

## EXECUTIVE COMMITTEE MINUTES

**Present:** Fech, Franti, LaCost, Lindquist, McCollough, Prochaska-Cue, Rapkin, Schubert

**Absent:** Bradford, Hachtmann, Konecky, Ledder, Zimmers

**Date:** Wednesday, November 5, 2008

**Location:** Faculty Senate Office, 420 University Terrace

**Note:** These are not verbatim minutes. They are a summary of the discussions at the Executive Committee meeting as corrected by those participating.

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### **1.0 Call to Order**

Prochaska-Cue called the meeting to order at 3:02 p.m.

### **2.0 Office of Research Policy on Misconduct (Vice Chancellor Paul, Associate Vice Chancellor Espy, Director of Human Research Protections Program & Research Compliance Director Vagird, Associate to the Chancellor Poser)**

Prochaska-Cue thanked everyone for coming and noted that earlier she sent a summary of the Committee's concerns. She noted that the Committee is asking for a joint committee to be formed to look at the Office of Research Policy on Research Misconduct and the Academic Rights & Responsibilities Procedures for Professional Misconduct to see if they can be improved.

VC Paul thanked the Committee for the opportunity to come and discuss how to handle research misconduct. He noted that we have to manage our policies to follow federal regulations as in the past ten years there has been closer scrutiny by the federal government on this topic. He reported that a copy of our previous policy was sent to the federal Office of Research Integrity but was deemed unacceptable. He stated that the government gave us a short timeline to fix the policy although we did ask for an extension which was not recommended as the program director was retiring and it would have delayed getting approval of our federal assurance. He also pointed out that the current policy was developed in June of 2005 and was vetted with the Senate Executive Committee. He noted that the UNL policy was based on the model policy developed by the federal funding agencies and has been adopted by many other institutions.

VC Paul reported that federal regulations require that the university have a policy on professional research misconduct which applies to anyone doing primary research, not just faculty.

VC Paul stated that it is important that the Office of Research policy be kept separate from the Academic Rights & Responsibilities process. If the Office of Research does not do a fair job of investigation regarding research misconduct then the faculty member has

the recourse to file a grievance complaint to the Academic Rights & Responsibilities Committee (ARRC).

VC Paul stated that federal regulations stress the importance of confidentiality in any cases of research misconduct. The Office of Research policy dictates that after research misconduct inquiries and/or investigations are completed and if it is determined that the allegation is unfounded the university has to ensure to take appropriate actions to restore the person's reputation.

VC Paul pointed out that any changes to the research misconduct policy must be approved by the federal government. He stated that he believes the current policy is excellent but it can be worked on to further address the concerns raised by the Executive Committee.

Prochaska-Cue noted that the ARRC procedures were approved by the Board of Regents in September 2005 but it does not appear that the Office of Research policy was approved by the Board. She asked if it was ever approved by the Board of Regents. VC Paul stated that the rationale for not seeking Board of Regents approval was that the Office of Research policy was in agreement with the ARRC procedures because the ARRC procedures turn cases of research misconduct involving federal funding over to the Office of Research for investigation.

Prochaska-Cue stated that the Committee understands the need to keep the policies separate. She stated that Professor Works met recently with the Executive Committee and was helpful in clarifying the process. She noted that he used the analogy that the Office of Research policy is the grand jury and the ARRC is the trial and the jury. However, the big problem is that the Office of Research policy never mentions the ARRC at all. She pointed out that the Committee would be less concerned if the ARRC was mentioned or referred to so the person being accused of misconduct knows they can have recourse through the ARRC should they wish to pursue it.

VC Paul noted that his Office does operationally advise the person that he/she can go through the ARRC to file a grievance about procedural issues. McCollough asked if this information can be inserted in the Office of Research policy. VC Paul suggested that a section could be placed at the end of the UNL research misconduct policy document. He noted that once the investigation committee's findings are complete, the person has the option of going to the ARRC to file a grievance regarding whether the process that was used to hear the grievance was consistent with the UNL research misconduct policy.

Associate VC Espy stated that one appropriate time to inform the person is to wait until the process is concluded. She stated that the most natural place to inform the person of the ARRC procedures would potentially be in the decision letter they receive from the Research Integrity Officer at the conclusion of the process.

Prochaska-Cue noted that another concern of the Committee is that the report made by the investigating committee goes to the Office of Research Integrity before the person has

the opportunity to go through the ARRC. VC Paul stated that the decision is reported to the funding agency and they make their own determination that is separate from that of the university. Associate VC Espy stated that we also are required to notify the particular funding agency at the time of the allegation of research misconduct. She noted that the agency will then decide whether to start an investigation and they subrogate the procedure to the university but with the understanding that the agency makes their own final decision. She reported that the university is required to send the decision and case material to the funding agency at the conclusion of the university process and they determine if the investigation is sufficient.

Lindquist stated that the Committee would like to see language included in the policy that states that the ARRC is notified if there is an allegation of misconduct so that the ARRC can go to that person to let them know they have a right to file a complaint should they wish to do so. VC Paul stated that if it is a case of research misconduct than it is the jurisdiction of the Office of Research. Lindquist stated that this is not true because the Board of Regents Bylaws state that any misconduct must go through a committee established by the Faculty Senate.

Associate to the Chancellor Poser stated that she understands the Regents policy but under section four of the ARRC procedures it specifically states that the ARRC shall refer the matter to the Vice Chancellor of Research in cases of federal misconduct in science regulations. She stated that the ARRC shall not do an investigation of any research of misconduct. Lindquist pointed out that this is true for everything. The ARRC determines if a case should be investigated and if so, a special hearing committee is formed to investigate the case, not the ARRC.

Associate to the Chancellor Poser pointed out that what the Research misconduct policy does is that it takes the ARRC policy and the Regents policy and carves out one kind of behavior, research misconduct that the ARRC does not have control over. She noted that the federal Office of Research Integrity requires that the university follows this procedure. She stated that there would be real problems of confidentiality if there is a requirement that the ARRC be notified of any allegations of misconduct. She asked if it shouldn't be up to the respondent to decide whether they want to go to the ARRC. She pointed out that the Office of Research Integrity is very concerned with confidentiality issues.

Associate VC Espy suggested that a relatively simple paragraph could be inserted at each stage which would satisfy both the Committee's concerns and the Office of Research concerns.

Schubert pointed out that if an allegation of research misconduct is made an investigation by the Office of Research automatically begins but the ARRC process does not. Associate VC Espy stated that an allegation is evaluated first to see if it warrants an inquiry.

Lindquist stated that if someone makes a complaint, an evaluation is made and then an investigation occurs and this could happen even if a faculty member doesn't know about the ARRC. VC Paul stated that this is a communication issue that can be addressed.

McCullough asked if the Office of Research conducts an investigation and a report is filed, where does it go? VC Paul stated that if federal funding is involved the report would go to the funding agency. They could accept the report or reject it and conduct their own investigation.

McCullough asked where the sanctions are coming from. Associate VC Espy stated that the campus level administrative action and sanctions are separate from that of the funding agency, and the funding agency can decide administrative actions and sanctions on their own. She stated that an extreme circumstance of research misconduct would call for the firing of an individual but she pointed out that the National Science Foundation cannot recommend firing anyone but they can sanction that person from serving as a reviewer or barring funding for their research. McCullough asked if the Office of Research can sanction a faculty member. VC Paul stated that the Deciding Official can make administrative actions and sanctions as per UNL policy and those actions depend on the nature of the research misconduct. If it involves firing the person then it's beyond the Office of Research's jurisdiction and this process is more complicated and other administration would need to get involved. Associate VC Espy stated that administrative actions and sanctions are based on the premises of enhancing education and prevention and therefore includes actions that make sure that there is adequate knowledge of the appropriate conduct of research and other prevention strategies, such as mentoring. Associate to the Chancellor Poser pointed out that if the sanction involves a demotion or firing it would automatically trigger an ARRC investigation.

Schubert stated that this issue is being discussed in his department. He noted that there is a different focus between the Office of Research which is conducting the investigation and the faculty member who is doing the research. He asked who is protecting the faculty member during these allegations. He asked if the Office of Research is going to protect the faculty member or the university. VC Paul stated that this is why the Office of Research Policy and the ARRC procedures should be kept separate. If they were to merge then there would not be independent protection for the faculty member.

Human Research Protections Program & Research Compliance Director Vagird noted that most allegations do not make it through to an investigation. He noted that the federal government does not want to have every complaint reported. If the Research Integrity Officer evaluates an allegation and determines for example that it is just a disgruntled student complaining about a faculty member and it does not refer it for inquiry then the Office of Research Integrity is satisfied. He suggested that language can be inserted within the Research policy at different stages that alerts and encourages the faculty member to consult with the ARRC chair. This language would allow the person to make the decision whether to follow this course and informs the person of this option.

Fech stated that the problem is largely procedural and allows some confusion. He noted that the Committee considered a flow chart that a person could follow that would inform him/her of what the steps are and what steps can be taken.

VC Paul recommended Associate VC Espy and Associate to the Chancellor Poser be on the committee that is formed to address the problems. Associate to the Chancellor Poser stated that she agrees with the areas that need to be clarified in the policy and if the respondent wanted to go to the ARRC it would be helpful to have the process set out.

VC Paul stated that he wants to make sure that everyone understands that his office is willing to consider revisions that would further clarify the process for addressing research misconduct. He pointed out that they work for the faculty and want the faculty to be successful but ethics are important to the conduct of research conduct. He stated that his office, for example, has created a position that will help faculty members make sure they are complying with federal regulations regarding export controls while they are conducting their research.

Prochaska-Cue stated that she appreciates them meeting with the Committee and she will be appointing faculty members to it but she wants to discuss this with the Committee.

Rapkin stated that for clarification he wanted to confirm that the Committee is looking for language that would satisfy the needs of the Research Office but address the concerns of the Executive Committee. He asked if everyone's concerns would be met if a paragraph was inserted at different points in the process that if an allegation reaches the investigation stage the person being accused can go to the ARRC. Associate to the Chancellor Poser pointed out that there is a list of things that need to be clarified and the committee that is appointed needs to look at these things. Associate VC Espy noted that many of the things that been suggested have actually been done in practice.

On a different note VC Paul stated that he wanted to brag about the faculty's accomplishments and that he had reported to the Deans and Directors about these accomplishments. He noted that for the first quarter of this fiscal year the total amount of research awards UNL obtained is over \$66 million. He pointed out that we are moving ahead at a record pace in a very competitive environment and he wanted to thank the faculty for all of the work that they do.

McCollough asked if the stem cell research issue is going to affect us. VC Paul reported that directly in the short term it won't but in the long term it will. He noted that although we don't do a lot of clinically oriented research at UNL we need to make sure that we have the new tools that enable faculty members to do their research. He stated that when restrictions are put on researchers so they can't use all available tools it can stifle innovation and can make it harder to recruit and retain good faculty members in some fields.

VC Paul asked the Committee to let him know if there are any issues that need to be addressed and he looks forward to coming back in the spring to report to the Executive Committee.

Schubert stated that the entire engineering college is very nervous about federal restrictions being put on faculty members traveling with their research work. He stated that basically the restrictions mean that researchers cannot have contracts in other countries. He noted that this is something that needs to be monitored because of the potential impacts it can have on researchers.

### **3.0 Announcements**

Prochaska-Cue reported that she attended the Deans and Directors meeting and the Chancellor discussed the cancellation of Dr. Ayers' visit. She stated that the Chancellor pointed out that the process of making the cancellation was started before the Governor or Regents made comments and the email messages would support this statement. She reported that the Chancellor stated that he has been contacted by national organizations that deal with free speech although he did not state which organizations.

Prochaska-Cue stated that she contacted the national AAUP organization but was unable to speak to the necessary person at that time. She noted that Professor McShane stated that the AAUP would do the investigation into the Ayers case for free should the Senate approve the motion next month.

Lindquist suggested possibly revising the resolution to give some other option if the AAUP refuses to conduct the investigation. He pointed out that faculty members on campus are still having issues with what occurred.

Prochaska-Cue reported that the Chancellor talked about campus safety at the meeting. She stated that after discussions with former Dean John Peters at Northern Illinois University the administration is reviewing plans that are in place to handle various campus situations. She stated that Chief Yardley gave a report on the toy gun incident that happened recently on campus and a timeline of the procedures that were used. She reported that Chief Yardley is considering educational programs to help deal with the situation. The Committee suggested meeting with Chief Yardley to discuss the leadership roles that faculty members should take in incidents of safety.

Prochaska-Cue reported that the Chancellor stressed that the Chancellor's office and VC Jackson's office should be notified there is a request for email or accounting records.

Rapkin stated that the Chancellor's comments at the Senate meeting about dismissing threats made to the university because these threats cannot be prosecuted completely undermines the security rationale for his argument for canceling Dr. Ayers' visit. Lindquist stated that if nothing else there should be a public statement made that we will follow up and prosecute anyone that makes terroristic threats to the university. He pointed out that the way it stands now anyone could make a threat and get away with it.

#### **4.0 Approval of 10/29/08 Minutes**

Lindquist moved and Fech seconded approval of the minutes as amended. Motion approved.

#### **5.0 Unfinished Business**

##### **5.1 Faculty Salary Survey**

The Committee discussed the faculty salary survey and what the goals would be of conducting the survey. Various questions were considered and Rapkin stated that he would work on sharpening language for the survey. The Committee agreed that the survey should be kept short and be able to do in under ten minutes. Rapkin noted that there needs to be more transparency on how money is set aside by the administration and deans and directors.

##### **5.2 Faculty Members Needed for Committees**

Prochaska-Cue reported that she sent out an email message to the Senate and has received suggestions for faculty members to serve on the Recruit-NE and Promote-NE Committees as well as the Research Council. She stated that she will contact these people to see if they are willing to serve on these committees.

#### **6.0 New Business**

No new business was discussed.

The meeting was adjourned at 4:54 p.m. The next meeting of the Executive Committee will be on Wednesday, November 12th at 3:00 pm. The meeting will be held in the Faculty Senate Office. The minutes are respectfully submitted by Karen Griffin, Coordinator and David Rapkin, Secretary.