

**A Supplementary Ruling from the Committee on Faculty Rights and
Responsibilities**

Appeal by Professor Donald Hindley

December 19, 2007

Our initial ruling on Professor Hindley's appeal (November 29) found serious flaws in the application of the university's procedures for discrimination tn6033Nd3597(h)-0.957028(e)3.1(c)3.15-0.4

the Faculty Handbook (Section III.C.1.a.). In addition they constitute a threat to the academic freedom of other faculty and students, and we will urge the Faculty Senate to work with us on ways to address that threat.

II. Fair Procedure. In our earlier ruling we found that Professor Hindley’s right to receive “fair and equitable treatment” under university policies (Section III.C.1.c.) was also violated, and we reiterate that finding. We read the Provost’s December 10 response memo as an acknowledgment of procedural failings, mitigated, in her view, by the sincerity of the student complaint and the expected resistance by Professor Hindley. We are troubled, however, by new factual statements in her memo that go beyond the record that was provided to us in our earlier round of interviews. In particular her detailed information about two more students in Professor Hindley’s class (in addition to the one officially complaining student) goes beyond what the factual record actually shows. The version of the investigator’s report supplied to us contains only hearsay evidence about these two students. It does not say that they “suffered significant emotional trauma.” It certainly does not suggest that “each also expressed significant fear over even reporting Professor Hindley’s conduct...” In our interviews with the Provost and with others who shared her decision-making role, we asked quite specifically and repeatedly if there was any relevant information, external to the report written by the investigator, on which the Provost and her associates might have relied. The answer was unequivocally “no.” It is therefore disturbing to find the factual record augmented at this late stage, whatever the reasons may be. (Had we been told about these unreported facts, we might well have interviewed the HR investigator.) Our conclusion remains that the factual record in this case, even when limited to the documented written evidence, cannot properly support any finding about whether acts of discriminatory harassment occurred.

We repeat our earlier statements that the HR investigation in this case lacked requisite thoroughness, failed to consider appropriate “problem resolution” methods, did not afford Professor Hindley a meaningful opportunity to involve a colleague on his behalf, and violated step 5 of the *Non-discrimination Procedures* by failing to return to talk with Professor Hindley. It seriously misstates those *Procedures* to say that step 5 is discretionary on the part of the investigator, whenever she concludes that the evidence all points in the direction of guilt. No reading of the language in step 5 could possibly support this interpretation. Having studied the investigator’s report carefully, we believe more questions should have been raised about her interpretation of quotations she attributes to Professor Hindley. (The Provost treats these quotations as undisputed facts in her reply memo.) As we noted previously the investigator failed to give Professor Hindley a chance to respond to her interpretations, let alone to confirm whether these quotations were even accurate. At this late date, he still has not been given an accurate picture of the allegations or judgments contained in the investigator’s report.

III. Rights in the appeal process. We restate our finding that Professor Hindley was entitled to have his discipline suspended pending his appeal to this Committee. The Provost still has not provided us with legal authority that might excuse her failure to comply with this essential part of Handbook procedure. By contrast, we have cited regulations that specifically defer to faculty handbook procedures—regulations she acknowledges as binding on the university. The fact that she has not produced any

