

APPENDIX N: FACULTY OMBUDS AND FACULTY HEARING COMMITTEE

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I. Purpose

Duke University (University), with the concurrence of the Academic Council, has established a Faculty Ombuds and a Faculty Hearing Committee (FHC) to facilitate prompt and equitable resolution of allegations by faculty members and instructional staff. The Faculty Ombuds and the FHC shall function in accordance with the policies and procedures set forth below.

II. The Faculty Ombuds

A. Selection

The Faculty Ombuds shall be appointed, in consultation with the President, for a term of two years by the Academic Council and selected from active tenured or recently retired members of the faculty. The appointment may be renewed. The Faculty Ombuds shall report directly to the president of Duke University who shall appropriately compensate the Faculty Ombuds and provide reasonable support services.

Upon appointment, the Faculty Ombuds shall maintain active membership in the International Ombudsman Association (IOA) and follow recognized best practices of the profession. Before assuming duties, and regularly while in office, the Faculty Ombuds shall receive training in areas including counseling, implicit and explicit bias, and negotiation and mediation. The Faculty Ombuds shall also be knowledgeable of Duke structures for handling complaints and be familiar with relevant legal requirements. The Ombuds is one of several university channels for preventing and resolving conflicts involving faculty and instructional staff. Faculty and instructional staff may also choose to utilize resources such as those in the Office of Institutional Equity, or where alleged misconduct is by a student, those in the Office of Student Conduct.

B. Jurisdiction

The Faculty Ombuds shall address concerns or inquiries from faculty and instructional staff related to problems in the workplace or alleged instances of unfairness, impropriety, or insensitivity. In addition, the Faculty Ombuds shall have jurisdiction to consider concerns from faculty and instructional staff including but not limited to the following matters:

1. The university's policy concerning academic freedom and academic tenure as set forth in Appendix C of this handbook;
2. The university's policy of equal treatment in employment, without regard to race, color, religion, national origin, disability, veteran status, sexual orientation, gender identity, gender expression, sex, genetic information, or age;
3. Dismissal for misconduct or neglect of duty;
4. Termination of appointment prior to its expiration date;
5. Disputed claims by a faculty member to the existence of tenure;
6. Allegations of violation of academic freedom;
7. Allegations of violation of academic due process with respect to an adverse employment

- or disciplinary action, including allegations of biased or prejudiced conduct by a decision-maker of a substantial nature that likely had a material impact on the outcome of the proceedings;
8. Allegations of adverse employment action involving discrimination on the basis of race, color, religion, national origin, disability, veteran status, sexual orientation, gender identity, gender expression, sex, genetic information, or age. Adverse employment actions include actions with respect to the member's rank, salary, fringe benefits, sabbatical and other leaves with or without compensation, workload or work assignment, promotion, tenure, and extension or termination of employment.
 9. Allegations of damaging instances of harassment directed against faculty and instructional staff by other members of the university community after failure of a university officer or agency to resolve the matter.
 10. Faculty and instructional staff may consult with the Faculty Ombuds at any time. However, after a complaint has been filed with the Faculty Hearing Committee, consultation with the Ombuds shall be limited to questions about the FHC's formal processes, functions, and related procedural matters.

C. Function

The Faculty Ombuds is a confidential, informal, independent, and impartial resource for faculty and instructional staff. The Ombuds provides faculty and instructional staff with guidance on a range of issues, including communication and conflict management skills. The Ombuds listens to the concerns of faculty and instructional staff, provides information and guidance, and attempts to resolve disputes informally through conciliation. Consistent with standards set forth by the International Ombudsman Association (IOA), the Faculty Ombuds "advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization." Among other things, it is expected that:

1. The Faculty Ombuds will practice active listening, ask strategic questions, provide information, and help faculty and instructional staff identify and evaluate available options. With the permission of the inquiring faculty or instructional staff member, the Ombuds will facilitate communications, review documentation and other relevant materials, make referrals, and/or provide mediation.
2. With the permission of the inquiring faculty or instructional staff member, when attempting conciliation, the Faculty Ombuds will confer and discuss the concerns of faculty and instructional staff with appropriate academic officers and submit to them, orally or in written form, any relevant facts and recommendations.
3. The Faculty Ombuds will routinely and promptly follow up with faculty and instructional staff to determine whether additional information or guidance is needed. In cases involving conciliation, the Ombuds will attempt to resolve the matter within 60 days of being contacted by a faculty or instructional staff member.
4. The Faculty Ombuds will collect data, including the number of contacts, the types of concerns, and the unit within the university from which the concern emanated in order to identify patterns or areas where policy changes or other improvements might occur. This information shall be shared with the President and the Academic Council in the manner described in II.C.7 below. To preserve confidentiality, the Faculty Ombuds shall not keep long-term records of individual cases, nor shall the identity of inquiring faculty or instructional staff be revealed except with the permission of those faculty and instructional staff members, or as otherwise required by law.
5. The Faculty Ombuds will operate independently of existing administrative structures. While the Faculty Ombuds may advise faculty and instructional staff and attempt conciliation, the Faculty Ombuds has no authority to make decisions on behalf of the university or on behalf of individual faculty, conduct formal investigations, override policies or decisions, or provide legal advice. The Faculty Ombuds shall be available to answer questions about how to file a formal written complaint with the FHC, as described in III.D below, and to consult with faculty and instructional staff before the initiation of any formal hearings or investigations under university processes. After the initiation of a formal hearing or investigation with the FHC, the Ombuds' role shall be limited as described in II.B.10. The Ombuds, upon request, shall have access to such university records, accounts, files, and other sources of information as may be

pertinent to the concern of the faculty or instructional staff member, unless such access is otherwise restricted by law.

6. The Faculty Ombuds shall be in regular communication with other Ombuds at Duke (currently the University's Student Ombuds and the School of Medicine's Ombuds) to identify common patterns, trends or insights that would be helpful for the university, develop recommendations, engage in professional networking and development, and discuss best practices.
7. The Faculty Ombuds shall make a yearly report to the President and to ECAC. The Ombuds shall present a summary of the report, including the number of contacts, the types of concerns raised, and actions taken, annually to the Academic Council.

D. Confidentiality

1. Confidentiality is essential to the Ombuds function and helps create a safe place for faculty and instructional staff to voice concerns, evaluate issues, understand University processes, identify options, and resolve or prevent conflict.
2. The Faculty Ombuds shall not disclose information of a private or confidential nature, except 1) with the express permission of the inquiring faculty or instructional staff, or 2) as required by law or pursuant to court order or other legal process, or 3) where the Faculty Ombuds determines there is imminent risk of serious harm.
3. The Ombuds is not authorized to receive notice on behalf of the university of any formal complaint to the university. For faculty and instructional staff wishing to place the university on notice of any formal complaint, charge, grievance, lawsuit or other claim, the faculty or instructional staff member must file such notice in the appropriate university office. The Ombuds will refer those wishing to place the university on notice of claims to the appropriate office such as the Office for Institutional Equity, Human Resources, or the Office of Risk and Compliance. Conversations with the Ombuds do not toll or affect any time limits by which notice of claims must be provided to the university. The Faculty Ombuds is a Campus Security Authority under the Jeanne Clery Act of 1990 as amended and will report crime information to Duke Police as required by that Act.
4. To the extent allowed by law, Duke University will protect the confidentiality of 1) communications between faculty and instructional staff and the Ombuds, and 2) other activities undertaken by the Ombuds pursuant to this Appendix.
5. The Ombuds may at the Ombuds' discretion discontinue providing services to a faculty or instructional staff member who is not using the Ombuds' services in good faith or is not abiding by the Ombuds' terms of service.

III. The Faculty Hearing Committee (FHC)

A. Selection

1. The Faculty Hearing Committee shall consist of at least 12 and up to 18 ~~regular rank tenured~~ faculty members, nominated by the Executive Committee of the Academic Council and elected by the Council at large. In its nominations, the Executive Committee shall seek to present a reasonable representation of the University's academic community. The Executive Committee shall appoint one member of the FHC to act as chair.
2. Committee members shall serve for three-year terms, and may be reelected; however, no person shall serve more than six consecutive years. Retiring members shall nonetheless conclude the cases pending before them at the time of the expiration of their terms. Vacancies arising during an academic year may be filled by appointment by the Executive Committee until the next regular election of FHC members.

B. Jurisdiction

1. The FHC shall have jurisdiction to consider complaints from faculty members concerning one or more of the following matters:

- a. Allegations of violation of academic freedom;
 - b. Allegations of violation of academic due process with respect to an adverse employment or disciplinary action, including allegations of biased or prejudiced conduct by a decision-maker of a substantial nature that likely had a material impact on the outcome of the proceedings. For purposes of this subsection, adverse employment actions include actions that affect the faculty member's rank, salary, benefits, sabbatical and other leaves with or without compensation, workload or work assignment, promotion, tenure, and extension or termination of employment. Failure to act may also be considered an action;
 - c. Allegations of adverse employment action involving discrimination on the basis of race, color, religion, national origin, disability, veteran status, sexual orientation, gender identity, gender expression, sex, genetic information, or age. For purposes of this subsection, adverse employment actions include actions that affect the faculty member's rank, salary, benefits, sabbatical and other leaves with or without compensation, workload or work assignment, promotion, tenure, and extension or termination of employment. Failure to act may also be considered an action;
 - d. Dismissal for misconduct or neglect of duty;
 - e. Termination of employment prior to its expiration date; and/or
 - f. Disputed claims by a faculty member to the existence of tenure.
- C. Jurisdictional Limitations
- 1. The jurisdiction of the FHC described in Paragraph III.B.1.b. above relates to procedural rather than substantive issues.
 - 2. The FHC shall consider complaints only when all university action is otherwise complete. This includes exhaustion of all other relevant internal processes. For example, allegations of discrimination, harassment (including sexual misconduct) and related retaliation must first be referred to the Office for Institutional Equity (OIE) for review. Faculty members are encouraged to consider informal or alternative options for resolution before filing a complaint with the FHC. The Chair of the FHC can assist complainants with identifying and exploring these options.
- D. Pre-Hearing Procedures for Cases Involving Dismissal or Termination of an Appointment Prior to its Expiration Date
- 1. Proceedings to dismiss a member of the University faculty who has tenure or whose term appointment has not expired shall be initiated by the relevant dean only after the Dean has made sufficient investigation to determine that reasonable grounds exist. The Dean should ordinarily discuss the matter informally in personal conference with the faculty member in question. If the Dean discusses the matter with other officers of the University and with other members of the faculty, care should be taken to keep in confidence any accusations that may reflect adversely on the faculty member under investigation.
 - 2. If a mutually satisfactory adjustment does not result from the informal discussions contemplated in paragraph 1, the Dean may then commence formal proceedings to consider the question of dismissal by service of a written notice on the faculty member. The written notice shall include a statement informing the faculty member of the proposed grounds for dismissal set forth in as much detail as is practicable and of the right to request a hearing by the FHC. The written notice shall also be accompanied by copies of or references to the applicable bylaws and other governing documents of the University establishing the faculty member's rights and by a summary of the evidence on which the charges are based and a preliminary list of witnesses to be called to testify at the hearing. The faculty member should reply to the Dean in writing within ten (10) business days of receipt of the written notice to respond to the charges and specify whether he or she wishes a hearing under subsection III(B)(1)(d) or (e), above. Procedures for the hearing are set forth in Sections E and F, below.
 - a. If the faculty member requests a hearing, the matter shall proceed to the FHC as outlined in Section E, below.
 - b. If the faculty member declines a hearing or fails to respond within a reasonable amount of time, the Dean shall then issue a formal notice of dismissal ending the faculty member's employment and tenure with the University.
 - 3. Suspension of the faculty member during the dismissal proceedings is justified only if serious harm

to the faculty member or to others is threatened by the faculty member's presence or the continuance in the performance of his or her duties. Such suspension shall not interrupt the payment of the faculty member's salary and other compensation. Except for announcements to inform interested persons of the time and place of the hearing and similar matters, public statements about the case shall be avoided in so far as is possible until the proceedings have been completed. If a public announcement of the final decision is made, it will include a statement of the FHC's recommendations.

E. Initiating the Faculty Hearing Process

1. The Complaint

- a. The Faculty Hearing Process begins when a Complainant files a complaint with the Chair of the FHC. Complaints shall be brought by individuals and not on behalf of a class. Complainants are encouraged to submit complaints as soon as possible after the occurrence of the action that is the subject of the complaint.
- b. At a minimum, the complaint must:
 - i. Identify the Complainant and potential Respondents;
 - ii. Describe the action(s) complained of and state whether all action is considered complete or still in process;
 - iii. Identify, to the extent possible, the bases of FHC jurisdiction;
 - iv. Describe all prior efforts to resolve the dispute, including exhaustion of other available University processes, and their outcomes;
 - v. Identify potential witnesses; and
 - vi. Propose a desired remedy.
- c. Complaints and all supporting evidence must be submitted in writing. Complainants may include attachments, exhibits and supporting statements with their complaints.
- d. In cases of dismissal or termination of a faculty appointment prior to its expiration date, the formal written notice to the faculty member and the faculty member's response requesting a hearing together shall be treated as the complaint.

2. Initial Review by Chair of FHC

- a. The Chair of the FHC will conduct an initial assessment of the complaint to determine whether it falls within the FHC's jurisdiction, confirm that the issues are ready to be considered by the FHC, and to identify the specific issues to be decided.
 - i. The Chair of the FHC may reject any complaint that does not adequately provide sufficient information (as described above) and evidence a good faith attempt to resolve the complaint (including exhaustion of other relevant internal processes).
 - ii. If a Complainant alleges conduct prohibited by the University's Policy on Prohibited Discrimination, Harassment and Related Misconduct that has not yet been reviewed by OIE, pursuant to University policy, the Chair of the FHC will immediately forward the Complainant's allegations to OIE for assessment and suspend any further action on the complaint until OIE has completed its review of those allegations.
 - iii. The Chair of the FHC shall reject any complaint that has been the subject of a previous FHC proceeding unless significant new facts are presented.
- b. If the Chair of the FHC finds that jurisdiction is in question, jurisdiction shall be decided in a meeting of the Chair and at least two other members of the FHC. Additional information regarding the complaint may be requested as needed to determine jurisdiction.
- c. If the complaint is rejected, the Chair of the FHC will notify the Complainant accordingly in writing and, when possible, work with the Faculty Ombuds to help the Complainant identify any other available University resources for addressing the concerns raised.
- d. If the complaint falls within the FHC's jurisdiction and is ready to be heard, the Chair of the FHC will also review the complaint to identify the appropriate Respondent(s).
 - i. In cases involving dismissal or termination, the relevant dean will be a Respondent.
 - ii. In other cases involving formal employment action, the Respondent will usually be the chair of the department of which the Complainant is a member, unless the underlying action was taken despite a departmental recommendation favorable to the Complainant.
 - iii. There may be more than one Respondent designated by the Chair of the FHC.

- F. The Faculty Hearing Process
1. Designation of Panel
 - a. If the Chair of the FHC determines that the complaint is eligible and ready to be heard, the Chair of the FHC shall appoint a Panel to conduct a hearing (if the Panel deems a hearing necessary) and to make findings and recommendations.
 - i. Each Panel shall have three (3) members. In cases involving dismissal or termination, the Complainant may request a Panel of five (5) members; absent such a request, the Chair of the FHC will appoint a Panel of three members.
 - ii. Panels shall be drawn from the current members of the FHC to the extent possible.
 - b. Once potential panel members have been identified, the Chair will confidentially share relevant information about the case (including the identities of the Complainant, Respondent(s) and potential witnesses) to confirm that the potential panel members have no conflict of interest.
 - c. The Chair of the FHC will designate one panel member to serve as Panel Chair.
 - d. The Chair of the FHC will then notify the parties of the names of the panel members.
 - i. Either party may challenge a panel member on grounds of personal interest or bias.
 - ii. If the Chair agrees that a panel member should be removed, the Chair shall appoint a replacement panel member.
 - iii. If, at any point, a potential conflict of interest arises, a panel member should disclose this to the Panel Chair so appropriate action can be taken.
 2. Preliminary Matters
 - a. Requests for Additional Information
 - i. Upon receipt of the complaint, the Panel may request additional information or written submissions from any party, including further clarification from the Complainant or a formal written response from a Respondent.
 - ii. Failure to timely respond to a request from the Panel may be grounds for finding against the non-responsive party.
 - b. Appointment of Respondent Designee
 - i. When the Respondent is the President, the Provost, the Chancellor for Health Affairs, or a dean, an appropriate individual may be appointed by that Respondent to serve as the Respondent's designee for purposes of this process.
 - ii. Any such designee, however, may not be trained in law and must not have any conflict of interest regarding this matter (for example, the designee may not be a witness or party in the matter).
 - c. All parties must be included in all communications with the Panel or Panel Chair. In other words, if an email is sent to the Respondent(s) regarding the Complaint, the Complainant should be copied and vice versa.
 3. Burden of Proof
 - a. In cases involving dismissal for misconduct or neglect of duty or in the case of termination of an appointment prior to its expiration date, the burden of proof shall be upon the University to provide by a preponderance of the evidence the existence of misconduct, neglect of duty, or other grounds justifying dismissal or termination.
 - b. In all other cases, the burden of proof shall be on the Complainant to prove by a preponderance of the evidence that the action complained of violated University policy.
 - c. At the close of the first party's case, the Panel may decide that the burden of proof has not been met regarding certain issues and, therefore, that further hearing of those issues is unnecessary.
 4. The Hearing
 - a. If the Panel deems a hearing necessary, it should be held as soon as possible at a time and place mutually-agreeable to the Panel, the Complainant, and the Respondent(s).
 - i. The parties are required to prioritize scheduling of the hearing so these matters can be addressed expeditiously. To facilitate this process, the Chair and other members of the FHC may hold standing hearing times throughout the semester for these proceedings.
 - ii. If there is a dispute over the time or place of the hearing or if there is unreasonable delay, the Panel Chair will set the time and place for the hearing.
 - b. The Panel Chair will serve as the presiding officer over the hearing.
 - i. The Panel Chair is responsible for maintaining decorum, setting the schedule, and assuring that the parties have a reasonable opportunity to present relevant oral and documentary evidence, and for making all procedural decisions.

- ii. The hearing need not be conducted strictly in accordance with the rules of evidence, but the Panel Chair may exclude irrelevant evidence.
 - c. Each party is entitled to have one advisor present during the hearing but advisors may not take an active role in the hearing. Neither party may have an attorney (or someone with a law degree) present at the hearing to serve as an advisor.
 - d. The scope of the hearing will be limited to the issues raised in the complaint. If additional issues arise that the Complainant would like to have heard, the Complainant should submit those additional issues to the Chair of the FHC in writing as an amendment to the complaint. Upon receipt of the amended complaint, the Chair of the FHC (in consultation with the Panel Chair, as needed) will determine whether these additional issues should be considered as part of the hearing, should be treated as a separate complaint, or fall outside the FHC's jurisdiction altogether.
 - e. During the hearing, each party shall have the right, within reasonable limits set by the Panel, to:
 - i. Question and cross-examine witnesses;
 - ii. Introduce exhibits; and
 - iii. Rebut any evidence presented.

Where unusual and urgent reasons move the Panel to permit the introduction of testimony taken outside the hearing, the identity of each such outside witness, as well as the statements taken outside the hearing, shall be disclosed to the parties as soon as possible and the opposing party should be given the opportunity to object and respond to this outside testimony as appropriate.
 - f. The hearing shall be confidential. The Panel Chair has the sole discretion to decide who may or may not be present at the hearing.
 - i. The Panel and the parties may not disclose any information of a private or confidential nature obtained during the course of these proceedings except as permitted by University policy or as required by law.
 - g. Witnesses (except those individuals who are parties in the matter) shall be sequestered until they are called to testify. If a party has difficulty securing the attendance of a witness, the FHC and the University shall assist by requesting such witnesses to appear and, if applicable, offering relief from work for time spent testifying at the hearing.
 - h. The Panel, upon request, shall have total access to those University records and other sources of information that may be pertinent to the complaint.
 - i. In addition to hearing testimony from witnesses identified by the parties, the Panel itself may identify witnesses to testify at the hearing, including individuals who can educate the Panel about the specific procedures, practices, context or culture in a relevant department or unit.
 - ii. To the extent that relevant documents are not available to the Complainant (Confidentiality Policy, Chapter 3), the Panel may, in its discretion and after consultation with university counsel, provide such documents to the Complainant upon the Panel's determination that equitable considerations require release to the Complainant. In such cases, the Panel shall notify the custodian of records of the release of such documents.
 - i. The Panel may hold sessions involving just the Panel and the parties to hear arguments and rulings germane to the complaint. All parties, however, must be invited to attend all presentations of evidence.
 - j. All evidence considered by the Panel, written and oral, shall be recorded by means furnished by the University.
- 5. Findings and Recommendations
 - a. Once the hearing and the presentation of all arguments and evidence is complete, the Panel shall issue a written report of its findings and recommendations. Any decision of the Panel shall be based only on information and evidence in the record.
 - b. Except in demonstrated extraordinary circumstances, the Panel shall issue its Report within ninety (90) days from the hearing.
 - i. If a hearing transcript is needed to reach a decision, the Panel shall issue the Panel Report within ninety (90) days after its receipt of the hearing transcript.
 - ii. If additional time is needed to issue a decision, the Panel shall promptly notify the parties in writing of the need for a reasonable extension.
 - c. The Panel Report shall include the Panel's findings of fact and recommendations to the Provost or the Health Affairs Chancellor, as appropriate, for further action.

- i. For example, if due process is found to have been violated in a decision not to renew a term appointment, grant tenure, or promote in rank, the Panel may recommend to the Provost or the Health Affairs Chancellor that the decision be reconsidered, along with recommended procedures.
 - d. The Panel Chair shall send the Panel Report to the Provost or the Health Affairs Chancellor, as appropriate, for review. The Panel Chair should also copy all parties, the Chair of the FHC, the Chair of the Academic Council, and the Vice President for Institutional Equity (in cases of alleged discrimination, harassment or related misconduct).
 - e. The Provost or Health Affairs Chancellor shall review the Panel Report and decide whether the Report's findings and recommendations should be accepted, rejected, modified or remanded for further clarification.
 - i. The review of the Provost or Health Affairs Chancellor should be limited to the Panel Report and, if needed to better understand the Panel's findings and recommendations, any additional information from the record requested by the Provost or Health Affairs Chancellor.
 - ii. The parties, the Panel Chair, the Chair of the FHC, the Chair of the Academic Council, and the Vice President for Institutional Equity (in cases of alleged discrimination, harassment or related misconduct) should be informed in writing of the decision of the Provost or Health Affairs Chancellor.
 - iii. If the Provost or Health Affairs Chancellor decides to reject the findings and/or any of the recommendations, he or she should state in writing the reasons for doing so.
 - iv. The Provost or Health Affairs Chancellor may also ask the Panel to modify or revisit its Report and recommendations where the Panel Report is unclear or where effectuation of the Panel's decision is seen as imprudent, impractical, or unnecessarily repetitious.

G. Appeals

- 1. A Complainant who is not satisfied with the findings and recommendations of the Panel or with the decision of the Provost or Health Affairs Chancellor may appeal to the President.
 - a. Any appeal must be submitted in writing within ten (10) business days of receipt of the final decision of the Provost or Health Affairs Chancellor stating why the Complainant believes that the Panel and/or the Provost or Health Affairs Chancellor erred and specifying what actions the Complainant believes should have been recommended and/or taken.
 - b. All parties must be included in all formal communications regarding pending appeals. If the Complainant sends an email to the President regarding an appeal, the Respondent(s) should be copied and vice versa.
 - c. The adverse party and/or the Panel may, within ten (10) business days of receipt of the appeal, submit to the President in writing the reasons why the Panel's recommendations or the decision of the Provost or Health Affairs Chancellor should be upheld.
 - d. The President shall, to the extent possible, issue a written decision on the appeal within thirty (30) business days after the deadline for the adverse party to respond. If additional time is needed to issue a decision, the President shall promptly notify the parties in writing of the need for a reasonable extension.
- 2. The decision of the President shall be final.

IV. Records and Reporting

- 1. A file for each complaint submitted to the FHC, including even those complaints determined to be outside the jurisdiction of the FHC, shall be maintained by the Chair of the FHC in the Office of the Academic Council. For those matters accepted and heard by the FHC, the file shall contain all communications with the parties, a recording or transcript of the hearing, and all evidence submitted into the record. These records shall be kept for at least three years after the Complainant's appointment with the University ends.
- 2. At least once each year, the Chair of the FHC shall make a report to the Academic Council on the work of the FHC. The report shall provide a de-identified summary of the complaints submitted to the FHC and any hearings conducted and their outcomes. The Chair of the FHC should also identify any general trends, concerns, or opportunities for training or improvement.