

Marshall University Board of Governors Rule: Faculty Conduct and Disciplinary Procedures (MU BOG AA-XX)

I. Purpose

This rule establishes a comprehensive, fair, and academically sound framework for addressing faculty misconduct while protecting academic freedom, due process, and shared governance and ensuring accountability and professional conduct. The policy:

1. Ensures consistent procedures across the institution.
2. Provides faculty-led adjudication of serious sanctions.
3. Aligns Marshall University with AAUP Recommended Institutional Regulations, MUBOG AA-6 and AA-16, and W. Va. Code.

Nothing in this rule shall be interpreted to restrict academic freedom, protected speech, or lawful participation in shared governance.

II. Scope and Authority

Applicability: This policy applies to all individuals holding faculty appointments (classifications) at Marshall University (including adjunct faculty, dual-credit instructors, tenured, tenure-track, clinical-track, teaching-track, librarian-track, and research-track faculty).

This rule applies equally to faculty-classified administrators when the alleged conduct arises from their faculty role or responsibilities. When a faculty-classified administrator is alleged to have committed misconduct, the complaint shall be reported to the Provost. The Provost (or the President, if the allegation concerns the Provost) will forward the complaint to the administrator's immediate supervisor and to the Chair of the University Faculty Senate Faculty Personnel Committee.

For dual-credit instructors, coordination with partner school systems will occur as required by applicable agreements and law; however, University disciplinary authority over faculty appointments remains unchanged.

Relationship to Other Policies: Allegations governed by federal or state law or other legally mandated policies—including Title IX, discrimination or harassment law, research misconduct regulations, and HIPAA/FERPA—shall be governed by those applicable laws and policies, which supersede the procedures outlined below.

Once fact-finding is complete and a policy violation is substantiated, sanctioning and appeals shall proceed under the applicable governing policies. When fact-finding is conducted under another controlling policy, the faculty misconduct panel's role is limited to review and comment on the sanctions. Findings of fact shall not be re-adjudicated

absent new evidence or due-process defects. In matters governed by Title IX, the Faculty Misconduct Panel shall have no review authority, and the Faculty Senate Executive Committee shall have no appellate authority

Dual-Role Faculty (Faculty with Administrative Appointments): When an individual serves in both faculty and administrative capacities, jurisdiction is determined by whether the alleged conduct occurred primarily in the administrative role or the faculty role.

The Provost, Chief HR Officer, and General Counsel will jointly make this determination and issue a written routing memo to the faculty member and the University Faculty Senate Faculty Personnel Committee Chair.

No party may unilaterally select the forum.

Authority: This policy is authorized under W. Va. Code §18B-2A-4, MUBOG AA-6, MUBOG AA-16.

History: [tbd]

III. Guiding Principles

1. **MUBOG Rule AA-16 (Professional Responsibility, Academic Responsibilities, and Academic Freedom):** Faculty shall not face discipline for protected teaching, scholarship, or governance, and they shall have the freedom to speak on any matter of social, political, economic, or other interest to the larger community, without institutional discipline or restraint, save in response to fundamental violations of professional ethics or statements that suggest disciplinary incompetence. Each faculty member is entitled to freedom in the classroom regarding discussion of the subject being taught. In addition, when faculty members speak or write as private citizens outside the institution they shall be free from institutional censorship or discipline, unless they are indicating they are speaking on behalf of Marshall University. The academic freedom, protected speech and activities, institutional responsibilities of faculty in relationship to alleged misconduct is further outlined below in the section on Academic Freedom and Nexus Requirement of this rule.
2. **Faculty-Led Adjudication:** Serious sanctions require an impartial hearing before a University Faculty Personnel Committee (FPC) panel of tenured faculty.
3. **Due Process:** Faculty are entitled to written notice of charges, access to evidence, representation, cross-examination of witnesses, a verbatim hearing record, and a defined appeal consistent with W. Va. Code §6C-2-3.
4. **Neutrality:** HR coordinates logistics; investigators and FPC panelists must be impartial and free from conflicts of interest.

5. **Progressive, Educational Approach:** The University seeks to remediate whenever appropriate, emphasizing corrective actions, particularly for Tier 1 Minor Misconduct.
6. **Proportionality and Consistency:** Sanctions must be proportionate to misconduct and consistent with prior comparable cases.
7. **Timeliness with Flexibility:** Timelines are clearly defined but may be extended for good cause, with written explanation.
8. **Burden and Standard of Proof:** The University bears the burden of proof in all faculty misconduct proceedings.
 - a. For Minor Misconduct Allegations (Tier 1), the University must establish the alleged misconduct by preponderance of the evidence.
 - b. For Serious Misconduct (Tier 2) Allegations and Grave Misconduct (Tier 3) Allegations, the University must establish the alleged misconduct by clear and convincing evidence.
 - c. Corrective and non-disciplinary actions, such as coaching, mentoring, and Faculty Development Plans, are remedial in nature and do not require formal evidentiary findings under either standard.
 - d. The applicable standard of proof shall be stated on the record at the outset of any formal hearing and applied consistently throughout the adjudication process.
9. **Academic Nature of Proceedings:** Faculty misconduct proceedings under this rule are academic and administrative in nature and are not judicial or criminal proceedings. The purpose of these proceedings is to determine professional fitness, institutional responsibility, and appropriate institutional action, not to adjudicate civil or criminal liability. Formal rules of evidence applicable in courts of law do not apply. However, all findings must be based on relevant, reliable, and probative information and evaluated under the applicable standard of proof established by this rule. Procedures shall be conducted in a manner that is fair, respectful, orderly, and consistent with the principles of academic due process, shared governance, and professional responsibility.
10. **Shared Governance:** Peer faculty review is central, with the University Faculty Senate's Faculty Personnel Committee (FPC) hearing all cases involving serious (Tier 2) or grave (tier 3) misconduct allegations. The Faculty Senate Executive Committee serves as the appellate authority in these cases.

IV. Definitions

For purposes of this policy:

1. **Adequate Cause:** Substantial reason demonstrably related to performance of institutional responsibilities, such that continued appointment is inconsistent with the institution's mission and obligations.
2. **Minor Misconduct (Tier 1):** Low-impact, isolated, or first-time behavior that is readily remediable and does not warrant formal disciplinary sanction.
3. **Serious Misconduct (Tier 2):** Repeated, willful, or significant breaches of professional responsibility that materially disrupt institutional operations, compromise trust, or harm students, colleagues, staff, or the University's interests.
4. **Grave Misconduct (Tier 3):** Willful, egregious, or fitness-impairing conduct (e.g., serious research misconduct, exploitation, violence, major fraud) that may warrant suspension, revocation of tenure, or dismissal for cause.
5. **Neglect of Duty:** Persistent failure or refusal to perform assigned academic or institutional responsibilities after written notice and an opportunity to improve.
6. **Unfitness to Serve:** Clear and convincing evidence that conduct, neglect, or incompetence substantially impairs effectiveness as a teacher, scholar, or community member.
7. **Corrective Action:** Non-disciplinary interventions aimed at remediation and improvement (e.g., coaching, mentoring, Faculty Development Plans).
8. **Disciplinary Action:** Formal sanctions imposed in response to substantiated misconduct (e.g., written reprimand, salary reduction, suspension, demotion, revocation of tenure, dismissal).
9. **Serious Sanction:** Any sanction altering pay, rank, tenure status, or fundamental faculty privileges (e.g., suspension without pay, demotion, salary reduction, loss of tenure, dismissal).
10. **Interim Measure:** Temporary, non-punitive action (typically with pay) used to protect safety, prevent disruption, or preserve investigation integrity while allegations are pending.
11. **University Presenting Party or University Representative:** The individual designated by the Provost (or designee) to present the University's case in a faculty misconduct hearing. This role may be filled by an attorney from the Office of General Counsel, an external attorney, or a trained University official. The presenting party must be trained in this rule, evidence handling, and hearing procedures and may not have served as investigator or decision-maker in the matter.
12. **Clear and Convincing Evidence:** Evidence that produces in the mind of the fact-finder a firm belief or conviction regarding the truth of the allegations. This standard is higher than a preponderance of the evidence but lower than proof beyond a reasonable doubt and requires that the facts supporting the finding be highly probable. The University bears this burden for all serious sanctions.

13. **Preponderance of the Evidence:** Evidence that shows that a fact or allegation is more likely true than not true. This standard is met when the greater weight of the evidence supports the conclusion, even if the evidence is not overwhelming.
14. **Faculty Misconduct Review Panel:** A five-member hearing panel drawn from a trained pool of tenured members of the University Faculty Senate Faculty Personnel Committee, responsible for adjudicating serious faculty misconduct cases. Panel members must complete annual training and certify the absence of conflicts of interest prior to service. The panel is chaired by the University Faculty Personnel Committee Chairperson who presides over misconduct hearings.

V. Academic Freedom and Nexus Requirement

1. Faculty have the rights and responsibilities described in MUBOG AA-16 and AAUP's statements on academic freedom and tenure.
2. No disciplinary action may be imposed for:
 - Protected teaching or research content; or
 - Participation in shared governance; or
 - Extramural speech as a private citizen, unless there is a demonstrated nexus between the conduct and substantial impairment of professional fitness or institutional functioning.
3. Disagreement with viewpoints, scholarship, or criticism of the University is not misconduct.
4. Political speech, peaceful protest, and lawful public advocacy are acknowledged as protected forms of free speech and faculty expression.
5. Off-campus and/or mediated political speech, in and of itself, does not constitute misconduct.
6. Public criticism of institutional leadership shall not constitute misconduct, absent clear and convincing evidence of a direct and material impairment of assigned professional duties.
7. Institutional reputational impact alone cannot serve as a basis of disciplinary action absent material disruption to assigned duties or university operations.
8. When expression is implicated, decision-makers must explicitly analyze and document the nexus between the conduct and alleged impairment of assigned duties and institutional operations.

VI. Roles and Responsibilities

Department Chair/Director/Immediate Supervisor: First-level intervention, coaching, and documentation.

Dean: May issue minor discipline (reprimand, warning); refers serious cases to University Faculty Senate's Faculty Personnel Committee (FPC).

University Faculty Personnel Committee (FPC): Conducts hearings in all serious cases, makes findings of fact, and recommends sanctions. The FPC issues a written decision containing findings and recommendations. A faculty member may appeal the FPC's findings and recommendation decision to the Faculty Senate Executive Committee in accordance with this policy.

Faculty Senate Executive Committee: Serves as the final faculty-level appellate body. The Faculty Senate Executive Committee reviews appeals from FPC decisions and may affirm, reverse, or remand the FPC's findings and determination in accordance with this policy. The Executive Committee issues a written appellate decision.

President: The President retains final institutional authority following completion of all procedures required under this rule, but they may not bypass or disregard faculty-led adjudicative steps. The President, in consultation with the Provost, may affirm, reverse, or remand decisions issued by the Faculty Senate Executive Committee or the Faculty Personnel Committee only upon written findings of material procedural error, lack of evidentiary support under the applicable standard of proof, clearly disproportionate sanction, or newly discovered evidence. Any reversal or remand must include a written rationale. Faculty members may grieve final determinations consistent with W. Va. Code §6C-2-3.

Conflict of Interest and Impartiality Requirements: All individuals involved in the administration, investigation, adjudication, and appeal of faculty misconduct matters—including investigators, Faculty Personnel Committee panel members, administrators, and appellate reviewers—shall be impartial and free from actual or perceived conflicts of interest.

Prior to participation, such individuals must complete a written conflict-of-interest and impartiality disclosure affirming the absence of disqualifying conflicts.

Any party may raise a written objection requesting recusal for cause. The Faculty Personnel Committee Chair shall rule on recusal requests in writing. Individuals required to recuse themselves shall not participate further in the matter.

VII. Misconduct Classification and Illustrative Behaviors by Tier

An illustrative list of potential misconduct behaviors is listed in Appendix A.

The following examples are illustrative, not exhaustive. Classification depends on the nature of the conduct, intent, pattern, impact, and context.

A. Tier 1 Minor Misconduct (Informal Corrective Action (Non-Disciplinary):

Generally handled at the immediate supervisor level.

Tier 1 actions are corrective and developmental in nature. They do not constitute formal discipline, are not considered adverse employment action, and shall not serve as the sole

basis for escalation except where a documented pattern of materially similar conduct demonstrates failure to respond to prior written notice and opportunity to improve.

Tier 1 conduct must be low-impact, isolated, and not materially impair student academic progress, institutional operations, or professional fitness. Isolated clerical or administrative errors corrected upon notice shall not constitute misconduct.

Tier 1 records are not considered disciplinary records and shall not be considered in promotion, tenure, or merit determinations unless they form part of a documented pattern of similar conduct demonstrating failure to respond to corrective intervention.

Tier 1 corrective actions are intended to address concerns early and constructively and should not be interpreted as disciplinary findings.

Examples:

- Isolated failures to hold or post office hours after reminder.
- Minor workplace interaction concerns that are appropriate for supervisory coaching or corrective guidance.
- Minor syllabus or assessment irregularities without material impact on student grades or progression.
- First-time late submission of grades or required administrative materials.
- Non-willful administrative or communication errors (e.g., confusion about deadlines or forms).
- Isolated minor collegial conduct issues remediable through coaching or a Faculty Development Plan (FDP).

B. Tier 2 (Serious Misconduct): Requires formal referral; serious sanctions cannot be imposed without an FPC hearing.

Tier 2 includes conduct that materially undermines professional responsibilities, student welfare, institutional integrity, or compliance obligations, or conduct demonstrating a documented failure to correct behavior following Tier 1 corrective intervention.

A documented pattern of substantially similar Tier 1 misconduct may warrant escalation to Tier 2 when the faculty member has received prior written notice of the concern, has been provided a reasonable opportunity to correct the behavior (including coaching or a Faculty Development Plan where appropriate), and the conduct continues in a manner that materially impacts institutional functioning.

Multiple substantiated incidents within a rolling three-year period may be considered evidence of such a pattern, typically three (3) incidents, but escalation shall not be automatic and must include written justification explaining why the continued conduct demonstrates disregard of prior corrective intervention or inability to fulfill assigned duties.

Examples:

- Repeated unprofessional or hostile conduct after written notice and coaching.
- Documented FERPA or confidentiality breaches with potential or actual harm.
- Retaliation against students, faculty, or staff for reporting concerns or participating in a process.
- Significant grading irregularities or misuse of academic authority (e.g., grading motivated by personal animus rather than academic performance).
- Failure to adhere to required safety protocols or research compliance obligations after notice and training.
- Discriminatory or harassing behaviors not rising to Tier 3 but demonstrating serious misconduct.
- Persistent neglect of duty following an unsuccessful FDP.

C. Tier 3 (Grave Misconduct): Requires expedited FPC hearing; may warrant revocation of tenure or dismissal.

Tier 3 includes conduct that fundamentally undermines professional fitness, institutional integrity, or the safety and welfare of the University community. Grave misconduct may arise from a single egregious act or from a documented pattern of sustained Tier 2 misconduct demonstrating persistent disregard of prior interventions.

A documented pattern of sustained Tier 2 misconduct that continues following formal intervention and materially impairs professional fitness may constitute Grave Misconduct. Escalation must include written justification explaining why prior corrective or disciplinary interventions failed to resolve the conduct.

Examples:

- Fabrication, falsification, or serious plagiarism in research or scholarship as substantiated by the University's research misconduct process.
- Serious harassment, stalking, coercion, or exploitation of students, colleagues, or staff.
- Violence or credible threats of violence; dangerous behavior that endangers others.
- Fraudulent conduct, such as, impersonation, falsifying University records, significant financial misconduct, or misappropriation of funds.
- Severe abuse of authority, such as coercive relationships with students or supervisees or quid-pro-quo demands.
- Criminal acts that directly impact the faculty member's fitness to serve or the University's safety or integrity.

VIII. Routing and Gatekeeping

1. **Initial Classification** – The Department Chair makes a preliminary classification (Tier 1, 2, or 3) based on available information and consults with the Dean.
2. **Dean Confirmation** – The Dean’s confirmation or modification of classification must include a brief written rationale addressing severity, impact, pattern, and proportionality considerations.
3. **Disputed Classification** – If the faculty member or Dean disputes the classification, the FPC Chair issues a threshold ruling within five (5) business days on the appropriate procedural tier. This ruling determines whether the matter must follow the Tier 2/3 formal process.
4. **Routing for Dual-Role Cases** – As described in Section II, jurisdiction for faculty with administrative appointments is set through a written routing memo. If the faculty member is a Dean or Provost, their immediate supervisor fulfills each role above.

IX. Procedures and Timelines: All time periods are “business days” unless otherwise specified.

The timelines set forth in this rule are intended as procedural goals designed to promote timely resolution of faculty misconduct matters. These timelines are not rigid deadlines and may be extended for good cause, including but not limited to complexity of allegations, witness availability, academic calendar constraints, or the need to ensure procedural fairness.

Any extension of a procedural timeline must be documented in writing, include the reason for the extension, and specify the revised target date. Written notice of timeline extensions shall be provided simultaneously to both parties.

No disciplinary determination shall be invalidated solely due to a timeline extension that is supported by good cause and documented in accordance with this section.

Participants should maintain confidentiality regarding faculty misconduct matters to protect privacy and the integrity of the process. These confidentiality expectations do not prohibit accused faculty from consulting with legal counsel, advisors, union representatives, colleagues, or support persons, nor from making good-faith reports of retaliation or seeking assistance.

A. Step 1 – Intake, Documentation, and Preliminary Assessment (≤ 5 days)

1. **Incident Identification and Documentation**
 - All allegations of misconduct shall be reported to the faculty member’s chair (or immediate supervisor in the case of Dean or Provost misconduct).

- If a report is received by another administrative office, it shall be promptly forwarded to the appropriate chair or supervisory authority for intake.
 - Upon report of alleged misconduct, the chair records the date, source, and nature of the concern, and they preserve any initial evidence.
2. **Informal Fact-Gathering**
 - The intake party may clarify factual issues with the reporting party and review relevant materials but shall not conduct a full investigation or make formal credibility findings.
 3. **Preliminary Classification**
 - Chair proposes Tier 1, 2, or 3; Dean confirms or modifies.
 4. **Notification to Faculty Member**
 - Faculty are notified in writing that a concern has been raised, the preliminary classification, and they are provided a copy of this policy, unless notification would compromise an external investigation or create a safety risk.

B. Step 2 – Formal Referral (Tier 2 or 3) (≤ 10 days after Step 1)

For Serious or Grave Misconduct:

1. Dean's Referral Packet sent to the Provost, HR (for logistics), and FPC Chair, including:
 - Alleged conduct (bullet points).
 - Dates, locations, involved individuals.
 - Preliminary evidence (e.g., emails, syllabi, reports).
 - Tier classification and rationale.
 - Policies potentially violated.
 - Any request for interim measures.
2. Copy to Faculty Member
 - The faculty member receives the same referral packet on the same day it is transmitted.

C. Step 3 – Notice of Charges (≤ 5 days from referral)

1. HR issues a formal (electronic) Notice of Charges that includes:
 - Specific allegations and conduct at issue.
 - Policy sections allegedly violated.
 - Summary of available evidence.
 - Statement of rights (representation, evidence access, hearing, appeal).
 - Timelines for response and subsequent steps.
 - Non-retaliation statement.
2. Faculty acknowledge receipt in writing (electronically).

D. Step 4 – Investigation (target ≤ 15 days)

1. Appointment of Neutral Investigator

- The Provost (or designee) appoints a neutral investigator, who may be internal or external, and is not an HR decision-maker in the case.

2. Scope of Investigation

The investigator:

- Interviews complainants, the faculty respondent, and relevant witnesses.
- Reviews documents, digital records, LMS content, and/or other evidence.
- Maintains confidentiality to the extent possible.
- Offers the faculty respondent the opportunity for a full interview before completion of the report.

3. Investigative Summary

- The investigator produces a written summary of the facts and evidence collected.
- The summary does not recommend sanctions.
- All exculpatory evidence must be disclosed.

4. Distribution

- The Investigative Summary is provided simultaneously to the faculty member, the University's presenting party, and the FPC Chair.

E. Step 5 – Faculty Response (≤ 15 days after Investigative Summary)

The faculty member may submit:

- A written narrative or rebuttal.
- Exhibits or documents.
- A list of witnesses.
- A statement of desired outcome.
- Objections to procedural issues thus far.

Extensions may be granted for good cause.

F. Step 6 – Pre-Hearing Evidence Exchange (≥ 10 days before hearing)

Both parties must exchange:

- All exhibits they intend to introduce.
- Witness lists with brief descriptions of testimony.
- Any stipulations of fact.
- Objections to proposed evidence (relevance, prejudice, redundancy).
- Requests for witness sequestration.

The FPC Panel Chair rules on pre-hearing objections and motions in writing.

G. Step 7 – Scheduling and Panel Formation (Hearing within \leq 30 days after Step 5)

1. Panel Formation

- FPC Chair selects a five-member panel from the Misconduct Hearing Pool.
- At least one member is from the faculty member's Academic Unit when feasible.
- Parties may request recusals for conflict of interest; rulings are made by the FPC Chair.

2. Hearing Scheduling

- HR coordinates date, time, and location (or secure virtual platform).
- Scheduling reasonably accommodates the faculty member and key witnesses.

H. Step 8 – FPC Hearing

The hearing is conducted in accordance with Section X below.

I. Step 9 – Findings and Recommendations (\leq 15 days after hearing)

The panel issues a written decision that includes:

- Findings of fact (numbered).
- Conclusions as to each allegation (sustained or not sustained).
- Policy provisions violated, if any.
- Aggravating and mitigating factors considered.
- Recommended sanction(s) with proportionality rationale.

The decision is provided to:

- The faculty member.
- Chair and Dean.
- Provost.
- Faculty Senate Chair.
- HR (logistics).
- President.

J. Step 10 – Appeal to Faculty Senate Executive Committee (\leq 20 days)

The faculty member may file a written appeal (\leq 10 days) to the Faculty Senate Executive Committee (copying the Provost, HR, and the President) on one or more of the following grounds:

1. Material procedural error that likely affected the outcome.
2. New evidence not reasonably available at the time of the hearing.

3. Sanction is clearly disproportionate to the substantiated misconduct.

The Senate Executive Committee reviews the record and within (≤ 10 days) may:

- Affirm the FPC decision.
- Modify the sanction.
- Remand to FPC with instructions for further proceedings.

The decision is issued in writing to the FPC Chair, Provost, HR, and the President.

K. Step 11 – Final Institutional Determination / Action (≤ 10 days after appeal decision)

The President (or designee):

1. Reviews the FPC and Faculty Senate Executive Committee decisions.
2. Issues written notice of final institutional determination and action.
3. For revocation of tenure and dismissal for cause, submits a notice to the Board of Governors.

X. Hearing Procedures (Expanded)

Prohibition of Ex Parte Communications

Once a formal referral or Notice of Charges has been issued, ex parte communications regarding the merits of the case between any party and a panel member, investigator, administrator, or appellate reviewer are prohibited.

Communications limited to procedural scheduling, logistics, or administrative coordination do not constitute ex parte communications, provided no substantive discussion of the case occurs.

Any improper communication must be promptly disclosed to the Panel Chair and documented in the case record. Appropriate remedial action, including recusal if necessary, shall be taken to preserve fairness and process integrity.

- **Pre-Hearing Conference**

The Panel Chair may hold a pre-hearing conference to:

- Confirm witness lists and exhibits.
- Address outstanding motions.
- Clarify the order of proof and logistics.

- **Opening the Record**

At the start of the hearing, the Panel Chair:

- Identifies the case, panel members, and parties.
- Confirms the hearing is being recorded verbatim.

- States the applicable standard of proof for the case.
- States that the University bears the burden of proof.
- **Opening Statements**
 - University representative may present an opening statement.
 - Faculty member (or counsel) may present an opening or reserve until their case.
- **University Case-in-Chief**
 - University presents witnesses and exhibits.
 - Each witness is subject to direct examination, cross-examination by the faculty member or counsel, and questions from the panel.
- **Faculty Case-in-Chief**
 - Faculty member presents testimony, witnesses, and exhibits.
 - University may cross-examine; panel may question.
- **Rebuttal/Surrebuttal**
 - Limited to new issues raised.
- **Closing Statements**
 - Both parties have the opportunity to summarize the evidence and apply the standard of proof.
- **Evidence Rules**
 - Formal rules of evidence do not apply; relevance, reliability, and fairness govern.
 - The panel may exclude irrelevant, cumulative, or unduly prejudicial evidence.
 - Anonymous complaints may not be the basis for a finding.
- **Sequestration of Witnesses**
 - At the request of either party or on the panel's initiative, witnesses (other than the faculty member and the University representative) may be excluded from the virtual or physical hearing space except while testifying.
- **Counsel and Advisors**
 - Each party may be advised or represented by counsel or another advisor at their own expense.
 - The Panel Chair may set reasonable limits to ensure order and efficiency.
- **Deliberation and Decision**
 - After closing statements, the panel deliberates in private without HR or non-panel participants present.
 - Decisions are by majority vote.
 - A written Findings and Recommendations document is prepared and signed by panel members.

- **Professional Conduct Expectations**

All participants, including parties, advisors, witnesses, and representatives, are expected to conduct themselves in a professional and respectful manner. The Panel Chair may impose reasonable procedural limitations, recess proceedings, or remove disruptive participants when necessary to preserve the integrity and academic character of the hearing

XI. Interim Measures

1. Interim measures are non-punitive and administrative in nature, typically with full pay and benefits, and may include administrative leave, reassignment of duties, temporary removal from teaching or supervisory responsibilities, limitations on access to certain University facilities or systems, or temporary removal from specific environments where risk is present.
2. Interim measures may be imposed only when:
 - Continued duties pose an immediate and serious risk to safety or operations, or
 - Continued duties would seriously impede the investigation.
3. When such risk is present, interim measures may include immediate administrative leave and temporary restriction from University property, activities, or systems pending investigation.
4. Interim measures may be imposed prior to any finding of misconduct and are based solely on the need to protect safety, institutional operations, or the integrity of the investigation.
5. The President, Provost, or their designee may implement interim measures when necessary. The FPC Panel Chair (or designee) reviews any interim measure within five (5) business days of implementation and may affirm, modify, or lift it.
6. Interim measures are not evidence of misconduct and must be clearly labeled as such in all communications.
7. Interim measures shall be narrowly tailored to address the identified risk and shall remain in place only for the duration necessary to address that risk.

XII. Sanctions and Collateral Consequences

1. Corrective (Non-Disciplinary) Actions

- Coaching and mentoring.
- Faculty Development Plan (FDP).
- Classroom observations and feedback.

2. Disciplinary Actions (Non-Serious Sanctions)

- Written reprimand.
- Final written warning.
- Monitored probation.
- Targeted training requirements.
- Temporary limitation of certain duties or roles (e.g., committee chairing).

3. Serious Sanctions (require FPC hearing and Senate appeal opportunity)

- Prospective salary reduction.
- Suspension without pay for a defined period.
- Demotion in rank or removal from specific roles.
- Revocation of tenure.
- Dismissal for cause.

4. Collateral Consequences

- May include temporary removal of graduate faculty status, PI eligibility, overload teaching, or leadership roles.
- Collateral consequences must be explicitly stated, time-limited, and include conditions for reinstatement.

5. Proportionality

- Sanctions must be proportional to the nature and severity of the misconduct and consider intent, pattern, harm, remediation, and consistency with prior cases.

XIII. Non-Retaliation and Reporter Protections

1. Marshall University strictly prohibits retaliation against any person who:
 - Makes a good-faith report of misconduct or concern.
 - Participates in an investigation or hearing.
 - Serves as a witness or panel member.
2. Retaliation includes:
 - Adverse employment actions (e.g., negative evaluations, workload changes, loss of opportunities) motivated by the report or participation.
 - Threats, intimidation, or coercion.
 - Actions that would reasonably deter a person from reporting or participating.
3. Retaliation as Misconduct
 - Proven retaliation constitutes at least Serious Misconduct and may be treated as Grave Misconduct depending on severity.
4. Reporting Retaliation
 - Retaliation concerns may be reported to the Chair, Dean, FPC Chair, Provost, Title IX Office, or other designated reporting offices.
5. Supportive Measures
 - The University may implement supportive measures for reporters and participants, such as changes in supervision, workspace, or schedule, as appropriate.

XIV. Relationship to Grievance Procedures

1. This policy governs the investigation, adjudication, and sanctioning of alleged faculty misconduct.
2. The faculty grievance process remains available for:
 - Claims of unfair treatment not addressed in a misconduct process.

- Disputes over workload, resource allocation, or other employment conditions unrelated to a misconduct finding.
 - Alleged retaliation, which may also trigger a misconduct proceeding.
3. Limitations
 - The grievance process may not be used to re-litigate facts or misconduct findings already decided through an FPC hearing and Senate appeal.
 - Grievance officers or committees may not overturn or modify sanctions imposed through this policy.
 - Grievances related to issues intertwined with misconduct allegations will normally be held in abeyance until the misconduct process is complete.
 4. Knowingly false, malicious, or bad-faith allegations constitute misconduct under this rule. This provision shall not apply to complaints made in good faith that are not substantiated.

XV. Revocation of Tenure

1. **Tenure may be revoked only for adequate cause, following:**
 - An FPC hearing under this policy.
 - A clear and convincing evidence standard.
 - An appeal opportunity to the Faculty Senate Executive Committee.
 - Presidential review and action.
 - Where applicable, Board of Governors notification.
2. **Revocation of tenure may:**
 - Be coupled with dismissal for cause, or
 - Result in continued employment on a fixed-term appointment with explicit expectations and monitoring, in rare and carefully justified cases.

XVI. Dismissal for Cause

1. Dismissal for cause of a tenured faculty member, or of a non-tenured faculty member prior to the expiration of their appointment, must comply with:
 - This policy's procedural requirements.
 - MU BOG AA-6 provisions on dismissal for cause.
 - W. Va. Code
2. Dismissal for cause requires:
 - An FPC hearing and written findings of adequate cause.
 - Opportunity for Senate Executive Committee appeal.
 - Presidential action and Board of Governors notification.

XVII. Records, Reporting, and Expungement

1. Records

HR and Academic Affairs maintain official records of formal disciplinary actions and related hearing documents.

- **Record Retention**
The Office of the Provost, in coordination with Human Resources, shall maintain official records of faculty misconduct proceedings—including investigative reports, hearing recordings, findings, and final determinations—for a minimum period of seven (7) years following final resolution, unless a longer retention period is required by law or contractual obligation.
2. **Access**
 - Access to records is limited to individuals with a legitimate institutional need, consistent with law and University policy.
 3. **Expungement of Minor Discipline**
 - Minor (Tier 1) disciplinary records shall be expunged from personnel files after three (3) consecutive years of satisfactory performance with no related misconduct. Tier 1 corrective documentation shall not be considered in promotion, tenure, or merit determinations absent a documented pattern of materially similar misconduct.
 4. **Annual Reporting**
An anonymized annual report summarizing numbers and types of cases, sanctions, and resolution times will be provided to the University Faculty Senate's Faculty Personnel Committee.

XVIII. Training and Implementation

1. Annual training on this policy is required for:
 - a. Department Chairs and School Directors.
 - b. Deans and Associate Deans.
 - c. FPC members and panelists.
 - d. Investigators and relevant HR staff.
2. Training addresses:
 - Academic freedom and the nexus test.
 - Due process and impartial adjudication.
 - Evidence handling and confidentiality.
 - Recognition of bias and conflict of interest.
 - Appropriate use of corrective vs. disciplinary sanctions.

XIX. Review and Revision

This policy will be reviewed at least every five (5) years by the Faculty Personnel Committee, Faculty Senate, and Academic Affairs to ensure continued alignment with law, AAUP standards, and institutional needs. Proposed revisions follow shared governance processes and require appropriate approvals.

Appendix A Illustrative Misconduct Examples by Tier

*The following examples are **illustrative and non-exhaustive**. Classification of misconduct depends on the nature, severity, intent, frequency, context, impact, and applicable institutional standards. The absence of a specific example from this list does not preclude conduct from being addressed under this rule. The examples in this appendix are illustrative only and do not independently establish misconduct absent conduct meeting the definitions and standards set forth in Section VII.*

TIER 1 — MINOR MISCONDUCT

Generally isolated, low-impact, or first-time issues that are readily remediable through coaching, feedback, or a Faculty Development Plan.

Examples may include:

- **A. Workplace Conduct and Professional Interactions**
- Isolated workplace interaction concerns that are low-impact and readily correctable through supervisory coaching, and that do not involve hostility, intimidation, harassment, or disruption of institutional operations.
- Minor displays of frustration or discourtesy that do not involve hostility, intimidation, or a pattern of conduct.
- Repeated failure to respond to administrative communications after reminder.
- **B. Teaching & Course Management**
- First-time late submission of grades.
- Minor syllabus or assignment irregularities that do **not** affect student progress.
- Failure to post or hold office hours after a reminder.
- Incorrect or outdated information on syllabi without material impact.
- **C. Administrative Responsibilities**
- Occasional missed internal deadlines (assessment reports, schedules, updates).
- Minor errors in paperwork or recordkeeping without harm or pattern.
- **D. Student Interaction**
- Unclear communication causing minor confusion.
- Minor boundary concerns that are not inappropriate but require clarity or professional reinforcement.
- **E. Research/Compliance**
- Minor IRB or compliance oversight (e.g., late continuing review submission with no impact).
- Failure to complete required training (e.g., FERPA or Title IX) after reminder.
- Accidental or unintentional plagiarism that does not materially misrepresent scholarship and lacks intent to deceive.

TIER 2 — SERIOUS MISCONDUCT

Behavior that is repeated, willful, significantly harmful, violates important obligations, or reflects disregard for professional responsibilities. Tier 2 requires a formal referral and FPC hearing before any serious sanction.

Examples may include:

- **A. Professionalism & Conduct**
- Repeated unprofessional, disrespectful, or hostile interactions following documented notice from supervisor.
- Behavior that creates a disruptive or unhealthy working environment.
- Inappropriate comments or conduct that do **not** rise to Tier 3 harassment but are concerning.
- **B. Teaching & Student Impact**
- Significant grading irregularities or violations of academic policies.
- Failure to follow required accommodations (e.g., ADA) after notice.
- Ignoring safety protocols in labs, clinics, or fieldwork after prior instruction/reminder.
- **C. Confidentiality & Data Security**
- FERPA violations with potential or actual harm to students.
- Mishandling sensitive student information.
- **D. Retaliation (Non-Severe)**
- Lowering grades, limiting opportunities, or altering workload in apparent response to a student or colleague raising concerns.
- Excluding a colleague from routine departmental functions due to their participation in a complaint.
- **E. Research/Compliance**
- Failure to follow IRB protocol requirements after notice.
- Misuse of University resources or research property (not rising to fraud or criminal misuse).
- Significant or repeated plagiarism arising from negligent scholarship or disregard for professional standards, without evidence of intent to deceive
- **F. Neglect of Duty**
- Persistent failure to meet contractual expectations (teaching, advising, research, service) after documented intervention.
- Repeated refusal to carry out reasonable assignments or departmental responsibilities.

TIER 3 — GRAVE MISCONDUCT

Egregious, harmful, unethical, or illegal behavior that may warrant suspension, revocation of tenure, or dismissal. Requires expedited investigation, FPC hearing, and Board approval for dismissal.

Examples may include:

- **A. Research Misconduct (Confirmed by RIO/ORI Process)**
- Fabrication or falsification of research data.
- Serious plagiarism in published work or grant submissions (plagiarism cases must be intention (deliberate appropriation of another person's ideas, data, or language without attribution, with intent to deceive, or substantial plagiarism constituting research misconduct.)
- Manipulation/mechanical removal of data to produce false findings.
- **B. Exploitation, Harassment, and Abuse**
- Sexual harassment, stalking, coercion, or exploitation of students or supervisees.
- Quid-pro-quo relationships or abuse of power.
- Physical intimidation, threats, or credible threats of violence.
- Harassment, including intimidation, coercion, or targeted harassment of a colleague, student, or staff member; harassment of a colleague's family members or associates; intimidation outside the University context (e.g., through social media or other external venues); or knowingly false or malicious allegations intended to harm another individual.
- **C. Criminal or Dangerous Acts**
- Criminal conduct that impacts fitness to serve (e.g., assault, threats, fraud, identity theft).
- Possession or misuse of weapons or dangerous materials in violation of law or policy.
- **D. Severe Breaches of Integrity**
- Intentional falsification of University records, timesheets, financial documents.
- Significant misuse or misappropriation of University funds or property.
- Intentional destruction of evidence or obstruction of institutional processes.
- **E. Severe Retaliation**
- Threatening or harming individuals for participating in a complaint, investigation, or hearing.
- Direct interference with witnesses or evidence.
- **F. Gross Neglect of Duty / Unfitness to Serve**
- Complete abandonment of teaching responsibilities.
- Conduct that demonstrably undermines student safety or welfare.
- Severe or repeated violations that demonstrate unfitness for the faculty role.

Appendix B

Consequence Ladder

Consequence	When it's used	Prerequisites / Process	Typical Terms	Collateral Effects
Advisory Conversation (Documented Coaching) <i>(non-disciplinary)</i>	First, low-level issues; misunderstandings; performance drift	Chair/Director discussion; emailed summary to faculty; improvement checkpoints	1–3 months follow-up	Not placed in personnel file as discipline; may be referenced if issues persist
Faculty Development Plan (FDP) <i>(non-disciplinary)</i>	Performance gaps likely correctable (teaching, service, timeliness)	Written goals, supports, timeline (3–12 months), check-ins	Milestones; classroom observations; mentoring	FDP completion (pass/extend/fail) informs later steps
Written Reprimand	Policy breach or failure to meet FDP goals	Dean issues after review; faculty response opportunity	Specifies conduct, expectations, monitoring window	In personnel file; may affect merit for that cycle
Final Written Warning (last-chance)	Repeated or more serious breach after reprimand	Dean issues; states that further breach may trigger serious sanctions	6–12 months monitoring; may pair with targeted training	Eligibility limits (e.g., merit raise, overloads) during period

Consequence	When it's used	Prerequisites / Process	Typical Terms	Collateral Effects
Loss/Restriction of Specific Privileges (e.g., graduate faculty status, PI eligibility, chairing committees, independent study supervision)	Misconduct impacting supervision, safety, or integrity but not rising to severe sanction	FPC not required unless contested or severe; written notice with reasons and review window	1–3 years or until conditions met; periodic review	May affect stipend, course assignments, student load; report to Sponsored Programs if PI limits apply
Restitution / Financial Remedy	Verified misuse or loss to the University	Determination of amount; repayment schedule	Lump sum or installments; failure may escalate	May combine with other sanctions; reported as required
Mandatory Training / Monitored Probation	Correctable conduct or climate issues	Plan defines training, mentor, probation length	6–12 months	Non-completion escalates sanction
Salary Reduction (Prospective) — Serious Sanction	Sustained misconduct where continued employment is appropriate but deterrence warranted	FPC hearing → Senate appeal → Presidential action	Prospective only; amount and duration defined (e.g., 5–10% for 1–2 years)	Adjusts base going forward; cannot be retroactive

Consequence	When it's used	Prerequisites / Process	Typical Terms	Collateral Effects
Suspension With Pay (Interim) <i>(not a sanction)</i>	Safety/disruption risk pending outcome	Admin action; must be reported to FPC within 5 business days	Short, limited; reviewed every 30 days	No loss of pay/benefits; not a finding
Suspension Without Pay — Serious Sanction	Significant misconduct; strong deterrence needed short of separation	FPC hearing → Senate appeal → Presidential action	Time-limited (e.g., up to one semester); terms to return	No pay during period; may limit access to campus; may impact future merit/sabbatical eligibility per policy
Demotion in Rank or Role — Serious Sanction	Proven unfitness for current rank/responsibilities but continued service possible	FPC → Senate → Presidential action	Permanent or time-limited with re-review	Title/rank change; possible pay band change; duties reassigned
Revocation of Tenure — Serious Sanction	Adequate cause shown: gross misconduct, persistent neglect after notice/opportunity to improve, severe policy/law breach, or unfitness for continued service	FPC hearing (clear and convincing) → Senate appeal → Presidential action	See details below	Removes continuing-appointment presumption; may pair with dismissal or rare fixed-term continuation

Consequence	When it's used	Prerequisites / Process	Typical Terms	Collateral Effects
Dismissal for Cause — Serious Sanction	Adequate cause proven; separation is necessary to protect the University, students, or the integrity of the academic enterprise	FPC hearing → Senate appeal → Presidential action	Immediate separation upon decision; final pay/benefits per law	Loss of position; potential loss of emeritus eligibility; campus access may be restricted

Appendix C

Review Panel (Faculty Misconduct Panel)

Review Panel (Faculty Misconduct Panel):

A Review Panel is a five-member adjudicatory body constituted from a standing **pool of tenured faculty members of the University Faculty Personnel Committee (FPC), chaired by the FPC Chairperson**, who have completed required annual training under this rule. Review Panels are responsible for conducting hearings, making findings of fact, and recommending sanctions in cases of Serious or Grave Misconduct.

Panel Pool Composition and Training:

Members eligible for service on a Review Panel must:

- Be current members of the University Faculty Personnel Committee;
- Hold tenure at Marshall University;
- Complete annual training on this rule, including:
 - Academic freedom and the nexus requirement,
 - Due process and standards of proof,
 - Evidence handling and confidentiality,
 - Hearing procedures and witness examination,
 - Recognition and management of bias and conflicts of interest.

Panel Selection:

For each case, the FPC Chair selects four (4) panelists from the trained pool, giving reasonable consideration to disciplinary representation while ensuring impartiality. At least one panelist shall, when feasible, be from the faculty member's academic unit or a closely related field.

Conflict of Interest and Impartiality:

All Review Panel members must be impartial and free from actual or perceived conflicts of interest. Prior to service, panelists shall submit a written **Conflict of Interest and Impartiality Statement** affirming that they:

- Have no personal, professional, supervisory, or adversarial relationship with the faculty member, complainant, witnesses, or investigators that would compromise neutrality;
- Have no prior involvement in the investigation, classification, or administrative handling of the matter;
- Can adjudicate the matter fairly based solely on the record and applicable standards.

Any party may request recusal of a panelist for cause. The FPC Chair shall rule on recusal requests in writing. If the FPC Chair is the subject of a recusal request, the Faculty Senate Chair shall designate an alternate decision-maker for that determination.

Authority and Independence:

The Review Panel operates independently of Human Resources, Academic Affairs administrators, and investigators. HR provides logistical support only and does not participate in deliberations. Panel decisions are made by majority vote based on the evidentiary record and the applicable standard of proof.

Appendix D

Faculty Misconduct: Sanction Ladder Matrix

Marshall University (Benchmark-aligned). Use this matrix to map substantiated misconduct to proportional consequences. Serious sanctions (salary reduction, suspension without pay, demotion, revocation of tenure, dismissal) require FPC hearing, clear-and-convincing standard, Faculty Senate Executive Committee appeal, and presidential implementation. Specialized matters (Title IX, research misconduct/ORI, IRB/IACUC, HIPAA/FERPA) follow controlling policies for investigation; this matrix guides sanction selection and collateral terms. This matrix provides guidance for proportional sanctioning and does not replace the procedures or standards established in this rule.

Category	Example Misconduct	Default Tier	Typical Sanctions (starting point)	Escalate To (if pattern/egregious)	Routing / Notes
Teaching and Student	Unjustified no-shows/cancellations; failure to meet class obligations	Tier 1	Advisory + FDP; Written reprimand	Tier 2: Final warning; monitored probation; loss of overload eligibility; Tier 3 for chronic abandonment	Academic Affairs routing; document attendance/coverage
Teaching and Student	Arbitrary/capricious or discriminatory grading	Tier 2	Final warning; grade audit/redo; mandatory training; probation	Tier 3: suspension without pay; demotion in role; dismissal if willful and persistent	Coordinate with Registrar/EO; consider independent regrade
Teaching and Student	Significant intrusion of irrelevant/inappropriate content	Tier 1–2	Reprimand; syllabus remediation; observation; training	Tier 3 if pattern after notice	Academic freedom review to ensure protected content not penalized

Teaching and Student	FERPA breach of student records	Tier 2	Training; probation; access restrictions	Tier 3 if willful/widespread harm	Route through Registrar/Privacy Officer
Research and Scholarly	Research misconduct (FFP: fabrication/falsification/plagiarism)	Tier 3	Revocation of tenure + dismissal for cause (default); sponsor notifications	—	ORI/Research Misconduct policy controls fact-finding; this matrix sets sanctions
Research and Scholarly	IRB/IACUC/biosafety noncompliance (conduct outside approved protocol)	Tier 2	Removal of PI status; study hold; training; probation	Tier 3 if risk/harm/defiance: suspension without pay; dismissal	Route via IRB/IACUC/IBC; notify sponsors/regulators
Research and Scholarly	Data mismanagement; failure to maintain records; undisclosed selective reporting	Tier 2	Reprimand; probation; recordkeeping plan; PI restrictions	Tier 3 for willful deception or sponsor impact: salary reduction; suspension	Coordinate with Sponsored Programs
Research and Scholarly	Misrepresentation of credentials/contributions; coercive authorship	Tier 2	Reprimand; probation; correction/retraction; removal from committees	Tier 3 if material fraud: suspension or dismissal	Notify publishers as required
Professional and Collegial	Persistent neglect of duties after FDP	Tier 2	Final warning; monitored probation; workload adjustment	Tier 3: demotion; salary reduction; dismissal	Document FDP outcomes; ensure supports provided
Professional and Collegial	Interference with governance/retaliati	Tier 2–3	Suspension of committee	Tier 3: suspension without	EEO/HR consult; protect

	on against colleagues		roles; probation; training	pay; dismissal	complaints
Professional and Collegial	Dishonesty in reviews/committees; falsifying deliberations	Tier 2	Reprimand; removal from roles; probation	Tier 3 if consequential fraud: suspension; dismissal	Senate/Provost notified for governance integrity
Discrimination /Harassment	Harassment or discrimination (protected classes)	Tier 2–3	Suspension; pay reduction; role restrictions; mandatory training	Tier 3: demotion; dismissal for egregious conduct	Title IX/EEO investigates; discipline follows findings
Discrimination /Harassment	Retaliation against complainant/witnesses	Tier 3	Suspension without pay; dismissal for cause	—	Zero-tolerance; interim measures to prevent further harm
Conflict-of-Interest (COI)/ Commitment	Undisclosed financial COI; improper influence in research/procurement	Tier 2	Management plan; restitution if applicable; PI/role restrictions	Tier 3 if willful/benefit gained: salary reduction; suspension; dismissal	Follow COI policy; disclose to sponsors
Financial and Resource	Misuse/misappropriation of funds, P-card/grant/travel fraud	Tier 3	Restitution; suspension without pay; dismissal; possible criminal referral	—	Notify sponsors; audit; legal counsel
Financial and Resource	Unauthorized personal use of facilities/equipment /staff	Tier 2	Reprimand; restitution; access limits; probation	Tier 3 if significant value/pattern: salary reduction; suspension	Facilities/HR coordination
Information and Data	HIPAA/FERPA/Confidential data breach (negligent)	Tier 2	Training; probation; access	Tier 3 if willful/widespread:	Privacy/Security Office

			limits; incident remediatio n	suspension; dismissal	leads investigati on
Information and Data	Unauthorized system access; credential sharing	Tier 2	Reprimand; access revocation; probation	Tier 3 if intentional/i mpactful: suspension; dismissal	CISO involveme nt; reportable incident review
Safety and Compliance	Serious lab/field safety breach creating risk/harm	Tier 3	Suspension without pay; demotion; dismissal	—	EHS leads; regulator notificatio n
Safety and Compliance	Failure to report/correct known hazards; repeated PPE violations	Tier 2	Reprimand; training; lab restrictions; probation	Tier 3 for pattern/defi nition: suspension	EHS corrective action plan
Administration and Service	Falsification of official records (minutes, rosters, evaluations)	Tier 2–3	Reprimand; removal from admin roles; probation	Tier 3 if material impact: salary reduction; dismissal	Notify governanc e leadership
Administration and Service	Abuse of authority in admin roles (coercion, retaliation)	Tier 2–3	Role removal; probation; training	Tier 3 for grave misuse: suspension; dismissal	HR/Genera l Counsel consult
Legal and Criminal	Criminal conviction impacting fitness/safety (fraud, violence, exploitation)	Tier 3	Dismissal for cause (often) or suspension without pay pending outcome	—	Backgroun d, legal counsel; consider interim leave
Legal and Criminal	Misuse of university title/status in unlawful activity	Tier 3	Suspension without pay; dismissal	—	Public affairs/lega l coordinatio n
Other	Knowingly false or malicious	Tier 2	Reprimand; probation;	Tier 3 if severe	Safeguard against

	complaints; abuse of process		process training	harm: suspension	chilling legitimate reports
Other	Misuse of university name/logo; reputational harm unrelated to protected speech	Tier 1-2	Cease-and-desist; reprimand; training	Tier 3 for willful commercial misuse: suspension	Coordination with Marketing/Legal