

UofA
UNIVERSITY OF ARKANSAS SYSTEM

Office of the General Counsel

May 4, 2016

Dr. Joel E. Anderson
Chancellor
University of Arkansas at Little Rock
2801 South University Avenue
Little Rock, AR 72204

RE: Judicial Policies Proposal

Dear Chancellor Anderson:

Thank you for the opportunity to make an initial review of the "Judicial Policies" document. I understand that a committee of faculty has been working on this throughout the year and plan to place it in front of the UALR Faculty Senate before the end of the spring semester. I agree that UALR's policies and procedures for a variety of appeals need attention. I also believe the document under review represents steps forward on a number of fronts. I should state at the outset, however, that the proposed "Judicial Policies" document, given its length and the breadth of issues that it includes, is too much for me to give the kind of careful attention and advice that such important topics require before giving final advice to you or President Bobbitt.

My strong preference would be to deal with one policy ("sub-policy" in the language of the document) at a time in the various subject areas over the course of several months. I also believe that affected administrators should be involved in the review – HR representatives, the RIO and Graduate Dean, to name a few. The 48-page document brings together much in relevant information, existing policies, potential revisions, and commentary that would be very helpful in such a large undertaking. I think this set of policies is especially sensitive because these policies not only address questions of fairness to individual persons within the university community but also they all have potential involvement in litigation. It is to everyone's benefit that the language adopted be drawn with much care.

One other preliminary observation: It is important to keep in mind that the goal of an internal appeal process is not to replicate the legal system with its strict formality and its terminology. The goal of an internal appeal process is to authorize a third party (person or panel) to listen to arguments and review the supporting information of both sides, and then offer an informed and timely opinion as to the fairness or appropriateness of the decision or circumstance being appealed. The conclusion of the hearing officer or panel then goes as a recommendation to the chancellor or president or, in the case of grade appeals, the provost.

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Arkansas School for Mathematics, Sciences, and the Arts / University of Arkansas Clinton School of Public Service

The University of Arkansas is an equal opportunity/affirmative action institution.

Selected observations follow, section by section.

As an additional matter, I believe it is overwhelming to try to bring so many policies together in one document and perhaps the same result could be achieved by having an overarching diagram or table of contents of where to find policies dealing with specific subject matter.

PREAMBLE/GENERAL PROCEDURES AND DEFINITIONS

I do not recommend acceptance of the Preamble and General Procedures and Definitions. These paragraphs provide governing guidelines stated as applicable to all the sub-policies. If any of the preamble's requirements is germane to a specific policy, it should be included in the policy in language and style consistent with the rest of the policy. As general and innocuous as the language in these statements may seem, they have considerable potential for unintended consequences.

Throughout the remainder of the document the individual sub-policies include, by reference, the Preamble and General Procedures and Definitions. Although I will not repeat it each time, in all instances I recommend against acceptance of inclusion of these two sections.

GRADE APPEALS

The effort to update the policy to address grade appeals by online students is appropriate.

I note that a number of places in the document there are provisions that deadlines are to be adhered to if possible but deviation is permissible. I understand the challenge of scheduling persons who are participants in appeals processes. However, the statements could encourage persons to expect delays if they request them. I would encourage consideration of some tightening of the language, or including an option where there is delay by mutual agreement, with some official's approval—perhaps, depending on the process, the approval of the chief student affairs officer, the chief academic officer, or the chancellor.

Procedures for Formal Grade Appeals Handled by the Academic Integrity and Grievance Committee

In 6. of this section, I would caution about using such language as “until it has been determined that all pertinent written documents...have been submitted and reviewed.” That is a standard not always achievable. For an organization's internal processes, reasonableness is an appropriate standard. In 8. I would advise against requiring sworn affidavits. They are preferable if a witness cannot be present, but if a statement or record is not under oath the committee should still be able to give it such weight as it decides. Again, our internal processes are not court proceedings and participants are not sworn in. Committee members use their collective good judgment in determining the credibility of witnesses and evidence. Sections 5. and 10. have confusing language regarding committee member participation.

In the appeal process it is unclear whether the “advocate” is an administrator, faculty member or another student. The provision for the SGA President to serve in this capacity has been removed.

ACADEMIC INTEGRITY SUB-POLICY

In this policy, the term “guilt” is used replacing “responsibility” in the current policy. I prefer not characterizing an academic integrity matter as one of guilt or innocence. Likewise, in Paragraph 7, there again a requirement of affidavits being required if witnesses are not available in person and the reservation I previously expressed is applicable here as well.

Procedures for Academic Offenses Referred to the Academic Integrity and Grievance Committee

This section includes a reference to an appendix. Throughout the document there are references to one or another of the appendices. Separating the step-by-step appeal and hearing process into an appendix or section at the end of a policy can be very helpful to all concerned. Such sections are even more user-friendly if they follow immediately after the parent policy rather than if removed and have to be located among a number of other appendices.

CLASSROOM DISRUPTIONS SUB-POLICY

Steps Toward Redress of Classroom Disruptions

I have no comments on this.

APPEALS PROCEDURES AND INSTRUCTIONS (Not applicable to Grade Appeals)

The reference in Paragraph 3 to Act 1194 should make it clear that this is Act 1194 of 2015 and the effect of this recent legislation will need to be carefully considered as to which policies it is applicable. I also question the need for the term “active” legal representation and believe that the terms of this representation should be clarified. The language of the statute is “fully participate”. I believe also in this instance that UALR, the faculty member or the Dean of Students should also have a right to have University legal counsel participate. This is not a matter of statute but is something that could be provided as a matter of policy.

FACULTY APPEALS AND GRIEVANCES PROCEDURES SUB-POLICY

This is the section I would want to have time to review more carefully because it involves either quoting or implementing Board Policy 405.1, which addresses tenure and promotion and other faculty employment matters. The draft does not address the two primary sources of confusion and problems related to the Faculty Appeals Council.

The first source is the statement of the council’s jurisdiction.

The Faculty Appeals Council (or something similar) is properly included in the Constitution of the University Assembly but its scope should be broad and generally include the

subjects that are uniquely academic. However, the language stating the jurisdiction of the Faculty Appeals Council is overbroad and therefore a source of confusion.

The language is misleading in saying that “All appeals and grievances involving faculty are made to the Faculty Appeals Council.” Federal anti-discrimination laws and regulations in regard to race, ethnicity, sex, gender, disability, and sexual orientation apply equally to all persons on campus without regard to role within the university and are dealt with through separate, established appeal processes, consistent with applicable laws and regulations, under the executive authority of the chancellor as set out in Board Policy 100.4

Federal requirements, for example, with regard to campus implementation of Title IX, including appeals, have recently required revision in the process for handling Title IX appeals. (The omission of Title IX in the Judicial Policies draft is evidence that the drafting committee recognized that Title IX is separate.) However, the statement regarding the Faculty Appeals Council jurisdiction—“all appeals and grievances involving faculty...”—would lead a person to assume Title IX appeals go the Faculty Appeals Council.

The second source is the procedure for constituting hearing panels, which has been challenging and which has produced delays and hearing processes that have been very slow.

MORAL TURPITUDE SUB-POLICY

I would not recommend approval of this section. It is the Board’s prerogative to define terms in Board policy and to delegate responsibilities and interpret its own policy. Such a consequential decision as outlined in this section would short circuit the appeals process established by the Board of Trustees.

PROCEDURAL APPEALS SUB-POLICY

I would not recommend approval of this section. It is the responsibility of the Office of General Counsel to provide guidance if there is an issue regarding proper internal appeals processes—and then to defend in court the guidance provided if the General Counsel’s professional judgment is challenged.

This section, which would put in place a new decision process, reflects an obvious concern that there is confusion on campus as to which policy or appeal process is the right one for a particular case. I have not encountered a comparable problem on other campuses. The cure is to have clear policy for each category of grievances/appeals, not to set up another process with another decision group to choose among the confusing choices. The goal should be to eliminate the confusion, not to create a work-around that adds time and complexity to campus processes.

I would point to the precedent of Board of Trustees policies which are single-subject policies. Each policy stands on its own.

POLICIES AND PROCEDURES FOR DEALING WITH MISCONDUCT IN RESEARCH,
TEACHING, AND SERVICE SUB-POLICY

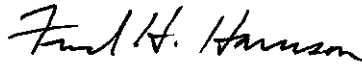
Reading the title makes me wonder if research misconduct, in which Federal requirements are applicable, and misconduct in teaching and service all fit well in a single policy. In any event, this section addresses an important subject which is governed in part by Federal regulations. This draft constitutes a recommendation of policy for the campus, subject to the chancellor's approval. Therefore, I will reserve advice on it unless you have specific questions now or until you are satisfied with it and request review.

APPENDICES

As stated earlier, I support the purpose of the appendices, but I have not had sufficient time to review these critical parts of the policies and therefore must reserve judgment on them.

This letter clearly does not provide a thorough and complete review of the document, but I hope it will be helpful to you and your campus colleagues.

Sincerely,



Fred H. Harrison
General Counsel