

**Boulder Faculty Assembly
Grievance Advisory Committee
2022–23 Annual Report**

Committee members:

Jennifer Hendricks (chair)
Alison Lemke
Markus Pflaum
Kevin Stenson

Matters handled

At the end of 2021–22, at the request of the complaining party, the GAC participated in an appeal under the PRR. The GAC advised the Provost’s Advisory Committee that the investigation of the matter had been improperly conducted. The Provost’s Advisory Committee agreed, and the provost sent the matter back for re-investigation. The re-investigation reached the same conclusion as the original investigation, a finding of no unprofessional conduct.

The GAC participated in four other matters, which are at varying stages as of the end of 2022–23. Two of those matters involved faculty members subjected to discipline under the PRR by their Supervising Administrators. In both cases, the faculty member did not contact the GAC until after the discipline had been imposed and they were looking for an avenue for appeal. In the other two matters, faculty members reached out to the committee about possibly filing a complaint under the PRR *against* their Supervising Administrator. In one case, the faculty member decided not to proceed; the other is ongoing.

In addition, the chair received requests for information from four faculty members in cases that did not proceed further under the PRR, so far as the GAC is aware.

The matter that occupied the largest share of the GAC’s time this year was one of the cases in which a faculty member was disciplined and tried to appeal. In that matter, The GAC expressed concern that imposition of a teaching-improvement plan was not consistent with the intent of an “informal resolution” under the PRR. While reviewing the matter, the committee also had concerns about the investigation, particularly that inadequate information was used to justify a disciplinary measure and that the professor’s right to academic freedom in teaching their course was violated. The committee wrote a letter to the provost about these concerns and received a reply from him rejecting the GAC’s concerns. The committee’s letter was forwarded to the Faculty Senate Grievance Committee in support of the faculty member’s complaint about violation of academic freedom. With the faculty member’s permission, a redacted version of the committee’s letter is appended at the end of this report.

The committee is concerned about the provost’s willingness to discipline a faculty member for academic choices regarding pedagogy and grading criteria. We note that in the matter in question, the faculty member had made a few comments to students that could be considered unprofessional, but could also be considered as comments on pedagogy. Those were also part of the investigation. The committee had reservations about whether those comments,

too, could legitimately be the basis for discipline, but the faculty member themselves apologized for the comments and did not seek to contest the findings of the investigation on that basis. The provost therefore could have imposed his chosen remedy on the basis of those comments alone. Instead, the provost insisted on his right to discipline a faculty member on the basis of a finding that their course and exam were too difficult, despite no input from anyone in the faculty member's department or anyone else with relevant expertise.

Recommendations for the PRR

The committee has identified the following matters that should be considered in a future revision of the PRR:

Clarify that the scope of the administration's disciplinary authority is *not* co-extensive with the full scope of faculty member's professional obligations and that faculty, individually and collectively, retain full control over matters of curriculum, grading standards, and pedagogy. If the provost persists in claiming that the PRR gives administrators unilateral authority to impose discipline over matters of pedagogy, the BFA should consider withdrawing its support for the PRR.

Require an administrator who receives a complaint to notify any faculty parties about the GAC as a resource during the process.

Create an alternative procedure in cases of recusal, to avoid unnecessary escalation up the administrative hierarchy, as this has the unfortunate consequence of leaving no avenue for appeal up the administrative hierarchy.

Clarify that a coercive remedy cannot be considered "informal." (The PRR defines "informal responses" as including, but not limited to, oral or written warnings or reminders.)

Clarify a faculty member's right to privacy with respect to PRR proceedings. In the GAC's review of correspondence in matters in which we have been involved, we have observed administrators, especially the provost, cc'ing a large number of other administrators on personnel matters that they have no apparent need to know about.

Undertake a re-evaluation of the best means by which investigations under the PRR are conducted to ensure accuracy and completeness of fact-finding during an investigatory process.

Problems with the Provost's Advisory Committee

As noted above, the GAC dealt with one matter that progressed from the PRR to the "Provost's Advisory Committee," which handles appeals from actions under the PRR. The policy document that governs the Provost's Advisory Committee is a mess. I've already shared the notes below with Katherine Eggert and Michele Moses, who I understand to be responsible for this policy, but include them here for possible future reference.

(1) Integration of “policy” and “procedures”

Each time I’ve talked to someone (including Suzanne Soled!) about the PAC, they have been very confused when I referred to the Procedures section and couldn’t find the provision I was referring to. The problem is that people are looking at it online, so they read the part called “Policy.” When they get to the end of it, they see the phrase “End of Policy” followed by a list of links to appendices, so they stop reading and never get to the “Procedures.” Also, the “Policy” section actually has a lot procedural elements in it, so people aren’t looking for more.

(2) Numbering in the “Procedures” document

In section 4 of the “Procedures” document, sub-section b (“Request for hearing”) has two itemizations that re-use the same numbers: first 1-3, then 1-5. This makes it difficult to refer uniquely to any of those provisions. It would help to break this into two sub-sections.

(3) Requesting a hearing

*** timeline for requests concerning allegations that “an action taken by their Dean, or the failure of their Dean to act ...” or “a Grievance process ... was conducted improperly and that their Dean has failed ...”** (Note: Should references to “their Dean” instead say “a Dean”?)

We have been unable to reconcile the following requirements:

- (1) The grievant “must first work promptly in good faith the Dean toward Informal Resolution.”
- (2) “If, after ten (10) working days of ... attempting Informal Resolution [it] is not achieved, the faculty member must meet [consult] with the VPFA ...”
- (3) “The faculty member must request this meeting in writing within ten (10) working days of when the Grievant knew or should have known that a grievable action occurred” and must then request a hearing before the PAC “within ten (10) working days of the meeting.

(1) and (2) seem to be saying that the grievant must attempt informal resolution and give it at least 10 days to work. But when you combine that with (3), you are saying that, once the person has something to complain about, they must wait at least ten days (while attempting informal resolution) before proceeding, but also that they must proceed *within* ten days. Those two seem to cancel each other out and result in their being no day on which the person is permitted to initiate PAC processes. (Or maybe they could do it at the precise moment of ten days since the problem arose, but only if they were able to start informal resolution efforts instantly. But even that would seem counter-productive in that it could cut off the informal resolution possibility prematurely.)

*** in general**

The procedures charge the PAC with making sua sponte determinations about eligibility for review, triviality of the concern, and timeliness, and specify that there is no appeal from the PAC’s decision to decline review for any of those reasons. There is some concern for ensuring the grievant or other affected party is given notice and an opportunity to respond to the PAC’s proposed determination of these issues. This also seems in tension with the provision stating that the provost has authority to extend deadlines.

(4) Participation by BFA grievance advisory committee

This is just a question. What is the process you envision for involving the GAC when someone requests it? [Edited to add: In the only matter in which the GAC participated, the GAC's participation was extremely truncated based on insufficient disclosure of information.]

(5) Things to watch

Some possible points of confusion regarding the PAC's interface with the PRR:

--different uses of the idea of "concern"

--whether by the time something reaches the PAC level, requiring (additional) attempts at informal resolution is worth the candle

-- regarding policy section III.D.2 and procedure section 4.B.1—The more severe sanctions must be imposed by a dean rather than a Supervising Administrator, so in the scheme envisioned by the PRR, a dean who imposes such a sanction is still acting as part of the primary case (and so is not a Reviewing Administrator when acting in this capacity—more like a superseding Supervising Administrator for the purpose of imposing a sanction).



Boulder Faculty Assembly

UNIVERSITY OF COLORADO **BOULDER**

Grievance Advisory Committee

[2022–23 academic year]

Provost Russell Moore
via email

Dear Provost Moore,

As you know, the BFA’s Grievance Advisory Committee has been contacted by Professor [X] regarding the professional misconduct investigation against [them]. The Grievance Advisory Committee of the BFA is charged with advising faculty, upon their request, on compliance with the PRR and on ways of resolving grievances in a manner that allows all parties to maintain productive relationships in support of the mission of the university.

The Committee understands that this matter is not in a formal appeal posture that would trigger the Committee’s role under PRR IV.C.4.c. The Committee’s charge, however, is broader than that provision of the PRR and includes the obligation to monitor and evaluate campus grievance processes in general. We believe this obligation includes communication, in the spirit of shared governance, regarding issues that arise under the PRR and other campus or university policies. Accordingly, the Committee has examined the report by [Y], your letter adopting that report, and Professor [X]’s response. Our review of the process raises some important concerns about compliance with the procedures outlined in the PRR. Our concerns fall into three categories.

First, we’d like to highlight the recusal process as a topic that should be re-evaluated in future reviews of the PRR. A guiding principle of the PRR is to resolve matters at the “lowest appropriate administrative level.” This principle is in some tension with moving “up” the chain in cases of recusal, rather than appointing a substitute Supervising Administrator. Keeping the matter at the same administrative level would give the responding faculty member a more meaningful opportunity to be heard by the decision-maker, leave “room” for an appeal of any sanctions, and avoid micromanagement.

The de facto escalation of this matter appears to have contributed to the educational remedy being imposed in a manner inconsistent with the PRR's vision for informal resolution. In Part IV.D.1.a., the PRR contemplates educational remedies as part of a range of actions that includes "voluntary apologies" and various types of mediation, all of which typically require that participation be voluntary. The Committee believes there is some ambiguity in the PRR regarding "educational" remedies that are coercively ordered rather than mutually agreed upon, but we also believe the PRR contemplates a collaborative process for arriving at informal resolutions. The importance of a collaborative process is highlighted by [facts specific to this case, which do not] seem to have been considered in formulating the remedy. Under these circumstances, it is understandable that Professor [X] feels the resolution to be punitive rather than constructive. A collaborative process would have included a conversation identifying shared goals and steps to achieving them, as contemplated by remedies such as mediation.

Second, the Committee is disturbed by the scope of this investigation and by the conclusion that Professor [X] committed unprofessional conduct due to an alleged "disconnect between the material being taught and the difficulty level of the exams." The only pieces of evidence cited in support of this conclusion were that some students complained, that Professor [X] denied a request to allow a more extensive cheat-sheet than [they] had authorized during exams, and that the grade distribution for the course was lower than some unspecified norm.

This line of inquiry is inconsistent with principles of academic freedom. Like all tenured faculty, Professor [X] is subject to annual evaluations of [their] performance, as well as post-tenure reviews every five years. Both types of review include evaluation of teaching and are performed by [their] academic peers in [their] department. Those colleagues not only have the requisite expertise to evaluate the substance of his courses and pedagogy; under principles of academic freedom, they are the appropriate evaluators of this aspect of his work. The Committee is concerned that the administration would conduct a *disciplinary* investigation into these pedagogical questions or into the general question of whether a professor's course is too difficult. These are manifestly academic questions and are the prerogative of the appropriate faculty body.

Third, the Committee concludes that the investigative report misapprehends and misapplies the preponderance-of-the-evidence standard. That standard inherently refers to factual findings, meaning whether a particular thing happened or not. One example of misapplication is described above: the conclusion that because students had complained and received poor grades, it was "more likely than not" that the students were correct about how the course should be taught *and* that Professor [X]'s disagreement constituted unprofessional conduct on [their] part. Yet the report contains no example of, say, a problem on an exam that someone with appropriate expertise determined to be "too difficult" in light of what had been

taught. Unproven allegations cannot form the basis for a preponderance-of-the-evidence finding.

Another example is the report's reliance on FCQs as "evidence" to support disciplinary action. Using FCQs for this purpose does not comport with the due-process standards established by the PRR. While PRR investigations do not require courtroom standards of evidence, it is inappropriate to use anonymous student comments as if they could establish facts, let alone establish whether a professor's pedagogical choices were improper. Indeed, the "terms of service" for the FCQs specify that they are to be used for "data analysis, creating teaching portfolios, and department promotion purposes," a list which conspicuously (and properly) fails to authorize the use of FCQs as evidence in disciplinary investigations.

Finally, the report misuses the preponderance standard in its conclusions regarding [an additional allegation]. The report concludes that Professor [X]'s [conduct in a certain matter] was retaliatory. This conclusion is based solely on the fact that the [matter] arose after some students had complained about the class. Again, an allegation without evidence does not constitute a preponderance of evidence.

In conclusion, the committee urges reconsideration of this matter to reach a resolution that respects Professor [X]'s and their department's control over their curriculum and pedagogical choices and that comports with the goal of collaborative informal resolutions that unite all parties in furtherance of the mission of the university.

Yours truly,



BFA Grievance Advisory Committee

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c: [X]