



MEMORANDUM

To: Julio Frenk
University President

From: Linda L. Neider
Chair, Faculty Senate

Date: August 28, 2020

Subject: Faculty Senate Legislation #2020-08(B) – Update *Faculty Manual* Section B4.10
(Committee on Professional Conduct)

Reference Legislation #2020-07(B) – Revise the *Faculty Manual* Sexual Harassment
Policy Handbook Section to include Title IX clause

The Faculty Senate, at its August 26, 2020 meeting, had no objections to the proposal to update the *Faculty Manual* Section B4.10, Committee on Professional Conduct, to align with the newly revised Sexual Harassment Policy in the Handbook Section of the *Faculty Manual*.

The proposal is enclosed for your reference.


This legislation is now forwarded to you for your action.

LLN/rh

cc: Jeffrey Duerk, Executive Vice President and Provost
Guillermo Prado, Vice Provost, Faculty Affairs
JoNel Newman, First Vice Chair, Faculty Senate; Professor, School of Law
Tamara Lave, Professor, School of Law

CAPSULE: Faculty Senate Legislation #2020-08(B) – Update *Faculty Manual* Section B4.10
(Committee on Professional Conduct)

PRESIDENT’S RESPONSE

APPROVED:  DATE: 9/29/20
(President’s Signature)

OFFICE OR INDIVIDUAL TO IMPLEMENT: Faculty Senate

EFFECTIVE DATE OF LEGISLATION: IMMEDIATELY
(pending any additional approval by the Board of Trustees)

NOT APPROVED AND REFERRED TO: _____

REMARKS (IF NOT APPROVED): _____

Faculty Manual, 6/1/2020 version

Proposed additions to the existing *Faculty Manual* are shown in RED.

[BEGIN TEXT]

B4.10 The Committee on Professional Conduct (CPC)

- (a) has jurisdiction over complaints that a member of the UNIVERSITY FACULTY has committed unprofessional conduct.¹ The primary function of the committee is to provide a roster of names that can be appointed to the Hearing Panel for a particular case. The committee as a whole shall have no role in individual cases. However, the entire committee may meet to make recommendations on policy or legislative language if requested by the Senate Chair or one quarter of the committee members.²
- (b) The CPC consists of at least twenty-five members, elected annually by the Faculty Senate. Each member shall be a tenured faculty member, with the minimum rank of Associate³ Professor and with substantial time on the University faculty. No member shall be a member or alternate member of the Senate, nor may a member be the holder of any administrative position specified in section A7.1(f) or (g).
- (c) Except as provided elsewhere in this section, the CPC shall have jurisdiction over:
 1. an allegation that a member of the University Faculty is not suitable to serve the university by virtue of having:
 - i. been convicted of a serious crime or entered into a plea of guilty to the commission of such a crime by an American court or by a foreign court that accords a high standard of due process rights, and the acts committed would constitute a felony under federal law or the laws of Florida; or
 - ii. been convicted of multiple misdemeanors by one or more American courts for which a guilty party could have been sentenced to imprisonment for more than 30 days for each offense, but not including simple traffic offenses or violation of local ordinances;
 2. an allegation that a member of the University Faculty has engaged in unprofessional conduct by:
 - i. violating a provision of this *Faculty Manual*, including the *Faculty Handbook*, that sets forth standards of conduct;
 - ii. violating specific written professional standards of conduct applicable to a person in the faculty member’s profession, such as those applicable to members of the bar or licensed physicians;

¹ [#2009-28\(B\)](#)

² [#2019-71\(B\)](#)

³ [#2018-59\(D\)](#)

- iii. violating ethical or behavioral standards generally applicable to faculty members, such as those including but not limited to dealing with plagiarism, abuse of students, physical contact without consent, or committing common-law battery against a member of the university community;
 - iv. repeatedly failing to perform essential duties set forth in legislation adopted by the Faculty Senate, or a written bylaw of the faculty member’s primary Department or School, and the failure to perform faculty duties without justification or approval by the Faculty Senate. Such a failure is more serious if the faculty member received a written warning and the deficiency persisted;
 - v. committing serious defalcations involving university funds or resources, or intentionally damaging valuable university property; or
 - vi. engaging in retaliation of any sort against an individual who has made a good faith charge against another individual for violation of the Faculty Manual or applicable law.⁴
3. an appeal from the decision of a prior Hearing Panel of the CPC on a complaint alleging that a member of the UNIVERSITY FACULTY has committed sexual harassment in violation of Title IX where:
- i. the prior Hearing Panel has not made a recommendation that tenure should be revoked and/or the faculty member’s employment terminated or that the faculty member has committed unprofessional conduct of a serious character within the meaning of B4.10(c); AND
 - ii. the appellant claims procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that Title IX personnel or adjudicators had a conflict of interest or bias that affected the outcome of the matter.
- (d) A complaint that a member of the UNIVERSITY FACULTY has engaged in unprofessional conduct can be brought:
- (i) either by the University, acting through the President, the Provost, the Vice Provost for Faculty Affairs, or an Academic Dean. Before the University may file a complaint under this sub-paragraph, a thorough investigation must take place;
 - (ii) by a member of the UNIVERSITY FACULTY who does not fall within (c)(i); or
 - (iii) by a complainant alleging that a member of the UNIVERSITY FACULTY has committed sexual harassment in violation of Title IX.
- (e) The complaint shall be addressed to the Chair of the Faculty Senate in writing. The complaint shall include, at a minimum:
- (i) a brief recitation of the alleged conduct and when it occurred;
 - (ii) a concise statement as to why, in the opinion of the complaining party, the conduct is unprofessional; and

⁴ [#2019-71\(B\)](#)

- (iii) a declaration that all reasonable⁵ attempts at informal resolution have been exhausted, or an explanation as to why, in the opinion of the complaining party, further attempts at informal resolution would be pointless.

- (f) Except as provided in paragraphs (f) or (h), upon receipt of a complaint meeting the requirements of paragraphs (c) and (d), the Chair of the Faculty Senate must appoint a hearing panel for the case as soon as it is feasible to do so.

- (g) The Chair of the Faculty Senate may not appoint a hearing panel if:
 - (i) the complaint, even if assumed to be correct in all its factual allegations, does not allege conduct that any reasonable hearing panel could construe as unprofessional; or
 - (ii) the gap between the time in which the allegedly unprofessional conduct occurred and the filing of the complaint is so great as to make the complaint untimely in terms of the availability of evidence and witnesses, prejudice to the accused, or other relevant factors.

- (h) If the complaining party disagrees with the decision of the Chair of the Faculty Senate under paragraph (f), the party may appeal the ruling to the Committee on General Welfare within 10 academic working days from the date the Chair’s decision is sent to the complaining party. The Committee on General Welfare has 10 academic working days from the time of receipt of the appeal in which to render a decision. At its sole discretion, it may make the decision on the basis of written documents, or may request the complaining party and the Chair of the Faculty Senate to make oral presentations.

- (i) The Chair of the Faculty Senate has the discretion not to appoint a hearing panel if the same or substantially the same conduct is under investigation by the Committee to Investigate Misconduct in Research, by the Faculty Sexual Harassment Officer, by the Senate’s Committee on Rank, Salary and Conditions of Employment, or by the Faculty Hearing Committee as these roles are specified in the *Faculty Manual*. The Chair has similar discretion if the matter is subject to an indictment or information by a State or Federal prosecutor. Any decision not to appoint a hearing panel on one of the grounds listed in this paragraph is without prejudice to the filing of a complaint after such investigations or proceedings have concluded.

- (j) The hearing panel for a particular case shall consist of three members of the CPC selected by the Chair of the Faculty Senate. To the extent feasible, the selected members of the hearing panel shall include one member who has had legal training. No member of the hearing panel may be:
 - (i) from the same department or undepartmentalized school as the accused;
 - (ii) from the same department or undepartmentalized school as the complainant in the case of a complaint filed pursuant to paragraph (c)(ii); or
 - (iii) a relative or domestic partner of the accused, of the complainant, or of an individual who holds one of the offices listed in (c)(i).

⁵ [#2019-71\(B\)](#)

- (k) Service on the Hearing Panel as a party, Academic Counsel, witness, Panel member or alternate may conflict with the participant’s scheduled activities. The President shall direct the relevant Deans and Chairs to facilitate the participation of their faculty members. As needed, the Office of the Executive Vice President and Provost shall make such arrangements as are necessary to cover the teaching and other University assignments of such faculty members so that the proceedings may be conducted from day to day until they are concluded. The Executive Vice President and Provost shall compensate the Review Panel members who are not on twelve-month contracts for any additional days of service on a *pro rata* basis, and reimburse for any additional expenses caused by any such continuation of service. Weekday days when such hearings are held after the last scheduled undergraduate examination are to be considered academic days for the purposes of this section only.⁶
- (l) As soon as the hearing panel is constituted, the Secretary of the Faculty Senate shall forward a copy of the charges to the accused and the complainant, notifying them of the following matters in writing:
- (i) the appointment of the hearing panel and the names of its members;
 - (ii) the requirement that the accused provide a brief reply to the charges;
 - (iii) the requirement that any communications related to the matter before the hearing panel by a party or that party’s counsel with the panel, with the other party, or with any official listed in (c)(i) be made only through the Faculty Senate Office; and
 - (iv) the procedures by which the hearing panel will carry out its work.
- (m) In the case of a complaint filed by the university pursuant to paragraph (c)(i):
- (i) The hearing panel shall hold a hearing promptly after its appointment.
 - (ii) The hearing panel must present its final report within 30 academic working days, measured from the receipt of the complaint by the hearing panel to the date a final report is sent to the President and Senate, unless the Chair of the Faculty Senate, for good cause, grants an extension of not more than 20 academic working days.
 - (iii) The accused shall have the right to represent him or herself or to be represented at the hearing by academic counsel or legal counsel. The University shall be represented by the Office of the General Counsel. However, the university may utilize outside counsel if the accused decides to be represented by legal counsel.
- (n) In the case of a complaint filed by a faculty member pursuant to paragraph (c)(ii):
- (i) The complaint shall be investigated by one or more investigators appointed by the Chair of the Faculty Senate from the membership of the CPC. No investigator may be a member of the hearing panel for the same case, nor may an investigator be appointed who is excludable from panel membership for the same case under the provisions of paragraph (i).

⁶ [#2019-71\(B\)](#)

- (ii) The accused and the complainant each have the right to explain the facts and circumstances to the investigators, but without counsel present. The accused also has the right, without prejudice, to decline to speak with the investigators.
 - (iii) The investigators shall report their findings in detail to the hearing panel as quickly as a careful investigation will allow, but in any event within 30 academic working days.
 - (iv) If upon consideration of the report by the investigators, the hearing panel concludes that there appear to be sufficient facts which, if established at a hearing, make it more likely than not that unprofessional conduct has taken place, a hearing shall be held promptly.
 - (v) From the date the hearing panel receives the report of the investigators, the hearing panel has 20 academic working days to conduct the hearing and present its report to the President and Senate, unless the Chair of the Faculty Senate, for good cause, grants an extension of not more than 20 academic working days.
 - (vi) The accused and the complainant shall have the right to be represented at the hearing by academic counsel or legal counsel. The Office of the General Counsel may participate at its discretion.
- (o) In any hearing pursuant to this section:
- (i) A hearing panel member or investigator has a duty to recuse him or herself if there would be, or there would appear to be a conflict of interest or any reason why the panel member could not be neutral and impartial. The accused shall have the right to request that the Chair of the Faculty Senate remove a panel member for good cause shown.
 - (ii) The accused has a right to waive the hearing, in which case the decision of the hearing panel shall be based on the information already available to the hearing panel. The accused also has the right, without prejudice, to decline to speak during the hearing.
 - (iii) The accused has a right to raise affirmative defenses justifying the conduct, if the asserted defense is based on an interpretation of law, professional standards, or the *Faculty Manual*.
 - (ii) The accused may plead guilty to one or more of the charges, in which case, the hearing will then be held concerning the remaining charges, if any.
 - (v) The panel may, at its discretion, require the filing of briefs, memoranda or other documents by the parties before or during the hearing, and may issue orders governing the conduct of the hearing and the panel’s processes.
 - (vi) The complainant, the accused, and the General Counsel’s office shall have the right to make opening and closing statements either orally or written, as determined by the Panel⁷; to examine all briefs, and other documents presented to the hearing panel; and to present, examine, and cross examine witnesses.
 - (vii) The accused has the right, during or after the hearing but before the panel concludes its report, to make an oral statement or to file a written statement to the hearing panel explaining matters in mitigation.

⁷ [#2019-71\(B\)](#)

- (p) If the hearing panel has reason to believe that an individual acting as complainant or witness has knowingly introduced evidence that has been fabricated or has knowingly given false testimony, the panel may recommend:
 - (i) in the case of a faculty member, that the Chair of the Faculty Senate bring a charge of unprofessional conduct against the faculty member; or
 - (ii) in the case of an employee who is not a faculty member, that the Chair of the Faculty Senate bring the matter to the attention of one or more appropriate administrators.

- (q) The University has a duty to make known to the accused any exculpatory documents, or the identity of witnesses who could provide evidence favorable to the accused. A knowing failure to do so which is material to the outcome invalidates any adverse action that may be recommended by the Review Panel against the accused. A copy of the documents and/or the identity of such witnesses shall also be provided to the Secretary of the Faculty Senate.

- (r) Upon the conclusion of its hearings and deliberations, the Hearing Panel shall prepare a report to the President, the Chair of the Faculty Senate and the accused and forward to the Secretary of the Faculty Senate for distribution. The reports shall contain the following sections (i) The findings of facts of the Panel, including in particular the acts or omissions of the accused which are relevant to the matters charged; (ii) the conclusions of the Panel as to whether the facts support a finding that the accused is not suitable to serve the university within the meaning of sub-section C (1) or has engaged in unprofessional conduct within the meaning of C (2), and, if so, whether the conduct was merely a technical or trivial violation; and (iii) the sanctions recommended to the President and the Senate, respectively, if any. At its discretion, the Hearing Panel may comment on matters it believes should be rectified or reformed, and may request that these comments be forwarded to the Senate, the President, and/or other appropriate administrative officials. Once the report has been submitted, the Faculty Senate Chair shall dismiss the Panel and make a report to the Committee on General Welfare, taking care to protect privacy and confidentiality.⁸

- (s) In those cases in which the hearing panel concludes that no unprofessional conduct has taken place, or that only a trivial or technical violation has taken place, and no sanctions are recommended, the Chair of the Faculty Senate shall then dismiss the case.⁹

- (t) If the hearing panel determines that unprofessional conduct has taken place, and that the conduct was not merely a trivial or technical violation, it shall prepare a report to the Chair of the Faculty Senate and to the President. It shall recommend one or more of the following as sanctions:
 - (i) *Censure by the Senate.* If the Senate concurs with the recommendation of censure, it shall decide on the text of the censure resolution, on the means and extent of publication of the resolution, on whether the censure resolution shall be

⁸ [#2019-71\(B\)](#)

⁹ [#2019-71\(B\)](#)

made a part of the faculty member’s personnel records, and on whether the member shall be barred or suspended from service on the Senate.

- (ii) *Dismissal*, in accordance with the procedures specified in section C15 of the *Faculty Manual*.
 - (iii) *Sanctions by the President other than dismissal*. The President may take one or more of the following actions: restrictions on pay increases for a period of years; a one-time reduction in pay not to exceed 10% of base pay; required counseling or training; loss of rights to have graduate Research Assistants or Teaching Assistants; and/or termination of appointment to an Administrative position. The President is not required to impose the sanctions recommended by the hearing panel, but shall explain in writing to the Senate the reasons for imposing sanctions that differ from the hearing panel’s recommended sanction(s).
- (u) Nothing in this section shall be interpreted to preclude a mutually satisfactory settlement between the complainant and the accused (for a case filed under paragraph (c)(ii)). A mutually satisfactory settlement may also be reached between the university and the accused (for a case filed under (c)(i)), provided, that such a settlement may not adversely affect the interests of third parties. Any settlement must be reached prior to the time the hearing committee files its report to the Senate. If a settlement is reached, the Chair of the Faculty Senate shall dismiss the case.
- (v) The Senate shall adopt and publish written procedures as Class D legislation for¹⁰:
- (i) Filing and processing complaints;
 - (ii) Appointment of investigators and hearing panel members;
 - (iii) The conduct of hearings; and
 - (iv) Consideration of censure and related matters by the Senate.

In the event of a conflict between those procedures and this section, this section shall prevail.

[END TEXT]

¹⁰ [#2011-23\(D\)](#) – procedures