

# REGULAR MEETING OF THE UNIVERSITY FACULTY SENATE

DECEMBER 1, 2014 – 104 GORE HALL

4:00 PM

## OFFICIAL MINUTES

**Members Present:** B. Ackerman, H. Bais, W. Batchis, D. Bellamy, J. Bernstein, M. Buell, C. Caro, N. Carver, C. Castillo, L. Claessens, J. Courtright, K. Cranker, J. Daniel, P. Dhurjati, N. Donofrio, P. Duker, C. Dybowski, S. Eidelman, D. Ford, D. Galileo, J. Gizis, D. Grasso, M. Gutierrez, B. Hanson, E. Hayes, J. Heinz, J. Hethorn, F. Hofstetter, M. Hopkins, R. Jaeger, J. Jebb, P. Laux, W. Lewis, A. Marsh, M. McLane, J. McNutt, G. Melloni, B. Ogunnaike, L. Okagaki, R. Opila, B. Orzada, M. Papas, M. Parcells, V. Perez, D. Reisman, M. Rieger, C. Riordan, M. Robinson, R. Rocek, D. Satran, E. Selva, S. Shabo, C. Shen, A. Sivaraman, C. Swanik, H. Tanner, D. Thompson, K. Turkel, T. Vermeer, B. Weber, R. Wool, J. Zide

**Members Excused:** N. Brickhouse, T. Gill, S. Hastings, K. Matt, S. McGeary, L. Overby, A. Poorani, N. Targett, G. Watson, C. Williams

**Members Absent:** ~~M. Cleveland~~, J. Gillespie, T. Hsu, S. Isenstadt, P. Harker

November 19, 2014

TO: Senators and Executives

FROM: Prasad Dhurjati, Vice President  
University Faculty Senate

SUBJECT: Regular Faculty Senate Meeting December 1, 2014

In accordance with Section IV, paragraph 6 of the Constitution, the regular meeting of the University Faculty Senate will be held on Monday December 1<sup>st</sup> at 4:00 p.m. in room 104 Gore Hall.

The Agenda will be as follows:

## AGENDA

## **I. Adoption of the Agenda**

Motion moved and seconded. Agenda is unanimously approved.

## **II. Approval of the Minutes: [November 3, 2014](#)**

Motion moved by Sen. Duker and seconded. Minutes approved unanimously.

## **III. Remarks: Provost Grasso**

- Provost Townhall meeting tomorrow at 4pm at Trabant. Next semester - informal provost teas –one for faculty, one for staff and one for students.
- The RBB committee has developed a draft that will be discussed with the deans and rolled out in phases.
- A few weeks ago we opened the faculty commons - a place that brings together instructional resources. The new data management system – Faculty 180 – some of its benefits include management of faculty data, data analytics, networking tools to encourage collaboration. Onsite open forums for Faculty 180 are scheduled for Dec. 10.
- Renewed subscription to Academic Analytics. This is an attractive tool that will assist colleges with benchmarking analysis.
- On the campus safety front, there is a strong perception that crime is on the increase. Some of the areas are not adjacent to campus but our students live work and walk through those areas. Which is why we include criminal activity in that area in our reporting system. Serious crimes are down about 30% as of Nov. 1. Newark PD has also been able to curtail serious crimes and crime is down 27% in the Newark PD area.
- We are searching for two Title IX officers to start this fall. In 2015, strategic plan will come more into focus. Comments are welcome through website. Draft plan is due by March 2015.
- Comments on the Ferguson incident: Diversity and Inclusion is a big part of our strategic plan. Vice Provost Carol Henderson will be organizing a variety of events in which faculty are invited to participate.

## **IV. Announcements: Senate President Fred Hofstetter ([slides attached](#))**

- As per the motion passed at the 3 November 2014 Faculty Senate meeting, the Executive Committee has formed the Commission on Sexual Harassment and Assault.
- Michael Chajes has agreed to chair the Commission. The charge to this committee is as follows.

### Commission on Sexual Harassment and Assault

This commission is given the task of making recommendations for the implementation of best practices for the prevention of sexual misconduct and for addressing sexual harassment and assault allegations. In fulfilling the charge, the commission will work in concert with the Title IX Coordinator. The commission will focus its efforts in the following areas.

- With regard to the prevention of sexual misconduct, the commission will review current education and training efforts at the University of Delaware and elsewhere, solicit recommendations for new programs, and develop recommendations for creating a safe and supportive campus environment.

•With regard to the handling of sexual misconduct cases, the commission will review current policies and procedures at the University of Delaware and elsewhere, study the existing and new federal requirements, determine whether all appropriate programs are in place to educate the community regarding the University’s policies and procedures, broadly solicit recommendations for improving current policies and procedures, and develop proposed changes.

In developing recommendations for creating new programs and for changing existing policies and procedures, the commission will seek input broadly across campus through open hearings.

The commission will develop a complete set of recommendations for consideration by the full Faculty Senate no later than the April 2015 Faculty Senate meeting. The commission will be composed of ten faculty members, one of whom will be appointed chair; one member of the university staff; three students, two undergraduate and one graduate, chosen by their respective student government associations; and the Vice Provost for Faculty Affairs, the Vice President for Student Life, and the Director of the Office of Equity & Inclusion and Title IX Coordinator, or their designees.

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**V. Presentations:**

The UDance Tradition ([slides attached](#))

Arya Cohn, Campus Engagement Director

Jessica Davis, UDance Faculty Chair

- March 22, 9am -9pm. Call to faculty to personally get involved in the fundraising efforts. Request to contact alumni and tell them about UDance and fundraising efforts. The day before UDance, a networking event is hosted by the UDance organization. Alumni hour during the dance event. Webpage has links for faculty to get more information.

**VI. Consent Agenda:** None

**VII. Regular Agenda:**

**1. Unfinished Business:**

- a. Recommendation from the Committee on Graduate Studies (Charles Swanik, Chair) with the concurrence of the Rules Committee (Anu Sivaraman, Chair) for the recommendation to revise the Charge of the Faculty Senate Committee on Graduate Studies and the Faculty Handbook section 1.3 ([Attachment 1](#))

WHEREAS, the University of Delaware Faculty Senate Graduate Studies Committee shall receive and may stimulate and originate proposals for its development, and

WHEREAS, this committee shall have the power to act on and shall make recommendations to the Faculty Senate on matters of policy concerning graduate study, and

WHEREAS, the title for one of the ex officio members listed is Vice Provost for

Academic Programs and Planning, and this position no longer exists, therefore, be it

RESOLVED, that the Vice Provost for Graduate and Professional Education, or their designee, shall serve on the committee as one of the ex officio members, and be it further

RESOLVED, that the charge of the Faculty Senate Committee on Graduate Studies shall be revised as in the redline document attached ([Attachment 1](#)).

## Discussion

- Sen. Dybowski: Minor change – in point 3. Motion to amend Grad student senators to Grad student members.
- Graduate Studies Chair Swanik: It has been in the charge for years.
- Pres. Hofstetter: Friendly Amendment.
- Resolution as amended is moved and seconded and approved.

### 2. Discussion:

- a. Proposed Revision of the Committee on Faculty Welfare and Privileges (FWP) Termination and Complaint Procedures ([Attachment 1](#)). This is a period of open discussion of the proposals lasting up to 45 minutes.

Pres. Hofstetter's Comments ([slides attached](#))

This is a period of open discussion of the proposal to revise the Committee on Faculty Welfare and Privileges (FWP) Termination and Complaint Procedures ([Attachment 1](#)). I would like to begin this discussion by drawing your attention to some key issues that have been raised as follows.

#### 1. FWP Issue #1: Who can file?

- The current policy enables any Faculty member, including Provosts, Deans, Department Chairs and Directors, to file an FWP complaint.
- The proposed revision specifies that administrators at or above the level of department chair/program director no longer can file FWP complaints. See Section II-A-4:

4. **Faculty refers to all voting and non-voting Faculty members as defined by the Faculty Constitution, I, Section I, full-time and part-time Professors, Associate Professors, Assistant Professors and Instructors, who do not hold an administrative position at or above the level of department chair/program director.**

#### 2. FWP Issue #2: Standard of Proof

- In termination cases, the current policy calls for the standard of proof to be clear and convincing evidence.
- The proposed revision specifies that in cases of sexual harassment, the standard of proof is preponderance of evidence. See section I-B-2

2. The burden of proof in the proceedings rests with the party or parties bringing the charge and the relevant standard in Faculty Welfare and Privileges termination proceedings is clear and convincing evidence, unless the underlying complaint involved Sexual Misconduct. If the underlying complaint involved Sexual Misconduct, then the relevant standard is a preponderance of the evidence (more likely than not). The burden of proof rests with the Initiator seeking to terminate a Respondent.

### 3. FWP Issue #3: Standard of Proof

- The proposed revision adds the role of complainant.
- In the proposed revision, the complainant is defined as “The student, staff or faculty member who brought a sexual misconduct or other formal complaint of wrongdoing against the Respondent prompting the FWP proceeding.”
- I-A-11:

11. 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.

- II-B-12:

12. 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.

### 4. FWP Issue #4: Open hearing not well attended

- Some people thought the 10 November 2014 Open Hearing was not well attended.
- The hearing was spirited but most senators did not attend. You can review the hearing at [www.udel.edu/podcast](http://www.udel.edu/podcast).
- To enable more senators to participate, we scheduled the Open Discussion Period that will now commence. Rules for this discussion are explained as follows.

### FWP Resolution

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).

#### Discussion

- Sen. Perez: Concerned about creating a special standard for sexual misconduct cases. ([attached statement](#))
- Pres. Hofstetter: Recognized Prof. Morgan
- Prof. Morgan: Worrisome that the Hearing panel only makes recommendation to the Provost and the President. If we do have to lower the standard of evidence, we should at least have a provision that unless a majority of the hearing panel recommends that the FM be terminated, the termination shall not occur.
- Prof. Hanley: One of the concerns the document uses the term "sexual misconduct." Where did that term come from? Answer seemed to be by "sexual misconduct" we mean what OCR means by its term sexual harassment. If that is true, why are we introducing a new term? It is not any part of OCR (only turns up once in the 3 OCR documents). Second issue: the way OCR's sexual harassment gets used in two completely diff ways – one meaning is the one that comes under Title IX, the other does not.
- Sue Groff: "Sexual misconduct" means numerous things sexual harassment, sexual assault, dating and domestic issues. It is inclusive.
- Prof. Hanley: So it follows that it is not prohibited by Title IX. You have given examples that do not rise to prohibition to Title IX. The OCR documents are clear on this.
- Sen. Jebb: If we can have someone like the university lawyer comment on this standard of proof that would be good. What is the impetus for the change?
- GC White: Institutions are required to use the preponderance of evidence standard. Reads "Dear Colleague" letter – "The clear and convincing standard currently used by some schools is a higher standard...and are thus not equitable under Title IX." That has been the law since 2011 (since the dear colleague letter). And OCR has decided to put teeth into the 2011 dear colleague letter.
- Sen. Courtright: We kept what we could.
- Sen. Galileo: I do agree with including only faculty. I do not agree with lowering the standards of evidence. I agree with many things that Sen. Perez said. I also agree with Prof. Morgan. If we are forced to lower the standard for pragmatic standards, that is a good balance for lowering the standards of evidence. Prof. Hanley's open letter from this afternoon also makes some good points.
- GC White: Definition of complainant: complainant does not have access to the

FWP proceeding. Created in the spirit of parity.

- Sen. Turkel: The lower standard might have an opposite effect. Nicole Eramo – U Virginia – Interview. She is talking about cases involving students - Why has no one who has been guilty of rape in a formal procedure never been expelled? And she explains that in sexual misconduct case they use a preponderance of evidence standard. People are then reluctant to give out a strong penalty given the low evidence standard. So this recommended change might have the opposite effect.
- Sen. Shabo, Philosophy: any other motives other than external motivation?
- Pres. Hofstetter: I think the rationale comes from Title IX and it seems to me that if we want to challenge it we might have to go to the supreme court with a very expensive court case.
- GC White: fundamental precept of civil rights law – anything more than a preponderance of evidence creates an unsurpassable standard. A higher standard interferes with the vindication of civil rights. It is not a frivolous standard.
- Sen. Eidelman: What is the time horizon here?
- Pres. Hofstetter: It must be done by the end of this academic year.
- Vice Prov. Kinservik: Title IX prohibits gender discrimination. An instance of harassment can create a condition of discrimination. The law compels us to identify the problem, stop it and address its effect. This isn't about a federal agency bullying a university. It is about creating a discrimination free environment. One other thing is that we have used the preponderance of evidence standards in adjudicating student cases. If we have a different standard for students and faculty we are going to have to explain it.
- Sen. Buell: If this is about title IX, and it is all about discrimination, then if the case involves discrimination but not sexual misconduct, would it fall under this?
- Sue Groff: All sexual misconduct falls under Title IX. Others kinds of discrimination, I will have to check on.
- Pres. Hofstetter reads Sexual misconduct definition from document.
- Sen. McNutt: I am concerned with what this looks like but it looks like we do not have a choice here.
- Sen. Courtright: Practical justification: end of the day, it is unimportant. Before anything comes to FWP, the university has already decided to terminate the faculty member. The decision is going to have the required evidence because lawful termination cases are very expensive. The university is not going to do it lightly because it is a big deal.
- Sen. Papas: Why do we now have 2 different burdens of proof and why does sexual misconduct have a lower burden of proof?
- Sen. Courtright: Lower sexual misconduct standard because it is protecting the victim under Title IX. We thought we should keep higher standard because it protects the faculty member.
- Sen. Zide: If we use standards not accepted by the OCR, then the President and Provost may not respect the FWP recommendations. Also the board of trustees may see this as protecting the faculty and not the institution as a whole.
- Sen. Bernstein: When you talk about sexual violence, aren't you talking about something that is illegal? A capital offence? Why can that serious offence be under

a lower level of evidence?

- GC White: I find it heartbreaking that prosecutors have put universities around the world in this position because they fail to prosecute rape cases. We are preparing for a visit by OCR. We are hoping to put this in place. There are tremendous inconsistencies in the law – inconsistencies in how we deal with sexual misconduct and other vices. We are one of 85 universities investigated by the OCR.

- 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 reads resolution. Recognized Sen. Courtright. Move to send back to committee. Sen. Galileo seconded the motion.
- GC White: This catches me by surprise. We want this policy to comport with OCR principles. They might be coming in Jan or Feb or anytime in the spring.
- Pres. Hofstetter: Are you making a motion to postpone to revise and bring back to our Feb. 9th meeting?
- Sen. Courtright: Send us the changes so that we can discuss in FWP.
- Sen. Donofrio: What happens if they come in January and we don’t have it?
- GC White: We will have to inform OCR that a policy is in works and OCR might require us to adopt it as a part of a reconciliatory agreement.
- Sen. Hethorn: Why do we need to postpone it?
- Sen. Courtright: FWP has not voted on it yet.
- Sen. Buell: A new resolution should not come to the floor till it has been voted on and approved by the committee.
- Sen. Donofrio: Can we add the preponderance clause and vote on it?
- Pres. Hofstetter: I could call a special meeting to bring it back sooner than Feb. 9. We are going to be drowned in curriculum proposals by Feb. 9.
- Sen. Courtright: My committee needs more time than the first week of Jan.



- Sen. Parcells: In one of our past cases in the spring, the treatment of the victim seemed to be out of compliance with Title IX. I thought this was merely to get us in compliance and codify that.
- Sen. Dybowski: The committee has not voted on it. Can someone explain how this is considered a motion?
- Pres. Hofstetter: We are into a motion now. This resolution that you see here was unanimously voted on by the committee but the attachment was not.
- Sen. Courtright: The attachment has not been seen by the FWP since open hearing.
- Pres. Hofstetter: I have shared it with you but you have not touched it? Ok.
- Pres. Hofstetter: The attachment is before you and it has a few changes.
- Sen. Galileo: Some of the confusion arose because some changes that the GC proposed were not sent back in a redline version so there was some confusion on what the changes were according to the FWP. I request that a redline version be sent to the committee.
- Pres. Hofstetter: We can do that. We need to set a date for the Jan meeting.
- Parliamentarian Jebb: Motion on the floor: motion to postpone - to revise and bring back to our Feb. 9th meeting. You have to make a motion to amend the date.
- Pres. Hofstetter: Clarifies through friendly amendment that the motion is to postpone until time specific and hold a special Faculty Senate meeting on January 12.
- Pres. Hofstetter: Straw vote shows there will be a quorum on Jan. 12. All those in favor of having a Jan. 12 meeting – 43. Those opposed – 5.

### 3. New Business:

#### 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.)

#### Discussion

- Prof. Morgan: Noticing that Chajes Commission is going to deliver recommendations to the senate in the April meeting. The previous week is spring break. Can the senate have notice of the recommendations before the Friday before the spring break so that the senators can discuss with their colleagues? Even the Friday before spring break would be too late for senators to consult with their constituents.

Motion to adjourn – moved and seconded. Meeting adjourned.

Attached are podcast transcripts of this meeting's [FWP discussion](#) and the [FWP open hearing](#) that was held on 10 November 2014. These transcripts were submitted by Professor John Morgan on his own initiative. Before attaching them to these minutes, the Executive Committee asked Dr. Morgan to certify their accuracy, which he has done on the first page of each transcript.