Resolution to Revise the Faculty Handbook to Move Grievance Sections to a Single Section and Change College Professional Ethics Committees to a University PEC Professional Relations Committee

May 8, 2024 – Second Reading

Whereas faculty members are often confused by the grievance process and find it difficult to find information in the current handbook layout, and

Whereas college professional ethics committees seldom hear grievances that contain ethics questions specific to that college, and

Whereas RHE campus ethics committees have not been able to have cases referred to them since OneOhio removed the branch campus department chairs, and

Whereas RHE faculty have expressed concerns about having to navigate an Athens-centric grievance process,

Be it resolved that the faculty handbook sections II.F, II.G, and IV.L shall be deleted in their entirety, and

Be it resolved that a new section V be added with text attached below, and that all current sections V and greater shall have their numbering incremented by one.
V Faculty Grievances and Ethics Panels

A General Information Regarding Grievance Process

1 The grievance processes are meant to resolve disagreements between faculty and other members of the Ohio University community that do not involve violations of U.S. or State of Ohio law. If a faculty member believes that they have had their civil rights violated, have been the victim of sexual harassment or assault, and/or have been unfairly treated with respect to OU’s academic freedom policy, they should review Sections V.D.1.a, V.D.1.b, V.D.4.a of this document. To protect the integrity and the collegiate climate of Ohio University, and to support University compliance with U.S. and State of Ohio law, faculty uncertain about how to proceed should contact Ohio University’s Office of Equity and Civil Rights Compliance for guidance.

2 Faculty grievances are divided into four main categories. Grievances related to matters involving promotion and tenure decisions are covered in Section B. Grievances related to other violations of academic policies and procedures are covered in Section C. Grievances related to violations of professional ethics by another faculty member that are not violations of state or federal law and do not involve research misconduct are covered by Section D.4.b. Grievances that involve research misconduct are covered by section D.5. For all grievances, the grievance process begins with a written complaint filed with the designated office.

3 Format of the Grievance: The written grievance shall be no more than five pages (with 12 point font and one-inch margins) and consist of the following. Appendices may be used for supportive materials.

a Name, department, college and contact information of the individual submitting the grievance.

b Specific identification of the individuals and their titles precipitating the grievance.

c Justification of the grievance with explicit reference to that section of the Ohio University Faculty Handbook or Policy and Procedures Manual or Professional Ethics Code which has been violated.

d Description of the series of events that resulted in the violation with a timeline that includes all of the important events that precipitated the grievance. Supporting material (letter, emails, etc.) should be explicitly referenced in the timeline and provided in the Appendix.

e A statement by the faculty member concerning how he/she/they think the grievance should be resolved in a fair and equitable manner.

f The grievance may include a one-page cover letter that introduces the grievance and its potential merits. All material should be in 12-point font.
4  RHE Grievance Consultants: As most offices involved with the grievance process are located on the Athens campus, all RHE campuses will have a tenured faculty member who has been designated as the consultant for all faculty on that campus for grievance related matters. The RHE grievance consultants shall be chosen by the Faculty Senate Chair in consultation with the Faculty from each RHE campus with agreement from the RHE Vice Provost (or designee or equivalent). This position will be a service assignment for the designated faculty member. Each campus consultant will be trained so that they can provide information, advice, and assistance regarding the grievance process.

B  Grievance Procedures for Non-reappointment and for Denial of Promotion and/or Tenure

1  If a faculty member believes there is cause for grievance relative to non-reappointment or denial of promotion and/or tenure, an appeal of a negative decision may be initiated at the level at which the decision was made, i.e., either within the department, or at the level of the dean or of the Provost. Should the appeal be denied at any of these levels, the faculty member may take the appeal to the next level. The grievance can involve one or more of the following allegations: inadequate consideration, denial of due process (including failure to follow designated procedures), or denial of academic freedom.

a. Denial at the Department/School level

If the denial occurs at the department/school level, the faculty member must direct their appeal to the appropriate departmental/school committee through the department chair/school director. If the appeal is denied, the faculty member may then appeal to the dean. If the dean supports the appeal, the case will be returned to the department/school for reconsideration. If the department/school again denies the appeal, the faculty member may continue the grievance process by appealing the case to the Provost. If the Provost supports the appeal, the case will be forwarded to the Standing Committee on Promotion and Tenure of the Faculty Senate. If the Standing Committee on Promotion and Tenure of the Faculty Senate supports the appeal, the case will proceed to a formal hearing at the request of the appellant faculty member (see Section II.F.7 for the exact procedure to follow).

If the dean denies the appeal the faculty member may continue the grievance process by appealing the case to the Provost. If the Provost supports the appeal, the case will be returned to the department/school for reconsideration. If the department/school again denies the appeal, the faculty member may appeal to the Standing Committee on Promotion and Tenure of the Faculty Senate. If the Standing Committee on Promotion and Tenure of the Faculty Senate supports the appeal, the case may proceed to the formal hearing unless the faculty member withdraws the appeal (see Section II.F.7).

b. Denial at the Dean Level
If the department/school voted in favor of granting promotion and/or tenure but the dean denies the case, then the faculty member must direct the appeal to the dean. If the dean denies the appeal, the faculty member may appeal to the Provost. If the Provost supports the appeal, the case will be forwarded to the President for consideration. If the Provost denies the appeal, the faculty member may appeal to the Standing Committee on Promotion and Tenure of the Faculty Senate. If the Standing Committee on Promotion and Tenure of the Faculty Senate supports the appeal, the case will be returned to the dean for reconsideration. If the dean again denies the appeal the case may proceed to the formal hearing at the request of the faculty member (see Section II.F.7).

c. Denial at the Provost level

If the department/school and dean were in favor of granting promotion and/or tenure but the Provost denies the case, then the faculty member must direct the appeal to the Provost. If the Provost denies the appeal, the faculty member may appeal to the Standing Committee on Promotion and Tenure of the Faculty Senate. If the Standing Committee on Promotion and Tenure of the Faculty Senate supports the appeal, the case will be returned to the Provost for reconsideration. If the Provost again denies the appeal the case may proceed to the formal hearing at the request of the faculty member (see Section II.F.7).

d. Deadlines

The initial appeal by the faculty member must be made within 45 calendar days from the date of notification of non-reappointment or denial of promotion and/or tenure; subsequent appeals to higher administrative levels including to the Standing Committee on Promotion and Tenure of the Faculty Senate must be made within 30 calendar days of the receipt of the response at the previous level. These deadlines are to be interpreted as excluding winter intersession, the summer term, and breaks between terms. Additionally, if the deadline falls on a weekend or holiday the next workday shall be considered the deadline.

Responses to appeals on the part of the dean or Provost are to be made within 30 calendar days of receipt of the appeal. If the deadline falls on a weekend or holiday the next workday shall be considered the deadline. Responses to appeals on the part of the department/school or Standing Committee on Promotion and Tenure of the Faculty Senate are to be made within 30 calendar days of receipt of the appeal excluding winter intersession, the summer term, and breaks between terms. If the deadline falls on a weekend or holiday the next workday shall be considered the deadline. Appeals at the departmental level are to be directed through the departmental chair to the chair of the departmental committee responsible for promotion, tenure, or non-reappointment recommendations. The departmental chair is responsible for conveying the decision of the committee to the person making the appeal. In cases in which positive recommendations of departmental promotion and tenure committees are not sustained at the level of the dean or of the Provost, the committees shall enjoy the right to support faculty appeals including providing supporting documentation.
A faculty member who remains dissatisfied with the status of the grievance following the issuance of the report of the Standing Committee on Promotion and Tenure of the Faculty Senate, may, within 45 calendar days, petition the Standing Committee on Promotion and Tenure of the Faculty Senate to recommend that a formal proceeding be conducted, in accordance with Section II.F.7 below, with the burden of proof resting on the grievant. If this deadline falls on a weekend or holiday the next workday shall be considered the deadline. The appeals process may continue even if the proceedings extend beyond the termination date of the individual’s contract.

2 All appeals adjudicated by the Faculty Senate Promotion and Tenure committee will be heard by faculty with rank equal or higher than the rank which a candidate is being considered. In the event of an Instructional or Clinical Faculty appeal, two Instructional members of the Faculty Senate will act as advisors to the Promotion and Tenure Committee with full voting rights on Instructional or Clinical Faculty appeals. If in any given year there are no Instructional Faculty assigned to the committee, the Senate Chair will request two Instructional Faculty serving the Senate in other capacities join the Senate Promotion and Tenure Committee for the duration of the committee’s work on the Instructional or Clinical Faculty’s appeal. Insofar as the petition for review alleges denial of due process, the functions of the Faculty Senate Promotion and Tenure Committee shall be as follows:

a  To determine whether a denial of due process in fact occurred.

b  In the event it finds a denial of due process, to suggest a course of action that will equitably resolve the situation.

c  To provide copies of these findings and recommendations to the chair of the Faculty Senate, the faculty member, the department concerned, the academic dean, and the Provost.

d  If necessary, to decide whether the evidence warrants a recommendation that a formal proceeding be conducted (see Section II.F.7).

3 Insofar as the petition for review alleges inadequate consideration, the functions of the committee shall be the following:

a  To determine whether the decision of the appropriate party was a result of adequate consideration in terms of relevant standards of the institution, with the understanding that the review committee is not to substitute its judgment on the merits for that of the faculty body on the question of whether the faculty member meets these standards.

b  To request consideration by the appropriate party when the committee believes that adequate consideration was not given to the faculty member’s qualifications. (In such instances, the committee should indicate the respects in which it believes the consideration may have been inadequate.)
c To provide copies of its findings and recommendations to the chair of the Faculty Senate, the faculty member, the department involved, the academic dean, and the Provost.

d If necessary, to decide whether the evidence warrants a recommendation that a formal proceeding be conducted (see Section II.F.7).

4 Insofar as the petition for review alleges denial of academic freedom, the functions of the committee shall be the following:

a To determine whether the notice of non-reappointment constitutes on its face a violation of academic freedom.

b To seek to settle the matter by informal methods.

c To provide copies of its findings and recommendations to the chair of the Faculty Senate, the faculty member, the department involved, the academic dean, and the Provost.

d If necessary to decide whether the evidence warrants a recommendation that a formal proceeding be conducted (see Section II.F.7).

5 If the Standing Committee on Promotion and Tenure of the Faculty Senate has found that a formal proceeding is warranted on the evidence presented to it, the committee will so inform the chair of the Faculty Senate. In consultation with the Executive Committee of the Faculty Senate, the chair shall appoint five tenured faculty members, at rank or above, none of whom shall be from the grievant’s department, to constitute a hearing committee. The chair of Faculty Senate shall designate the chair of the formal proceeding committee.

a In the discharge of its responsibilities, the formal proceeding committee shall proceed as follows:

b The committee shall determine the time and place of the hearing, which shall commence not later than thirty days from the date of the committee’s appointment.

c No later than three days following the date of the committee’s appointment, the chair shall notify the grievant of the time and place of the hearing, and inform them of the basic procedures governing the hearing, which shall be closed, unless the grievant requests an open hearing.

d At the hearing, the grievant shall bear the burden of proving, by a preponderance of the evidence presented, that the action taken (a) violated due process and/or (b) was based upon inadequate consideration and/or (c) infringed upon academic freedom. The order of events at the hearing, which shall be determined by the committee, shall reflect this requirement.
e During the proceedings, the grievant shall be permitted to have as advisor either a faculty member or an academic administrator of their choice. Likewise, the senior administrator responsible for the grievant’s area or their designated representative shall be permitted to have as advisor either a faculty member or an academic administrator of his/her/their choice. The responsibility for presenting the grievant’s case is restricted to the grievant and/or their advisor. The functions to be performed by each advisor shall be determined by the person whom they are advising. A representative of an appropriate educational organization may be invited to be present.

f The grievant shall have the aid of the committee in securing the attendance of persons who possess relevant information, and in having access to information related to the case.

g The grievant and/or their advisor and the University representative and/or their advisor shall have the right to confront and question all persons who make statements before the committee.

h The full proceedings shall be recorded by the University, which, upon request, shall make a copy or written transcript available to the grievant, the committee, or the President. Upon completion of the hearing, the committee shall, within 15 calendar days, submit a written report of its findings and recommendations to the President, with copies to the grievant and the University representative. Within 30 calendar days of receiving the report, the President shall then reach a final decision in the case, which decision shall be communicated in writing to the grievant, the University representative, and the committee. The President shall not make a public announcement of their decision unless requested to do so by the grievant.

C Grievance Procedure for Other Academic Policy or Procedure Violations

1 If a faculty member has reason for grievance in a matter other than reappointment, tenure, and promotion (Section V.B), then the faculty member is entitled to file a grievance.

2 The grievance shall be submitted in writing first to the Department Chair (or School Director); if there is no resolution it moves next to the Dean of the College, and finally to the Provost as outlined below.

a If the Chair (or Director), Dean, or Provost are identified in the grievance or have a conflict of interest, then the grievance must be submitted in writing to the next administrative officer in the hierarchy.

b In the instance that the Chair (or Director), Dean, and Provost are all identified in the grievance or have a conflict of interest, the grievance shall be sent to the President who will forward it to the Professional Relations Committee of the Faculty Senate for review.
c Each administrative level (Chair (or Director), Dean, and Provost) shall within 30 days of receipt of the grievance render a written decision on all issues included in the grievance. If no written decision is received within 30 days of faculty filing the grievance at an administrative level, the faculty member may refer the grievance to the next level. A “day” is defined as a calendar day per Appendix B.

d Failing resolution of the grievance by the Provost, the faculty member may submit the grievance to the Professional Relations Committee of the Faculty Senate for review. The Committee shall rule on the grievance and submit its recommendations to the President within 90 days of the faculty filing the grievance with the Committee. The recommendations of the Committee should be either sustained by the President or returned to the Committee with the objections specified within 30 days of the grievance recommendations being filed with the President by the Committee.

e If the President returns the recommendations with objections, then the Committee shall reconsider, taking account of the stated objections and considering additional information, if necessary. The Committee shall frame its revised recommendations and communicate them to the President in the same manner as before. Only after study of the Professional Relations Committee’s reconsideration should the President make a final decision overruling the Professional Relations Committee’s recommendation.

f The Professional Relations Committee shall communicate the decision in writing to the faculty member, the Chair (or Director), the Dean, and the Provost as soon as possible and not to exceed 30 days of the Committee receiving the President’s final response.

D Procedures in the Event of Allegations of Violation of Professional Ethics

1. Introduction

a. The Faculty Senate and the Provost of Ohio University have adopted a statement on Professional Ethics. (See Section I.A of the Faculty Handbook.) Procedures for the investigation and resolution of alleged violations of Professional Ethics are specified. Section IV.L.4 applies to alleged violations of Professional Ethics not involving research misconduct or sexual misconduct. Section IV.L.5 applies to alleged Fraud and Misconduct in Professional Research (see Policy No. 19.048).

b. Members of the faculty should familiarize themselves with the University policies on Whistle-blowing and Retaliation (03.006), Workplace Violence (41.135), Equal Employment and Educational Opportunity (40.001) and Sexual Misconduct (03.004).

2. Reporting violations.
Cases involving alleged research misconduct should be reported to the Office of the Vice President for Research (V.D.5). Alleged violations of sexual misconduct, relationship violence, and stalking (as indicated in Policy No. 03.004) and of discrimination (Policy 40.001 Equal Employment and Educational Opportunity) should be reported to University Equity and Civil Rights Compliance (ECRC). Those involving discrimination (as defined by Policy 40.001) will be investigated by ECRC and reviewed via procedures outlined in V.D.4.a. All other cases of alleged violations of professional ethics should be brought to the attention of the department chair and resolved by according to section V.D.4.b.

3. University Professional Ethics Committee

The university will have a standing Professional Ethics Committee consisting of eighteen faculty members with faculty status. The number of members from each degree-granting college or school should be in proportion to the number of faculty eligible to serve on the committee from the college or school, with all such organizations having a minimum of one member. The November snapshot of faculty from the previous year will be used to determine the distribution of open seats among the colleges. At least twelve of the committee members shall be tenured faculty. The term length for members on the University Professional Ethics Committee shall be three years. Appointments shall be staggered such that six members are selected each fall. If a member is unable to complete their term, a replacement shall be selected from the same college to serve the remainder of the term. The Faculty Senate Chair will be responsible for determining which college and what status of faculty member is needed for each open position, and shall coordinate with the faculty senators of that college to fill the position. Appointments to UPEC from a given college are subject to review by the Dean of the college, with disagreements between faculty senators and the Dean of a college on a nomination to be appealed to the Provost. RHE faculty shall be represented on the committee in proportion to their fraction of total Ohio University faculty.

For any given case referred to the University Professional Ethics Committee, the chair and Executive Committee of Faculty Senate will select at random six faculty from among the pool of UPEC members who have served on the fewest cases that academic year to serve as an ethics panel, with at least 4 of the members being drawn from the pool of tenured faculty. One member will be appointed as chair of the panel. All six should be willing and able to serve for the duration of the case.

The panel chair will be responsible for conducting the review or inquiry and ensuring that the panel carries out all its responsibilities in a timely manner and satisfies all requirements of the state and federal laws and university policies. Any member of the UPEC or the Faculty Senate Executive Committee, including the chair of Faculty Senate, who is from the same department or has close personal or professional relationships with any faculty member involved in the case will recuse themselves from the process for that case. If the chair of Faculty Senate recuses himself/herself/themselves, his/her/their duties would fall to the vice chair etc.

1 Department Chair is equivalent to school director or the associate director of the Voinovich School.
4. Procedures for allegations not involving sexual or research misconduct

a. For allegations of discrimination or harassment based on race, color, religion, age, ethnicity, national origin, national ancestry, sex, pregnancy, gender, gender identity or expression, sexual orientation, military service or veteran status, mental or physical disability, or genetic information as defined by Policy 40.001, ECRC investigates the allegations according to procedures outlined in its Grievance Resolution Procedure, https://www.ohio.edu/equity-civil-rights/grievance-resolution.cfm).

Briefly, in the inquiry phase, the ECRC investigator will evaluate whether the allegations, if substantiated, would constitute a violation of Policy 40.001. If so, then the ECRC investigator will proceed to initiate an investigation. If the ECRC investigator determines that the allegation would not violate the policy even if substantiated, the ECRC investigator will close the inquiry.

If the ECRC investigator determines an investigation is warranted, the investigator will notify the faculty member identified in the complaint as well, his/her/their department chair and the dean of the college/school when the investigation is initiated. ECRC will provide the faculty member with written notice of the allegations involved in the discrimination complaint. As a part of the ECRC investigation, the faculty member will have the opportunity to present any oral, written, or other information they wish the investigator to consider and to identify any witnesses the faculty member believes may have information relating to such a complaint before an investigation is completed.

ECRC endeavors to complete investigations as promptly as possible, ideally within 90 business days. Investigators will regularly communicate with the parties throughout the investigation about timeline and an anticipated date of completion.

Once an investigation is complete, the ECRC Memorandum of Findings (MOF) will be sent to the complainant(s) and the faculty member involved, with copies to the dean of the planning unit and the chair of his/her/their department.

If the ECRC MOF does not support findings of misconduct, the ECRC investigator closes the ECRC case. ECRC’s closing of the ECRC case does not foreclose the examination of the faculty member’s conduct by other established university processes.

If the ECRC MOF presents findings of discrimination (violations in accordance to Policy No. 40.001), the dean will forward the complaint to the University Professional Ethics Committee (according to V.D.4.c) for its review and

1 Director is the equivalent of Dean for the Voinovich School
recommendation of disciplinary action. The university PEC’s responsibility is to consider only the charges contained in the ECRC MOF.

b. For apparent violations of professional ethics not investigated through the Office of the Vice President of Research nor by the ECRC, the investigation starts at the department level. The department chair, possibly in consultation with faculty colleagues or a departmental grievance/advisory committee, shall investigate the allegations. When charges are brought against a faculty member from some external professional or governmental agency, the case will proceed directly to the dean and the University Professional Ethics Committee after any adverse determination is made by the external professional or governmental agency. The exception to this process would be if the violation involves part of the faculty member’s reporting chain, (i.e. Department Supervisor, Chair, Dean). In these cases, the dispute should be raised at the level immediately superior to the highest ranking member involved with the faculty member’s dispute. (e.g., if a chair is involved, the faculty member should report the dispute to the dean with oversight of that chair. If a dean is involved, the dispute should be reported to the Provost).

i. The investigation at the department level will include, minimally, interviews with the accused and the complainant, and may include but is not limited to written statements or other documentation provided by the accused and the complainant(s) regarding the activities in question, and interviews or statements from possible witnesses.

The person accused of the violation of professional ethics will be informed of the charges within thirty (30) calendar days and be given an opportunity to explain their behavior. If the chair is not satisfied with the explanation, the specifics of the allegation will be given within fifteen (15) calendar days to the person accused in writing. The person accused will have fifteen (15) calendar days to respond to the chair in writing, and the chair will attempt to resolve the problem.

ii. If resolution cannot be reached between the chair, the complainant, and the accused within fifteen (15) calendar days, the chair will forward the specific allegations of violation of Professional Ethics by the faculty member, along with documentation of the process and findings of their investigation to the dean in writing. The faculty member accused will be given the option of submitting their explanation of the alleged misconduct in writing as part of the documentation submitted to the dean at the same time.

iii. If the dean, chair, complainant, and faculty member accused of the violation cannot reach a resolution of the matter within fifteen (15) calendar days, the dean will notify the chair of Faculty Senate, who will form a panel according to Section V.D.3. After the formation of the university ethic panel for that case, the panel chair will contact the dean and indicate that the panel has been formed and is ready to proceed.
The specific allegations of violation of professional ethics along with all documentation of the investigation, attempted resolutions, and process followed will be forwarded to the Professional Ethics Panel (according to V.D.4.c) in writing. A final copy of the allegations and documentation provided to the panel will be given to the accused and complainant, and once the allegations are forwarded to the panel, no additional changes can be added without beginning the process anew.

c. **Role of the Professional Ethics Committee.** When an allegation of violation of professional ethics is received by the Professional Ethics Committee panel, the panel chair will inform the person accused and the panel will investigate the charges (or review the investigation and findings from ECRC in cases of allegations of discrimination according to V.D.4.a), with the assistance of university offices as needed as determined by the dean and the panel chair.

The panel investigation will be a formal examination and evaluation of the allegations to draw conclusions as to whether the findings of misconduct merits disciplinary action, and if so, to determine an appropriate recommendation for disciplinary action. The investigation will include examination of documentation, including but not limited to, the written statements from parties involved, summary statements of witness interviews, and reports from the chair and the dean as to process, findings, and resolutions attempted. The complainant and accused will be given an opportunity to meet and discuss the charges within the committee. When appearing before the committee, they may be accompanied by an advocate, preferably a faculty member. The panel has the right to interview all parties involved including possible witnesses as needed to support their decision process.

After consideration of all the testimony and evidence in the case, the Professional Ethics Committee panel will report its written conclusions and recommendations to the dean of the college who referred the case and to the person accused, with a copy to the provost. The report and recommendations must be issued within thirty (30) days after receiving the written allegations. The findings and recommended action may include the following:

**Not Guilty**—In matters not investigated by ECRC, the Professional Ethics Committee panel finds that the person charged is not guilty of a violation of professional ethics. This finding ends the process.

However, for investigations conducted by ECRC (V.D.4.a) where the investigator presents findings of misconduct, a PEC recommendation of Not Guilty is inappropriate, the minimum sanction possible would be **Insufficient cause** to support disciplinary action.
Reprimand—Suitable for violations of professional ethics that are moderately serious.

Censure or Disciplinary Action—Appropriate for more serious violations of professional ethics, and may include, but are not limited to, a formal censure, reassignment of duties for some specified period of time, a financial penalty not to exceed 10% of the academic year's salary and/or recommendation that a school or department initiate loss of tenure and/or dismissal proceedings.

A recommendation of reprimand, censure, disciplinary action or to initiate loss of tenure/dismissal proceeding requires at least four positive votes from the Professional Ethics Committee panel. In these cases, the report and recommendations of the Professional Ethics Committee and the dean’s recommendation are forwarded in writing to the Provost for action within thirty (30) days after the dean receives the report and recommendations of the college Professional Ethics Committee. The dean may recommend a reduced, but not more severe, penalty to the Provost, and a copy of the dean’s recommendation is given to the accused.

The Provost, with due consideration of the recommendations of the dean and the Professional Ethics Committee, will announce their decision within thirty (30) days of receiving the recommendations and report from the college Professional Ethics Committee and the dean. The individual charged under this procedure can appeal the action of the Provost to the Professional Relations Committee of the Faculty Senate within twenty-one (21) days of being informed of the Provost's action. The grounds for appeal are limited to failure to follow appropriate procedures in the investigation or arbitrary and capricious decision-making. The Professional Relations Committee shall submit its recommendations to the President within thirty (30) days of notification, and the President will make the final determination on the appeal and allegation.

5. Fraud and Misconduct in Professional Research

a. Purpose

To establish an administrative process for dealing with misconduct in research, or allegations thereof, so that the integrity of research conducted at Ohio University is maintained, and so that Ohio University complies with federal regulations for institutional oversight of scientific misconduct, specifically as set forth in 42CFR50 for NIH-supported research, and particularly 42CFR50.103(d)(13) and 45CFR689 for NSF-supported research.

b. Definitions

Misconduct in Research: The term "misconduct in research," as stated in the aforementioned regulations and for the purposes of this policy, means
"fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic community for proposing, conducting, or reporting research." It does not include honest error, or honest differences in interpretations or judgments of data.

**Inquiry:** The term "inquiry," as stated in the aforementioned regulations and for the purpose of this policy, means "information gathering and initial fact finding to determine whether an allegation or apparent instance of misconduct warrants an investigation."

**Investigation:** The term "investigation," as stated in the aforementioned regulations and for the purposes of this policy, means "formal examination and evaluation of all relevant facts to determine if misconduct has occurred."

**Complainant:** The term "complainant" means the individual who makes the allegation.

**Respondent:** The term "respondent" means the individual against whom the allegation has been made.

**Whistleblower:** The term "whistleblower" refers to a university employee who, in good faith, makes an allegation of wrongdoing.

c. **Policy Statement**

Misconduct in research is not consistent with the principles that Ohio University follows in fulfilling its mission of teaching, research, and public service, and will not be tolerated. If allegations of such misconduct are raised, the institution shall conduct a prompt and thorough review and impose appropriate sanctions when the allegation of misconduct has been sustained. Throughout the process the institution will strive to protect due process rights of those accused and, to the maximum extent possible, the privacy of those who in good faith report apparent misconduct.

d. **Implementation**

Implementation of this policy shall be performed in a manner consistent with the aforementioned regulations, specifically: Allegations of fraud or misconduct in research, scholarship, or creative activity will be presented to the Vice President for Research.

e. **Pre-Inquiry Review**

The Vice President for Research, or his/her/their designee, will conduct a pre-inquiry review to assist the complainant to formulate as clearly as possible the exact nature of the allegation and to determine if an allegation has any reasonable basis before beginning a formal process of review. In those cases involving allegations that pose threats to the health or welfare of human
subjects or other involved persons, a pre-inquiry review may be omitted. Following an informal review with the respondent, if the Vice President or his/her/their designee determines that the allegation has no merit and/or does not fall under the definition of misconduct in research, the complainant and respondent will be notified of that decision.

f. Inquiry Procedure

An inquiry procedure shall be initiated immediately upon completion of the pre-inquiry review or, in cases involving the health or welfare of individuals, immediately upon receipt of an allegation of misconduct in research. The Vice President for Research will notify the respondent as soon as possible but no later than five (5) days from receipt of the complaint or completion of the pre-inquiry review. This notification will be in writing and shall mark the beginning of the formal inquiry. At the time of notification, all relevant research records and materials will be secured by the office of the Vice President for Research and the dean of the respondent's college will be notified of the allegation. If an allegation of research misconduct is referred to Ohio University by a federal agency, the University will review the referral and, if appropriate, move directly into the investigation procedure defined in Section V.D.5.g.

The Vice President for Research, in consultation with the Professional Relations Committee of the Faculty Senate, shall appoint an inquiry panel to conduct an inquiry to determine if a full investigation is warranted. The inquiry panel shall consist of no fewer than three (3) persons. The inquiry panel should include not only persons who have expertise in the discipline of the respondent(s), but also at least one other, unrelated scholarly discipline and a member of rank or position similar to the respondent. The chair of the inquiry panel will be selected by the Vice President for Research, and staff support will be provided by the Vice President's office. The inquiry shall be completed and a written report submitted to the Vice President for Research within thirty (30) days from the date of notification of the respondent of the allegation or misconduct.

The inquiry is the initial stage of formal information-gathering and initial fact-finding to determine whether there is sufficient credible evidence of misconduct to warrant a full-scale investigation. The written report shall state what evidence was reviewed, summarize relevant interviews, and include conclusions of the inquiry. The inquiry panel will have access to and the assistance of all units or offices at the University in conducting its review. Contacts with experts or witnesses outside the University will be authorized by the chair of the inquiry panel and made by staff members assisting the panel. The respondent(s) will be interviewed as a part of the inquiry process and shall be given a copy of the report of the inquiry. If they comment on that report, their comments will be made a part of the record. If the inquiry takes longer than thirty (30) days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the thirty (30) day period.
The inquiry panel shall maintain sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted, if necessary. The documentation will be delivered to the Vice President for Research at the conclusion of the inquiry for maintenance in a secure manner for a period of at least three (3) years after the termination of the inquiry.

Within ten (10) days following the completion of the inquiry, the Vice President for Research will review the recommendations of the inquiry panel and the written comments of respondent, if any are made, and determine, in consultation with the Provost, whether to conduct an investigation, drop the matter, or pursue some other appropriate action. The dean of the respondent's college will be notified of the decision of the Vice President. In cases where there are procedural or bias challenges or other problems identified in the inquiry process, the University may elect to proceed with an investigation or pursue other appropriate remedies, on advice of University counsel and in consultation with any affected federal agency. The course of action chosen will be reported to the respondent. An institutional settlement at the inquiry stage cannot bind the federal government.

g. Investigation Procedure

An investigation shall be initiated within thirty (30) days of the determination by the Vice President for Research to proceed with the investigation. The Vice President for Research will notify the respondent and any federal agency that is providing support for research identified in the allegation of the University's decision to initiate an investigation. This notification will be written and will delineate the allegation of misconduct. In consultation with Professional Relations Committee of the Faculty Senate or other representative committee appropriate to the employment status of the respondent, the Vice President for Research shall appoint a committee of no fewer than five (5) persons to conduct the investigation. The committee shall include not only persons who have expertise in the disciplines of the respondents(s), but also at least one from some other, unrelated scholarly discipline and at least one member of rank or position similar to the respondent. The chair of the committee will be selected by the Vice President for Research and staff support will be provided by the Vice President's office. The Committee will be authorized to secure necessary and appropriate expertise from Ohio University and elsewhere, to augment the expertise represented by the committee membership. The committee will have access to and the assistance of all units or offices at the University in conducting its review. The Vice President for Research will take appropriate interim administrative actions to protect any federal funds involved in the allegation and insure that the purposes of the federal financial assistance are carried out.

The investigation normally will include examination of documentation, including but not necessarily limited to the report of the inquiry panel, relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. The respondent(s) will be interviewed as part of the
investigative process. Contacts with experts or witnesses outside the university will be authorized by the chair of the committee and made by staff members assisting the committee. Whenever possible, interviews should be conducted of all individuals involved, including the complainant and other individuals who might have information regarding key aspects of the allegations; summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

The investigation is the formal review of an allegation of misconduct with a formal examination and evaluation of relevant facts to draw a conclusion about whether the evidence persuasively supports a finding that misconduct has occurred. The committee may find:

1. Insufficient evidence to rise to the level of research misconduct as defined in V.D.5.b; or

2. No formal finding of research misconduct, but concern that the respondent has not followed best practices, which could result in educational or corrective action recommended by the Vice President of Research; or

3. Persuasive evidence that supports a finding of research misconduct leading to disciplinary action as recommended by the Vice President of Research.

An investigation should ordinarily be completed within ninety (90) days of its initiation, including conducting the investigation, preparing the report of findings, and making that report available for comment by the respondent(s). The report, regardless of outcome, along with all documentation used in the investigation and any comments provided by the respondent(s), shall be delivered to the Vice President for Research immediately upon completion.

The Vice President for Research will review the report and any comments from the respondent(s) and forward the report with his/her/their recommendations to the Provost for appropriate action. The recommendations of the Vice President for Research may include:

- **Insufficient cause** to support disciplinary action, with or without educational or corrective action

or

- A recommendation for disciplinary action that may include, but is not limited to, one or a combination of the following:

  a. **Written reprimand** placed in the faculty member’s file
  
  b. **Reassignment of duties** for some specified period of time.
c. **Suspension without pay** for a specified period of time or

d. Recommendation that a school or department initiate **loss of tenure and/or dismissal** proceedings.

The Provost, following review of the findings and recommendations with the respondent(s), shall determine what disposition to make of the case(s). The dean of the respondent's college will be informed of the Provost's action. The report of the investigation, and comments from the respondent(s), and the decision of the Provost with regard to sanctions will be forwarded to any appropriate funding agency.

h. **Appeal Procedure**

An appeal of the decision of the Provost may be made by the respondent by petition to the Professional Relations Committee of the Faculty Senate or other grievance committee appropriate to the employment status of the respondent(s). The appeal must be submitted in writing within fifteen (15) days of notification and is restricted to the body of evidence already presented. The grounds for appeal are limited to failure to follow appropriate procedures in the investigation or arbitrary and capricious decision-making. The Professional Relations Committee shall submit its recommendations to the President within thirty (30) days of notification and the President will make the final determination on the appeal and allegation.

i. **Due Process Considerations**

Precautions shall be taken against real or apparent conflicts of interest on the part of those involved in the inquiry or investigation. Diligent efforts, as appropriate, shall be undertaken to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and to undertake diligent efforts to protect the positions and reputations of those who, in good faith, make the allegations. In particular:

The individual(s) against whom the allegation of scientific misconduct has been made shall be afforded a prompt and thorough investigation, confidential treatment to the maximum extent possible under Ohio law, and an opportunity to comment on allegations and findings in the inquiry and/or the investigation before recommendations are made.

It is the obligation of every employee at Ohio University to cooperate in good faith with inquiries and investigations of possible misconduct.

The privacy of those who in good faith report the apparent misconduct in research shall be protected to the maximum extent possible.
It is the responsibility of the University to undertake diligent efforts as appropriate to restore the reputation(s) of the respondent(s) when allegations are not confirmed. These efforts may include notification of the findings to all agencies, sponsors, or other entities of individuals initially informed of the inquiry and/or investigation.

j. Reporting

The University will comply with all reporting requirements concerning scientific misconduct on federally supported research. Project-specific information on such requirements is maintained in the Office of the Vice President for Research.

k. Retaliation Complaints

For purposes of responding to whistleblower retaliation complaints, the Vice President for Research will be the University official responsible for establishing and implementing policies consistent with 42CFR50.103(d)(13) and the Office of Research Integrity (ORI) Guidelines for Institutions and Whistleblowers: Responding to Possible Retaliation Against Whistleblowers in Extramural Research (November 20, 1995) and will serve as the university's liaison to ORI. If the involvement of the Vice President for Research creates a real or apparent conflict of interest with the University's obligation to protect good faith whistleblowers, the President shall appoint a substitute responsible official who has no conflict of interest.

A whistleblower who wishes to receive the procedural protection described by the ORI Guidelines shall file their retaliation complaint with the Vice President for Research within 180 days from the date the whistleblower became aware or should have become aware of the alleged adverse action.

The University shall review and resolve all whistleblowers’ retaliation complaints in conformity with the processes outlined in the ORI Guidelines including notification to the whistleblower of the receipt of the complaint within fifteen (15) days and shall resolve the complaint within 180 days after receipt of the complaint. If the University fails to respond to the complaint within fifteen (15) days, the whistleblower may file the retaliation complaint directly with ORI.