

EAST CAROLINA UNIVERSITY
2019-2020 Faculty Governance Committee

MINUTES OF MEETING DATE: October 23, 2019.

PRESIDING: Jeff Popke (vice-chair)

REGULAR MEMBERS (X IN ATTENDANCE):

Tracy Carpenter-Aeby _____, Michael Duffy X , Brad Lockerbie _____, Jay Newhard X ,
Jeff Popke X , Marianna Walker _____, David Wilson-Okamura X

EX-OFFICIO MEMBERS (X IN ATTENDANCE):

Crystal Chambers, Rep of Chancellor X ; Don Chaney, Rep of the Chair of the Faculty X ;
Jay Golden, VCREDE _____; Ron Mitchelson, Provost / VCAA _____; Mark Stacy, VCHS _____;
David Thomson, Rep of Faculty Senate X

OTHERS IN ATTENDANCE: Lori Lee; Rachel Baker, University Program Specialist; Linda Ingalls for Office of the Provost; Malorie Porter, Director of Equal Opportunity and Title IX Compliance Officer; Meagan Kiser for Paul Zigas, interim Univ. Counsel and VC for Legal Affairs; Lisa Hudson for Mark Stacy, VCHS

I. Call to Order, 3:00 pm, Rawl 142

II. Minutes

(The minutes of Sept. 25 were approved beforehand by email, in advance of the vice-chair's report to the Faculty Senate. The committee did not convene on Oct. 9.)

III. Continuing Business.

A. The committee resumed discussion from last spring of the interim regulation "Resolving Allegations of Discrimination" (2017). Prior to the meeting, Popke circulated the text of the regulation, together with UNC-Chapel Hill's "Policy on Prohibited Discrimination, Harassment, and Related Misconduct" for comparison.

1. Popke explained that this was the standard review that this committee would make of any interim regulation.
2. Popke reminded the committee of concerns raised by a faculty member, about record-keeping of investigations that did not lead to formal finding.
3. Porter noted: for accusations of sexual harassment or violence, there is a separate regulation governed by Title IX.
4. Chambers asked who, at UNC-Chapel Hill, conducts administrative reviews? Popke answered: the employee's immediate supervisor, except where the complainant is a student.
5. Popke proposed moving through the document paragraph by paragraph.
6. Section 1: Introduction
 - a. Popke asked, Is it redundant to say that salary discussions are protected, if it's legal?
 1. Wilson-Okamura: salary discussions are *not* protected in many workplaces.

2. Kiser: the reference to salary discussions designates this policy as the one that will govern.
3. Newhard asked, Why is this in a policy on discrimination?
4. Chambers explained, Questions about salary often arise under conditions of discrimination.

7. Section 2: Definitions

- a. Popke and Chambers moved that subitem 2.2.1 (“Discrimination includes failing...”) be **revised** as follows **and appended** to 2.2 (“Discrimination - actions that subject individuals to unfavorable or unequal treatment based on a Protected Class.”), since there are no other subitems: “Discrimination includes but is not limited to failing to provide reasonable accommodations to a qualified person with a disability, failing to provide a reasonable religious accommodations, and failing to provide a reasonable accommodations for pregnancy...” **Carried.**
- b. Popke asked, Is the definition of “hostile environment” so broad as to interfere with academic freedom?
 1. Chambers noted that the behavior must be severe or pervasive; the policy stipulates that a single incident will usually not constitute a hostile *environment*.
 2. Chaney asked, What happens if the complainant is not a member of a protected class?
 3. Chambers suggested, The definition of protected classes is quite broad.
 4. Kiser contextualized: the law does not guarantee a pleasant, friendly work environment, only one that is not hostile.
- c. Porter noted, OED might refer matters that don’t fall under its purview to other units (e.g., the university ombudsperson).
 1. Newhard noted that there are forms of serious misconduct that are not discrimination.
 2. Thomson asked, Should this document point community members to other policies or offices when this one does not pertain?
 3. Wilson-Okamura suggested we place these pointers outside of the regulation, in a document that can be revised apart from the regulatory process.
 4. Ingalls: the Faculty Manual’s grievance policy serves as an umbrella for all employment-related grievances that are not covered by other regulations.
 5. Newhard argued that some harassment is not, as 2.3 calls it, “a form of discrimination.”
 6. In response, Chambers moved to **revise** the definition in 2.3: “Harassment - ~~a form of discrimination.~~ Harassment, for purposes of this regulation, is-unwelcome conduct based on a Protected Class, a form of discrimination as defined in Paragraph 1.1 above...” **Carried.**

- d. Chambers asked whether *Complaints*, which is not defined, should be capitalized. Popke moved to **remove the capital from “Complaints” throughout. Carried.**
- e. On 2.5: Preponderance of the Evidence Standard: Wilson-Okamura averred that he would not want to be judged by this low standard if he were an innocent Respondent.
 - 1. Chambers pointed out, If we set the standard too high, real injustices will continue to go unpunished.
 - 2. Newhard noted, It’s hard to give concrete evidence proving innocence when nothing happened.
 - 3. Kiser contextualized: the civil standard is a preponderance of evidence; an inconsistent standard exposes us to potential liabilities.
 - 4. Wilson-Okamura responded: yes, but civil procedures have additional safeguards; for example, the possibility of appealing a finding, which is explicitly disallowed in 4.2.3.8.3 of this regulation (“OED’s findings may not be appealed”).
 - 5. Popke and Thomson asked, What are the alternatives to the preponderance standard?
 - 6. Kiser outlined the range of evidentiary standards, from “preponderance of evidence” to “clear and convincing” to “beyond a reasonable doubt.”
 - 7. Wilson-Okamura moved to change the standard for this regulation from “preponderance of evidence” to “clear and convincing.”
 - a. Popke argued against the motion, noting that this body may lack sufficient legal expertise.
 - b. Chambers, too, argued contra: this change would put a greater burden on complainants who are already disadvantaged.
 - c. Wilson-Okamura conceded both points, but reiterated that this standard fails the Golden Rule test, of being a standard that he himself would want to be judged by.
 - d. The motion was defeated conclusively.
 - 8. In response to an objection from Newhard, Popke moved to **revise 2.5** as follows: “meeting the preponderance of evidence standard ~~constitutes a conclusion~~ means that it is more likely than not that the alleged Prohibited Conduct occurred.” **Carried.**
 - 9. Newhard and Chambers proposed to insert a definition of Complaint for Section 2: “An allegation of Prohibited Conduct.”
 - a. Several asked, Do we need to specify that the allegation has been filed, formally submitted, submitted in writing?
 - b. Porter noted that most reporting procedures do not involve an actual form.
 - c. Popke suggested that we return to the issue after studying the rest of the document’s discussion of procedures.

- f. 3.3: Procedures for Reporting Prohibited Conduct Against an ECU Faculty Member
 1. Chambers, Popke, and Farwell: we need to clarify, possibly outside of this document, which procedure applies to which type of complaint (e.g., student against student; student against employee; employee against employee; etc.).
 - a. UNC-Chapel Hill's policy, which Popke distributed beforehand, offers a possible model, in the form of a visual matrix.
 2. In response to a query from Chaney, Porter described several methods used for making anonymous complaints.
 3. Chambers asked, Does the mandatory reporting category of "responsible authority" apply to Title VII cases as well as Title IX?
 - a. Porter and Kiser answered: only Title IX.
 - b. Chambers responded, Then there are protections from sexual harassment that do not extend to racial discrimination. Most people don't divide themselves up like that.
 4. In response to earlier concerns about clarifying who should use which procedure, Wilson-Okamura moved to revise the heading of 3.1: "Procedures for an SHRA Employee Reporting Prohibited Conduct ~~Filed By an SHRA Employee~~"
 - a. Popke suggested that we need to rethink this whole section on a larger scale. For example, accusations against faculty members will now be covered by this regulation, not the grievance process in the Faculty Manual.
 - b. Wilson-Okamura, agreeing with Popke, urged nay. The motion failed.

IV. Adjourned at 4:59.

The next meeting of the 2019-2020 Faculty Governance Committee will be held on **Wednesday, November 13**, at 3:00pm in Rawl 142.

Respectfully submitted, David Wilson-Okamura.