Ohio Northern University Faculty

Minutes of the September 12, 2006 Meeting

I. President Baker called the meeting to order at 4:00.

II. Invocation was offered by Dr. Ray Person.

III. Minutes from May 9, 2006 and August 30, 2006 were approved as submitted.

IV. Unfinished Business: None.

V. University Council: Professor Terry Keiser reported that three items which had been submitted to the Council from the Personnel Committee at the end of the 2005-2006 academic year had been approved by President Baker.

VI. Report on Opening of School: President Baker reported the following:
   a. First-day student count was 3587.
   b. There was approximately a 4% decrease in deposits this year, but a 1% increase in total student numbers, indicating an improvement in retention. The President indicated that the increased retention rate was a reflection of improved student quality.
   c. All student housing projects were open in time for student move-in. Minor finishing touches are still be done. If students have problems or concerns with their rooms, they should contact pplant@onu.edu.
   d. Landscaping will be done shortly. One concern is the lack of proper sidewalks. This issue is being addressed, but in the meantime drivers should take care as students may be walking on the roads.
   e. The new pharmacy building is open and is a very well-equipped and attractive facility.
   f. On Saturday, the University will provide a picnic lunch and tickets to the ONU football game for the workers involved in the construction projects. The President estimated that more than 300 people per day were on campus working on these projects this summer.

VII. Questions for the President: President Baker announced that Clayton and Mary Ann Mathile have pledged $5 million, with an additional $5 million in matching funds, for the construction of a science education and research facility between Meyer Hall and the Pharmacy buildings. Planning is underway, and a groundbreaking is anticipated in the Spring or Summer of 2007.

VIII. Other Reports: Mr. George Gulbis made the following announcements:
   a. The university will again be offering Teaching With Technology Grants. Ten grants of up to $5,000 each will be awarded in the 2006-2007 academic year.
   b. The University is offering to sponsor one faculty member to attend the Educause conference this year.

IX. Recognition of Endowed Chairs for 2006-2007: Dr. Baker presented the following endowed chairs with a certificate of recognition of their award:
   a. Pharmacy Alumni Chair: Dr. Jeffrey Allison
   b. Eleanor H. & Robert W. Biggs Chair in the Sciences: Dr. Amy Aulthouse
   c. Engineering Alumni Chair: Dr. Bruce Berdanier
   d. Mary Reichelderfer Chair: Dr. Kristo Boyadzhiev
   e. Eleanor H. & Robert W. Biggs Chair in Chemistry: Dr. Kimberly Broekemeier
   f. Eleanor H. & Robert W. Biggs Chair in the Arts: Prof. Melissa Eddings
   g. George W. Patton Chair: Dr. Jeffrey Heinfeldt
   h. Bower, Bennett & Bennett Endowed Chair Research Award: Dr. Sandra Hrometz
   i. Wilfred E. Binkley Chair: Dr. Michael Loughlin
   j. Kernan Robson Chair: Dr. Andrew Ludanyi
   k. Bower, Bennett & Bennett Endowed Chair Research Award: Dr. S.N. Murthy
   l. Sara A. Ridenour Chair: Dr. Raymond Person
   m. Mary Alice Accountis Endowed Chair: Dr. Kelly Shields
   n. Ella and Ernest Fisher Chair: Dr. Victor Streib
   o. Herbert F. Alter Chair: Dr. Les Thede
   p. The Irene Casteel Chair in Education, Professional and Social Sciences: Mr. Kurt Wilson
   q. LeRoy H. Lytle Chair: Dr. John-David Yoder
X. New Business:
  a. Dr. Howard Fenton presented the recommendations of the Judicial Task Force on Non-Academic Violations.
  b. Dr. John Lomax expressed a number of concerns with the proposal. While he agreed that the current system needs to be streamlined and more clearly defined, he believes that the proposed changes create a harsh, rigid legal regime without adequate protections for the accused. Specific concerns include the following:
     • The members of a particular Disciplinary Board are appointed by the Vice-President for Student Affairs, who is also the prosecuting authority. Dr. Lomax suggested that membership on the Disciplinary Board be based on a rotating schedule.
     • The proposed standard of proof ("more likely than not") is too low.
     • The proposed system is very legalistic, but the student is denied any meaningful legal representation during the hearing. While the student is allowed an advisor, this role is significantly restricted.
     • The proposal places the decision for approving an appeal with the VP/SA, who is responsible for the Disciplinary Board whose decision is being appealed. Dr. Lomax suggested that the validity of the appeal should be determined by the next higher authority (the University Board of Appeals). He also noted that three days was an insufficient amount of time for allowing students to appeal.
  c. Dr. Fenton responded that the proposal is intended to clarify and simplify the process for handling non-academic disciplinary matters. It is expected that an overwhelming majority of these cases will continue to be resolved informally through negotiations with the three Student Affairs administrators. Additional points made by Dr. Fenton include the following:
     • The VP/SA will select members from a pool of trained and qualified individuals. While it is anticipated that appointments to these panels will be on a rotating basis, the VP/SA does have discretion to select a panel that possesses certain qualifications and experience to handle particularly complex or controversial cases.
     • The “more likely than not” standard of proof is common in non-criminal matters.
     • While students are allowed to have an advisor present, they are required to present their own cases. The mechanism created by the proposal is designed to be informal and accessible to university students.
     • The role of the VP/SA in the appeals process is to determine if the reasons given fit within the defined grounds for appeal. The three day time limit mentioned is only the deadline for the student to articulate the reasons why an appeal should be granted. If the appeal goes forward, the student would have the opportunity to fully prepare the case before it is heard by the Board of Appeals.
  d. A more detailed record of the discussion can be found in the attached document.
  e. Pr. Nils Riess noted that co-curricular activities, such as performances, are required for many students in the Fine Arts. The following motion to amend was approved: Instances of the term “extra/co-curricular activities” will be changed to “extra-curricular activities.”
  f. A motion was approved to postpone voting on the proposed legislation until the next regularly scheduled faculty meeting, on October 10.

XI. Announcements:
  a. Professor Daniel Tokaji, Associate Director of Election Law at The Ohio State University, will be presenting “The Sordid Business of Democracy” on Thursday, September 21 at 11:30am. The lecture will be held in Room 129 in the Pettit College of Law.
  b. A Constitution Day Program will be held at the Freed Center on Monday, September 18 at 7:30. The first 500 people to attend will receive door prizes.
  c. “Once Upon A Mattress” is being performed this weekend at the Freed Center.

XII. The meeting adjourned at 5:22.

Submitted by,

Dr. David R. Sawyers, Jr.
Secretary
Ohio Northern University Faculty

University Faculty Meeting
September 12, 2006

Discussion of the recommendations from the
Judicial Task Force on Non-Academic Violations

Comments of Dr. John Lomax:

I do not have questions, Howard, but I do have comments. I agree that the existing procedure is an “irrational system,” that needs to be “streamlined” and “more clearly defined.” Still, as the great German legal historian, Fritz Kern, said in reference to primitive law, it was “vague, confused, and impractical, technically clumsy,” but also “creative, sublime, and suited to human needs.” The old way was put together in a way that responded to the demands of the time. As the legal historian Harold Berman says in reference to pre-modern law, “Law was conceived primarily as a mediating process, a mode of communication, rather than as a process of rule-making and decision-making.”

The old rules are more informal, put together when the university was as not as subject to litigation and we thought of our responsibility to the students in a parental way, the old in loco parentis days. This proposal seems to rest on the premise that our students these days are lying, litigious weasels who need strict laws. However, this proposal creates a harsh, rigid legal regime without adequate legal protections, that stacks the deck in favor of the prosecution, which seems intended to maximize convictions and make them stick.

If we must achieve efficiencies in process, then we must provide protections for those who are accused. We need both the reality and the appearance of fairness in a legal process that can have real, permanent consequences for those who are caught up in the toils of this process. And it is a legal process. It uses legal phrasing, like “properly served,” “in a writing,” and “complaint register.” It publishes decisions and sanctions, like the Courts of Common Pleas in Lima or Kenton. It lists classifications of crimes – and they are crimes; just read the list – just like the law does with felonies and misdemeanors. I would say to anyone who get caught up in this business, “If you ain’t scared, you ain’t right.”

Although I think that a more systematic way of dealing with student crimes makes sense, I have two principal objections to the proposal: the selection of judges and the appeals process. Let me go through the document and explain them to you.

First of all, the court that the proposal creates is the Vice-President for Student Affairs’ (VP/SA) court. Article 1, section 1, states that the Student Disciplinary Coordinator (SDC) “is appointed by and serves at the discretion of the VP/SA.” The VP/SA appoints the members of each University Disciplinary Board, albeit from a list of faculty members and students that the faculty and the student senate select. It would be fairer to select the members of these boards on a rota, or rotating schedule. The next ones in the rota will serve on any given board. The proposal allows the accused student to challenge members, which is a good thing. If that happens, you just go to the next name on the list. It seems unlikely that with such a large pool of judges that “no qualified student or faculty member is available to serve on a particular Disciplinary Board,” but it gives the VP/SA full power to appoint unelected faculty members or students to a board. The power of the VP/SA to control the composition of boards is a problem that rotating membership would address.

I have not heard of the standard of proof offered, “more likely than not,” but it seems too low. Certainly lower than the criminal standard of “beyond a reasonable doubt,” and much more like the civil standard of “a preponderance of the evidence,” which still seems higher than “more likely than not.” If we are going to subject our students to potentially life-altering sanctions we need to establish a higher standard of proof.

The student is all but denied representation. He or she is allowed an “advisor,” but the restrictions on the advisors role are substantial. If we are going to “legalize” this process to the point that the proposal stipulates, then I say that any student caught up in it needs a lawyer with teeth.
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The student has only three days to appeal a Disciplinary Board decision instead of the ten days that he or she now has, even though the board has five days to post their decision. We expect students to absorb the blow of an unfavorable decision and then turn around and formulate an appeal in only three days, which seems entirely unfair.

The proposal limits the grounds for appeal and then empowers the VP/SA, whose court made the decision, to determine whether the grounds that the convicted student offers are sufficient. In effect, the head of the prosecutor’s office decides on the merits of the appeal rather than the appellate tribunal. No legal system works this way. The Disciplinary Board is the VP/SA’s court. The University Board of Appeal’s is the President’s court. The appeals court should decide whether to hear an appeal, not the trial court.

Comments of Dr. Howard Fenton:
1. The new procedures are designed to clarify and simplify the process for handling non-academic disciplinary matters. They are more specific and define the process in a transparent and accessible manner. The emphasis continues to be on the informal resolution of these matters without a formal hearing. We anticipate that the overwhelming majority of complaints will be resolved through negotiations with the three Student Affairs administrators (Director of Residence Life, Director of Greek Activities and Dean of Students).

2. The new position of Student Disciplinary Coordinator was created to handle the administrative tasks relating to receiving complaints, gathering preliminary information, preparing a file on the matter, and managing the dispute’s movement through the system. The functions of the office are purely administrative, to assure that complaints are processed in a timely manner and consistent with the requirements of the new procedures.

3. The violations and sanctions reflected in the new rules are simply a collection and reorganization of the existing violations and penalties or sanctions. After reviewing a variety of different student conduct codes from other schools we elected to use this four-tier model. The objective, again, is to promote transparency and accessibility to the rules, so that students understand the consequences of their actions. It is important to remember that the purpose of these rules, like laws in society at large, is to protect those who do not misbehave while assuring those who do a fair process to determine their responsibility and consequence.

4. The greatest change in the new procedures is the composition of the Student Disciplinary Board. There will be a pool of 15 students and 7 faculty members, selected by the Student Senate and the faculty respectively, trained and qualified to serve on individual case panels. The new rules require that all colleges be represented in both the student and faculty pools. When it is determined that a hearing must be held, the Vice President for Student Affairs will appoint three students and two faculty members from the pool and designate one of the faculty members as chair of the panel. While it is anticipated that appointments to these panels will rotate through the membership of the pools, the procedures give the VPSA discretion to select a panel that possesses certain qualifications and experience to handle particularly complex or controversial cases.

5. The standard of proof before the Student Disciplinary Board is whether, based on the evidence, it is more likely than not that the student committed the act alleged. This is a common standard in non-criminal matters, similar to a requirement of a preponderance of the evidence. The term is used because it is less legalistic and more accessible to lay persons.

6. Consistent with most student disciplinary systems, the students are allowed to have an adviser present, but must present their own cases. This is not designed to be a formal, adversarial system. For example there is no “prosecutor”, but rather the person making the complaint states his or her position, as does the accused student. Both may ask questions of the other and of the witnesses, as may the Board. The objective is to arrive at the truth of the matter in question. While the
language of these rules may be “legalistic” in the sense of detailed procedures and standards, the mechanism created by the rules is designed to be highly accessible to university students and to function in a relatively informal manner.

7. The time frames in the rules are designed to avoid lengthy delays and expedite the resolution of the matters raised. With regard to the specific question raised about the three day deadline for filing an appeal, it should be noted that that the rules set forth very specific grounds for appeal, and that the student (who is, of course, intimately familiar with all of the details of the matter affecting themselves) has three days to articulate which grounds for appeal he or she wishes to assert and the reasons supporting those grounds. If the appeal is allowed to go forward, the student then has the opportunity to fully prepare the case before the hearing with the Board of Appeals.

8. The rules envision that the Vice President for Student Affairs will review all applications for appeal to determine if they fall within one of the prescribed categories for appeal. The purpose of defining specific grounds for appeal is to avoid simply rehearing a matter because the student is disappointed with the outcome. The student must assert one of the specific grounds to have his or her appeal considered by the Board of Appeals. The role of the VPSA in the process is to review the asserted justification for the appeal to determine if it fits within the defined grounds. If it does, the matter is referred to the Board of Appeals, if it does not, the decision of the Student Disciplinary Board becomes final.