

20 November 2021

Dear Lori,

I care greatly about making UofL more fair, equitable, accepting and supportive of its entire community, as demonstrated by my considerable involvement in and contributions to the Athena Advance project, Stride Handbook, and Speed School Faculty Council (including a leading role in revising the Speed Bylaws and providing school-wide training on shared governance as described in the Redbook.) To ensure that the highest levels of faculty satisfaction with the UofL climate, it is crucial that faculty and their creative problem-solving skills are fully engaged in governance to the full extent permitted by the Redbook. Because of your strong support of these type of activities I am contacting you about the new Faculty Accountability Policy.

This policy is unclear and easily interpreted in ways that could bypass the Redbook. The most serious problem is that the policy either lacks or is completely mute on faculty oversight in disciplinary matters. It reads as if a Chair can single-handedly determine if a faculty member has violated a policy or the code of conduct. This policy would be dramatically improved if:

**Recommendation 1:** *A determination of a transgression, its severity and means of remediation were evaluated in a review similar to any other faculty personnel review (as described in Ch. 4 Redbook).*

Given the crucial importance of having the clearest, cleanest and most enforceable disciplinary policy, it is essential that:

**Recommendation 2:** *The policy is replaced by rewriting it (along the lines of the other types of reviews) and approving it for inclusion in Chapter 4 of the Redbook on Faculty Personnel Reviews. It could easily be added as new section 4.2.5 Disciplinary Investigations and Reviews.*

Also, calling this policy a “faculty accountability” policy is misleading and sends a bad message to the general public that the faculty do not understand their responsibilities to conduct themselves at the highest professional standards of UofL and their professions. (As reported in the UofL Today and local news that UofL had no faculty accountability policy.) These reports and this policy title send the message that faculty require a policy to understand these responsibilities. In fact, adherence to all policies, codes of conduct, ethical standards and laws is clearly referred to in the Redbook and amplified in the Code of Conduct. Furthermore, faculty as professionals are committed not only to meeting the standards of their professions, but ensuring that all members of their profession comply with those standards. This is one of the reasons the faculty are given jurisdictional and legislative authority over their own personnel matters. Therefore, before this policy is replaced by amendment of the Redbook (Recommendation 2) it is important that:

**Recommendation 3:** *The Faculty Accountability Policy is renamed Guidance to Faculty Supervisors on Progressive Disciplinary Procedures.*

Finally, please consider that the actual process for enacting this policy bypassed the legislative/jurisdictional authority of the faculty over personnel policies, criteria, and procedures (Redbook 3.3.2). Simply presenting the policy to the Faculty Senate, collecting comments and revising the wording does not conform to legislative/jurisdictional authority assigned to the faculty. My reason for mentioning this is not to complain about the method of enactment, but rather to point out the poor understanding of the Redbook (the overriding UofL policy) by the Executive Committee of the Faculty Senate, University Administration and the Board of Trustees. Given the numerous workshops and trainings that faculty and administrators are required to take, and that the Redbook is the overriding UofL policy, it is crucial that:

***Recommendation 4:*** *UofL provides regular and repeated workshops and/or other training on the Redbook rules and principles to all faculty, administrators and BOT members. The training could also be made available to students and staff, and possibly customized for their relevant parts of the Redbook.*

This recommendation also addresses the recent interest and discussions around UofL on shared governance and shared governance training. The Redbook precisely describes a shared governance model that is the accepted and required practice at UofL. So training in the Redbook and its principles also will provide that training on shared governance.

I hope that you and the Administration will accept and can pursue these recommendations in a timely manner. It would ensure that UofL has understandable and enforceable policies, and that the faculty are appropriately engaged in working to maintain the highest levels of UofL and professional standards.

I write this note because I do take seriously my role as a faculty member to provide “leadership in shared governance” (a UofL guiding principle). I hope that you also believe that administrative leadership in a university setting is leadership in promoting and sustaining shared governance. I would be delighted to assist you in working to further engage faculty and administration alike in understanding and following the governance policies, as prescribed by the Redbook. I believe that fully engaged governance will not only strengthen UofL programs but it will contribute greatly towards improving the UofL climate when faculty recognize that their best ideas are moving the University forward.

Best regards,

A handwritten signature in blue ink that reads "Bob".

p.s. Rather than making this note any longer than it already is, I have attached reference notes and an earlier memo on this policy.

20 November 2021

**Problems with the Accountability Policy, its enactment, the UofL reporting of the BOT meeting on FAP and proposed policy corrections**

**Summary:** The new Faculty Accountability Policy (approved by the BOT 10/29/21) was opposed in its current form by a large majority of comments from the Faculty Senate members. The policy did not go through any sort of Faculty approval process (per the Redbook guarantee of legislative powers on personnel matters). The policy also does not describe faculty involvement in determining faculty misconduct or recommending the scope of disciplinary measures (also bypassing the faculty legislative powers in personnel matters.) As a result the new policy is very unclear and open to interpretation in ways that conflict with the Redbook and Code of Conduct. A list of many of these issues are presented as follows:

1. The policy was established by bypassing the jurisdiction and legislative authority of the faculty over all faculty personnel policies, procedures and criteria. (per RB 3.3.2).
  - a. Discussions with the Faculty Senate cannot substitute for Faculty legislative approval.
  - b. The Executive Committee of Faculty Senate claimed that because Faculty Senate does not have this specified jurisdictional authority (though the faculty does, 1a.), that it was only their job to forward any comments that might help the Administration write a better policy. That is, they chose to overlook faculty jurisdiction and claim that an open comment period was sufficient.
  - c. UofL Today reporting on the BOT meeting said: "... development of the policy was a two-year process which was reviewed by the senate on two occasions. In addition to the Faculty Senate, several other university units were asked to provide feedback." While this point was made by the BOT members as a reason to approve, it completely overlooks faculty jurisdiction.
  - d. The Code of Conduct says that "Leadership in Shared Governance" is one of our guiding principles. Enacting the policy without consideration of the faculty jurisdiction is in opposition to our guiding principles.
  - e. "The President may approve amendments to unit bylaws approved by the faculty of the unit and the Faculty Senate which do not change governance or faculty rights." (Redbook 3.1.3.) This policy, since it bypasses faculty jurisdiction, does change governance and faculty rights.
  
2. UofL Today reporting on the BOT meeting included this: "... Gonzalez said that the policy: was established within the appropriate scope of her authority; is constitutional and contains all hallmarks of due process; embodies principles of shared governance; and encourages collaborative discussion and problem-solving among faculty members."
  - a. For the reasons in 1, the policy is not constitutional since it bypassed faculty jurisdiction per the Redbook.
  - b. It lacks due process because it bypasses faculty jurisdiction in personnel matters. Specifically, nowhere in the policy is the faculty involved in potential determination if a faculty member did violate a policy, procedure or code of conduct. (The option for a grievance is too far down the line to get to the correct result.)
  - c. It does not "embody principles of shared governance" because nowhere are faculty involved in the process, as in 2b.
  - d. There is no faculty collaboration or involvement described in the policy, only faculty being judged and disciplined by multiple levels of administration.

3. The reasons for the need for this policy were never made clear in Faculty Senate discussions
  - a. The Redbook does indicate that disciplinary measures can be taken in the event of any violation of UofL policies including the Redbook (the overriding policy) and the Code of Conduct.
  - b. Never in the Faculty Senate meetings were any specific examples given of why the Administration was unable to appropriately discipline a faculty member. Instead only general statements were given that in rare instances UofL did not know how to discipline faculty members.
  - c. In the Speed School there was some informal mentions by Administration that they did not know how to discipline faculty members who engaged in a fight during a departmental faculty meeting. I view this more as a lack of leadership and fear of lawsuits rather than a lack of available policies. Involvement of faculty in the review of possible violations and disciplinary recommendations, as in any other faculty personnel review described in the Redbook, would have led to a satisfactory course of action.
  
4. The Policy is ambiguous and open to interpretation
  - a. If you read any of the other policies in the UofL Policy Library, none of them are even close to as rambling and unfocused as this one. They are succinct, clear and to the point.
  - b. The title Faculty Accountability is misleading – as described above in the letter
  - c. The section “examples of grounds for discipline” is confusing in being called examples. Besides, these are all Redbook and/or Code of Conduct violations, so why not just refer to the Code. There is also no distinction between what warrants progressive vs. what warrants immediate discipline. It seems that this section is duplicative of the code of conduct and therefore could conflict with the Code.
  - d. Nowhere in the policy is there a description of how grounds for a discipline are determined, other than the Chair leads an investigation. As mentioned in the letter, the Redbook gives the faculty jurisdiction on personnel matters (e.g. all other types of faculty reviews), but nowhere is there a mention of this.
  - e. The procedures for discipline appear to be completely advisory, with any range of disciplines allowed for any situation. It seems that this is the key part of the document, but it needs to be clarified, or turned into a handbook of training examples. For this reason it also makes sense to rename this policy *Guidance to Faculty Supervisors on Progressive Disciplinary Procedures*

Letter to the Board of Trustee  
27 October 2021

***Why the proposed Faculty Accountability Policy needs to be rejected***

***Abstract:*** *The proposed Faculty Accountability Policy adds little if anything new to what exists in the Redbook and Code of Conduct. It is confusing and completely obscures the involvement of the unit faculty in determining if a faculty member needs to be disciplined. An Administrator who understands and follows the UofL Redbook governing model and Code of Conduct will have no problem in making disciplinary decisions. While the termination procedures imply how progressive discipline works, the termination policy could be modified slightly to explicitly provide information on progressive discipline. A general policy on methods of progressive discipline could be developed to provide some guidance to Administrators, but that policy needs to be written within the context of the Redbook prescribed handling of disciplinary issues. The pursuit of this new policy reflects the poor understanding by the University Community of the Redbook, which is THE overriding policy of the University. If faculty and administrators worked together within the Redbook's governing framework, any disciplinary matter could be resolved. Therefore, an additional recommendation is that UofL provide regular (and repeated) training to all faculty and administrators on the Redbook and associated governing documents.*

Dear Board of Trustees:

The proposed Faculty Accountability Policy (FAP) represents a serious blow to UofL governance as described in the Redbook. For this reason alone it needs to be rejected. Below is my specific analysis of the problems posed by this policy, and ways the objectives of the Administrators who developed this policy can be met within the framework of the Redbook and UofL's Code of Conduct.

1. Redbook 3.3.2 gives faculty ***general legislative powers over all matters pertaining to its own personnel policies, criteria, and procedures.*** This means that any personnel policies first require faculty development and approval of policies, such as FAP. "Approval" means normal debate and voting is required at some point before approval is sought from the higher administrative levels through the BOT. The proposed policy has been presented for comment but there has been no debate.
2. The policy itself also bypasses ***general legislative powers over all matters pertaining to its own personnel policies, criteria, and procedures*** by describing only the situations of administrative decisions on determining that a faculty member is not accountable and the administration's pursuit of disciplinary measures. This bypasses the powers of the faculty to review and make determinations of non-accountability. Instead, any review of non-compliance should include a faculty review either using a standing committee like the Faculty Affairs Committee in each School that considers promotions, tenure and periodic career reviews, or an Ad Hoc committee for making a determination of non-compliance and recommended actions for administration to consider.

3. Continuation of 2: The proposed policy only offers due process by way of filing a grievance. This totally bypasses the faculty processes implied by the “general legislative powers statement.” Grievances are meant as a last resort when the existing processes fail. The faculty member is denied a hearing from the faculty in his/her own unit who are most knowledgeable about the situation at hand and the Unit expectations. It is a worthwhile thought experiment to consider if the Administration in wishing to discipline a faculty member were first required to file a grievance against the faculty member. This would ensure a hearing by peers, but would unnecessarily burden the Grievance Committee.
4. The FAP is not necessary, because the Redbook and Code of Conduct (CoC) provide all the necessary guidance related to Faculty Accountability and Discipline.
  - a. The FAP most likely conflicts with the Redbook and CoC.
  - b. Administrators will use the FAP in order to ignore or bypass the Redbook and CoC – which will weaken the UofL Governance model prescribed by the Redbook.
  - c. It is important for Administrators to rely on the Redbook and CoC in order that they fully participate in UofL Governance as prescribed by the Redbook.
  - d. It appears the Administrators want more concrete guidance and authority in applying discipline, rather than following the Redbook and CoC. In fact, the Redbook already gives them all the authority they need, but many want to be relieved of making the hard decisions and of involving the faculty in the decision.
5. The FAP is very complex and confusing because it tries to cover every aspect of faculty discipline, including both defining non-compliance and the range of disciplinary measures. Again, these are covered in the Redbook and CoC so that this can lead to conflicts between the two policies. But in practice it will lead to a bypassing of the Redbook.
6. The reason given for the need for this policy is that there are occasional conduct issues that Administrators do not know how to deal with. I believe that this sentiment reflects a lack of responsibility and a lack of participation in the governance of the University as described in the Redbook. The FAP gives administrators the authority of make decisions without consulting the Redbook and the Faculty, who are required to share in all unit ***personnel policies, criteria, and procedures***. The FAP provides administrators a policy that allows them to make decisions outside of the Redbook prescribed governing methods – leading to an overall weakening of governance as envisioned in the Redbook.
7. **Proposed Solution 1:** The Redbook provides very clear description of termination of faculty members for cause. While it may not describe progressive discipline, the termination procedures do imply how progressive discipline would work. Therefore, it would seem that slight wording changes to termination procedures in Redbook Ch.4 could meet these objectives.

8. **Proposed Solution 2:** The Redbook and/or unit personnel documents could explicitly include provisions for faculty committees (*ad hoc* or standing) on faculty misconduct. These committee reports (with a possible approval vote by the unit faculty) would provide the unit administrator the authority to implement specific disciplinary measures.
9. **Proposed Solution 3:** A general policy on methods of progressive discipline could be helpful to administrators. But the policy needs to be very clearly connected to the disciplinary and code of conduct sections of the Redbook. A method similar to the method of Staff progressive discipline (and the associated forms) might well be sufficient.
10. **Additional Recommendation:** The pursuit of this new policy demonstrates a limited awareness and understanding of the Redbook and the UofL governance model described therein. Probably the best way to resolve any issues or concerns about being able to discipline faculty is for faculty and administrators alike to spend time becoming much more familiar with the Redbook and other governing documents than at present. It would serve the governance model and the University quite well if formal training on these documents, their meanings and implications were provided to all Faculty and Administrators on a regular basis. This would greatly improve compliance with all UofL policies. A workshop could be presented live or it could be a type of one-on-one interactive and automated online training. The interactive training modules could be similar to the ones from the Dept of Safety or the recent only COVID training. With the Redbook being THE policy of the University, the need for required training is as worthy as any of UofL's other required training. (I am willing to help develop such training – and have already developed some training within Speed School to help it develop new school and departmental bylaws.)
11. **Overall Assessment:** The proposed Faculty Accountability Policy adds little if anything new to what exists in the Redbook and Code of Conduct. It is confusing and completely obscures the involvement of the unit faculty in determining if a faculty member needs to be disciplined. An Administrator who understands and follows the UofL Redbook governing model and Code of Conduct will have no problem in making disciplinary decisions. While the termination procedures imply how progressive discipline works, the termination policy could be modified slightly to explicitly provide information on progressive discipline. A general policy on methods of progressive discipline could be developed to provide some guidance to Administrators, but that policy needs to be written within the context of the Redbook prescribed handling of disciplinary issues.