

PROCEDURES OF THE FACULTY COMMITTEE ON RIGHTS AND RESPONSIBILITIES

Sec. 504(c) of the “Faculty By-Laws” charges the Faculty Committee on Rights and Responsibilities (“the FCRR”) with addressing certain classes of complaints by and against faculty members; the Committee conveys its recommendation to the President, who makes final disposition. **Part I** of these procedures specifies the FCRR’s purview. **Part II** lays out procedures for lodging and pursuing complaints. **Part III** sets forth the rigorous procedures that apply when a complaint alleges conduct that might subject a faculty member to dismissal or suspension without pay (see **Sec. 301**). **Part IV** describes the FCRR’s reporting and record-keeping procedures. **Part V** sets forth procedures for recusal and enforcement.

In any case considered under the procedures outlined below, if extraordinary circumstances arise, the FCRR may proceed in a manner it deems appropriate and may, at its discretion, change these procedures, with sufficient written notification to the parties.

The FCRR has exclusive jurisdiction to hear formal complaints and make recommendations to the President in disciplinary cases brought against members of the faculty where dismissal or suspension without pay is contemplated, with the limitation noted in Sec. 101c below.

Glossary of terms used in these procedures:

Committee: (where not otherwise defined) the FCRR

Complainant: the person(s) bringing a complaint

Counselor: a member of the Wesleyan community, from the faculty, administration, or staff, serving as an advisor to one of the parties

Dismissal: dismissal from the University

Legal counsel: a lawyer providing legal advice

Parties: the complainant(s) and the respondent(s)

Respondent: the person(s) charged in the complaint

Part I. Purview

Sec. 101. The FCRR’s purview extends to complaints against faculty members made by other faculty members, undergraduates, graduate students, administrators, and staff; and to complaints by faculty members made against the Vice President and Provost (“VPAA”) and the President, the Academic

Deans, and academic departments or programs. The FCRR will not consider complaints by faculty members concerning the following matters:

(a) **Tenure, promotion and reappointment.** Appeals in these matters are governed by the “By-Laws and Guidelines of the Academic Council” and associated committee regulations.

(b) **Merit pay.** Faculty legislation provides that complaints against administrative decisions concerning merit pay must be directed to the Faculty Merit Committee.

(c) **Decisions made by the President or Board of Trustees following a recommendation by the FCRR.** The “By-Laws of the Faculty” and the University do not provide for appeals in such cases.

Sec. 102 Scientific misconduct. In cases of alleged scientific misconduct, the procedures of the University’s “Policies and Procedures for Addressing Allegations of Possible Misconduct in Scientific Research” will apply in place of those in **Part II**, because funding agencies and federal guidelines are potentially involved. If the VPAA brings to the FCRR a complaint alleging scientific misconduct that might subject a faculty member to dismissal or suspension without pay, the procedures in **Part III** will apply.

Sec. 103. Harassment. The University’s policy on harassment is outlined in the Faculty Handbook. This policy makes a distinction between discriminatory forms of harassment and non-discriminatory forms. The University has a legal responsibility to act promptly whenever any form of discriminatory harassment comes to its attention. Accordingly, if a complaint is filed with the FCRR regarding any form of discriminatory harassment, the FCRR will promptly refer the complaint to the appropriate official for action, consistent with the University’s policy. If, following administrative disposition of the matter, a complaint against a faculty member is filed with the FCRR by a faculty member or administrator, or by a faculty member against a member of the administration subject to the FCRR (see **Sec. 101**), the procedures in **Part II** will apply. If the Vice President for Academic Affairs deems any harassment complaint against a faculty member sufficiently serious to result in dismissal or suspension without pay, the procedures in **Part III** will apply. A complaint charging any person within the jurisdiction of the FCRR, or an academic department or program, with harassment that appears not to meet the definition of discriminatory harassment (see **Sec. V** of the policy on **Discrimination and Harassment**) may be brought directly to the FCRR.

Sec. 104. The FCRR reserves the right to suspend or terminate its processing of any case if the complainant submits the complaint to an external agency.

Sec. 105. If at any time during the handling of a complaint the FCRR feels that it needs legal advice, it may request of the President that the University bear the cost of consultation with a lawyer other than one who advises the University or either of the parties. Such requests will be considered on a case-by-case basis.

Part II. Lodging and pursuing complaints

Sec. 201. Before making a complaint, members of the community are encouraged to attempt to resolve the matter informally and directly with the person against whom the complaint would be made.

Sec. 202. Lodging a complaint. Complaints should be submitted to the FCRR in writing within 30 days of the alleged injury or harm or the discovery of the alleged injury or harm. The Committee may extend this time limit upon request and for good cause. The complaint should state as precisely as possible the basis for the complaint, e.g., any injury or harm that has been done or rights that have been violated. The FCRR has the right to request clarification of a complaint or to reject a complaint that it considers spurious or insubstantial. If the FCRR accepts a complaint, it will forward the complainant's statement promptly to the respondent.

(a) At the discretion of the FCRR, and with the consent of the parties, a complaint may be submitted first to mediation. The FCRR will select a mediator, subject to the approval of all parties, from among the senior faculty, emeritus faculty, or appropriate members of the administration. The mediator will act over a period of time specified by the FCRR, typically 30 days but no more than 60 days from the date on which the FCRR submits the complaint to mediation. The mediator will informally and confidentially inquire into the situation and attempt to reconcile the differences between the parties. Mediation efforts will not require face-to-face meetings between the complainant and the respondent. A mediator who is a faculty member may consult an appropriate administrator if s/he feels that administrative involvement might facilitate informal resolution of the problem. At the end of the mediation process, the mediator will report to the FCRR with a certification that simply states, "The mediator hereby certifies that the mediation in the case of [names of complainant and respondent] has been successfully/unsuccessfully concluded." The certification will be signed by both parties, indicating that they agree with the mediator's determination. In

the case of successful mediation, the FCRR will take no further action on the case and will keep no record of it other than the mediator's certification. If the mediation does not result in a resolution satisfactory to both the complainant and respondent, the mediator will refer the case back to the FCRR.

(b) Following unsuccessful mediation, the complainant will inform the FCRR whether s/he wants the FCRR to continue to adjudicate the case or whether s/he wants it dropped. If the FCRR accepts a case in which a member of the faculty is a respondent, either without submitting the case to mediation or after unsuccessful mediation, the FCRR will promptly forward information about the complaint to the Vice President for Academic Affairs, who will decide within 30 days of receiving the information whether, in his or her opinion, the case might result in dismissal or suspension without pay. The FCRR may extend this time limit at the request of the VPAA for cause.

(c) The VPAA will ensure that an appropriate investigation takes place, and will give due notice to the respondent that such an investigation is under way. If, after such investigation, the VPAA concludes that the allegations, if proved true, might subject the respondent to dismissal or suspension without pay, the VPAA will consult with an ad hoc committee made up of three former Chairs of the Faculty before proceeding with a formal complaint. The advice of the ad hoc committee will not be binding upon the VPAA and will not be reported to the FCRR.

(d) If the case is deemed by the VPAA to be not likely to result in dismissal or suspension without pay, the FCRR will handle the case according to the provisions of **Sec. 204–209**.

(e) If a complaint is made against the VPAA, and mediation is unsuccessful or not attempted, the FCRR will inform the President that it has received such a complaint. The President will delegate a member of the senior administration or faculty to determine whether the charges are sufficiently serious to justify a hearing held according to the provisions of Part III. The President's delegate will inform the Committee of such a determination and will present the case to the Committee on behalf of the administration. Less serious charges against the VPAA that are submitted to the Committee for adjudication will be handled according to the procedures in subsequent sections of **Part II**. If the Committee accepts a complaint made against the President, it will normally be guided by the procedures in **Part II**.

Sec. 203. Counselors. Either party to a complaint has the right to choose a counselor from among Wesleyan faculty or administrators. Upon request, the

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Chair of the Faculty will assist either party or both of the parties in finding an appropriate counselor, who must have no potential conflict or appearance of conflict or impropriety arising from the case. The counselor may have the same access to the documents, meetings, and hearings as the person counseled, at the latter's discretion.

Sec. 204. FCRR action. If, acting under **Section 202**, the VPAA deems the case to be not sufficiently serious to result in dismissal or suspension without pay, the FCRR will proceed in the following manner:

(a) The FCRR will notify both parties in writing that the Committee is prepared to continue its consideration of the case.

(b) Upon notification by the FCRR, the complainant will inform the Committee, in writing and no later than seven days after the Committee's notification, whether or not s/he wishes to proceed with the case. If the complainant decides to proceed with the case, s/he will promptly provide the FCRR with the information listed in **Section 204(f)** below, a copy of which will be forwarded by the FCRR to the respondent. The respondent will provide to the FCRR, no later than seven days from the receipt of the Committee's notice, the information listed in **Section 204(f)**, a copy of which will be forwarded to the complainant.

(c) If the complainant decides not to proceed with the case, the Committee will inform the respondent in writing of the complainant's decision. The respondent may request a hearing with respect to any part of the complaint. The request must be made in writing no later than seven days after the Committee has informed the respondent of the complainant's decision not to pursue the case. If the respondent requests a hearing, the FCRR will so inform the complainant.

(d) If both parties to the dispute decline a hearing, the case will be closed.

(e) At any time after being notified by the FCRR under **Section 204(a)**, the respondent may state in writing his or her intention not to dispute the complaint. The FCRR will submit its findings and recommendation to the President in accordance with Section 207 below, noting the respondent's decision.

(f) If either party chooses to have the FCRR hear the case, the complainant and the respondent must provide to the FCRR in writing the following information:

(i) *In the case of the complainant*, a copy of the original written complaint with any new information the complainant considers relevant; *in the case of the respondent*, a brief written statement responding to the complaint;

(ii) A list of documents and/or witnesses the parties might wish to introduce in the event of a full FCRR hearing under **Section 206** below, with a brief indication of their relevance. The parties should indicate whether the witnesses have agreed to appear on their behalf;

(iii) The names of the parties' counselors;

(g) The FCRR will decide whether, based on the information available to it, the Committee should conduct a simplified hearing under **Section 205** or a full hearing under **Section 206**. A full hearing differs from a simplified hearing in that witnesses may appear before the Committee, the parties and witnesses may be cross-examined and asked follow-up questions after cross-examination, and a counselor may, with the permission of the Committee, pose questions. The Committee will make the determination as to whether to hold a simplified or full hearing no later than seven days after the deadline for the receipt of the information requested from the respondent under **Section 204(f)** above.

(h) Whether the FCRR conducts a simplified or a full hearing, the following procedures will apply:

(i) The hearing will be conducted in private, and legal counsel may not be present in the room during the hearing.

(ii) The FCRR will designate a Committee member to chair the hearing ("the Chair"). The Chair will have final authority over the conduct of the hearing, its time limits, and similar matters. The Chair and the other members of the FCRR may question the parties and, in a full hearing, witnesses. The FCRR is not bound by strict rules of evidence and may admit any evidence it deems relevant.

(iii) No inference of guilt or innocence will be drawn from the failure of a respondent to testify at the hearing.

(iv) The Committee will keep a record of the hearing.

Sec. 205. A simplified hearing. If, at its discretion, the FCRR decides to conduct a simplified hearing, the Committee will proceed as follows:

(a) The Committee will notify both parties and their counselors, if any, that the Committee will hold a simplified hearing, and will inform the parties of the date, time, and place of the hearing. The Committee will invite both parties and their counselors, but no others, to appear at the hearing.

(b) At the hearing the complainant may summarize her or his complaint, and the respondent may respond. Both the complainant and the respondent will be offered an opportunity to address questions to each other, provided the questions are posed through the Chair. Although counselors may attend the hearing as observers, they may not address questions to the parties or to the Committee.

(c) If, following a simplified hearing, the FCRR decides it has sufficient information to make a recommendation to the President, it will do so in accordance with the provisions of **Section 207** below. The Committee will inform the President that its recommendation is based on a hearing conducted under the provisions of **Section 205**. The President may, at his or her discretion, return the case to the Committee for a full hearing under the provisions of **Section 206**.

Sec. 206. A full hearing. If, acting under **Section 204(g)**, the FCRR determines that a simplified hearing under **Section 205** would be inappropriate, or if, having held a simplified hearing, it determines that a full hearing would be appropriate, it will proceed as described in sections (a)–(i) below.

(a) The Committee will inform the parties and their respective counselors of the Committee’s decision to conduct a full hearing under **Section 206**.

(b) The notification will be sent no later than seven days after either the Committee’s determination under **Section 204(g)** not to hold a simplified hearing or its determination following a simplified hearing that a full hearing would be appropriate. The notification will include the date, time, and place of the hearing.

(c) The parties will have the opportunity to present evidence and argument at the hearing, including calling and cross-examining each other and witnesses and asking follow-up questions after cross-examination. The parties and their respective counselors may address questions to each other, provided the questions are posed through the Chair. With the permission of the Chair, the parties or their counselors may directly address or ask questions of the FCRR or the witnesses.

(d) Both parties will be given copies of all documents and records submitted to the FCRR.

(e) The FCRR may call its own witnesses and may gather documentary evidence not provided to it by either party. When doing so, at least ten days before the hearing the FCRR will provide both parties with any documentary evidence it has gathered and will inform them of the witnesses' identity.

Sec. 207. The FCRR will submit its findings and recommendations to the President in writing within thirty days after the close of the hearing, together with any materials gathered or records kept during the case that will form part of the permanent record. The President's decision concerning the complaint will be final. If the complaint is directed against the President, the FCRR will make its submission to the Board of Trustees, whose decision will be final.

Sec. 208. Should the decision of the President depart from the recommendation of the FCRR, the President must give the reasons for the departure in writing to those members of the FCRR who forwarded the recommendation, and to the parties.

Sec. 209. The FCRR may extend the time limits set forth in sections **202, 204, 206** and **207** for good cause.

Part III. Complaints Alleging Conduct that Could Lead to Dismissal or Suspension without Pay

Sec. 301. The procedures of **Part III** apply when a complaint alleges conduct that might subject a faculty member to dismissal or suspension without pay. No member of the faculty may be dismissed or suspended without pay unless, after due notice, investigation, and opportunity for a hearing, it is determined that there is sufficient cause to justify dismissal or suspension without pay (cf. "University By-Laws," **Ch. IV, Sec. 4**). Sufficient cause must be related,

directly and substantially, to the fitness of faculty members in their professional capacities as teachers or scholars. Dismissal or suspension without pay shall not be used to restrain faculty members in their exercise of academic freedom or legal rights. Examples of behavior that, in their most serious form, may directly and substantially detract from the professional capacities of faculty members in their roles as teachers and scholars are plagiarism, dishonest research, fiscal malfeasance, and physical abuse or other illegal workplace harassment of students, faculty, or staff. These principles apply to the dismissal or suspension without pay of tenured faculty members or of a non-tenured faculty member prior to the end of a term appointment. The FCRR may recommend remedial actions to the President, but the only sanction it can recommend under Part III is dismissal or suspension without pay.

Sec. 302. If the VPAA brings a case for dismissal of a faculty member or suspension without pay under the provisions of Section 202(f), the VPAA, or his or her designee, will have the burden of proving with clear and convincing evidence that there is sufficient cause for dismissal or suspension without pay.

Sec. 303. Procedures and timetable.

(a) The VPAA must notify the FCRR and the respondent in writing of the grounds for initiating proceedings; the VPAA will provide such notice within thirty days after becoming aware of credible evidence supporting the charges.

(b) If the respondent wishes to submit a written response, s/he must do so within fourteen days from the date of the VPAA's notice. The response must be directed to both the VPAA and the FCRR.

(c) The FCRR will hold a hearing no later than thirty days from the receipt of the VPAA's notice but not sooner than seven days from the VPAA's receipt of the faculty member's response, unless the faculty member fails to submit a response within the stipulated time period.

(d) At least five days before the hearing, both the VPAA and the respondent must provide the FCRR and each other with copies of any documents, as well as with the names of any counselors and those of any witnesses they intend to produce at the hearing.

(e) The VPAA may amend the arguments justifying dismissal or suspension without pay before the start of the hearing, provided that the

respondent is informed and has at least five days within which to respond. Similarly, the respondent may amend his or her response before the start of the hearing, provided at least five days' notice is given to the VPAA. Copies of an amended submission by either party must be furnished to the FCRR.

(f) Either party may notify the FCRR before the end of the hearing that it intends to submit further written argument, which must be delivered to the FCRR no later than ten days after the close of the hearing.

(g) Within thirty days following the close of the hearing, the FCRR will submit a written report and recommendation to the President, together with any materials gathered or records kept that will form part of the permanent record.

(h) The FCRR may extend the time limits set forth in subsections 303(a)–(f), and the President may extend the time limit set forth in subsection 303(g).

Sec. 304. The FCRR hearing.

(a) The FCRR will conduct the hearing. It will designate a chair for the hearing (“the Chair”), who will have final authority over the conduct of the hearing, its time limits, and similar matters. The Chair and the other members of the FCRR may question the parties and the witnesses. The FCRR is not bound by strict rules of evidence and may admit any evidence it deems relevant.

(b) The hearing will be conducted in private.

(c) The VPAA, or his or her designee, who shall not be someone acting as legal counsel, and the respondent will have the opportunity to present evidence and argument at the hearing, to call and cross-examine witnesses, and to ask follow-up questions after cross-examination.

(d) Both parties will be given copies of all documents and records submitted to the FCRR.

(e) A stenographic record of the hearing will be made by a qualified court reporter, and a copy of this record, and of all evidence submitted at the hearing, will be given to both parties.

(f) No inference of guilt or innocence will be drawn from the failure of the respondent to testify at the FCRR hearing.

(g) Both the VPAA and the faculty member may be assisted by legal counsel in an advisory capacity during the proceedings and at the hearing. If the University engages legal counsel to advise it in the FCRR hearing, it will bear the cost of like counsel to the respondent, except when paying for such counsel might itself subject the University to legal liability, as in harassment cases. Legal counsel will not be allowed to address the FCRR, present evidence or argument, or examine or cross-examine the parties or the witnesses.

(h) The respondent may have a faculty member or administrator serve as a counselor during the proceedings and the hearing. With the permission of the Chair of the hearing, a faculty or administrative counselor may address or ask questions of the FCRR or witnesses.

(i) The FCRR may call its own witnesses and may gather documentary evidence not provided to it by either party. When doing so, at least ten days before the hearing the FCRR will provide both parties with any documentary evidence it has gathered and will inform them of the witnesses' identity.

Sec. 305. Disposition of the case.

(a) The FCRR's report and recommendation to the President will be based on the evidence submitted at the hearing and the parties' pre- and post-hearing submissions, as provided for in **Sec. 303**. The President will consider only the FCRR's report and recommendation, together with the evidence submitted at the hearing and the documents and submissions, in deciding whether there is sufficient cause for dismissal or suspension without pay.

(b) The President will report his or her decision to dismiss a tenured faculty member, or a non-tenured faculty member prior to the end of a term appointment, to the Board of Trustees for review. The FCRR expects that the President will forward the FCRR's full recommendation and supporting documentation to the Chair of the Board of Trustees. As provided in the "University By-Laws" (**Ch. IV, Sec. 4**), the dismissal of a faculty member "shall require the concurring vote of not less than two-thirds of the Trustees then in office." The President's decision to dismiss a faculty member will not be effective until this concurring vote has been obtained. The decision of the Board of Trustees is final.

(c) The “By-Laws of the Faculty” and the University do not provide for a review by the Board of Trustees if the President decides to suspend a faculty member without pay subsequent to a formal recommendation by the FCRR. The decision of the President is final.

(d) In cases where scientific misconduct in funded research was alleged, the VPAA will inform the relevant funding agency in writing of the outcome.

(e) Should the President’s decision depart from the FCRR’s recommendation, s/he must give the reasons for the departure in writing to the members of the FCRR who forwarded the recommendation, the VPAA, and the respondent.

Part IV. Reporting, Record-Keeping, and Confidentiality

Sec. 401. The permanent record of each case will be kept on file in the Office of the President. It will be treated as confidential, except that:

(a) The respondent will have access to the permanent record of the case.

(b) The FCRR will have access to these records when necessary for ascertaining precedent.

Sec. 402. The Committee will create, for its own use only, an index consisting of a one-paragraph summary of the disposition of each case it considers, not using names and taking care to disguise the personalities of the parties as far as possible. The index will be kept only in the Office of the President, where it will be available to the FCRR for orientation to new cases it must consider.

Sec. 403. All parties to a complaint, including counselors and mediators, are expected to observe confidentiality about matters discussed at a mediation or hearing and about information provided to the Committee for mediation or a hearing.

Sec. 404. Members of the FCRR will observe confidentiality about cases in which they take part. The FCRR may report to the faculty about general issues of faculty rights and responsibilities that it has encountered in its work, taking all care to respect the privacy of the parties to complaints it has heard.

Part V. Recusal and Afforcement

Sec. 501. Recusals are governed by **Sections 304** and **305** of the **Standing Rules of the Faculty**.

Sec. 502. For consideration of a particular case when one or more members have recused themselves for cause, the FCRR may recruit a like number of faculty members to participate in the case. These recruits will be faculty members who have recently served on the FCRR, and they will be selected so as to preserve the Committee's membership balance as specified in **Sec. 501(b)** of the "Faculty By-Laws."

