

## **APPEAL TO RECONSIDER PROFESSIONAL CONDUCT POLICY**

At its November 6<sup>th</sup> meeting, the Academic Senate passed a Professional Conduct Policy without extensive debate or an opportunity for all who had concerns to express themselves. It was very disappointing that a motion to cut off debate passed after only twenty minutes of discussion on one area of a nine-page document. Those unable to address the issues presented wish to convey to the members of the Academic Senate the belief that the document possesses many flaws that still need attention before the Senate passes a new policy regarding professional conduct. There are serious questions that need to be addressed, and we propose to seek a reconsideration of the policy on the Senate floor. We ask your support, and encourage you to read the policy that was included in last month's Senate agenda on the Website (see [http://cc.yosu.edu/acad-senate/prof\\_conduct\\_policy\\_11-02.pdf](http://cc.yosu.edu/acad-senate/prof_conduct_policy_11-02.pdf)).

Given that this new policy could affect the careers of faculty, staff, and administrators, and give rise to many lawsuits, it is important that the Academic Senate at least consider removal of flaws discussed below:

**II. (C)** Section II provides definitions of a variety of offenses. Subsection (C) defines plagiarism as “representing the works of another person, including their words, ideas, or methods, as one’s own in a **public** forum or medium.” Since this is the only definition of plagiarism offered in that section, it precludes the finding of an offense of plagiarism in a “closed or private forum or communications,” as provided for in the second paragraph.

This section will designate for the first time that plagiarism can apply to oral communication at this university. For the most part, the accusation of the offense of plagiarism has been directed at written offenses, not oral, in most academic institutions, and until recently here at YSU. Speeches, either to the public or a community group, or lectures within the classroom, have traditionally not required footnoting or citation of another’s ideas that are paraphrased by the speaker. Two reasons for this practice are that the audience makes an assumption that the speaker has gathered a variety of ideas from extensive reading and also that it prefers not to listen to a citation of sources. The practice, however, of using another person’s words without attribution in a public speech is not condoned by most academics. Faculty need to be aware that, with passage of the present document, they will have to cite sources for the ideas they paraphrase in class unless the ideas are considered general knowledge.

In the second paragraph the new policy adds official meetings of administrative committees to the list of closed or private forums or communications. It seems unusual to expect that an administrative committee meeting would require documentation of where one’s ideas came from. Moreover, why are administrative committees singled out? If plagiarism can occur there, then why are not all official meetings of any committees, including those of the Academic Senate, covered?

In subsection (i) the wording that “such use is of a self-interested nature or is for purposes other than educational missions” is very vague and does not target the professional and personal gains sought by the offender.

Finally, there is no definition of what is meant by “communications” in the second paragraph. Without any apparent restrictions other than “limited to their members,” this provision could apply to e-mail, minutes of meetings, memos sent to committee members, conversations held during or after a meeting, etc. It does not appear sensible to enforce this policy in all of these areas.

**II. E.2 and E.3** “. . . the Case Investigation Subcommittee, consisting of three (3) to five (5) tenured faculty, administrators, or professional staff . . .” “The Case Investigation Subcommittee shall investigate . . .taking testimony . . . examination of all pertinent evidence . . .” “A quorum of members of the Case Investigation Subcommittee shall be present whenever testimony is given . . .”

These sections set the number of members at 3, 4 or 5 for the Case Investigation Subcommittee (CIS) and also call for a quorum for the taking of testimony. Because the taking of testimony occurs before a quorum of the subcommittee, anomalies may arise in the following circumstances:

1. CIS of three -- two people hear testimony but the two cannot agree, so the person not present at the testimony decides the case.
2. CIS of five -- three as a quorum to hear testimony and make a recommendation, and two of those three needed to support the allegation and report to the Ethics Committee. Hence, this is a vote of two of five regarding the allegation and, as such, constitutes a minority vote.
3. CIS of Four – three as a quorum to hear testimony and make a recommendation, and two of those three needed to support the allegation and report to the Ethics Committee. This is a vote of two of four regarding the allegation, and, as such, is not a simple majority.

The Case Investigation Subcommittee should be held to rigorous standards in making its decision to support an allegation of misconduct, and their subsequent recommendation to the full Ethics Committee. We will move to require a 75% majority of the full CIS membership to support allegation(s) of misconduct. Hence: if a committee of 3 members, all three are needed; if a committee of 4, three votes needed; if a committee of 5, four votes needed.

**IV (E) 3** “If the investigation includes taking testimony from the complainant and/or others as deemed appropriate, the person(s) against whom the allegation has been made shall not be present, but may designate a representative who shall be present and who shall have rights of discovery and cross-examination.”

This language does not permit the accused to hear or to challenge the testimony of the complainant, but does permit the designation of a representative with such powers.

This provision violates the principle of American justice that allows the accused to challenge the accuser. Those who make such charges have a responsibility to stand behind their allegations and to answer all questions, including those from the accused. We will move to affirm the right of the accused to be present for all testimony.

**IV (G) 1** obligates the Chair of the Ethics Committee to notify relevant regulatory or funding agencies during the investigation if certain conditions exist. It does not indicate who is to determine that the conditions exist nor who is to be notified, but implies that this responsibility falls to the Chair. However, it is very unlikely that the Chair of the committee shall have the expertise, or the training, to recognize that:

- a. an immediate health hazard exists
- b. there is immediate need to protect funds or equipment
- c. there is an immediate need to protect the interests of the accuser, the accused, or the investigators
- d. publicity is imminent
- e. criminal violation is possible or probable.

If any of these conditions is suspected or anticipated to exist, it should be the responsibility of the Chair to notify the appropriate university official in a timely fashion. It is the University's responsibility to protect itself and its members.

**IV (G) 2 (a)** "When, on the basis of an inquiry, it is determined that an investigation is warranted, the Chairperson shall notify the relevant Federal or other legal funding agency in writing ... that an investigation is being commenced."

This provision requires the Chair of the Ethics Committee to notify before an official investigation has been conducted. This action occurs after an allegation has been made and it has been determined that an investigation is in order. It occurs, however, before any finding of wrongdoing by the Investigation Subcommittee or by the Ethics Committee. To notify agencies or other parties before any determination of misconduct has occurred could be immensely damaging to one's professional career, and is inappropriate and misdirected.

Note further, that the existing language requiring notification that an investigation is under way does not require notifying the agencies that the allegation has been dismissed. Under Article F.5 (p.8) (Unsubstantiated Allegation) "If . . . the Ethics Committee agree that the allegation has not been substantiated, then any party notified about the possibility of misconduct or the need to conduct an investigation may be informed of that finding in writing." Thus, notification is not a requirement.

**IV. Procedures** -- throughout this section of the document there is language to the effect that "a simple majority consisting of at least seven (7) of its members" is empowered to take various actions. Members of the Ad Hoc Ethics Committee seem to agree that this wording implies that seven of the twelve members of the Ethics Committee must vote on various actions. Others have construed this language to allow a majority (4) of a quorum

(7 members) to initiate action. There should be some language that all could agree on that more clearly stipulates that voting shall require a majority of the full committee and not leave room for the interpretation that the voting requires only a majority of those present once a quorum (7 of 12) has been met.

## AMENDMENTS

- 1) II, Article C (p.2) We will move to change the language to read:  
**“Plagiarism’ means representing the work of another person, including their words, ideas, or methods, as one’s own in published written works, or their words as one’s own in public or private forums or mediums.”**  
  
We will also move to change the language to read:  
**“Within closed or private forums, including official meetings of classes, determination of plagiarism shall be based upon considerations of:...”**
- 2) IV, Article E.3 (p.6) We will move to change the language to read:  
**“has been made may be present, or may designate a representative to be present and who . . .”**
- 3) IV, Article G.1 (p. 8) (Other Notifications)  
We will move to amend Article G.1 to state:

**If the Ethics Committee believes at any time that any of the following conditions exist:**

- a.
- b.
- c.
- d.
- e.

**,then, the Chairperson shall notify the University’s attorney that such conditions may exist.”**

Article G.2.a (p. 9) (Other Notifications)

We will move that notification to agencies and others shall occur only after a finding of misconduct by the Ethics Committee. We will move to rewrite G.2.a to read:

**“When a finding of misconduct has been made by the Ethics Committee, the Chairperson shall notify the relevant Federal or other legal funding agency in writing.”**

- 4) IV, Article D.1 (p.5) “The Ethics Committee shall determine by vote of a simple majority consisting of at least seven (7) of its members as to . . .”  
Article F.1 (p. 6) “The Ethics Committee shall vote to determine by simple majority consisting of at least seven (7) of its members . . .”  
Article F.4a (p.7) “If a simple majority consisting of at least seven (7) of the members of the Ethics Committee . . .”  
Article F.4a (p.7) “The committee shall, also by vote of a simple majority consisting of at least seven (7) members  
Article F.4b (p.7) “If no simple majority consisting of at least seven (7) of Committee members . . . shall report that result.”  
Article F.5a (p.8) “If a simple majority consisting of at least seven (7) members of the Ethics Committee agree that the allegation has not been substantiated . . .”

We will move to amend the language of the Articles noted above to read:

**Article D.1 (p. 5)** “**The Ethics Committee shall require at least seven (7) votes in the affirmative to determine . . . investigation subcommittee is appropriate.**”

**Article F.1 (p.6)** “**The Ethics Committee shall require at least seven (7) votes in the affirmative to determine . . . allegation of misconduct is substantiated...**”

**Article F.4a (p.7)** “**If at least seven (7) members of the Ethics Committee agree that the allegation has been substantiated . . .**”

**Article F.4a (p.7)** “**The Committee shall, also by the affirmative vote of at least seven (7) of its members, . . . make recommendation(s) concerning relevant penalties or sanctions . . .**”

**Article F.4b (p.7)** “**If at least seven (7) members of the Committee do not agree upon any penalty or sanction, then the Chairperson shall report that result.**”

**Article F.5a (p.8)** “**If at least six (6) members of the Ethics Committee agree that the allegation has not been substantiated . . .**”

- 5) In the preamble (p.1) “The faculty and administration of the University affirm and honor the presentation, growth, and flourishing of these values throughout all their activities, including budgeting and funding, employment and selection, promotion and tenure, teaching and learning, scientific and administrative research, and other professional endeavors.

We will move to replace “**throughout all their activities,**” with **throughout all their professional activities**” and to delete “**scientific and administrative.**”

Comments:

1. It should be clear that the conduct policy refers to the professional activities related to employment by YSU, and not to other activities (for example, personal).
2. Research is research, whether it is related to the arts, to business, to education, etc., or to science and administration. The values affirmed and honored in this document apply to all.

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