

INTERIM REPORT TO THE FAS SENATE, FACULTY CONDUCT STANDARDS AND PROCEDURES

In response to the thoughtful work of the Ad Hoc Committee on Faculty Standards of Conduct, the FAS Senate's study group on faculty conduct standards and procedures offers the following interim report. We present these ideas in a spirit of collaboration and inclusion. We intend for this report and its concluding recommendations to improve the processes by which we handle faculty misconduct.

OVERVIEW AND RECOMMENDATIONS

In spring 2014, Yale President Peter Salovey and Provost Benjamin Polak appointed an Ad Hoc Committee on Faculty Standards of Conduct to formulate a code of conduct for the university faculty. The intentions behind this initiative were admirable: to ensure a safe, fair, and supportive environment for all members of the Yale community, and to affirm a collective faculty commitment to these principles. However, in recent weeks members of the faculty have raised serious concerns about the conduct standards, the draft disciplinary procedures to enforce those standards, and the process by which both the standards and procedures have been introduced as university policy. These concerns, in turn, raise questions about the legitimacy and workability of the standards and procedures as currently conceived.

This interim report, prepared by a study group of the FAS Senate (Beverly Gage, Kathryn Lofton, William Nordhaus, Karen Wynn), is intended to reflect these concerns. It attempts to synthesize the history of the conduct and standards process, and to introduce questions raised in recent weeks both at Senate meetings and through formal and informal conversations with members of the Yale faculty and administration.

It is the view of the study group that subjects of direct concern to the faculty—in this case, the standards and procedures by which faculty conduct will be adjudicated—are rightly subject to faculty deliberation as well as a faculty vote. The introduction of the new standards and procedures as an administrative policy (rather than as a process of collective deliberation and governance) tends to undermine rather than strengthen the standards' legitimacy.

With this principle in mind, the study group recommends that the Senate consider the following resolution in order to enhance transparency and faculty governance within the current standards process (NOTE: This resolution passed unanimously in the Senate on November 19, 2015):

1) A recommendation that the current standards and draft procedures be distributed in full to the university faculty, followed by a 30-day period for faculty comment and input. Opportunities for input may be primarily written communication but should also include town hall or discussion meetings and other forms of exchange. Written and online comments should be made publicly available.

2) A recommendation that the Ad Hoc Committee on Faculty Standards of Conduct revise the standards and procedures with this expanded faculty input in mind.

3) A recommendation that the FAS Dean should, at an appropriate time, call a meeting of the Faculty of Arts and Sciences in order to discuss and vote upon the Ad Hoc Committee's final proposals for faculty conduct standards and procedures.

HISTORY

In spring 2014, President Salovey and Provost Polak appointed an Ad Hoc Committee on Faculty Standards of Conduct to formulate a university-wide code of behavior for the faculty. This occurred in the context of heightened attention to sexual misconduct throughout the university, including among university faculty. This attention to sexual misconduct in turn raised questions about other forms of "misconduct," such as workplace bullying, in which clear procedures and standards were perceived to be lacking.

Psychology professor Margaret Clark agreed to serve as chair of the Ad Hoc Committee. Five other members of the FAS served on the committee: Ron Breaker (Molecular, Cellular, & Developmental Biology), Michael Della Rocca (Philosophy), Dolores Hayden (Architecture, American Studies), David Post (Ecology & Evolutionary Biology), and Kyle Vanderlick (Dean, School of Engineering & Applied Science). The remainder of the committee's 14 members were drawn from the university's professional schools, including Law, Divinity, Medicine, Nursing, Management, and Forestry.

During the summer and fall of 2014, according to a message to faculty from the president and provost, "the committee reviewed existing Yale policies as well as peer institutions' statements and policies relating to faculty conduct. It also heard a number of de-identified reports of actual incidents and patterns of concerning behaviors on our campus. In fall 2014, informed by this exploration, the committee produced a draft of Standards of Faculty Conduct, which aggregated existing relevant Yale policies and position statements and added language to clarify expectations that were not fully articulated in any existing documents." The University Cabinet, a group of 25 deans and officers from across the university, reviewed and approved the proposed standards.¹

In January 2015, the president and provost released a draft of the standards to all Yale faculty and opened an online comment period, coordinated through the Office of the Provost. This initial report included only the standards of conduct themselves, and did not include the procedures by which faculty might be sanctioned or disciplined for violations of those standards. The faculty comments were not made publicly available, and there were no town hall meetings or formal public discussions within the FAS. It is worth noting, however, that news coverage and public perception suggested a divided reaction to the proposed standards. Faculty

members interviewed by the *Yale Daily News* expressed concerns that free speech, political activity, and academic freedom would not be adequately protected by the proposed standards, for instance.² Others objected that the conduct standards had been presented for comment but not for an official vote by the faculty itself. Many similar concerns have since been expressed by members of the Senate as well.

On September 18, 2015, President Salovey and Provost Polak announced that the new faculty conduct standards had become official Yale policy, and those standards are now included in the Faculty Handbook. These revised standards include several small changes in response to feedback gathered during the open-comment period. For instance, the committee made efforts to clarify language regarding political activity and freedom of speech, and to note that faculty holding full-time administrative positions would be included within the conduct standards.

During this time, the Ad Hoc Committee also turned to its second task: developing the procedures by which faculty may be disciplined or sanctioned for violations of the university's conduct standards. To complete this task, the committee examined faculty conduct procedures at other universities, as well as existing procedures regarding sexual misconduct, prohibited business practices, and academic misconduct here at Yale. FAS Dean Tamar Gendler distributed the proposed conduct procedures to the FAS Senate in advance of the Senate meeting on October 15. At the October 15 meeting, the Senate discussed the proposed procedures with Dean Gendler, Professor Clark, and Deputy Provost Stephanie Spangler. The Senate recommended that Dean Gendler distribute the proposed procedures directly to the full FAS for comment. The Senate also offered to work with the FAS Dean's office to gather the widest possible faculty feedback about the new procedures, and potentially to make recommendations for revision and reform.

QUESTIONS AND CONCERNS

Faculty Governance and the Right to Vote

According to the Yale University bylaws, "The members of the faculty of each school ... shall be the governing board of the school, entrusted with matters relating to the educational policy and government of the school."³

The Yale Faculty Handbook, in introducing the new conduct standards, also affirms the importance of faculty governance. "The Yale faculty bears primary responsibility for preserving the conditions necessary to advance [the university's] mission, including protection of free expression and inquiry; participation in the governance of the University; the application of fair and consistent standards and processes in matters of promotion and tenure; and adherence to a shared set of principles governing faculty members in relation to each other, to their students and trainees, and to the University and its staff members."⁴

Thoughtful and generous members of the faculty have played key roles in formulating the new conduct standards and draft procedures, both as committee members and as interlocutors. However, contributing input and providing feedback are quite different from engaging in “governance.” Once again: It is the view of the ad hoc study group that matters of direct concern to the faculty—in this case, the standards and procedures by which faculty conduct will be adjudicated—are rightly subject to deliberation and vote by the faculty itself.

The Standards

The new conduct standards are now official university policy, included in the Faculty Handbook. However, as Deputy Provost Spangler indicated in her discussion with the Senate on October 15, the handbook is a “living document,” subject to change and evolution.

The basic principles articulated in the standards are sound. However, we have several concerns about the standards as they are currently drafted.

First, we recommend the articulation of the rights of faculty in this document. This could be in the form of a Bill of Rights or several sentences that state the value of academic freedom, political freedom, and intellectual expression, as well as the right to make judgments on student academic work. A stronger affirmation of the rights and privileges reserved for faculty would make clear that standards of faculty conduct exist as much to underscore our highest standards as to monitor egregious abuse of them.

Second, the standards have been created primarily to prevent ongoing, systematic patterns of misconduct. However the standards as written range widely from potentially serious ongoing patterns of intimidation, harassment, and racial discrimination to more technical violations such as submitting late letters of recommendation or failing to hold office hours. It is important to provide some clarification regarding the relative severity of these acts of misconduct, as well as to clarify the intent to discipline faculty for patterns of misconduct, rather than for a single late letter of recommendation.

Third, the standards attempt to compile in one place all of the policies governing faculty misconduct—a useful endeavor. Some of these are new policies. Many of these policies have existed at Yale for years. Of those existing policies, there has traditionally been a wide variation in levels of enforcement. Sometimes this is highly problematic—when it has yielded a toleration of workplace bullying, for instance. In other cases, it is simply a matter of faculty culture and institutional tradition. The disjuncture between accepted faculty practice and the “rules on the books” raises the possibility of selective enforcement under the new standards: Will all faculty in violation of a given policy receive the same warning and treatment? Will the disciplinary process be triggered only by specific complaints against specific faculty members? Again, clarification of the intent to use the disciplinary process only for

serious or repeated violations of widely observed university policy would help to prevent the possibility of selective enforcement.

The Procedures

On October 15, the Senate began a series of deliberations and conversations about the draft conduct procedures formulated by the Ad Hoc Committee and distributed to the Senate for comment and deliberation in early October. At that meeting, and during subsequent conversations, several questions and suggestions have emerged, aimed at bringing greater transparency and accountability to the procedures:

- 1) Do the procedures concentrate too much authority in the office of the dean? Under the current proposal, the dean may bring a complaint, appoint the review panel to adjudicate that complaint, and overrule the panel's recommendation in the same complaint if so desired.
- 2) Should members of the review panel be elected rather than appointed, or perhaps some combination of the two?
- 3) How will the appeals process work? Currently the procedures specify that any party to a complaint "may appeal the Dean's decision by submitting a letter to the Provost within seven days after receiving the decision." It is not clear how the appeal process proceeds from that point, whether or not an appeals board will exist, who might be included on that appeals board, or what the provost's expectations will be.
- 4) Should the procedures match particular "offenses" to particular "punishments"? At the moment the standards include a list of possible forms of misconduct, and the procedures include a list of possible sanctions, but there is no specified relationship between the two.

The above questions are not intended as a comprehensive list of issues, but as a prod to further deliberation and consideration of the procedures.

CONCLUSION

The Senate's study group thanks the hard-working members of the Ad Hoc Committee for their many hours of deliberation and care. However, we believe that the standards and procedures require further review as well as a more active role for the faculty in creating and adopting the procedures that will govern us all.

¹ Message from President Salovey and Provost Polak to Yale faculty, September 18, 2015, available at <https://messages.yale.edu/Messages/University/univmsgs/detail/126496>.

² "Faculty standards of conduct draft draws criticism," *Yale Daily News*, February 17, 2015, available at <http://yaledailynews.com/blog/2015/02/17/faculty-conduct-draft-draws-criticism/>.

³ Yale Corporation By-Laws, December 13, 2014, point 34, available at <http://www.yale.edu/about-yale/president-leadership/governance-historic-documents/yale-corporation-laws>.

⁴ *Faculty Handbook*, Yale University, September 18, 2015, p. 5-6, available at http://provost.yale.edu/sites/default/files/files/Faculty%20Handbook_9-18-15%281%29.pdf.