

Minutes of the Meeting of the Academic Council
Thursday, February 21, 2019

Don Taylor (Chair, Academic Council / Sanford School of Public Policy):

Thanks, everyone, for coming today. The perpetual rain seems to have broken, so that's good. I hope your semesters are going well. Spring break is in sight. That means if there's anything super important to tell your undergrads, you better tell them in the next two weeks. I always find, it seems they never fully come back after spring break. [laughter] Maybe that's just me.

A few announcements up front. First, I'm very pleased to announce that Professor Kerry Haynie (Political Science / African and African American Studies) is our next Chair. [applause] Kerry has a lot of experience in shared governance, is a collaborator, and I'm thrilled. I also want to thank Mark Anthony Neal, my colleague on ECAC, for being willing to run. [applause] Both personally, and all of ECAC, we're thrilled that both of them will be able to be together in serving all of us and all the faculty next year, so thank you very much.

The annual election for the Academic Council for 2019-20 is underway and voting will end soon. We will then announce the members for next year, are, and from that roster the current ECAC will set an election to fill three open spots for next year's Executive Committee of the Academic Council. The nominees

will come from the divisions/schools not represented by the continuing members of ECAC. Under the bylaws, any member of the Academic Council, with four other representatives from the Academic Council, can nominate an Academic Council member for ECAC -- so five Academic Council members can propose to ECAC that any member of AC be put forward to stand for election for ECAC. So, you have to be a member of next year's Academic Council to be eligible for ECAC, but the Executive Committee sets the slate. There will be six members who will run and the top three vote-getters will be on next year's Executive Committee. If you haven't voted in the AC election, go ahead and vote, and then look later this semester for the election for the Executive Committee.

So, a couple updates before we get to the agenda. We've talked a lot about faculty climate and professionalism. We've been talking about that for over a year. ECAC has been working very closely with Abbas Benmamoun, the Vice Provost for Faculty Advancement, and Claudia Gunsch, former ECAC member and now Associate Vice Provost for Faculty Advancement. Claudia is in the process of going out to Chairs, to units, talking to Deans, and trying to help us decide on the next steps. ECAC and the Academic Council, we want to make sure we work with and support her and support the work of that office.

We're thinking there are going to be two things that ECAC is planning to bring to the Council this semester. One is a revision of Appendix N, which is the Faculty Hearing Committee. The Faculty Hearing Committee rules have been around for quite some time. They really need to be updated and simplified. We're working with Duke Counsel's office to do that. Our goal is to bring a revised section for the Faculty Hearing Committee, which is not really going to be a revision, it's going to be, here's the old one and here's the new one. Because the revisions are going to be fairly profound in terms of simplifying things. We're planning to bring that to the April meeting to comply with the two-meeting rule with a vote on that in May. The other thing that we are probably going to bring, we're going to keep consulting with Abbas and the Provost, and Claudia, is, the National Academy of Sciences adopted an overarching code of conduct this past December. We are, I think, planning to bring a code of conduct for Duke faculty. We have different types of statements of that sort that govern all employees at Duke. We are, I think, planning to hold ourselves to a higher standard with such a code. Counsel's office is also looking at what the National Academy of Sciences has done. We're looking at what National Academy of Medicine is doing, the National Academies of Engineering are talking about it, and there are several professional organizations doing this. We're not planning on bringing any one as an exact replica, we're going to bring an adaptation for Duke's purposes. The plan would be to bring the Appendix N revision and a proposed code of conduct to the April meeting. A couple things that we're probably not going to bring back here: we've had two sessions, one in the fall and one in January, where we talked

about the financing of PhD education and we received the RIDE report [Reimagining Doctoral Education Committee]. Those are being worked through in the Provost's office and I know the Provost's office and the Deans, and I think some of the Chairs, are going to talk through some of that, along with Paula McClain, Vice Provost for Graduate Education and the Dean of the Graduate School. We don't think that item will come back to AC this spring. Perhaps it's something that may come back next year but it's probably not going to come back this spring. The final update is that we received the report from the Ad Hoc Committee on Faculty Rank Distribution last fall. We were trying to decide if we have a basic set of shared facts, what that means and what we might do about it. Jennifer Francis [Executive Vice Provost] is in the process of trying to look through the data systems for non-regular rank faculty. We want to make sure we have the data completely correct and as defensible as possible before we talk about this again. That process is underway and has been underway for some time. It's probably going to take the rest of the spring and through the summer. Something may come back next fall on that. Those are our big updates in terms of what's planned for the rest of the semester. Well, maybe not "big," [laughter] but those are our updates.

***APPROVAL OF JANUARY 17, 2019
ACADEMIC COUNCIL MEETING MINUTES***

Taylor: Approval of the January 17 minutes. They were posted with the agenda. Are there any corrections or edits?

[Minutes approved by voice vote without dissent]

MISCONDUCT IN RESEARCH POLICY REVISION

Taylor: We're going to talk about the Misconduct in Research Policy revision now, but when we get to item 4, we're going to go into executive session and we're not going to come out of executive session. So any students or media will need to leave, so just to tell you, don't stay around, we're going into executive session and we'll not come out of executive session.

Speaker: [Indistinguishable joke][laughter]

Taylor: Just trying to set expectations, guys, come on. So next we have a presentation regarding revisions to Duke's Misconduct in Research Policy. Dr. Geeta Swamy, Vice Dean and Associate Vice Provost for Scientific Integrity is here today and the documents were posted. I know Leigh Goller, who worked on this, who is the Director of Audit, Risk and Compliance for Duke is also available to answer questions.

Geeta Swamy (Vice Dean and Associate Vice Provost for Scientific Integrity): Thanks, everyone. I'm just going to give a few brief slides to really review the policy revisions to our Research Misconduct Policy, which is in Appendix P in the Faculty Handbook. I know that everyone knows exactly what's in every appendix in the Faculty Handbook. [laughter] This was presented at ECAC a few weeks ago and was discussed. Just to make sure everyone is very clear on what we're talking about. Research misconduct has a regulatory definition. It is the falsification, fabrication, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. That means

even reporting results in a grant proposal is considered reporting. So it doesn't mean just putting into a publication for review. The definition does not include honest error or honest differences in interpretation or judgements of data. There are very specific definitions of each of those. You would think everyone knows what those mean, what it means to plagiarize, but it's still very important that we have very clear details. I'll tell you that, classically, we've thought of this in the context of publications, but now this has become more of an issue, given all of our use of social media and blog posts and so forth, it's becoming more of a widespread issue to be aware of. So we have very specific definitions, and this is all in the regulations that I've cited here from the Code of Federal Regulations.

So what does it mean when we have a research misconduct finding? What that means is that there was a significant departure from accepted practices of relevant research as we would expect them in the research community. The misconduct was committed intentionally or knowingly or recklessly and the allegation was proven by a preponderance of evidence. So why are we proposing to change our policy now? Our current policy dates back to January 2007. While our policy isn't actually in opposition to any of the federal regulations, there are several areas that we all think would benefit from revision and further clarification. For example, there are several practices that are in the existing policy that unnecessarily go beyond regulatory requirements. For example, in the federal regulations, the statute of limitations is for six years of federal funding. Our policy has been silent on that, which means when there is an allegation, there is no timeframe. While

that may be in the interest of someone bringing forth an allegation, what that does is actually clog up the system and produce a lot of inefficiency in dealing with all the cases that come forward. We also need to make sure that we are aligning the process with how we actually implement it. There were lots of things in the policy which aren't really how we're practicing it today. Again, not in the standpoint of regulations, but just how we implement it going forward. Also, the Office of Research Integrity, under HHS [Health and Human Services], has a specified or recommended template, so that if you go from one university to the next, or one institution to the next, you can look at their same template and get an idea and be familiar. So you don't have to say, oh, I was at such and such university, and they did it differently, or I didn't know that. So having some sort of standardized template can help to bring forth more clarification.

So what do we propose changing? As I mentioned, the policy is in Appendix P in the Faculty Handbook, I think it's pages 32-41, and all of those things are posted and available to you. To give you just a brief summary, the definition that we propose has now been limited to the regulatory definition. There is actually another broad category that is called Questionable Research Practices and that actually raises a lot of concerns on interpretation and how we're really moving those things forward when we're making decisions amongst the committees. The scope is now broadened to say it includes researchers and not just a statement that it includes faculty. As you know, we all interact with many individuals in the research community who are not faculty. It would be very hard for us to accomplish things if we only had

faculty working on our research. We depend on them and they depend on us to be honest and do our work with integrity. It's important to make sure that everyone who is working in that arena understands that there are broad implications for that. Cases that involve students do not necessarily have to come up to the same review process, if the school or college has the ability to manage that. So it just says "may," it doesn't mean we're kicking out everything from the review process just because it involves students. The same thing with staff. These are specific when they're working on, say, projects in research that are not federally funded. Again, these are all things that would be decided during the process with those individuals who would be governing those students or staff. The standing committee, which we have already, there's never been a statement about how many people it would have. We've now said it can have no fewer than three committee members. This was our practice, but it wasn't formalized in the policy. A few more things: we would now allow that throughout the inquiry or investigation process, that Deans of Schools have the ability to determine whether there might be any implications during that process, such as whether it would be appropriate or needed for administrative leave, salary continuation, or, say, a hold on an APT process. That could go in either direction. It could go in the direction that it could benefit an individual, say, that's on a tenure clock and has had an allegation where they have been limited from access to data or publications or issues. It isn't assuming that you're only thinking about it in terms of, well, if they are found that they did commit misconduct, that they can't be promoted. So it's really meant for both directions. Factual findings from the

investigation committee would now be conclusive and binding for other university purposes. So, for example, we interact a fair amount with the Authorship Dispute Board and so if there were findings from the misconduct review, that information can be used as factual findings for that group as well. The university has obligations to reporting outside of the institution and there has been a lot of attention to this in the media lately. So we've included details on our obligations to third-party reporting, specifically, that includes federal sponsors and more specific, new requirements from NIH [National Institutes of Health]. I mentioned the six year statute of limitations as well, which is consistent with the regulations. We have record retention requirements that are specified that had been in a separate document, but now we're in alignment with both of those.

What is staying the same? It sounds like we're changing a lot. To be clear, the policy is somewhere around 16 or 18 pages. So what is staying the same? The process is really outlined in the federal regulations. You have a process of what's called allegation, inquiry, investigation, and the final action of determination. The allegation process is conducted by our Misconduct Review Officer, who is Donna Kessler. The deciding official, which is either the Vice Provost for Research or the Vice Chancellor, which is the Dean of the School of Medicine, is the deciding official to make a determination in either of those areas. Those are all remaining the same, no changes there. Our Standing Committee on Misconduct in Research is the governing group that oversees the review process, conducts the interviews, gathers the information, makes assessments, and provides the formal

report and recommendations to the deciding official, who then makes a determination. The investigation process, I mentioned before, follows a similar pattern. This is at the level where we have federal reporting requirements, and individuals for the Investigation Committee are appointed ad hoc. Final actions, if there's any appeals process from the investigation level, go either to the Provost or to the Chancellor. We also have federal reporting requirements at that stage. Any sanctions or corrective actions that would be implemented if warranted would be at that stage. I just want to mention, because I know that Don had gotten a few questions from individuals about whether we should be thinking of other areas to consider as part of our research misconduct policy. As I mentioned before, the guidance really does follow federal regulations and reporting requirements. It doesn't mean that we shouldn't be thinking about other areas of misconduct, but to put it in the same policy I think would really muddy the waters in knowing that there are different groups and different areas that we need to be focused on and who is involved in those processes and determinations and evaluations. One area that you may have heard about is the issue of COI [conflict of interest] disclosure and whether that should really be considered research misconduct. That means either failure to disclose, inaccuracy to disclose, but you can imagine how difficult this can be. I was just in a meeting at AAMC [Association of American Medical Colleges] where the editors of JAMA [Journal of the American Medical Association] and ASCO [American Society of Clinical Oncology], one of the oncology societies, put up data from one individual who had reported their information in a medical journal, that

asked for their information for the last three years. The society asked for their information reported for the last two years, and NIH asked for their information reported for twelve months. So if you compared it all, none of it fit. But that individual didn't do anything wrong. So how do we manage disclosure from a process that would make sense that they committed something wrong? How would we assess those? There's a lot of room to be gained in advancing our reporting definitions and those sorts of things. The last thing I want to say is, I know there's been a lot of discussion amongst ECAC and amongst Academic Council about the broader areas of misconduct in academia. There are many things going on across the academic arena, as well as at Duke, in how we're assessing faculty culture, how we're dealing with misconduct. Right now, there are actions being taken by federal sponsors and scientific societies about how we define harassment, how we move forward in assessing that, and actually making a difference to prevent and also deal with the issue when it comes up. To be very clear, it has a separate process for evaluation and a separate process for determination and then actions thereafter. So those are definitely things that even our Office of Scientific Integrity is working towards. But to be clear, they just need to be separate at this time, but to know that we're looking at all those things together. If there are any questions, I'm happy to answer those.

Roxanne Springer (Physics): One of the things that the National Academies pointed out is how very critical it is to not delineate different types of misconduct, in other words, to make sure that it recognized that harassment is completely at odds with appropriate research and

academic conduct. It's for those reasons that I'd like to argue that language go into this policy so that abuse of humans is actually included in the research misconduct policy.

Swamy: Isn't that sort of narrowing it down into just the research misconduct? Isn't it part of the broader picture of the code of conduct?

Springer: Absolutely. I think this will take numerous prongs. And this should be one of them, in my opinion.

Taylor: You can think of this, at least what I think of what we have is, basically number seven, this is like Duke's number seven. You don't have this in front of you, but there are different types of conduct in an overall code of conduct. That's what the Executive Committee is planning to bring in April. An overall code of conduct that will have this included.

Springer: I'll just point out that the National Academies does not agree, necessarily, with this bifurcation.

Taylor: When I read this – I guess I just don't agree with that. We will talk about this in April, but we're planning to bring a comprehensive code of conduct.

Sara Beale (Law School): So, is this being presented to us as an information item, or does it require approval by this body?

Taylor: That's a good point. We talked about this. This is not a two-meeting rule. This is not being voted on. Duke has done this as an employer. It is a change of the Faculty Handbook, therefore the Council has to act. We [ECAC] acted on behalf of the Council. Because we just didn't feel

like it made sense to have the notion of a two-meeting rule and a vote when this is actually being done.

Beale: So it would not be in order to have a motion to include sexual harassment as recommended by that national body included in this, as well as in the broader standard. Because it's already been approved on our behalf.

Taylor: Yes. Duke has done this. This is essentially the faculty being put on notice of a new set of rules.

Cam Harvey (Fuqua School of Business): I would also like some discussion as to why we narrow the definition of research misconduct. The current policy is pretty clear. It says, "In addition, other practices that seriously deviate from those that are commonly accepted within the research community for proposing, conducting, or reporting research, may also constitute misconduct in research." That has been deleted, and it seems to me that within the policy that is being proposed, we're missing a lot of stuff. For example, we're missing things like p-hacking, where a researcher is doing a study and stops the data collection strategically when they get a positive result. Or, you don't manipulate the data. You don't censor the data, you actually strategically decide what data to use. So this problem is getting worse in academia, yet we seem to be moving in the other direction.

Swamy: To be very clear, lots of things come to our office to be assessed and evaluated, and they go through the same process. So we don't make a determination if it doesn't meet the regulatory definition that we say, we don't deal with it. Take it somewhere else.

We still make the assessment. Then they still even have corrective actions that come forth from that. But it may not meet the definition of research misconduct. So the difference is whether it requires federal reporting, whether it fits into any of those criteria, but it doesn't mean that our office and those committees don't assess it, that it doesn't go up to the deciding official for evaluation. But it may not meet the definition.

Harvey: That's the reason to delete that key sentence?

Swamy: Because it gets very complicated when we're doing something beyond the regulations and how we actually report that. Because it has actually gotten us into more trouble to be doing that.

Harvey: What is the goal here? To meet the requirement of regulations? Or is it to pursue the truth?

Swamy: Well, the goal is to be consistent with the guidelines and the regulations and to make sure that we're actually doing everything we can from the rest of our office, not just this policy, so that we can provide resources and tools for people to do it right, and also train everyone on what the right way is to do it. So this is the policy here that we'll then be providing further education and communication about that.

Taylor: Thank you, Geeta.

EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING A QUESTION SUBMITTED FOR THE ADMINISTRATION REGARDING AN INCIDENT IN THE BIOSTATISTICS AND BIOINFORMATICS DEPARTMENT

Taylor: We are now going to go into executive session, so students and members of the press will need to leave. As I said, I didn't mean we were going to go into executive session forever, [laughter] I meant until either 5:00pm or when the meeting ends, whichever is first, because I'm leaving at about 5:00.

[Remainder of the meeting conducted in executive session]