



## Revisions to the University of Maryland Policy on Suspension

**PRESENTED BY** Jack Blanchard, Chair

**REVIEW DATES** SEC – March 26, 2019 | SENATE – April 4, 2019

**VOTING METHOD** In a single vote

**RELEVANT POLICY/DOCUMENT** [III-1.10\(A\) – University of Maryland Policy and Procedures Concerning Scholarly Misconduct](#)

**NECESSARY APPROVALS** Senate, President

### ISSUE

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At its meeting on March 6, 2019, the Senate considered a report on the Interim University of Maryland Policy and Procedures Concerning Research Misconduct (Senate Document #17-18-07). That report recommended changes to the University of Maryland Policy on Suspension of Faculty to align that policy with a newly revised Policy and Procedures Concerning Scholarly Misconduct. The Senate approved the recommendations. However, due to a clerical error, the version of the report sent to the Senate did not include the proposed revisions to the Policy on Suspension of Faculty. As a result, the Senate must vote to formally approve the revisions to the policy.

### RECOMMENDATIONS

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The Faculty Affairs Committee recommends that the University of Maryland Policy on Suspension of Faculty be revised as indicated in the policy document immediately following this transmittal.

### COMMITTEE WORK

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N/A

### ALTERNATIVES

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The Senate could choose not to approve the revisions to the University of Maryland Policy on Suspension of Faculty. However, the policy would be out of alignment with the recently revised University of Maryland Policy and Procedures Concerning Scholarly Misconduct.

### RISKS

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There are no known risks to the University.

### FINANCIAL IMPLICATIONS

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There are no known financial implications.

II.9-00(A) University of Maryland Policy on Suspension of Faculty

(Approved by the President, September 23, 2007)

**I. General**

(a) The Provost may suspend a faculty member for willful neglect of duty, incompetence, moral turpitude, or scholarly or professional misconduct.  
~~Adequate cause for suspension will be related directly and substantially to the service of a faculty member in his or her professional capacity as teacher and researcher.~~

(b) The following procedures constitute the exclusive avenue for appeal and review of suspension decisions within the University of Maryland.

**II. Scope and Definitions**

For the purpose of these suspension procedures, the following definitions<sup>1</sup> shall apply.

(a) "Faculty member" may include any person holding faculty appointments at the ranks set forth in Paragraphs I.A. through I.E. of the University Policy II-1.00(A) (University of Maryland Policy on Appointment, Promotion, and Tenure of Faculty).

(b) "Unit head" shall refer to a department Chair, Dean, or any University administrator ~~having~~ **who has** a supervisory relationship to a faculty member who is being considered for suspension, **including the Responsible Administrator designated in Scholarly Misconduct proceedings as described in the University of Maryland Policy and Procedures Concerning Scholarly Misconduct (III-1.10[A]).** ~~In cases of scholarly misconduct, the chair of the Committee of Investigation constituted under University of Maryland Procedures for Scholarly Misconduct III-1.10(A) shall act in lieu of the unit head.~~ In exceptional circumstances, such as when the appropriate unit head or committee chair may have a conflict of interest, or waiting for action by a unit head or chair would result in unreasonable delays, the Provost may appoint a faculty member or other academic administrator to investigate any allegations of serious misconduct and, if warranted, carry out the responsibilities of the unit head as described in the remainder of this policy.

(c) Unless otherwise specified, "day" shall mean ~~calendar~~ **business** days, excluding days the University is officially closed.

**III. Recusal of the Provost**

The Provost may recuse himself or herself in cases where he or she concludes that he or she may have a real or apparent conflict of interest with either the faculty member or other persons directly involved in the events or matters under consideration.

Should the Provost recuse himself or herself, the President may appoint a dean or other University academic administrator to carry out the responsibilities of the Provost, as described in the remainder of this policy.

#### ~~IV. Initiation of Suspension in Cases of Scholarly Misconduct~~

~~(a) The University of Maryland Procedures for Scholarly Misconduct (III-1.10(A)) provide comprehensive procedures for institutional inquiry, investigation, determination and resolution of allegations of scholarly misconduct by faculty in cases of fabrication, falsification, and plagiarism in proposing, performing, or reviewing research, or in reporting research and scholarship. The Scholarly Misconduct Procedures are the exclusive procedures for determining matters within their scope, and a final determination under these procedures shall be controlling and not subject to challenge or review by any person or board under this Faculty Suspension Policy.~~

~~(b) Under said procedures III-1.10(A) a Committee of Investigation may report a finding of scholarly misconduct to the Provost and recommend the sanction of suspension. Should the Provost accept this finding and recommendation, he or she shall initiate suspension proceedings under Paragraphs VI-XIV, below, with the proviso that the proceedings shall deal only with the appropriateness of the penalty.~~

#### **IV. Initiation of Suspension Proceedings** ~~in Cases of Willful Neglect of Duty, Moral Turpitude, Incompetence, or Professional Misconduct~~

**Suspension proceedings may be initiated by** ~~For cases of willful neglect of duty, moral turpitude, incompetence, or professional misconduct,~~ a faculty member's unit head. **The unit head** may request that the Provost suspend any faculty member covered by this policy. Such a request must be presented in writing and include a description of the specific events or circumstances that warrant the suspension, as well as the reasons for the use of suspension as a remedy instead of less severe measures. The faculty member shall be informed of this process and be provided with a copy of this request prior to the initial finding of the Provost set forth in Paragraph VI, below.

#### **VI. Initial Finding of the Provost**

(a) The Provost or the President's appointee has the primary responsibility for reviewing the charges, assessing the quality of the evidence, and determining if suspension is the appropriate remedy. The Provost shall deny any request which, in his or her professional judgment, is not supported by sufficient and reliable evidence, or where the alleged misconduct is not so severe as to warrant such a serious action.

(b) If the Provost concludes that on the facts known to him or her suspension would be appropriate, then the Provost shall present a Notice of Initial Finding to the faculty member. The notice shall set forth the specific charges, the length of suspension, whether the suspension shall be with or without pay, limitations on physical access to University facilities and participation in research activities, and such other matters as the Provost deems relevant to the circumstances.

(c) Absent exceptional circumstances, a suspension will be for a period of no more than one calendar year for the same incident of misconduct, incompetence, moral turpitude, or willful neglect.

(d) If the Provost finds that suspension is not warranted, both **the** faculty member and the unit head shall be informed of this decision in writing.

#### **VII. Preliminary Response Meeting**

A faculty member who is to be suspended shall be offered an opportunity to ~~have a preliminary meeting with the Provost~~ **provide a response in writing**. The ~~request for a preliminary meeting should be made in writing by the faculty member and~~ **response should be** received by the Provost within ten (10) days from the date the faculty member received the Notice of Initial Finding. The purpose of this ~~meeting response~~ is to present the faculty member with an opportunity to challenge the specific charges and specifications contained in the Notice of Initial Finding, and the sanction of suspension under the circumstances, including any without-pay status. The faculty member may also use the ~~meeting response~~ to suggest alternatives to the sanctions contained in the Notice of Initial Finding.

#### **VIII. Decision of the Provost**

(a) Upon careful consideration of any arguments and evidence provided by the faculty member, the Provost shall determine (a) which, if any, charges or specifications stated in the Notice of Initial Finding shall be dismissed, and (b) whether an alternative sanction is more appropriate under the totality of circumstances known to the Provost. The decision of the Provost shall be reported in writing both to the faculty member and to the unit head. The decision shall include a determination of the length of any suspension and whether it should be with or without pay.

(b) The effective date of any suspension shall be the date of the report of the Provost's decision, unless otherwise established therein.

#### ~~IX.~~ **VIII. Request for a Formal Hearing**

(a) The faculty member shall be accorded an opportunity to appeal the decision of the Provost to a three-member Faculty Board of Review.

(b) Upon receipt of a decision by the Provost, the faculty member may request a formal hearing. The request shall be **in** writing and received by the Provost within ten (10) days from the date the faculty member received the decision.

(c) Except by mutual agreement of the faculty member and the Provost, the hearing shall be held no sooner than fifteen (15) days, nor later than thirty (30) days after receipt of the faculty member's request for a hearing.

#### **IX. Appointment of the Faculty Board of Review**

Upon receipt of a request for a formal hearing, the Provost shall ask the Chair of the

University Senate, in consultation with the elected faculty members of the Senate Executive Committee, to empanel an impartial three-member Faculty Board of Review. The board shall consist of tenured University faculty who do not have a close professional or personal relationship to the faculty member, the unit head or any other person having a direct involvement in the matters under consideration. The Senate Chair shall provide a list of seven potential board members to both the faculty member and the unit head at least five (5) days before the start of the formal hearing. Both the unit head or committee chair and the faculty member shall be allowed to exclude up to two potential board members without stated cause if the requests are provided to the Senate Chair in writing two (2) days prior to the start of the hearing. The Senate Chair shall appoint the board from among the remaining potential members.

### **X-I. Conduct of the Formal Hearing**

The following matters pertain to the hearing under this paragraph:

- (a) A University administrative hearing is not a judicial proceeding. It is not the same as a criminal or civil trial and is not governed by all the conventions of courtroom advocacy.
- (b) The purpose of a hearing shall be to determine if the charges alleged against the faculty member are true in whole or in part and, if so, whether suspension would ~~be~~ a reasonable sanction under the circumstances.
- (c) The burden shall be on the unit head to demonstrate by a preponderance of the evidence that the misconduct, incompetence, or neglect alleged as grounds for suspension occurred and that suspension is a reasonable sanction under the circumstances; provided, however, when the grounds of suspension is scholarly misconduct, the prior determination of the **Investigation** Committee ~~of Investigation~~ as to the existence or non-existence of such misconduct is determinative, and not open to further challenge or review under these suspension procedures.
- (d) The hearing shall be closed to the public. Prospective witnesses, other than the faculty member and the unit head and their respective representatives, shall be excluded, except to testify.
- (e) The Faculty Board of Review shall elect a chair and may organize itself in the way it thinks most efficient.
- (f) The chair shall exercise control over the proceedings to avoid unnecessary delay and to achieve the orderly completion of the hearing. Reasonable measures may be taken to maintain control over the proceedings to elicit relevant facts, to maintain civility, to prevent disruptions or harassment of participants, and to ensure that the interests of both parties and of fairness are preserved. This may include defining the issues (if the parties disagree), regulating the timing, order, length and manner of presentations, motions, argument, testimony and objections,

declaring recesses in the proceedings, and taking other appropriate actions. The chair's decision in these matters shall be final.

- (g) The University's Office of **General Counsel** ~~Legal Affairs~~ will advise the Faculty Board of Review on legal and procedural questions that may arise and may be present if requested.
- (h) The chair shall cause a record to be made of the hearing, including a transcript of the proceedings and all documents accepted for consideration.
- (i) The formal rules of evidence shall not apply. The chair shall ensure that the rules of confidentiality and privilege are followed, but shall otherwise admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.
- (j) The faculty member and the unit head will each have an opportunity to make opening and closing statements, present written evidence, examine and cross examine witnesses, offer personal testimony, make objections, and file motions, including motions raising issues of substantive or procedural due process. The Faculty Board of Review may question the faculty member, the unit head, and the witnesses. Matters pertaining to timeliness, conflict, standing, grievability, or authority of the chair should be raised by motion at the earliest possible point in the proceedings.
- (k) It is the personal responsibility of the faculty member and of the unit head, respectively, to produce in a timely manner the evidence they each wish considered, including documents and witnesses. Absent extraordinary circumstances, the hearing will not be delayed to obtain the presence of a witness or document. In advance of the hearing, either party may request that the chair contact a person to be a witness or produce a document. The request should be in writing and contain a concise proffer of the expected testimony. If the chair deems the request reasonable and the evidence relevant, the individual may be asked to appear or produce the item, but his or her actions shall be voluntary.
- (l) At the conclusion of the hearing, the board shall meet privately to reach a conclusion. The decision of a Faculty Board of Review shall be by majority vote. A case shall be judged solely on the evidence in the record, although notice may be taken of University matters within the common knowledge and experience of campus faculty, including published policies of the University System of Maryland and the University of Maryland. A written report shall be made to the Provost in the form of findings and recommendations. The findings shall address each charge and provide the reasons therefore. The findings

shall also include a determination whether suspension would be a reasonable sanction under the circumstances. If warranted, an alternate or modified sanction may be recommended. Both the unit head and the faculty member will be provided a copy of the Faculty Board's findings and recommendations, as well as a written minority report in cases where the finding is not unanimous.

- (m) The Provost shall review the findings and recommendations of the Faculty Board of Review. If the Provost accepts the findings and recommendations of the Board, he or she will so inform the faculty member and the unit head. This will constitute the last action of the University and conclude the matter; provided, however, in the event that the final action of the Provost is to maintain the suspension of the faculty member or to take an action different than that recommended by the Faculty Board of Review, the faculty member may appeal the Provost's decision to the President in accordance with Paragraph XII ("Final Appeal"), below.

## **XII. Final Appeal**

If the decision of the Provost is to suspend the faculty member, or if the Provost does not accept the recommendation of the Faculty Board of Review, then the faculty member may appeal to the President. Upon receipt of the decision of the Provost, the faculty member may request a meeting with the President. The request shall be in writing and received by the President within ten (10) days from receipt of the Provost's decision. The meeting shall occur at the earliest possible time, but no later than thirty (30) days following the receipt of the request for an appeal. The following matters pertain to the appeal:

- (a) The purpose of the meeting is to afford the faculty member an opportunity to challenge the decision of the Provost.
- (b) The appeal shall be limited to oral argument, which may be augmented by written briefs submitted before the meeting. Arguments and facts not previously presented to the Faculty Board of Review will not be considered on appeal. The President will have access to the record of the formal hearing, including the findings and recommendations of the Faculty Board of Review and, if applicable, any minority report resulting from these findings.
- (c) The Provost may elect to attend the meeting and respond as appropriate.
- (d) The University Office of **General Counsel** ~~Legal Affairs~~ will advise the President on legal and procedural questions that may arise and may be present if requested.
- (e) The decision of the President shall be final and shall be communicated in writing to the Provost, the unit head, and the faculty member.

### **XIII. Time Requirements**

Time requirements established in Paragraphs **VI**, ~~VII~~, VIII, IX, ~~X~~, and ~~XII~~ above are an important element in these suspension procedures and are considered necessary to the orderly administration of the academic and financial needs of the University and its faculty. Unless otherwise mutually agreed in advance between the faculty member and the Provost, strict adherence to them is a condition of review and appeal under these procedures.

### **XIII~~V~~. Right to Advocate ~~Counsel~~**

In all proceedings and appeals under these suspension procedures, the faculty member and the unit head may each elect to be ~~represented or~~ assisted by **an advocate** ~~a person~~ of their choice, including legal counsel, provided such person agrees and is available without unreasonable delay.