

December 7, 2012

Dr. Jammie Price
Department of Sociology
Chapell Wilson Hall
Campus

Dear Dr. Price:

As requested in your November 25 letter, a copy of the 2011 version of the *Faculty Handbook* is attached. Because the Provost is a respondent in your grievance, I assumed responsibility for compliance with sections 3.9.3.11-3.9.3.14. Under those provisions, I have given you and the Faculty Grievance Hearing Committee an opportunity to respond to my November 21 notice. The Committee's recent response has prompted me to provide a memorandum that supplements the November 21 notice. That memorandum also is attached for your review. You are still welcome to submit a written response for my consideration on or before December 21, 2012. If you need additional time, I will be glad to extend the time for your response to the November 21 notice and today's supplemental memorandum upon your request.

You will be provided ten (10) working days after receipt of my final decision to submit a notice of appeal to the Board of Trustees, if you choose to appeal to the Board, as provided in section 3.9.4.1 of the 2011 *Faculty Handbook*.

Sincerely,



Kenneth E. Peacock
Chancellor

KEP/kr

Enclosures

Copy to: Dr. Hugh Hindman

TO: Dr. Jammie Price
Professor of Sociology

Dr. Hugh Hindman
Chair, Faculty Grievance Committee

FROM: Kenneth E. Peacock *KEP*
Chancellor

RE: Grievance of Professor Jammie Price

DATE: December 7, 2012

On November 21, I notified Professor Jammie Price (Dr. Price) and the chair of the Faculty Grievance Hearing Committee (FGHC), Professor Hugh Hindman (Dr. Hindman), of my intentions with respect to the FGHC's recommendations concerning Dr. Price's grievance in this matter. Dr. Hindman and the committee responded to my communication in a memorandum dated November 27, 2012. I continue to appreciate the committee's careful effort in this matter, as reflected in their October 23 report and their November 27 memorandum. After considering the points raised by the committee in their memorandum, I have concluded that my November 21 notice was unclear in certain respects. Accordingly, this communication will revise and supplement my notice of intent dated November 21.

Procedural Matters

Before turning to the substantive matters at issue in the grievance, three procedural matters merit attention. First, the committee asserts that Section 4 of the 2012-2013 version of the *Faculty Handbook*, rather than Section 3 of the 2011-12 *Handbook*, supplies the appropriate procedures for the grievance, because the grievance hearing took place over several days in August and September, roughly coinciding with the beginning of the 2012-2013 academic year. Based on my review of the record, however, Dr. Price filed her grievance petition on June 13, 2012 and the committee accepted the petition on July 17, 2012, before the 2012-2013 *Handbook* took effect. Therefore, I have determined that the 2011-2012 *Faculty Handbook* supplies the appropriate procedures for Dr. Price's grievance.

Second, consistent with the provisions of the 2011-2012 *Handbook*, this supplement to the notice of intent is directed to the grievant and the FGHC chair in accordance with Section 3.9.3.12. Dr. Price should submit her written response, if any, to me within (10) working days of her receipt of this communication, in accordance with Section 3.9.3.13.

Although the 2011-2012 *Handbook* does not explicitly contemplate a written response from the FGHC, I welcome and will review and consider any additional written input that the committee wishes to provide, so long as I receive that input no later than December 21, 2012. My final decision will be rendered within ten (10) working days of Dr. Price's response, if any, in accordance with Section 3.9.3.14, not within thirty (30) days of the FGHC's October report and recommendations.

Third, the committee writes in their November 27 memorandum that they view my intention to reject two (2) of their recommendations as an indication of my intention to accept all of their other recommendations. The committee's focused work on the report is evident in many of their thoughtful recommendations. Some parts of those recommendations merit further consideration outside of this forum, particularly those that do not directly affect the outcome of Dr. Price's grievance. My rejection of specific recommendations, however, does not amount to my acceptance of the others. The committee and the parties should not assume that I have accepted any particular recommendation as written and without qualification, except to the extent that I so indicate in this communication.

Factual Background

I carefully reviewed the FGHC's report and recommendations along with the considerable record assembled by the parties and the committee to identify the essential facts in this matter.

Professor Jammie Price (Dr. Price) taught two sections of an introductory sociology course for undergraduate students (SOC 1000) during the 2012 spring semester. On March 2, one of the students contacted a university employee and complained about Dr. Price's conduct in class. A second student soon lodged a similar complaint. The complaints against Dr. Price included allegations that during class time she: (1) ranted and made disparaging remarks about students participating in intercollegiate athletics at the university; (2) stated that those students are given special privileges on campus in that they are provided with tutors/advisors, are permitted to miss class and may avoid class assignments that are required of other students; (3) repeatedly stated that she dislikes working at Appalachian and that the only reason she remains at the university is to maintain joint custody of her children; (4) criticized students for choosing to attend Appalachian; (4) asserted that black students do not want to come to the university because it is a racist, predominantly white institution; (5) repeatedly criticized the university administration and stated that the university is racist; and (6) deviated from the syllabus to share her own political views that were unrelated to the topics to be covered in the course.

During the March 2 class Dr. Price also discussed a campus controversy concerning pending sexual misconduct cases involving student athletes and a campus gathering scheduled for later in the day to protest the university's handling of those cases. Dr. Price criticized the university administration's handling of those cases and opined that the

university administration protects student athletes and that other students would not be treated in the same manner.

The initial complainants perceived Dr. Price as hostile to student athletes. One of the students expressed distress and fear at the prospect of returning to Dr. Price's class. Two other students also expressed concerns about personal safety in the classroom due to Dr. Price's conduct.

Dr. Price met with her department chair, the associate dean of her college and Linda Foulsham, Director of the Office of Equity, Diversity and Compliance, on Tuesday, March 6. Dr. Price received an explanation of the complaints during the meeting. She responded, saying that she believed she had done nothing wrong. Dr. Price and the other participants agreed that a meeting with the students would be an appropriate step to address the complaints. Ms. Foulsham offered to schedule the meeting with Dr. Price and the students to discuss their concerns. Ms. Foulsham also explained the university policy prohibiting retaliation against complainants and advised Dr. Price to refrain from actions that could be retaliatory.

The next day, March 7, Dr. Price arrived at her introductory sociology class, turned off the lights and started a video – *The Price of Pleasure: Pornography, Sexuality and Relationships* -- that played for the entire class period. *The Price of Pleasure* is a documentary critical of the pornography industry that takes snippets from pornographic films that are very graphic. Some of the images are blurred; some are not, and the sounds are largely unedited. The film's graphic depictions include women who are chained, torture scenes, men ejaculating on the faces of women and simulated acts of child molestation and gang rape. Some students left the class as the video played, disturbed by the extremely graphic nature of the film. Dr. Price did not stop the video for discussion or contextualization during the class. Class concluded without any comment or debriefing from Dr. Price.

The university soon received additional complaints concerning Dr. Price's conduct and the showing of the video. Dr. Tony Carey, Vice Provost for Faculty Affairs and Associate Dean Neva Specht met with her on March 16 to discuss the complaints. They presented Dr. Price with the allegations against her and offered her an opportunity to respond. They also instructed her to cooperate with the investigation into the complaints and to avoid retaliation against a complainant, witness or anyone else who might be asked to provide information relevant to an allegation. Finally, Dr. Price was placed on administrative leave, a paid non-disciplinary status, pending the completion of the investigation. University administrators tasked Ms. Foulsham with reviewing and investigating the complaints along with the previous complaints against Dr. Price.

Dr. Price explained that she decided to show the film because Ms. Foulsham, her department chair and her associate dean had cautioned her to be careful about retaliation. Dr. Price reasoned that by showing the video, she was merely following the instructions of university administrators. Although the film is known among some sociologists and is

available from the university's library, Dr. Price admitted she never viewed the video before making the decision to show it to her introductory sociology class. Yet she insisted that, in her opinion, the film was appropriate for students in an introductory course. She also dismissed concerns that the film could make students uncomfortable, saying that causing student discomfort is part of a liberal arts education and the topic of pornography is covered in her textbook.

Ms. Foulsham completed the investigation and reported to Provost Lori Gonzalez on April 26, 2012 that Dr. Price "created a hostile learning environment for a significant number of her students." Her report also included information that some of Dr. Price's students described her lectures as, "scattered...rambling; sporadic; political; argumentative; off topic..." The Provost reviewed the relevant facts in light of institutional policies, faculty responsibilities and the principles of academic freedom. Following her review, Provost Gonzalez determined that Dr. Price's behavior reflected very poor judgment, particularly in the area of pedagogical practice, that would best be addressed through professional development activities, rather than sanctions. Accordingly, in order to foster improved performance by Dr. Price, the Provost directed Dr. Price to work with Associate Dean Neva Specht to prepare a professional development plan that included the terms set forth in Attachment A. I understand that Dr. Price had expressed concerns about her working relationship with her department chair and that the Provost determined that it would be in Dr. Price's interests to work with Dean Specht on the development plan.

Discussion

The faculty, including those of us who function as administrators and institutional leaders, must work daily to protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth. When the university receives a complaint of harmful treatment of students, applicable law and policy require administrators to undertake a prompt and reasonable inquiry and, where warranted, take appropriate remedial action. For example, federal law requires the university to deliver educational programs to students in a manner that is free from illegal discrimination, and to respond appropriately to complaints in way that ensures it meets those obligations. The responsibility for meeting these obligations by receiving, investigating and promptly addressing complaints of harmful treatment of students rests with university administrators. And within the university we all share the responsibility for maintaining an environment in which academic freedom -- responsibly exercised -- flourishes and in which the rights of each member of the academic community are respected.

Importantly, the substance of Dr. Price's comments as reflected in the March 2 complaints was not the focus of the March 6 meeting, and properly so. The complaints included allegations that Dr. Price used class time to, among other things, comment and express opinions regarding the role of athletics in higher education, the controversy surrounding the handling of sexual misconduct cases at the university and related

criticisms of university administration. These issues have been part of discussions and debates on campus and topics of coverage in the media, including the campus student newspaper. It is reasonable to expect that experienced scholars in sociology might find those topics relevant to concepts in an introductory sociology course, the discussion of which could achieve important educational goals. I am confident that faculty can address topics like these with academic rigor in a manner that is faithful to the principle of the responsible exercise of academic freedom.

Based on the allegations in the complaints, however, the university had a legal obligation to engage in a reasonable inquiry. The form of the complaints – whether oral or written – did not materially alter the university's legal obligation. The complaints also implicated the university's core principles of academic freedom and respectful treatment of each member of the academic community. I believe that our faculty provide excellent instruction within the broad discretion afforded by academic freedom and that we remain faithful to academic freedom principles by addressing promptly and reasonably any concerns about conduct that is alleged to violate applicable laws and/or university policies.

The initial steps taken in response to the complaints were reasonable and in accordance with accepted practices for pursuing an investigation. After receiving initial relevant information, university administrators met with Dr. Price on March 6 and discussed the complaints with her. Together they decided to arrange a meeting between Dr. Price and the students, a step that is, in my view, in keeping with our commitment in the university to seek and speak the truth and to encourage respectful treatment of one another. Meetings with experienced faculty members to address questions and concerns provide opportunities for students to derive real benefit from the wisdom and prudential judgment that experienced scholars and teachers bring to bear on their disciplines. As would be standard in any complaint inquiry, Dr. Price was advised to avoid engaging in actions that could be construed as retaliatory.

Placement on Paid Leave

I agree with the committee that, had Dr. Price proceeded to meet with the two initial complainants, as she contemplated in the March 6 conversation, their complaints might have been resolved. Regrettably, Dr. Price chose to show the graphic video *The Price of Pleasure* without preamble, contextualization or debriefing, before such a meeting could occur. The complaints resulting from Dr. Price's conduct in showing the video generated a legal obligation on the part of the university to conduct a reasonable inquiry and to consider what action, if any, to take based on the inquiry. The obligation arose at a time when the prior complaints involving Dr. Price and students in the same introductory sociology class remained unresolved, a factor that administrators had to consider in determining how to best address the complaints. Administrators also had to consider the possibility that Dr. Price's action in showing the film could be construed as retaliatory. Therefore, the accumulation of complaints together with reports of Dr. Price's conduct required administrators to determine initially whether they could conduct an appropriate

inquiry while Dr. Price continued to teach the class. Administrators met with Dr. Price, notified her of the allegations and considered her responses to the complaints. Dr. Price was removed from the classroom temporarily and placed on leave with pay in order to facilitate a prompt and orderly investigation.

I have considered the committee's view that placing a tenured faculty member on non-disciplinary leave necessarily implicates liberty and dignity interests to which due process protections and university procedures applicable to serious sanctions should apply. I appreciate the committee's acknowledgment that courts have determined that paid administrative leave placements generally do not trigger such protections under the United States Constitution. I also understand their belief that administrative leave placements constitute deprivations of substantial interests at least within the university, if not under the Constitution, because faculty members view such placements as serious sanctions in the academic and occupational context in which they work.

Based on my review of the record, the decision to place Dr. Price on paid administrative leave with pay amounted to an appropriate exercise of administrative discretion by those who are responsible for ensuring that the institution operates in accordance with legal requirements. The leave placement was non-disciplinary in nature, predicated not on findings of wrongdoing on the part of Dr. Price, but rather on the judgment that removing her from the same classroom where she had been alleged to have engaged in conduct that generated the complaints was the best way to facilitate an orderly investigation of those complaints. Organizations commonly utilize such placements when conducting compliance-related administrative inquiries and, as such, they do not imply wrongdoing on the part of the individual placed on leave.

The leave placement and investigation were accomplished in a manner consistent with the requirements of due process. Dr. Price lost no pay; she maintained her employment status. She also had notice of the allegations in the complaints and several opportunities to provide responses to the allegations and additional information. Therefore, the leave placement did not amount to a serious sanction, requiring observance of the university's procedures for discharge. Nor did it amount to a lesser sanction or disciplinary action.

While I understand the committee's concerns regarding non-disciplinary leave placements, there are times when that is the right step to take. Such a step does not involve the imposition of a sanction or notice of intent to discharge. That said, I look forward to reviewing and carefully considering with Provost Lori Gonzalez the recommendations that the faculty Due Process Task Force expects to provide.

Professional Development Plan

The basic facts surrounding Dr. Price's decision to show the *Price of Pleasure* video are undisputed. Dr. Price showed the video without previewing it herself or contextualizing it for students. She explained her decision as both a response to the instructions she received to avoid retaliation and as an appropriate video selection for her sociology

course. I agree with the respondents and the committee that Dr. Price may permissibly select any material relevant to her course. The *Price of Pleasure* offers a negative and critical perspective on the pornography industry, a matter that is within the academic discipline of sociology and the course in question. As the committee correctly observes, however, Dr. Price exhibited extremely poor judgment in her manner of showing the film, as confirmed even by her own explanation of her actions.

Despite its recognition that Dr. Price exercised poor judgment, the committee would nonetheless have me set aside the professional development plan required by the Provost in its entirety, because they do not believe that Dr. Price intended to retaliate against or create a hostile learning environment for her students. I also recognize that the committee finds fault in the investigation conducted by Ms. Foulsham, and that they consider her comments on Dr. Price's pedagogical practices to be outside the scope of her appropriate area of inquiry. I believe the committee's findings and recommendations in this regard miss an important point. Dr. Price's failure to contextualize and present the film in an appropriate manner considering her audience falls short of the standards that we expect members of the university community to observe in their responsible exercise of academic freedom. This factor alone requires an appropriate response, both in terms of the university's legal obligations, but just as important, in terms of the university's observance of the principles of academic freedom and respect for all members of our university community.

Although Ms. Foulsham was tasked with the responsibility of conducting an inquiry into complaints regarding Dr. Price, all substantive decisions concerning the appropriate response on behalf of the university belonged to the Provost. Based on my review of the record, the Provost thoroughly considered all of the relevant facts, including information concerning Dr. Price's conduct prior to March 7, and then properly determined that the appropriate response under the circumstances was to focus on performance improvement, rather than sanctions.

The professional development plan presents, in my view, an appropriate and reasonable framework for enhancing Dr. Price's skills and effectiveness, which will ultimately be to her benefit as well as the benefit of her future students. The committee, however, expresses the view that the plan is not tailored to the particular performance concerns identified by university administrators. Further, the committee takes the position that, "assessment of teaching effectiveness and proposed corrective measures should emanate from the department." Accordingly, I will modify the Provost's April 30 instruction as follows: Dr. Price is instructed to submit her draft professional development plan to her department chair on or before February 1, 2013. The department chair will approve the plan or recommend modifications. In the event that Dr. Price and her department chair are unable to agree on the contents of the proposed plan, the department chair will forward the draft plan with recommended modifications to Associate Dean Specht. Dr. Specht will review the materials and make a recommendation to Provost Gonzalez. The Provost will then confer with Dr. Price and make the final decision concerning the

contents of the plan. Dr. Price will implement the plan as approved by the department chair or the Provost.

Additional Recommendations

The committee makes several other recommendations, which generally concern: (a) the process for receiving, reviewing and developing appropriate responses to complaints; (b) training of personnel in academic advising; (c) the organization and training of personnel in the Office of Equity, Diversity and Compliance; and (c) academic freedom. The committee's recommendations on these points merit further study and careful consideration, but have no bearing on the resolution of Dr. Price's grievance. Accordingly, I will consider them further following consultation with faculty and academic administrators.

Other Matters

The freedom to teach, to learn, and otherwise to seek and speak the truth is central to our university. It is important that we exercise that freedom in a manner that it is faithful to our core principles, including the way we conduct ourselves in resolving disputes in an academic community. The faculty grievance process provides an avenue for faculty members to address their concerns. To function properly, it requires a reasonable measure of confidentiality and the support, respect and participation of faculty and administrators in a variety of roles as witnesses. Indeed, the FGHC chair discussed the importance of maintaining confidentiality at the beginning of the hearing in this matter. Therefore, it is disappointing to me that this dispute has been represented in such an inaccurate manner in the media and in online forums, apparently through the selective release of certain materials. It is also unfortunate that the extramural commentary about what was supposed to be a confidential process may discourage faculty from participating in the process in the future.

Time to Respond

I look forward to receiving Dr. Price's written response, if any, to this notice, in accordance with Section 3.9.3.12 of the 2011-2012 *Faculty Handbook*, by December 21, 2012. I will also review and consider any written response that the FGHC may wish to submit by that date.

Attachment A

A. A process for midterm and end of semester teacher-course evaluations. These evaluations should be administered by a third party.

B. The inclusion of best practices for teaching lower division courses, which should include at a minimum:

1. An attendance policy that requires attendance and specifies the method to take attendance during class.

2. Multiple assignments that provide students some form of graded feedback prior to the midterm period.

3. Individual class objectives which allow for framing conversations that deal with sensitive topics.

C. Participation in professional development education activities:

1. Dealing with sensitive topics in the classroom

2. Sensitivity training

D. A fully developed syllabus which includes disclaimers should controversial materials be used. Further, a planning document should be developed if sensitive materials are to be used. The document should provide the class session objectives, information regarding the steps to be taken to contextualize the information and the debriefing process. It is important to note that this requirement is not a ban on use of sensitive materials. Instead, it is a requirement to implement responsible approaches to pedagogy.

E. Random peer reviews from individuals with knowledge of either the course content or best practices for undergraduate teaching. A mutually-agreed upon observation instrument will be used by each reviewer. These reviews should occur across at least two semesters. If the reviews are positive, decisions can be made about phasing out these activities.