

Faculty Senate Minutes #530
John Jay College of Criminal Justice

Tuesday, October 26, 2021

1:40 PM

Zoom

Present (31): Alex Alexandrou, Chevy Alford, Elton Beckett, Ned Benton, Mohamed Ben Zid, Lissette Delgado-Cruzata, Jonathan Epstein, Jessica Gordon-Nembhard, John Gutierrez, Jay Hamilton, Marta-Laura Haynes, Christopher Herrmann, Veronica Johnson, Karen Kaplowitz, Catherine Kemp, Erica King-Toler, Yuk-Ting (Joyce) Lau, Vicente Lecuna, Anru Lee, Alexander Long, Samantha Majic, Gerald Markowitz, Patrick Raftery, Maureen Richards, Stephen Russell, Francis Sheehan, Gregory Sheppard, Charles Stone, Fritz Umbach, Adam Wandt, Violet Yu

Absent (7): Andrea Balis, David Brotherton, Marta Concheiro-Guisan, Heath Grant, Maki Haberfeld, Mickey Melendez, Hyunhee Park

Agenda

- 1. Adoption of the agenda**
- 2. Announcements**
 - **Report of the Senate Spring 2022 Registration Student Preferences Survey**
- 3. Approval of the Minutes #529 of October 14, 2021**
- 4. Potential Contract Issue of mandatory face-to-face instruction: Senator Fritz Umbach**
- 5. Proposed Senate Resolution on Online Instruction**
- 6. Proposed Senate Survey of the Faculty Senate members**
- 7. Discussion: Future Status of the Faculty Elections Committee**

1. Adoption of the agenda. Approved.

2. Announcements

President Benton reported that the chairs and the student leaders have wanted to survey our students to ascertain what modalities they want next semester but have found themselves unable to do so. And so the Faculty Senate's Executive Committee has done this. The results of the surveys conducted by CUNY Central have never been released, even to college administrators. Graduate Dean Sofia Morote sent the Senate survey to the program directors to send to their own students and 500 responses have been returned thus far representing 2,035 course enrollments. Of the respondents so far, 23% want traditional in-person courses and, yet, we are being required by the Chancellery to provide 70% of our sections in that format; 27% want synchronous classes; 35% want asynchronous; and 15% want hybrid. The students reported that the factors influencing their preferences are as follows: 16% prefer traditional learning modes; 67% are responding to job, home, or family demands; 32% need to fill out their course schedule; and 8% have had a bad experience with online experiences.

VP Kaplowitz suggested that the survey link be sent to the members of the Faculty Senate who could send it to their students. She noted that the program directors to whom Dean Morote sent the link probably sent the survey to their graduate students. President Benton said he would do so.

3. Adoption of Minutes #529 of the October 14, 2021, meeting. Approved.

4. Potential Contract Issue of mandatory face-to-face instruction: Senator Fritz Umbach

Senator Fritz Umbach reported that on Wednesday, October 13, 2021 Provost Li sent to "Chairs/Schedulers" a paragraph from FSR.034 about minimum teaching loads. The first point is that the policy says "a minimum of one course on campus during both the fall and spring semesters," which means that over the whole year, a faculty member is expected to be teaching "on campus," (p. 14) for a single course.

But looking closely at the contract also leads to the second point. When we turn the page, we find the definitions of what counts as "on campus" versus what requires a waiver. We find the answer on p.15: "Online or Hybrid Courses: An online course is one that is *taught entirely online with no face-to-face (emphasis added)* contact hours. A hybrid course is one that is taught partly online and partly in person, the ratio of in-class to online instruction to be determined by the faculty member. Workload credit is the same for online and hybrid courses as for in- person courses. Teaching an on-line class does not count as teaching on campus. A faculty cannot have all on-line schedule in a given semester."

Thus, according to the written policy contained in FSR.034, **ONLY** fully online courses do not count as teaching 'on campus' while hybrid courses would.

Senator Umbach explained the promissory estoppel concept: when there are multiple plausible interpretations of contract language *and* there's been a past practice that was not contested by either party that assumed or relied upon one particular interpretation of the text, the fact of that uncontested practice gives the interpretation underlying that practice more weight than the other interpretations.

President Benton explained that the gist of the promissory estoppel position is that Vice Chancellor Daniel Lemons' mandate about face-to-face instruction, as interpreted by our Provost to require fully in-person instruction and not hybrid course instruction, violates the principle of promissory estoppel, because faculty members have relied on the college's workload policy to arrange their work schedules, research plans, and sometimes ongoing home life decisions (such as the choice of where to live) based on the policy, and the Lemons' mandate contradicts the understanding communicated by the college. The policy (FSC.034 page 15) established that teaching a hybrid class constituted "teaching on campus" and the proportion of in-person classes was to be "determined by the faculty member."

John Jay faculty members are entitled to the provisions of FSR.034 based on the doctrine of promissory estoppel. An analogous New York State Appellate case is *Agress v Clarkstown Central School District* (2010 NY Slip Op 00455, decided on January 19, 2010, Appellate Division, Second Department) where the Appellate Division explained that "The elements of a cause of action based upon promissory estoppel are a clear and unambiguous promise, reasonable and foreseeable reliance by the party to whom the promise is made, and an injury sustained in reliance on that promise."

Although as a general rule estoppel may not be invoked in New York State against a governmental body to prevent it from performing its statutory duty or from rectifying an administrative error there is an exception to this general rule "where a governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his position to his detriment or prejudice." In *Landmark Colony at Oyster Bay v Board of Supervisors of County of Nassau*, (113 AD2d 741) the Appellate Division invoked the doctrine of estoppel against governmental entities where its "misleading nonfeasance would otherwise result in a manifest injustice" such as where the aggrieved party has been the victim of bureaucratic confusion and deficiencies.

So, Senator Umbach explained, faculty members have relied on FSC.034 as a clear and unambiguous promise, and the sudden Lemons' mandate, combined with the sudden campus mandate that hybrid classes do not constitute in-person on-campus instruction, creates injury to faculty members who relied on the promise. CUNY or campus administrators could claim that FSC.034 was incorrectly or ambiguously drafted, but this would be an admission of the "bureaucratic confusion and deficiencies" that are precisely necessary for promissory estoppel to apply to CUNY and John Jay as governmental subdivisions. Thus, John Jay faculty members should be entitled to teach a hybrid class to satisfy any expectation of teaching on-campus in any semester.

Senator Umbach also said that he and others have had communications with the PSC contract enforcement officer who agrees with them that there's very likely a contract issue on the first grounds; she hasn't responded yet regarding the second promissory estoppel issue. He suggested the following compromise: since what really matters is the students' learning and since research suggests that hybrid courses that meet in person at least once a week deliver learning outcomes about the same as fully face-to-face instruction (and better than face-to-face instruction when the content is scientific or technical), hybrid classes that meet that standard should be considered as teaching "on campus." He said the PSC asked him to explain all of these issues to them four days ago, on Friday, and that after he did so there was a fair amount of opposition (if from only a single faculty member). And that single faculty member's position is one that, Senator Umbach said, he is sympathetic with, which is that our students do poorly in the on-line environment and the data suggest they are dropping like flies from such courses.

Senator Umbach concluded that taking a big tent approach here will allow us to pre-empt potential opposition to our position from fellow faculty on top of the opposition from the administration. He said he doesn't want to engage in battle with the administration. But there

will (and, in his view, should be) some faculty opposition to any position that looks like we're just making it possible for faculty to take the low road of on-line teaching at the expense of student learning.

Because of other time-sensitive agenda items, the Senate did not engage in further discussion but asked Senator Umbach and Senator Markowitz, who also spoke of his communications with the PSC leadership, for follow-up briefings as more information becomes known or decisions are made.

5. Proposed Senate Resolution on Online Instruction

President Benton noted that at our previous Senate meeting, we adopted a resolution regarding the \$1.9 million Online Excellence Initiative of which \$540,000 is for faculty developers. The Senate's position was that more balance is needed with regard to the types of course modalities for which dev shells should be created. Subsequently, members of the Senate Executive Committee discussed the Senate's resolution with Allison Pease and Judith Cahn but we are at a stalemate. Allison and Judy are still focused on asynchronous courses; they cited SUNY's OSCQR [Open SUNY Course Quality Review] even though SUNY's document makes no reference to synchronous or asynchronous courses nor to semestral structure. Allison and Judy adopted SUNY's standards but John Jay has never done so.

So, the Senate is raising these issues but the appropriate bodies to resolve them are the Undergraduate Curriculum & Academic Standards Committee [UCASC] and Graduate Studies Committee [GSC]. President Benton said that Allison Pease and Judy Cahn are not the appropriate bodies by themselves to say the college has to do it this way. So the Faculty Senate Executive Committee has decided to ask the Senate to ask both UCASC and GSC to each pass a resolution calling for the 120 course templates to be designed to support hybrid, asynchronous, synchronous, and in-person courses. Similarly, DOES tells the graduate programs that they must have 8-week online semesters and tells undergraduate programs that they must have 16-week semester. He said that each program should decide semester size. President Benton said he would like to incorporate into the motion to adopt the resolution an understanding that the Executive Committee may add language about the findings of the survey of students that the Senate is conducting. The Resolution was adopted by unanimous vote.

Resolution Referred by the Faculty Senate, October 26, 2021, passed by unanimous vote

The Online Excellence Project 2021-2022 is a \$1.9 million dollar project of which \$540,000 is for the faculty developers (120 courses at \$4,500 each) and the remaining cost is mostly for 7 additional staff members for two years.

All courses meet the OSCQR (Open SUNY Course Quality Review) standards, which are available online here: <https://oscqr.suny.edu/>. These standards apply to "fully online, blended or web-enhanced courses" and ensure online courses are "learner centered and well designed" provided that course expectations are clear for students. These standards do not classify fully

online asynchronous instruction as a preferred approach, and do not mandate a semester length.

The project, as currently envisioned, will only develop model course templates for fully online asynchronous delivery. Instructors can adapt the course materials for other modes of use, but the project will not develop course materials for synchronous or hybrid modes of instruction. The Faculty Senate has recommended that the model course templates should be structured to treat hybrid, synchronous and asynchronous online instruction neutrally. The academic department should be able to offer use of the template for a hybrid section, a fully online synchronous section or a fully online asynchronous section. For example, if the model envisions a point for a class discussion on a topic, the instructor should be able to select (consistent with the scheduled course modality) an online discussion board or a synchronous discussion using a technology like Collaborate or Zoom.

The leaders of the project do not agree with several of the Senate recommendation, and in discussions we have not been able to fashion a compromise solution, so the Senate refers these matters to the Undergraduate Committee on Academic Standards and Curriculum (UCASC) and the Committee on Graduate Studies (CGS) as the academic governance bodies responsible for undergraduate and graduate curricular matters. These resolutions do not require amendment of the 2013 college policy for online teaching and learning.

The Senate suggests the following resolution to the Undergraduate Committee on Academic Standards and Curriculum:

For the Online Excellence Project 2021-2022, the 120 course templates shall be designed to neutrally support hybrid, online asynchronous and online synchronous modes of instruction. Proposed scope and content shall align with applicable learning goals and core curricular content.

The Senate suggests the following resolution to The Committee on Graduate Studies:

For the Online Excellence Project 2021-2022, the 120 course templates shall include graduate courses and shall be designed to neutrally support hybrid, online asynchronous and online synchronous modes of instruction. Proposed scope and content shall align with applicable learning goals and core curricular content. Graduate programs should determine which college semestral structure should be used for delivery of online courses and programs.

The Resolution was adopted by unanimous vote.

6. Proposed Faculty Senate Survey of Faculty Senate members

President Benton reported that the Faculty Senate's Racial Justice & Inclusion Committee has suggested to the Senate Executive Committee that the Senate conduct a confidential survey of Faculty Senate members. The Executive Committee is proposing that such a survey include members of this year's Senate as well as those faculty members who were on the Faculty Senate during the previous two years. He explained that the survey was developed by the Executive Committee and that they considered and decided to not include questions about whether the membership reflects the diversity of our faculty or of our students because that

can be determined objectively by analysis of the data. They also decided to not include questions about future leadership interest, because the survey is anonymous.

Senator John Gutierrez expressed his appreciation for the quick development of the survey. As a member of the Committee on RJ&I who brought this idea to the Executive Committee, he called this a great starting point. He suggested that he and the other members of his subcommittee of the CJ&I Committee meet with the Senate Executive Committee to develop a much more complete document. Senator Jessica Gordon-Nembhard said the reason the RJ&I and its subcommittee thought a survey would be a good idea is that they consider part of their goal and of their job is not just to monitor the campus but to monitor the Faculty Senate. They are interested in ascertaining who volunteers to serve on the Senate and who doesn't and what the barriers to doing so are. They are also interested in learning how to make the Senate more reflective of our student body. President Benton said he welcomes such collaboration and they will bring a richer version of the survey to the next Senate meeting.

7. Discussion: Future Status of the Faculty Elections Committee

VP Kaplowitz explained that the College Council Bylaws require that there be a Faculty Elections Committee [FEC], comprising five members of the full-time faculty. The FEC has traditionally counted the ballots and certified elections in which the entire full-time faculty is the electorate, such as annual elections for Faculty Senate at-large representatives and annual elections for FPC at-large members. But since the pandemic, these elections have been conducted electronically and, therefore, the FEC hasn't functioned and this fall, when the call for nominations for committees went out, no one (understandably) ran for the FEC. But because this committee is named in the Bylaws, the Faculty Senate is required to elect faculty members to it.

President Benton asked if we were to eliminate the FEC, whether there are any functions that would have to be transferred to another body, given that certification is from SimplyVoting. He added that having a disinterested party receive certification might obviate the need for the FEC.

Senator Maureen Richards, who has been a member of the FEC, said that someone should certify the company's certification. VP Kaplowitz said perhaps the FS executive committee but added that we should first determine how the Senate feels about whether we should continue electronic voting after the pandemic or return to paper ballots.

President Benton asked if anyone wants to return to paper ballots: there were no affirmative votes. Then he asked if the FEC should be maintained: there were no affirmative votes.

Senator Gordon-Nembhard suggested that the Faculty Senate Executive Committee is perhaps not the appropriate certifying body because the members would be certifying their own annual election to the Faculty Senate. She suggested that we ask either of the college's legal counsels, Tony Balkisoon or Jill Maxwell for their opinion. This was agreed to.

The meeting was adjourned at 2:40 pm.

Submitted by Karen Kaplowitz