

Resolution to Clarify the Process for Reviewing Findings of ECRC when Related to Faculty Sexual Misconduct
Professional Relations Committee
Faculty Senate
April 2, 2018—Second Reading & Vote

Whereas, the university's process for review of findings of sexual misconduct against faculty can be improved to provide greater clarity and consistency and to satisfy the requirements of the Violence Against Women Reauthorization Act of 2013's amendments to the Clery Act,

Whereas the procedure for determining outcomes following investigations of allegations of sexual misconduct by faculty is not clearly stated in the faculty handbook,

Be it resolved that the language of the Faculty Handbook be revised to include the following process for review of accusations of sexual misconduct by faculty

II. Q. Policy on Sexual Misconduct, Relationship Violence and Stalking

1. Sexual misconduct, relationship violence and stalking [sexual misconduct] of students, faculty, or staff is prohibited at Ohio University as defined in the Policy and Procedures Manual [No. 03.004](#).
2. The administration and faculty of Ohio University recognize that sexually explicit material may be part of the instructional material used in the classroom. Therefore any investigation will consider the legitimate pedagogical context, and will take into account discipline-specific guidelines for professional practice [Policy and Procedures [03.004 VII.O](#)].

In settings where a sexual misconduct charge may be directly related to the content or instructional mission of the instructional environment, the investigating body will take special consideration of such a context and the outcome of these goals. Weighing inappropriate behavior against the context of legitimate physical contact (for example, in dance or medical instruction); or verbal or visual communication (such as creative writing, art, or biology) should be conducted with cognition of the necessary pedagogy involved in such cases and take into account guidelines within each discipline for recognized professional activities.

3. **Responsibility to Report.** All Ohio University faculty and staff are responsible for compliance with [03.004](#) in the Policy and Procedures Manual and have an affirmative duty to report conduct inconsistent with this policy. Immediately upon learning of potential campus sexual misconduct, a faculty member who receives a complaint of sexual misconduct or who observes or learns of conduct that is reasonably believed to be in violation of this policy, is required to report the alleged conduct to the University office of Equity and Civil Rights Compliance (ECRC), following the reporting guidelines

as outlined in [03.004](#), section VII.A Duty to Report. University Equity and Civil Rights Compliance (ECRC) is the University office with responsibility for responding to complaints of sexual misconduct or discrimination and ensuring the University's compliance with its obligations under federal and state non-discrimination laws, including Title IX.

In addition to the duty to report sexual misconduct to University Equity and Civil Rights Compliance (ECRC) as identified above, in some circumstances there is a duty to report allegations of criminal conduct to law enforcement. Ohio law (Ohio Revised Code 2921.22) requires every person who knows that a felony has been or is being committed, to report it to law enforcement. It is a criminal offense to knowingly fail to make the report. If a faculty member suspects or has knowledge of criminal activity occurring on university property, s/he/they have a duty to call the Ohio University Police Department at 740-593-1911 (in an emergency, please dial 911 immediately). Incidents that occur off campus or at a regional campus should be reported to local law enforcement.

4. **Procedures for complaints involving sexual misconduct by faculty.**

- a. **Inquiry into reports of sexual misconduct:** On receiving a report of possible sexual misconduct or on receiving information that suggests possible sexual misconduct, University Equity and Civil Rights Compliance (ECRC) will respond in accordance with its Grievance Resolution Procedure, <https://www.ohio.edu/equity-civil-rights/grievance-resolution.cfm>)

In the inquiry, the ECRC investigator will evaluate whether the allegations, if substantiated, would constitute sexual misconduct, relationship violence, or stalking as defined in Policy 03.004. If the ECRC investigator determines the allegations would violate the sexual misconduct policy if substantiated, then the ECRC investigator will proceed to initiate an investigation.

If the ECRC investigator determines that the allegation would not violate the sexual misconduct policy even if substantiated, then the ECRC investigator will close the inquiry as a consultation.

- b. **Investigation.** An ECRC Investigation will be conducted in accordance with the ECRC Grievance Resolution Procedure (<https://www.ohio.edu/equity-civil-rights/grievance-resolution.cfm>). If the ECRC investigator determines an investigation is warranted, the ECRC 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 sexual misconduct complaint **either via hand delivery or email using his/her university account.**

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. In the event an investigation cannot be completed within 90 days, ECRC will notify the faculty member and the complainant(s) in writing, with a copy to the faculty member's dean and chair, of the need to extend the timeline and provide an anticipated timeline for completion of the investigation.

At any time during the investigation, the ECRC investigator may recommend to the Provost that interim measures be put in place to prevent **the possibility of** continuation or recurrence of discrimination, harassment or retaliation, or to preserve the integrity of the investigation process (as detailed in the ECRC Grievance Resolution Procedure, section V. 7.). **Interim measures should not be seen as a sign of any judgement or determination of measure, but as a protection for all parties involved. The Provost may consult the chair of the department and/or dean of the college/school when making these determinations.** Depending on the severity of the accusations, the Provost may decide to put the faculty member on administrative leave until resolution of the allegations.

- c. The Violence Against Women Reauthorization Act (Code of Federal Regulations at 34 CFR 668) requires that sexual misconduct proceedings provide equal opportunity for the complainant and the respondent to participate, including simultaneous written notification of the outcome of any sexual misconduct proceeding. Therefore, 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 ERCCR 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 university entities.

If the ECRC MOF presents findings of sexual misconduct (violations in accordance to Policy No. 3.004), the dean will forward the complaint to the Provost and Chair of Faculty Senate to convene a review committee of the University Professional Ethics Committee (according to VI.L.3.b.ii). The committee shall be established within twenty-one (21) calendar days of a case being forwarded to the Provost.

- d. If a UPEC review committee is to be formed, the provost will notify the faculty member and complainant involved who each will be given the opportunity to submit a statement regarding the ECRC findings in writing to the Provost within 21 days. These statements will be included as part of the documentation submitted to the UPEC for its review and consideration. The UPEC's responsibility is to consider only the charges contained in the ECRC MOF.

Please note: Unlike other faculty committees, because of the nature of these cases and the benefit of timely action to both the university and the faculty member, UPEC will not observe the academic calendar, therefore depending on the timing of findings, members may be asked to serve over summer, spring winter or fall breaks to meet the timeline (and, in that case, compensated for their time).

- e. The UPEC review will be a formal examination and evaluation of ECRC's findings and the statements of the faculty member and complainant(s) to draw conclusions as to whether the finding of misconduct merits disciplinary action, and if so, to determine an appropriate recommendation for disciplinary action. The review will include examination of documentation, including but not limited to, the report of the ECRC, and the statements of the faculty member and complainant(s) regarding the ECRC findings. It may also include interviews of the ECRC investigator(s), the faculty member involved, the complainant(s), and possible witnesses as deemed necessary by the review committee. The committee will have access to and the assistance of all units or offices at the University in conducting its review. UPEC will have forty-five (45) calendar days to conduct the review, write their report and submit it and their recommendations to the provost.
- f. After consideration of the case, the University Professional Ethics Committee will provide a written report with recommendations to the Provost, with a copy to the faculty member and complainant(s) involved, the chair of the department, and the dean of the college. The final report should include sufficient detail of the review processes to permit an assessment of the reasons for determining recommendation(s). The recommendation(s) of University Professional Ethics Committee may include
 - **Insufficient cause** to support disciplinary 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. **Unpaid leave (Suspension without pay)** for a specified period of time or
 - d. Adequate cause to recommend that a school or department initiate **loss of tenure and/or dismissal** proceedings.

A recommendation of disciplinary action requires at least four affirmative votes from the University Professional Ethics Committee.

- g. The report and recommendations of the University Professional Ethics Committee will be forwarded in writing to the Provost, with copies to the dean and the faculty

- member and complainant(s) involved, for action within thirty (30) days after the provost receives the report and recommendations of the University Professional Ethics Committee.
- h. The Provost, with due consideration of the recommendations of the University Professional Ethics Committee, will announce his/her/their decision within thirty (30) days of receiving the report and recommendations from the University Professional Ethics Committee.
 - i. The faculty member or the complainant(s) may appeal the action of the Provost to the President 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 or arbitrary and capricious decision-making. In the case where a faculty member is the complainant, the appeal would move through the Professional Relations Committee of the Faculty Senate as is standard practice for faculty appeals to the President. 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 within thirty-days (30) after receiving the recommendation of the Professional Relations Committee."
 - j. **Reporting.** The University will comply with all federal reporting requirements concerning sexual misconduct of faculty, including notification of the findings when allegations are not confirmed.