

EAST CAROLINA UNIVERSITY
2019-2020 Faculty Governance Committee

MINUTES OF MEETING DATE: November 13, 2019.

PRESIDING: Jeff Popke (vice-chair)

REGULAR MEMBERS (_X_ IN ATTENDANCE):

Tracy Carpenter-Aeby ____, Stacey Altman __X__, Michael Duffy __X__, Brad Lockerbie ____,
Jay Newhard __X__, Jeff Popke __X__, Marianna Walker _X__, David Wilson-Okamura __X__

EX-OFFICIO MEMBERS (_X_ IN ATTENDANCE):

Crystal Chambers, Rep of Chancellor ____; Don Chaney, Rep of the Chair of the Faculty __X__;
Jay Golden, VCREDE ____; Ron Mitchelson, Provost / VCAA ____; Mark Stacy, VCHS _X__;
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 Yeaman, Director of Equal Opportunity and Title IX Compliance Officer; Meagan Kiser for Paul Zigas, interim Univ. Counsel and VC for Legal Affairs

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

II. Minutes

The minutes of Oct. 23 were approved.

III. Continuing Business.

- A.** Popke remarked on a discrepancy between the committee's charge and the practice of some members, which has been to rotate their attendance rather than each one send a representative.
- B.** Popke circulated a proposed revision, from the Admission and Retention Policies Committee, to the policy on class visits. The effect of this addition would be to explicitly preclude visitors from attending classes without permission of the instructor or chancellor.
1. Popke questioned whether, under this wording, chairs could be deemed "visitors" and prohibited from visiting class, either for purposes of evaluation or to corroborate an anonymous student complaint as required by the Faculty Manual.
 - a. Stacy offered a general principle, "The university is the faculty," and recounted an occasion on which a chair visited an instructor's class several times in a row in order to investigate a student complaint. The chair found no evidence to support the complaint, but the unexplained, serial visits created a serious rift between the chair and instructor.
 - b. Ingalls noted that the Faculty Manual, Part VII says that annual evaluations of teaching may include "Direct observation of teaching...by the unit administrator." The Manual does not specify any parameters for chair observations, as it does for peer observations.
 - c. Wilson-Okamura expressed concern that a series of uninvited observations was inconsistent with academic freedom, unless there were serious and credible accusations to warrant them.

- d. Newhard pointed out that the proposed addition is really about students visiting. The immediate difficulty could be cleared up by specifying the scope of this proposed revision.
 2. Altman asked about auditing. The committee agreed that the instructor's permission was needed for auditing.
 3. Popke will consult further with interim University Counsel Paul Zigas.
- C. The committee resumed discussion of the interim regulation "Resolving Allegations of Discrimination" (2017).
1. Section 3: University Grievance Procedures for Complaints of Prohibited Conduct Outlined in this Regulation
 - a. Popke pointed out that 3.3, dealing with complaints against a faculty member, is no longer relevant and ought to be deleted, because discrimination complaints against all employees will be handled using the same procedures.
 - b. Popke proposed, therefore, adding faculty members to the list of employees covered in 3.2 and 3.2.1 as follows.
 1. "3.2. Procedures for Reporting Prohibited Conduct Against a SHRA, CSS, or EHRA Faculty, or EHRA Non-faculty Employee."
 2. "3.2.1. Complaints brought against CSS, EHRA faculty and non-faculty, or SHRA employees not falling within the Mediation and Grievance Procedure for SHRA Employees will be addressed in accordance with this regulation."
 - c. Altman queried the inconsistency of "reporting" and "filing a complaint."
 1. Kiser clarified that "complaint" was the more formal term in HR contexts.
 2. Popke proposed substituting "Resolving Complaints" for "Reporting Prohibiting Conduct" in 3.1 and 3.2.
 3. Ingalls suggested using the same "Resolving" language in the heading for this whole section: "3. University Grievance Procedures for Resolving Complaints of Prohibited Conduct Outlined in this Regulation.
 - d. Thomson and Kiser noted that the heading for section 3 does not really describe the content, which is to say which regulations apply in which situations, not to set out the regulations themselves (which come in Section 4).
 1. Newhard suggested that we need a brief explanation of employee distinctions at the beginning of section 3.
 2. Wilson-Okamura proposed working on this further in a subcommittee. Kiser, Yeaman, and Popke volunteered.
 2. Section 4: Resolving Complaints of Prohibited Conduct
 - a. Regarding 4.1.1, Duffy asked: *who* has standing to determine that "the University becomes aware" of potentially prohibited conduct?
 1. Kiser and Yeaman enumerated several *means* by which the University might become aware.

2. Duffy asked about anonymous complaints.
 - a. Kiser and Yeaman explained that there is often a limit on what can be followed up with anonymous complaints, unless they form a pattern.
3. Popke: the extent of the University's "obligation" to investigate or report is defined vaguely.
 - a. Yeaman: sometimes OED's action is a referral, when the violation does not concern a protected class.
 - b. Ingalls pointed to more specific language, defining the obligation, in "Notice of Nondiscrimination and Affirmative Action Policy," which is linked to at the beginning of this interim regulation.
 - i. Popke moved replacing 4.1.1 with this more specific language: "4.1.1. Consistent with the Notice of Nondiscrimination and Affirmative Action Policy, if the Office for Equity and Diversity becomes aware of any information or concerns related to prohibited discrimination, harassment, and/or related retaliation, the Office for Equity and Diversity will address those concerns with an informal review or formal investigation. ~~if the University becomes aware of any information or concerns related to Prohibited Conduct, the Office for Equity and Diversity ("OED") may conduct a formal or alternative resolution regardless of whether or not it receives a formal complaint. OED will conduct an initial assessment of each report upon receipt of the report to determine if it is within OED's purview prior to conducting any type of resolution.~~ **Motion Carried.**
 - b. Newhard and Thomson revived a suggestion from the previous meeting, to remove numbers from headings (such as 4.1) with only one subitem (such as 4.1.1) throughout the document.
 - c. 4.2.1: Reporting the Prohibited Conduct
 1. Ingalls asked whether working with HR should be added to the means of resolving complaints in 4.2.1.1.
 - a. Yeaman explained: OED sometimes refers complaints to HR when they do not concern a protected class.
 - b. Altman noted that this item includes directions for supervisors, to consult OED, as well as for complainants.
 - c. Wilson-Okamura suggested that there can be a substantial difference between making a complaint to OED and a supervisor consulting with OED to clarify procedures, regulations, and definitions.
 - d. Yeaman offered an example: sometimes the Dean of Students queries OED about unfamiliar religious observances.

2. Popke proposed moving 4.2.1.2, which describes the timeline for reporting complaints, to after the procedure for reporting complaint.
 - a. Wilson-Okamura suggested that leaving the timeline before the procedures is not confusing, and puts high-priority information in a prominent place. We don't want material complaints to fail because the complainant didn't know to submit them sooner.
 - i. Thomson and Newhard suggested that we should specify, in 4.2.1.1, that supervisors must consult with OED "in a timely fashion," so that the clock on a potential complaint doesn't run out.
 - ii. Popke formalized this suggestion as follows: "4.2.1.1. A Complainant may try to resolve an incident of Prohibited Conduct by talking with their supervisor (or other member of management in the supervisory chain if the supervisor is the Respondent), ~~or OED.~~ In such cases, Ssupervisors must consult with the OED in a timely fashion prior to attempting to resolve the complaint." **Motion carried.**
 - b. Popke moved the following clarification: "4.2.1.2. Complaints of Prohibited Conduct reported to OED should be ~~reported to OED-submitted~~ within one hundred and eighty (180) calendar days of the alleged conduct." **Motion carried.**
3. Ingalls asked: does this section deal with informal resolutions?
 - a. Yeaman and Kiser explained: OED does a lot of sorting. When they get a complaint that doesn't fit OED's remit, they may direct it elsewhere. Or, some behavior does not rise to the level of severe or pervasive.
 - b. Newhard argued: if we are really trying to push everyone to report to OED, we shouldn't suggest seeking a resolution with the supervisor first.
 - c. Wilson-Okamura answered: if OED is the only recourse, some substantial violations will go unreported because the process is intimidating, or the consequences seem disproportionate. We need to keep the option of raising the issue with a supervisor who is required to consult with OED.
 - d. Newhard responded: discrimination often involves power differentials, and addressing the issue with a supervisor introduces an additional power differential.
4. In 4.2.1.3.2 and 4.2.1.3.3, Popke proposed substituting "the contact information provided in this regulation" for "the contact information in paragraph 10." **Motion carried.**

- d. Popke moved to reorder “4.2.3.2: Preliminary Inquiry” ahead of “4.2.2: Alternative Resolution Process,” since (as Kiser clarified) this investigation will precede an Alternative Resolution even if the latter is requested.
 1. Altman observed that complaints to OED occur when the complainants believe something illegal has occurred; it’s hard to imagine circumstances in which a *preliminary* investigation would not be warranted.
 2. Kiser and Yeaman clarified: sometimes complainants just want to document behavior.
 3. Popke: in order to protect the due process rights of a respondent, an Alternative Resolution should not take place until the facts have been investigated, to determine whether a violation has actually occurred.
 4. Kiser and Walker suggested linking to the more specific language of the sexual harassment regulation.
 5. **Motion carried.**

IV. Adjourned at 5:05.

The next meeting of the 2018-2019 Faculty Governance Committee will be held on **Wednesday, December 11**, at 3:00pm in Rawl 142.

Respectfully submitted, David Wilson-Okamura.