days and maintained along with other collected files in an OIRC-controlled electronic folder and/or case management system.
11. The Respondent should provide any relevant evidence and information regarding the Allegation to OIRC and may suggest avenues of inquiry for any interviews to be conducted or related to other methods of collecting information relevant to the review of an Allegation. Under no circumstances should the Respondent, the Complainant, or anyone else not involved with or operating under the direction of OIRC take any investigative action on their own.
12. If additional instances of conduct that could be considered Professional Misconduct are discovered during the Investigation, those instances will be included in the

Investigation as additional Allegations and the Respondent will be provided with written notice of the amendment of the Allegations under review and an opportunity to respond in writing within fourteen (14) days.

13. The faculty, staff, graduate student and undergraduate student ombuds should not participate or provide information in any Investigation as interactions with the ombuds are confidential.
14. The Investigator will generate a draft investigation report that:
 - a. Sets forth the Allegations reviewed in the course of the Investigation;
 - b. Provides a detailed description of any relevant information that was collected and reviewed as part of the investigation, including information regarding any mitigating and/or aggravating circumstances;
 - c. Presents a summary of the analysis of the information that was collected and reviewed; and
 - d. Based on a preponderance of the evidence standard, presents one of the following findings for each allegation: that the allegation is substantiated; that the allegation is unsubstantiated; or that the allegation is unfounded.
15. Neither the draft nor final versions of the investigation report will identify any Complainant or Witness who has requested anonymity in connection with their involvement in the reporting or review of an Allegation.
16. The draft investigation report will initially be sent to the Office of General Counsel (“OGC”) for review. Once reviewed by OGC, OIRC will send the draft investigation report to the Respondent for review and comment before the final investigation report is prepared. The Respondent must submit those comments in response to the draft investigation report within fourteen (14) days from receipt.
17. The final investigation report will be submitted to the Deciding Official, who will review the report prior to transmitting the report to the Respondent and appropriate Unit Head(s) and consider any associated finding(s) and the evidence presented in support of the finding(s).
18. The Unit Head shall consult with the Senior Vice President for Academic Affairs and Provost or their designee to determine potential disciplinary, remedial, and/or corrective actions and/or other sanctions up to and including termination, that may be appropriate based on the report and any mitigating and/or aggravating circumstances presented therein.

D. Appeals

1. Respondents who wish to appeal the outcome of the Investigation must submit a written appeal to the Senior Vice President for Academic Affairs and Provost or their designee within seven (7) days of receipt of notice of the outcome of the Investigation.

2. Appeals must be limited to challenges regarding procedural violations as set forth in the Policy and these Procedures.
3. Within seven (7) days of the appeal, the Senior Vice President for Academic Affairs and Provost or their designee will appoint an independent appellant officer to review the appeal, who will render a final determination within seven (7) days of receiving the report and appeal documents.

E. Adjudication; Referral for Disciplinary, Remedial, and/or Corrective Action or Other Sanctions

1. Upon the conclusion of the Investigation and the Appeals process (if relevant), the recommended disciplinary, remedial, and/or corrective actions or other sanctions will be forwarded to the Senior Vice President for Academic Affairs and Provost.
2. Findings related to conduct which must be reported to external entities (*e.g.*, federal agencies) in connection with any federal or state law or regulation will be so reported upon conclusion of the Investigation and Appeals process.

F. Post-Investigation Actions

1. OIRC personnel shall maintain the case file and physical evidence and remain available to testify or assist the Senior Vice President for Academic Affairs and Provost, their designee, or the independent appellant officer until all appeals are complete. Any property collected shall be returned to its rightful owner upon conclusion of the appeal period unless a relevant University policy or federal or state law or regulation requires a longer retention period or the University is required to turn over certain property identified as evidence in connection with a criminal investigation.
2. All documentation created or collected shall remain in the possession of OIRC, including in the case management system utilized by that office, and retained according to University policy.