

Senate Advisory Committee on University Affairs Report on Office of Institutional Equity Procedures and Conduct

Approved for public release by SACUA, March 9, 2015¹

Summary

This report contains the conclusions and recommendations of the Senate Advisory Committee on University Affairs (SACUA) regarding the procedures and practices of the Office of Institutional Equity (OIE). Concerns about the lack of due process in OIE's procedures and practices originated in reports to the Senate Advisory Committee on University Affairs (SACUA) from the Faculty Grievance Monitor (FGM) beginning in 2012. SACUA raised these concerns and sought information from the Director of Academic Human Resources (AHR) and the Director of the Office of Institutional Equity in November 2013. Failing to receive answers to its concerns, SACUA included in its Model Grievance Procedure Report to the Provost (April 8, 2014) an outline of perceived deficiencies with OIE procedures and a request that current procedures be reviewed, in consultation with SACUA, "with an eye toward due process and procedural fairness, including but not limited to, fair and adequate notice, fair investigation processes, and the ability to obtain an independent, meaningful and timely appeal of findings."

Shortly after submitting the April report, SACUA received a complaint from a faculty member who had been the subject of an OIE investigation. On receipt of a formal request and determining that the request fell within its jurisdiction, SACUA, on May 13, 2014, charged the Faculty Hearing Committee (FHC) with investigating and reporting on the complainant's allegations. While that inquiry proceeded, SACUA received a complaint from a second individual who had been the subject of an OIE investigation. After considering this individual's request, SACUA added the investigation of the second individual's complaint to the FHC's charge on August 4, 2014. Investigation of a third complaint was added to the FHC's charge on September 8, 2014.²

In conducting its inquiries, the FHC reviewed OIE procedures as described on their website, interviewed the complainants, and assembled available documents relevant to the cases. The FHC also attempted to interview the directors of AHR and OIE, but the FHC's requests were repeatedly refused on advice from the Office of General Counsel (OGC), even after clarification that the subject of the interviews was only the procedures and practices of OIE and not the substance of the cases.

The Faculty Hearing Committee submitted its report on the three cases on December 8, and SACUA formally accepted the report on December 22, 2014.

¹ Public report release note: Unit names, dates of events and communications, and other potentially identifying information related to specific cases (indicated with brackets) and all of Appendix C have been redacted from this version of the report.

² After completing this report, we received a communication from the UM-Flint Faculty Counsel raising, independently, concerns identical to ours, based on complaints from Flint faculty who had been subjects of OIE investigations.

The University has an ethical and legal responsibility to investigate complaints of sexual discrimination and harassment. We strongly endorse the importance of maintaining a work environment free of discrimination and harassment. But the University also has an ethical and legal responsibility to protect faculty rights and to assure that faculty accused of misconduct receive due process.

On review of the FHC's report and other materials, SACUA concurs with the conclusions of the FHC that the procedures for handling allegations against faculty lack the most basic elements of fairness and due process and that, in "each of the three cases investigated,...the process was deeply flawed" (Report of the SACUA Faculty Hearing Committee, Dec. 8, 2014 (hereafter FHC), p. 17). More specifically, we conclude, based on the available record, that

1. The procedures of the Office of Institutional Equity currently in effect, as presented in their policy documents, lack adequate due process protections for faculty subject to OIE investigations, including fair and adequate notice, fair investigation processes, and the ability to appeal OIE findings and decisions based on such findings.
2. In carrying out its inquiries, OIE sometimes fails to follow its stated procedures or exploits discretion in its procedures to deviate from "typical" practices, without justification and to the detriment of respondents.
3. Both OIE and AHR are staffed by employees who lack the academic backgrounds necessary to evaluate matters of an academic nature and whose status as employees subordinate and reporting to the executive officers of the University creates a conflict of interest inconsistent with their professed neutrality.

In light of these conclusions, SACUA makes the following recommendations:

1. The executive officers of the University take immediate steps to assure that OIE follow its own procedures and remove the discretion of OIE to deviate unilaterally from its procedures.
2. As recommended by SACUA in its April 2014 report, the current OIE procedures be reviewed and revised, in consultation with SACUA, to ensure "due process and procedural fairness, including but not limited to, fair and adequate notice, fair investigation processes, and the ability to obtain an independent, meaningful and timely appeal of findings."
3. Any decision or action arising in connection with an OIE investigation involving termination, dismissal, or demotion of a faculty member be pursued through the procedures provided in Regents Bylaw 5.09.
4. Immediately, and until such time as new acceptable procedures are adopted, all decisions and actions involving reports, investigations, or findings of OIE be subject to review under existing Grievance Procedures.
5. In light of the serious procedural deficiencies in their cases, and of compelling doubts about the validity of the OIE findings raised by the FHC investigations and in this report, the actions taken against the three complaining individuals be reversed until their cases can be reconsidered in a forum with appropriate due process protections. In addition, a review of other OIE cases involving faculty should be conducted to determine whether similar problems have arisen in cases that have not been brought to our attention and, if so, appropriate remedial actions be taken.

I. Introduction

This report contains the conclusions and recommendations of the Senate Advisory Committee on University Affairs (SACUA) in response to concerns about lack of due process in the procedures and practices of the Office of Institutional Equity (OIE) raised originally by SACUA's Faculty Grievance Monitor and subsequently by a Faculty Hearing Committee inquiry into complaints from three subjects of OIE investigations. As outlined in more detail in Appendix A, SACUA and its subunits, the Faculty Grievance Monitor and Faculty Hearing Committee, derive their authority to investigate and report on these complaints from Section 4 of the Regents Bylaws, from the University's Model Grievance Procedures, and from Section 10.H of the Faculty Handbook.

The central concerns of this report are the adequacy of due process protections in OIE procedures and OIE's application of those procedures in the complainants' cases rather than the substantive merits of those cases. We note, however, that the evidence available to us, examined in the course of reviewing OIE's practices, raises serious doubts about the validity of the OIE findings in these cases. SACUA does not take a position on the outcome of these cases. But our findings regarding lack of due process necessitate reconsideration of these cases.

1. ORIGINS OF SACUA'S CONCERNS AND INITIAL ACTIONS

Concerns regarding the procedures and practices of the Office of Institutional Equity (OIE) originated in reports to SACUA from the Faculty Grievance Monitor (FGM) beginning in 2012. In the course of performing the FGM's prescribed role, the FGM identified problems with the OIE procedures and practices in two grievances. Discussion of these concerns occurred at SACUA's August 26, 2013, meeting, as described in the minutes from that meeting. In reference to "[t]he packet of information regarding the Office of Institutional Equity,"³

[Chair Staller] stressed the two sections, "Information for Respondents" and "Information for Complainants", which start with "We are neutral". In the Respondent section, there is a sentence, "OIE's finding, however, cannot be the subject of the grievance". SACUA believes that this should be revisited.

Seeking to understand the nature and rationale for OIE's procedures and practices, SACUA invited OIE Director Walesby and AHR Director Frumkin to meet with SACUA, which they did on November 4, 2013. Having received confirmation from Directors Walesby and Frumkin of the procedures that SACUA found problematic and failing to obtain answers to one of its central concerns — the justification for prohibiting appeals of OIE decisions — SACUA included in its Model Grievance Procedure Report to the Provost an outline of perceived deficiencies with OIE procedures (April 8, 2014):

III. Recurring Pattern Revealing OIE-Grievance Process Issues

SACUA's role in overseeing grievances allows us to monitor cases for common patterns or systemic problems. Of the 8 grievances filed over the past two years, two involved a similar fact pattern. Furthermore, both these cases implicated the relationship between OIE investigations and the Unit's grievance procedure. This observation led SACUA to investigate OIE policy and processes. Here we identify an issue common to these cases that, we believe, raises serious due process concerns with the existing OIE process.

³ Throughout, extended excerpts and quotations are indicated by vertical lines at the left-hand border to facilitate distinguishing quotations from indented text.

SACUA has spoken with Jeff Frumkin, Anthony Walesby, and Chris Whitman about this issue.

1. Problematic Relationship between OIE investigations and Grievances. The recurring fact pattern that produced two independent grievances both involved a discrimination or harassment allegation lodged with OIE against a faculty member. OIE investigated the case and ultimately made a finding against the faculty member. The findings were reported to the Dean who, based on the OIE report, imposed serious sanctions on the faculty member. The faculty member then filed a Grievance. However, in both cases, the faculty members' real complaints were not with the sanctions imposed by the Dean (which were arguably appropriate given OIE's reports) but rather with the inability to appeal or contest the OIE investigation and/or report in the first place. This inability to appeal OIE's investigation—coupled with the serious sanctions that can be imposed based on them—raises due process issues and structural concerns about the relationships between these two processes. Without the ability to appeal OIE decisions, some aggrieved faculty [have] sought to use the grievance procedure as a proxy for an appeal against OIE's finding. These grievances would, by the current grievance procedure, fail for being non-grievable. SACUA believes that explicit consideration should be given to the interaction of these two policies.

2. Problematic OIE policy. SACUA is extremely concerned with the current state of due process in OIE harassment and discrimination investigations for the following reasons: a) there is no opportunity for either side to appeal OIE's finding (this limitation may burden complainants even more than respondents given the low success rate of complaints.); b) respondents do not receive adequate notice that OIE investigations can result in serious sanctions following the investigation; and c) complainants and respondents are misled and misinformed by OIE's repeated written assertions that "we are neutral" and "OIE does not take sides."

In light of these concerns, the Report included the following recommendations:

6. Request that the General Counsel's Office, in consultation with SACUA, review the OIE discrimination and sexual harassment processes with an eye toward due process and procedural fairness, including but not limited to, fair and adequate notice, fair investigation processes, and the ability to obtain an independent, meaningful and timely appeal of findings.

7. Request that the General Counsel's Office, in consultation with SACUA, examine the relationship between OIE investigations and the Faculty Grievance Procedure to ensure effective and fair administration.

2. RECEIPT AND REFERRAL OF COMPLAINTS TO THE FACULTY HEARING COMMITTEE

Shortly after submitting its report to the Provost, SACUA received a complaint from a faculty member (referred to hereafter as C1) who had been the subject of an OIE investigation. On receipt of a formal request and determining that the request fell within its jurisdiction, SACUA, on May 13, 2014, charged the Faculty Hearing Committee (FHC) with investigating and reporting on the complainant's allegations. While that inquiry proceeded, SACUA was contacted by a second individual (C2) who had also been the subject of an OIE investigation. After consideration, SACUA added the investigation of C2's complaint

to the FHC's charge on August 4, 2014. The complaint of a third OIE subject (C3) was subsequently received and added to the FHC's charge on September 8, 2014.

In conducting its inquiries, the FHC reviewed OIE procedures as described on their website, interviewed the complainants, and assembled available documents relevant to the cases. The FHC also attempted to interview the directors of Academic Human Resources and the Office of Institutional Equity, but the FHC's requests were repeatedly refused on advice from the Office of General Counsel (OGC), even after clarification that the FHC only wished to discuss the procedures and practices of OIE and not the substance of the cases. The Faculty Hearing Committee submitted its report on the three cases on December 8, and SACUA formally accepted the report on December 22, 2014.

The current report begins with a review of principles and policies relevant to assessing the adequacy of OIE's procedures in cases involving faculty. This is followed by (i) an assessment of OIE's procedures in light of these principles and policies; (ii) a summary and assessment of OIE's conduct in relation to these broad principles and OIE's stated procedures and its responsiveness to SACUA's requests; and (iii) our conclusions and recommendations for addressing the deficiencies in OIE's current processes and conduct.

II. Principles of Due Process and Fair Hearing

Faculty in general and tenured faculty in particular possess certain rights as a matter of both law and University policy. Because determinations by the OIE can have serious career-altering implications, such determinations must satisfy high standards for due process.

1. RIGHT TO DUE PROCESS AND FAIR TREATMENT

Faculty in public universities have a right to due process under the Fourteenth Amendment in actions that would encroach on the faculty member's property or liberty interests. Property interests are most clearly implicated in cases of termination of a tenured faculty member. But due process is also required where University actions stand to injure a faculty member's "good name, reputations, honor, and integrity."⁴ In addition, faculty frequently have rights to fair treatment in contract law.

Regardless of the legal and constitutional requirements, it is in the interest, and has been the policy, of the University of Michigan to treat faculty fairly. Recognition of this interest and the importance of due process appear in numerous University policy statements. The Bylaws of the University of Michigan Regents provide for tenure of an indefinite term (5.08.1) that may only be removed or degraded pursuant to procedures prescribed in Bylaw 5.09. These procedures provide for, among other things, hearings before a committee of peers and review by the Tenure Committee and by SACUA. The University also affirms the need for fairness and due process in matters affecting faculty short of termination or demotion in the recently enacted Model Grievance Procedure (2010), which "provides for redress when a decision or action concerning a faculty member's conditions of employment ...violates University policy or is otherwise manifestly unfair," establishes a "peer-based procedure to ensure the prompt, effective, and fair resolution of faculty members' grievances" and further requires that "[t]he grievance procedure must comply with the demands of due process, most critically, fair notice and an opportunity to be heard." Finally, the Senate Assembly Statement on Academic Freedom, incorporated in the University of Michigan Faculty Handbook (Sec. 1.C) stresses the essential role of due process in preserving academic freedom, the first line in the defense of which is accomplished "by ensuring that institutional discipline of faculty members is in proportion to the severity and persistence of misconduct, and by insisting that

⁴ Patrick D. Pauken, "Substantive and Procedural Due Process," and "Due Process Rights in Faculty and Staff Dismissal," pp. 135-141, in Charles J. Russo (ed.), *Encyclopedia of Law and Higher Education*, 2010.

alleged offenses be handled with appropriate standards of due process, including, wherever possible, the judgment of competent peers.”

2. ELEMENTS OF DUE PROCESS AND FAIR TREATMENT

The right to due process does not establish a unique set of requirements applicable in all cases. Rather, the requirements of due process are context-specific, depending on a balancing of rights and interests. In that respect, the severity of the potential harm of an adverse determination to a faculty member’s livelihood and reputation, not to mention society’s interest in preserving academic freedom, supports relatively stringent legal due process requirements. Regardless of the minimal legal requirements of due process, however, the University’s interest in and commitment to fair treatment of faculty demands adherence to high standards of due process. Principles and elements of due process on which there is broad agreement include:⁵

- fair and adequate notice;

As required by Regents Bylaw 5.09 in cases involving termination or demotion, notice should “state with reasonable particularity the charges which the executive authority proposes to investigate.” In addition to notice of the “charges” and the basis for them, the requirement of notice generally requires the opportunity to correct behavior: “[D]ue process demands that college and university officials offer employees notice of alleged rule violations and, where possible, opportunities to correct their behavior.”⁶

- a fair and competent investigation process, including access to the evidence necessary to support or defend oneself against charges and the opportunity to respond to and challenge opposing facts and arguments;

In addition to basic due process requirements, employees are entitled to inspect and make copies of their personnel files as a matter of both University policy⁷ and Michigan law.⁸

⁵ One authoritative and often-cited source, referenced in the FHC Report, lists the following elements:

1. An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.

H.J. Friendly, “*Some Kind of Hearing*”, 123 U. Pa. L. Rev. 1267 (1975). (As of 2011, this article ranked 48th in a listing of all-time most cited law review articles (Fred R. Shapiro and Michelle Pearce, *The Most-Cited Law Review Articles of All Time*, 110 Mich. L. Rev. 1483 (2012)).)

⁶ Patrick D. Pauken, *Due Process Rights in Faculty and Staff Dismissal*, pp. 135-141, Charles J. Russo (ed.), *Encyclopedia of Law and Higher Education*, 2010.

⁷ See <http://www.provost.umich.edu/faculty/handbook/12/12.C.html> and <http://www.ogc.umich.edu/frequently-asked-questions/faq-personal.html>. Among the rights of the grievant (and respondent) under Section 3.05 of the University of Michigan Model Grievance Procedure is the right “[t]o have access to all relevant evidence,

- a fair hearing by knowledgeable and impartial arbiters;

Because of the nature of academic inquiry and its often specialized subject matter, fair treatment in cases involving the professional activities of faculty, in addition to conforming to other generally applicable principles, requires that assessments and conclusions be informed by or subject to review by “the judgment competent peers.”⁹

- a decision based on facts accompanied by a written explanation that identifies the factual basis for the decision;

Regents Bylaw Section 5.09 requires production of a written report containing “the hearing committee's conclusions and recommendations and the reasons therefor,” including, where a dismissal or demotion is recommended, “a specific statement of the deficiencies or acts of misconduct on which the recommendation is based.” Similarly, Section 3.11 of the Model Grievance Procedures provides that decisions include “a summary of the testimony, factual findings, [and] conclusions with reasons the grieved decision or action was or was not violative of University policy or otherwise manifestly unfair.”

- independent, meaningful, and timely appeal.

The University itself affirms the opportunity to appeal as an essential element of fair hearings, in precisely the kinds of cases handled by OIE, in its Statement of Student Rights and Responsibilities (Section IV. Procedures):¹⁰

Stage 3: Appealing the Resolution Process

An appeals process is an essential safeguard for an imperfect human process that attempts very hard to be fair. The appeals process is available to each party. Appeals may be filed for the following reasons: proper procedures were not followed, the evidence clearly does not support the finding(s), sanctions/interventions are insufficient or excessive relative to the violation, or there is new evidence not reasonably available at the time of the hearing.

What is true of cases involving students is even more compelling in cases involving faculty where liberty and property interests associated with tenure mandate due process protections. The necessity of an opportunity for appeal is especially critical where investigations are conducted and conclusions arrived at by nonacademic employee staff.

testimonial and documentary, except confidential evaluations and evidence that would infringe upon the privacy interests of third persons.”

⁸See Bullard-Plawewski Employee Right to Know Act (<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-397-of-1978.pdf>).

⁹ University of Michigan Faculty Handbook, Section 1.C.

¹⁰ This provision has appeared in the Statement since at least 2005.

III. Office of Institutional Equity Procedures

The Office of Institutional Equity website describes its role as follows (<http://hr.umich.edu/oie/complaint.html>):

The Role of the Office for Institutional Equity in Responding to Reports and Complaints of Discrimination

The Office for Institutional Equity is an administrative office, not an internal judicial or legal office. Its function is to determine whether University policies or procedures regarding discrimination or discriminatory harassment have been followed. If violations are found, the Office works to remedy the situation and relieve the complainant of the burden imposed on her or him by the inappropriate actions.

The oie consultant remains impartial at all times when investigating a charge of discrimination, discriminatory harassment, or retaliation. The consultant is neither an advocate nor an adversary with respect to the complainant, the person accused, or witnesses. The consultant is responsible for gathering any evidence that will help the University meet its requirements for nondiscrimination, regardless of whose position that evidence supports.

Discrimination and Discriminatory Harassment Resolution Goals

- Provide timely, sensitive, and discreet responses to complaints and reports of discrimination, discriminatory harassment and retaliation.
- Investigate complaints and reports of discrimination thoroughly and impartially, and work to arrive at an appropriate and equitable resolution.
- Work to improve the University's response to reports and complaints of discrimination, discriminatory harassment, and retaliation.

1. THE NATURE OF OIE ACTIVITIES

In the course of determining whether University policies or practices have been violated, OIE performs multiple types of activities. The first is investigative: “investigating” charges and “gathering of evidence.” Second, OIE evaluates evidence and makes conclusionary determinations:

- OIE documents advising complainants and respondents state, “After receiving the Complainant’s and Respondent’s comments, OIE analyzes the evidence and reaches a conclusion” (Information for Complainants, and Information for Respondents).
- Consistent with this, AHR Director Frumkin and OIE Director Walesby consistently referred to the outcomes of cases as “decisions” at their meeting with SACUA (SACUA minutes, Nov. 4, 2014).
- In correspondence with SACUA, Director Frumkin stated, “After carefully weighing all the evidence, OIE makes a determination regarding whether a violation of University policy has occurred” (email correspondence, January 13, 2014).
- According to OIE Director Walesby, OIE findings are effectively determinative: “[Walesby] said the deans accept 100% of the OIE findings” (SACUA minutes, Nov. 4, 2013).

Third, although it advises respondents that “OIE does not impose corrective action” (Information for Respondents), the description of its role reproduced above includes, “If violations are found, the Office works to remedy the situation” and “to arrive at an appropriate and equitable resolution,” suggesting that

OIE also participates in prescribing remedies and implementing its decisions.¹¹ Such remedial action “can include, but is not limited to, specialized training, time off without pay, and other actions up to and including termination” (Information for Respondents).

Significantly, and consistent with its self-description as “an administrative office, not an internal judicial or legal office,” the Office of Institutional Equity does not hold hearings.

2. OIE PROCEDURES

2.1. General procedures

Although the OIE website appears to describe only one procedure, OIE apparently operates under two sets of procedures, the application of which depends on who initiates the case (Frumkin email correspondence, Jan. 13, 2014).

2.1.a. Complainant-initiated cases. According to AHR Director Frumkin, for cases “resulting from a complaint filed under a University Policy” (email correspondence, Jan. 13, 2014),

The process includes the opportunity for both the Complainant and the Respondent to review a written summary of the statement of each person interviewed (Complainant, Respondent and other witnesses) and documentation or other evidence reviewed by OIE and provide comment before the report is finalized. The Respondent and Complainant also receive a copy of the final report that is provided to the Dean.

For additional detail on this process Frumkin references the documents “Information for Complainants” (IFC) and “Information for Respondents” (IFR), which include the following provisions:

Understanding the complaint. The first step OIE takes in an investigation is to gather information about the complaint. This usually involves interviewing the Complainant and gathering all evidence the Complainant has, including documentation and names of witnesses, if any. The Respondent is not present during the Complainant’s interview and vice versa.

Interviewing the Respondent. After OIE understands the nature and scope of the complaint, the Respondent is asked about the allegations and given a full and fair opportunity to respond. The Respondent is also asked to provide any documentation and identify witnesses relevant to the complaint. Respondents are strongly encouraged to share all information they have regarding the matter.

Review. If OIE determines it will produce a written investigation report, the Complainant and Respondent, if participating in the investigation, will typically be provided with a written summary of the statement of each person interviewed (Complainant, Respondent and other witnesses) and documentation or other evidence reviewed by OIE. To ensure accuracy, the Complainant and Respondent are given the opportunity to provide clarifying comments on the summary. OIE reviews the comments submitted by the parties, if any, and determines whether the report should be modified. All comments from the parties are considered in reaching a determination on the matter.

¹¹ See, also, OIE Investigative Report [C3, date]: “This concludes our review of this matter. We are happy to meet with you [i.e., the unit head] discuss [sic] possible next steps.”

Decision and follow up. After receiving the Complainant's and Respondent's comments, OIE analyzes the evidence and reaches a conclusion. If an investigation report is produced, Complainant and Respondent receive a copy and it is submitted to relevant administrators for follow up. If OIE determines that inappropriate behavior or discrimination or harassment has occurred, the relevant administrators will follow up with corrective action aimed at addressing the offending behavior.

OIE is also apparently guided in its "case processing" by a document titled "The University of Michigan Procedural Guidelines for Handling Discrimination and Harassment Complaints" (Guidelines), which describes additional regulations and authorities not contained in the IFC and IFR. Relevant passages (excerpted verbatim except where indicated with brackets; emphasis added) include:

- The Office of Institutional Equity may deviate from these Guidelines as necessary to achieve the goals of prompt, thorough and effective complaint resolution in a procedurally fair manner.
- To file a complaint, a Complainant should contact a University official [...] within 180 days following the last occurrence of the behavior. [...] The Office of Institutional Equity may accept a complaint filed after the 180 day time limit for good cause shown, as determined by the Office of Institutional Equity.
- Discrimination and harassment complaints will be handled in a confidential manner to the extent possible and consistent with principles of due process.
- **Investigation Process.** The Office of Institutional Equity will determine the most effective method of investigating the concerns raised by the Complainant. In most cases, this will involve conducting a thorough fact-finding investigation, which includes meeting with the Complainant, Respondent, pertinent witnesses, and reviewing and analyzing relevant documents as they relate to each allegation of the complaint. ... Occasionally, a different or less formal response to the complaint may be warranted. Although the Office of Institutional Equity may deviate from these guidelines, it will still respond to the complaint in a prompt, thorough and effective manner that is procedurally fair.
- **Investigation Report.** When an investigation is conducted, the Investigator will prepare a written report at the conclusion of the investigation. The Complainant and Respondent will be given an opportunity to review a summary of the evidence gathered during the investigation, and given five (5) days to submit comments on that draft summary to the Investigator. The Investigator will address factual inaccuracies and misunderstandings, supported by evidence, identified by either party.

Following the receipt of any comments submitted, or after the five (5) day comment period has lapsed without comment, the Investigator will make a determination regarding the merit of the allegations. The Investigator's written report will contain (1) a summary of the Complainant's relevant allegations, (2) a summary of the Respondent's relevant statements in response to the allegations, (3) a description of the relevant information provided by witnesses or obtained from documents including comments submitted in response to the draft report, and (4) the Investigator's analysis and findings.

The Investigation Report will be provided to the Complainant, the Respondent and the appropriate supervisor. A copy of the investigation report will be provided to OIE if the Investigator is not from OIE, the appropriate Human Resources Office, unit Human Resources Representative and other pertinent University officials as

- necessary to ensure proper resolution and follow-up regarding the matter. The Investigator's involvement in the matter concludes when the investigation report is issued.
- **Evidentiary Standard.** The Investigator's findings of fact will be made using the "preponderance of the evidence" standard. Under this standard, individuals are presumed not to have engaged in the alleged conduct unless a "preponderance of the evidence" supports a finding that the conduct occurred. This "preponderance of the evidence" standard requires that the evidence supporting each finding be more convincing than the evidence offered in opposition to it.
 - **Corrective Action.** If the report finds that discrimination or harassment occurred, the University will determine appropriate corrective action, up to and including dismissal. The University may also take corrective action if no discrimination or harassment is found, but Respondent is found to have engaged in inappropriate workplace behavior.
 - **Appeal.** Respondent may grieve any corrective action that is disciplinary in nature through the grievance mechanism available to that faculty or staff member. The Investigation Report will be made available to the body hearing the grievance.

Notable features of these guidelines not disclosed to complainants or respondents in the IFC and IFR documents include (i) the requirement that handling of cases be consistent with due process and be procedurally fair; (ii) the use of preponderance of evidence as the evidentiary standard; (iii) the authority of OIE to deviate from the guidelines at its own discretion; (iv) the prescription of time periods for filing complaints and reviewing summaries; (v) content prescriptions for OIE reports; and (vi) the possibility that the University may take "corrective action" even if no discrimination or harassment is found.

2.b. Administrator-initiated cases. According to AHR Director Frumkin, a different procedure applies for cases initiated by an administrator (email correspondence, Jan. 13, 2014):

There is a second type of Report typically characterized as a "Management Report". Management Reports are typically developed when a Dean asks OIE (often in concert with AHR) to review a matter where, for example, there is no complainant (or the University is acting as the Complainant) or the matter does not involve a direct allegation of policy violation. The occurrence of such a Report is infrequent, and often involves an allegation that the Faculty-Student or Employee-Student consensual relationship policy has been violated. Unlike the process described above, the faculty member does not receive a copy of the Report prior to submission to the Dean. However, the Provost's Office does emphasize that prior to any action being taken by the Dean, the faculty member should receive the Report and be given the opportunity to comment.

The preceding constitutes the sole information we have about the existence and nature of this second procedure. As far as we have been able to determine, its existence and features are not disclosed on the OIE website; at a minimum, they are not prominently featured. As described above, respondents in such cases, unlike complainant-initiated cases, are not given an opportunity to review OIE's summary of their testimony or provided other information about the origins or nature of the allegations that prompted OIE's inquiry prior to OIE's transmittal of its report to the relevant administrator. The lack of other documentation concerning the process in administrator-initiated cases leaves it unclear whether other procedures associated with complainant-initiated cases are applied in these cases or even whether respondents are informed that the procedures described on the OIE website do not apply to their cases.

2.2. Specific OIE policies and procedures

2.2.a. *Neutrality and thoroughness.* OIE repeatedly represents itself as a neutral actor that conducts fair, impartial, and thorough reviews:

- We are neutral. OIE does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on evidence. We also help Complainants and Respondents by providing information about support and advocacy services (Information for Complainants, Information for Respondents, various years).
- OIE conducts a fair, equitable and timely investigation (id.).
- [OIE i]nvestigate[s] complaints and reports of discrimination thoroughly and impartially (<http://hr.umich.edu/oie/complaint.html>).

2.2.b. *Notice.* OIE informs respondents in complainant-initiated cases that OIE will provide them “enough information about the allegations to allow them a full and fair opportunity to respond.” At the same time, OIE “strongly encourage[s] respondents] to share all information they have regarding the matter” (Information for Respondents).

2.2.c. *Hearings.* OIE conducts “interviews.” OIE procedures contain no mention of hearings.

2.2.d. *Opportunity for response.* In complainant-initiated cases, complainants and respondents are told that they “will typically be provided with a written summary of the statement of each person interviewed (Complainant, Respondent and other witnesses) and documentation or other evidence reviewed by OIE” and “given the opportunity to provide clarifying comments on the summary.” OIE’s internal guidelines, however, reserve the right for OIE to deviate from this process without informing the parties in advance and for OIE to decide whether its report should be modified in light of comments submitted by the parties. Respondents in administrator-initiated cases are not provided an opportunity to review and respond to testimony or documentation prior to OIE issuing its report. OIE encourages unit administrators to provide respondents in the latter cases an opportunity to respond to OIE’s report only after it is complete and has been submitted.

2.2.d. *Reporting.* Complainants and respondents are told that “an investigative report will be produced.” OIE’s internal guidelines provide that OIE issue a written report containing “(1) a summary of the Complainant’s relevant allegations, (2) a summary of the Respondent’s relevant statements in response to the allegations, (3) a description of the relevant information provided by witnesses or obtained from documents including comments submitted in response to the draft report, and (4) the Investigator’s analysis and findings.”

2.2.e. *Appeal.* OIE maintains that its findings are neither appealable nor grievable: OIE documents specifically prohibit the use of the faculty grievance procedures to challenge OIE findings (Information for Respondents):

If a Respondent does not agree with the disciplinary action taken, the corrective action may be grieved using the applicable grievance procedure. OIE’s finding, however, cannot be the subject of the grievance.

AHR Director Frumkin repeated the determinative and non-appealable character of OIE conclusions (email correspondent, Jan. 13, 2014):

To the question about the ability of a faculty member to appeal the substantive finding of an OIE Report, the answer is no.¹² After carefully weighing all the evidence, OIE makes a determination regarding whether a violation of University policy has occurred. They do not make recommendations regarding possible sanctions or actions to take to address the matter (other than recommending possible training). The Dean's office, working closely with campus partners, determines the appropriate next steps if there is a violation of University policy. As such [sic], the OIE determination is not within the scope of the faculty grievance procedure.

3. IMPLEMENTATION OF OIE PROCEDURES

In the fall of 2013, SACUA invited OIE Director Walesby and AHR Director Frumkin to visit SACUA to discuss the concerns first raised by the Faculty Grievance Monitor. Mr. Walesby described the procedure that OIE follows in response to a complaint of sexual harassment or discrimination as follows (as recorded in the SACUA minutes of Nov. 4, 2013):

Mr. Walesby said that the OIE conducts investigative work under authority of Standard Practice Guide (SPG) guidelines regarding sexual harassment and non discrimination. He said that the OIE is a neutral body. When a complainant comes forward, they first talk with the complainant and write a draft statement. They then ask the complainant to review the draft for accuracy and completeness. They also evaluate the need for intermediate steps such as separating the parties.

Next, Mr. Walesby said, OIE personnel contact the accused and ask them to meet. He said the OIE shares minimal information prior to meeting. At the meeting, they share an information sheet with the accused (distributed item 4) and ask them to sign a statement acknowledging that they understand it. He said the accused do not get to read the complainant statement, but rather are asked questions crafted by OIE based on the complaint. Following that interview the OIE prepares a draft statement from the respondent. Subsequently, the OIE shares documentation with both parties and gives them five days to respond to a draft report that contains no finding. After that, the OIE issues its report with findings to the unit dean. He said the standard invoked in the finding is “preponderance of the evidence,” not “clear and convincing evidence,” and not “beyond reasonable doubt.”

Mr. Walesby said that neither the complainant nor the respondent get to see a draft finding or to respond to it. He said that there is no opportunity to review or appeal the OIE findings, and that the accused are not permitted to face or cross-examine their accusers. He said “We feel it is inappropriate (to permit cross-examination) and we get guidance from the federal government.”

Broadly consistent with OIE policy documents, Director Walesby’s description reveals that OIE intentionally provides respondents with “minimal information” and confirms that respondents are denied the opportunity to question their accusers, that parties are not allowed to review and respond to OIE findings before they are issued, and that there is no opportunity for appeal or review after OIE issues its findings.

¹² As discussed in more detail below, the question SACUA posed to Frumkin was not whether OIE findings were appealable but *why* OIE findings were not appealable.

4. CONFORMANCE WITH DUE PROCESS AND FAIR DEALING

Even if fully observed as described in OIE documents and testimony, OIE procedures are deficient with respect to several due process requirements, including

- By its own assertion, the “Office for Institutional Equity is an administrative office, not an internal judicial or legal office” (OIE website). As an administrative office, it is subordinate and reports to the executive officers of the University, creating a conflict between the duties of its staff as employees of the University and its assertions of neutrality.¹³
- OIE operations combine the functions of, in effect, investigation, fact-finding, prosecution, and judgment in a single office and, often, a single non-academic staff member.
- As a matter of deliberate policy, OIE provides respondents with “minimal information” about the complaints against them and expects respondents to answer questions without knowledge of the specific allegations or the evidence supporting it.
- OIE procedures provide limited or no opportunity to examine documentation relevant to their cases.
- OIE “strongly encourage[s respondents] to share all information they have regarding the matter” without informing them that information that they provide may form the basis for adverse findings and/or disciplinary actions even if the information does not bear on the original allegation.
- OIE provides partial, incomplete, and potentially misleading information about the procedures applicable in OIE inquiries. Among other things, the standard information materials provided to respondents do not inform them of the evidentiary standard used; the existence of alternative procedures and, in the case of administrator-initiated cases, that the procedures described on the OIE website do not apply to their cases; the possibility of discipline despite absence of policy violations; and OIE’s discretion to deviate from its procedural guidelines without notice.
- OIE procedures do not provide for a formal hearing and provide no opportunity to question witnesses or complainants or otherwise to present a defense to specific allegations.
- Contrary to the requirements of peer review in an academic setting, the individuals responsible for carrying out OIE investigations and making conclusionary determinations — including, especially, the directors of OIE and AHR — are not faculty, much less experts in the specific fields or disciplines of particular complainants or respondents.
- OIE adopts the lowest possible evidentiary standard (short of presuming guilt barring proof otherwise) of “preponderance of the evidence,” under which even slight errors or mistakes can result in adverse judgments.
- OIE denies both complainants and respondents any form of review or appeal of OIE determinations.

¹³ The fact that OIE is also the office responsible for Title IX compliance raises additional concerns about whether the office can be considered “structurally impartial” (“Rethink Harvard’s Sexual Harassment Policy,” Statement of 28 Harvard Law School Faculty, *The Boston Globe*, Oct. 14, 2014 ([link](#))).

Each of these departures from due process is serious in its own right; in combination, they are overwhelming. Perhaps most troubling, in light of deficiencies elsewhere in the process, is the prohibition of appeals. Even if decision makers all perform their roles in good faith, an appeals process is, as the Statement of Student Rights and Responsibilities avows, “an essential safeguard for an imperfect human process.” The necessity of appeal is even more compelling for faculty where the nature of academic activity and the high degree of specialization and variety of disciplinary practices — the factors underlying peer review throughout academic institutions — impede understanding by nonacademics, thereby increasing the likelihood of error in decision making. Recognizing the potential for conflicts of interest and bad faith to enter decision making makes meaningful and impartial appeal an absolute necessity.

As noted elsewhere in this report, our request for the origins and justification of the prohibition of appeals of OIE decisions has gone unanswered. In an email purporting to be a response, AHR Director Frumkin, after asserting that “the OIE determination is not within the scope of the faculty grievance procedure,” reproduced Sec. 1.03 of the Model Grievance Procedure (mislabelled Sec. 1.02) under the heading “The scope of the Faculty Grievance Procedure” (email correspondence, Jan. 13, 2014). Although Director Frumkin only cites Sec. 1.03, we include here Sections 1.04 and 1.06, which are also potentially relevant (emphasis added):

Sec. 1.03. The procedure applies only to decisions made by academic units (schools, colleges, centers, institutes, and programs) acting through Deans, Directors, department chairs, and other authorized persons....

Sec. 1.04. The procedure applies only to a decision or action concerning a specific individual or specific individuals, including those adversely affected by application of policy or standard operating procedure, written or unwritten....

Sec. 1.06. The procedure does not serve as an additional step in a dispute that has been addressed in another formal hearing procedure of the University or a University unit. But a faculty member may use this grievance process to review new sanctions imposed by an academic unit acting on the basis of findings made in a different hearing procedure.

Director Frumkin’s communication is not explicit as to why Section 1.03 precludes grievances of OIE decisions, but presumably the argument is that, because the University has located conclusionary determinations within OIE, a conclusion that a faculty member violated university policy is not a decision made by an academic unit. Although Frumkin did not allude to it, one could also imagine a claim that Sec. 1.06 precludes grievances because OIE’s inquiries constitute “another formal hearing procedure.” For reasons described elsewhere in the report, we reject the contention that OIE’s inquiries constitute a formal hearing, much less a process that meets the requirements of due process in this setting. Furthermore, both cases in which academic units initiate OIE investigations and those in which academic units impose penalties despite OIE findings of no policy violation cannot reasonably be deemed to be anything other than “decisions made by academic units” and, for that reason, fall within Sec. 1.03.

Regardless, such a legalistic reliance on provisions of the grievance procedure to bar grievability of OIE decisions just begs the question at issue, namely, *why* current University policy prohibits review of assessments of faculty conduct made by nonacademic staff. At most, the coverage provisions of the grievance procedure are a manifestation, not the source, of the prohibition. The pertinent and as yet unanswered question remains why the University denies faculty access to an appeals process that it regards as “an essential safeguard” for students.

IV. Office of Institutional Equity Conduct

In response to complaints from three faculty members who had been the subject of recent Office of Institutional Equity investigations, SACUA charged the Faculty Hearing Committee with investigating OIE's handling of the allegations against the faculty. In conducting its inquiries, the FHC reviewed OIE procedures as described on their website, interviewed the complainants, and assembled available documents relevant to the cases. The FHC also attempted to interview Academic Human Resources Director Frumkin and Office of Institutional Equity Director Walesby. As discussed below, the FHC's requests were repeatedly refused on advice from the Office of General Counsel (OGC), even after clarification that the subject of the interviews was only OIE procedures and handling of the cases and not the substance of the allegations.¹⁴ The Faculty Hearing Committee submitted its report on the three cases on December 8, and SACUA formally accepted the report on December 22, 2014.

The report of the Faculty Hearing Committee indicates numerous deficiencies in OIE's practices and conduct. SACUA's review of the interview summaries and documentation assembled by the FHC identified additional significant defects in OIE's handling of these cases and in the office's policies and practices.

1. OFFICE OF INSTITUTIONAL EQUITY'S HANDLING OF THE COMPLAINANT'S CASES

As noted previously, the central focus of the FHC inquiry and of this report is on due process in OIE procedures and OIE's application of those procedures in the complainant's cases rather than the substantive merits of those cases. Consistent with this focus, we examined the record available to us to assess the extent to which OIE followed its own procedures and otherwise satisfied the requirements of due process, including providing adequate notice; a fair and competent investigation process, including adequate opportunity to respond; and decisions supported by facts and logic. The evidence available to us, examined in the course of reviewing OIE's practices, raised serious doubts about the validity of the OIE findings in these cases as well as about OIE's neutrality and competence to assess allegations involving academic norms, practices, and judgments. Details of these concerns that draw on statements of complainants, respondents, and witnesses in the OIE inquiries are reported separately in Appendix C to this report (redacted in the public report).

The subject matter of the three cases that we examined involved allegations of a hostile classroom environment (Case 1), inappropriate faculty-student relationships (Case 2), and sexual harassment and retaliation (Case 3). The findings below reflect our best understanding of the information available to us at the current time and are subject to revision in light of new information or corrections of misunderstandings. As stated earlier, SACUA takes no position on the individual cases themselves.

A note on terminology and abbreviations: To reduce confusion between complainants in the OIE inquiries and complainants to the FHC (who are the OIE's respondents), in the following we refer to the OIE complainants as "accusers," sometimes abbreviated as A1 and A3, with the numerals designating the respective cases. (Case 2 had no accuser.) Similarly, we abbreviate references to FHC complainants as C1, C2, and C3. Dates related to the cases (in brackets below) are redacted in the public report.

1.1. Notice

In all three cases, the FHC's investigation found deficiencies in providing notice with respect to the nature of the complaint, the nature of the process, and the respondent's rights.

¹⁴ SACUA Chair Masten also emphasized the procedural nature of the FHC's inquiry to Vice President and General Counsel Lynch in a meeting on October 22, 2014.

1.1.a. Notice regarding process. All three OIE respondents deny having been provided with OIE's Information for Respondents (IFR) document at the time of first contact by OIE, and none of the three was asked to sign the IFR.

- Neither C1 nor C2 recall having been provided with a copy of Information for Respondents at any time (Report of the SACUA Faculty Hearing Committee, Dec. 8, 2014 (hereafter FHC), pp. 2, 6, 7).¹⁵
- C1 denies having been asked to sign the IFR and no signed IFR has been produced even though the [year] IFR includes space for the respondent's signature beneath the statement "This information has been reviewed with me and I have been given the opportunity to ask questions about the investigation process, resources and related University policies."
- According to Director Frumkin, OIE does not follow the procedures outlined in the Information for Respondents in cases of administrator-initiated investigations (see above). OIE, however, did not inform C2 that procedures differed depending on who initiated the case, that the information and procedures available on the OIE website did not apply to C2's case, or what the applicable procedures were in C2's case.
- C3 received a copy of the IFR but only in response to an inquiry seeking "any advice you can give about the process and any advice about preparation that may be advantageous" and asking whether this is "an informational meeting ... [or] the beginning of an adversarial proceeding," adding "I have no idea what is involved" (FHC, p. 12; C3 email to Walesby [date]). Director Walesby responded the same day with a link to the IFR and stating,

As outlined in the linked document, my office is a neutral fact-finder... In response to your question, I don't view such a meeting as the beginning of anything adversarial, but more as a means by which to hear concerns expressed and to respond. I will conduct the investigation into this matter and I will reach a determination regarding whether a University policy was violated or not (see [SPG201.89]).
- In Cases 2 and 3, OIE acknowledged the right of the respondents to be accompanied by an advisor or "support person" only in response to being asked by the subjects (FHC, pp. 7, 11). In the case of C2, OIE failed to inform C2 of the right to be accompanied by an advisor or "support person" prior to the first meeting with OIE and acknowledged that right only after C2 raised the question during the second meeting (FHC, pp. 5, 7; C2 Response to OIE Memorandum, p. 18).
- Consistent with OIE's description of its methods and documents and emails, OIE presents itself as neutral and its initial meetings as informal and then encourages respondents to volunteer information on the record without notice that the information provided can be used against them. According to C2, OIE sought to overcome C2's resistance to supplying the identities of individuals with whom C2 had had romantic relationships, stating "things will go better if you tell us ..." (C2

¹⁵ The initial email from OIE Director Walesby informing C1 of its investigation, quoted in OIE's Investigative Report [date], includes a web page link to the [date] Information for Respondents document. It is evident from the email record between OIE and C1, in which C1 indicates inability to access attachments and asks OIE to send hard copies of transmitted documents, that C1 had difficulty with electronic communications, a fact acknowledged by OIE in its Investigative Report (p. 3).

Response to OIE Memorandum, p. 17), a statement that both contains an implicit threat and is false given that the information provided could, and was, used against C2.

1.1.b. Notice regarding potential consequences. All three complainants deny having been advised of the potential consequences of the OIE inquiries (FHC report: 2, 5, 11). Furthermore, there is no indication that OIE informed the complainants (i.e., OIE’s respondents) that they could be subject to disciplinary action even if found not to have violated University policy.

1.1.c. Notice regarding allegations. Consistent with its professed practice of providing respondents with “minimal information,” all three complainants complained of their frustration with the lack of information about the purpose of OIE’s inquiry and the allegations against them.

- C1 complained to OIE Director Walesby that C1 “had no knowledge of the language in the [year] allegations when I spoke to you on the phone” [date] (C1 email [date]).¹⁶
- According to C2, “I was not informed of any complaints even though I asked repeatedly for them both in a previous email and in person before questioning began” (FHC, p. 5).
- In his initial email contact with C2, OIE Director Walesby wrote “Dr. Jeffrey Frumkin, Associate Vice Provost and Sr. Director, Academic Human Resources, and I would like to schedule a meeting to discuss a matter that involves you” (Walesby email [date]). In reply to C2’s direct question, “Can I ask what this about?” [date], Walesby responded only, “Jeff and I are looking into concerns about your alleged interaction with University students. We can discuss this in further detail during our upcoming meeting,” adding later that “I believe this is an issue that is better left for an in-person discussion” (Walesby emails [date]). C2 stated that C2 was provided with no documentation about alleged facts or allegations of any kind or informed that C2 was suspected of violating University policies (FHC, pp. 5, 7).
- C3 testified that C3 was provided only a vague indication and no documentation concerning alleged facts or charges (FHC, p. 12): “I am writing to inform you that a complaint of discrimination has been filed against you by [complainant]” [date]. In reply, C3 asked “Is it possible to see the complaint in advance?” [date]. Director Walesby responded, “I will ask you a series of questions based on [A3’s] concerns expressed to my office. You then have a chance to respond to everything alleged and to provide any information you would like” [Walesby email [date]].
- After C3’s initial meeting with Director Walesby [date], C3 “transmitted a series of email inquiries” to Walesby (FHC, p. 12), including

¹⁶ The OIE Investigative Report on C1 states that, in their phone conversation on [date], C1 declined to meet with Director Walesby and did not wish to hear the comments attributed to C1 that prompted OIE’s inquiry. This does not relieve OIE of its obligation to provide C1 with adequate notice of the allegations, which it could (and should) have provided to C1 in writing. Moreover, C1 had reason to be reluctant to cooperate with OIE, having had previous experience with OIE, as noted in C1’s [date] email, “I objected to some gratuitous, misleading, and prejudicial language...in your [year] report. You ignored my objections and continued to repeat the language in your [year] report.”

- On [date]: “Is [it] true [that evidence consists entirely of email correspondence] or are there additional things I should understand to be material evidence in this case?”; and
- On [date]: “In hindsight I expected to receive a printed copy of [A3’s] complaint to help me understand it. Is no written complaint required? Am I not allowed to see what the complaint is? Or is the complaint still being formulated?”

Director Walesby did not answer C3’s specific questions (FHC, p. 14), replying instead, following C3’s [date] email, by suggesting meeting a second time.¹⁷

- C3 informed the FHC that the first time that C3 became aware of the specifics of the complaint was when C3 read the completed and submitted second OIE Investigative Report (FHC, p. 13).
- Consistent with our findings, a Grievance Review Board (GHB) noted the failure of the OIE to provide C3 with adequate notification:

[T]he GHB notes that the initial interaction between OIE and Professor [C3] was neither clear nor transparent on the seriousness of the complaint and the procedures to be followed. The GHB notes that for the process to be clear and transparent, respondents in OIE investigations should be told at the beginning of the interview/discovery process what is being investigated, that what they say may be used against them, that they are entitled to have an attorney present, as well as receive a description of the process through which the charges are to be investigated. This could be done orally or with a written handout, but something of this nature at the initial interview would make clear both the seriousness of the situation and the respondent's rights.¹⁸

1.2. Respondent’s Opportunity to Review and Respond

OIE’s stated practice in complainant-initiated cases is (“typically”) to provide complainants and respondents with summaries of statements of all interviewed parties and “documentation or other evidence reviewed by OIE” (IFR) for review and comment prior to issuing its report. Neither party is allowed to see, review, or respond to its findings prior to the report’s submission.

- Consistent with this practice, C1 was given nine days to reply to “a draft report that outlines the concerns and your response,” after which Walesby would “weigh all the

¹⁷ C3 (FHC, p. 13) and both of OIE’s Investigative Reports in this case state that C3 requested the second meeting: “In response to the Respondent’s request, we met on [date]” (OIE Investigative Report, [date], p. 5); and “the second meeting, at the request of the Respondent, took place on [date]” (OIE Investigative Report, [date], p. 4). An email dated [date] from Walesby to C3, however, reads, “I wonder if it would be a good idea to meet again to discuss this matter further?”, to which C3 responded, “I can meet at your convenience” [date].

¹⁸ Illogically and inexplicably given the process deficiencies the GHB identified, the GHB found “no demonstrable denial of access to a fair and rational process involving investigations into sexual harassment.” The GHB in this case also failed to substantiate its conclusions as required by the Grievance Procedures (Sec. 3.1). This and similar deficiencies in other cases, including a grievance by C2, indicates a need for knowledgeable and impartial procedural guidance of GHB members and for a credible mechanism for appealing GHB rulings on procedural grounds.

information and issue a final report, which will include a finding” (Walesby email [date]). There is no evidence that OIE provided C1 with “documentation or other evidence reviewed by OIE,” as prescribed in the IFR.

- Consistent with Director Frumkin’s claim that subjects of administrator-initiated investigations are not given an opportunity to review and comment on any aspect of its report prior to its submission to the dean (see above), C2 did not see the OIE’s report or any other written materials prior to the report’s completion and transmittal. The report does urge the dean “to share this memorandum with [C2] and allow [C2] the opportunity to comment on it, in person and/or in writing, before you finalize any [personnel action based in whole or in part on this memorandum]” (FHC, p. 9; OIE Memorandum [date]).¹⁹ C2 was eventually provided nine days to respond to the report but received the report more than two weeks after it had been received by the dean (FHC, p. 6; the OIE Report is dated 27 days prior to C2’s response, implying at least 18 days between its completion and its receipt by C2 if C2 took the full 9 days to respond).
- Contrary to standard OIE procedures, OIE did not provide C3 with summaries of testimony prior to issuing its first Investigative Report on [date]. Citing the discretion given OIE in the OIE Guidelines, the Report states, “I [Walesby] determined that a deviation from the Guidelines is necessary and appropriate” and consequently, “neither the Complainant nor Respondent was given this report in draft form for review prior to it being issued” (OIE Investigative Report [date]). The Report contains no explanation or justification for this deviation, nor could we find any plausible justification in the available record. Furthermore, we found nothing to indicate that OIE notified C3 (or A3) in advance of issuing its Report that it intended to deviate from its standard procedure of providing the opportunity for comment as described in its Information documents for complainants and respondents.
- As reported by the FHC, C3 testified to being “invited to meet with [associate dean] at noon within a day of when the report was issued. At that meeting [C3] reported being presented with a copy of the report ‘signed, sealed, and bound.’ [C3] said that was the first time [C3] had seen it, and the associate dean granted [C3] 20 minutes to read it” (FHC, p. 12). C3 was provided no opportunity to respond to or challenge the content or finding of this first Report.
- On [date], almost a full month after the date of its first Investigative Report, OIE Director Walesby sent C3 “a draft copy of the interviews notes [sic] I took during our meetings,” saying (emphasis added):

These notes are in draft form and at this point only you and I have seen them. Once you had a chance to review them and provide any feedback, I will finalize the notes and they will become part of the OIE report. The draft report, which will be shared with [A3] involved in this matter, will also be provided to you for your review and comment shortly. The report will contain your interview notes, [A3’s] interview notes, and other information I’ve gathered during my review of the concerns.

¹⁹ Worth noting is that the report in the case of C2 is issued and described as a memorandum addressed to C2’s dean, in contrast to the explicit designation “OIE Investigative Report” in the cases of C1 and C3.

Although the draft interview notes are more extensive, in fact, the [date] Investigative Report, sent to C3's chair and another unit head contained parts of, and relied for its conclusions on, information from OIE's interviews of C3 on [date] and [date].

1.3. OIE Decision Processes and Reports

Due process and fairness require that investigations and assessments be thorough and impartial and that decisions be based on facts and accompanied by a written explanation that identifies the factual basis for the decision. Decisions must also conform to applicable evidentiary standards. Our review of the record identified numerous deficiencies.

1.3.a. Academic judgment. As previously noted, the nature of academic inquiry and its often specialized subject matter requires that assessments and conclusions be informed by an understanding of academic norms and practices. All three cases, to varying degrees, involve judgments about academic matters.

Case 1. Case 1 involved allegations of inappropriate classroom statements, the appropriateness of which clearly involves academic judgments, as AHR Director Frumkin acknowledged in his visit to SACUA: "Mr. Frumkin said that in the case of lecture topics that cause discomfort to some students, the question is whether they are pertinent to the pedagogy of the course" (SACUA minutes, Nov. 4, 2013). The OIE Report, while acknowledging the academic nature of such determinations and OIE's lack of competence to make such assessments, nevertheless inserts its judgment in its Report (emphasis added):

[C]onsistent with academic freedom, the Respondent, as a faculty member at the University, is trusted to selected [sic] course content and methods of instruction. However, while I understand the general nature of classroom instruction and the broad topic, it is difficult to see how some reported sexual comments contribute to the academic environment in an appropriate manner. ... [The accusers] did not connect such comments to an academic discussion or relate the comments to the course materials. ... Absent a finding of impressible discrimination, it is not the place of OIE to evaluate faculty member's [sic] teaching method and language used in the classroom.... However, as noted above, it is difficult to understand how some of the reported language is designed to further student learning and growth. (pp. 5-6).

Despite the acknowledged lack of competence to make such assessments, there is no indication in the record that OIE solicited the advice of faculty with relevant expertise.

Case 2. The conflict-of-interest disclosure requirements of the Faculty-Student Relationships SPG (601.22) arise where faculty have a "supervisory responsibility," which includes "teaching, research, academic advising, coaching, service on evaluation or thesis committees, grading, recommending in an institutional capacity for employment, fellowships, or awards," clearly implicating academic activities and understandings. As discussed in more detail in Appendix C, the interpretation of this responsibility on which C2 was sanctioned is both illogical and contradicted by testimony of numerous faculty, including the provost responsible for drafting and enacting the SPG. According to C2, even AHR Director "Frumkin agreed that it could be interpreted in different ways and that not everyone would agree with his interpretation" (C2 Response

to OIE Memorandum, p. 17). The OIE Memorandum contains no indication that either OIE or the unit dean sought or found any faculty who agreed with its interpretation.

Case 3. Several academic issues are central to evaluating conduct in Case 3, including the nature of academic mentoring, the interpretation of journal reports, and the form and content of academic letters of recommendation. The first OIE Investigative Report [date] acknowledges OIE's incompetence to assess letters of recommendation: "With respect to concerns expressed about the Respondent's recent letter of reference for the Complainant, [C3] is the only person who can fairly evaluate the Complainant's work in question" (OIE IR, p. 7). More broadly, neither of OIE's Investigative Reports in this case provides any indication that OIE sought the views of faculty on these questions despite repeated requests from C3 that OIE obtain the opinions of knowledgeable faculty on these matters. (This and other aspects of Case 3 are discussed in greater detail in Appendix C.)

1.3.b. Lack of thoroughness. The record indicates substantial failures in Cases 1 and 3 to acquire or examine information or, if acquired, to report information relevant to the allegations. Moreover, OIE's practice of denying subjects in administrator-initiated cases (such as Case 2) an opportunity to review allegations, evidence, and summaries before issuing its findings precludes OIE from even learning about potential mistakes in their report or about information that contradicts their findings.²⁰

Case 1. As documented by the FHC, OIE based its findings in Case 1 on complaints from three students from a class of 30 and either did not seek confirmation or did not report the opinions of other students in the class. It also did not examine or, if it did, did not reference in its Report printed materials listed on the course syllabus that the FHC found to contradict specific allegations of the complaining students, raising doubts about the accuracy or credibility of their accusations. There is similarly no indication that OIE reviewed video recordings of the course for either context or confirmation of the allegations.

Case 2. C2's response to OIE's Memorandum, written only after OIE had completed and submitted its report, identifies numerous omissions and misrepresentations in the report that were not taken into account in developing the report nor, as far as the record indicates, were used subsequently to correct the Memorandum after its submission. The OIE report similarly takes no account of numerous letters containing statements, findings, and conclusions of knowledgeable parties that contradict OIE statements and conclusions.²¹

Case 3. The accuser's complaint includes (i) a quotation from an acquaintance's email containing highly derogatory statements about C3 (undated Complaint, p. 2), and (ii) a list of "others who had experienced similar behavior from [C3]" (id., p. 4). Neither Investigative Report indicates whether any attempts were made to substantiate the

²⁰ In one instance, OIE refused to correct a clearly incorrect statement when pointed out by the respondent: In Case 3, OIE Director Walesby declined to change a reported statement in the second OIE Investigative Report ([date], p. 6) from "[C3's] 'inappropriate behavior'" to "[A3's] 'inappropriate behavior'" at the request of the C3 on the grounds that his notes on his meeting with C3 say "my inappropriate behavior" despite the fact that the paragraph in question continues: "When asked to describe the inappropriate behavior, the Respondent stated that one time on the third floor of [location] the Complainant leaned against [C3] a long time," thus clearly indicating that the referenced behavior was that of the OIE Complainant.

²¹ C2's response to the OIE Memorandum included seven letters from prominent faculty, including a former provost, disputing various aspects of the OIE report.

derogatory statements (damning if true, defamatory if not). The Reports describe contacting only one of the named individuals (a former student who reported that the decision to leave the University was the result purely of deciding not to pursue a PhD and had nothing to do with C3 or any dissatisfaction at all with the University). On questioning by OIE, the accuser, in OIE's words "clarified that [A3] was not alleging that each one had experienced contact of a sexual nature with the Respondent, but rather 'it was more manipulative behavior and disrespectful treatment'" (OIE Investigative Report, [date], p. 9). OIE does not report whether it contacted these other listed individuals to determine whether any of them had had experiences consistent with the accuser's allegations, information that is relevant both to the accuser's credibility and to the existence of a pattern of behavior by C3. In addition, neither Investigative Report acknowledges or contains any indication that OIE responded to or incorporated what C3 described as "a detailed critique of the report ... transmitted to ... the [unit] dean's office" written by C3's administrative superior in response to the [date] OIE Investigative Report (FHC, p. 12). (See Appendix C.)

1.3.c. Inadequate justification and selective reporting. Due process requires that decisions be based on facts and accompanied by a written explanation that provides the logical and factual justification for the decision. Decisions must also conform to applicable evidentiary standards. Complainants C2 and C3 both accuse OIE of numerous material omissions, selective reporting, and incoherence.

- With respect to the investigators in this matter, their summaries of what others (including myself) have said are not the same as actually getting the information from the source. Their Report contains self-conflicting testimony, selective quotations, and glaring omissions (C2 Response to OIE Memorandum, p. 20).
- Mr. Walesby's written reports about me are incoherent and inconsistent streams of damning paraphrases and quotations interwoven from hand-written interview notes and abstracted out-of-context from e-mails (C3 email [date]).
- Mr. Walesby's retaliation report stands on its own as an example of incomprehensible writing. On page 7 of the retaliation report Mr. Walesby wrote: "While it is noted that the Respondent recently provided appropriate professional guidance to the Complainant, and such actions should continue, this does not change the fact that [C3] has subjected [A3] to retaliation." Next sentence: "It is noted that, to date, the evidence does not support a finding that the Respondent has taken a tangible or measureable action against the Complainant." And then finally on page 8: "In sum, the evidence obtained during this investigation supports the allegation of retaliation." (C3 email [date]).
- In its ruling on C3's grievance, the Grievance Hearing Board criticized OIE for its failure to identify in its Investigative Report accusations that it did not investigate, found to be false, or could not substantiate ([date]):

Additional GHB Concern: The final OIE report includes the original [date] complaint and describes charges brought in the initial interview with the complainant. It goes on to describe the findings, but does not discuss which charges were not investigated and/or not substantiated. We find this problematic.... Statements in the original complaint that were not

investigated or known by OIE to be false should be so identified as unsubstantiated or unsubstantiated pending further investigation.

As detailed in Appendix C, our review of the record and reports in these two cases supports C2's and C3's contentions, creating serious and substantial doubts about the accuracy and validity of OIE's conclusions.

1.3.d. Non-policy judgments and opinions. The record contains numerous instances of OIE inserting personal opinion, non-policy judgments, and innuendo in its investigations and of submitting prejudicial reports based on such considerations, accompanied by invitations for administrative action by unit heads.

Case 1. Although OIE concluded that the "Respondent's reported actions are not such that they constitute a violation of the University's sexual harassment policy" (OIE Investigative Report [date], p. 4), OIE nevertheless reported the allegations in the current case and noted that OIE had "interacted with the Respondent" on a previous occasion (approximately 3 years earlier, in which OIE had also determined that C1 had not violated the University's Sexual Harassment Policy), before concluding,

Based on all of the factors outlined above, it is determined that there is insufficient evidence to determine that Respondent's reported behavior created a hostile learning environment for students in relationship to the University's Sexual Harassment Policy. OIE is not ruling on whether other University policies, more appropriately assessed by academic units, may have been violated. As such, this matter is referred to the Dean's Office for review.

The dean, while noting OIE's finding of "insufficient evidence" and quoting the OIE statement above, nevertheless then used the OIE report, apparently without any further inquiry, as justification for disciplining C1 (with reference to the newly enacted Professional Standards for Faculty SPG (201.96)) ([Dean] letter [date]).

Case 2. The OIE Memorandum on C2 included reports on a number of relationships that had no bearing on the original allegation and of which OIE would have had no knowledge had C2 not provided that information in the interest of cooperation (and OIE's implicit threats) and C2's belief that C2 had done nothing wrong, a belief fully supported by the individuals in question (OIE Memorandum; FHC, p. 9). Given that the information had no bearing on whether or not C2 had violated University policy with respect to the original allegation, its inclusion in the report — indeed, OIE's entire pursuit of this line of inquiry — appears to serve no purpose other than to pass moral judgment on C2 and to provide a pretext for disciplining C2 for personal conduct of which OIE and/or the dean disapproved. Consistent with this interpretation, C2 testified that AHR Director Frumkin expressed the concern that C2's behavior "would make a terrible headline on AnnArbor.com" (FHC, p. 6).

Unable to substantiate that C2 had "violated University policy that addresses relationships between faculty and students," OIE was reduced to opining that C2's actions were not "consistent with the spirit of the policy"²² and passing moral judgment

²² OIE's conclusion that C2 violated the "spirit of the policy" was disputed by the provost who authored the relevant SPG, who wrote that not only did "[C2's] behavior [not] violate the letter of the rules. I am also firmly convinced that [C2] did not violate the spirit" (letter [date]).

“that [C2’s] actions are problematic and not consistent with the expectations of a University of Michigan faculty member” (OIE Memorandum, p. 11; FHC, p. 9). Despite OIE’s failure to find a violation, the dean nevertheless used the information in the OIE report to conclude that C2 “violated the College’s understanding of SPG 601.22” (letter, [date]; emphasis added).

2. OIE RESPONSIVENESS TO SACUA AND FHC

SACUA sought information from the Offices of Institutional Equity and Academic Human Resources regarding its procedures and practices, both in general and, through the FHC, in their specific application to the cases of the three complainants. The following describes difficulties we encountered in our efforts to ascertain the origins and rationale for the prohibition on appeals of OIE decisions and to obtain OIE’s accounts of and views on the issues raised in the faculty complaints.

2.1. Justification for prohibiting faculty appeals of OIE decisions

As previously noted, OIE Director Walesby and AHR Director Frumkin visited SACUA on November 4, 2013, where they responded to SACUA questions about OIE procedures and practices for approximately one hour. On the issue of the origin and justification for not allowing appeal of OIE findings — an issue of particular interest to SACUA — Frumkin and Walesby professed ignorance but promised to find out and respond to SACUA, as reported in the SACUA minutes (November 4, 2013):

Mr. Walesby replied that OIE “run(s) things by legal counsel”. He said he did not know what the justification is, and that it was that way when he got here.

...

Mr. Frumkin said he did not know who made the decision to deny appeal of OIE findings. He said he would get back to SACUA with who made the decision and how it was made.

Confirmation of the request was subsequently reported in the minutes of the subsequent SACUA meeting on Nov. 11, 2014 (SACUA Minutes):

OFFICE OF INSTITUTIONAL EQUITY AND GRIEVANCE ISSUES FOLLOWUP

1. OIE. SACUA is awaiting a promised report about the origins and justification for the process used by OIE. Members expressed unease with the lack of an appeal process, and suggested that their concerns be transmitted to the General Counsel advisory committee.

Not having received the promised answer, the SACUA office sent AHR Director Frumkin a reminder on Dec. 10, 2013 that “SACUA is very interested in finding out at what level the decision was made against appealability of OIE findings so we could discuss with that person that reasoning and where some change would be desirable.”

Director Frumkin acknowledged the request in emails on Dec. 10 and 11 before reporting on Dec. 16, “I met this morning on this matter. I am afraid it is going to take some more time to sort out the background on this provision” and noting that a reply should be expected in January.

Finally, on January 13, 2014, SACUA received an email from AHR Director Frumkin (copied to OIE, the Provost’s Office, and the Office of General Counsel) with the subject line “Appeal of OIE Reports,”

purportedly in response to SACUA's questions. As discussed above, the email failed to answer the question put to Messrs. Frumkin and Walesby and instead, after summarizing some of OIE's procedures, merely reasserted that OIE findings are neither appealable nor grievable.²³ The specificity of SACUA's question and Director Frumkin's promise to "get back to SACUA with who made the decision and how it was made," followed by his report to be "sort[ing] out the background on this provision," indicates that the failure to answer the question posed was not the result of a misunderstanding.

2.2. Refusal to meet with the FHC

As documented in its report, the Faculty Hearing Committee sought to meet with Directors Frumkin and Walesby to discuss their "methodology and procedures" in relation to the faculty complaints. Following consultation with the Office of General Counsel, each invitation was declined, in each instance on different grounds: (i) "[g]iven current legal proceedings [a complaint filed with the Equal Opportunity Commission]" (FHC, p. 3); (ii) because "other parties to the process have not provided similar consent [to that of FHC complainant]" (FHC, p. 8); and (iii) because of "our responsibility to not discuss any aspects of an interview or investigation with third parties who are outside the administrative review process" (FHC, p. 9). This final rejection followed a clarification that the FHC's "interest is in the process and methods applied in this case and in your interactions and communications with [C3]" and the FHC's willingness "to work with you to assure that the privacy of the complainants is protected" (FHC, p. 8).

VI. Conclusions and Recommendations

The Report of the Faculty Hearing Committee charged with investigating the complaints of three faculty subjects of Office of Institutional Equity investigations included the following findings (pp. 16-18):

- The FHC recognizes a pattern that is common to all three cases it investigated in which the so-called respondents are faced with nebulous charges that evolve during the proceedings toward a seemingly predetermined end.
- In each of the three cases investigated, the FHC concluded the process was deeply flawed. All three complainants were unanimous in reporting that they were not fully informed of the charges against them at the outset, nor were they informed of the possible sanctions they might receive if they experienced an adverse judgment.
- The complainants were deprived of the basic rights that have become understood as the foundation of fairness in administrative proceedings: opportunity to understand the charges against them, a hearing before an impartial judicial officer, the chance to examine all materials that would be relied on or to confront and cross-examine adverse witnesses to impeach the evidence against them, and a decision limited to the record thus made and explained in an opinion.
- There is ample evidence of selective use of evidence in Case #1, and of subjective interpretation of policy in Case #2.
- The FHC has concluded that proper procedures *as defined by the OIE itself* in its policy documents *were not followed* in the three cases that were examined. Further, the process and methods employed in the three cases are *inconsistent with fundamental expectations of fair dealings* [emphasis in original].

²³ The email identified neither the origin nor the rationale for the prohibition and, instead, as discussed above, merely restates its existence and cites provisions of the grievance procedure that, at most, implement the prohibition.

Our review of the record on which the FHC’s findings are based supports their conclusions. In addition to those findings, this report identifies numerous deficiencies in the procedures themselves that, even if followed, would deny faculty accused of misconduct due process and fair and impartial treatment. The evidence also indicates a pattern of at best perfunctory and incomplete, and quite possibly biased, determinations on academic matters by nonacademic employees, arbitrary variations in and deviations from procedural guidelines, and inadequate reporting and unsupported conclusions supplemented with prejudicial and irrelevant facts.

The procedural deficiencies documented in this report fail to capture the personal toll on faculty subjected to an OIE investigation. The complainants all described the psychological trauma of being subjected to an inquiry — all three using the term “witch hunt” — in which they were encouraged by high-level administrators to provide information without knowing the charges against them, only to find the information they provided subsequently being used as evidence against them without the opportunity to respond and challenge the allegations.

Finally, while we recognize the limitations of assessing the substance of complainants’ cases with a necessarily incomplete record, our review of the evidence available to us in the individual cases identified in the course of reviewing OIE’s practices raises serious doubts about the credibility of the OIE findings in these cases. Because addressing these issues involves details of the cases, we discuss what we regard as the most serious problems with the OIE’s reasoning and evidence separately in Appendix C.

In light of our findings in this report, SACUA makes the following recommendations:

1. The executive officers of the University take immediate steps to assure that OIE follow its own procedures and remove the discretion of OIE to deviate unilaterally from its procedures.
2. As recommended by SACUA in its April 2014 report, the current OIE procedures be reviewed and revised, in consultation with SACUA, to ensure “due process and procedural fairness, including but not limited to, fair and adequate notice, fair investigation processes, and the ability to obtain an independent, meaningful and timely appeal of findings.”
3. Any decision or action arising in connection with an OIE investigation involving termination, dismissal, or demotion of a faculty member be pursued through the procedures provided in Regents Bylaw 5.09.
4. Immediately, and until such time as new acceptable procedures are adopted, all decisions and actions involving reports, investigations, or findings of OIE be subject to review under existing Grievance Procedures.
5. In light of the serious procedural deficiencies in their cases, and of compelling doubts about the validity of the OIE findings raised by the FHC investigations and in this report, the actions taken against the three complaining individuals be reversed until their cases can be reconsidered in a forum with appropriate due process protections. In addition, a review of other OIE cases involving faculty should be conducted to determine whether similar problems have arisen in cases that have not been brought to our attention and, if so, appropriate remedial actions be taken.

Appendix A. Authority

Under the Regents Bylaws, the Senate Advisory Committee on University Affairs acts on behalf of and as an instrument for affecting the actions of the University Senate and Senate Assembly (Regents Bylaw 4.08). The Bylaws provide the Senate and Assembly, in turn, with broad authority to consider all matters of interest to the University. Regarding the Senate (Bylaws 4.01):

The senate is authorized to consider any subject pertaining to the interests of the University, and to make recommendations to the Board of Regents in regard thereto. Decisions of the University Senate with respect to matters within its jurisdiction shall constitute the binding action of the University faculties. Jurisdiction over academic policies shall reside in the faculties of the various schools and colleges, but insofar as actions by the several faculties affect University policy as a whole, or schools and colleges other than the one in which they originate, they shall be brought before the University Senate.

Regarding the Assembly (Bylaw 4.04):

The assembly shall have power to consider and advise regarding all matters within the jurisdiction of the University Senate which affect the functioning of the University as an institution of higher learning....

Bylaw 4.04 also provides for inquiry and consultation with any member of the University administration:

The assembly may request information from any member of the University staff, and may invite any such person to sit with it for the purpose of consultation and advice.

In addition to these general authorities, University policy prescribes other specific roles for faculty governance. Two such roles relevant in the present context are the Faculty Grievance Monitor and the Faculty Hearing Committee.

Faculty Grievance Monitor (FGM). The Model Grievance Procedures (approved by the Provost, the Academic Program Group, and SACUA, and unanimously endorsed by the Senate Assembly, April 26, 2010) specify the creation of a Faculty Grievance Monitor (FGM), “a tenured faculty member who is appointed annually by SACUA to monitor all grievances,” whose enumerated responsibilities include reporting to the faculty and “others with a legitimate interest in grievance proceedings” (Sec. 5.05).

Faculty Hearing Committee (FHC). The Faculty Hearing Committee was established on the recommendation of the Academic Affairs Advisory Committee, on March 30, 1987, as a subcommittee of the full committee for the purpose of hearing and advising SACUA on courses of action regarding faculty complaints that do not fall within school and college grievance procedures and of advising SACUA. The charge of the FHC was subsequently incorporated into the University of Michigan Faculty Handbook:

10.H SACUA Faculty Hearing Committee

A subcommittee of SACUA has been created to advise on faculty complaints or grievances that do not fall readily into established school and college grievance procedures. This subcommittee is known as the SACUA Faculty Hearing Committee and consists of one member of each SACUA class. After the initial formation, each year the SACUA chair appoints one member of the incoming class to the committee. Inquiries, complaints, and grievances addressed to SACUA from individual faculty members and groups of faculty members (e.g., school or college executive committees, programs slated for discontinuance) will be referred to the subcommittee for consideration. The subcommittee will then advise SACUA and counsel a course of action.

Appendix B. Timeline

2012-13 Academic Year	Faculty Grievance Monitor, in the course of prescribed role, identifies concerns with OIE procedures and practices
August 26, 2013	SACUA meeting minutes report distribution of OIE materials and discussion of concerns
November 14, 2013	SACUA meets with AHR Director Frumkin and OIE Director Walesby
November 11, 2013	SACUA meeting follow up discussion on OIE
January 13, 2014	AHR Director Frumkin email with the subject line "Appeal of OIE Reports"
April 8, 2014	Model Grievance Procedure Report, April 8, 2014
May 1, 2014	Meeting of first complainant (C1), outgoing SACUA chair (Staller) and incoming chair (Masten)
May 2, 2014	C1 requests Faculty Hearing Committee inquiry into his complaints
May 13, 2014	SACUA charges Faculty Hearing Committee with investigating and reporting on C1's complaint
June 18, 2014	FHC meeting with C1
July 11, 2014	FHC invitation to OIE Director Walesby
July 15, 2014	Office of General Counsel email declining participation of Walesby
August 1, 2014	Request from second complainant (C2) for FHC inquiry
August 4, 2014	SACUA charges Faculty Hearing Committee with investigating and reporting on C2's complaint
August 29, 2014	Request from third complainant (C3) for FHC inquiry
September 8, 2014	SACUA charges Faculty Hearing Committee with investigating and reporting on C3's complaint
October 3, 2014	FHC invitation to AHR Director Frumkin and OIE Director Walesby regarding Complaint 2
October 10, 2014	Email from OHR Director Frumkin declining interview on the advice of Office of General Counsel
October 22, 2014	SACUA chair meeting with General Counsel Lynch
October 24, 2014	FHC email to Directors Frumkin and Walesby clarifying purpose of interview and requesting reconsideration of invitation
November 18, 2014	AHR Director Frumkin email declining interview request
December 8, 2014	FHC Report submitted to SACUA
December 22, 2014	SACUA acceptance of FHC Report