



New York University
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Faculty Senators Council
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March 10, 2011

MEMORANDUM

TO: Paul Horn
Senior Vice Provost for Research

FROM: Molly Nolan
Chair, FSC Personnel and Affirmative Action Committee
A/Y 2010-2011

RE: FSC PAAC response regarding Policy on Academic Conflict of Interest and
Conflict of Commitment

The Faculty Senators Council (FSC) Personnel and Affirmative Action Committee (PAAC) presents the attached response to the Policy on Academic Conflict of Interest and Conflict of Commitment statement of March 1, 2011.

CC: Carol Morrow, Associate Provost
Bonnie Brier, Senior Vice President
Martha Dunne, Associate Vice Provost
Robert Schacht, FSC Chairperson
Daniel Zwanziger, FSC Vice Chairperson
Carol Hutchins, FSC Secretary
Floyd Hammack, FSC Immediate Past Chair

PAAC Response to Policy on Academic Conflict of Interest and Conflict of Commitment statement of March 1, 2011

The Personnel and Affirmative Action Committee of the Faculty Senate Council has reviewed the above statement and has several concerns, which we wish to share with you.

I. Our first concerns involve the stipulations on teaching activities on page 9. We do not understand how the tightened regulations on teaching fall under the justification for a new conflict of interest and commitment statement, which Senior Vice Provost Horn laid out in his 3/2/2011 email. ie. the “revised policy reflects the increasingly stringent regulatory environment with respect to conflict of interest, and complies with the proposed PHS regulations that govern scientific research.”

We strongly opposed the stipulation that “A teaching engagement outside of NYU competes directly with NYU’s core educational mission. Accordingly a faculty member may not accept a concurrent faculty appointment at another academic institution, even while on unpaid leave from NYU.” This policy, which reverses the existing one, seems to conflict with the provision that allows faculty to work one day a week outside of NYU for consulting, business or whatever. Why is teaching exempt? This policy would prohibit faculty from taking prestigious visiting professorship, while on unpaid leave from NYU. It would prevent faculty, whom other schools are trying to recruit, from taking a trial semester/year and may well encourage them simply to leave NYU immediately upon an offer. It would prevent faculty from teaching in another country, except in summer, or from working with particular groups of students not available at NYU. It would prevent faculty from teaching courses that they are not able to offer at NYU. We recommend a reversion to the current policy, which allows faculty to be employed by another academic institution while on unpaid leave from NYU.

II. We are concerned by the provision, also on page 9, that no course designed for NYU may be taught elsewhere, even when a faculty member is not being paid by NYU, except with express permission of the dean or department chair. Does this apply to contract as well as TT faculty? The policy states that it applies to adjunct faculty. Is this provision written into the adjunct contract, for if not, this would be an impermissible unilateral revision of that contract? Does that contract require adjunct faculty to disclose all other teaching positions, as the conflict statement would henceforth require?

The policy does not clarify what defines “a course designed for NYU.” Is it simply any course taught here? Are courses that faculty taught before coming to NYU exempt? (And by the logic of the conflict statement, are such courses, designed for or at other institutions allowed to be taught here?) What exactly is prohibited? Teaching the exact same syllabus? Teaching the broad topic area? How much would a course have to be altered so that it could be taught elsewhere? And how could such a policy possibly be enforced?

Is the stipulation about NYU ownership of courses designed for NYU contained in the Statement of Policy on Intellectual Property? That document is referred to the above conflict statement but is not available on the web or in the Faculty Handbook. The

Tangible Intellectual Property statement and the Access to Research Data are posted, but nothing that would cover courses.

III. We found the descriptions of the committee(s) and their responsibilities confusing. How is the Faculty Advisory Committee on Conflict of Interest and Conflict of Commitment at Washington Square to be constituted? Does this committee simply deal with cases referred to it or does it monitor disclosure forms and not trends in conflicts of interest and commitment and suggest problems with the guidelines?

On page 17 it states that schools must refer conflicts of interest to the appropriate committee unless school procedures do not require such referral. This seems unclear and seems to negate a uniform policy by leaving most discretion to individual schools. On page 3 it states that the Provost approves such policies. Where is faculty input on this issue?

The above statement permits schools to establish their own committees in addition to the general one for Washington Square and for the Medical School. We are concerned that this could create an extremely confusing environment for faculty and lead to dueling committees.

IV. PAAC found the examples section in the above Conflict statement less clear than the examples in the currently valid document, which can be found on page 98 of the Faculty Handbook. Does example one, for instance, prohibit faculty from evaluating departments and schools at other universities? Does “company” in example seven include other universities and think tanks? Does it prohibit a faculty member from posting her/his research on the web as open data?

V. Two points needing clarification.

A. On page 8, Under (a) Outside Activities... subsection (iii) it states that a conflict of interest occurs if someone appropriates or diverts a business or financial opportunity that the person knows or should know that NYU is pursuing or is considering pursuing or *reasonably might be interested in pursuing if it were aware of the opportunity* We find the phrase which we have italicized to be very problematic. How would a faculty member know what NYU Trustees and top administrators might be interested in if they knew about it?

B. On page 20 under enforcement the above statement should refer explicitly to the disciplinary policies and procedure it has in mind. It should clarify whether violation of the conflict rules is grounds for breaking tenure (The statement that termination of employment is a possible penalty suggests that the statement believes this to be true.) and should clarify whether this is compatible with the grounds for dismissal of tenured faculty in the Faculty Handbook.



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Paul Horn *Senior Vice Provost for Research
& Distinguished Scientist in Residence*

April 13, 2011

Memorandum to: Molly Nolan, Chair, FSC Personnel and Affirmative Action Committee

From: Paul M. Horn, Senior Vice Provost for Research

Subject: Response to PAAC Comments on the Policy on Conflict of Interest and Conflict of Commitment

I reviewed the March 1 comments of the FSC PAAC on the Policy on Conflict of Interest and Conflict of Commitment with my colleagues in the Provost's Office and the Office of General Counsel, and write now to respond to your queries. Thank you for your detailed review, and for the opportunity for us to amend some language in the policy and to clarify the intent in others.

For your convenience, I am attaching a clean copy as well as a tracked version of the document that incorporates the changes triggered by the PAAC comments. Please note that the document also incorporates technical changes required to conform to comments we received at the end of March from the NIH; the NIH had reviewed our existing policy as part of its Compliance Program on Financial Conflict of Interest. We are confident that this document also meets the requirements of the new NIH policy on Financial Conflict of Interest, which will soon be formally issued.

First, as a general comment, I want to point out that consultation and communication are the major dynamics in the process outlined by the policy. While the policy identifies numerous circumstances that may constitute conflicts of interest, the policy emphasizes the importance of consultation between faculty member and department chair, dean, Provost, and/or General Counsel to determine whether these are conflicts, whether activities are permitted, and whether conflicts may be mitigated. (See for example the first full paragraph in Section I., General Principles and later in Section VI. Procedures: Disclosures, Review and Responsibilities.)

Now, in specific response to your questions:

Question I. We take your point about permissible activities while on unpaid leave, and have amended the language in Section IV.C. (1) (c) Outside Teaching Activities, to provide that a faculty member may accept a concurrent faculty appointment at another academic institution while on unpaid leave from NYU, *with the prior approval of the school dean*. Note that the Section IV. C. (1) explicitly provides that "Outside Activities that involve teaching at another institution require special disclosure and review." Note too that while PAAC observes that

current policy allows faculty to be employed by another academic institution while on unpaid leave from NYU, the Faculty Handbook explicitly provides that faculty members must obtain dean's and in some cases provost's approval for unpaid leaves. (Leave of Absence, Faculty Handbook page 52.) In practice, the request for LWOP includes an activity plan, which is typically a visiting academic appointment elsewhere, a non-academic appointment, a research project, personal reasons.

Question II. Your question raises issues about definitions of “a course designed for NYU” and copyright ownership of course materials. These issues will become clearer with the release of the University's Intellectual Property Policy. The IP policy is in draft, and we hope to have it completed and issued by the end of the calendar year.

In this Conflict policy, the broad notion is that if faculty use course materials designed for NYU in a setting that competes with NYU, then NYU can prohibit that activity. This issue has come up with respect to full time (tenure track and nontenure track) faculty as well as adjunct faculty. The policy applies to all faculty members, including adjuncts. (University authority in this area is well encompassed within the bounds of the current adjunct contract.)

The Conflict policy recognizes that some such uses of course materials by faculty are more clearly acceptable or more clearly prohibited than others. We can all envision where there is clear competition (where a videotape of a course for NYU students is used at another institution during the academic year) and where there is clearly not competition (where a professor teaches his or her materials on a summer cruise ship, in the capacity of scholar-in-residence). We appreciate that determining the proper use of teaching materials designed for NYU raises challenging issues. The Conflict of Interest policy addresses this ambiguity by directing faculty to seek guidance from department chair or dean, to determine whether or not a conflict exists.

Question III. With respect to your question about the committee mentioned in this policy: Generally, the policy provides that questions about conflict are to be resolved through consultation and discussion starting in the jurisdiction closest to the faculty – that is the department – and then moving as necessary to the school dean, and finally, if necessary, the University level. The school is responsible for monitoring and reviewing annual disclosure forms, and ad hoc disclosures, and referring unresolved issues and submitting recommendations to the Washington Square Faculty Advisory Committee, which will make a recommendation to the dean and/or Provost. The Washington Square Committee does not monitor and track disclosures – it reviews and adjudicates referrals from the schools of cases that cannot be settled on the school level. A model for such a committee exists in the Statement of Policy on Faculty Responsibility to the University (Faculty Handbook, Page 79), which this policy will supersede.

Schools may establish their own policies on disclosure and review of disclosure, providing that these are consistent with University policy, and that the school policies have Provostial approval. In this, the administrative framework is similar to a number of administrative areas in which oversight is provided by school committees as well as a University committee.

Question IV. In your comment about the clarity of examples, we have clarified and edited the Examples of Conflict of Interest in Exhibit A. The first example is not intended to prohibit

faculty from evaluating academic units at other universities in most circumstances. Throughout the policy, the intent is to encourage consultation within department and school, in this example, to determine if there are circumstances under which it would be inappropriate to serve on such a visiting review team.

Question V.A. With respect to Section IV.C. (1) (a) (iii), this phrase addresses the possibility of someone appropriating/diverting an opportunity when the person is in a position to know that NYU is pursuing that opportunity. If the person is not in a position to know, a conflict does not exist. When the person is in a position to know, consultation is appropriate to determine the circumstances and the nature of any possible conflict.

Question 5.B. In response to your comment about Section VI. E. Enforcement, the language has been amended to reference relevant disciplinary policies in the Faculty Handbook and in the policies and procedures of the relevant schools

cc: Bonnie Brier
Marti Dunne
Floyd Hammack
Carol Hutchins
Carol Morrow
Robert Schacht
Daniel Zwanziger

Reply to Paul Horn

Dear Vice Provost Horn:

Thank you for your response to PAAC's Comments on the Policy on Conflict of Interest and Conflict of Commitment policies. You addressed our major concerns, but there are two issues we wish to raise.

We are concerned in your reply about references to a new Intellectual Property policy that is not complete. An earlier policy was vetted by the Governance Committee of the FSC in 2009. Why is the policy being revised again? Will the Governance Committee review the newly revised draft when it is completed?

In your response to Question II from PAAC you stated that "The Conflict of Interest policy addresses this ambiguity [about which courses are designed for NYU] by directing faculty to seek guidance from department chair or dean, to determine whether or not a conflict exists." We agree that reducing ambiguity should be the goal of the process, but worry that this will not occur if guidance from chairs and deans is the sole supporting mechanism. To reduce ambiguity and get general consistency, outcomes need to be communicated and faculty need to be consulted. In your response to Question III you said that the model for the Washington Square Faculty Advisory Committee exists in the Faculty Handbook Statement of Policy on Faculty Responsibility to the University. p. 79 ff. In that statement, which the new policy supersedes, it is stated that

In an annual report published and distributed to the faculty, the Committee on Institutional Responsibility shall set forth its actions and decisions on the questions that have been presented, in order to establish further guidelines for the faculty. The anonymity of specific situations and individuals shall be preserved. (p. 81)

Whether or not the previous committee actually did produce and disseminate annual reports, we strongly recommend that the new Washington Square Faculty Advisory Committee do so in order to reduce ambiguity and establish general consistency.

Sincerely,

Molly Nolan
Chair, PAAC