

Response to Professor Clermont's Concerns

This document addresses the concerns about the revisions to the Policy 6.4 procedures for complaints filed against faculty and staff raised by Professor Clermont in his October 23, 2018 email. The chart at the end of this document summarizes the key differences between the past and proposed procedures.

1. *The role of the AFPS Committee in the Current Procedures*

Current Procedures: Professor Clermont emphasizes the role of the AFPS Committee in the current procedures. What Professor Clermont does not emphasize is that this AFPS hearing occurs only after a full investigation and final decision by the Dean and is available only for academic freedom issues and issues concerning the supervisor-supervisee relationship.

New Procedures: In the new procedures, a review and dismissal of a matter on academic freedom grounds is available before an investigation begins by members of the AFPS committee.

We believe that faculty members would support an early (and easy) determination on the issue of academic freedom at the beginning of a matter rather than as an appeal after a finding of responsibility for prohibited conduct under Policy 6.4. This new step is intended to avoid the situation where a faculty member is dragged into a potentially protracted investigation based on a complaint arising out of their scholarship or classroom commentary or conduct that faculty peers feel should be protected by academic freedom. (This appeared to be the case with Professor Laura Kipnis at Northwestern who was subjected to a lengthy Title IX investigation about her controversial comments that once started, was not dismissed for many months.)

2. *The Investigation Process described in detail in New Procedures*

Professor Clermont suggests that the new procedures do not describe the investigation process. The investigation process is described in detail on pages 27-32 of the confidential draft provided to the Faculty Senate.

3. *New Procedures meet Professor Clermont's Requirements of Fairness*

In his email message dated October 23, 2018, Professor Clermont recalled that in 2015, prior to the revision of the student procedures, he and numerous law faculty identified seven elements of procedural fairness to be included in those procedures. The seven requirements are listed below, accompanied by an explanation of how the new procedures for faculty and staff meet each requirement:

Requirement 1: Investigation and prosecution functions must be vested in an office with safeguards to ensure its neutrality and fairness to both parties:

Response: Like the Student Procedures, all investigations will be conducted in the Title IX office.

Requirement 2: Investigation and prosecution processes must be appropriately open and transparent so that both sides have prompt access to all important case developments.

Response: We believe the new procedures afford substantial improvements in fairness and transparency by:

- Adopting the investigation model from the Student Procedures:
 - interviews are recorded, transcribed, and shared with parties;
 - all evidence is exchanged throughout the investigation;
 - the parties have the opportunity to request additional investigation and provide additional information;
 - parties review the investigation file before the report is written.

Requirement 3: Adjudication function separated from investigation; neutral multi-person faculty panel hears the appeal.

Response: In the new procedures the Dean is responsible for adjudication (and is not part of investigation)

- The procedures create a new appeal opportunity handled by yet another layer of neutrality – the proposed multi-person faculty appeal panel.
- This appeal to a panel is available in all cases not those limited as in current procedures, Appendix A.

Requirement 4: Both sides have the right to counsel at all stages of the proceedings.

Response: The current and new procedures permit each party to have support persons and advisors (including attorneys) throughout the process.

Requirement 5: Right not to participate if there is a pending criminal proceeding.

Response: The new procedures provide that a party may request participation in the investigation at a later time, e.g., after the conclusion of pending criminal procedures (p. 27).

Requirement 6: Ability to pose questions to the other party before a decision on the formal complaint is made.

Response: The new procedures provide that each party will:

- Be interviewed and have a chance to review their interview statement;
- Receive the complete interview statements of the other party and all witnesses;
- Provide information and evidence, including submitting rebuttals to statements made by the other party or witnesses;
- Suggest witnesses to be interviewed;
- Propose questions to be asked of the other party or witnesses;
- Review and comment on the investigation file before it is used to write the report.

Requirement 7: Both parties have the right to appeal.

Response: Both parties have the right to appeal to a faculty panel trained in issues relevant to Policy 6.4. The appeal affords an opportunity to submit a written rebuttal challenging the investigation and the findings.

In summary, we believe that Professor Clermont’s perspective that the proposed procedures undermine or fail to protect faculty process rights is not warranted. In contrast, the procedures were developed to enhance and clarify the rights of all parties in these investigations and to align the procedural protections with those provided to students.

As a source of additional guidance, the following chart identifies and compares the process steps in the current and in the new Policy 6.4 Procedures:

Order of Process Steps In Current Procedures	Order of Process Steps in New Procedures
Report	Report
Informal Resolution (if possible)	Informal Resolution (if possible)
Formal Complaint	Formal Complaint
<i>No provision for early review and potential dismissal of complaints that raise academic freedom or freedom of speech issues</i>	Review and dismissal of complaint if academic freedom or freedom of speech is at issue; AFPS members decide if matter is subject to academic freedom protection. Decision is final (not subject to appeal.)
Investigation: (pp. 7-9 of current Procedures) No recorded interviews, no obligation to share interview transcripts with parties, no file shared before Report is written	Investigation: (pp.27-32 of draft) FULL exchange of information throughout the investigation (opportunity to pose questions and request additional investigation); Completed investigation file exchanged before Report is written
Investigative Report transmitted to Dean; no requirement to include any documents	Investigative Report and full appendix with all transcribed interviews and all evidence transmitted to Dean
Dean’s Decision	Dean’s Decision
Appeal to Provost <u>or</u> Appeal to AFPS if academic freedom or supervisor-supervisor relationship at issue (full hearing; increased standard of burden of proof; cross-examination)	Appeal to Faculty Panel trained on Policy 6.4 issues on full record (Investigative Report and full appendix of all transcribed interviews)

Please let us know if you require additional information or further discussion. Thank you.