

SPECIAL MEETING OF THE UNIVERSITY FACULTY

SENATE JANUARY 12, 2015 – 104 GORE HALL

4:00

PM

OFFICIAL MINUTES

Members Present: H. Bias, W. Batchis, D. Bellamy, J. Bernstein, N. Brickhouse, M. Buell, C. Caro, N. Carver, C. Castillo, L. Claessens, J. Courtright, K. Cranker, P. Duker, S. Eidelman, D. Ford, D. Galileo, Provost Grasso, M. Gutierrez, E. Hayes, J. Jebb, P. Laux, J. McNutt, G. Melloni, L. Okagaki, B. Opila, B. Orzada, L. Overby, M. Papas, M. Parcells, V. Perez, D. Reisman, C. Riordan, M. Robinson, K. Rosenberg (elected replacement for Senator Rocek), D. Satran, S. Shabo, C. Shen, A. Sivaraman, H. Tanner, D. Thompson, K. Turkell, T. Vermeer, G. Watson, C. Williams, R. Wool

Members Excused: B. Ackerman, J. Daniel, P. Dhurjati, N. Donofrio, C. Dybowski, T. GiJ. Gizis, B. Hanson, J. Heinz, W. Lewis, A. Marsh, K. Matt, S. McGeary, M. McLane, B. Ogunnaike, A. Poorani, M. Rieger, T. Rocek, E. Selva, N. Targett, G. Watson, B. Weber, J. Zide

Members Absent: J. Gillespie, J. Hethorn, M. Hopkins, T. Hsu, S. Isenstadt, R. Jaeger

December 11, 2014

TO: Senators and Executives

FROM: Prasad Dhurjati, Vice President
University Faculty Senate

SUBJECT: Special Faculty Senate Meeting January 12, 2015

The special meeting of the University Faculty Senate will be held on Monday January 12th at 4:00 p.m. in room 104 Gore Hall.

The Agenda will be as follows:

AGENDA

I. Adoption of the Agenda

Motion made by Sen. Duker and seconded by multiple senators. Agenda Adopted.

II. Approval of the Minutes: [December 1, 2014](#)

Changes suggested and made. Motion made by Duker and seconded by multiple senators. Minutes Adopted.

III. Remarks: Provost Grasso

We need to invite everyone to higher education. It is not only in the individual student's interest but also in our interest but we cannot do this without providing and ensuring a safe and secure environment to all our students. The Federal government has had to step in to ensure that we achieve our lofty goals, much to our embarrassment. Today, we are gathered to do just that – provide a safe and secure environment to all our students. We all agree that it would be unconscionable if any student is robbed of his/her hopes and dreams.

We are also here to commit ourselves to a higher standard of shared governance similar to what we do in promotion and tenure and work toward common goals. In your recommendation to the President, we hope that you will send a strong signal that UD is committed to ensuring a safe environment for all our students and serve as a model of shared governance.

IV. Announcements: Senate President Fred Hofstetter ([Slides](#))

Two changes to the FWP policy on Dec. 1

- As Past Pres. Galileo requested at the end of the Faculty Senate meeting on December 1 2014, I sent FWP chair John Courtright a log of the changes that had been made in the FWP policy document.
- The definition of Complainant was modified. The old definition was "Complainant refers to the student, staff or faculty member who brought a sexual misconduct complaint against the Respondent." The new definition is "Complainant refers to the student, staff or faculty member who brought a sexual misconduct or other formal complaint of wrongdoing against the Respondent prompting the FWP proceeding." Where the old document said "if the matter involves allegations of Sexual Misconduct, the Complainant" the current version says simply "the Complainant".
- At the end of the definition of sexual misconduct, the following sentence was added: "Nothing in this policy shall infringe upon First Amendment or academic freedom protections set forth in either the Faculty Handbook or in the Collective Bargaining Agreement between the University of Delaware and the American Association of University Professors."

Next he discussed changes made after Dec. 1. In the revisions to the FWP Termination and Complaint Procedures that are before you today, the following additional changes have been made and voted on by the FWP committee:

- 1) Added to I-A-12 definition of Sexual Misconduct: "Speech appropriately related to curriculum, teaching, research, and scholarship is not sexual misconduct."
- 2) In I-C-1-d-i: Changed "four weeks" to "20 days"
- 3) Added I-C-7-b: "Unless a majority of the Hearing Panel recommends that the accused faculty member be terminated, the accused faculty member shall not be terminated."
- 4) Deleted the definition of Designated Dean (formerly Section II-A-11)
- 5) Changed "Respondent" to "Initiator" in the definition of Complainant in Section II-A-11.
- 6) Added to II-A-12 definition of Sexual Misconduct: "Speech appropriately related to curriculum, teaching, research, and scholarship is not sexual misconduct."
- 7) Removed the vestigial mention of the Designated Dean in Section II-C-3-b-iii.
- 8) On page 1 where the document mistakenly referred to Section II-C, that referral was corrected to II-B.

During this Special Meeting, the faculty must vote on the FWP resolution. During the debate, five amendments that may be made are as follows.

- 1) Past Pres. Galileo may propose amending the resolved clauses to refer termination changes as a recommendation from the Faculty Senate to the Board of Trustees.
- 2) Senator Zide has drafted amendments that will remove Section I-C-7-b, require majority and minority reports to be signed in Section I-C-7, and give the Provost the option of writing an explanation if the Provost's decision contradicts the majority vote of the FWP hearing committee.
- 3) President-elect Opila may propose amending Section I-C-7-b.

V. Consent Agenda: None

VI. Regular Agenda:

1. Unfinished Business:

- a. Recommendation from the Committee on Faculty Welfare and Privileges (John Courtright, Chair) for the revision of the Termination and Complaint Procedures ([Attachment 1](#))

WHEREAS, the Committee on Faculty Welfare and Privileges (FWP) Termination and Complaint Procedures (the "Procedures") have not been edited and updated since 1999, and

WHEREAS, updates need to be made to the Procedures including the definition of the term Faculty to redefine who may file FWP complaints, and

WHEREAS, it is in the best interest of the University and its faculty to ensure that the Procedures conform to new requirements imposed by the U.S. Department of Education's Office for Civil Rights (OCR) interpretation of Title IX, and

WHEREAS, the University needs to do all it can to reduce the incidence of sex discrimination and sexual harassment, therefore, be it

RESOLVED, that the FWP Committee's Termination and Complaint Procedures shall be revised as in the red line document that is attached ([Attachment 1](#)).

Pres. Hofstetter: In considering these possible changes and any other amendments that may come from the floor, Robert's Rules will be in effect.

Pres. Hofstetter recognized Past President Deni Galileo who introduced the Galileo amendment as follows:

*WHEREAS, the Committee on Faculty Welfare and Privileges (FWP) Termination and Complaint Procedures (the "Procedures") have not been edited and updated since 1999, and
WHEREAS, updates need to be made to the Procedures including the definition of the term Faculty to redefine who may file FWP complaints, and
WHEREAS, it is in the best interest of the University and its faculty to ensure that the Procedures conform to new requirements imposed by the U.S. Department of Education's Office for Civil Rights (OCR) interpretation of Title IX, and
WHEREAS, the University needs to do all it can to reduce the incidence of sex discrimination*

and sexual harassment,

WHEREAS, it is a privilege of the faculty to make recommendations concerning policies governing dismissals, therefore, be it

RESOLVED, that the FWP Committee's Termination and Complaint Procedures (exclusive of Section I. Termination Procedures) shall be revised as in the red line document that is attached ([Attachment 1](#)), and be it further

RESOLVED, that the Faculty Senate recommends that the FWP Committee's Termination Procedures (Section I.) be revised as in the red line document that is attached ([Attachment 1](#)).

Sen. Duker seconded the motion from Past Pres. Galileo.

Sen. David Bellamy requested that Pres. Hofstetter describe the red line document. Pres. Hofstetter displayed it on the screen. To clarify, the Galileo amendment is not making any changes in the FWP policy. It is only making Section I of the policy (dealing with termination) be a recommendation. It is not making any change in the policy itself. The President needs to take that to the Board for the Board's approval.

Sen. Buell: Are we voting on the amendment?

Pres. Hofstetter: Yes. The Galileo amendment is creating two resolved clauses – one is approving Section II and the other one is recommending Section I.

Past Pres. Galileo: it is a matter of presentation of the policy – to be more explicit that Section I is a recommendation.

Past Pres. Galileo: I did not say here that it is a recommendation to the Board of Trustees. If somebody feels that way, we can just reflect in the record that that is what needs to happen.

Pres. Hofstetter: That is what "recommends" means.

Sen. Turkell: If we vote to approve this, what happens to the Opila amendment?

Pres. Hofstetter: I would predict that that the Opila Amendment will still be made.

Parliamentarian Jebb: The pending amendments would be working on the attachment 1.

Pres. Hofstetter: Would the FWP committee accept the Galileo amendment as a friendly amendment?

Sen. Courtright: This is not a surprise to the committee and this would be going to the Board.

Pres. Hofstetter: Friendly amendment from Sen. Duker. Page 2 and Page 3 had old style references. These may go back 20 years or more. Those need to be replaced with Handbook, 4.1.15. I verified the accuracy of that.

Sen. Courtright: This is just housekeeping. Sure.

Pres.-elect Opila: describes the Opila Amendment. Moved by Pres. Elect Opila. Seconded by Sen. McNutt.

Pres. Hofstetter: reads the Opila Amendment.

Be it resolved that Section I-C-7-b shall read as follows:

Within 21 days after receipt of the Report, the Provost (or President) shall, in writing, either affirm the Report or refer it back to FWP with detailed objections and/or suggestions. If the Report is referred back, FWP shall review the Provost's response, taking into account any objections or suggestions therein. FWP submits a revised report within 21 days to the Provost (or President), who may affirm, modify, or reject it within 21 days. If the Report is rejected, then the Provost (or President) shall provide a written statement to the Committee and both parties describing the substantive reason(s) for rejection. The Provost's (or President's) decision shall be final and conclusive, and the matter in question shall be deemed closed, unless either party requests an appeal to the Board of Trustees within 21 days after receipt of a written copy of the Provost's (or President's) decision. The Board of Trustees may hear appeals at their discretion, and the Board's decision shall be final.

Sen. Courtright: Friendly amendment: I would like to add to this – this allows lot of communication to go back and forth between administration and the party. I suggest that all the communication be made available to initiator and the respondent. Rationale: This should be an open hearing and the results should be open. Making it available will enable the parties

have access to everything if they decide to go to civil litigation.

Sen. Caro: Suggestion: The minority opinion should also be made available. It would be helpful as people go forward.

Sen. Bernstein: Is there a real distinction between President and Provost?

Pres.-elect Opila: I would like to accept Sen. Courtright's friendly amendment.

Pres. Hofstetter: Yes, we can. His friendly amendment is accepted.

Sen. Bellamy: Is there going to be more than one party that can make an appeal?

Pres. Hofstetter: It is up to the parties involved.

Sen. Courtright: I can never imagine a situation where the P/Pres. – the people who have made the decision – would appeal?

Pres. Hofstetter: Party is a defined word in the document. It refers to the party as defined in the FWP policy.

Past Pres. Galileo: This amendment puts faculty policy in line with employees and student. The faculty should keep that in mind when voting on this amendment. We need to first decide whether to get rid of it or keep it before we decide on whether we will replace it.

Pres. Hofstetter: Such is Robert's rules. It is important to point out that if you pass this amendment, it will replace Section I-C-7-b. The amendment is modeled after the UVA policy.

Sen. Bellamy: The definition of the party excludes the complainant and that is not right. I am going to vote against this if an amendment is not made.

Sen. Bellamy: Please recognize Prof. Morgan.

Pres. Hofstetter: recognizes Prof. Morgan.

Prof. Morgan: I have read the Title IX document. Is the Board willing to go through training to handle Title IX issues? The appeals process must be equal for both parties. This is going to be hard and detail oriented for the Board of Trustees to handle. Has anybody checked with them to see if they are willing?

Pres. Hofstetter: UD is committed to bringing the organization in line with Title IX. If UD needs to do this to be in compliance it will do everything necessary. I am not arguing in favor or against. I am just making a point of information.

Pres. Hofstetter: If this amendment were passed, I would ask if you are ready for the question on the main motion? This is the so-called compromise amendment.

Past Pres. Galileo: If any modification to the policy as presented by any of the amendments that we are going through now, we need 2/3rds majority – it is a faculty handbook change and it follows the Galileo rule.

Pres. Hofstetter: Parliamentarian??? It is linked to the faculty handbook.

Past Pres. Galileo: You told me that it is part of the handbook because of that.

Pres. Hofstetter: That means it is associated with the faculty handbook. In the meantime, I would like to continue the debate.

Dean Okagaki: Please recognize Prof. Blits

Prof. Blits: Currently, important faculty protection is that the accused faculty member has the right to make public the Provost's or the President's recommendation. Would that apply here?

Pres. Hofstetter: As far as I know, it would. I don't see anything preventing the faculty member from making it public.

Pres.-elect Opila: With the Courtright amendment, the faculty member would have all the info.

Sen. Duker: Section C says that the President/Provost and the other party can make all the info public.

Sen. Courtright: That was the purpose of my amendment.

Sen. Eidelman: "may" in the fifth line should be changed to "may submit or decline to do so"

Pres. Hofstetter: Is this a friendly amendment?

Pres.-elect Opila: Yes, I will take it as a friendly amendment.

Sen. Bellamy: Please recognize Sen. Morgan.

Sen. Morgan: Lot of info in a case – takes time to review – how will the Provost do this in 21 days?

Sen. Buell: Can we vote on whether we want to change the sentence?

Pres. Hofstetter: It may be ready to vote on. Is it?

Sen. Bellamy: Yes, I am going to vote against it because I can think of a case about 40 years ago where having Section I-C-7-b would have saved the university a lot of embarrassment and public reprobation. This other part is going to be seen as busy work. I-C-7-b promotes faculty governance that is important in this university.

Sen. Caro: If this amendment is voted on and passed, would we entertain the others?

Pres. Hofstetter: If this amendment passes, other amendments might not come to the floor. Any member can propose any of those if they want, until the main motion. No one I have talked with is planning on bringing the other amendments forward if this one passes.

Sen. Caro: In that case, please consider one of the other amendments that would take into account the dissenting opinion.

Pres. Hofstetter: I think that is a separate issue but I am open to what the senator wants to do. This isn't talking about the minority and the majority opinion.

Sen. Bernstein: The sentence below seems to be greater in protection than the one above. My question is: Is the reason for the so-called compromise that the Board will not accept the last 3 lines?

Pres. Hofstetter: I do not know if the Board would accept it or not.

General Counsel Larry White was recognized. My sole purpose for the last six months is to ensure that the policy that is adopted is in alignment with Title IX. Prof. Morgan is correct that this language needs to be amended (4th to the last line). "either party" should be amended to "either party (or the complainant)."

Sen. Courtright made that friendly amendment and Pres. Elect Opila accepted it.

Pres.-elect Opila: Capitalize "P" in party as a friendly amendment

Pres. Hofstetter: accepted it.

Sen. Laux: In the same spirit, we should add "complainant" to the last line as well.

Pres.-elect Opila: Friendly amendment accepted.

Past President Galileo: When we are debating on this amendment, we are also debating on whether Section I-C-7-b should exist. Is there any argument against Section I-C-7-b?

Pres. Hofstetter: Many faculty think the bottom lines are best. The administration does not like it and we have the Zide amendment. If we pass the compromise amendment, then you will not vote on the 3 lines at the bottom.

Sen. Reisman: If part of the compromise is that this should be approved further above the chain –if we do not approve it – and there is a time constraint – so I am concerned about how that is all going to play out as well.

Sen. Bellamy: Section I-C-7-b does it satisfy Title IX – Q to GC Larry White.

GC Larry White: I made my suggestion for the lengthy paragraph because that will raise Title IX concerns. The shorter wording raises some shared governance concerns. I cannot think of another instance where the faculty takes that power away from the Provost/President. It violates the AAUP principles of shared governance that has been what UD has been committed to since 1966.

Pres. Hofstetter: Any further discussion?

Sen. Caro: Friendly amendment: add Zide amendment #2 to the Opila amendment after the first sentence.

Sen. McNutt: The question has been called and Sen. Duker seconded

Pres. Hofstetter judges the voting as more than 2/3rd in favor.

All those in favor of this motion to amend as seen on screen. 28 in favor and 8 opposed.

Pres. Hofstetter: Floor is now open for discussion on the main motion as amended.

Sen. Duker: Propose amendment I. C.7.a.iii – Zide amendment #2 is now Caro/Duker amendment. (see slide). Sen. Caro seconded it.

Sen. Duker: add (President) after Provost.

Motion passes with majority.

Pres. Hofstetter: Any further discussion on the main motion?

Sen. Duker: on page 13, why was the respondent struck through and the initiator replaced?

Sen. Courtright: I don't think it should be.

Sen. Duker: Friendly amendment to change it back to respondent.

Sen. Duker: II-b-I-C – Prof. Morgan's message allayed that concern. Page 14 – 2a. "sexual assault" should be changed to "sexual misconduct." Page 15 "in 1 above" delete "in 1."

Sen. Courtright: Friendly amendments accepted.

Sen. Turkell: throughout the document, his/her to be changed to they/their so that the wording accommodates everyone – outside of the gender binary.

Parliamentarian Jebb: advised that it be a separate motion.

Sen. Turkell: We should amend the document to change his/her to their or add his/her/their as per good English.

Sen. Caro. Seconded it.

Call to question by Sen. McNutt

Amendment passes

Pres. Hofstetter: any objection to voting on the main motion.

Sen. Castillo: I am speaking as a typical graduate student, whose most significant interaction with faculty is with his/her adviser.

Over the course of our graduate careers at UD, we will spend a great deal of time alone with our advisers, and we depend on them not only for knowledge and research guidance, but also for professional contacts, career advice, and letters of recommendation. Accordingly, our advisers play a critical role in shaping and launching our own future careers.

The relationship between graduate students and our faculty advisers is one of trust--trust that is compounded as many of us develop a personal rapport with our advisers, in addition to a professional relationship. Considering their ability to make or break our careers, it is not an exaggeration to say that our advisers potentially hold the rest of our lives in their hands. Though the relationship between students and faculty in general is not nearly as deep or complex as this, it is essentially the same in that it is founded on trust between the student and the faculty member.

Therefore, a violation of that trust--via harassment or assault, sexual or otherwise--demonstrates both absolute disregard for professional conduct and absolute disrespect for the student as a person. In particular, a faculty adviser violating his/her advisee's trust is tantamount to professional homicide, given the effect that faculty member can have on a student's potential career. The university, moreover, is an accomplice to this crime when it unreasonably shelters such faculty members from justice and enables them to become serial offenders; indeed, the university has a moral obligation to represent the very best professional standards and it should strive to ensure the success of its students.

If a faculty member has already been recommended for termination, and if it is determined that it was more likely that the faculty member violated a student's trust than that he/she did not, then that faculty member ought to be terminated. The university owes it to its students to provide them the highest-caliber faculty worthy of students' respect and trust, and faculty who harass or assault their students deserve neither.

In short, I support the application of the "preponderance of evidence" standard in the FWP document.

Pres. Hofstetter: Prof. Chajes would you like to respond.

Prof. Chajes: I appreciate the comment made. I am not ready to make any statement at this point.

Pres. Hofstetter: The commission is hoping to help us progress to the point at which all students are safe and secure.

GC Larry White: The preponderance standard is on page 3.

Sen. Courtright: The intent to terminate comes before FWP becomes involved.

Sen. Duker: Called the question.

More than 2/3rd majority supported calling the question.

Voting on the main motion as amended in the Galileo Amendment slide
39 for and 0 against.

2. New Business: None

VIII. Introduction of New Business:

Such items as may come before the Senate. (No motion introduced under new business, except a motion to refer to committee, shall be acted upon until the next meeting of the Senate.)

Dep. Provost Brickhouse: I am concerned with the composition of FWP. The full diversity should be reflected. We need provisions for determining the composition.

Pres. Hofstetter: I recognize Prof. Morgan

Prof. Morgan: There can be concerns if you need unbiased faculty on a committee. FWP is long overdue for clean up.

Adjourned at 5.45pm.