

10/23/2015

Dear Provost Schovanec:

Pursuant to OP 34.03 Section 2.g., whereby a faculty member may appeal a Dean's decision regarding procedures in determining a grade appeal to the Provost, on July 30, 2015, you empaneled an *ad hoc* committee to consider one such appeal. The committee was given two charges: to determine whether grade changes were justified for four graduate students in the Rawls College of Business (RCOB) and to look at the process by which they were done. The committee examined the process by which five students in Dr. Jay Conover's Spring 2015 ISQS 5345 classes were reexamined and by which four final grades issued by Dr. Conover were subsequently changed by Dean Lance Nail.

The committee is comprised of seven TTU faculty members and [REDACTED] as an *ex officio* member. Faculty members are mostly full professors; more than half have had administrative experience at the Chair level and above. A majority of the committee members has had experience in similar university review and advising settings such as tenure appeals, grievances, et cetera.

Given the committee's ad-hoc advisory nature, no OP's applied to our processes. We were charged by and instructed to report to the Provost, providing "Findings," "Observations," and "Recommendations." Strict confidentiality was mandated and to the best of our knowledge was maintained by committee members.

The committee has been permitted to pursue its charge independently in order to collect information and to call witnesses. There has been no interference with this charge. We began by reviewing the memos sent by Jay Conover (June 25, 2015) and Lance Nail (July 13, 2015) to the Provost's attention. On the basis of those memos, we first met separately with the two principal parties and then followed up with additional witnesses separately in the following order:

- Dr. Jay Conover; Dean Lance Nail

In addition, we submitted written questions to [REDACTED] and received email responses from each.

Charge: Determine whether the grade changes were justified.

Response:

- There is no evidence that the final grades for the students in question in Dr. Conover's sections of ISQS 5345 during the spring semester of 2015 were assigned with prejudice or on the basis of arbitrary or capricious action.
- The assertion that Dr. Conover's grading or classroom conduct was unsatisfactory is found to be unsubstantiated.
- The assertion by Dean Nail that Dr. Conover was biased against those students whose grades were changed is found to be unsubstantiated.
- There is direct evidence that five students were granted a privilege, in the form of an alternative exam. This alternative exam was created, at the Dean's request, by a faculty m who stated that he

was not informed of the full reason for the exam's creation. This alternative exam was not given to other students enrolled in the course.

Charge: Look at the process by which the grade changes were done.

Response:

- OP 34.03 was not followed. This was the unanimous conclusion of the committee.
- Dean Nail did not form the requisite appeals board to investigate the students' grade complaints.
- There was no formal grade appeal hearing; all evidence and witness reports support this.
- Although Dean Nail indicated that time pressure to graduation and the possibility of job opportunities being lost were the principal reasons for short-circuiting OP 34.03, there appears to have been sufficient time, approximately two months, for an appeals board to have been convened to review the students' final grades issued by Dr. Conover. This was confirmed by [REDACTED] on the basis of his extensive experience in handling formal grade appeals.
- [REDACTED] and [REDACTED] reported that Dean Nail retroactively instructed them to describe their three-person meeting they had with the Dean as a "formal grade appeals committee."
- Conversation with subordinates does not constitute a formal grade appeals process nor does it constitute a formal grade appeals board.
- Given the circumstances we find no justification for bypassing OP 34.03.

Findings:

- There is no evidence to support the argument that the grade changes were justified.
- There is no indication that a formal grade appeal was considered. Dean Nail's email to [REDACTED] (copied to [REDACTED] & [REDACTED] of March 18 indicates that, shortly after Dr. Conover informed students of their final grades, Dean Nail made the determination that the students would receive the opportunity for an alternative form of assessment (i.e., an alternative exam).
- Dean Nail reported that he viewed the complaints related to final grades as constituting formal grade appeals.
- Although the student complaints were considered formal grade appeals by Dean Nail, the students were not asked to complete and therefore did not file the required grade appeal forms (OP 34.03.2.c) to initiate the appeal process.
- Witnesses, including Dean Nail, confirmed that in all other instances in the past three years the Rawls College of Business (RCOB) routinely followed the procedural and substantive guidelines in OP 34.03 when students filed formal grade appeals.
- Consequently -- and when viewed in the totality of the circumstances -- none of the other normal procedural requirements outlined in OP 34.03 were completed and, by extension, this resulted in the following non-inclusive list of committee findings:
 - Because of the lack of a formal grade appeals process, Dr. Conover, [REDACTED] and [REDACTED] were unaware of the progress of the alternative assessment that Dean Nail implemented;
 - Without the benefit of an OP 34.03-directed appeals board (comprised of faculty and graduate students), there was neither an independent RCOB review of Dr. Conover's grading practices, nor was there a threshold finding that final grades were assigned with prejudice or on the basis of arbitrary or capricious action;

- Again, absent the involvement of an RCOB appeals board, there was no evidence of the students having met their burden of proving that “unfair influence [had] affected” their final grades (per OP 34.03.2.c);
 - Grade change forms were submitted to the Graduate School and TTU Registrar for four of the students who were successful in having their final ISQS 5345 grades changed; however, Dr. Conover, the [REDACTED] and the [REDACTED] [REDACTED] were not provided with the requisite notification of the grade change determinations (OP 34.03.2.c);
 - Significantly, although three of the students whose grades were changed graduated in May, the fourth student whose grade was changed did not graduate until August, nearly two months after Dr. Conover had initially raised his concerns about the propriety of the grade changes.
- Dean Nail was asked a question about the period of time that lapsed between early March when Dr. Conover notified his students of their final grades and the end of the spring semester (a period of approximately two months). Dean Nail responded to the question by stating that it “would have been possible and preferred” to rely on the “normal” OP 34.03 grade appeals process, but that this was not done in this instance. He attributed this lack, at least in part, to the “difficulty in finding” Dr. Conover during his office hours, and the Dean’s own travels away from campus while engaging in development efforts.
 - In response to follow-up questions regarding failed efforts to communicate with Dr. Conover, Dean Nail stated that he was unsuccessful on three separate occasions at finding Dr. Conover in his office during posted office hours. However, no alternative attempts or efforts (for example, communication via e-mail or by leaving voicemail messages) were made to communicate with Dr. Conover.
 - Dr. Conover stated that he did not become aware of the students in his classes either initiating grade appeals or having had their final grades in ISQS 5345 changed until after three of them graduated in May. The committee was not presented with any direct or circumstantial evidence to refute Dr. Conover’s contention.
 - The committee found Dean Nail’s explanation that he attempted to make Dr. Conover aware of the ongoing student grade complaints when the two met, along with [REDACTED] on April 29th to be largely unpersuasive, since the meeting was held at Dr. Conover’s – and not the Dean’s – request to discuss Conover’s pending faculty reassignment from RCOB to Arts & Sciences.
 - Dean Nail relies on a provision in OP 34.03.1.g (“The decision on a grade is the responsibility of the dean of the college that administers the course.”) as the basis for his authority in having authorized grades changes for four of Dr. Conover’s ISQS 5345 students since “no college grade appeals committee could have changed my mind that Dr. Conover acted in an arbitrary and capricious manner in assigning grades to the four students whose grades were changed.” The committee finds this logic contrary to the stated policy. Among other things, this logic is premised on the assumption that nothing could be gleaned from an appeals board review, that only the student side of things was heard/valued, and that Dr. Conover could offer nothing in his own “defense” since he was left completely outside the alternative appeals/review process instituted by Dean Nail.

- We find that [REDACTED] was directed to perform an assessment and did so in good faith when charged to assess these five students' subject competencies. [REDACTED] was not informed that the exam he authored and administered to these five students might potentially replace their failing grades in Dr. Conover's exam. [REDACTED] said explicitly that his assessment method was not intended and should not be understood to be "equivalent" to a face-to-face in-class exam.
- Given the construction and administration of the alternative exam, the positive results for four of the five students who availed themselves of the alternative opportunity cannot and should not be viewed as evidence or proof that the final grades previously assigned by Dr. Conover were arbitrary, capricious or assigned with prejudice. Similarly, the one alternative exam taker's unfavorable results cannot and should not be viewed as evidence or proof of his final grade in ISQS 5345 having been assigned by Dr. Conover with arbitrary, capricious or prejudicial action.
- [REDACTED] reported that [REDACTED] counseled Dean Nail to form a grade appeals board. [REDACTED] reported that [REDACTED] declined to submit the Grade Change Form over [REDACTED] own signature. [REDACTED] reported that Dean Nail asked [REDACTED] to have their shared assistant employ Dean Nail's own electronic signature, to which [REDACTED] agreed.
- We find that Graduate School staff appropriately followed the grade change process.
- Testimony suggests intimidation with regard to the desire on the part of Dean Nail to *ex post facto* claim that conversations with colleagues constituted a sufficient grade appeals board and that they should agree with this claim. Additional testimony by witnesses indicated that there may have been other intimidation tactics as well.
- Relying on the statement in OP 34.03.1.g that, "The decision on a grade is the responsibility of the dean of the college that administers the course," Dean Nail has asserted (in his July 13, 2015 memo to Provost Schovanec) that it is his "stated responsibility" under the OP to change the "appealed grades." The committee finds that accepting this selective application of policy language would lead to a convoluted result that is unsupported by reading the OP in its entirety, which requires in section 1.e that "due process will be followed in all grade appeals procedures." The OP neither states nor implies that the dean can forgo/ignore the grades appeal process.

Among the problems associated with Dean Nail's interpretation and selective application of OP 34.03:

- Noting his reference to these as "appealed grades," he did not direct the students to submit "Grade Appeal Forms" as mandated in subsection 2.c;
- Under any reasonable reading of OP 34.03 it is inappropriate to disconnect a dean's authority under OP 34.03.1.g to change grades from the formal appeals process outlined in OP 34.03 as a whole, and from section 2.f in particular: "*Taking into account the recommendation(s) of the appeals board* [Emphasis added], the dean of the college administering the course will make a decision on the grade appeal and send it in writing to the student, the instructor, the chairperson of the grade appeals board and the PSVPAA."
- Not only was a grade appeals board not empaneled in this instance, but Dean Nail also failed to notify other parties named in the OP as part of the process.
- At the very least Dean Nail should have known last March that providing students with an alternative examination in lieu of empaneling an appeals board would generate questions about why OP 34.03 was not being followed. The committee is troubled as to why Dean Nail did not look for advance confirmation last March that his "alternative examination

approach" was acceptable by seeking guidance from the Provost, Graduate School Dean and/or TTU's General Counsel.

Observations:

- The ad hoc committee's charge was not to serve as an after-the-fact "super" appeals board. Nevertheless, the committee found no direct evidence of Dr. Conover having assigned final grades for the five "appealing" students with prejudice, on the basis of arbitrary or capricious action, or in any other unfair fashion.
- Solely for the sake of discussion, viewed in the totality of the circumstances, and assuming that Dean Nail's reliance on student complaints about Dr. Conover's classroom instruction, interpersonal relationships with students, and grading practices might have warranted one or more of the final grades to have been changed, the fact that there was a two-month "window" during which OP 34.03 could have been implemented but wasn't is viewed by this committee as evidence of what appears to be Dean Nail's decision to modify the formal process in order to arrive at a desired result and then craft justification to get there.
- In light of developments during the past summer it is even more troublesome that Dean Nail concluded his July 13th memo to Provost Schovanec with, "I would take the same action again." This statement connotes an unacceptable level of administrative disregard for institutionally-mandated policies and procedures as well as marginalizing the input from professional colleagues.
- Dean Nail's conduct raises questions to the committee about academic ethics, fair practice, and witness intimidation. The evidence supporting these, especially after the changed grades were reported, potentially represents a very serious infringement of academic freedom, workplace fairness, and the integrity of the degree program.
- We believe that the atmosphere of intimidation was real, and that Dean Nail's conversations with [REDACTED] and [REDACTED] were intended to intimidate witnesses and falsify their testimony.
- As a result of these events we believe that Dean Nail's ability to fulfill his supervisory role fairly and impartially is significantly compromised.

Conclusions:

- (1) Per OP 34.03.2.g and based on the contention that "due process has not been followed" when a grade appeal decision is made, an instructor (Dr. Conover in this instance) had the right to appeal Dean Nail's decision "on the basis that due process has not been followed." Given the circumstances reviewed by the committee it was certainly appropriate and reasonable for Dr. Conover to do so in this instance.
- (2) The actions taken by Dean Nail in this instance and the weight of committee findings provide compelling evidence of Dr. Conover having been denied the fundamental precepts of due process that undergird OP 34.03.
- (3) In response to Provost Schovanec's two-pronged charge this committee concludes:
 - a. Given Dean Nail's process the committee found no justification for changing the final grades for four of the students in Dr. Conover's ISQS 5345 classes in Spring 2015.
 - b. The process implemented by Dean Nail was badly flawed, premised on assumptions unsupported by the evidence, not warranted by timing or the circumstances, and in

violation of due process components including basic fairness, impartiality, openness, and the opportunity for both sides to be heard before decisions are made.

(4) OP 34.12 ("Grading Procedures") mandates that "The instructor of record determines all grades for a course." This expectation is reinforced in OP 34.03 (Student Grade Appeal): "The responsibility for determining all grades and for judging the quality of academic performance in a course rests with the instructor assigned to the course." On a much different but nevertheless informative level the ad hoc committee is cognizant of our commitment to SACSCOC standards and the importance of institutional accreditation. SACSCOC Standard 3.7.5 states, "The institution publishes policies on the responsibility and authority of faculty in academic governance matters." Similarly, SACSCOC Standard 4.5 states, "The institution has adequate procedures for addressing written student complaints and is responsible for demonstrating that it follows those procedures when resolving student complaints." These guidelines combined with the basic tenets of due process exist for a reason and, therefore, cannot and should not be taken lightly. Being committed to our institutional Statement of Ethical Principles to "Do The Right Thing" means we must abide by and conform to our formalized policies. Dean Nail's actions in this instance did not.

Recommendations:

On the matter of subsequent allegations of violations of OP's and/or academic ethics:

- Given the scope and impact of Dean Nail's decisions and actions, the Provost should consider these decisions and actions as exceeding the purview and authority of a Dean. Therefore the Provost should consider the serious and lasting consequences of Dean Nail's behavior.
- All faculty and staff who have talked with our ad-hoc committee must be protected from retaliation. This is particularly important for the untenured faculty and staff in the Rawls College of Business.
- The committee proffers no opinion as to whether the four former students whose grades were changed should be subject to further review or investigation. Further, it is the consensus of the committee that they appear to have followed direction in availing themselves of the alternative exam opportunity that led, ultimately, to grade change submissions done at the Dean's direction.

Signed,

[Redacted signature block]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]