

SECTION TWELVE

Grievance Procedures and Faculty Misconduct Policy

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ACADEMIC GRIEVANCE PROCEDURE¹

I. OBJECTIVE

The objective of the academic grievance procedure is to provide appropriate means whereby an individual holding an academic appointment at WCMC who believes himself or herself to be aggrieved can obtain consideration and, possibly, redress of his or her grievance.

II. DEFINITION AND ASSUMPTIONS

1. Definition.² For the purpose of the following guidelines, a grievance is defined as an injustice of harm arising from a specific situation involving an act or acts of alleged unfairness which the individual regards as just cause for the protest on his or her own behalf (or individuals on their own behalf).

2. Nature of Grievable Action. An academic grievance procedure can be applied to the substantive and/or procedural aspects of any grievance arising out of the academician's execution of his or her designated responsibilities. Grievable actions might grow out of a number of separate or related aspects of those responsibilities of which the following are illustrative but by no means limiting: (a) reward; (b) academic freedom; (c) work assignment; (d) working conditions; (e) discrimination by race, creed, sex or age; and (f) existence of, adequacy of, and adherence to equitable grievance procedures.

3. Right to Invoke a Formal Grievance Action. The individual academician has the right as a condition of his or her appointment to seek through formal grievance procedures involving the judgment of his or her peers a redress of those decisions made and/or those actions taken at the departmental, College, and/or University level that he or she considers intolerable to the effective execution of his or her responsibilities.

4. Limitation on Right to Invoke a Formal Grievance Action. The right to invoke a formal grievance action does not extend to abnormal participation in or obstruction of the normal decision making process. The desire to prevent or to anticipate or to register mere unhappiness over a particular decision or action, does not, in and of itself, justify invoking a grievance procedure.

¹ Approved by the Executive Faculty Council on July 7, 1983 and the General Faculty Council on July 11, 1983.

² By action of the Executive Committee of the Board of Trustees on March 13, 1975, these grievance procedures are not applicable to complaints with respect to appointment, reappointment, promotion or any tenure decision.

Only when direct negotiations between parties to a dispute have been exhausted and not led to a resolution of a dispute may the individual (or individuals) resort to invoking the WCMC academic grievance procedure.

III. COVERAGE

1. Academic grievance procedures are applicable to all employees of the Medical College (except as noted below) who, because of the predominantly academic nature of their responsibilities, hold teaching and/or research appointments; i.e., to those men and women holding appointments as Professor, Associate Professor, Assistant Professor, Visiting Professor (all ranks), Instructor, Senior Lecturer, Lecturer, Senior Research Associate, Research Associate, Research Professor, or Associate Research Professor.

2. Academic grievance procedures are not applicable to degree candidates having appointments such as Teaching Assistant, Research Assistant, or Graduate Research Assistant.

3. An individual who, by his or her appointment, is covered by more than one University grievance procedure, may choose the procedure under which he or she wishes to protest a particular grievance. An individual may not, however, invoke more than one grievance procedure for the same grievance.

IV. RULES OF PROCEDURE IN ACADEMIC GRIEVANCE PROCEEDINGS

1. Informal Resolution. An individual (or individuals) who feels aggrieved should initially seek to resolve the problem informally. Such informal efforts may include a request to the Department Chairman to mediate or to refer the problem to an appropriate administrative officer for mediation.

2. Commencement of Proceeding. If informal efforts to resolve the matter are unsuccessful, a formal grievance proceeding may be commenced by submitting, to the Dean of the Medical College, a written statement of grievance. Such statement must include (a) a summary of the facts surrounding the grievance; (b) the specific policies, procedures, agreements or rules in question; (c) the efforts made by the grievant to settle the matter informally; and (d) the remedy sought.

3. The Dean, upon receipt of the written statement of grievance will decide whether or not the statement received constitutes a grievable action. The Dean may, in his discretion, appoint an ad hoc committee of faculty members to review the statement, investigate the allegations, and establish, if possible, the essential facts and unresolved issues. The committee will conduct its investigation in a confidential manner and will maintain a confidential record of its findings. At the conclusion of its investigation the committee will recommend to the Dean whether or not the statement received constitutes a grievable action and, when

appropriate, how the grievance might be resolved. The committee's findings and recommendations will be in writing. If the Dean determines that the allegations do not constitute a grievable action, he will so notify the grievant with a written explanation.

4. The Dean or the ad hoc committee is encouraged to mediate the matter giving rise to the grievance. If mediation is successful, the individual filing the grievance will formally withdraw his or her allegations by a written statement submitted to the Dean of the Medical College.

5. If the matter is not resolved by mediation within fifteen academic days after the Dean determines that the matter constitutes a grievance, the Dean will refer the grievance to the Faculty Councils for adjudication and will so notify the grievant.

6. Hearing Committee. Each Faculty Council will appoint one of its members to serve on a Hearing Committee and a third faculty member will be selected jointly by both Councils. This Hearing Committee will adjudicate grievances brought to the Faculty Councils under this academic grievance procedure. Any individual who is a party to the grievance may not serve on the Hearing Committee. The purpose of the Hearing Committee is to aid in the resolution of the grievance either by helping the parties reach a decision acceptable to both or by rendering a recommendation to the Dean of the Medical College.

7. Proceedings before the Hearing Committee.

- a. The Hearing Committee shall elect its own chairman.
- b. The Hearing Committee shall conduct its work as promptly as possible, and in no event shall the formal hearing be commenced on a date later than ten academic days after the date when selection of the Hearing Committee is completed.
- c. The Hearing Committee shall submit a written report and recommendation to the Dean within twenty academic days following completion of the formal hearing.
- d. The Hearing Committee shall notify each party involved in a proceeding of the date, time and place of any meeting or hearing in which any party is entitled to participate. Notice shall be adequate, in the judgment of the Hearing Committee, to permit, with diligent preparation, effective participation in the meeting or hearing by the party receiving the notice.
- e. The Hearing Committee may hold pre-hearing meetings with all parties in attendance to (i) define the issues, (ii) stipulate facts, (iii) provide for an

exchange of documents or other information, and (iv) achieve other appropriate pre-hearing objectives.

- f. Any party who has been charged in a grievance proceeding may file a written response with the Chairman of the Hearing Committee at any time before the hearing. Copies of the response shall be made available by the Hearing Committee to any other party to the proceeding. If a party waives a hearing, but denies the facts alleged in the request for hearing or asserts that the facts alleged do not support the charge, or if a party fails to respond, the Hearing Committee shall evaluate and base its recommendation on the evidence received.
- g. The hearing shall be closed to the public unless all parties and the Hearing Committee agree otherwise. In no event shall cameras, television, or broadcast equipment of any kind be admitted to the hearing room. In the case of a closed hearing, the Hearing Committee, at the request of a party to the proceeding or on its own initiative, may, in its discretion, invite representatives of responsible educational and other associations to attend the hearing. At any time after commencement of the hearing, the Hearing Committee, in its discretion, may close a public hearing or may change the site of the hearing.
- h. If any party to a grievance hearing or the Hearing Committee wishes an audio record of the hearing, one shall be provided free of charge. If any party wishes a written transcript of the hearing, one shall be provided to that party at cost.
- i. The issues considered by the Hearing Committee shall be restricted to those alleged in the writings submitted by the parties.
- j. The Hearing Committee shall not be bound by strict rules of legal evidence and may seek and admit evidence it deems relevant, subject to the limitations contained in this section.
- k. Any party to a hearing shall have the right to present witnesses and relevant documentary or other evidence, shall have the right to challenge evidence and cross-examine witnesses, and shall have the right to be accompanied or represented by a colleague or adviser, or counsel.
- l. Any material made available to the Hearing Committee by any party or witness shall be made available for examination and copying by all parties.

- m. If a witness cannot or will not appear and the Hearing Committee determines that the interests of justice will be aided by the admission of his or her testimony, the Committee may admit a written statement from the witness, provided that the witness responds in writing to all questions presented by any party or by the Committee and provided that the lack of oral cross-examination does not, in the opinion of the Committee work an injustice to any party. If the witness does not respond to all written questions directed to him or her, the evidence of the witness shall not be received or considered by the Committee without the consent of all parties.
- n. The burden of proof shall be satisfied only by clear and convincing evidence, considered as a whole. The burden of proof rests with the grievant.
- o. The Hearing Committee's recommendation shall be based on its view of the credibility of the testimony and other evidence in the record, the substantiation or lack of substantiation of the claim, the presence or absence of extenuating circumstances, and the gravity of the proven offence, if any. In every case, the Committee shall report the reasons for its recommendation.
- p. The Hearing Committee's report and recommendation shall be submitted to the Dean of the Medical College. The report and recommendation of a majority shall be the report and recommendation of the Committee, but any member may submit a minority report and recommendation to the Dean. In the event that a majority cannot agree on a single report and recommendation, each member shall submit an individual report and recommendation.

8. Dean's Decision.

- a. Should the Dean disagree with the Hearing Committee's findings or recommendation, the Dean shall meet with the Committee to discuss such differences, and may request reconsideration by the Committee before a final decision.
- b. The Dean shall report in writing his or her decision of action as a result of the recommendation within ten academic days after the Dean receives the report and recommendation of the Hearing Committee. The Dean's decision shall be reported to the Chairman of the Hearing Committee, the grievant, and each party against whom the grievance is lodged, as well as to the Faculty Councils.

- c. Disposition of a grievance informally or by the Dean's formal determination shall not constitute a precedent for other related grievances unless specifically agreed to in writing by the Dean.

9. Appeal of Dean's Decision. Should either party wish to appeal the decision of the Dean, he or she must submit to the President of the University, within ten academic days of the date of notification of the Dean's decision, a written appeal. The President's decision will be final.

10. Miscellaneous provisions.
 - a. All of the time-limits contained in this Procedure may be extended by mutual agreement of the parties or by the Dean upon the written request of any party.

 - b. A grievant may withdraw a request for hearing at any time by filing a written statement of withdrawal with the Dean, who shall arrange for delivery of a copy of the statement of withdrawal to each party involved in the proceeding within five academic days after the date when the statement is filed.

FACULTY MISCONDUCT POLICY^{3, 4}

I. Assessment of Allegations of Faculty Misconduct

The Faculty of the Medical College affirms that an allegation of faculty misconduct must receive a prompt and considered response, while protecting the rights of the respondent to a fair and transparent investigation. The individual responsible for an inquiry or investigation into alleged faculty misconduct under this policy must be a member of the Faculty. It is acknowledged that there must be a measure of proportionality between the gravity of the accusation and the investigative effort.

II. Scope of misconduct allegations addressed by this policy

Misconduct may involve verbal or physical actions directed against others, misappropriation or improper handling of property, financial impropriety, conflicts of interest and commitment, and failures of responsibility in recognizing and reporting misconduct of others. Several types of misconduct are covered by other University or Medical College policies, including scientific misconduct (Office of Research Integrity (ORI)), conflict of interest in and commitment in the conduct of research (ORI), substance abuse (Employees Assistance Program (EAP)), financial irregularities (Audit) or professional misconduct in the practice setting (Physicians Organization (PO)). These policies shall remain in effect and investigation of allegations of violations that are covered by these more specific policies shall be investigated as provided in those policies. The investigation of allegations of misconduct may only be conducted under one policy. This policy does not apply to tenure, promotion, hiring, dismissal⁵, termination and non-renewal of faculty, which remain governed by the Academic Staff Handbook. This policy applies to faculty who are employed by the Medical College. For individuals who are not Medical College employees, but who hold faculty appointments at Weill Medical College, this document applies only to those functions performed as members of the faculties of WCMC or GSMS.

The University has a special requirement under Title IX to address sexual harassment, assault and/or violence. Cornell University Policy 6.4 on prohibited discrimination, protected status harassment, and bias activity, provides examples of such misconduct, and Appendix D of that policy is appended to this document.

³ Approved by the Executive Faculty Council on November 14, 2013, the General Faculty Council on October 14, 2013, the Board of Overseers on December 3, 2013, and the Board of Trustees on January 31, 2014.

⁴ For complaints that might lead to dismissal or lengthy suspension of a faculty member for a period of one semester or more, the matter shall be handled under the University policy for Dismissal or Suspension.

III. Bringing a charge of faculty misconduct

Allegations of faculty misconduct may come from a member of the Medical College community, namely other faculty, non-faculty staff, or students, or from outside of the Medical College. An allegation of misconduct may be brought to the Department Chair of the accused faculty or to an administrative officer of the Medical College. For example, when the complainant is a nonacademic staff member, the allegation may be brought to Human Resources (HR); when the reporter is a student, the allegation may be brought to the Associate Dean for Student Affairs or Dean of the Graduate School or campus security authority. Any allegation of misconduct, from outside or from inside the Medical College, may be brought directly to the attention of the Dean of the Medical College, through the Office of the Vice Dean.

IV. Referral to the Faculty Ombudsman

When there is a charge of faculty misconduct, communication between or among the involved parties may provide resolution. The complainant may be referred to Office of Faculty Ombudsman for potential mediation or advice regarding how to proceed. Where both the complainant and respondent are willing to engage with the Ombudsman, the Ombudsman may attempt to assist them in resolving their differences through a process of either mediated or directed discussions. This process will remain informal and confidential. Specifically, there will be no written record of the proceedings, and the parties will not bring counsel to meetings with the Ombudsman. If the Ombudsman fails to resolve a situation or the complainant elects to end the informal mediation process, the case is returned to the Vice Dean for preliminary assessment. The Ombudsman will not participate in the assessment, inquiry or investigation.

V. Preliminary assessment

When a misconduct allegation is presented to a Department Chair or to an administrative office, there is a preliminary assessment of credibility and severity, and a triage decision is made. It is in the interest of the Medical College to resolve misconduct allegations within the appropriate department or unit and to resolve allegations of low severity as efficiently as possible. This will generally mean investigation and resolution within the Department of the respondent faculty member. For allegations registered with a Department Chair, the resolution process may remain within the Department (unless further action is required under Cornell University Policy 6.4 as applied at the Medical College). While many allegations related to faculty misconduct may be resolved within the Department, allegations also may be brought directly to the Dean, Vice Dean or other Medical College official. An allegation of misconduct registered with an administrative office must be brought to the attention of the Vice Dean for disposition. The Vice Dean may pursue an inquiry into the allegation, triage it to the Department Chair or the appropriate

unit, or may decide that the allegation should not be pursued at that time.

VI. Role of the complainant in assessment of a misconduct allegation

In some cases, an individual reporting faculty misconduct may not wish to be identified to the accused, for example if the complainant is concerned about possible retaliation. The request for anonymity may or may not be able to be accommodated depending on the circumstances of the complaint. The Vice Dean will determine whether the allegations can be assessed while maintaining anonymity for the complainant. In some circumstances, the complainant may be offered the status of "witness", in which the act of registering the allegation is not made known.

VII. Initial inquiry into a misconduct allegation

Although exceptional cases may occur, it is expected that upon receipt of a misconduct allegation against a faculty member, the initial step of the Vice Dean will be to interview the complainant. If at this point the Vice Dean believes that there is a situation that requires immediate action (e.g., issues of workplace safety, potential retaliation or other harm to the complainant), the Dean will be notified and appropriate interim measures may be taken. Unless the Vice Dean determines that other steps are appropriate (e.g., to secure evidence), the next step in the inquiry process should be an interview with the respondent faculty member to discuss the misconduct allegation. Early faculty notification (e.g., before contacting the Department Chair) reduces the possibility of a loss of confidentiality before the respondent faculty member is aware of alleged misconduct. Following the initial interviews (with accuser and accused), the Vice Dean may have discussions with the Department Chair or with others who might be knowledgeable of the situation. At this point, it may be the case that the Vice Dean can see a clear path to resolution, perhaps through direct discussion of the parties, or through mediation, or through intervention at the Departmental level or by the Faculty Ombudsman. If the severity of the allegation is relatively minor, and if both parties are in agreement, the matter may proceed along this path, obviating the need for a formal investigation.

VIII. Investigation of a misconduct allegation

Misconduct allegations of sufficient severity, or allegations which cannot be managed or resolved during an assessment or inquiry, will be brought to the attention of the Dean, via the office of the Vice Dean, for investigation. The Vice Dean will appoint an investigating panel. When the respondent Weill Medical College faculty member is not a Medical College employee, the decision to proceed to an investigation is at the discretion of the Vice Dean. The panel will have reasonable discretion in the scope and sequence of the investigation. All proceedings will be confidential, and the panel will have sole discretion regarding if

and when the complainant and respondent may attend meetings of the panel.

1. The investigating panel. From 1 to 3 additional faculty members will be appointed by the Vice Dean as the investigating panel, and the Vice Dean will appoint the Chair of the investigating panel. The Vice Dean will serve as a non-voting ex-officio member of the panel. The Vice Dean may engage appropriate assistance by appointing non-faculty academic or support staff to assist the investigating panel.

2. The allegation. The initial step typically will be an interview with the complainant, and development of a written statement of the allegation. Except in the circumstances in which the complainant has requested anonymity and the panel determines that such anonymity is necessary to protect the rights of the complainant, the allegation will be signed by the complainant. In the course of the interview, the complainant will be offered the opportunity to suggest avenues of investigation, such as witnesses to interview, evidence to examine, or documents to review. At this interview, and at all points in the investigation process, the complainant will have the right to seek the advice of personal advisors, and the complainant must be so-informed. One advisor may attend the investigative interview, but may not respond to questions for their clients or advisees, and may not pose questions.

3. The faculty response. The next step is notification of the respondent faculty member. The accused will be furnished a copy of the allegation and invited for an interview to respond to the charges. At this interview, and at all points in the investigation process, the respondent faculty member will have the right to seek the advice of personal advisors, including other faculty, and the faculty member must be so-informed. One advisor may attend the investigative interview, but may not respond to questions for their clients or advisees, and may not pose questions. In the course of the interview, the respondent will be offered the opportunity to suggest avenues of investigation, such as witnesses to interview, evidence to examine, or documents to review. At the time of the interview, or shortly thereafter, the respondent will provide a written reply to the written accusation.

4. Duty to cooperate. University faculty, staff, and students must cooperate with in the investigation of allegations of faculty misconduct. A faculty or staff member or student who has relevant information, but refuses to cooperate after being asked to do so during an investigation, may be subject to disciplinary action.

5. The investigation record. The investigation will maintain a record, of all witnesses interviewed, recordings of the interviews, if any, and, if prepared, a written summary of those interviews and copies of all documents or other records reviewed by the panel.

6. Administrative assistance. The investigating panel may seek

the assistance of and advice from other administrative offices, notably the Office of University Counsel, Office of Faculty Development and Diversity, Office of Research and Sponsored Programs, Audit or the Finance Office. Such advice does not become part of the investigation record, and is not available for review by the involved parties. In the absence of special circumstances, it is expected that the investigating panel will complete its investigation within 90 calendar days from receipt of the written allegations. If needed, additional time for the investigation may be obtained by specific request to the Dean.

7. Investigation report. Upon concluding an investigation, the investigating panel will produce a written investigation report, which will include the following: the scope of the investigation, a summary of the findings, recommendations for any corrective actions and/or sanctions, any non-punitive, preventative remedies for the complainant, and if warranted, recommended action to restore the accused's reputation, such as notifying persons who participated in the investigation, and/or a public announcement of the outcome.

8. Review of the investigation report. Once the investigation report has been created, it is forwarded to the complainant and to the respondent faculty member for review, and they may either approve or dispute it. In the absence of special circumstances, review of the investigation report, and written responses from accuser and accused, should be completed within 20 days. Failure to respond to the request for review within that time may be taken as tacit approval of the report. The investigating panel will decide whether or not to revise the investigative report based on the comments before forwarding the investigation report and recommendations to the Dean. The investigating panel will forward its investigation report and recommendation to the Dean, including comments from the complainant and respondent.

9. The Dean's decision. Upon receipt of the charge, the investigation report, and the recommendation of the investigating panel, the Dean may accept the recommendation, send the report back to the investigating panel for reconsideration, or render an independent decision for a final course of action. The decision of the Dean will be communicated to the complainant and respondent, and where appropriate, to the Department Chair. A copy of the investigation report, recommendation, and Dean's decision will be maintained as part of the faculty member's faculty affairs file.

10. Grieving the Dean's decision. The decision of the Dean may be grieved by the respondent faculty member or complainant. Grievance by faculty members shall be according to the procedures detailed in section 12 of the Academic Handbook; grievances by non-academic staff shall be according to WCMC Human Resources grievance procedures; and grievances by students will be reviewed by the Associate Dean for Academic Affairs.

IX. Obtaining Protection from Retaliation and Bad-Faith Complaints

Retaliation against complainant, respondent and others who participate (e.g., as witnesses) in the assessment, inquiry or investigation is prohibited. Retaliation also may violate local, state, and federal law and other institutional policies. Violation of this prohibition may result in disciplinary action.

At the same time, as with any complaint brought in bad faith, an individual who is aggrieved because a complaint was malicious, knowingly false, or fundamentally frivolous, may invoke any applicable disciplinary or grievance procedure that may result in disciplinary action against the party that brings such a complaint.

The following is a link to Cornell University Policy 6.4:

http://www.dfa.cornell.edu/cms/treasurer/policyoffice/policies/volumes/humanresources/upload/vol6_4.pdf

Appendix D of policy 6.4 is appended on the next page.

POLICY 6.4

Prohibited Discrimination, Protected-Status Harassment, Sexual Harassment, and Sexual Assault and Violence

APPENDIX D: EXAMPLES OF PROHIBITED DISCRIMINATION AND PROTECTED-STATUS (INCLUDING SEXUAL) HARASSMENT

Prohibited Discrimination

Discriminatory conduct may take many forms. Claims of discrimination may arise from conduct that includes, but is not limited to, the following when the conduct is based upon a person's EEO-protected status:

- Denying an opportunity for which an individual is qualified
- Not considering a person for an opportunity that is open to others
- Paying disparate wages for equal work in positions that require equal skill, effort, and responsibility and that are performed under similar working conditions (except in cases of a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a differential based on anything other than an Equal Education and Employment Opportunity (EEO)-protected class status);
- Singling out or targeting a person for different or adverse treatment because of his or her EEO-protected class status, or for opposing prohibited discrimination, protected-status harassment, and bias activity, or for participating in an investigation regarding a claim of prohibited harassment or discrimination
- Failure to provide reasonable accommodation for a disability or religious belief or practice (unless the employer can establish that providing such reasonable accommodation will create an undue hardship on the operation of the business or academic program, or will violate another university policy);
- Reinforcing the use of stereotypes that unreasonably impact a person's environment or opportunities
- Failing, or refusing to hire, or discharging an employee, or discriminating against an individual in admission to, or employment in, any program established to provide apprenticeships or other training or retraining, because of genetic information with respect to the employee that, for example, reveals the potential manifestation of a disease or disorder
- Failing, or refusing to hire or promote, or discharging an employee because of known or suspected caregiver responsibilities. For example, denial of promotion based on sex-based stereotypes that mothers with young children neglect their work duties or are unwilling to travel, denying male workers', but not female workers', requests for leave related to care giving

POLICY 6.4

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APPENDIX D: EXAMPLES OF PROHIBITED DISCRIMINATION AND PROTECTED-STATUS (INCLUDING SEXUAL) HARASSMENT, continued

responsibilities; or providing reasonable accommodations for temporary medical conditions, but not for pregnancy

◆**Note:** In the employment context, excluding student employment, the university has a/an selection/employment program that must comply with federal affirmative-action regulations. These regulations permit the establishment and use of numerical goals to ensure that the university meets its affirmative-action obligation. These regulations prohibit the use of goals to discriminate against any applicant or employee because of his or her EEO-protected class status.