

EAST CAROLINA UNIVERSITY
2019-2020 Faculty Governance Committee

MINUTES OF MEETING DATE: December 11, 2019.

PRESIDING: Jeff Popke (vice-chair)

REGULAR MEMBERS (X IN ATTENDANCE):

Tracy Carpenter-Aeby _____, Stacey Altman _____, 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 ;
Mike Van Scott, Interim VCREDE _____; Grant Hayes, Acting Provost / VCAA X ;
Mark Stacy, VCHS _____; David Thomson, Rep of Faculty Senate X

OTHERS IN ATTENDANCE: Lori Lee; Rachel Baker; Linda Ingalls for Office of the Provost; Amanda Williams, Associate University Attorney; Patrice Goldman, Assistant University Attorney; Lisa Hudson, for VCHS Mark Stacy; Malorie Yeaman, Director of Equal Opportunity and Title IX Compliance Officer

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

II. Minutes

The minutes of Nov. 13 were approved.

III. New Business.

- A.** Prior to the meeting, Popke emailed the committee about preferred names and gender pronouns, which will soon be available to instructors. Do we need a policy about their use?
1. In his email Popke quoted the University of Minnesota's draft policy as a possible model, noting (however) that similar policies have been revised or recalled because of negative media coverage, concerns about free speech, or questions about punishment. Popke speculated that our existing policies might cover the use of gender pronouns already.
 2. Wilson-Okamura suggested that we hold off on formulating a policy. Since other schools have had trouble with this issue, let's take a few years to learn from each other and see what works.
 3. Chambers agreed with Popke that we already have policies and statements in place that can address these issues.
 4. Hayes urged: whatever discussions take place should include an educational component.
 5. Chambers concurred: OED has a history of treating complaints with education more than sanction.
 6. The consensus of the committee was not to draft a policy on preferred names and gender pronouns at the present time.

IV. Continuing Business.

A. The committee resumed discussion of the interim regulation “Resolving Allegations of Discrimination” (2017).

1. Section 3: University Grievance Procedures for Resolving Complaints of Prohibited Conduct Outlined in this Regulation.
 - a. Most of the items in this section describe complaints that are *not* covered by this regulation. Popke, therefore, proposed grouping all of the complaints that are not covered in one new section, 1.4: Complaints of Prohibited Conduct Not Covered by this Regulation. The existing 1.4, which explains that sexual and gender-based harassment is addressed by a different regulation, would be subsumed under this new heading, as one of several complaints not covered by this regulation.
 1. Thomson observed that putting all this information together, near the beginning, prevents people from reading a long document that doesn’t end up applying to them.
 2. Chambers suggested hyperlinking the appropriate regulation for situations not covered by this regulation.
 3. Thomson suggested typographically distinguishing SHRA complaints that are filed more than 15 days after the last incident, to clarify that this category of complaint *is* covered by this regulation.
 4. Wilson-Okamura moved adoption of Popke’s proposal with the changes proposed by Chambers and Thomson. Carried.
2. Section 4: Resolving Complaints of Prohibited Conduct
 - a. Newhard objected to the following phrase in 4.2.1.1: “A Complainant may try to resolve an incident of Prohibited Conduct by talking with their supervisor.” Newhard pointed out that supervisors are sometimes complicit in discrimination themselves. Moreover, someone studying this policy is usually past the point of resolving the problem at the unit level.
 1. Chambers and Williams disagreed: in many situations, the best resolution is at the unit level.
 - a. Newhard replied: This may be fine for certain situations, but in many cases there is a risk associated with the Complainant discussing the complaint with their supervisor, since the Complainant might be naïve regarding the supervisor’s involvement or attitude. It is not uncommon for the supervisor themselves to be blind to their own attitude about the complaint.
 2. Thomson pointed out that sometimes people are studying the policy in order to weigh the costs of proceeding with a Formal Resolution.
 - a. Newhard replied: That may be true, but in many cases there is a risk associated with the Complainant discussing the complaint with their supervisor, since the Complainant might be naïve regarding the supervisor’s involvement or attitude.

3. Williams suggested that raising issues with a supervisor allows the supervisor to document an ongoing problem.
 - a. Newhard added: That is fine, too; but referring the Complainant to OED provides an even better and more systematic opportunity to document an ongoing problem.
4. Yeaman added: sometimes legal counsel can spot patterns that supervisors don't notice.
 - a. Newhard added: Sure; all the more reason for the Complainant to speak immediately with OED and not to a supervisor, especially when supervisors change periodically and it is unlikely for there to be a system used continually by successive supervisors to keep track of complaints.
- b. On "4.2.3.2. Preliminary Inquiry":
 1. Under the current regulation, potential Respondents are not notified when a preliminary inquiry takes place. Popke asked whether they should be.
 2. Wilson-Okamura turned the question around: what is the rationale for not informing potential Respondents?
 3. Duffy answered: for one thing, not notifying potential Respondents prevents them from destroying evidence, retaliating, or discouraging testimony.
 4. Williams and Yeaman: under FERPA, student complaints must remain confidential; notification to a potential Respondent can *only* be given if further action is taken (such as a formal investigation).
 5. Hayes wondered aloud: do university members really want to know every time someone complains about them to OED?
 6. Wilson-Okamura asked: is OED treating all parties equally (4.2.3.3.2) if one party doesn't know he or she is the subject of an inquiry?
 7. Chaney, Thomson, and Wilson-Okamura expressed concern about files becoming part of a record that the Respondent doesn't know about and therefore can't correct until it's too late (for example, because witnesses are unavailable or the potential Respondent can't remember).
 - i. Yeaman: action is usually taken on the basis of recent violations.
 - ii. Wilson-Okamura: but the standard for action is "severe or pervasive." So we're looking at patterns that extend back in time. It's important, therefore, to correct the historical record; and Respondents can't do that when they don't know a record exists.
 - iii. Wilson-Okamura added: the importance of correcting early record is magnified because the regulation's standard of evidence is "preponderance"; under that standard, small things can be decisive.
 - iv. Newhard interjected: our goal is to correct behavior as well as records.

- v. Thomson asked: could an accumulation of minor complaints lead a supervisor not to renew a contract?
 - vi. Chaney responded: for better or worse, OED doesn't notify unit administrators of preliminary inquiries.
 - vii. Yeaman added: OED complaints are usually organized by Complainant, not Respondent, and do not become part of an employee's personnel file.
 - viii. Williams addressed Wilson-Okamura's concern about evidence, pointing out that Faculty Manual sanctions require the higher standard of "clear and convincing."
8. Popke acknowledged the concern about secret files, but argued that the welfare of potential Respondents should not eclipse that of Complainants, to the degree that Complainants are discouraged from reporting to OED in the first place.
 9. Wilson-Okamura proposed that Respondents should not be notified for all intakes, in which a potential Complainant has a conversation with OED, but should be notified for all preliminary inquiries.
 10. Popke proposed, to general agreement, that we review the rest of the procedure and return to this issue later, perhaps with a larger perspective.
- c. To general agreement, Popke proposed removing the following item from "4.2.2 Alternative Resolution Process" and appending it to "4.2.3.2 Preliminary Inquiry" as follows: "~~4.2.2.2.1~~ 4.2.3.24. Additionally, if the report of Prohibited Conduct includes matters that fall within the jurisdiction of one or more University offices, OED may conduct a joint review with those offices as necessary."
 - d. On "4.2.2. Alternative Resolution Process":
 1. Popke asked how OED decides whether to open a preliminary inquiry or seek an alternative resolution.
 2. Yeaman estimated that approximately half of last year's intakes that did not escalate to a full investigation were addressed through an alternative resolution.
 3. In some cases, Williams explained, the regulation *only* allows for an alternative resolution: e.g., because the alleged discrimination was not severe or pervasive.
 4. Thomson asked: should we speak of "an alternative resolution" rather than "the alternative resolution process"?
 5. Wilson-Okamura defended "process," as something that all resolutions should be governed by.
 6. In 4.2.2.2, Yeaman noted that "Conflict Resolution and Mediation Program" should now be changed to "Ombuds Office."
 7. Thomson and Popke asked: does the preponderance of evidence standard apply when there is an Alternative Resolution?

8. Yeaman explained: the preponderance standard applies to Formal Resolutions, which involve an investigation and a finding submitted to a vice-chancellor.
- e. On “4.2.3. Formal Resolution Process”:
 1. Newhard asked why Complainants and Respondents were prohibited from conducting their own investigations.
 2. Yeaman, Williams, and Hayes explained that independent investigations can impede OED’s investigation; they can also be a form of retaliation.
 3. In response to queries from Duffy, Yeaman described how participants were informed about outcomes or delays.
3. Chambers suggested that “Preliminary Inquiry” should be renamed “Preliminary Review,” because *inquiry* sounds like *inquisition* and because, at this stage, OED is not seeking information from sources other than the Complainant. The preliminary inquiry is an intake report.
 - a. Wilson-Okamura expressed confusion. [Compare the end of the minutes for Nov. 13, where Popke moved to reorder “4.2.3.2. Preliminary Inquiry” ahead of “4.2.2. Alternative Resolution Process.” The motion carried, at least in part, because “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.”]
- B. At 5 pm, Popke charged the committee to read ahead in the document and flag any potential issues, so that we can complete our review at the next meeting. We will also revisit the question of whether potential Respondents should be notified when no action or investigation results from the initial intake report.

V. Adjourned at 5:01.

The next meeting of the 2018-2019 Faculty Governance Committee will be held on **Wednesday, January 22**, at 3:00pm in Rawl 142.

Respectfully submitted, David Wilson-Okamura.