1. **DISCIPLINARY PROCEDURES AND SANCTIONS**
   1. Coordination with Grievance Procedures
2. Grievance procedures have been adopted by the University to review allegations that professional

personnel violated institutional rules prohibiting unlawful discrimination (including sexual harassment).

1. In order to avoid duplicative proceedings and the risk of inconsistent decisions, affirmative action grievance proceedings that satisfy constitutional due process requirements shall constitute the investigative steps in this procedure.
2. If a faculty member is found responsible for violation of University anti-discrimination policies through the affirmative action grievance proceedings, the supervisor may initiate sanctions consistent with the procedures described below. Should the affirmative action grievance proceeding result in a recommendation of termination for cause, the President may commence a termination proceeding in accordance with the articles of this Handbook.
   1. Levels of Disciplinary Action
3. Disciplinary actions can be categorized as either “minor” or “major”.

a. Minor disciplinary action includes, but is not limited to, written reprimands or temporary loss of

Departmental privileges (for example, loss of access to discretionary resources for one semester.)

1. Major disciplinary action includes, but is not limited to, mandated training/counseling, removal from certain types of service roles at School/College or University levels, reassignment, demotion in academic rank, reduction in salary, suspension, or termination.
2. Faculty will have the right to appeal the imposition of any disciplinary action.

C. Causes for Disciplinary Action

1. Any attempt to list all possible potential causes for disciplinary action will necessarily be incomplete. However, the Faculty Employment Handbook identifies certain types of behaviors as problematic and subject to sanction. These types of behaviors can vary in severity and frequency, and as such, should be subject to disciplinary sanctions that also differ in severity. These types of behaviors vary, from gross neglect of job duties eligible for termination to minor infractions that require conversations between a supervisor and faculty member, warnings, and/or letters of reprimand.

Minor misconduct is behavior and conduct demonstrating neglect of academic responsibilities or a lapse in professional judgement or actions that does not violate the rights or well-being of others under the law.

Major misconduct is behavior and conduct violating the law; serious violation of policy or ethics of an academic discipline; persistent and consistent failure to fulfill academic responsibilities; or a violation of the rights and well-being of others.

PLEASE NOTE: The spectrum of behavior must be considered on a case-by-case basis before sanctions are implemented. It is expected that the faculty member’s supervisor and university officials will use sound and reasonable judgement in addition to proper due process.

Minor infractions and transgressions may include, but are not limited to:

* 1. Unintentional misuse of university property.
  2. Neglect of duty, including failure to fulfill obligations associated with teaching (including advising), scholarship, and service
  3. Failure to meet material standards of performance included in the Handbook or written job descriptions.
  4. Unintentional breach of ethical and professional standards inherent in the faculty member’s discipline or, more generally, inherent in the role of a faculty member as described in the AAUP Code of Ethics.

Gross negligence and major infractions may include, but are not limited to:

* 1. Academic fraud or dishonesty.
  2. Misuse or destruction of university property.
  3. Gross neglect of duty, including significant failure to fulfill obligations associated with teaching, advising, scholarship and service.
  4. Repeated and/or continued minor infractions.
  5. Unlawful conduct, commission of a crime or conviction of a felony or acceptance of a guilty plea or a plea of nolo contendere to a felony (while employed at MSU Denver) that renders the faculty member unable or unfit to perform his or her duties.
  6. Significant or persistent failure to meet material standards of performance included in the Handbook, written job descriptions, post-tenure performance improvement plan, or other specific performance improvement plan or warnings instituted under the Handbook.

1. When evaluating causes of action, all reviewing bodies and supervisory levels shall independently consider the impact of investigation and sanctions on the academic freedom inherent in the role of all members of the faculty, as defined by the AAUP’s 1940 Statement of Principles of Academic Freedom and Tenure. Anybody or individual beyond the complainant recommending investigation or imposing sanctions shall explicitly note their analysis of the academic freedom impact in their recommendations or in their justification of the imposition of sanctions.
2. Progressive Disciplinary Action and Sanctions
   1. Disciplinary sanctions should be progressive in nature. Repeated incidents of the same or similar forms of misconduct should be referred to a higher supervisory level and may result in increasingly severe sanctions.
   2. Different types of sanctions are available to different supervisory levels – i.e., the University President will have a greater range of sanctions at her/his disposal than will a Department Chair.
   3. For disciplinary actions involving a faculty member not serving as a Department Chair, the supervisory chain of command will include: Department Chair, School/College Dean (or his/her designee), Provost (or his/her designee), President (or his/her designee), and Board of Trustees. For disciplinary actions involving a Department Chair, the supervisory chain of command will include: School/College Dean (or his/her designee), Provost (or his/her designee), President (or his/her designee), and Board of Trustees.
3. Procedures
4. Nothing contained in this document precludes a voluntary attempt by the relevant parties to resolve potential disciplinary actions informally. In cases of a first instance of minor misconduct, the supervisor should make every effort to resolve the issue informally.
5. In any instance in which a supervisor considers the imposition of a disciplinary sanction, the respondent’s rights of due process and appeal must be protected.
6. Professional misconduct complaints should be submitted to the supervisory level closest to the faculty member against whom the complaint was made. In cases involving faculty, this would normally be the Department Chair. For cases involving Department Chairs, this would normally be the School/College Dean.
   1. Minor Misconduct
      1. Upon becoming aware of an allegation of misconduct against a faculty member, the Department Chair will conduct an initial assessment of the severity of the alleged misconduct. If the alleged misconduct is relatively minor the Department Chair should address the issue directly with the faculty member. This may result in no sanction, or the imposition of a minor disciplinary sanction. In cases of minor misconduct, a written warning is a required first step. The Department Chair should only proceed to sanctions if there are repeated occurrences of the same or similar minor misconduct.
      2. Written warning: A written statement from the supervisor to the faculty member identifying the precise nature of the faculty member’s misconduct and notifying the faculty member that subsequent misconduct may result in official sanction. The warning will be shared with the faculty member and the next level supervisor but will not be placed in the faculty member’s personnel file, nor will it be included in the portfolio for the purposes of faculty evaluation. The faculty member will have the right to submit a response to the Department Chair and School/College Dean. The preliminary discussion with the faculty member and/or a written warning do not constitute disciplinary sanctions and are not subject to the appeal procedures described in Section F.
      3. In cases of repeated occurrences of the same or similar minor misconduct, the Department Chair may impose an additional minor sanction, or may refer this issue to the School/College Dean. The School/College Dean should assess the severity of the misconduct and, if appropriate, assign a sanction.
   2. Major Misconduct
      1. In cases of ongoing minor misconduct (e.g., repeated failure to maintain office hours), or in cases of serious misconduct (e.g., intentional refusal to adhere to University policy regarding accommodations for students with disabilities), the Department Chair receiving the complaint will inform the respondent, in writing, that a complaint has been received, the name of the complainant, the specific allegations included in the complaint, and that the complaint will be reviewed to determine whether or not a formal investigation is warranted.
7. The Department Chair will consult with the School/College Dean to determine jurisdiction. Depending on the nature and/or severity of the complaint, this consultation may also include other relevant parties such as the Provost, the University General Counsel, the Equal Opportunity Office, and/or the Director of Human Resources. This initial consultation will determine:
   1. Whether there is sufficient basis for investigating the complaint; and if there is sufficient basis for investigation,
   2. The appropriate level (Department Chair, Dean, Provost, or President) to manage the complaint.
8. The determination of the appropriate level to manage a complaint will be based on factors such as:
   1. The severity of the alleged professional misconduct; and
   2. The respondent’s prior history of professional misconduct.
9. If the initial consultation concludes that there is insufficient basis for investigation, the Department Chair receiving the complaint will dismiss the complaint without further action. The Department Chair will inform the complainant and the respondent, in writing, that the complaint has been dismissed.
10. If the initial consultation concludes that there is sufficient basis for investigation, once jurisdiction is determined, the responsible supervisor (as identified in IX.E.3.b., above) will conduct the investigation, or will appoint an investigatory committee or individual to conduct the investigation. The investigator or investigatory committee must have no conflicts of interest in the case and must conduct a fair and objective investigation. The nature and extent of the investigation will differ depending on the nature and severity of the alleged misconduct. All interviews conducted as part of the investigative process shall be recorded by the institution and those recordings will be retained for the duration of the investigation. In those cases where disciplinary sanctions are imposed, the recording will be retained for the duration of the sanction. Interview subjects shall also have the option of making personal recordings and being accompanied to any interview by an observer of their choosing. They may consult with their observer during the interview. The subject of the interview is responsible for arranging for this observer. If an observer is going to be present, the subject of the interview shall notify the interviewer of the identity and role of that observer no less than 24 hours in advance.
11. Within 5 days of the determination that an investigation will be undertaken, the responsible supervisor will inform the respondent and complainant, in writing, that an investigation will be conducted.
12. Regardless of the structure of the investigation, any investigation of alleged misconduct must include an opportunity for the faculty member to respond to the allegations. Such responses, whether they be oral or written, will become part of the investigative record, and will be subject to the retention guidelines specified above in subsection (5).
13. The responsible supervisor will review the findings of the investigation and either will dismiss the allegations without further action or will meet with the respondent to review the findings of the investigation.
    1. The responsible supervisor will determine sanctions if allegations concerning gross negligence, major infractions, minor infractions, and/or transgressions are substantiated.[[1]](#footnote-1)

PLEASE NOTE: Any sanctions must be considered carefully while both appropriate and reasonable in severity to the behavior considered. It is expected that the faculty member’s supervisor and university officials will use sound and reasonable judgement in addition to proper due process.

Identified sanctions available to the Department Chair, Dean, Provost, and President include, but are not limited to:

1. Written reprimand: A written statement from the supervisor to the faculty member identifying the precise nature of the faculty member’s misconduct and notifying the faculty member that subsequent misconduct may result in more severe sanction. The written reprimand is to be placed in the faculty member’s official personnel file in the Office of Human Resources. A written reprimand can be appealed per the procedures described in section F below.
2. Temporary loss of privilege, such as access to discretionary funds. This sanction can be appealed per the procedures described in section F below.

Identified sanctions available to the Deans, Provost, and President include, but are not limited to:

1. Required counseling, participation in a rehabilitation program, remedial instruction, or other training to be paid for by the University. These sanctions can be appealed per the procedures described in section F below.
2. Removal from and/or ineligibility to serve on Department, College/School, and/or University committees or other shared governance bodies for a period not to exceed 3 academic years. (If this sanction is imposed, the supervisor imposing the sanction is required to develop a plan, in consultation with the faculty member and Department Chair, to ensure that the faculty member will have other opportunities to meet his/her service requirements, as defined in the faculty member’s Department Evaluation Guidelines.) These sanctions can be appealed per the procedures described in section F below.

Identified sanctions available to the Provost and President include, but are not limited to:

1. Reassignment to other professional positions or different job duties, with or without a reduction in pay.
2. Reduction in salary or a reduction or denial of a salary increase.
3. Reduction in rank or denial of promotion.
4. Suspension with or without pay not to exceed one academic year.
5. Termination for cause in accordance with the Handbook, as applicable, if the nature, gravity, and/or frequency of the unprofessional conduct justifies termination.

F. Appeals/Faculty Right to Respond: Minor Disciplinary Action

1. In cases in which a written warning is issued, the Department Chair will provide copies of the warning to the faculty member and to the School/College Dean. The faculty member will have the right to submit a response to the written warning to the Department Chair and School/College Dean. No further action is necessary.
2. The faculty member may appeal any sanction.
3. A memorandum specifying any sanction will be written by the responsible supervisor imposing the sanction, and will be placed in the faculty member’s personnel file, along with relevant supporting documentation (e.g., copies of complaints, investigation reports, etc.):
   1. The faculty member shall be provided with a copy of the memorandum and all other documentation at least 10 working days prior to the possible placement of such materials in the faculty member's personnel file;
   2. The faculty member may appeal the sanction by requesting, no later than 5 working days after receipt of the memorandum and materials, a conference with the next level supervisor to discuss the reasons for the sanction. Such a request shall not be unreasonably denied.
   3. The next level supervisor, after meeting with the faculty member and consulting with the supervisor imposing the sanction, may dismiss the proposed sanction, impose an alternative sanction, or uphold the proposed sanction.
   4. In the event that a sanction is imposed, the faculty member shall have the right to attach a rebuttal to the memorandum and/or materials, or to request correction of the record. Such rebuttal and/or correction will also be placed in the faculty member’s personnel file.
   5. Three years from its effective date, the faculty member may submit a request to the Associate Vice President of Human Resources to remove documentation of the sanction, and any rebuttal submitted by the faculty member in response to that sanction, from the faculty member’s personnel file. Such a request shall not be unreasonably denied. If approved, a statement verifying the permanent removal of the materials shall be provided to the faculty member. Neither the request for such a removal nor the statement verifying the removal shall be placed in the official personnel file. This provision shall not be implemented under the following conditions:
      1. a notice of disciplinary action has been served on the faculty member and documentation of the prior sanction is related to the pending disciplinary action; or
      2. a subsequent sanction(s) of a similar nature has been placed in the personnel file within the 3 year period. If, after three years from its effective date, the faculty member requests the removal of the subsequent sanction, then the faculty member may also request the removal of the prior sanction(s) of a similar nature.
   6. A sanction in the faculty member’s personnel file will be included in the faculty evaluation portfolio *only* if the sanction was imposed as a result of a finding of misconduct in the areas of Teaching, Scholarship, or Service. In such case, the Department Chair will add documentation pertaining to the sanction, along with any response submitted by the faculty member, to the evaluation portfolio. Reviewers must consider the material included in the sanction in their deliberations and may address the sanction in their evaluation letters. The information included in the sanction relating to the faculty member’s performance in the area of Teaching, Scholarship, or Service will be weighed by reviewers assessing whether the faculty member has met performance standards articulated in the Department Evaluation guidelines. The presence of a sanction will not automatically disqualify the faculty member from a successful review; rather, the information included in the sanction will be considered as one part of the total body of evidence.

Sanctions unrelated to the areas of Teaching, Scholarship, and Service will not be included in the evaluation portfolio, nor will they be referenced in any evaluation letters.

G. Appeals/Faculty Right to Respond: Major Disciplinary Action, Excluding Termination for Cause

1. Procedures for Appeal
   1. No less than 10 working days prior to the imposition of any major disciplinary sanction, the supervisor imposing the sanction (i.e., Provost, President) will provide the faculty member with written notice of the pending sanction. The written notice will include:
      1. The cause(s) for disciplinary action;
      2. The pending sanction;
      3. The proposed effective date of the pending sanction; and
      4. The right of the faculty to appeal the pending disciplinary action and to have the matter heard.
   2. Within 5 working days of the receipt of the notice of a pending major disciplinary sanction, the faculty member may, if they so choose, submit a written notice of his/her intent to appeal the sanction.
      1. The appeal may challenge the manner in which the investigation was conducted, the interpretation of the findings of the investigation, or the severity of the pending sanction;
      2. The faculty member should submit the notice of intent to appeal to the supervisor proposing the sanction (i.e., Provost, President), the next level supervisor (i.e., President, Board of Trustees), and the Faculty Senate Vice President, who serves as convener of the Disciplinary Appeals Committee (DAC);
      3. The supervisor proposing the sanction will not impose any disciplinary sanctions while the appeal is being adjudicated.
   3. Within 10 working days after submitting a notice of intent to appeal, the faculty member may, if they so choose, notify the supervisor proposing the sanction, the next level supervisor, and the Faculty Senate Vice President of their intent to invite legal counsel, or other advocate to, and/or their interest in having an audio recording made of, the hearing (Sec. X.G.1.f).
   4. No more than 10 working days after receiving a notice of intent to appeal, the Faculty Senate Vice President must submit a list of eligible members of the DAC to the faculty member and the next-level supervisor. The faculty member and the supervisor proposing the sanction will take turns removing names until three remain (if four remain after the faculty member and the supervisor proposing the sanction have removed the same number of names, the Faculty Senate Vice President will remove the final name). If either party fails to participate in this step within five working days, the Faculty Senate Vice President will remove names on their behalf. The three remaining will comprise the Hearing Panel for the appeal. These three will select a chair for the Hearing Panel.
   5. No more than 20 working days after submitting the notice of intent to appeal, the faculty member will submit the appeal materials to the supervisor proposing the sanction (i.e., Provost, President) and the Faculty Senate Vice President, who must provide the materials to the Chair of the Hearing Panel. The materials should include detailed documentation of the disputed facts and defenses to the allegation of misconduct. The Hearing Panel may, at their discretion, request additional materials. Such additional materials may be delivered later than 20 working days after

submitting the notice of intent to appeal. However, non-delivery of such additional materials requested by the Hearing Panel shall not cause the date of the hearing to extend beyond the deadline (Sec. X.G.1.)

1. No more than 10 working days after receiving the appeal materials, the Hearing Panel will meet to hear the appeal. The conduct of the hearing will adhere to the policies and procedures regulating the functioning of the Hearing Panel. After hearing the appeal, the Hearing Panel will have 5 working days to submit a written report detailing its findings and recommendations. The Hearing Panel may:
   * 1. Recommend that the case be dismissed and no sanctions imposed;
     2. Support the finding of culpability, but recommend a less severe sanction;
     3. Support both the finding of culpability and the proposed sanction.
2. The report of the Hearing Panel will be distributed to the appealing faculty member, the supervisor proposing the sanction (i.e., Provost, President), and the next level supervisor (i.e., President, Board of Trustees).
3. The next level supervisor (i.e., President, Board of Trustees) will review the recommendations of the Hearing Panel, along with information derived from the original investigation, and will make a final determination.
4. Should the reviewing supervisor decide to ignore the recommendations of the Hearing Panel by imposing a more severe penalty than that advised by the Hearing Panel, the supervisor must state reasons for their decisions in writing, and allow the faculty member and Hearing Panel to respond before imposing any penalty, thereby allowing for a reconsideration. This written discussion shall become part of the faculty member’s personnel file should the supervisor uphold their finding of culpability.
5. If the supervisor hearing the appeal upholds the finding of culpability, a memorandum specifying the sanction will be placed in the faculty member’s personnel file, along with relevant supporting documentation (e.g., copies of complaints, investigation reports, reports from the Hearing Panel, etc.):
   1. The faculty member shall have the right to attach a rebuttal to the memorandum and/or materials, or to request correction of the record. Such rebuttal and/or correction will also be placed in the faculty member’s personnel file.
   2. Three years from its effective date, the faculty member may submit a request to the Associate Vice President of Human Resources to remove records of the sanction, and any rebuttal submitted by the faculty member in response to that sanction, from the faculty member’s personnel file. Such a request shall not be unreasonably denied. If approved, a statement verifying the permanent removal of the materials shall be provided to the faculty member. Neither the request for such a removal nor the statement verifying the removal shall be placed in the official personnel file. This provision shall not be implemented under the following conditions:
      1. a notice of disciplinary action has been served on the faculty member and documentation of the prior sanction is related to the pending disciplinary action; or

(b) a subsequent sanction(s) of a similar nature has been placed in the personnel file within the three year period. If, after three years from its effective date, the faculty member requests the removal of the subsequent sanction, then the faculty member may also request the removal of the prior sanction(s) of a similar nature.

(3) A sanction in the faculty member’s personnel file will be included in the faculty evaluation portfolio *only* if the sanction was imposed as a result of a finding of misconduct in the areas of Teaching, Scholarship, or Service. In such case, the Department Chair will add documentation pertaining to the sanction, along with any response submitted by the faculty member, to the evaluation portfolio. Reviewers must consider the material included in the sanction in their deliberations and may address the sanction in their evaluation letters. The information included in the sanction relating to the faculty member’s performance in the area of Teaching, Scholarship, or Service will be weighed by reviewers assessing whether the faculty member has met performance standards articulated in the Department Evaluation guidelines. The presence of a sanction will not automatically disqualify the faculty member from a successful review; rather, the information included in the sanction will be considered as one part of the total body of evidence.

Sanctions unrelated to the areas of Teaching, Scholarship, and Service will not be included in the evaluation portfolio, nor will they be referenced in any evaluation letters.

1. The Disciplinary Appeals Committee (DAC)
   1. Composition: The DAC shall consist of:
      1. The Faculty Senate Vice President, who serves as convener with full membership on the committee.
      2. Up to two tenured faculty members elected from each School/College
2. Terms: Two years. For the initial election of the DAC for Fall 2020, Schools and Colleges will offer one seat with a one-year term and one seat with a two-year term. Schools and Colleges should seek to fill vacated seats by the beginning of each fall semester.
3. Training: Hearing Panels may at their sole discretion request training from the University.
4. Hearing Panels
   1. Eligibility: for the purpose of selecting a Hearing Panel, eligible members of the DAC are those who
      1. Do not have a direct relationship to the investigation,
      2. and have not voluntarily recused themselves for the case to be heard.
   2. Composition: Hearing Panels consist of eligible full members of the DAC selected according to the procedures in Sec. X.G.I.
   3. Responsibilities:
      1. Select a Hearing Panel chair.
      2. Review materials pertaining to the appeal for which the Hearing Panel was formed.
      3. Unless prohibited by law, distribute to the faculty member any investigation and appeals materials not provided by the faculty member, including any audio recordings of the hearing.
      4. Conduct an appeals hearing. The time and date should be coordinated with the appealing faculty member in accordance with the timeline presented in Sec. X.G.1.
      5. Treat as confidential all discussions and materials related to the appeal.
   4. Functioning of meetings and hearings:
      1. Audio recordings may be made at the direction of the Hearing Panel in the case the appealing faculty member has requested such recordings in Sec.X.G.1.c. No personal audio or video recordings may be made.
5. Witnesses, including eyewitnesses and expert witnesses, may be called.
6. The appealing faculty member must be permitted to attend the hearing.

H. Reporting

Each academic year, the Associate Vice President for Faculty Affairs will gather reports from Department

Chairs, Deans, and Provost regarding any disciplinary sanctions imposed against any faculty member. These reports, including demographic data on faculty members against whom sanctions were imposed, will be provided to the Director of Equal Opportunity (EO). The Director of EO will provide a summative report of disciplinary actions, with a particular examination of any disproportionalities associated with any demographic characteristic, to the Faculty Senate Diversity Committee and the Faculty Senate Faculty Welfare Committee. This report shall be submitted in accordance with the deadlines specified in the Procedural Calendar.

I. Appeals/Faculty Right to Respond: Termination for Cause

Termination of a faculty member for cause will be managed in accordance with the procedures identified in section IX. of this Faculty Employment Handbook.

J. Allegations of Misconduct Against Department Chairs

1. All policies and procedures described in this section will apply in cases of alleged misconduct involving a Department Chair.
2. In cases of alleged misconduct involving a Department Chair, the School/College Dean will initially

review the allegations. The Provost will serve as the next-level supervisor.

1. As described in E.3.a, discussions with the faculty member alleged to have engaged in minor misconduct and a written warning are required steps that must be taken prior to the imposition of any sanction. The preliminary discussion with the faculty member and/or a written warning do not constitute disciplinary sanctions and are not subject to the appeal procedures described in Section F nor will the warning be placed in the faculty member’s personnel file.  [↑](#footnote-ref-1)