

FAS Senate

AN ELECTED BODY OF THE FACULTY OF ARTS AND SCIENCES
YALE UNIVERSITY

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Approved

Senate Response to the *August 2017 Report of the University-Wide Ad Hoc Committee on Procedures for Resolving Complaints of Faculty Misconduct*

Committee:

Karen Wynn (Chair), *Professor, Psychology and Cognitive Science*

Beverly Gage, *Professor, History and American Studies*

Brad Inwood, *Professor, Classics and Philosophy*

William Nordhaus, *Sterling Professor, Economics*

Charles Schmuttenmaer, *Professor, Chemistry*

The University-Wide Ad Hoc Committee, appointed in 2016 and chaired by Professor Kathryn Lofton, has improved the Yale Faculty Standards of Conduct & Procedures for Resolving Complaints of Faculty Misconduct (hereafter called, respectively, the Standards and the Procedures). This revision addresses inadequacies of previous versions of the Standards and Procedures. We note in particular that the newly-proposed set of Faculty Standards is no longer illustrated by problematic examples of behaviors that would constitute violation of the Standards, and that the Procedures are considerably revised to provide more due process for respondents.

The Ad Hoc Committee has solicited faculty input on this latest draft. We commend this process, embracing as it does the recognition that the strongest set of Standards and Procedures will be created through a collaborative process that includes public discussion amongst faculty and ample dialogue between faculty and the Committee.

In reviewing the faculty input submitted to date and from our own discussions, we conclude that the Standards and Procedures can and should be further improved prior to being put to the FAS faculty for a vote of approval and adoption. It is in the spirit of creating the strongest set of Standards and Procedures—Standards that will provide a clear set of guidelines for faculty and Procedures that will provide due process for respondents as well as transparency of process and outcome for complainants, respondents and faculty alike—that we provide the following recommendations.

We recommend that, prior to an FAS faculty vote on approval and adoption of the new Standards and the Procedures:

1. The Ad Hoc Committee should summarize the faculty input and their response

We recommend that in its next draft of the Standards and Procedures, the Ad Hoc Committee review the faculty input received and summarize their consideration of and response to this input.

2. The Standards should not just express aspirational norms of conduct, but also characterize *misconduct* (by articulating types of misconduct, providing examples of misconduct, or both)

The revised Standards, once adopted, will constitute a contractual agreement between Yale and its Faculty; as such, it is essential that they convey clearly what constitutes misconduct. The Standards currently printed in Yale's *Faculty Handbook* provide examples of violations to the Standards. However, some of these appear rather trivial (e.g., not holding office hours as scheduled); others are behaviors identified as violations of other Yale policies, creating awkward recursive reference wherein it is against Yale policy to violate Yale policy. The newly-drafted proposed Standards avoid these problems, as they contain no examples at all of behaviors that would violate the Standards. However, this approach is problematic for its own reasons: While the new draft Standards articulate the worthy ethical principles that faculty should strive to embody in their words and deeds, they do not delineate what falls sufficiently short of these noble objectives to warrant sanction; they describe the upper reaches that faculty should strive towards, not the lower threshold that faculty must meet or exceed. In this, as in virtually all categories of human behavior, there is measurable distance between the two (after all, “a man’s reach should exceed his grasp”). Thus, the absence of definitions, descriptions, or illustrative examples of types of misconduct allows for significant differences of interpretation and for wide latitude in judging whether a given behavior constitutes a violation. This opens the door for individual biases and influences to creep into decision-making. Moreover, it makes it hard to evaluate the first of the four requirements for the Provost to submit a case to the Review Committee Chair (namely, the requirement that “a faculty member’s actions violated the Standards of Faculty Conduct”).¹

3. The Procedures should provide for more joint decision-making of the Review Committee and the Provost.

Currently, it is the Provost alone who decides whether to dismiss a case or submit it to the Review Committee Chair; and it is the Provost’s sole discretion to accept all, some, or none of the Review Panel’s recommendations. We note that faculty have made suggestions relevant to these points in their online comments (e.g., have the Provost and Review Committee Chair together determine whether a case brought to the Provost meets the standards to warrant review by a Panel, etc.); these and other possible approaches to placing the decision-making more equitably upon the Review Committee (Chair) and the Provost should be considered.

4. The Annual Reports on Faculty Misconduct should provide more information.

The current draft Procedures state that the Faculty Standards Review Committee will produce annual reports providing the number of cases received by the Provost, the number heard by a Review Panel, and the number that resulted in a conclusion of violation of the Standards. In

¹It is interesting to note that while many universities have a community-wide code of conduct that applies to students, faculty and staff alike, few appear to have a faculty-specific code. Those that do embrace one of two general approaches. Those with procedures for adjudicating violations typically provide a taxonomy of misconduct, describing categories of infractions (e.g., appropriation of university resources; interference with a university function; etc.) either with or without presenting specific examples. Others articulate ethical standards for faculty, but not violations of such nor procedures for adjudicating violations. Finally, it is worth noting that some universities that articulate a faculty-specific code of conduct that includes descriptions or definitions of misconduct also articulate, as part of the document or statement, a set of faculty rights. (UC Berkeley is one university with a Faculty Code of Conduct whose approach strikes us as hitting a good balance between specificity and abstraction. It is available at: http://webcache.googleusercontent.com/search?q=cache:DxP6f02knKEJ:apo.chance.berkeley.edu/faculty_misconduct_015.pdf+&cd=1&hl=en&ct=clnk&gl=us&client=safari.)

addition to these statistics, the Annual Report should provide, for each case heard by a Review Panel: a description of the nature of the complaint (suitably anonymised), the Review Panel's recommendations, and the Provost's actions and reasoning (especially where actions taken diverge from the Panel's recommendations). This information will build a body of case law over time that will provide clarity missing from the Standards themselves, and promote consistency across cases and over time. We note that both the University-Wide Committee on Sexual Misconduct and the Executive Committee on undergraduate misconduct produce biannual public reports that provide such information, including descriptions of the complaints, committee findings, and disciplinary actions taken (if any). The University's findings and responses resulting from complaints of faculty misconduct should similarly be systematically tracked and reported.

5. Clarification should be provided relating to the informal processes employed by department chairs and deans

A recent case was brought to our attention in which the 2015 Faculty Standards were apparently applied by a Dean. We have not attempted to verify the details of the case and are not commenting on it, but it raises the question, which has not been considered by the Senate or in the comments: how should the Faculty Standards be used in the preliminary proceedings before the formal Procedures are invoked? Here is the language from the current proposal by the University-Wide Committee on Procedures for Resolving Complaints of Faculty Misconduct:

“The Committee believes that alleged infractions of the Standards of Faculty Conduct should initially be addressed by informal processes conducted by department chairs and deans.

“We have placed a great emphasis on the informal **mediation** of complaints.

...

“Responsibility for addressing a complaint that a faculty member has failed to comply with the Standards of Faculty Conduct normally lies with the faculty member's Dean. Deans may create and apply informal processes to resolve complaints of faculty misconduct, which may include the designation of a particular faculty member to receive and facilitate the resolution of complaints. Those who believe that a faculty member has violated the Standards of Faculty Conduct are encouraged to seek an informal resolution of the matter through the faculty member's Dean. **Such informal processes may result in sanctions beyond the inherent authority of the Dean only with the consent of the relevant parties.**” (emphasis added)

One interpretation is that the informal procedure is a mediation, that is, one in which the outcome must be mutually agreed upon. The formal procedure would only be invoked if the informal procedure (mediation) failed. However, the last sentence muddies the water because it involves “inherent authority of the Dean.” It is unclear what these authorities are, and no specific formal authorities for imposing sanctions are given in the *Faculty Handbook*. The informal procedures discussed in the *Faculty Handbook* (see L.3.b) have the clear structure of a mediation. This confusion should be removed. We recommend that it be explicitly stated that the informal procedures are a mediation. Put differently, sanctions for misconduct under the Faculty Standards should be applied without consent of all parties only under the formal procedures. It would make no sense to have an informal procedure in which a Dean could unilaterally impose sanctions without the protections that are so central to the current conception. Such a process would invite an administration of the system (or threats to do so) that would undermine the faculty rights and responsibilities that have been central in designing the Faculty Standards and Procedures. We recommend that it be clearly specified that the “informal processes” described in the Faculty Standards and Procedures be a mediation in which sanctions can be applied only with the consent

of all parties, and if the sanctions are not agreed upon by all parties, then the case would go to the formal procedure.