II.E.16. Procedure Governing Sanctions Taken Against Members of the Faculty
(Source: Standing Resolution of the Trustees, October 16, 1959; revised, June 21, 1991; revised, June 20, 1997 and Almanac, October 21, 1997; revised, October 19, 2007 and Almanac, November 6, 2007)

1. Introduction and Definitions

A. Introduction
The imposition of a sanction on a faculty member of the University of Pennsylvania is a rare event. However, when situations that might lead to such an action arise, they must be handled fairly and expeditiously. It is essential to have a process that both protects the rights of faculty members and addresses the legitimate concerns of the University. This policy replaces the previously existing “Procedure Governing Sanctions Taken Against Members of the Faculty” (Standing Resolution of the Trustees, June, 1991 and Almanac, October 21, 1997).

Any cases initiated after this policy is in force, even if the alleged actions preceded its adoption, shall be governed by the procedures prescribed here.

B. Definitions
1) Charging party: The Provost, a dean of a school, or a Provost’s or dean’s designee who shall be a faculty member of the University, or a Group for Complaint.

2) Complainant: Individual bringing to the attention of a dean or the Provost a situation that may call for a sanction against a faculty member. The complainant may be a student or faculty or staff member of the University, or any individual outside the University.

3) Faculty Member: A member of the Standing Faculty, or a Standing Faculty-Clinician-Educator.

4) Counsel: An advisor, who may be an attorney.

5) Group for Complaint: A charging party elected by the Standing Faculty of a school, by majority vote, from its own tenured professors.

6) Hearing Board: The body, selected by the Chair of the Faculty Senate, in consultation with the Past Chair and Chair-Elect of the Faculty Senate from the University Tribunal (see definition of the Tribunal below), that adjudicates a just cause matter. It serves both an investigative and deliberative function. The Board shall consist of five members, with a chair chosen by and among the members. If feasible, one member of the Hearing Board should be on the faculty of the Respondent’s school. Should any Hearing Board member become unable to serve or to satisfy his or her responsibilities on the Board as the matter progresses, the Chair of the Faculty Senate shall select a substitute from the University Tribunal.

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

8) Major sanction: Serious penalties that include, but are not limited to, termination; suspension; reduction in academic base salary; zero salary increases stipulated in advance for a period of four or more years.

9) Minor infraction of University behavioral standards: An action involving disregard of the University’s standards, rules, or mission, or the customs of scholarly communities that is less serious than a major infraction.

10) Minor sanction: Penalties less serious than a major sanction that may include, but are not limited to, a private letter of reprimand, a public letter of reprimand, monitoring the manner and conditions of specific future research, teaching, or supervision of students, provided they relate to the infraction.

11) Respondent: The Faculty Member against whom a complaint is lodged.

12) University Tribunal: A body comprised of past and present tenured faculty members on the Senate Committee on Academic Freedom and Responsibility, the school committees on academic freedom and responsibility, and if necessary, past and present members of the Senate Executive Committee.

2. Suspension or Termination for Just Cause

A. Preliminary Procedures

Should a question arise regarding the possible infraction of University behavioral standards, the dean or Provost shall interview the respondent, normally in the presence of any department chair concerned, and may afford the respondent the opportunity for informal resolution of the matter under appropriate circumstances.

The dean or Provost shall provide a written description of the charges to the respondent, if requested by the respondent in writing. If the matter is resolved informally to the satisfaction of the dean or Provost and the respondent, no further proceedings shall be invoked by them. An informal resolution must be consistent with all existing University policies and behavioral standards, and does not derogate from a complainant’s right to invoke procedures subsumed under these policies and standards.

If the matter is not adjusted informally, the dean or Provost shall consult with several tenured members of the University faculty. Relying on these consultations, the dean or Provost
shall decide whether to invoke the just cause procedures in a case involving major infractions of University behavioral standards, to impose minor sanctions directly in a case involving minor infractions of University behavioral standards, or to discontinue the matter. If the decision is to discontinue the matter, the dean or Provost shall notify the respondent and any complainant in writing.

B. Formation of a Group for Complaint

If the dean or Provost decides to discontinue the matter or impose a minor sanction, no further proceedings shall be initiated with the single exception of the standing faculty’s prerogative to form a Group for Complaint. If formed, the Group shall promptly conduct an investigation and, based on this investigation, may a) initiate proceedings for imposition of a major sanction, b) recommend imposition of a minor sanction, or c) determine not to proceed further.

3. Minor Sanction

A. Imposition by Dean or Provost

If, having consulted with several members of the tenured faculty, the dean or Provost concludes that the situation involves a minor infraction of University behavioral standards, the dean or Provost shall impose a minor sanction on the respondent. The dean or Provost shall notify the respondent in writing of this decision and take the steps necessary to put the sanction into effect.

B. Application for Relief to Faculty Grievance Commission

The respondent may apply to the Faculty Grievance Commission for relief from any minor sanction imposed by the dean or Provost.

4. Major Sanction

A. Charging Party Requests Formation of Hearing Board

If the charging party believes that a major infraction of University standards has occurred, the charging party shall promptly request that the Chair of the Faculty Senate convene a Hearing Board. The Dean or Provost shall notify the respondent in writing of this decision.

B. Disqualification of Potential Members of Hearing Board

The charging party and the respondent each shall be given the opportunity to move to disqualify for prejudice any potential member of the Hearing Board designated by the Chair of the Faculty Senate. Such motion shall set forth, in writing, the reasons therefore and shall be delivered to the Chair of the Faculty Senate.

Motions to disqualify Hearing Board members shall be decided by the remaining members of the Board (with a tie to be broken by the Chair of the Faculty Senate). If the remaining members decide that disqualification is proper, an alternate member shall be designated by the Chair of the Faculty Senate.
C. Hearing Board Determines Whether to Proceed
1) Once the composition of the Hearing Board is determined, the charging party shall promptly send to the Chair of the Hearing Board, the respondent, the dean and Provost a written statement that sets forth in as much detail as is practicable the grounds for the complaint and for the recommendation of a major sanction. In the case of misconduct in research, the report of the formal investigation committee issued under the Misconduct in Research Procedures shall be included. To determine whether formal hearings shall take place, the Hearing Board shall immediately consider the statement from the charging party, consult the relevant documents, and afford the charging party opportunity to present oral and written arguments, but shall not hold a hearing to receive evidence.

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

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

D. Notification of Right to a Hearing
If further proceedings are conducted, the Chair of the Hearing Board shall send to the respondent written notice that the respondent may preserve and elect the right to a hearing by promptly notifying the Chair of the Hearing Board in writing. If the respondent requests a hearing before the Hearing Board, the Chair of the Hearing Board shall notify the charging party and the respondent in writing of the date and place of the hearing. One month prior to the hearing, the charging party shall supply to the Chair of the Hearing Board a summary statement of the evidence to be presented by the charging party, including a list of witnesses, a detailed summary of the testimony expected from each witness, copies of relevant extracts from the Statutes and standing resolutions of the Trustees of the University of Pennsylvania, a copy of these procedures, and copies of any other University documents that are relevant to the respondent’s procedural and substantive rights in this matter. The Chair of the Hearing Board shall immediately furnish these documents with the notice to the respondent.

E. Hearing Board Procedure in the Absence of Participation by Respondent
If the respondent does not request a hearing, the charging party shall nevertheless present evidence to the Hearing Board. The Hearing Board shall then make a written report of its findings, conclusions and recommendations and send a copy of its report to the charging party and the respondent. If the Hearing Board concludes that the charging party has not shown clear and convincing evidence of just cause for the imposition of a major sanction, no major sanction may be imposed, and the substance of the complaint shall not be the basis for any further proceedings with respect to major sanctions. However, based on clear and convincing evidence of a minor infraction, the Hearing Board may recommend that the dean or Provost impose a
minor sanction and he or she will normally implement that recommendation. If the Hearing Board concludes that the charging party has shown clear and convincing evidence of just cause for the imposition of a major sanction, the Hearing Board shall promptly send to the President a copy of its report recommending the major sanction.

F. Hearing Board Procedure when Respondent Participates

The hearing shall be held at the earliest date that is practicable to the respondent, charging party and Hearing Board, and ordinarily no more than three months from the notification date. Two weeks prior to the date of the hearing, the respondent shall provide to the Chair of the Hearing Board a written answer to the charging party’s statement of the grounds for the complaint and for the recommendation of a major sanction. At that time the respondent shall also provide to the Chair of the Hearing Board a list of witnesses, a detailed summary of the testimony expected from each witness, copies of relevant extracts from the statutes and standing resolutions of the Trustees of the University of Pennsylvania, and copies of any other University documents that are relevant to the respondent’s procedural and substantive rights in this matter.

G. Procedures During a Hearing

Hearings shall be private with two exceptions. The respondent shall have the right to invite as observers, representatives of national professional academic associations concerned with matters of academic freedom and tenure. Other observers may be invited to attend if the charging party, the respondent and the Chair of the Hearing Board consent in advance of the hearing. A transcript of the hearing shall be made available to the parties at the expense of the University.

The charging party has the burden of proving by clear and convincing evidence that there is just cause for imposition of a major sanction against the respondent. Both the respondent and the charging party may appear personally throughout the hearing; both may have the assistance of counsel. The Hearing Board shall afford the respondent and the charging party the opportunity to present oral and written argument. The respondent and the charging party shall have the right to confront any witnesses, each of whom shall have the right not to incriminate himself or herself in answer to any question, and to question them personally or through counsel. They may call witnesses and shall receive the cooperation of the University administration in securing the attendance of such witnesses and the production of such documents as may be relevant.

The extent of document production shall be determined by the Hearing Board. The Chair of the Hearing Board, in consultation with his/her colleagues, shall rule on any procedural or substantive issues complained of by either the charging party or respondent. The Hearing Board shall have the discretion to limit the number of witnesses in order to prevent overly repetitious or cumulative testimony. It shall not be bound by formal rules of evidence, and may elect to admit any evidence it deems to be of probative value in evaluating the issues. The Hearing Board may permit the use of electronic or other means of remote communication, such as telephone conference calls, in lieu of the appearance of witnesses.

H. Report of Hearing Board and Objections of Respondent

1) Upon concluding the hearings, the Hearing Board shall deliberate privately, and determine whether or not the charging party has established by clear and convincing evidence that a major
infraction has occurred. If so, the Hearing Board shall recommend what the major sanction should be. Decisions shall require a majority of the members participating. The Hearing Board may, in its discretion, recommend a minor sanction instead if it determines that a minor infraction has occurred.

2) The Hearing Board shall conclude its deliberations promptly and send to the President a written report in which it shall set forth its findings, conclusions, recommendations, and a transcript of the hearings. Copies of these documents shall also be sent to the respondent, the charging party, and the dean and/or Provost.

3) The respondent may request reconsideration of the sanction by submitting a written statement to the Chair of the Hearing Board within five days of the receipt of the Hearing Board’s recommendation. In the event of such a request, the Chair shall reconvene the Hearing Board as soon as possible and hear statements from both the complainant and the respondent, delivered either personally or through counsel. The Hearing Board may, by majority vote, change its recommendation, but only if there is new evidence or there are new arguments to be presented. If there is a change in the recommendation, the Chair of the Hearing Board shall communicate it to the President, the Dean and/or Provost, and to the respondent promptly.

4) The respondent may send to the President, within a reasonable time, any objections to the findings, conclusions or recommendations of the Hearing Board.

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

2) The President may depart from the Hearing Board’s recommendations only in exceptional circumstances, and only to reduce the severity of recommended sanctions or to dismiss the charges for failure of proof. Any departure may be made only after consulting the individuals then serving as the Chair, Past Chair and Chair-elect of the Faculty Senate (“the three Chairs”). When a departure is proposed, the President shall send to the three Chairs all of the documents received from the Hearing Board and the respondent and shall secure their views before taking action. Should any of the three Chairs be unable to serve, the other two Chairs shall select a replacement from the available former Chairs of the Faculty Senate.

3) Without limit to the right of departure, the President may request reconsideration of the decision recommended by the Hearing Board by submitting a written statement to the Chair of the Hearing Board within a reasonable time. In the event of such a request, the Chair shall reconvene the Hearing Board promptly and hear statements from both the President and the respondent, delivered either personally or through counsel. The Hearing Board may, by majority vote, elect to adopt or reject the recommendation of the President.

4) The President may also remand the matter to the Hearing Board because there has been a significant defect in procedure. The Hearing Board shall reconvene, take steps to repair any procedural defects, and hold an additional hearing, if needed. The Hearing Board shall then send
a second report to the President, along with the transcript of any second hearing, with copies to the respondent by certified mail, and to the charging party and the dean and/or Provost.

5) After all proceedings of the Hearing Board have been concluded, including any reconsideration proceedings, the President shall render his/her decision and send it, together with his/her reasons. The President’s decision, except a decision that is subject of an appeal as described below, is final within the University.

**J. Appeal of the President’s Decision**

If the respondent objects that there has been a significant defect in procedure but the President declines to remand the matter to the Hearing Board, the respondent may appeal on that ground in writing to SCARF. The President shall promptly forward to SCARF all of the documents upon which the decision was made. SCARF shall review the documents forwarded by the President and the respondent’s written statement of appeal and shall decide the appeal promptly. If SCARF finds that there has been a significant defect in procedure, it shall remand the matter to the Hearing Board for further proceedings in accordance with paragraph I(4).

**K. Termination**

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

**L. Hearing Board Records**

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

**5. Interim Suspension**

A faculty member shall not be suspended prior to the conclusion of proceedings under this policy unless continuance of employment poses a threat of immediate harm to the faculty member or others, or seriously threatens to significantly disrupt the academic or research activities of the University. Any such suspension shall be with salary. A dean’s decision to suspend a faculty member shall be accompanied by a concise statement of the factual assumptions on which it is based and the grounds for concluding that the faculty member’s continuance threatens immediate harm. Such a decision should be made only after consultation with the school’s Committee on Academic Freedom and Responsibility, which should, whenever possible, afford the faculty member an opportunity to be heard, and to present evidence of why interim suspension should not be imposed. (See also, II.E. 18, Temporary Suspension or Exclusion of a Faculty Member.)
6. General Matters

A. No Public Statements When Proceedings Are in Progress

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

B. Actions When Charges Are Unfounded

If final action completely exonerates the respondent, and a determination is made that the allegations were without any foundation or were filed in bad faith, the University shall reimburse that individual for the reasonable costs and expenses, including attorney fees, incurred in his or her defense. In that event, the administration should also attempt to ameliorate any damage wrongly done to the reputation of the respondent or of any complainant, provided that the complainant acted in good faith. If it appears that the complainant did not act in good faith, the administration shall investigate and take appropriate action.

C. Statements Following a Minor Sanction

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

D. Statements Following a Major Sanction

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

E. Modification of Time Periods

The time periods contained in these procedures may be modified by the Hearing Board in its discretion.

F. Timeliness

If the President determines that the Hearing Board is untimely in pursuit of its charge, thereby detrimentally affecting the legitimate interests of the University, the President may disband the existing Hearing Board. The President shall then promptly request that the Chair of the Faculty Senate reconstitute the Hearing Board.