

FRPR Second Meeting, 16 November, 2016, 10:30-11:30 AM; 1415A LEEP2.

Attendance: Richard Hale (chair), Sean Seyer, Eugene Parker, Fran Devlin, Uma Outka, Mary Banwart; (Unable to attend: Joe Harrington, Dean Williams)

Guest attendee: Jim Tracy, Vice-Chancellor for Research

- 1. Introductions**
- 2. Motion to approve prior minutes receives, seconded and unanimously approved**
- 3. Review and Discussion of Individual Charges**

3.1) Specific Charge III. Scholarly misconduct procedures

In further review of the policies at KU Medical Center as well as a review of current Federal policies such as the Public Health Service Policy, it is clear there is more to change in the current KU policy than the items identified in the charges, to ensure federal compliance as well as compatibility across campuses. In an initial meeting with Richard Hale, Jim Tracy, Rodolfo Torres and Susan MacNally the breadth of these potential changes were discussed, and Jim Tracy was invited to join us at this FRPR meeting to share his experiences with the additional issues. In the prior meeting the FRPR chair recommended that the most expedient path to an acceptable policy would be for Jim Tracy to create an initial draft of a compliant process, and for FRPR to review and edit this draft rather than vice versa. After discussion, this approach is endorsed by FRPR.

Jim Tracy

Discussed issues related to and his experience with scholarly misconduct.

- a) KU must adhere to federal science policies
- b) Current KU policy is inconsistent with federal policies in some instances.
 - i) per federal policy an allegation must be accepted in any form (oral, written...) and may be anonymous, but the KU policy requires the complaint to be in writing from a defined complainant
 - ii) the federal need to immediately sequester all related information is not in KU policy
 - iii) the first day or two of the process are most critical and are unlikely to be possible with an ad hoc approach
 - iv) an assessment is required to make an initial determination of whether a scholarly misconduct investigation is warranted; assessment and investigation are not synonymous and must be separated as once an investigation begins it must be completed (e.g. most common complaints address author disputes, something outside of misconduct regulations, and something which can often be dismissed in an assessment)
 - v) issue of appeal is not a part of federal policy, and thus needs considerable review within FRPR
 - appeal based on finding
 - appeal based on fair process, which Jim favors

- public or private appeals
- current KU policy only allows for appeals on sanction
- vi) the definition of misconduct in the current KU policy differs from the current federal definition
- vii) the policy should include a clear definition section
- c) We need to keep process confidential to protect the accused's reputation if nothing found
 - KU policy needs to ensure protection of others involved such as graduate students and postdocs
- d) We need to balance the goal for timely completion of the review yet also allow for extension of time as needed based on the individual case
- e) Jim strongly believes that at no time should the accused and the accuser meet
 - KU's current cross-examination approach should be revised
- f) KU policy currently does not clearly designate the different offices involved in the various stages of the process
 - separation of investigative phase from the penalty phase
 - federal policy requires separate offices for sanctions (eg Provost Office) than for reviews (eg VP Research)
- g) Federal funding agency is informed that the process is underway at the university
 - at no point in time will the university announce that an investigation is underway
 - the federal government will announce the existence of the case only after investigation completed and accused found in violation
 - federal agency does its own investigation and makes independent finding
- h) New KU policy should be consistent for all funding types. PHS, NSF, USDA, DoD, DOE, NIH and other agencies have slightly different procedures, but sufficient similarities that one policy can address all, perhaps changing only in reporting and timelines
 - views the Public Health Services policy as the best, especially their timetable. This is most commonly used in AAU institutions
- i) We need to define evidentiary status as well as definitions of misconduct

3.1.1 Subsequent Committee action: Jim hopes to have a draft policy to us no later than the beginning of spring 2017, at which time FRPR will review and edit.

3.2) Specific Charge IV. Inclusion of a statement on conflict of interest

After discussion of various governance policy documents, motions for the following actions were made and seconded, and each action was approved unanimously.

3.2.1)

Faculty evaluation procedures are defined in FSRR 7.4. The current language of FSRR 7.4.2.2 is "Provide for the adoption of evaluation procedures by units that ensure review is conducted in a manner that respects faculty rights, including academic freedom and tenure, the confidentiality of personnel matters, and principles of due process, including the right to appeal unfavorable decisions." **FRPR recommends changing this to: "Provide for the adoption of evaluation procedures by units that ensure review is conducted in a manner that avoid conflict of interest and respects faculty rights, including academic freedom and tenure, the**

confidentiality of personnel matters, and principles of due process, including the right to appeal unfavorable decisions.”

3.2.2)

The FRPR studied various definitions of Conflict of Interest. In addition, FRPR examined the Faculty Senate Rules and Regulations (FSRR) with regard to defining Conflict of Interest in hearings related to disciplinary hearings for faculty members. While many governance policies allude to procedures for recusing committee members for conflict of interest, a definition is not commonly referenced in current governance policies.

Multiple types of Conflict of Interest exist, thus, various policy documents offer different definitions. Perhaps the most all-encompassing definition is:

“A conflict of interest occurs when there is a divergence between an individual's private, personal relationships or interests and his/her professional obligations to the university such that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal benefit, gain or advantage.” (Office of Provost and Executive Vice Chancellor Policy: Commitment of Time, Conflict of Interest, Consulting, and Other Employment, Preamble, I. General, B. Conflict of Interest) (See <https://policy.ku.edu/provost/commitment-of-time-conflict-of-interest#conflictointerest>)

FRPR recommends that the best place to include such a definition is in Article II of the Faculty Code of Rights, Responsibilities and Conduct (FCRRC), which is by inclusion thus contained in FSRR 7.1 (which contains the FCRRC in its entirety). **FRPR recommends the following language be inserted as a new definition 4 in the FCRRC article 2:**

- 4. The term conflict of interest refers to a divergence between an individual's private, personal relationships or interests and his/her professional obligations to the university such that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal benefit, gain or advantage.**

And thus we also recommend that the current definition number 4 (all other terms...) be renumbered to definition 5.

3.2.3)

The current language of FCRRC Article III item 2 is:

“Faculty members shall have the right to impartial application of unit/department, school and University policies.”

FRPR recommends changing this to: “Faculty members shall have the right to impartial application of unit/department, school and University policies **free from conflict of interest.”**

With these changes, the other already existing FSRR references to conflict of interest are sufficient. As noted in prior years these include references within Promotion and Tenure procedures in FSRR Article 6 and Disciplinary Hearing procedures in FSRR Article 7. For instance, FSRR 6.1.4 addresses Conflict of Interest among participants in the promotion and tenure process. Section 6.1.4 speaks to Conflict of Interest but does not define it. FRPR notes that FSRR 6.1.4 does provide guidance on participation in promotion and tenure by prohibiting a faculty member from serving on more than one committee, prohibiting administrators from serving on review committees, and prohibiting spouses of candidates from serving. FSRR 6.1.4.4 also provides a mechanism for candidates to petition to resolve Conflict of Interest with the committee voting on the petition. Section 6.3.3 makes similar provisions for the University Committee on Promotion and Tenure.

3.2.4 Subsequent Committee action: Review charge 4, subcharges a, b, c with respect to the 1940 and 1970 AAUP Statement on Principles on Academic Freedom and Tenure, the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings, and the Statement on Teaching Evaluation for further discussion at a meeting to be scheduled prior to the semester break.

4. **Adjourn.** Next meeting to be scheduled in early December, time and location TBD.