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Interim President Phyllis M. Wise
Office of the President
301 Gerberding Hall, Box 351230
University of Washington
Seattle, WA 98195-1271

Professor James W. Harrington
Chair, Faculty Senate
36 Gerberding Hall, Box 351271
University of Washington
Seattle, WA 98195-1271

Professor Rich Christie
Chair, Faculty Council on Faculty Affairs
222 EE/CSE Building
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Seattle, WA 98195-1271

Re: The administration is systematically violating the Faculty Code. Will the faculty insist that the rules be followed?

Dear President Wise and Professors Harrington and Christie,

I recently represented a UW professor with a complaint against then-Provost Wise and other members of the University administration. Although that matter has now settled, documents submitted on behalf of the administration during the proceedings establish that the Office of the Provost is systematically violating the Faculty Code. In particular, the administration maintained in writing that the Provost has the authority to unilaterally discipline faculty members for alleged violations of University rules or laws without first having a hearing in front of a faculty (or faculty/student/staff) panel, provided only that the discipline imposed falls short of "removal from a position (or 'discriminatory reduction of salary')."[1] "Unless the proposed action would meet th[is] threshold . . . any Faculty Adjudication should come only after the University has taken action, i.e., imposed discipline."[2] Moreover, the administration implied that the Provost exercises this purported authority in "dozens and dozens" of cases each year.[3]

Any unilateral imposition of discipline on a faculty member without a prior hearing violates Section 28-32(A) of the Faculty Code, which states as follows:

> [I]f reasonable causes exist to adjudicate charges that a faculty member has violated University regulations or state or federal laws pertaining to the faculty member's performance of his or her duties . . . . then, before taking any disciplinary or punitive action against such faculty member, the Provost shall initiate an adjudication for resolution of such charges

(emphasis added).[4] This language is not ambiguous.[5] It leaves no room for any disciplinary or punitive action against a non-consenting faculty member prior to the initiation of an adjudication.[6] Moreover, the extent of discipline imposed, if any, is initially determined by the hearing panel or hearing officer, not by the administration.[7]

The history of Chapter 28 and the related § 25-71 decisively confirms the plain meaning of the Code's text. When the faculty approved the 1994 amendments that gave those provisions their current form, they knew that they were changing the adjudication system from one in which "a dean can take disciplinary action against a faculty member, including revocation of tenure, before the faculty member has the opportunity to respond to the accusations at a hearing" to one where "[t]he administration could not take disciplinary action against a faculty member until a hearing has been held and a Hearing Panel finds that the disciplinary action should be taken."[8] Then-President Gerberding and the entire Senate Executive Committee specifically discussed, and unanimously endorsed, this precise feature of the amendments.[9] Everyone understood that they were ushering in a new system where there could be no discipline of any non-consenting faculty member without a prior adjudication.[10] On paper, that system has remained effectively unaltered since 1994, and it remains binding on all of the University's faculty, including the Provost and the President.[11]

In practice, the administration—by its own admission—violates the Faculty Code "dozens and dozens" of times a year by imposing supposedly minor discipline on non-consenting professors without first holding the required hearings.[12] However abstract and bloodless these violations may appear at first glance, they are surely not experienced as such by the faculty subject to them. Moreover, the Office of the Provost plays an important role in enforcing the University's rules. It should not be violating those rules, certainly not "dozens and dozens" of times a year, and above all, not knowingly. To put it in mildly, knowing violation of the rules is cheating. Since the University claims to uphold academic integrity as one of its basic principles, it must find a way to close the glaring gap between its rules and its practice.[13] To muddle along as if the Code doesn't mean what it clearly says will expose the University to continuing litigation and ridicule.

Sincerely,

David Corbett

Enc.
Cc (w/enc.):

Current members of the SEC:

Susan Astley
John Schaufelberger
Rich Christie
Ron Stenkamp
Bruce Balick
Marcie Lazzari
Bruce Kochis
Janelle Taylor
Steve Buck
Susan Nolen
Eric Stern
Constance Lehman
Kurt Johnson
Margaret Baker
Mary Lidstrom
Jim Fridley
Madeleine McKenna
Sarah Reyneveld
Marcia Killien

Faculty or former faculty involved in drafting relevant documents and referenced in letter or its attachments:

Tom Andrews
Lea Vaughn
John Junker
Karen Boxx
Miceal Vaughan
Gerry Philipsen
John Stewart
William Gerberding
Ronald Dear
R.J.H. Bollard

Other:

Jack Johnson, Senior Assistant Attorney General
Lexie Krell, editor in chief of the UW Daily
Abby Williamson, editor of the UWT Ledger
Sam Shupe, editor of the UWB Husky Herald
Board of Regents of the University of Washington

NOTES

[1] This quotation comes from Respondents' Opposition to my client's motion for partial summary judgment, at p. 14, line 11. Excerpts from this pleading are attached to this letter as **Exhibit A.** The administration made similar assertions in other pleadings during my client's matter. I have no knowledge of the identity of the individual or individuals actually supplying the administration's arguments. However, the Provost is the official with ultimate authority for overseeing faculty discipline. She is responsible for the arguments made in her name.

[2] *See* **Exhibit A**, p. 16, lines 15-17.

[3] *See* **Exhibit A**, p. 14, line 9.

[4] The current version of the complete UW Faculty Code is available on line at http://www.washington.edu/faculty/facsenate/handbook/Volume2.html.

[5] The Faculty Code effectively has the status of a statute within the University. Under established principles of statutory interpretation, the plain meaning of the Faculty Code may be discerned "from all that the [Faculty Senate] has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, LLC,* 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Taking the Faculty Code as a whole, there can be no doubt that it prohibits any discipline of non-consenting faculty members prior to the initiation of an adjudication. Consider:

- The pre-1994 Code contained provisions that did expressly allow deans to decide on disciplinary action prior to a hearing (but even then, the Code required that implementation of the discipline be delayed until the faculty member had a hearing, if he or she so chose). The provisions conferring the power to decide on discipline prior to a hearing were all deliberately deleted in 1994, leaving no express authorization anywhere in the current Code for imposition of any type of discipline on a non-consenting faculty member prior to a hearing. *Compare* the pre-1994 versions of Sections 28-31, 28-42, and 25-71(E) with their current counterparts. The pre-1994 version of these sections are included as an attachment to "Class 'A' Bulletin No. 91," sent to each member of the faculty by the then Secretary of the Faculty R.J.H. Bollard on June 1, 1994 along with the ballot to vote on amendments to Chapters 28 and § 25-71. A copy of Class "A" Bulletin No. 91 is attached to this letter as **Exhibit B** (the pre-1994 versions of the relevant passages of the Code are at pp. 3-8 and pp. 52-54 of **Exhibit B**). It can also be found in the Special Collections section of Allen Library, Accession No. 4-92, box 8.
- The 1994 amendments to the Code distinguished for the first time between "comprehensive adjudications" and "brief adjudications." See § 28-31(B) and (C) of the current Code. A "Brief Adjudication is an informal adjudication used for cases involving a limited number of persons, simple factual issues and *minor impact on the persons involved*" (emphasis added). A "Comprehensive Adjudication is the formal hearing process *used for all cases except the minor cases that are resolved with Brief Adjudications*" (emphasis added). Brief adjudications and comprehensive adjudications are both adjudications subject to Section 28-32. Since "brief adjudications" and "comprehensive adjudications" together exhaust the set of all cases, there is no room for a case so minor that no adjudication is necessary prior to the imposition of discipline. Recall that the issue is how to discipline faculty members for alleged "violations of University regulations or state or federal laws." If there are minor cases of alleged violations of regulations or laws, they are to be handled by brief adjudications (but only if there is probable cause to adjudicate).
- Under the post-1994 Code, the extent of the discipline to be imposed is determined by Hearing Officer in the case of brief adjudications and the Hearing Panel in the case of comprehensive adjudications. *See, e.g.*, § 28-41 and § 28-54(B), the latter of which states in pertinent part that "[i]n the written decision, the [Hearing] Panel shall . . . . state specifically any action necessitated by the decision and identify the specific relief to be provided,

including but not limited to suspension or dismissal, reprimand or warning, restoration or award of privileges, benefits or status . . . ." The magnitude of the discipline to be imposed thus cannot be used to determine whether or not any adjudication is required at all. This is completely consistent with the fact that the *ex ante* possible *range* of punishment plays a role in determining whether the required adjudication should be "brief" or "comprehensive." *See, e.g.*, § 28-41(B).

- The text of § 28-32(A) provides strong support for the proposition that the question of whether "reasonable causes exist to adjudicate charges" focuses on the underlying validity of the charges (as does a standard "probable cause" inquiry), rather than on whether an adjudication (be it brief or comprehensive) or unilateral fiat should be used to impose discipline (underlined emphasis added). As a matter of grammar, the plural forms used link "reasonable causes" to "charges" rather than to adjudication. Perhaps more importantly, § 28-32(A) requires the Provost to double check whether in fact reasonable cause exists before proceeding with an adjudication. If the allegations come from UCIRO, the Provost has to appoint a special advisory committee of faculty to address the issue of whether reasonable cause exists. Since there is no reason to think that administrators would recklessly squander University resources by proposing too many adjudications when they could just unilaterally impose punishment, the Provost's double-checking function is surely a matter of confirming a degree of merit to the allegations, as opposed to being a mechanism for encouraging the unilateral imposition of supposedly minor discipline. See also the last two bullet points to endnote 10 below.

Read as it must be as part of the overall Faculty Code, Section 28-32(A) unambiguously prohibits any discipline of a non-consenting faculty member prior to the initiation of an adjudication.

[6] Of course a professor accused of wrongdoing can agree to discipline prior to any hearing. *See, e.g.*, Chapter 27, and § 25-71(B) – (D). The question is whether the administration can properly discipline a non-consenting faculty member prior to starting a hearing. It is also important to note that the minimum trigger for imposing discipline is the initiation of a hearing, not its termination. This is because the drafters of the Code recognized that there could be "compelling circumstances, such as danger to the health or safety of members of the University community, that warrant suspension of the faculty member from teaching or other duties pending resolution of the adjudication." *See* § 28-36(D). In such cases, "the Provost may, after consultation with the Chair of the Faculty Senate, suspend the faculty member for a period not to exceed the duration of the adjudication and assign the suspended faculty member to other duties as the Provost deems appropriate. The faculty member's regular salary, benefits, and other privileges shall continue during such suspension." *Id.* The drafters of the Code were clearly not proceeding carelessly when they specified that there was not to be "any disciplinary or punitive action" against a non-consenting faculty prior to the initiation of an adjudication. § 28-32(A) (underlined emphasis added).

[7] *See* § 28-54(B) (discussing matters assigned to hearing panels), and the third bullet point in note 5 above. The question of whether, and on what grounds, the President of the University may overturn a hearing panel's decision about the extent of any discipline imposed is an issue raised in the Aprikyan case, but is not central to the point here: there can be no discipline imposed on a non-consenting faculty member prior to a hearing.

[8] See the first page of the "Summary and Explanation of Revisions to Faculty Code Adjudication Procedures," dated May 16, 1994, appended to the May 18, 1994 letter from Faculty Senate Chair Ronald Dear to the faculty. Professor Dear's letter and the "Summary" are attached to this letter as **Exhibit C**. The original of this document is located in *Records of the Faculty Senate*, vol. 44, pp. 247-260, which can be found in the Office of the Secretary of the Faculty in Gerberding Hall.

[9] The minutes of the Senate Executive Committee for May 17, 1993 (attached as **Exhibit D** to this letter), read in conjunction with Professor Miceal Vaughan's May 25, 1993 memo to the Faculty Senate (attached to this letter as **Exhibit E**), make it plain that then-President Gerberding was present when the