



The University of New Mexico

Office of the Provost & Executive
Vice President for Academic Affairs
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Albuquerque, NM 87131-0001

March 10, 2008

Dear Colleagues:

I am writing to inform you that I have decided not to ask the Faculty Senate Ethics and Advisory Committee to review the conduct of Professor Lisa Chávez, as requested by those who signed the February 22, 2008 petition.

Before reaching my decision, which I know most of you will find disappointing, I met with some of you on several occasions, received and read carefully many e-mails, letters, and petitions, consulted with legal counsel and other administrators, and examined a number of pertinent university policies. Please allow me to review how the administration has dealt with this situation and why I came to the conclusion I did.

As you know, President Schmidly ordered an independent investigation of this matter upon becoming aware of it. It has become increasingly common to characterize that investigation (as is done in the February 22 petition) as "focused on the legal liability of the University and the legal rights and responsibilities of those involved." Others who have written me have further abbreviated the investigation, describing it as merely having "decided that no laws were broken."

These characterizations are inaccurate and unfair. In fact, the President's concerns were much broader than simple legal liability, and included whether there was evidence of a hostile learning environment, whether any student had been solicited or coerced to participate in the activities under question, and whether University facilities or properties were used in furtherance of these activities. The investigation addressed all of these issues and found no evidence of illegal activity and no evidence of violation of the University's sexual harassment policy. None of the students interviewed complained of either sexual harassment or of unequal treatment based on participation or non-participation in the activities. Everyone interviewed denied having been solicited by Professor Chávez to participate. The investigation revealed that the PEP website involvement of two graduate students preceded the involvement of Professor Chávez, and that both she and a third graduate student learned of the PEP website from the graduate students whose involvement preceded their own. All four of these adult women reported that their activities were consensual, and all disclaimed any recruitment, solicitation, or coercion. The investigation did not identify significant use of University property or

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facilities, and did not find that Professor Chávez initiated or encouraged importing these activities into the classroom. The implication that the University has “done nothing” or was concerned only with liability and not with its students is thus unwarranted.

The conclusion that I draw is that Professor Chávez’s conduct was clearly extra-mural, and this bears directly on the request most of you have made of me. Our faculty policy A61.8 (Faculty Ethics and Advisory Committee) specifies that the Committee “shall advise and consult...where a faculty member...*in the course of his or her instructional or research-related duties* (emphasis added) is accused of unethical behavior.” The reference to “instructional or research-related activities” is, in my view, informed by the Committee A Statement on Extramural Utterances, which appears as Appendix VII to the Statement on Academic Freedom and Tenure published in our Faculty Handbook, section B. Appendix VII instructs that “...an administration may file charges...if it... believes that the professor’s extramural utterances raise grave doubts concerning the professor’s fitness for continuing service” and that “[i]n the absence of weighty evidence of unfitness, the administration *should not prefer charges*” (emphasis added). Further, Appendix VIII (Faculty Ethics and Advisory Committee) states “It is intended that the Committee investigate only serious accusations which have or may have done damage to the accused’s reputation.”

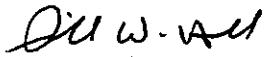
I read these policy statements as predicating investigatory proceedings upon an accusation on my part of serious unethical conduct and/or unfitness to serve, and as highlighting the grave seriousness of such an accusation. While the views of many of you clearly support such an accusation, I have received correspondence from other faculty which expresses the contrary point of view with equal vigor, and which, while expressing the same concern for the deteriorating atmosphere, attribute it not to the underlying situation but to the persistence of some in pursuing this matter.

I would like to make two final points. First, I do understand the concerns and outright pain this situation has caused on behalf of almost all who have considered it carefully, and I regret the entire matter as much as any of you. However, we have to be guided by our carefully crafted policies and avoid at all costs trampling on the rights of any one of us, no matter the feelings any extramural activities may provoke. Second, the issue of involvement of a student does escalate the situation in the minds of many. We need to be mindful of the power differential between faculty and students, and take care that any involvement be clearly consensual and be between adults. In this case, even if we conclude, as I do, that Professor Chávez used poor judgment in participating in the website activities with one of her students, in my mind this participation did not rise to the level of calling into question her “unfitness for duty.”

Under these circumstances, and in light of the policy guidance discussed above, I do not find present the “weighty evidence of unfitness” upon which to initiate further proceedings through my office. Instead, I urge all concerned to regard this painful episode in the life of the English department as concluded. I am willing to do everything I can to promote some healing to return the atmosphere to a professional one that will enable everyone to get back to teaching, scholarship, and service.

Nevertheless, as we have discussed, we are using the "academic chain" here, so you are of course free to seek the Provost's review of my decision.

Sincerely,



Richard W. Holder
Deputy Provost

copy: President David Schmidly
Provost Viola Florez
Dean Brenda Claiborne
Professor David Jones, Chair, Department of English
Lee Peifer, Senior Associate University Counsel

Note: A copy of this letter is being sent individually to all those who either signed the February 22 petition or wrote me separately. Since some of the latter group wrote "confidential" on their letters, I am not providing a summary list of recipients.