

REPORT OF THE FACULTY GRIEVANCE HEARING COMMITTEE
IN THE MATTER OF PROFESSOR JAMMIE PRICE v.
PROVOST LORI GONZALEZ AND VICE-PROVOST TONY CAREY

October 23, 2012

CONTENTS:

Introduction	1
I. Recitation	2
A. Initial Complaint against Professor Price	3
1. Student Athlete #1	3
2. Student Athlete #2	5
3. Resolution of student athlete complaints	6
4. Students #3 and #4	9
B. The Investigation	11
II. Findings and Recommendations	14
A. Findings Regarding Involuntary Placement on Administrative Leave	14
1. Authority to place a faculty member on administrative leave with pay pending completion of an investigation	14
2. Were Prof. Price’s due process rights violated when she was denied a due process hearing?	16
3. Recommendations regarding involuntary placement on Administrative Leave	20
B. Findings Regarding Imposition of a Professional Development Plan	20

1. Classes and events prior to March 7.....	21
2. Class of March 7.....	23
3. Recommendations regarding the Professional Development Plan.....	25
C. Additional Findings Regarding the Investigation.....	25
1. Appearance of undue deference to student athletes.....	26
2. Solicitation of student interviews.....	27
3. Lack of written complaints.....	27
4. Inadequacy of the investigation report as evidence.....	27
5. Uneven treatment of confidentiality.....	28
6. Recommendations.....	29
III. Concluding Reflections.....	30

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On June 13th, 2012, Professor Jammie Price filed a grievance petition along with a number of supporting documents with the Faculty Grievance Hearing Committee (FGHC or the Committee). At that time, the required initial meeting between the grievant and the respondents had not occurred, so the grievant was directed to pursue that. On July 12th, the required initial meeting was held. On July 17th, six members of the FGHC met to consider the petition and voted unanimously, with one abstention, to accept the petition. The matter was then directed to mediation. On August 7th, a mediation session was held with Mediator Thorns Craven. That mediation concluded without a settlement, and the matter was scheduled for hearing.

At the risk of oversimplification, at its essence, Professor Price's petition challenges two actions of the respondents: 1) her placement on leave on March 16, 2012, and 2) imposition of a Professional Development Plan on April 30, 2012. She is challenging those two actions on three grounds: 1) that they violate due process; 2) that they violate her academic freedom; and 3) that there were various procedural irregularities in the investigation process that led to those actions. The petition named Provost Lori Gonzalez, Vice Provost Anthony Carey, and Director of Equity, Diversity and Compliance Linda Foulsham as respondents. The Provost objected to treating Ms. Foulsham, who conducted the investigation of Prof. Price, as a respondent. The FGHC took the objection under advisement. The Committee ultimately determined that it was capable of making findings regarding the investigation process whether or not Ms. Foulsham was considered to be a respondent. Therefore, for purposes of this report, Ms. Foulsham is not treated as a respondent.

Hearing sessions were held on Friday, August 31, Saturday, September 1, Friday, September 14, and Monday, September 17. Total hearing time was approximately 24 hours. A total of 110 exhibits were entered into the record, 17 from the grievant and 93 from the respondents, though portions of respondents' exhibits 1-10 were excluded from the record as lacking relevance. FGHC members hearing the case were Jill Ehnenn, Professor, English; Susan Staub, Professor, English; Jesse Taylor, Associate Professor, Philosophy & Religion; Kim Wangler, Associate Professor, Music; and Jennifer Geib, Assistant Professor, Biology. Hugh Hindman, Professor, Management served as the Committee's non-voting Chair. Upon receipt of the full transcripts of the hearing, the hearing was adjourned on September 25.

I. RECITATION

Context matters. In the spring of 2012 the campus was embroiled in controversy over sexual assault allegations involving student athletes. Two female students, at least one of whom was a student athlete, had accused five male students, at least four of whom were student athletes, of sexual assault, in two separate incidents. The Student Conduct Board found two of the student athletes responsible for sexual assault and suspended them from campus. The controversy escalated when the suspensions were set aside over a procedural error, and the student athletes were reinstated. The reversal of the suspensions was reported by *Appalachian Online* on March 1. On Friday, March 2, a "silent protest" was held on campus to protest the university's handling of the matter. Eventually, in a second series of hearings, 4 of the 5 accused were found responsible for sexual assault and were suspended from campus. These events generated considerable media attention, resulted in an investigation by the US Dept of Education's Office

of Civil Rights, which in turn, brought about an overhaul of the university's policies and procedures regarding student sexual misconduct.

I.A. Initial Complaint Against Price

I.A.1. Student Athlete #1. Professor Price was intending to participate in the March 2 silent protest and wore a tee shirt that signaled that intention to her 11am section of Sociology 1000. When students in the class asked Dr. Price about her tee shirt, remarks ensued about the sexual assault case. A female student athlete in the class (hereinafter, Student Athlete #1), who was a teammate of one of the sexual assault victims, took offense and went to Associate Athletic Director Troy Huestess to complain. From there she went to complain to Ms. Linda Foulsham, Director of Equity, Diversity and Compliance. According to Ms. Foulsham, "I received a phone call from Troy Huestess, who is the associate director of athletics, and he said that he was with a student who was very upset and that he wanted to come over and meet with me and also meet with Tony Calamai. So Troy, the student, me, Tony Calamai, and Neva Specht met in Tony's office. And the student was very upset about statements that Dr. Price had made in class involving student athletes and comments about race and particularly black athletes and black football players, and the student did not want to go back into the classroom and said she was fearful" (Transcript 1, pg 186). Neither Troy Huestess nor Dean Calamai testified in the hearing. Associate Dean Neva Specht, who did testify, described the student athlete's demeanor in the meeting: "She cried through most of it. She'd been very upset. My understanding she had just come from a meeting with Linda Foulsham where she had told the story, so I think she was upset from that. I thought she presented in a convincing way" (Tr2, pg 201).

Later that same day, sometime before mid-afternoon on the 2nd, Student Athlete #1 repeated her complaint to Ms. Sharon Trivette, her advisor, and Ms. Jean Roberts, Director of the Learning Assistance Program (Tr3, pg 27). According to Ms. Roberts, she complained of “comments that had been made in class for several days by Dr. Price of – targeting specific student populations, that the student felt very uncomfortable with those remarks. Some were targeted to a population that this student was a part of. Other comments were about another specific student population, that this student felt the remarks were discriminating, biased, hostile among other things” (Tr3, pg 13-14).

Student Athlete #1 was upset about what she perceived as “inaccurate, disparaging remarks that Dr. Price made about student athletes,” contending that Price “ranted about college athletes in two classes.” She told Ms. Foulsham, “I don’t want other athletes to have to deal with this” (ExR#39). She was also apparently offended by other remarks she perceived as racist. When Ms. Foulsham was asked whether she felt the campus sexual assault controversy had a bearing on the student’s perceptions of what went on in the classroom, Ms. Foulsham answered “No” (Tr2, pg 11). But she acknowledged, “I don’t know those students. I didn’t know them before they filed a complaint or complained, so I didn’t have any point of comparison for that. But . . . I have no reason not to believe them” (Tr2, pg 12). When Ms. Roberts was asked whether the campus sexual assault controversy might have “heighted the student’s sensitivity,” she replied, “No, No. . . . I think the student athletes in Dr. Price’s class felt – would have felt the same way no matter what was going on, on campus at the time” (Tr3, pg. 40; 45). It was this student’s first semester at Appalachian, so the advising staff would not have known her well either.

However upset Student Athlete #1 might have been about earlier classes, it is clear that the events of March 2 were the final straw that triggered the student's complaint. While the record is unclear whether she left class at the beginning or in the middle of class, she left before class was over and immediately sought out Associate Athletic Director Huestess.

Student Athlete #1 did not reduce her complaint to writing at this time. Indeed, she did not put her complaint in writing at any time during the investigation that followed. Only on the eve of this hearing, on August 28, 2012, did she submit a written complaint (ExR#78).

I.A.2. Student Athlete #2. Ms. Foulsham testified that after the initial March 2 meeting with Student Athlete #1, "Then, either later that day or the next day, I heard from Sharon Trivette who is an academic advisor in Academic Service for Athletes, and she told me that there was another student athlete who also was in Dr. Price's class who was complaining about comments and also did not want to return to the classroom and wanted to drop the class" (Tr1, pg. 186). The record of the hearing is unclear when and how Student Athlete #2 was put in contact with Ms. Foulsham. According to Ms. Roberts, "the two students had discussed what to do before they ever met with their advisors. They were both – they identified with each other as student athletes and felt very uncomfortable and didn't know how to handle the situation . . . they felt it was a hostile learning environment for them, and so they talked to each other to support each other before they ever talked to us" (Tr3, pg 25). On March 2, after Student Athlete #1 left Prof. Price's class, Ms. Roberts indicated that the student told her "that another student that I worked with felt the same way, but was too intimidated and too nervous to leave the class" (Tr3, pg 14). Later, Ms. Roberts initiated contact with Student Athlete #2 about the matter: "I contacted the

student that I work with to ask [him] to give me information from that student's perspective, and I was told the very same things, the same kind of comments, the comments that were directed negatively about student athletes. . . . Neither student wanted to remain in the class, . . . So they wanted to know what options they may have" (Tr3, pg 15-16).

It is not at all clear whether Student Athlete #2 should be more properly characterized as a complainant or as a supporter of Student Athlete #1. At no time did Student Athlete #2 ever reduce his complaint to writing. Further, in Ms. Foulsham's investigation report, she states, "One student athlete told me that he was not offended by the comments that Dr. Price made about student athletes and university athletics. He told me that he could understand why another student athlete in the class, a varsity athlete, was upset because one of the accusers in the sexual assault cases was a teammate" (ExR#39). This student could only be athlete #2.

I.A.3. Resolution of Student Athlete Complaints. On Friday, March 2, Associate Athletic Director Troy Huestess brought the complaint of Student Athlete #1 forward to the Equity Office and the College of Arts and Sciences (Tr1, pg 185-186). On the following Monday or Tuesday, the complaint of Student Athlete #2 was forwarded to the Equity Office. Before the week was out, the students' complaints had been resolved when they were moved out of Price's class.

A meeting was held on Tuesday, March 6 to address these complaints (although it is not clear whether one or both of the student athlete complaints had been received by that time). In attendance were Prof. Price, Ms. Foulsham, Dr. Folts, Associate Dean Specht. According to Prof. Price, she was informed that Student Athlete #1 complained of "inaccurate disparaging remarks about student athletes. . . . Ms. Foulsham did not provide much on the substance of her

allegations other than claiming that this student did not feel ‘safe in my class as an athlete.’ Ms. Foulsham characterized the substance of the student’s complaint as constituting, quote, ‘a hostile environment’” (Tr1, pg 27-28). According to Ms. Foulsham, “I explained to Dr. Price what -- that two students had come forward and that -- summarized what the nature of the complaints were, wanting to inform her of the complaints, asking her if she had any response or any information to provide. She had very little to provide except stating that she didn’t think she said anything wrong in class, and if the students couldn’t handle her comments, then they probably shouldn’t be in college” (Tr1, pg 187).

At this stage in the process, everyone involved agreed that a meeting with the student athletes and Prof. Price was the appropriate course of action. Dr. Specht thought it was “the best thing to do” (Tr2, pg 185); Ms. Foulsham testified that, in her experience, such a meeting might well be all that was necessary to clear up a misunderstanding about classroom experiences. “I do that fairly frequently, particularly with faculty and students, because I often find that there’s miscommunication and that if the students and the faculty can talk it through together, oftentimes that’s where the complaint ends” (Tr1, 187-188). Prof. Price “expressed willingness to meet with the student, as I thought this was necessary and the only means of addressing the student’s complaint” (Tr1, pg 33).

No meeting with Prof. Price and the student athletes ever occurred. Ms. Foulsham indicated that she began making arrangements for such a meeting, “I left messages with the students, with the academic advisor, Sharon Trivette, and also with Troy Huestess stating that I had met with Dr. Price and that I was hoping to arrange a meeting with the students” (Tr1, 189). Respondents and their witnesses intimate that the meeting never occurred because of the actions

of Prof. Price when she showed the anti-pornography documentary, *The Price of Pleasure*, in her class on Wed. March 7. In her opening statement, Provost Gonzalez asserted, “The situation we find ourselves in today began with a conversation with Dr. Price and three campus administrators and could have ended with a meeting between Dr. Price and the students who made the initial complaint. She had the opportunity to work with the administrators to provide explanations and responses to the concerns of the student at this point in time. However, we’re here because she chose to act in a way that exacerbated an already hostile environment where a number of students stated they feared for their personal safety. In essence, she retaliated against students in her Introduction to Sociology courses by choosing to show a film . . .” (Tr1, 17). Ms. Foulsham was asked, “Did something happen before you managed to get the meeting arranged?” Answer: “Yes.” Question: “What was that?” Answer: “Dr. Price showed the documentary on pornography the following day which was March 7” (Tr1, 189).

While the showing of the video certainly altered the dynamics of the case (discussed further below), it does not explain why there was no meeting between the student athletes and Prof. Price. Instead, actions taken by administrators pre-empted the meeting. According to Dr. Folts, “After Dr. Price left [the March 6 meeting], we discussed what we might do to correct the situation and keep it from getting worse. And what we decided was to put the two students who had complained, on the basis of their complaint, put them in a separate section of the intro class that they were in. We essentially created another section, which I would teach, and that's what we decided to do. . . . I met with the students once during their class period [that week], and we went over what the class was going to look like, and actually went through what was essentially a first lecture” (Tr2, 213). Neither of the student athletes attended Prof. Price’s class on the date

when the video was shown (Tr2, 13) because they were no longer in her class. So, it should come as no surprise that shortly thereafter Ms. Foulsham heard back from Sharon Trivette “that the students did not want to meet with Dr. Price” (Tr1, 198-199). Since they had been moved to another class, their complaint had already been resolved.

I.A.4. Students #3 and #4. On Wednesday, March 7, Prof. Price showed a documentary on the pornography industry, *The Price of Pleasure*, in class. Within a of couple days, the mother of a student in the class called Dr. Folts. As Folts testified, “One of the student’s mothers called me complaining. What she told me was that Dr. Price had shown a porno movie in class, and that she was very upset about that” (Tr2, pg 214). Dr. Folts suggested the student’s mother call Ms. Foulsham. According to Ms. Foulsham, “I received a phone call from one of the students’ mothers complaining about the video and also complaining about other behaviors or statements that Dr. Price had made in class during the semester, and she wanted to know what the university was going to do about this matter” (Tr1, pg 189). Ms. Foulsham asked the mother to have the student contact her. Students #3 and #4 are friends who went on Spring Break together. On Saturday, the 10th, at the beginning of Spring Break, both students sent emails to Ms. Foulsham at precisely 8:32pm (ExR#15 and #16). Both student emails were similar in their essential content (ExG#10). Both complained about the showing of the video. They criticized the fact that it was shown, Student #3 judging that it was “not appropriate for the classroom,” and Student #4 judging that “It was in no way related to sociology.” They also both complained about the manner in which the video was shown: that Prof. Price did not warn students about the content; did not say a word before or after showing the video; that the video was not on the syllabus; and

that she gave no invitation for students to leave the class if they felt uncomfortable. Both students also criticized the content of the class of Friday March 2, the day of the campus silent protest, though Student #3 went into more detail than Student #4. Both complained that Prof. Price was disrespectful and negative about the university, characterizing it as a racist institution. And both objected to Prof. Price's interjection of personal information into the class discussion: her own dissatisfaction with her job, family and child custody issues that limited her mobility, and an allegation that Prof. Price had been accused of sexual relations with a student. Finally, both students expressed concern for their own personal safety, referencing without elaboration incidents that have occurred on other university campuses.

While the parties assign differing motives, it is generally agreed that Prof. Price entered the room and, without saying a word, flipped the lights and started the video. According to Ms. Foulsham, Prof. Price explained "that she had shown it because during the meeting on March 6th I had talked to her about our policy that prohibits retaliation against anyone who brings a complaint. . . . when I asked her why she showed the video, she said it was because of me. She showed the video because she didn't want to be accused of retaliating against the students" (Tr1, pg 205). Ms. Foulsham found this explanation "neither credible nor logical" (ExR#39). The administration insinuates retaliatory motive. Clearly during the week leading up to March 16, administrators were concerned that the showing of the video looked like retaliation. The possibility was discussed in the March 12 meeting with Provost Gonzalez, Dayton Cole, Linda Foulsham, Ed Folts, and Neva Specht. It concerned Dr. Carey in the March 16 meeting with Prof. Price and Neva Specht that "[t]here was a considerable thought in my mind that the showing of the video, itself, was an act of retaliation. I didn't know that for certain one way or

the other, but it seemed to me like an extremely odd response to the situation” (Tr2, pg 88). In the end, however, few administrators concluded that retaliation was Prof. Price’s motive. When asked if she considered showing the film to be retaliation, Dr. Specht replied, “No” (Tr, pg 197). Earlier, Ms. Foulsham suggested that a reasonable person could believe Prof. Price showed the video as an act of retaliation (Tr1, pg 204). But after investigating, she herself did not draw that conclusion: “I don’t know whether it was retaliation or not. So no, I did not conclude that it was retaliation” (Tr2, pg 54). Decision-makers continue to believe it was retaliation, but even they are equivocal. Provost Gonzalez testified, “I viewed it as retaliation in the lay term, that it was a way to say, ‘If you complain about me, this is what could happen.’ That’s the way I would say it. Retaliation in terms of the federal law, no, I wouldn’t go that far” (Tr3, pg 161-162).

Prof. Price suggests an alternate explanation for the choice of *The Price of Pleasure*. She indicated there was another video – *Killing Us Softly* – she would have preferred to have shown, but it was checked out of the library (Tr1, pg 83 and Tr3, pg 207). So she selected *The Price of Pleasure*, though she had never seen it, because it came recommended by Michael Kimmel, a well-known sociologist who had lectured at ASU in 2008 (ExG#1). When Ms. Foulsham was asked whether Prof. Price gave her this explanation, Ms. Foulsham acknowledged, “She may have told me that” (Tr2, pg 74). The Committee heard no evidence that anyone thought it might be a good idea to have Students #3 and #4 meet with Prof. Price.

I.B. The Investigation

On the Monday of Spring Break, March 12, a meeting was held. In attendance were Provost Gonzalez, Ms. Foulsham, Associate Dean Specht, Dr. Folts, and university General Counsel

Dayton Cole. It was decided at this meeting that a formal investigation into student complaints would be conducted by Ms. Foulsham. According to Provost Gonzalez, “Options discussed were Dr. Folts taking over Dr. Price’s classes, administrative leave with pay, and removal from the classroom” (Tr3, pg 127).

On the Friday of that week, March 16, a meeting was held with Dr. Carey, Dr. Specht, and Prof. Price to inform Prof. Price that a formal investigation was being initiated, to inform her that she was being placed on leave while the investigation ensued, and to present her with the March 16 letter documenting these actions. There was conflicting testimony about when the decision was finally made to remove Prof. Price from teaching and place her on leave. Dr. Carey insisted that the decision was not made until the end of the March 16 meeting, and that he was “prepared to deliver the letter or not deliver it depending on Dr. Price's responses in the meeting” (Tr2, pg 80). But Dr. Folts testified that, on the 13th, 14th, and 15th, “I was involved in phone calls and creating and then shifting the students back into the original class, and then changing that class over to me. But that was not within the administration, it was with the registrar’s office” (Tr2, pg 216-217).

Ms. Foulsham’s investigation included interviews with Prof. Price, Dr. Folts, three tenured faculty in the Sociology Department, and thirty-one students from Prof. Price’s classes (ExR#39). On April 3, Prof. Price submitted a written response to the allegations (ExG#1). On April 11, Ms. Foulsham sent an email to all students who were enrolled in what had been Prof. Price’s classes. The email read, in part: “Dear Student: I am writing to inform you that the Provost has asked me to conduct an investigation of a complaint of inappropriate classroom behavior that has been filed by a few students against Dr. Jammie Price. I would like to meet

with you in my office at your earliest convenience to discuss the allegations and obtain any information you might have that would be relevant to the investigation” (ExR#90). In addition to the four students who had already complained, this email resulted in interviews with twenty-seven students.

On April 26, Ms. Foulsham submitted her investigation report to the Provost, asserting, “There is sufficient evidence to conclude that Dr. Price created a hostile learning environment for a significant number of her students. Her pedagogy appears to be consistently confrontational, belittling, angry, critical, and destructive of the potential for a valuable educational experience for her students. Whether or not students felt demeaned or harassed based on their race, sex, political affiliation, status as an athlete, or status as an Appalachian student, there is a consistent pattern of Dr. Price making students feel uncomfortable” (ExR#39).

On the basis of Ms. Foulsham’s report, on April 30, Provost Gonzalez issued a “summary of the facts” that concurred in the finding of a hostile learning environment, adding, “In the classroom, students reported you [Price] often commented about an allegedly racist environment at Appalachian and about student athletes. Additionally, students stated that you repeatedly criticized students for attending Appalachian. Such comments are patently unacceptable, and support the conclusion that your classroom demeanor has been confrontational, belittling and destructive to students and the student experience. Comments about your personal life and challenges also contributed to a hostile environment” (ExR#41). As a consequence, Prof. Price was “instructed to work with Associate Dean Specht to draft a professional development plan . . . designed to cover a two-year period” (ExR#41).

II. FINDINGS AND RECOMMENDATIONS

II. A. Findings Regarding Involuntary Placement on Administrative Leave

A majority of the voting members of the Committee find the Respondents' placement of Professor Price on administrative leave with pay a violation of her rights to due process and academic freedom. The former we discuss here; the latter in context of our findings regarding the Professional Development Plan in Section II.B, below.

II.A.1. Authority to place a faculty member on administrative leave with pay pending

completion of an investigation: The Committee unanimously finds that, under the *Faculty Handbook*, Respondents lack the authority to impose involuntary administrative leave. There is nothing in the *Faculty Handbook* called "administrative leave" and no section that directly addresses leave while an investigation proceeds. In fact, Respondents have testified that they agree with this statement. We do not disagree that this may well be the practice elsewhere. Respondents provided numerous examples of policies from other colleges and universities that expressly authorize placing a faculty member on administrative leave with pay pending completion of investigation (ExR#85). We would simply note that this is precisely the kind of language that is lacking in Appalachian's *Faculty Handbook*. We also do not disagree that if administrative leave for these purposes is to be permitted, there should be clear provisions in the *Handbook*. (The respondents have testified to this as well.) However, this is not currently the case. Dr. Carey testified that on previous occasions where a tenured faculty member was placed on administrative leave with pay for purposes of conducting an investigation, the question of authority to impose involuntary leave had not come up: "up until this case there was no

discussion of the matter” (Tr2, pg 123). Because administrative leave has been used in the past does not mean that there was authority for it either then or now. Thus, we unanimously conclude that the *Faculty Handbook* does not *specifically* or *clearly* provide for or address administrative leave with pay for the purpose of investigation.

Respondents claim that *Faculty Handbook* Section 6.5.3.2 provides the authority to place a faculty member on administrative leave with pay for the purpose of investigation. They have repeatedly made this argument. However, this *Handbook* section only addresses leave requested by the faculty, which is not relevant to Dr. Price’s situation. Saying that it also applies to leave imposed upon the faculty is out of context and quite a stretch. Thus, we unanimously conclude that section 6.5.3.2 cannot be invoked as adequately justifying putting faculty on administrative leave with pay for the purpose of investigation.

Respondents claim that the Provost has the ultimate authority to interpret the *Handbook*. The Provost does not, however, have the authority to add something to the *Handbook* that is not there without such an addition going through the approval process. Respondents assert that placing Prof. Price on administrative leave with pay is authorized because it is based on their interpretation of Section 6.5.3.2 of the *Handbook*. However, we unanimously conclude this assertion is not an interpretation of a section that already exists, but rather, such an extension of that section that it would constitute an *addition* to the *Faculty Handbook*.

A majority of the Committee (3-2) finds the only authority to impose involuntary leave in Section 4.10 of the *Faculty Handbook* and Section 603 of the *UNC Code*, the due process provisions (discussed further in II.A.2, below).

A minority of the voting members of the Committee (2-3) saw this issue somewhat differently. While they agree with the majority that there is no authority in the *Faculty Handbook's* Section 6.5.3.2 to place a faculty member on involuntary leave with pay, they are persuaded that "University administrators have inherent authority to place employees on administrative leave with pay in fulfillment of institutional management responsibilities" (ExR#93). Such inherent authority is limited only by the requirement that administrators have "good cause." Good cause is subject to testing in a grievance hearing, and the minority would find that Respondents had good cause to place Prof. Price on administrative leave with pay.

II.A.2. Were Prof. Price's due process rights violated when she was denied a due process hearing? Respondents have asserted that Professor Price was not entitled to a due process hearing because only serious sanctions warrant a hearing before the Faculty Due Process Committee (FDPC). They assert that administrative leave with pay for the purpose of investigation is neither disciplinary nor "serious" sanction. As a result, Dr. Price was denied a hearing with the FDPC and was told that her only option to challenge the decision was a grievance hearing.

Question of serious sanction: *Faculty Handbook* Section 4.10 addresses "Discharge or the Imposition of Serious Sanction." Section 4.10.2.1 lists the following as serious sanctions: discharge, suspension, demotion in rank, diminishment in pay, or deprivation of some other substantial interest. A majority of the voting members (3-2) conclude that placing Prof. Price on involuntary administrative leave deprived her of substantial interest (liberty interests and dignity interests, as described below), and therefore is, indeed, a serious sanction.

Respondents asserted that administrative leave pending investigation is common practice, and they provided the Committee with a number of illustrative cases where university employees had been placed on administrative leave with pay (ExR#85). Most of these cases involved administrators or other non-faculty employees so their applicability to tenured faculty is unclear. Of the seven illustrations involving tenured faculty placed on leave, five involved criminal misconduct, just the kind of circumstance most likely to warrant suspension pending final outcome. Of the other two illustrations, one occurred in a military academy that admittedly “operates according to a stricter code of behavior and values,” and the other would be governed by the grievance procedure under a collective bargaining agreement.

Respondents also provided the Committee with an interpretation of their authority to invoke “administrative leave to facilitate an investigation” (ExR#93). In one paragraph of this document, several court cases are cited suggesting that “[i]t is well established that placing an employee on paid administrative leave during an investigation concerning the employee’s conduct is not an adverse employment action.” Included in these cases is the Fourth Circuit’s *Von Gunten v Maryland* (2001), a Title VII case. But *Von Gunten* does not hold that administrative leave with pay can never be considered an adverse employment action, and the standard in the Fourth Circuit recognizes that similar or lesser actions (reducing job responsibilities and professional status) could constitute adverse employment action. Still, we get it; employees rarely prevail on claims that administrative leave with pay constitutes adverse employment action. Even the AAUP’s 2007 report on *The Use and Abuse of Faculty Suspensions* (ExR#30) acknowledges, “Courts generally rule that suspension with pay does not trigger constitutional due process concerns at public institutions.” Whether a faculty member is

likely to prevail on claims in a court of law seems an inappropriate standard, and somewhat beside the point, for determination by an internal hearing committee whether a faculty member has been wronged.

Applying a more appropriate standard, a majority of the Committee finds, according to “commonly shared understandings within the academic community about the rights, privileges and responsibilities attending University employment” (*FH* 4.11.3.1), administrative leave can, and in this case does, constitute a “deprivation of . . . substantial interest” subject to the due process provisions of the *Faculty Handbook* and *UNC Code*. Occupational context matters. When a police officer is placed on leave pending investigation after she discharges her weapon, no negative inferences are drawn and no negative aspersions are cast. But when, as here, a tenured faculty member is removed from teaching in the middle of the term and effectively banished from her core work areas of campus, and when this is followed by an announcement to all of her students “that the Provost has asked me to conduct an investigation of a complaint of inappropriate classroom behavior that has been filed by a few students against Dr. Jammie Price” (ExR#90), it is clear that “an extremely negative judgment” (ExR#30) has been rendered. Prof. Price did not ask to be put on leave. But it’s not even so much the placement on involuntary leave that drives our conclusion (though that matters). It’s more the removal from teaching, the banishment from core work areas, the announcement to students, and the attendant harm to reputation, that drive our conclusion that this was a serious sanction.

A majority of the Committee concludes that a reasonable tenured faculty member would experience all of the above as serious sanctions. Quoting from the 2007 AAUP report *On the Use and Abuse of Faculty Suspensions*, “Barring a teacher from his classroom inflicts ignominy upon

the teacher and is destructive to the morale of the academic community. . . . The profession's entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one's professional skills in practice, . . . To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic professional rights. . . . To inflict such injury without due process and, therefore, without demonstrated reason, destroys the academic character of the University" (ExR#30). The report is replete with examples where faculty members, campus communities, faculty hearing committees, and the AAUP itself view removal from teaching as a serious sanction. It is a commonly shared understanding within the academic community.

Having established that placing Prof. Price on administrative leave with pay, along with the other attendant restrictions, does deprive her of some substantial interest and thus falls under the category of a serious sanction, the majority of the committee concludes that not permitting her to bring the matter to the Faculty Due Process Committee was a violation of due process. (3-2).

A minority of the voting members of the Committee saw these issues differently. The minority did not see placement on administrative leave with pay as a serious sanction and so, did not see it as subject to the due process provisions of the Handbook and Code. Therefore, they did not find a due process violation.

II.A.3. Recommendations regarding involuntary placement on Administrative Leave

a. While the majority found that Prof. Price should have been afforded a due process hearing, the Committee can find no remedy for Prof. Price with regards to this issue and is unanimous that recommending a hearing now would serve no useful purpose. What's done is done.

b. We unanimously recommend that, henceforth, no faculty member should be placed on involuntary administrative leave except as provided for in *FH 4.10*, unless the *Faculty Handbook* is otherwise revised.

c. We are aware that a Due Process Task Force is formulating recommendations related to these issues for submission to the Faculty Senate. We strongly urge the administration to accept any Senate legislation on this matter.

II. B. Findings Regarding Imposition of a Professional Development Plan

The Committee unanimously finds that imposition of a professional development plan does not, by itself, constitute a serious sanction. It lacks key elements of administrative leave, which we did find to be a serious sanction. Prof. Price would remain, first and foremost, in the classroom. It is clearly a sanction, a change in a term or condition of employment imposed based on the administration's judgment of misconduct. But it is a lesser sanction and, so, the faculty grievance hearing process is the appropriate venue for its adjudication.

On the ultimate question whether the professional development plan was justified, we find it useful to distinguish classes and events occurring prior to March 7 and the class of March 7. We do so because a majority (4-1) conclude that events prior to March 7 are an illegitimate basis for imposition of a professional development, and thus, violate Prof. Price's academic freedom to teach her subject according to the dictates of her own responsibly exercised professional judgment.

At the same time, the Committee concludes unanimously that the events of March 7 represent a serious lapse in judgment.

II.B. 1. Classes and events prior to March 7. These principally include the two classes the last week of February, in the unit on race and ethnicity, the classes where Prof. Price is said to have “ranted” about student athletes. These classes provoked an immediate verbal complaint from Student Athlete #1 and a partially corroborating statement from Student Athlete #2 when his opinion was solicited by Ms. Roberts, his advisor. It also includes the class on March 2, the day of the campus silent protest. This is the class Student Athlete #1 walked out of on her way to complain to Troy Heustess. Students #3 and #4 also later expressed negative reactions to this class.

In teaching race and ethnicity Prof. Price discusses race in the context of higher education and student athletics. In doing so, she does not paint a pretty picture, and it intentionally hits home with many students. Even if her illustrations are critical of Appalachian, that is legitimate sociology. Teaching about the intersections of race and higher education and athletics is a

legitimate topic for a Sociology class. It is a legitimate argument in the field that student athletes receive special privileges in a university setting. It is a legitimate argument in the field and at the university that others perceive athletes as receiving special privileges. In fact, ASU student athletes do receive special privileges. Committee members from outside the discipline of sociology are aware there is a substantial literature on these issues. We can fully understand how a student athlete, one perhaps nurtured for a lifetime on the values and virtues of athletic competition, one who perhaps never heard anyone seriously question these values and virtues, might find these lectures seriously unsettling and upsetting. But a college education should at least occasionally require that students examine their systems of belief, which might well lead to cognitive dissonance and varying degrees of discomfort. The majority of the Committee finds that the preponderance of the evidence indicates Prof. Price's actions were consistent with these pedagogical principles.

The class on March 2, the day of the silent protest, was to be the introductory class to the unit on gender and sexuality. Discussion of the campus sexual assault controversy seems to us to provide an effective transition from one week's topic to the next. Even if Prof. Price "commented that the administration had let the student athletes back into school because they were athletes" (Tr2, pg 25), she was only answering a question on the minds of many in the campus community. The March 2 protest and the campus sexual assault controversy have been discussed in a number of classes (see testimony of Prof. Page and Jean Roberts). This, too, was legitimate sociology.

To impose a professional development plan on the basis of classes and events occurring prior March 7 constitutes an unwarranted intrusion on Prof. Price's academic freedom to teach

her subject as she sees fit. As Section 3.2.2 of the *Faculty Handbook* mandates, “Appalachian State University shall protect faculty and students in their exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.” We can understand why Ms. Foulsham, Mr. Heustess, and others in the athletic department might be less sensitive to the importance of academic freedom in the classroom, but we are disappointed that our faculty/administrators in the Office of Academic Affairs apparently failed to consider the implications their actions might have on academic freedom.

II.B. 2. Class of March 7. The Committee unanimously finds that Prof. Price exercised extremely poor judgment regarding the March 7 class. That said, we are also unanimous that we do not find sufficient evidence to suggest that the manner or the choice of showing *The Price of Pleasure* was an act of retaliation.

Respondents have been careful to assure that it was not the choice of the video, but rather the manner in which it was shown, that warrants sanction. The Committee wishes to make it clear that we believe it is Prof. Price’s professional prerogative to select any material relevant to her course.

Respondents concluded that Prof. Price’s “conduct in the classroom has led to the creation of a hostile learning environment” (ExR#41). In the *Appalachian State University Policy Manual*, harassment and hostile learning environment are defined thusly: “Harassment is defined as unwelcome and unsolicited speech or conduct based upon race, color, religion, creed, sex, national origin, age, political affiliation, veteran status, disability, sexual orientation, or gender identity and expression that creates a hostile environment . . . Hostile environment is one

that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether the conduct unreasonably interferes with an individual's work performance, academic advancement, participation in extracurricular activities or access to University services. In some cases, a single incident may constitute harassment" (401.2).

When interviewed by Ms. Foulsham over a month after the showing, students seemed to have a vivid memory of the video, and most of those memories were negative. Some criticized the video itself; some criticized the manner in which it was shown; some both. An indeterminate smaller number of students seemed genuinely upset by the experience even after more than a month. But there is little evidence that this experience constitutes unreasonable interference with student academic endeavors.

The Committee unanimously concludes that the manner in which the video was shown did not create a hostile learning environment for the students. Still, we wish to reiterate our concern over Prof. Price's poor judgment. Conceding that, the Committee believes that this matter should have been settled within the department, with the likely consequence that the chair might have warned Dr. Price to avoid this behavior in the future and stated an expectation that any future showing of controversial materials should include contextual background and time for debriefing/discussion in class.

II.B.3. Recommendations Regarding the Professional Development Plan

a. The Professional Development Plan is largely untethered to the question of poor judgment or even hostile learning environment, if we were to accept that finding. The only aspects of the PDP that are relevant to the Respondents' concerns were to include a disclaimer regarding sensitive topics on the syllabus and the professional development activities of addressing sensitive topics in the classroom and the sensitivity training. Since the majority did not find that Prof. Price created a hostile learning environment, we recommend the Professional Development Plan be set aside.

b. Most of the Professional Development Plan is directed at issues of teaching effectiveness. The Committee unanimously asserts that assessment of teaching effectiveness and proposed corrective measures should emanate from the department. Teaching effectiveness should never be assessed within the context of an investigation of misconduct. This fundamental tenet of faculty governance provides an additional basis for our unanimous recommendation that the professional development plan be set aside.

II.C. Additional Findings Regarding the Investigation

The Committee unanimously agrees that this case should have started, and could well have stopped, with a meeting between Prof. Price and Student Athlete #1. If Prof. Price had had a chance to sit down with the student (perhaps with the Chair, the advisor, or coach) a dialogue could have taken place that would have enabled the student to express the reason for her

discomfort, and allowed Prof. Price to help the student understand the sociological basis for her pedagogy. If that had happened, it is likely the student would have realized that the comments were not racist or otherwise intended to be hostile. Instead, the situation was escalated and the opportunity for clarifying conversation was eliminated. For us, that missed opportunity – preventing a student and teacher from having the chance to correct a misunderstanding – was a real tragedy and poor judgment on the part of the administration.

We are unanimous in identifying five significant concerns with the ensuing investigation:

II.C.1. The appearance of undue deference to student athletes. It is ironic that a case – initiated at least in part by Prof. Price’s assertion that student athletes get preferential treatment – became an object demonstration that student athletes do, in fact, get preferential treatment. The alacrity of resolution of Student Athlete complaints was notable. Student Athlete #1 complained initially to her athletic administrator, Troy Heustess, on a Friday afternoon. He immediately escorted her to the Equity Office, where they were received with little or no wait. From there, they got an immediate meeting with the Dean. Shortly thereafter, an athletic advisor solicited a corroborating opinion from a second individual from the class (Student Athlete #2). By the middle of the following week, student athlete complaints had been resolved by moving them into a separate section to be taught by Dr. Folts, the Dept. Chair. Past history suggests that if these students were not student athletes, it is unlikely they would have received such swift attention, nor would they have had a ready source of facilitation and support in the athletics administration

and Student Advising for Athletes. Without the involvement of the Athletic Department, the matter would likely have been returned to the department for resolution.

II.C.2. The manner in which student interviews were solicited. We do not disagree that interviews with students were appropriate, but we conclude that the wording of Ms. Foulsham’s invitation was not sufficiently neutral, likely resulting in a prejudicial recruitment bias bringing forth a specific subset of students.

II.C.3. The lack of written complaints from Student Athletes #1 and #2. In accordance with the *ASU Policy Manual*, policy 401.2, “A complaint is a report by a person alleging the occurrence of harassment or retaliation prohibited by this policy. All complaints must be reduced to writing, either initially or as part of an investigation.” We note that this is also the policy at Chapel Hill, ECU, Wilmington, and Greensboro, among other universities in the UNC System and elsewhere. While we acknowledge that it is the responsibility of the university to take all complaints seriously, when the complaint rises to the level of a formal investigation, the complaint must be reduced to writing in the course of that investigation. To argue that this policy was followed because Ms. Foulsham wrote it down is inadequate. A fair reading of the policy indicates that it is the complainant who must put the complaint in writing.

II.C.4. Inadequacy of Ms. Foulsham’s investigation report as evidence. There are a number of shortcomings with the investigation report. Ms. Foulsham’s investigation report is entirely hearsay, and further it is also hearsay with Ms. Foulsham as the sole interpreter. If Respondents

expect such a report to be given credibility, it must be compiled with far greater precision than was exhibited here.

A report that paraphrases rather than quotes students (with identifying information removed) always opens up opportunity for bias. It was impossible to distinguish direct quotes from interpretation, and the report did not denote how many comments were attributed to each student. That is, did one student say ten things, or did ten different students say one thing? Because of the impossibility of distinguishing one student interview from another, we asked for access to Ms. Foulsham's notes. Respondents refused to make these notes available, even in redacted form. A redacted summary of each interview would not compromise student confidentiality, and would make the investigation report more useful for the decision-maker, for the faculty member, and for any reviewing body such as the FGHC.

II.C.5. Uneven treatment of confidentiality. Throughout the investigation and hearing, great concern was expressed about maintaining the confidentiality of the four student complainants. The Committee notes, however, that there did not appear to be commensurate concern over other students whose names and experiences were logged in the Respondents' evidence notebook. We also have concerns regarding the treatment of confidential matters regarding faculty such as testimony of other members of the Sociology department and, perhaps most notably, the fact, mentioned above, that Ms. Foulsham's email inviting students to talk with her stated that Dr. Price was under investigation for misconduct.

II.C.6. Recommendations:

a. The Committee unanimously recommends that, in accordance with ASU policy (and best practices at our sisters schools), every attempt be made to encourage dialogue between a teacher and student before a complaint escalates to any other entities on campus.

b. The Committee unanimously recommends that, henceforth, all actionable complaints be put in writing by the complainant and that the accused should be granted the right to know who her accuser is and to know precisely what she is being accused of. We believe that the fundamental right to this information supersedes any concern about retaliation, for which there is a separate remedy should retaliation occur.

c. The Committee unanimously recommends education about Academic Freedom in the classroom for athletic advising and the Equity Office so that they will be better able to advise students about the parameters of instructor pedagogical prerogatives in the classroom.

d. The Committee unanimously recommends that the Office of Academic Affairs should uphold and reassert their commitment to the principles of responsible Academic Freedom, as articulated in *Faculty Handbook* 3.2 and 3.3 and the *UNC Code*, chapter 6, section 600, including their responsibility for maintaining an “environment in which academic freedom flourishes.”

e. The Committee unanimously recommends that the Respondents organize a taskforce, with substantial faculty membership, to conduct a critical review of the investigative process. This review should address our concerns as noted above and result in a process that is consistent with practices in the UNC system and nation.

f. The Committee unanimously recommends that ASU return to the previous practice of having a faculty review board involved in the oversight of the Equity Office.

III. CONCLUDING REFLECTIONS

As a committee, we wish to express our concern about the unbalanced nature of ASU's grievance proceedings:

1. The faculty member (grievant) should be entitled to active representation. We support the recent *Handbook* changes approved in October's Faculty Senate regarding this issue and urge the Provost and Board of Trustees to support that Senate recommendation.
2. The Faculty Grievance Hearing Committee is vested with the authority to deal with confidential personnel matters. As such, when requested, confidential information must be shared in order for the committee to make an evidence-based decision.
3. When the Provost is a Respondent in a grievance case, the report should be submitted to the Chancellor for a decision.

RESPECTFULLY SUBMITTED ON BEHALF OF THE FACULTY GRIEVANCE HEARING
COMMITTEE:

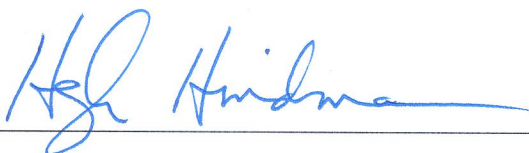
Jill Ehnenn, Professor, English

Susan Staub, Professor, English

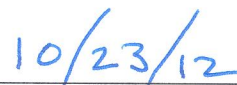
Jesse Taylor, Associate Professor, Philosophy

Kim Wangler, Associate Professor, Music

Jennifer Geib, Assistant Professor, Biology



Hugh Hindman, (non-voting) Chair FGHC



October 23, 2012