

May 25, 2012

TO: Kenneth E. Peacock, Chancellor

FROM: Faculty Due Process Committee
Hugh Hindman, Chair, Professor, Management
Stella Anderson, Professor, Management
William Bauldry, Professor, Mathematics
Rodney Duke, Professor, Philosophy & Religion
Colin Ramsey, Professor, English

*Hugh Hindman
for the Committee*

SUBJECT: Faculty Due Process Committee Report and Recommendations Arising from the Matter regarding Professor Jammie Price

COPY TO: Professor Jammie Price
Provost Lori Gonzalez

Faculty Handbook Section 3.8 provides that, at the conclusion of a due process hearing, the Faculty Due Process Committee (FDPC) shall submit its report and recommendations to you, the Chancellor. As you may be aware, no hearing has taken place in the matter of Professor Jammie Price because the Provost has asserted the FDPC “lacks jurisdiction” over the matter. Thus, we are unable to make findings or recommendations about whether the University’s actions towards Professor Price were, or were not, justified. Nevertheless, based on the official record of the case (see documents list below and the attached documents), the FDPC can and has made findings and recommendations regarding procedural questions that arise from the case. In sum, the Provost improperly circumvented due process requirements and, in doing so, improperly denied the faculty member’s due process rights, including the right to a hearing before the FDPC.

Background

On March 16, 2012, the Vice Provost for Faculty Affairs provided the faculty member with notice that various student complaints had been lodged against her; that the matter would be investigated by the Director of the Office of Equity, Diversity and Compliance, and, effective that day, the faculty member was “being placed on administrative leave with pay pending the completion of the EDC investigation.” On March 18, 2012, the faculty member submitted a written request for a due process hearing. On March 20, 2012, the Provost responded to the request for hearing, asserting that no disciplinary sanctions had been imposed. Instead, “You have been placed on paid administrative leave, consistent with the University’s discretion to grant leaves of absence, with or without compensation. *See Faculty Handbook*, Section 4.9.3.2. This is not a disciplinary suspension within the meaning of *Faculty Handbook* Section 3.8.2.1.” On April 30, 2012, the Provost notified the faculty member that the investigation had been completed: among the conclusions was that, “there was sufficient evidence to conclude that you created a hostile learning environment for a significant number of students in your classes.” The faculty member was thus required to submit to a “professional development plan,” though with

the proviso that, “These corrective actions are not serious sanctions.” On May 1, 2012 the faculty member repeated her request for a due process hearing. On May 7, the Provost responded to the faculty member that “there is no basis for a due process hearing” and directed the faculty member to the grievance procedures in the Handbook. On that same day, the Provost asserted to the members of the Faculty Grievance Hearing Committee, “it is clear that the FDPC lacks jurisdiction over this matter,” a position she re-affirmed to the FDPC on May 11, 2012, noting, “I continue to interpret an administrative leave with pay as non-disciplinary administrative action. It is not a sanction and not a suspension.”

Findings and Analysis

Serious Sanctions

The Provost insists that administrative leave with pay does not constitute a serious sanction and is not disciplinary. However, it is uncontested that the faculty member was involuntarily relieved of her duties, removed from teaching in the middle of the term, was told to surrender her keys, was “directed not to enter Chapell Wilson Hall or any offices or classrooms of the College of Arts & Sciences,” was ordered not to speak with students or colleagues about the allegation, and is now required to undergo extensive “corrective” professional development activities as a condition of continued employment. The FDPC has no difficulty concluding that these actions constitute a serious sanction within the meaning of Section 3.8 of the Faculty Handbook and Section 603 of the UNC Code. Whether characterized as “administrative leave with pay” or as suspension, and whether characterized as non-disciplinary or disciplinary, these actions are a deprivation of substantial liberty interests (e.g., freedom to practice one’s profession, especially when under contract to do so) and dignitary interests (e.g., reputation) and, as such, “these sanctions may be imposed only in accordance with the procedures prescribed in Section 3.8.2.”

The faculty member’s due process rights have been violated, first by the failure to notify the faculty member of her right to a due process hearing, and later by the repeated denial of the faculty member’s request for a due process hearing.

Administrative Leave

The FDPC has been unable to locate any authority in either the Faculty Handbook or the UNC Code to place a faculty member on involuntary administrative leave with pay. The Provost asserts such authority by referring to Section 4.9.3.2 of the Faculty Handbook, which states:

These provisions do not apply to informal temporary adjustments of the regularly assigned duties of faculty members by the departmental chair who is responsible for their direct supervision, nor to the University’s granting of extended leaves of absence with or without compensation.

However, Section 4.9 is not concerned with actions imposed involuntarily upon faculty members, but rather addresses the process by which leaves of absence (e.g., Family Medical Leave or Off-Campus Scholarly Leave) may be granted upon the request of the faculty member.

Section 4.9.3 addresses “other adjustments of employment obligations” and includes the possibility of “relief from all employment obligations for a specified period,” but only by “mutual agreement of the institution and faculty member.”

Read in context, then, the provisions of 4.9.3 do not apply to: a) informal temporary adjustments in duties by the department chair, or b) granting extended leave with or without compensation. The Provost does not contend, and it is clearly not the case, that the actions taken against the faculty member were simple adjustments made by the department chair. Thus, the Provost finds the authority to place a faculty member on involuntary administrative leave with pay, in the phrase, “These provisions do not apply to ... the University’s granting of extended leaves of absence with or without compensation.” Two words are fatal to this position: “granting” and “extended.” “Granting leave” clearly implies that the leave was formally requested, or at least desired, by the faculty member. The granting of a desired leave is clearly and plainly different from imposing a forced leave that is not desired. In addition, the Handbook’s use of the word “extended” in this section implies that there was first a leave “for a specified period,” which was then extended. This was not the case in this matter.

Creating new terminology of “administrative leave” – language that appears nowhere in either the UNC Code or the Faculty Handbook – resulted in an improper “leave” for the faculty member. Without the support of an authority previously established in the UNC Code, use of the language “administrative leave with pay” to describe the actions taken against the faculty member circumvents both the letter and the spirit of the UNC Code and the Faculty Handbook. The Provost’s actions in this case are more properly characterized as a suspension, and thus the faculty member has been denied the due process required by the Code and the Handbook.

Non-disciplinary Suspension

The Provost repeatedly asserts that administrative leave with pay is not a disciplinary action. In her letter of March 20 to the faculty member, she states, “This is not a disciplinary suspension within the meaning of *Faculty Handbook* Section 3.8.2.1. Indeed, the University would consider it inappropriate to impose disciplinary suspension or a ‘deprivation of some other substantial interest’ prior to carefully investigating allegations against a faculty member that might arguably support disciplinary action.”

The FDPC would agree that there are circumstances where it is necessary and wise to suspend a faculty member pending completion of an investigation, and that such a suspension would, in and of itself, be non-disciplinary in nature (i.e., “not a disciplinary suspension within the meaning of *Faculty Handbook* Section 3.8.2.1”). And, without a hearing, we can make no judgment whether the suspension was warranted in the present case. But the proper authority to impose such a suspension, disciplinary or not, must be applied, and that includes the right to an FDPC hearing. The existing authority to suspend is found in Section 603(10) of the UNC Code, which states:

When a faculty member has been notified of the institution's intention to discharge the faculty member, the chancellor may reassign the individual to other duties or suspend the individual at any time until a final decision concerning discharge has been reached by the

procedures prescribed herein. Suspension shall be exceptional and shall be with full pay. (see also, Section 3.8.2.6 of the Faculty Handbook)

Grounded as it is in Section 603 of the UNC Code and Section 3.8 of the Faculty Handbook, it is clear that even “non-disciplinary” suspensions are governed by these provisions, including the right to review by the FDPC. The Provost has encouraged the faculty member to pursue a grievance pursuant to Section 3.9 of the Faculty Handbook and Section 607 of the UNC Code. While questions regarding the jurisdiction of the Faculty Grievance Hearing Committee are beyond the purview of the FDPC, we note that both the Handbook and the Code provide that “no grievance that grows out of or involves matters related to a . . . suspension . . . may be considered by the [FGHC].

The authority to impose non-disciplinary suspension pending investigation should be made clearer, but it is necessary to clarify within the existing framework of the protections provided by the Code, rather than to create an entirely new authority — “administrative leave.” Creating new authority outside the framework of the Code is contrary to good governance. So, after Section 3.8.2.6, we suggest language along the following lines:

If, on the basis of a preliminary investigation, the Chancellor determines a) there is probable cause to believe a dischargeable offense has occurred, and/or b) immediate harm to the faculty member or others is threatened by the faculty member’s continued presence in the classroom or otherwise on the campus, a suspension may be imposed. Before suspending, the Chancellor shall consult with the Faculty Due Process Committee concerning the propriety, the length, and the other conditions of the suspension. If an emergency precludes prior consultation with the FDPC, the consultation shall occur as soon after imposition of suspension as is practicable.

We conclude that the faculty member in this particular matter was placed on a non-disciplinary suspension; that the suspension was imposed improperly by the Vice Provost for Academic Affairs rather than the Chancellor; and that the faculty member was denied her right to contest the propriety of the suspension through a due process hearing.

Authority to Define FDPC Jurisdiction

The Provost has asserted that the FDPC “lacks jurisdiction” to hear this case. The Committee has accepted it for hearing. Nowhere in either the UNC Code or the Faculty Handbook is there authority for the Provost to unilaterally decide whether or not the FDPC can hear a case accepted for hearing. Further, there is good reason why the Provost should not be permitted to interfere with the action of the FDPC. The FDPC and the Faculty Grievance Hearing Committee are unique among committees at the university. They exist to perform important quasi-judicial functions in reviewing disciplinary and grievance matters. In the performance of their quasi-judicial function, it is proper and necessary that they exercise a greater degree of autonomy and independence from administrative control than other committees and councils. Administratively preventing these committees from acting strikes at the core of faculty governance. Can one imagine the executive branch of government determining what cases the judiciary can and cannot hear? Consider that if the FDPC should err in its recommendations after a hearing, that

error can be corrected: the committee is a recommending body. But if the Provost is in error in denying the opportunity for a hearing, that error remains uncorrected and uncorrectable.

We find that the Provost does lack the authority, and properly should lack the authority, to assert that the FDPC does not have jurisdiction over this matter. Despite the invention and application of the language “administrative leave with pay” to describe the actions of the administration in this matter, Sections 603 and 607 of the UNC Code require that the FDPC have jurisdiction.

Summary of Findings

The FDPC has concluded that the Provost has:

1. Failed to follow due process. Actions which should be construed as severe sanctions were taken against a faculty member; however, the faculty member was not notified of her rights of due process according to the Faculty Handbook, Section 3.8.2.2.
2. Refused to follow due process. When the faculty member repeatedly requested a due process hearing according to Section 3.8.2.3, the Provost denied those requests asserting that the FDPC “lacks jurisdiction” over the matter.
3. Circumvented the UNC Code and the ASU Faculty Handbook. The Provost circumvented both the letter and the spirit of ASU (Section 3.8.2.6) and UNC policy (Section 603(10)), defending the actions above by the creation of new terminology, “administrative leave,” based on an interpretation of Faculty Handbook, Section 4.9.3.2, a section that is not applicable.

Recommendations

We recommend that the faculty member be afforded a full and fair hearing before the FDPC.

We recommend the Faculty Handbook be revised to clarify the Chancellor’s authority, under existing provisions of the UNC Code and Faculty Handbook, to impose non-disciplinary yet involuntary suspensions under extraordinary circumstances, pending investigations, and to clarify that such suspensions always include the right to a hearing before the FDPC.

We understand that, “If the Chancellor intends to reject the recommendation of the Faculty Due Process Committee, the Chancellor shall communicate that intention to the committee along with the Chancellor’s reasons and provide an opportunity for committee response before taking final action” (Faculty Handbook Section 3.8.2.5).

Documents List

- 1) 1st written specification of reasons (Carey 3/16 memo)
- 2) 1st written request for hearing (3/18 letter)
- 3) Provost reply to request for hearing (3/20 letter)
- 4) 2nd written specification of reasons (Provost 4/30 memo)
- 5) 2nd written request for hearing (5/1 email)
- 6) Provost reply to request for hearing (5/7 email)
- 7) Provost email to Faculty Grievance Hearing Committee (5/7 email)
- 8) Provost reply to FDPC (5/11 email)