

Faculty Senate Policy Committee

Meeting Minutes

November 4, 2015

3:30 p.m. to 5:00 p.m.

- Members Present:** Kimberly Gauderman (Co-Chair), Martha Muller (Co-Chair), Leslie Oakes, Marsha Baum, and Melinda Tinkle
- Ex-Officio:** John Trotter, HSC Vice Chancellor Emeritus, and Leslie Morrison, HSC Vice Chancellor, Vivian Valencia, University Secretary, Office of the Secretary, Kimberly Bell, Deputy University Counsel, University Counsel Office, and Carol Parker, Senior Associate Provost, Office of the Provost & EVP for Academic Affairs
- Members Absent:** Barbara Hannan, Jamal Martin, and Lee Brown
- Staff Present:** Candyce Torres, Office of the Secretary, Administrative Coordinator
Carol Stephens, Office of the Secretary, Professional Consultant
- Guest Present:** Emma Rodriguez, Associate University Counsel, University Counsel Office

Meeting began at 3:30pm

1. The regular meeting of the Faculty Senate (FS) Policy Committee was called to order at 3:30PM on Wednesday November, 4 2015 in Scholes Hall, Room 101 by Co-Chairs, Kimberly Gauderman and Martha Muller.

E40 “Research Misconduct”. Chair Muller expressed that for this particular policy one of the things the committee wanted to make sure of was that it had a good grasp on whether the changes that were proposed from ORI significantly changed the policy. ORI was concerned about adding back the following sentence (which ORI recommended taking out) that Faculty Senate President, Dr. Stefan Posse wanted put back (per his request with the committee’s approval at the September 23, 2015 FS Policy Committee meeting) into the policy: *“Immediately upon ensuring that the research records are secure, the respondent shall be notified that an inquiry is being initiated and an inventory of the secured records shall be provided him/her. As soon as practicable, a copy of each sequestered record will be provided to the respondent,*

or to the individual from whom the record is taken if not the respondent, if requested. The respondent shall be notified of the charges and the procedures to be followed.”

Carol Stephens indicated that ORI would need to be consulted to determine if adding this language back into the policy is okay. Stephens and HSC Vice Chancellor, Dr. John Trotter pointed out that ORI’s rationale for removing this sentence appeared to be because of the additional work for the University, which appears to be unmanageable. Dr. Trotter indicated that Dr. Posse’s point was you need to know the basis on which somebody is subjecting your activities to investigation. Dr. Trotter stated that at least an inventory, at least would seem to be appropriate at that point. Carol Parker is concerned about the time periods that come into play. Parker referenced submission inquiry for example. Carol Parker expressed further concern about the process for research suspension. Parker indicated that it is unclear when or how research is suspended during the investigation process.

Carol Parker identified a typo on page 7, “of the allegation. On page 13 the reference to UAP Whistleblower policy should be referenced and the applicable UNM Compliance Office. Carol Stephens will talk to John Trotter about the grammatical errors he caught. In section 1.2 delete report and in section 1.1 replace with allegation. In the related document section C07 should be referenced. In addition, the committee recommended defining record. Committee Co-Chairs will reach out to Michael Dougher and Richard Larson via email requesting their thoughts on the current policy language and identify challenges in addition, to obtaining a definition for conflict of interest from them. Martha Muller mentioned recirculating the policy draft once all recommendations have been received and applied. The committee would then discuss this and vote on the policy additions/recommendations etc. via email. The deadline to receive this information is before Thanksgiving. Mindy Tinkle motioned to accept Martha Muller’s recommendation and Marsha Baum seconded. Members should send their comments to Candyce Torres.

- 2. Updates. C07 “Faculty Disciplinary Policy”.** Carol Parker had a question about C07. Parker indicated that at the last meeting the committee ran out of time to fully discuss C07, and the proposed peer hearing procedures being included in the policy. Parker further mentioned that she was surprised to see it listed as being forwarded on to AF&T for review since Parker didn’t see the committee vote on it. Parker expressed that the point she didn’t get to make at the last meeting was that she is concerned about taking an elaborate hearing procedure and dropping inside of a policy. There are so many other instances when peer hearings are used. She indicated to the committee that it is more appropriate to have a peer hearing policy, and then simply reference it. From a policy structuring approach that procedure couldn’t be used for anything else. It is limited to that. Carol Stephens provided some clarification. Stephens’s summary indicated that the current C07 policy does refer to the use of peer hearing procedures and it instructs that you use the dispute resolution peer hearing procedures which exist in the body of the dispute resolution in UAP for staff. Her understanding was that the peer hearing procedures weren’t completely well suited for faculty when the disciplinary policy was being administered. The thought was instead of relying on a staff peer hearing procedure and instructing faculty to use that out of C07, it would make more sense to incorporate a faculty peer hearing procedure into the procedures section of C07, which allows for change just with the Faculty Senate (FS) Operations Committee and FS Policy Committee approval. Stephen’s explained that the process

that she used was she looked at the dispute resolution peer hearing procedures that are currently referenced in C07 and model hearing procedures developed out of University Counsel's Office and blended the two to produce the proposed peer hearing procedures for faculty. This was just a start for the committee to look at. At the FS Policy Committee meeting held in June, the committee asked Kimberly Bell to look at those procedures having been involved in a recent hearing. Bell's comments were presented in the agenda packet at the last committee meeting in September. The discussion that Stephens recalled was that the issues being raised about the disciplinary policy (as AF&T was the body that developed C07 to begin with) would be referred to AF&T, and then the Committee would revisit any recommendations AF&T had. Gauderman stated that C07 was discussed at the last committee meeting, and that C07 would be sent to AF&T but that the committee would still have another discussion about the peer hearings. In the course of planning the FS Policy Committee meeting agenda (for this meeting) because Marsha Baum is interviewing people who are involved in the Ethics Committee, it was recommended that Ethics also look at the procedures, invite Bell to talk about those procedures at the November meeting, and bring the discussion(s) back on peer hearings from Ethics and AF&T to the Policy Committee. Gauderman confirmed that the piece about the peer hearing procedures was indeed supposed to be brought back to this meeting. Vivian Valencia explained that Baum became involved with this because the Ethics Committee charge is being revisited. In Baum's efforts to look at the components of that charge there was some question about the role of the Ethics Committee in relation to AF&T. Valencia indicated that she is more than happy to facilitate requests for administrators to be considered for future AF&T and or FS Policy Committee agendas to provide information and input at that level. Gauderman further confirmed that it was explicitly stated that C07 would come back to the FS Policy Committee for consideration and approval. Parker expressed that the FS Policy Committee has never discussed at a higher level on the comments she has made. Parker stated that she informed the FS Policy Committee in prior meetings of the difficulty in administering this policy, and further maintained that she never received any feedback from committee members about her concerns. Parker indicated that she wanted feedback from committee members about whether or not her concerns are valid points.

Carol Parker asked if it is possible to revise C07 to provide for a tiered response which she had suggested. Parker indicated that the level of due process and appeals were too great in situations where it is a minor infraction. If it could be indicated in the policy if it is a minor infraction maybe one appeal is granted to the dean, provost, etc. Parker asked what the committee thought about this idea. Melinda Tinkle asked Parker if she thought that the policy is one that it is clear when it should be invoked. Parker stated no it is not. Tinkle stated that she wonders if the problem is on the front-end, in terms of using it when it is not necessary/appropriate. Parker further inquired about how outside investigations come into play from entities like OEO or Internal Audit.

Leslie Oaks informed the committee that in dealing with situations like this it would be helpful to have a tiered system in place like Parker is proposing.

Baum informed Parker that she can certainly take her concerns to AF&T. Parker indicated that where the Department chairs are really struggling is whether they have to follow this policy when they slimly have to call someone out about their behavior. The spirit of C07 states it is meant to be rehabilitative. Oaks asked if the investigatory recommend a penalty. Parker

informed Oaks that she spoke with Legal and other compliance offices. Parker stated that OEO and Internal Audit never make recommendations about what should happen as a consequence of the finding of a policy violation. They simply affirm whether or not a policy was violated. Oaks recommended providing some more clear instruction. Cleared instruction on whether a verbal warning should be written down and put into the file would be helpful. Just some clear guidance and small steps incorporated into the policy.

Morrison indicated that the appeal process must be addressed at each step so that is appropriate to the action. C07 needs to be more explicit.

Martha Muller asked members to look at UAP 3215 and see if that policy is something that the committee could adapt for faculty, and move in that direction as opposed to going through and trying to imbed this into C07. Oakes offered to take this up and bring what she discovers to the committee. The committee discussed whether or not to take C07 back from AF&T before they have further discussion about it to address some of these issues. Baum expressed that AF&T has concerns about C07, and prefers that it stay with AF&T (as it was originally drafted by AF&T) since they have already started working on it. It would be helpful to stay so that AF&T can provide their input. Baum will take all of the concerns from the FS Policy Committee to AF&T for discussion and consideration.