

In re Dr. Stephen M. Schwartz Petition for Adjudication

Respondents' Motion for Summary Disposition of Dr. Schwartz's Claims Regarding the February 12, 2016 Housekeeping Amendments to Faculty Code Section 25-71¹

INTRODUCTION

Dr. Schwartz alleges that Faculty Code housekeeping amendments made more than two years ago were made improperly. He asks the Panel to change the Faculty Code back to what it was in 2015, but does not claim the housekeeping amendments caused him any actual harm. This Panel should not decide these issues here. The Panel should dismiss Dr. Schwartz's claims relating to the housekeeping amendments and leave consideration of those provisions to other faculty leaders who are already undertaking a global review of all the Code's disciplinary provisions.

BACKGROUND

1. Dr. Schwartz's Claims

Dr. Schwartz's Petition makes two general claims: (1) that Marcia Killien,² Cheryl Cameron, and others violated the Faculty Code by their involvement in making certain housekeeping amendments to Faculty Code Section 25-71 in February 2016; and (2) that Paul Ramsey and Charles Alpers violated the Faculty Code by temporarily replacing Dr. Schwartz as principal investigator on a training grant while UCIRO investigated allegations about Dr. Schwartz's conduct. *See* Petition for Adjudication ("Petition") at 10-13.

The vast majority of Dr. Schwartz's Petition is dedicated to challenging the February 2016 housekeeping amendments to Faculty Code Section 25-71. *See id.* at 4-10. Those housekeeping amendments altered notice requirements associated with UCIRO investigations. Under the current version of Section 25-71 (the version in place at the time of Dr. Schwartz's investigation), if a dean determines that possible violations of Executive Order No. 31 should be investigated, the dean must refer the matter directly to UCIRO. Section 25-71.C. The Code does not provide for advance notice to the faculty member. *See id.* The previous version of the Code required a dean or department chair to inform the faculty member before allegations were referred to UCIRO. *See* Petition Ex. 8.

Dr. Schwartz's UCIRO investigation commenced in January 2017, after the housekeeping amendments were made. The day after Paul Ramsey, Dean of the School of Medicine, requested the UCIRO investigation, Dr. Schwartz's department chair and longtime colleague, Charles Alpers, called Dr. Schwartz to inform him of the investigation. *E.g.*, Petition at 1 & Ex. 1; Respondents' Response ("Response") Appx. 3. One week later, UCIRO wrote to

¹ Respondents reserve the right under Faculty Code Section 28-52.A. to bring additional motions for summary disposition as the facts and circumstances warrant.

² Respondents name a number of individuals in this motion. For ease of reading, Respondents periodically omit titles such as "Professor," "Dean," "Dr.," or "Vice Provost." Respondents mean no disrespect by those omissions.

Dr. Schwartz to confirm the opening of an investigation and to describe—in even greater detail—the nature of the allegations being investigated. Response Appx. 5

In his Petition, Dr. Schwartz does not allege these forms of notice caused him any actual harm. Indeed, although Dr. Schwartz contends the housekeeping amendments were made improperly, and that, therefore, all faculty members were adversely affected, he does not seek relief for any injury he alleges resulted from lack of notice. *See* Petition at 15. Instead, Dr. Schwartz asks that the housekeeping amendments be declared “null and void.” *Id.* He also asks for a declaration that the people involved in making those amendments “exceeded their authority.” *Id.* But Dr. Schwartz asks for no other relief relating to the amendments, and no relief that would redress harm personally suffered by him as a direct consequence of those amendments. *See id.* In other words, Dr. Schwartz does not claim harm from having received notice about the UCIRO investigation shortly *after*, instead of shortly *before*, it was initiated. Dr. Schwartz seeks redress only for harms he claims resulted from being temporarily replaced as principal investigator on a training grant. *See id.*

2. The Chair of the Faculty Senate Has Formed a Committee to Reassess the Faculty Code’s Dispute Resolution and Disciplinary Procedures

At the same time this adjudication is taking place, all of the Faculty Code’s dispute resolution and disciplinary provisions are being reviewed by a special University committee. These provisions of the Code have not undergone a global review in more than 25 years. In October 2017, the Chair of the Faculty Senate, Thaïsa Way, created a task force to review and revise the faculty disciplinary process in the Faculty Code, which includes the provisions of Section 25-71.³ The task force includes a Steering Committee that oversees two work groups: a Values and Principles Work Group and a Legal and Regulations Work Group. Members of the task force include both faculty members and administrators. An example of a letter sent by Professors Thaïsa Way, Mike Townsend, and Zoe Barsness, describing the task force and inviting participation in it, is attached as Appendix A to this motion.

The three components of the task force perform different functions. The Values and Principles Work Group is charged with identifying and articulating the guiding principles that will serve as the foundation for revisions to the Code’s dispute resolution and disciplinary provisions. The Values and Principles Work Group is chaired by Zoe Barsness, and is composed of faculty members, administrators, and other University officials. Its members include Chadwick Allen, Jill Lee, John M. Lee, Ian Messerle, Carole Palmer, Terryl Ross, Gowri Shankar, Chuck Sloane, Robert Stacy, Lea Vaughn, Ka Y. Yeung-Rhee, Sara J. Webb, Rob Wood, and William Zumeta.

The Legal and Regulations Work Group will then use those values and principles to develop a comprehensive framework for the Faculty Code’s disciplinary and adjudication

³ The creation of this task force was discussed during the November 2017 meetings of the Faculty Senate and the Faculty Senate Executive Committee. Minutes for the Faculty Senate Meeting can be found here: https://www.washington.edu/faculty/files/2014/05/senmin_113017.pdf. Minutes for the meeting of the Faculty Senate Executive Committee can be found here: https://www.washington.edu/faculty/files/2014/06/secmin_111317.pdf.

processes. This will include recommending revisions to the Faculty Code. This drafting work group is chaired by Mike Townsend, and includes Rich Christie and Lea Vaughn.

The Steering Committee oversees the two work groups, and will review and approve the groups' recommendations before sending final proposals to the Faculty Senate and administrative leadership. The Steering Committee is Co-Chaired by Professors Way, Barsness, and Townsend, and includes other members from the faculty and administration. Steering Committee members include Sandra Archibald, Cheryl Cameron, Joe Giffels, Nancy Hovis, Joseph Janes, Sharon Kioko, Jill Lee, Lynne Manzo, Jill Purdy, Valery Richardson, George Sandison, Elaine Scott, Margaret Shepherd, Chuck Sloane, and Joseph Tennis.

After the Steering Committee approves final recommendations, the Steering Committee plans to deliver them to the Faculty Council on Faculty Affairs. From there, the recommendations will follow familiar processes leading to final Senate and faculty approval. The proposals would then be submitted to President Cauce for her signature.

This work is well under way. As described in Appendix A, the goal has been to complete a full draft of proposed changes to the Code and to obtain final Senate and faculty approval by the end of the spring quarter in 2019.

ARGUMENT

1. The Panel Should Dismiss Dr. Schwartz's Housekeeping Amendment Claims Because the Amendments Did Not Actually Adversely Affect the Terms, Conditions, or Course of His Employment

Under Faculty Code Section 28-32.B., a faculty member may initiate an adjudication only to seek redress for violations "affecting the terms, conditions, or course of [the faculty member's] employment." In this adjudication, Dr. Schwartz does not seek redress for changes in the terms, conditions, or course of his employment stemming from insufficient notice of the UCIRO investigation. Indeed, Dr. Schwartz received prompt notice from both his department chair and UCIRO. Dr. Schwartz does not claim he was denied the right to participate in the investigation or that he lacked sufficient information to participate effectively. *See* Petition.

Nor does Dr. Schwartz claim he was entitled to have an opportunity to *head off* the investigation. *See id.* Given the nature of the allegations against Dr. Schwartz, Drs. Ramsey and Alpers had no option but to commence an investigation. *See, e.g.,* E.O. 31 § 8. Indeed, institutions of higher education are rightly expected by the public and the federal government to promptly and fully investigate serious allegations of harassment. *See, e.g.,* Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School, published by the Office for Civil Rights at the U.S. Department of Education, April 2, 2011.⁴ Under all the circumstances, no discussion with Dr. Schwartz could have relieved Drs. Ramsey and Alpers of their obligation to commence an investigation. Indeed, in a letter to Drs. Ramsey and Alpers more than two months after the UCIRO investigation commenced, Dr. Schwartz, through his

⁴ Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>,

attorney, conceded that the “University should investigate allegations of behavior that . . . may qualify as ‘unacceptable or inappropriate’ under E.O. 31.” Petition, Ex. 2 at 2.

Dr. Schwartz’s requested relief focuses, instead, on harms he claims he suffered because he was temporarily replaced as principal investigator on a training grant. Respondents do not agree he has been injured, but any hearing should focus on those claims. Because Dr. Schwartz seeks no similar redress for injuries actually caused by the February 2016 housekeeping amendments to Section 25-71, this Panel should dismiss Dr. Schwartz’s housekeeping amendment claims.

2. Given Dr. Schwartz’s Lack of Injury, the Panel Need Not and Should Not Decide the Proper Version of Faculty Code While The Code is Already Being Reevaluated By Other Appropriate Bodies

Particularly in light of the lack of injury to Dr. Schwartz, this Panel should not accept his invitation to use this adjudication to decide the proper form of Faculty Code. Faculty adjudication panels exist to follow and enforce the Code as written. Dr. Schwartz has not and cannot identify a provision of Chapter 28 permitting an adjudication panel to change the Code. Still, Dr. Schwartz is asking this Panel of three faculty members to change the Faculty Code and insert old provisions that were revised in February 2016. This is a task that should be left to other bodies within the University.

Right now, the Chair of the Faculty Senate is leading a process that is conducting a global review of the Code’s dispute resolution procedures. That review will include consideration of all the provisions of Section 25-71.⁵ That process includes input from all the relevant stakeholders, and permits the kind of careful consideration and compromise that will produce the best outcome for the University and all its faculty members.

Chapter 28 does not permit that kind of process. Chapter 28 of the Faculty Code provides for the adjudication of actual disputes between faculty members and administrators—it is not a forum for political deliberation, and this Panel is not a political body. For that reason, this Panel cannot and should not wade into these issues when Dr. Schwartz has identified no violation—relating to the housekeeping amendments—actually causing him injury. This Panel should allow other bodies at the University to decide the proper form of the Faculty Code.

3. The Panel Should Dismiss Professor Townsend, Vice Provost Cameron, and President Cauce

Because only Dr. Schwartz’s housekeeping amendment claims implicate Professor Townsend,⁶ Vice Provost Cameron, and President Cauce, those Respondents should be dismissed along with Dr. Schwartz’s housekeeping amendment claims.

⁵ Even if the provisions at issue here are not ultimately *revised*, they will at least be *ratified* by the processes underway.

⁶ As with the Response, Professor Townsend takes no position on the claims raised in Dr. Schwartz’s Petition other than that Professor Townsend should be dismissed.

Professor Townsend should be dismissed in any event. Dr. Schwartz admits he “does not allege that Professor Townsend has personally done anything wrong” (Schwartz Mot. to Strike at 19), and Dr. Schwartz seeks no relief from Professor Townsend. Nor is Professor Townsend’s presence as a Respondent necessary for Dr. Schwartz to obtain relief. Dr. Schwartz is not asking Professor Townsend to do anything, and the Code ensures that appropriately awarded relief can be obtained. *E.g.*, Section 28-54.B; Section 28-91. Professor Townsend can also be called as a witness without being named as a Respondent.⁷ *See* Section 28-52.I. Professor Townsend has nothing to do with this adjudication, and should be dismissed.

CONCLUSION

Faculty members can use Chapter 28 of the Faculty Code to seek relief when a University administrator has allegedly taken some inappropriate action actually “affecting the terms, conditions, or course of [the faculty member’s] employment.” With respect to Dr. Schwartz’s housekeeping amendment claims, this element is missing. Dr. Schwartz is not seeking to remedy a real and personal harm with respect to these housekeeping amendments; he is seeking to reverse a change in the Faculty Code he thinks the former Secretary of the Faculty, and others, should never have drafted or authorized. Adjudication panels do not have responsibility for constructing the Code, and appropriate persons are already conducting a review of the Code. This Panel should not involve itself here. The Panel should defer to the task force’s work and dismiss Dr. Schwartz’s housekeeping amendment claims. At the very least, the Panel should stay consideration of Dr. Schwartz’s housekeeping amendment claims until the task force reassessing the Faculty Code’s disciplinary provisions has finished its work. Dr. Schwartz’s claims will likely be moot before the end of the next academic year.

Dated this 4th day of May, 2018.

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⁷ Respondents do *not* concede Professor Townsend would be an appropriate witness, but point out only that his availability to serve as a witness—if it were appropriate—does not depend on him being a named Respondent.

Appendix A



October 24, 2017

We hope this finds you well. We are embarking on an important project to establish a Faculty Senate Task Force on the Faculty Disciplinary Code and Process. We would like to invite you to contribute to the task force by serving on a **Steering Committee**. As a joint effort by the Secretary of the Faculty and the Chair of Faculty Senate, we are charging the task force to review and revise the faculty disciplinary process and related policies as reflected in the Faculty Code to align with legal labor standards, relevant federal and state research funding requirements, and additional standards as determined appropriate.

This charge responds to three significant and converging circumstances. First, with the completion of the revised Student Code of Conduct, it is clear the Faculty Code and related processes should be made equally strong and clear to assure: due process, timely resolution/redress, equitable treatment and fairness. Second, as the Faculty Code and UW Policy Directory, which pertain to the faculty disciplinary process, have not been substantially reviewed for over two decades, it is time to conduct a full review of these and propose revisions to them as deemed appropriate given changes in laws and regulations, our institutional structures and faculty careers. Finally, as the diversity and complexity of our university faculty increases, including the current engagement of three robust campus communities, we must assure that our disciplinary process and code are reflective of the values and principles we hold yet better suited to address the complex landscape of our university. We appreciate your attention to these important matters.

This will be a complex project, thus we have established a tri-part committee structure that includes a Steering Committee, which will oversee two work groups: a Values and Principles Work Group and a Legal and Regulations Work Group. Given your background and expertise, **we invite you to serve on the Steering Committee**.

Our timeline for this work is to establish a full draft of all proposed changes to the code and faculty disciplinary process and policies by the end of the academic year 2017-2018. In academic year 2018-2019, the committee's work will focus on bringing the proposed legislative changes through the appropriate faculty bodies targeting final senate and faculty approval by end of the spring quarter 2019.

Steering Committee Charge:

We jointly charge the steering committee with overseeing the process of review and revision of the Faculty Code regarding the faculty disciplinary process and policies. This includes, but is not limited to: 1) an identification and articulation of the values and guiding principles that motivate our approach to faculty discipline, 2) the options available within the framework of labor law and policy requirements to inform our faculty disciplinary process, and 3) the appropriate delegation of authority of the elements that comprise the faculty disciplinary code and related policies. This committee will consider and approve all recommendations emerging from the two work groups. The committee will determine the process for sharing draft legislation and policy with faculty and appropriate administrative personnel and leadership and subsequently guide the response to feedback. To emphasize, this committee will confirm that all appropriate parties have been consulted prior to the legislative and policy proposals being submitted for any final approval by faculty and/or administration. It will be responsible for the final proposal of the revised faculty disciplinary code and associated policies to the UW Faculty Senate and administrative leadership.

Values and Principles Work Group Charge:

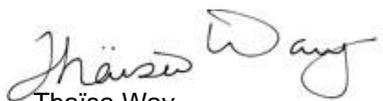
The joint charge to the Values and Principles Work Group is to identify and clearly articulate the values and guiding principles that will serve as the foundational framework for the revised Faculty Code and related policies relevant to the faculty disciplinary process and policies. This effort will include, but not be limited to: 1) an inventory and assessment of current dispute resolution, disciplinary and adjudication processes and resources; 2) a review of disciplinary and adjudication models from other universities; and 3) interviews with key thought leaders on all three campuses that will help inform the work group's discussions and conclusions. This work group will then respond to the Legal and Regulations Work Group draft faculty disciplinary code and policy to assure alignment with the values and principles framework established. They will establish recommendations for all areas of the faculty disciplinary code and associated and relevant policies that are not pre-determined by labor law or other external regulations. This work group will report to the steering committee and make the final recommendation to the steering committee for adopting a revised Faculty Code on disciplinary process and associated and relevant policies and practices.

Legal and Regulations Work Group Charge:

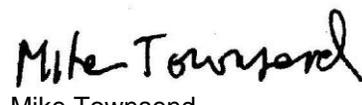
The joint charge to the Legal and Regulations Work Group is to develop a clear and complete legislative and administrative framework for the disciplinary and adjudication processes addressed in the Faculty Code and UW Policy Directory. The Legal and Regulations Work Group will identify all policies and practices that are relevant to the disciplinary process that do not require being in the Faculty Code but require delegation elsewhere. They will advise the Values and Principles Work Group on recommended decisions regarding proposed changes to the faculty disciplinary code and respond to feedback from external groups and individuals. They will meet as needed with the steering committee to explain the legislative and policy framework that are being proposed.

This is one of the most important projects that we have taken on this year. We know that we are asking a lot of your time and focus, but hope that you will be able to contribute as your expertise and background is critical to our success. Please don't hesitate to ask any questions of any of us.

Thank you in advance for your time and attention


Thaisa Way
Chair, Faculty Senate
Co-chair, Steering Committee


Zoe Barsness
Past Chair, Faculty Senate
Co-chair, Steering Committee
Chair, Values and Principles


Mike Townsend
Secretary of the Faculty
Co-chair, Steering Committee
Chair, Legal and Regulations

/nlb

Cc: